

NEUTRAL CITATION NO:2022/DHC/005590

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 10th November, 2022**
Pronounced on: 16th December, 2022

+ W.P.(C) 1092/2021 & CM APPL. 3056/2021

RAMESHWAR JHA Petitioner

Through: Mr. Devendra Kumar, Mr. Sunil
K. Jha, Ms. Priti and Mr. N. K.
Upadhyay, Advocates

versus

THE PRINCIPAL RICHMOND GLOBAL SCHOOL & ORS.

..... Respondents

Through: Ms. Akanksha Kaul, Ms. Apoorva
Pandey and Mr. G. G. Kashyap,
Advocates for R-1
Mr. Rishikesh Kumar, ASC,
GNCTD with Mr. Muhammad
Zaid and Mr. Aditya Raj,
Advocates for GNCTD
Mr. Zahid Hanief, Advocate for R-
3

+ W.P.(C) 10649/2021 & CM APPL. 32835/2021

SAMRAT Petitioner

Through: Appearance not given

versus

GNCT OF DELHI AND ORS Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.

NEUTRAL CITATION NO:2022/DHC/005590

Pradeep and Ms. Mahak Rankawat,
Advocates for DOE

+ W.P.(C) 10731/2021 & CM APPL. 33142/2021

ISHAAN THROUGH NATURAL GUARDIAN/FATHER

..... Petitioner

Through: Appearance not given

versus

GOVT. OF NCT OF DELHI AND ORS Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE

+ W.P.(C) 14408/2021 & CM APPL. 45384/2021

YOGESH Petitioner

Through: Mr. Devendra Kumar, Mr. Sunil
K. Jha, Ms. Priti and Mr. N. K.
Upadhyay, Advocates

versus

THE PRINCIPAL DE INDIAN PUBLIC SCHHOL & ANR.

..... Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE

+ W.P.(C) 11297/2022 & CM APPL. 33201/2022

NEUTRAL CITATION NO:2022/DHC/005590

VINOD KUMAR Petitioner

Through: Mr. Devendra Kumar, Mr. Sunil
K. Jha, Ms. Priti and Mr. N. K.
Upadhyay, Advocates

versus

THE PRINCIPAL R D RAJPAL PUBLIC SCHOOL & ANR.

..... Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE
Mr. Kamal Gupta, Mr. Sparash
Aggarwal and Ms. Paridhi,
Advocates

+ W.P.(C) 11643/2022 & CM APPL. 34522/2022

VIKAS Petitioner

Through: Mr. Devendra Kumar, Mr. Sunil
K. Jha, Ms. Priti and Mr. N. K.
Upadhyay, Advocates

versus

THE PRINCIPAL DE INDIAN PUBLIC SCHOOL & ANR.

..... Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE

+ W.P.(C) 13677/2022

MANTA SINGH & ORS. Petitioners

NEUTRAL CITATION NO:2022/DHC/005590

Through: Mr. Aayush Agarwala, Mr. Siddham Nahata and Ms. Bhumika Sharma, Advocates

versus

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Santosh Kumar Tripathi, Standing Counsel, Civil, GNCTD with Mr. Arun Panwar, Mr. Pradeep and Ms. Mahak Rankawat, Advocates for DOE
Ms. Shobha Rani, Advocate for R-2

+ W.P.(C) 13708/2022

ASHOK Petitioner

Through: Mr. Aayush Agarwala, Mr. Siddham Nahata and Ms. Bhumika Sharma, Advocates

versus

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Santosh Kumar Tripathi, Standing Counsel, Civil, GNCTD with Mr. Arun Panwar, Mr. Pradeep and Ms. Mahak Rankawat, Advocates for DOE
Mr. R. K. Sharma and Mr. Abhishek Mudgal, Advocates for R-2

+ W.P.(C) 13908/2022

NEERAJ MAHENDRA Petitioner

NEUTRAL CITATION NO:2022/DHC/005590

Through: Mr. Aayush Agarwala, Mr. Siddham Nahata and Ms. Bhumika Sharma, Advocates

versus

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Santosh Kumar Tripathi, Standing Counsel, Civil, GNCTD with Mr. Arun Panwar, Mr. Pradeep and Ms. Mahak Rankawat, Advocates for DOE
Ms. Shobha Rani, Advocate for R-2

+ W.P.(C) 13976/2022

PREM CHAND Petitioner

Through: Mr. Aayush Agarwala, Mr. Siddham Nahata and Ms. Bhumika Sharma, Advocates

versus

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Santosh Kumar Tripathi, Standing Counsel, Civil, GNCTD with Mr. Arun Panwar, Mr. Pradeep and Ms. Mahak Rankawat, Advocates for DOE
Ms. Shobha Rani, Advocate for R-2

+ W.P.(C) 13998/2022

VICKY Petitioner

Through: Mr. Aayush Agarwala, Mr.

NEUTRAL CITATION NO:2022/DHC/005590

Siddham Nahata and Ms. Bhumika
Sharma, Advocates

versus

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE
Ms. Shobha Rani, Advocate for R-
2

+ W.P.(C) 13999/2022

ARUN KUMAR SHARMA Petitioner

Through: Mr. Aayush Agarwala, Mr.
Siddham Nahata and Ms. Bhumika
Sharma, Advocates

versus

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE
Ms. Shobha Rani, Advocate for R-
2

+ W.P.(C) 14003/2022

AMIT KUMAR JHA Petitioner

Through: Mr. Aayush Agarwala, Mr.
Siddham Nahata and Ms. Bhumika

NEUTRAL CITATION NO:2022/DHC/005590

Sharma, Advocates

versus

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE
Ms. Shobha Rani, Advocate for R-
2

+ W.P.(C) 14021/2022

SUMAN KUMARI JATAV Petitioner

Through: Mr. Aayush Agarwala, Mr.
Siddham Nahata and Ms. Bhumika
Sharma, Advocates

versus

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE
Mr. Randhir Kumar, Advocate for
R-2

+ W.P.(C) 14119/2022

SANTOSH DEVI Petitioner

Through: Mr. Aayush Agarwala, Mr.
Siddham Nahata and Ms. Bhumika
Sharma, Advocates

versus

NEUTRAL CITATION NO:2022/DHC/005590

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE
Ms. Shobha Rani, Advocate for R-
2

+ W.P.(C) 14181/2022

SUMAN KUMARI JATAV Petitioner

Through: Mr. Aayush Agarwala, Mr.
Siddham Nahata and Ms. Bhumika
Sharma, Advocates

versus

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE
Ms. Shobha Rani, Advocate for R-
2

+ W.P.(C) 14188/2022

POOJA DEVI Petitioner

Through: Mr. Aayush Agarwala, Mr.
Siddham Nahata and Ms. Bhumika
Sharma, Advocates

versus

NEUTRAL CITATION NO:2022/DHC/005590

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE
Mr. Pramod Gupta, Ms. Vidisha
Jain, Ms. Utkarsha Srivastava and
Ms. Poonam Meena, Advocates for
R-2

+ W.P.(C) 14229/2022

SHABNAM Petitioner

Through: Mr. Aayush Agarwala, Mr.
Siddham Nahata and Ms. Bhumika
Sharma, Advocates

versus

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE
Ms. Shobha Rani, Advocate for R-
2

+ W.P.(C) 14242/2022

LEKHA KUMARI Petitioner

Through: Mr. Aayush Agarwala, Mr.
Siddham Nahata and Ms. Bhumika
Sharma, Advocates

versus

NEUTRAL CITATION NO:2022/DHC/005590

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE
Ms. Shobha Rani, Advocate for R-
2

+ W.P.(C) 14243/2022

SHAKILA KHATUN Petitioner

Through: Mr. Aayush Agarwala, Mr.
Siddham Nahata and Ms. Bhumika
Sharma, Advocates

versus

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE
Mr. Namit Suri and Mr.
Rameezuddin Raja, Advocate for
R-2

+ W.P.(C) 14260/2022

KAPIL KUMAR Petitioner

Through: Mr. Aayush Agarwala, Mr.
Siddham Nahata and Ms. Bhumika
Sharma, Advocates

versus

NEUTRAL CITATION NO:2022/DHC/005590

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE
Ms. Shobha Rani, Advocate for R-
2

+ W.P.(C) 14288/2022

PAWAN KUMAR Petitioner

Through: Mr. Aayush Agarwala, Mr.
Siddham Nahata and Ms. Bhumika
Sharma, Advocates

versus

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE
Ms. Shobha Rani, Advocate for R-
2

+ W.P.(C) 14289/2022

RITU KASHYAP Petitioner

Through: Mr. Aayush Agarwala, Mr.
Siddham Nahata and Ms. Bhumika
Sharma, Advocates

versus

NEUTRAL CITATION NO:2022/DHC/005590

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE
Ms. Shobha Rani, Advocate for R-
2

+ W.P.(C) 14305/2022

VINAY YADAV Petitioner

Through: Mr. Aayush Agarwala, Mr.
Siddham Nahata and Ms. Bhumika
Sharma, Advocates

versus

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE
Mr. Kamal Gupta, Mr. Sparsh
Aggarwal and Ms. Paridhi,
Advocates for R- 2

+ W.P.(C) 14332/2022

RAJNI KHURANA Petitioner

Through: Mr. Aayush Agarwala, Mr.
Siddham Nahata and Ms. Bhumika
Sharma, Advocates

versus

NEUTRAL CITATION NO:2022/DHC/005590

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE
Ms. Shobha Rani, Advocate for R-
2

+ W.P.(C) 14412/2022

JYOTI Petitioner

Through: Mr. Vivek Kumar Tandon,
Advocate along with petitioner in
person

versus

GOVERNMENT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE
Ms. Shobha Rani, Advocate for R-
2

+ W.P.(C) 14449/2022

VIJAY KUMAR Petitioner

Through: Mr. Aayush Agarwala, Mr.
Siddham Nahata and Ms. Bhumika
Sharma, Advocates

versus

NEUTRAL CITATION NO:2022/DHC/005590

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE
Ms. Shobha Rani, Advocate for R-
2

+ W.P.(C) 14456/2022

SHALU Petitioner

Through: Mr. Vivek Kumar Tandon,
Advocate along with petitioner in
person

versus

GOVERNMENT OF NCT OF DELHI Respondent

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE
Ms. Shobha Rani, Advocate for R-
2

+ W.P.(C) 14457/2022

HARBANSH KUMAR Petitioner

Through: Mr. Vivek Kumar Tandon,
Advocate along with petitioner in
person

versus

GOVERNMENT OF NCT OF DELHI & ANR. Respondents

NEUTRAL CITATION NO:2022/DHC/005590

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE
Ms. Shobha Rani, Advocate for R-
2

+ W.P.(C) 14463/2022

SHARDA KHER (AS GUARDIAN OF KUNIKA KHER)

..... Petitioner

Through: Mr. Ishan Sanghi, Ms. Sagrika
Wadhwa and Mr. Arish
Chaudhary, Advocates

versus

GOVT OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE
Dr. Sudershan Kumar, Advocate
for R-2

+ W.P.(C) 14483/2022

SONU

..... Petitioner

Through: Mr. Aayush Agarwala, Mr.
Siddham Nahata and Ms. Bhumika
Sharma, Advocates

versus

GOVT OF NCT OF DELHI & ANR.

..... Respondents

NEUTRAL CITATION NO:2022/DHC/005590

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE

+ W.P.(C) 14514/2022

AJIT SINGH Petitioner

Through: Mr. Ishan Sanghi, Ms. Sagrika
Wadhwa and Mr. Arish
Chaudhary, Advocates

versus

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE
Dr. Sudershan Kumar, Advocate
for R-2

+ W.P.(C) 14541/2022 & CM APPL. 44475/2022

MASTER RIDHYANSH Petitioner

Through: Mr. Chirag Madan, Mr. Shivender
Sharma and Ms. Ravleen
Sabharwal, Advocates

versus

MAXFORT SCHOOL & ANR. Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.

NEUTRAL CITATION NO:2022/DHC/005590

Pradeep and Ms. Mahak Rankawat,
Advocates for DOE

+ W.P.(C) 14546/2022

AMBAR DABAS

..... Petitioner

Through: Dr. Amit George, Mr. Amol
Acharya, Mr. Rayadurgam Bharat,
Mr. Arkaneil Bhaumik, Mr. P.
Harold Jaimon, Advocates
(DHCLSC)

versus

DIRECTORATE OF EDUCATION & ANR. Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE
Ms. Smati Surbhi and Mr. Mohd.
Shahid, Advocates for R-2

+ W.P.(C) 14671/2022 & CM APPL. 44959/2022

MASTER PARTH BHALLA THROUGH NATURAL

GUARDIAN/MOTHER PREETI

..... Petitioner

Through: Appearance not given

versus

VIDYA JAIN PUBLIC SCHOOL & ANR. Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,

NEUTRAL CITATION NO:2022/DHC/005590

Advocates for DOE

+ W.P.(C) 14780/2022 & CM APPL. 45422/2022

YASHIKA

..... Petitioner

Through: Mr. Pankaj Sinha, Mr. Kailash Kr. Jha and Mr. Shriesh Sharma, Advocates

versus

D A V PUBLIC SCHOOL AND ANR

..... Respondents

Through: Mr. Santosh Kumar Tripathi, Standing Counsel, Civil, GNCTD with Mr. Arun Panwar, Mr. Pradeep and Ms. Mahak Rankawat, Advocates for DOE

+ W.P.(C) 14844/2022 & CM APPL. 45656/2022

DIVYANSH

..... Petitioner

Through: Mr. Pankaj Sinha, Mr. Kailash Kr. Jha and Mr. Shriesh Sharma, Advocates

versus

LITTLE FAIRY PUBLIC SCHOOL & ANR. Respondents

Through: Mr. Jyotinder Kumar, Mr. Vyom Shandilya and Ms. Palak Khurana, Advocates for R-1
Mr. Santosh Kumar Tripathi, Standing Counsel, Civil, GNCTD with Mr. Arun Panwar, Mr. Pradeep and Ms. Mahak Rankawat, Advocates for DOE

NEUTRAL CITATION NO:2022/DHC/005590

+ W.P.(C) 15199/2022

SONU KUMAR Petitioner

Through: Mr. Ishan Sanghi, Ms. Sagrika
Wadhwa and Mr. Arish
Chaudhary, Advocates

versus

GOVERNMENT OF NCT OF DELHI AND ANR..... Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE

+ W.P.(C) 15330/2022

MASTER LOVE Petitioner

Through: Ms. Radha Mohan Sharma, Mr.
Jiwan Ram and Mr. Rahul Kumar,
Advocates

versus

THE STATE & ORS. Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradeep and Ms. Mahak Rankawat,
Advocates for DOE
Mr. Pramod Gupta, Ms. Vidisha
Jain, Ms. Utkarsha Srivastava and
Ms. Poonam Meena, Advocates for
R-3

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

“अन्नदानं परं दानं विद्यादानं अतः परम्।

अन्नेन क्षणिका तृप्तिः यावज्जीवं च विद्यया।।”

1. The aforequoted *subhasitam* clearly lays down the merits of imparting education. It is stated that charity by way of giving food to a person is a great deed, but giving *vidyā* (education) is even better, since the satisfaction (obtained) from consuming food is momentary, but that (obtained) from *vidyā* lasts a lifetime. This probably could be translated, not precisely yet contextually, to the saying 'Give a man a fish, you feed him once. Teach him to fish and you feed him for life'. Thus, the charity of imparting education is the greatest of all charities. Imparting education is a charitable cause and a calling that cannot be allowed to be metamorphosed into a platform for profiteering.

2. Mahatma Gandhi in his thoughts on *Nai Talim* (New Education) expressed that the basic education should be free and compulsory for all persons between the ages of seven to fourteen irrespective of their economic backgrounds. His thoughts are reproduced hereunder:

“I am a firm believer in the principle of free and compulsory primary education for India. I also hold that we shall realize this only by teaching the children a useful vocation and utilizing it as a means for cultivating their mental, physical and spiritual faculties. Let no one consider these economic calculations in connection with

education as sordid, or out of place. There is nothing essentially sordid about economic calculations. True economics never militates against the highest ethical standard, just as all true ethics to be worth its name must at the same time be also good economics.”
[Harijan, 9-10-'37]

3. While we rejoice the *Azaadi ka Amrit Mahtosav*, on the occasion of the 75th Anniversary of Indian Independence – of liberty from the clutches of colonialism, it is an occasion to relish as well as retrospect. We achieved political independence in 1947, but social and economic independence still evades us. It is pertinent to reminisce the words of the Chief Architect of Indian Constitution, Dr. B. R. Ambedkar, where he said:

“However good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot.”

4. It is as evident as it can be that letters of law remain in black and white devoid of flesh and blood unless they are given effect to. Welfare legislations must be implemented in letter and spirit to ensure that objectives sought therein are implemented by making the fruits accessible to and exercised to the benefit of the last person in the society for whom the legislation was brought in.

5. After the Constitution (Eighty-sixth Amendment) Act, 2002, which inserted Article 21-A in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right, and with the advent of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter

referred to as the “RTE Act”), ensuring free and compulsory education to all children of the age of six to fourteen years became a solemn responsibility and commitment on the part of state.

6. The instant batch of petitions has been filed by the petitioners seeking the admission of students under the Economically Weaker Section category (hereinafter referred to as the “EWS category”) under Section 2(e) of the RTE Act in the respondent schools at the elementary level. Such students from the EWS category have been given Letters by the Department of Education (hereinafter referred to as the “DOE”), Government of NCT of Delhi confirming their admission to the respective schools in Delhi under the Scheme of the RTE Act.

7. These letters were issued pursuant to a draw of lots conducted by the DoE and the results were communicated to all the schools as well as the fortunate few children belonging to the EWS category who got selected by such a draw of lots. Despite the children possessing confirmed admission letters from the DOE, the schools refused to give them admission.

8. Learned counsel for petitioners have even made a statement, at the bar, that to add insult to injury, the school gates were literally shut in the faces of the shortlisted students and their parents. One can just imagine the humiliation faced by the young children and their parents. This Court, as a custodian of the Constitution, cannot remain a mute spectator to the outright bulldozing of human rights by those in the noble service of imparting education, thus bringing bad name and repute to the same.

9. The same has been transpiring in the instant case, where the provisions of the RTE Act as well as the Directives/Circulars issued by the DoE are being violated and brutally lynched in broad daylight. This is the status, where circulars in form of letters are exchanged between the State and the Schools, while the poor children along with their parents, despite having followed the due procedure, are forced to move from pillar to post and are being humiliated at every step with the only hope that on some fortunate day, Lady Luck will shower her blessings and these children will get admission in a school. These children have committed no other crime but that they were born in poverty. This Court's conscience is laden with the woes of the poor children and their parents. The state of affairs is appalling, anguishing and agonizing. It is a travesty of justice and an utter failure on the part of the state in its duties of a welfare state.

10. In light of the flurry of petitions being filed before this Court *qua* the admissions of students belonging to economically disadvantaged strata of society, and due to paramount significance of the matter and its ramifications on the career of young students seeking admission, the instant batch of petitions was heard at length on the question of law with an intent to settle the principles governing the EWS admissions in schools and the mechanism for dealing with non-compliance of the same. It is made clear that the question of facts that are varying from case to case of individual petitioners have not been dealt with in this judgment.

ISSUES

11. Having heard the learned counsels for both the sides, the issues for consideration for being adjudicated in the instant batch of petitions are framed hereunder:

Issue I.

What is the rationale behind granting reservation for students belonging to the EWS category under the RTE Act?

Issue II.

What is the method of calculating the percentage of 25% for admission to students from weaker sections under the RTE Act, viz. -

- (i) Whether it is calculated as actual strength of the class or as per the declared strength for an academic year?
- (ii) Whether the prescribed percentage is a cap on reservation or a basic threshold that needs to be followed?

Issue III.

What are the measures that can be adopted to ensure that the provisions of the RTE Act and/other orders passed by the Directorate of Education (DoE) under the Act are not violated, viz.-

- (i) What is the ambit of powers of the Directorate of Education to pass binding orders to the schools under the RTE Act as well as the DSE Act?
- (ii) What is the mechanism to enforce the provisions of the RTE Act upon being flouted?

SUBMISSIONS**Petitioners' Submissions**

12. Learned counsels for the petitioners submitted that the right to free education was originally a directive principle under Article 45 of the Constitution, which was elevated to the status of a fundamental right by way of the Constitution (Eighty-Sixth Amendment) Act, 2002 which inserted Article 21A under Part-III, thus, placing a categorical obligation on the State to provide free and compulsory education to all children of the age of six to fourteen years.

13. It is submitted that even prior to, and independent of, Article 21A, the Hon'ble Supreme Court in a plethora of judgments including *Mohini Jain v. State of Karnataka (1992) 3 SCC 666*, *Unni Krishnan v. State of Andhra Pradesh (1993) 1 SCC 645* and *State of H.P v. H.P State Recognised & Aided Schools (1995) 4 SCC 507* had declared the right to primary education to be a fundamental right.

14. It is also submitted that in the case of *Ashok Kumar Thakur v. Union of India (2008) 6 SCC 1*, the Hon'ble Supreme Court has declared Article 21-A to be the most important fundamental right which stands above all other rights since the ability to enforce one's fundamental rights flows from one's education.

15. It is further submitted that the RTE Act was enacted to aid the implementation of Article 21-A and help the country realize the goal of universal elementary education. It is submitted that reliance is placed on

the Statement of Objects & Reasons of the RTE Act for the purpose of understanding the true import of the said Act.

16. At this juncture, the learned counsel for petitioner sought to place reliance on some of the relevant provisions of the RTE Act applicable to the instant case, as stated hereunder:

- a) Section 2(a) of the Act defines who would be the 'appropriate Government' in respect of a school under the RTE Act. This provision may be read with Section 8 which lists the obligations of such appropriate Government.
- b) Section 2(e) defines who would be considered to be a 'child belonging to weaker section'.
- c) Section 2(n) enumerates the schools which would be covered under the RTE Act, and specifically sub-clause (iv) which covers unaided schools as well.
- d) Section 3 sets out the objective and goal, i.e. every child from the age of 6 to 14 years is to be afforded free compulsory education in a neighborhood school till completion of elementary education.
- e) Section 12(2) provides that unaided schools providing free education would be reimbursed the expenditure to the extent of per-child expenditure incurred by the State.
- f) Chapter VI grants powers to the National Commission for Protection of Child Rights and the respective State Commissions for Protection of Child Rights to effectively act as grievance redressal mechanisms.

NEUTRAL CITATION NO:2022/DHC/005590

g) Section 35 permits the Central Government and the appropriate Government to issue necessary guidelines and directions for implementation of the RTE Act.

h) Section 38 confers powers to make necessary rules. It is important to highlight that the list provided under sub-clause (2) is ‘without prejudice to the generality’ of the general power to make rules and therefore, the argument that no rules can be made in respect of Section 12(1)(c) is completely misconceived.

17. It is also submitted that the Government of NCT of Delhi has framed the Delhi Right of Children to Free and Compulsory Education Rules, 2011 (hereinafter referred to as the “Delhi RTE Rules”). Under Rule 11, the procedure for reimbursement of expenditure to the schools has been provided. Rule 15 permits withdrawal of recognition to a school which fails to fulfill conditions for grant of such recognition. It is also stated that, Form II appended to the Delhi RTE Rules specifically mandates admission to the extent of 25% of the strength of the class to students of EWS category. Rule 24 provides for a mechanism to approach the Delhi Commission for Protection of Child Rights for registering complaints under the RTE Act. Rules 26 and 27 grant powers to the DoE to issue necessary directions for implementation of the provisions of the RTE Act.

18. It is further contended that the most important provision for the purpose of adjudication of the instant dispute is Section 12(1)(c) of the RTE Act which reads as under:

NEUTRAL CITATION NO:2022/DHC/005590

“(c) specified in sub-clauses (iii) and (iv) of clause (n) of section 2 shall admit in class I, to the extent of at least twenty-five per cent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion.”

19. It is submitted that the school has mischievously caused confusion while interpreting the phrase 'strength of the class' to suggest that it means the students actually admitted in an academic year. This issue was considered by this Court in ***Birla Vidya Niketan v. Govt. of NCT of Delhi***, 2013 SCC OnLine Del 3171 wherein it was categorically held that:

“8. ... In any case, even if the school does not admit students from other categories for the academic year 2013-2014, the number of students belonging to EWSs/Disadvantaged Group cannot be restricted to 44 on the ground that the percentage of such students should not exceed 25%. Reducing the total intake to 175 during the academic year 2013-2014 is petitioner's own creation for which, the students belonging to EWSs/Disadvantaged Group cannot be made to suffer. In any case, there is no illegality in the ratio of the students belonging to EWSs/Disadvantaged Groups being more than 25%, the requirement being to have a minimum ratio of 25% for such students.”

20. It is also submitted that the same issue was again considered by the Court in ***The Sovereign School v. Directorate of Education***, 2013 SCC OnLine Del 3928 where it was held that a relaxation may be granted in cases where despite reasonable and *bona fide* attempts on the part of the school to admit the general category students, the ample number of admissions did not take place.

21. Again, in the case of *Siddharth International Public School v. Motor Accident Claim Tribunal, 2016 SCC OnLine Del 5272*, a Division Bench of this Court had the occasion to deal with the same question, and it was held that the 25% ratio under the RTE Act was not the upper limit, therefore, it is not the school's discretion to refuse the admission to students from EWS category on the basis that there are insufficient general category admissions.

22. It is submitted that the Circular dated 9th July 2021, in furtherance of the judgments as mentioned hereinabove, issued by the DoE specifically states that all the concerned Private Unaided Schools must grant admission to all eligible candidates allotted to them as per the declared strength of the entry level classes and if the school is refusing the admission there should be genuine and *bona fide* reason as well as attempt to admit the sufficient number of general category students and apply to the DOE for the exemption. The said circular was challenged in the case of *Action Committee Unaided Recognized Schools v. Directorate of Education, WP(C) 10839/2021*, where the Court vide its Order dated 24.09.2021 upheld the Circular and dismissed the prayer to stay its effect and operation.

23. It is further submitted that the arguments offered by the school in justification of its action for denial of the admissions are twofold: *firstly*, that the schools are only required to admit EWS students corresponding to the general category admissions which is in stark contravention of the ruling of *Siddharth International Public School (Supra)* as well as to the

bare reading of the Section 12(c) of the RTE Act. *Secondly*, the attempt has been made to discredit the credentials of a child seeking admission not at the stage when the admission is actually being sought, rather it is pleaded in the course of the proceedings initiated by the child for denial of admission despite being shortlisted by the DoE, thus bypassing the mechanism for admission of the EWS students.

24. It is also submitted that the private schools have been flagrantly violating the circulars and notifications issued by the DoE on the ground of the latter's competence to pass those directions and circulars, whereas, the Rule 25 grants powers to DoE to issue necessary directions for implementation of the provisions of the RTE Act. Thus, the contention that DoE lacks authority to issue directions concerning the admissions is entirely baseless.

25. In view of the aforesaid, it is submitted that the sheer number of writ petitions being filed by the aggrieved students and their helpless parents is in itself a testament to the fact that the implementation of RTE Act is in tatters. Therefore, it is prayed that urgent intervention of this Court in exercise of its powers under Article 226 of the Constitution is required for providing directions for proper implementation of the RTE Act.

Respondents' Submissions**(i) Directorate of Education**

26. In most of these petitions, the DoE has not filed a counter affidavit/reply to the averments made in the respective petitions. Furthermore, despite express directions made by this Court at the time of reserving the judgment on 10th November 2022 for filing the Written Submissions within one week for the assistance of the Court in deciding the issues in question, no such document could be found on record. Therefore, this Court is bereft of such assistance by the State that could otherwise been helpful to adjudicate the instant batch of petitions.

27. Learned counsel appearing for the DoE submitted that the DoE is the Regulatory Authority for education being imparted in the government schools run and established by it and Government Aided Schools which are aided by it. It is also the Regulatory Authority over the private unaided schools recognized by it under the provisions of Delhi RTE Rules and the RTE Act, and such schools are required to comply with the provisions of the said Act and Rules framed thereunder and terms and conditions of recognition. Hence, all the private unaided recognized schools are under obligation to follow the guidelines/directions of the DoE issued from time to time.

28. It is also stated, at bar, that despite several directions passed by this Court as well as a number of circulars issued by the DoE from time to

time, the private unaided schools have failed to comply with the same, and have acted in contravention of the RTE Act and the Delhi RTE Rules.

29. It is stated that there are ample mechanisms available under the provisions of the Act as well as the said Rules to ensure the implementation of the provisions of the RTE Act and the DoE is taking all necessary measures to enforce the same.

30. It is further submitted that in case, the schools require an exemption for a specific academic session due to any dire circumstances, they have been provided with the option to approach the DoE and the same is considered on a case-to-case basis. However, the provisions of law as well as the directives/circulars of the DoE have to be implemented by the respective schools.

(ii) Private Unaided Schools

31. *Per contra*, it is submitted on behalf of the Private Unaided Schools that in terms of Section 12(1)(c) of the RTE Act, a Private Unaided School, is required to admit at least 25% of the strength of the Class, students belonging to Economically Weaker Section/Disadvantaged Group (EWS/DG). The expression Strength of the Class is very unique and has been used in order to maintain a healthy proportion, ratio and balance of students from general category & EWS/DG category, leading to smooth assimilation of all children with each other. A clear distinction between the RTE Act viz. Section 12(1)(c) & other Reservation Acts, creating Quota may be noted. In an Act of Reservation/Quota, the seats are to be offered irrespective of anything

else, whereas, in the RTE Act, there is no reservation/quota, but the (actual) strength of the Class is determinative of the admissions/seats that would be offered/available to the EWS/DG category.

32. It is further submitted that the judgment of a coordinate bench of this Court in *The Sovereign School (Supra)*, clearly holds that the admissions of EWS category is to be done on the basis of actual general category admissions and not on the basis of the total declared strength of the Class that the School is able to make in a particular year.

33. It is further submitted that the judgment of a Division Bench in *Siddharth International Public School (Supra)* does not overrule the judgment in *The Sovereign School vs. DoE, Govt. Of NCT of Delhi (Supra)*. It is submitted that the question in the judgment of *Siddharth International Public School (Supra)* was totally different from the question raised in the judgment of *The Sovereign School (Supra)*.

34. The factual position in *Siddharth International Public School (Supra)* case was that as against 27 general category admissions made by the school already, it had admitted only 7 students in the EWS category and was claiming under a wrong notion and misconception that it is only required to fill up 7 seats with EWS candidates, being 1/4th of the general category.

35. As per the said formula in *Siddharth International Public School (Supra)*, the school had to give admissions to 9 EWS candidates and thus, there were two vacancies, one of which was rightly directed by this Court

to be filled up, by exercising its extraordinary jurisdiction under Article 226. The said case, as a matter of fact, supports the case of the schools, contrary to the misleading averments made on behalf of the DoE. There is nothing to suggest that inclusive education be interpreted as exclusive education for one class merely because the Act states the term at least to the extent of 25%, it does not mean or imply that the same can be even more than 25% or even 100%.

36. It is submitted that the Hon'ble Supreme Court in *Pramati Educational and Cultural Trust v. Union of India (2014) 8 SCC 1* has upheld the *vires* and constitutionality of the RTE Act, only for the reason that inroad made in the Right of Private Unaided Schools under Article 19(1)(g), is reasonable and minimal.

37. It is also submitted that under Section 10 of Delhi School Education Act, a comparison of the words “*at least to the extent of 25%*”, with “*shall not be less than the salary & allowances of its counterpart in Government Schools*” be done. In both the cases, it would be a voluntary act on the part of a School to be admitting more than 25% from EWS category, or to be paying salaries & allowances to its teachers, which are more than what is required to be paid to the counterparts in a Government School.

38. However, there cannot ever be a mandate or a *mandamus* sought from this Court that even more than 25% can be granted admission or to have a right to admission. In that case, everyone, successful or unsuccessful in a draw of lots, would approach this Court, to grant

admission even against vacant general category seats, till such time even a single seat remains vacant.

39. It is also stated that, the Division Bench of this Court in the case of ***Justice for All & Anr. V. Venkateshwar Global School & Ors.*** in LPA No. 5/2022 was misguided and misled to pass an Interim Order dated 26.05.2022, directing the schools to fill up the vacant seats in EWS/DG category for the past 5 years, on the basis of the entire declared strength of the Classes, without referring to the judgment of ***Sovereign School (Supra)***. The Hon'ble Supreme Court set aside the said order and the judgement of ***Sovereign School (Supra)*** continues to hold the field, by way of order dated 01.09.2022.

40. The DoE has in fact issued numerous Circulars clearly mandating that the admissions in the EWS/DG category have to be made proportionate (3:1) to the number of General Category admissions, *actually made by the School*. Going further, the DoE has also clarified by way of an illustration, in the said Circulars, that the admissions shall be made *in seriatim*, in the order of the names appearing in the list of selected candidates forwarded by the DoE to the School.

41. It is also stated that as a matter of fact, the schools were prohibited by the DoE from making any extra admissions, beyond 25% of the actual general category admissions and it was stated that no reimbursement under the RTE Act shall be made for such extra admissions.

42. Further, even the State of Rajasthan, has issued guidelines for admissions in Private Unaided Schools under section 12(1)(c) of the RTE Act, *inter alia*, mandating that admissions shall be made against EWS/DG category seats, only in proportion to the general category admissions. It has been stated that for every 3 admissions made in the general category, the 4th admission shall be of a child from the EWS category and the said roster of admission shall be followed for every 3 general category admissions.

43. Similarly, the State of Karnataka has also clarified that Unaided Schools shall earmark at least 25% of seats as per the strength of the Class at entry level as on 30th September every year, for EWS/DG category candidates, as per the data filled by the Schools in UDISE (Unified District Information System for Education), which contains the names, details, etc. of the actual general category candidates admitted by the school till 30th September.

44. It is further submitted that there are many instances of fraud being committed by the wards and their parents wherein the entire application process *qua* them are pre-planned, pre-programmed and predetermined, being based on forgery and furnishing of false information – in terms of fake credentials regarding income, residence and age.

45. It is submitted that there has been gross abuse and misuse of the EWS Admission System. The very system of issuance of Certificates (be it EWS or Caste) on the basis of mere self-declaration, in the form of a

one-page application, is flawed and is being grossly misused and abused by the Applicants, as the experience has shown.

46. The said system of issuance of EWS/Caste Certificates, on the basis of mere self-declaration by the Applicant, is inherently flawed and is not made/subjected to any verification or cross-checking by the issuing Authority (SDM/Tehsildar), to check the veracity of the self-declaration being made by the Applicant. Such verification by the Certificate-issuing-Authority, is absolutely necessary, so as to ensure that the state largesse, in the form of availing preferential admissions at government expense, are not misused or defeated, in any manner.

47. In most of the cases, of applicants obtaining income certificates of their entire family's income, being less than Rs.1 Lakh p.a., are false and misleading, in as much as even the minimum wages in the State of Delhi, are much more than Rs.17,000-22,000/month. Thus, the Issuing Authority (SDMs/Tehsildar) must insist on an Affidavit of Income, Assets & Liabilities, to be filed by the applicant, signed by all his/her immediate family members, so that he/she is made responsible, liable, and aware of the consequences of obtaining such certificate, on false information/declaration.

48. It is further submitted that the distance criterion is the foremost important criteria, which ensures that an applicant allegedly living within 0-1 KM radius of the school concerned has the best chance of securing admission under the EWS/DG category. However, unfortunately many ways and means have been innovated to defeat the very system of such

EWS/DG admissions, by filling up false information by changing the constituency, sub-constituency, locality etc. by the way of online application for the EWS/DG seats.

49. Even the DoE has also found such kind of irregularities done by the Applicants in W.P.(C) No. 4531/2018, titled *Sh. Rahul Malhotra v. Indraprastha World School & Ors.*, wherein the DoE was directed to pass a reasoned and speaking order whether the petitioner was residing at the address claimed by him or not. After the physical verification and hearing of both the parties, the DoE passed an order on 16.07.2018 holding that the applicant in that case to be ineligible for admission under EWS/DG category.

50. The aforementioned ways & means adopted by certain applicants, have taken magnanimous proportions in as much as general category and well-to-do applicants are making applications under the EWS/DG category to not only illegally enjoy/claim such state largesse, but also avoid the payment of fees to the School, for which they are not entitled in law. Such fraudulent practices of misusing and abusing the flaws in the system of certification and online applications defeats the very purpose of admissions of EWS/DG category candidates in Private Unaided Schools.

51. It is submitted that this Court would be pleased to lay down binding and mandatory directions, for the certificate-issuing-authorities, to insist on the Affidavit, before issuing the Certificate and also carrying out a verification of the self-declarations made therein, before issuing a certificate at all.

52. It is further submitted that 31st December is the last date of admission against the EWS/DG category seats. In the case of *Neeraj Kumar vs. Venkateshwar Global School & Ors., (2017) SCC Online Del 7842* it was held that, admissions in the EWS/DG category are to be made only till 31st December of the year, in which the applicant is to be selected by draw of lots and not thereafter.

53. It is submitted that an applicant who is unable to secure admission by 31st December of the year has to apply again in the subsequent year(s) as a fresh applicant. It may also be noted that the ratio of the *Neeraj Kumar (Supra)* was followed by a Division Bench of this Court by way of Order dated 14.03.2018 passed in WP(C) No.3684/2013 titled *Justice For All Vs. GNCTD*.

54. Further, the judgment in *Neeraj Kumar (Supra)* was challenged in LPA No.255/2018 titled *Master Vansh vs. Venkateshwara Global School & Ors.*, which came to be dismissed by the Division Bench, by way of a detailed judgment dated 16.07.2018 which judgment was never assailed before the Hon'ble Supreme Court and has attained finality.

55. It is submitted that the remedy prescribed under Section 32 of the RTE Act is statutory in nature and is binding upon all parties and cannot be ignored. No parallel or any other system contrary to the said statutory mandated Scheme containing the remedy in case of alleged violation of the Act, can be insisted upon or adopted by the parents or by the DoE. Unless and until such remedy is availed of and exhausted, no final rights accrue in favour of the parents of the DoE.

56. As stated above, there are cases of fraud being played upon the system. Since the DoE does not carry out any verification of applications, rightly the duty has been cast upon the schools to verify the same along with the documents submitted by the allottee students/parents with the school. In this regard reliance is placed on various Circulars of the DoE including the Circulars dated 14.05.2015, 21.04.2015, 27.02.2019 and 15.06.2021.

57. Thus, it is submitted that when a school on verification finds that the documents or information submitted by or on behalf the applicant, is not genuine, is fraudulent or is incorrect, the admission is rightly rejected by the school, with intimation to the ward concerned, as also to the DoE. Thereafter, it is for the concerned applicant to seek recourse to its statutorily mandated and prescribed remedies. Unverified allotments for admission being recommended by the DoE cannot be trusted upon the schools for them to challenge such allotments despite them being false and fraudulent.

58. In view of the aforesaid, it submitted that the instant set of petitions is frivolous, devoid of merits and hence be dismissed.

ANALYSIS

Issue I: Rationale of the RTE Act

59. The aspirations of the people are reflected in the Preamble of the Constitution which reads as under:-

“WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”

60. Originally, Part IV of Indian Constitution, under Article 39 (f) and Article 45 of the Directive Principles of State Policy had provisions for state-funded as well as equitable and accessible education. The provisions read as under:

“39. Certain principles of policy to be followed by the State.—

(f). that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”

“45. Provision for early childhood care and education to children below the age of six years.—The State shall endeavour to provide

NEUTRAL CITATION NO:2022/DHC/005590

early childhood care and education for all children until they complete the age of six years.”

61. Let us now briefly traverse across the journey for providing free and compulsory education for children in India. The first official document on the Right to Education was the Ramamurti Committee Report in 1990. In 1993, the Hon'ble Supreme Court's landmark judgment in the *Unnikrishnan JP v. State of Andhra Pradesh & Others*, **1993 SCC (1) 645** held that education is a fundamental right flowing from Article 21. Tapas Majumdar Committee (1999) was set up, which encompassed insertion of Article 21-A. The 86th Constitutional Amendment in 2002 provided Right to Education as a fundamental right in Part-III of the Constitution. It inserted Article 21-A which made Right to Education a fundamental right for children between 6-14 years and was followed up by the legislation - RTE Act.

62. The Preamble, the Fundamental Rights and the Directive Principles of State Policy forming the Golden Trinity are the soul of the Constitution. The Preamble visualizes to remove economic inequalities and to secure to all citizens of India, Justice - Social, Economic and Political, which in its substance is the sum total of the aspirations as enshrined in the Part IV of the Constitution.

63. Economic empowerment to the weaker sections of the society is a fundamental requirement for ensuring equality of status and to promote fraternity assuring dignity as envisioned by the founding fathers of our Constitution. Therefore, any positive discrimination in favour of the weak or disadvantaged class of people by means of a valid classification has

been treated as an affirmative action on the part of the State. The Preamble to the Constitution and the Directive Principles of the State Policy give a positive mandate to the State and the State is obliged to remove inequalities and backwardness from the society.

64. The Constitution of India was amended by the Eighty-sixth Amendment Act, 2002, to include the right to education as a fundamental right under Article 21-A providing that “*the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.*”

65. The RTE Act, being the consequential legislation envisaged under Article 21-A, provides that every child has a right to full-time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.

66. Article 21-A and the RTE Act came into effect on 1st April 2010. The long title of the RTE Act reads as “*a Bill to provide for free and compulsory education to all children of the age of six to fourteen years.*” The words incorporated therein are ‘free and compulsory’. ‘Free education’ means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education. ‘Compulsory education’ casts an obligation on the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the

6-14 age group. With this enactment, India moved forward to a rights-based framework that casts a legal obligation on the Central and State Governments to implement this fundamental child right as enshrined in the Article 21A of the Constitution, in accordance with the provisions of the RTE Act.

67. The Statement of Objects and Reasons of the RTE Act is furnished hereunder:

“The crucial role of universal elementary education for strengthening the social fabric of democracy through provision of equal opportunities to all has been accepted since inception of our Republic. The Directive Principles of State Policy enumerated in our Constitution lays down that the State shall provide free and compulsory education to all children up to the age of fourteen years. Over the years there has been significant spatial and numerical expansion of elementary schools in the country, yet the goal of universal elementary education continues to elude us. The number of children, particularly children from disadvantaged groups and weaker sections, who drop out of school before completing elementary education, remains very large. Moreover, the quality of learning achievement is not always entirely satisfactory even in the case of children who complete elementary education.

2. Article 21A, as inserted by the Constitution (Eighty-sixth Amendment) Act, 2002, provides for free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such manner as the State may, by law, determine.

3. Consequently, the Right of Children to Free and Compulsory Education Bill, 2008, is proposed to be enacted which seeks to provide,—

NEUTRAL CITATION NO:2022/DHC/005590

(a) that every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards;

(b) 'compulsory education' casts an obligation on the appropriate Government to provide and ensure admission, attendance and completion of elementary education;

(c) 'free education' means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education;

(d) the duties and responsibilities of the appropriate Governments, local authorities, parents, schools and teachers in providing free and compulsory education; and

(e) a system for protection of the right of children and a decentralized grievance redressal mechanism.

4. The proposed legislation is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds.

5. It is, therefore, expedient and necessary to enact a suitable legislation as envisaged in article 21-A of the Constitution.

6. The Bill seeks to achieve this objective."

68. Furthermore, in the case of *Society for Unaided Private Schools of Rajasthan v. Union of India*, (2012) 6 SCC 1, the Hon'ble Supreme Court while upholding the constitutionality of the RTE Act held as under:

“27. At the outset, it may be stated, that fundamental rights have two aspects—they act as fetters on plenary legislative powers and, secondly, they provide conditions for fuller development of our people including their individual dignity. Right to live in Article 21 covers access to education. But unaffordability defeats that access. It defeats the State’s endeavour to provide free and compulsory education for all children of the specified age. To provide for free and compulsory education in Article 45 is not the same thing as to provide free and compulsory education. The word “for” in Article 45 is a preposition. The word “education” was read into Article 21 by the judgments of this Court. However, Article 21 merely declared “education” to fall within the contours of right to live.

28. To provide for right to access education, Article 21-A was enacted to give effect to Article 45 of the Constitution. Under Article 21-A, right is given to the State to provide by law “free and compulsory education”. Article 21-A contemplates making of a law by the State. Thus, Article 21-A contemplates right to education flowing from the law to be made which is the 2009 Act, which is child-centric and not institution-centric. Thus, as stated, Article 21-A provides that the State shall provide free and compulsory education to all children of the specified age in such manner as the State may, by law, determine. The manner in which this obligation will be discharged by the State has been left to the State to determine by law. The 2009 Act is thus enacted in terms of Article 21-A. It has been enacted primarily to remove all barriers (including financial barriers) which impede access to education.

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.*

39. *In T.M.A. Pai Foundation [(2002) 8 SCC 481] , this Court vide para 53 has observed that the State while prescribing qualifications for admission in a private unaided institution may provide for condition of giving admission to small percentage of students belonging to weaker sections of the society by giving them freeships, if not granted by the Government. Applying the said law, such a condition in Section 12(1)(c) imposed while granting recognition to the private unaided non-minority school cannot be termed as unreasonable. Such a condition would come within the principle of reasonableness in Article 19(6).*

40. *Indeed, by virtue of Section 12(2) read with Section 2(n)(iv), a private unaided school would be entitled to be reimbursed with the expenditure incurred by it in providing free and compulsory education to children belonging to the*

NEUTRAL CITATION NO:2022/DHC/005590

above category to the extent of per child expenditure incurred by the State in a school specified in Section 2(n)(i) or the actual amount charged from the child, whichever is less. Such a restriction is in the interest of the general public. It is also a reasonable restriction. Such measures address two aspects viz. upholding the fundamental right of the private management to establish an unaided educational institution of their choice and, at the same time, securing the interests of the children in the locality, in particular, those who may not be able to pursue education due to inability to pay fees or charges of the private unaided schools.

41. We also do not see any merit in the contention that Section 12(1)(c) violates Article 14. As stated, Section 12(1)(c) inter alia provides for admission to Class I, to the extent of 25% of the strength of the class, of the children belonging to weaker sections and disadvantaged group in the neighbourhood and provide free and compulsory elementary education to them till its completion. The emphasis is on “free and compulsory education”. Earmarking of seats for children belonging to a specified category who face financial barrier in the matter of accessing education satisfies the test of classification in Article 14. Further, Section 12(1)(c) provides for a level playing field in the matter of right to education to children who are prevented from accessing education because they do not have the means or their parents do not have the means to pay for their fees.”

69. Again, as has been recently reiterated in the majority judgment delivered by the Constitution Bench of the Hon'ble Supreme Court on 7.11.2022 in the case of **Janhit Abhiyan v. Union of India, W.P. (C) No. 55/2019**, upholding the constitutionality of 103rd Constitution Amendment or the EWS Reservation, that according to the Constitutional scheme, the right to education forms part of the right to life under Article 21 and the right to education is incorporated separately and in clear terms

as an independent fundamental right in the form of Article 21-A. That Article is couched in the language which is mandatory insofar as the State is obliged to provide free and compulsory education to all children of the age of 6 to 14 years. The matter of free and compulsory primary education has been perceived to be so important even at the time of drafting of the Constitution that Articles 45 and 46, respectively, were incorporated in Part IV of the Constitution to lay the principles which are fundamental for the governance of the Country and thus, it became the duty of the State to apply those principles in making laws by virtue of Article 37.

70. Since the right to education has not only been declared a fundamental right of every child, but the State has also been obliged to provide free and compulsory education, and hence, no authority which falls within the ambit of definition of State as per Article 12 could renege on the constitutional covenant.

71. The phrase “free and compulsory education” in Article 21-A clearly makes it obligatory on the State to not only provide necessary funds and facilities for free, but also ensure that compulsory education is imparted. Thus, the State is under an obligation to apply the provisions contained in Articles 45 and 46 respectively to provide childhood care and primary education and promote with special care the educational and economic interests of the weaker sections of the people and protect them from social injustice.

72. Therefore, the right of children to free and compulsory education guaranteed under Article 21-A and the RTE Act can be enforced against the schools defined under Section 2(n) of the Act, except unaided minority schools not receiving any kind of aid or grants to meet their expenses from the appropriate governments or local authorities. In exercise of the powers conferred upon the appropriate Government under Section 38 of the RTE Act, the Government shall frame rules for carrying out the purposes of this Act and in particular, the matters stated under sub-Section (2) of Section 38 of the RTE Act.

Issue II: Method of Calculating the Percentage of Admission under Weaker Sections category

73. The first sub-issue to be decided is whether the percentage is to be calculated on the basis of the actual strength of the class or as per the declared strength for an academic year? To decide the same, perusal of the relevant provisions of the Act is essential.

74. The second sub-issue to be considered by this Court is that whether the prescribed percentage is a cap on reservation or a basic threshold that needs to be followed? For deciding the same, it is pertinent to peruse the relevant provision of the Act, i.e., Section 12(1)(c).

75. For interpretation of a legislative instrument like a statute enacted by the Parliament, it is pertinent to seek resort to various aids of interpretation, including the internal as well as external aids. Internal aids include long title, short title, preamble, headings, title of chapter, marginal notes, illustrations, punctuation, proviso, and schedules.

76. When the internal aids are not forthcoming, recourse is sought to external aids to discover the object and true meaning of the provisions of legislation. External aids include Parliamentary History, Historical Facts and Surrounding Circumstances, Statement of Objects and Reasons, Reports of Commissions, Speeches of mover of Bill, Social, Political and Economic Developments, Scientific Inventions, reference to other statutes, and expert studies on the subject matter.

77. Section 12(1)(c) of the RTE Act reads as under:

“12. Extent of school's responsibility for free and compulsory education.—(1) For the purposes of this Act, a school,—

(c) specified in sub-clauses (iii) and (iv) of clause (n) of section 2 shall admit in class I, to the extent of at least twenty-five per cent. of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion.”

78. The interpretation of the phrase 'strength of the class' to suggest that it means the student actually admitted in an academic year is fallacious since the intent of the Act is to ensure that a minimum of 25% of children admitted belong to weaker and disadvantaged sections. It is also to be noted that the words used in the provisions are “shall” and “at least”, which in a plain reading itself suggest that the limit thus prescribed is not at all an upper limit rather it is a minimum figure decided by the parliament in its wisdom.

79. The admissions actually carried out in an academic year is a matter that is within the realm of the school administration and the declared strength cannot be dynamically updated on the basis of the actual admissions being carried out and the poor children cannot be kept in limbo where on a daily basis, the portal reflects the number of admissions carried out in each school and accordingly vary the number of the EWS students that can be actually made. This will lead to a state of chaos and will defeat the very intent of the legislation. Lesser admissions as compared to the declared strength could be taken as a defense when the nation was fighting with the COVID-19 pandemic, however as on date, lesser admissions made cannot be considered to be a ground reality, and even be considered as an argument.

80. In any case, even if it is presumed for a moment that few less admissions are carried out, it still should not affect the number of admissions of EWS students since, the object of imparting education is charitable and not to profiteer and the appropriate government is duty bound to reimburse the expenses of the students admitted against the EWS category. Therefore, no question arises to peg the number/percentage of the students admitted under the weaker section category to the actual number of admissions. It is thus settled that the number of the students to be admitted has to be calculated on the basis of the strength as self-declared by the school.

81. This issue was also considered by this Court in ***Birla Vidya Niketan v. Govt. of NCT of Delhi, 2013 SCC OnLine Del 3171***, where it was categorically held that:

“7. One of the purposes behind issuing the said notification was to give adequate representation to the children belonging to EWSs/Disadvantaged sections of the society, in the private schools and the Government wanted to ensure that the schools do not reduce the number of such students by taking recourse to reducing the overall admissions, to the entry class. Considering the objective behind this stipulation, the said amendment cannot be said to be arbitrary, unfair or unreasonable nor does it contravene any statutory provision.

8. It goes without saying that the petitioner, if it so decides can admit, students from other categories so as to fill up 300 seats at the entry level during the academic year 2013-2014. If this is done, the representation of the students belonging to EWSs/Disadvantaged Group would also remain at 25%. In any case, even if the petitioner does not admit students from other categories for the academic year 2013-2014, the number of students belonging to EWSs/Disadvantaged Group cannot be restricted to 44 on the ground that the percentage of such students should not exceed 25%. Reducing the total intake to 175 during the academic year 2013-2014 is petitioner's own creation for which, the students belonging to EWSs/Disadvantaged Group cannot be made to suffer. In any case, there is no illegality in the ratio of the students belonging to EWSs/Disadvantaged Groups being more than 25%, the requirement being to have a minimum ratio of 25% for such students.”

82. The same issue was again considered by the Court in ***The Sovereign School v. Directorate of Education (Supra)*** where it was held that a relaxation may be granted in cases where despite reasonable and

bona fide attempts on the part of the school to admit the general category students, the ample number of admissions did not take place.

83. It is also in the case of *Siddharth International Public School v. Motor Accident Claim Tribunal (Supra)*, a Division Bench of this Court had the occasion to deal with the same question, and it was held that the 25% ratio under the RTE Act was not the upper limit, therefore it is not the school's discretion to refuse the admission to students from EWS category on the basis that there are insufficient general category admissions. It was held therein:

“12. We have also taken note of the submission of the learned counsel for GNCTD that in terms of sub-Section (2) of Section 12 of RTE Act, the unaided schools which provided free and compulsory elementary education to the children belonging to weaker section and disadvantaged group in the neighbourhood, including the appellant school would be reimbursed the expenditure so incurred and that no prejudice would be caused to the appellant school by complying with the directions in the order under appeal.

13. Admittedly, this is a case where Master Priyanshu is not only a child belonging to weaker section but he is also a differently abled child with a prosthetic leg. It is also not in dispute that the appellant school is located in the locality where the boy resides. Therefore, the learned Single Judge was fully justified in directing the appellant school to admit Master Priyanshu in Ist Standard.

14. We are also of the view that the appellant school cannot be allowed to escape from the statutory mandate merely on the ground that during the pendency of the writ petition, the boy was admitted in a local municipal school.”

84. Therefore, the arguments offered by the school in justification of its action for denial of the admissions stating that the schools are only

required to admit EWS students corresponding to the general category admissions is in stark contravention of the ruling of *Siddharth International Public School v. Motor Accident Claim Tribunal (Supra)* as well as to the bare reading of the Section 12(C) of the RTE Act and hence, cannot be upheld.

Issue III: Implementation of the RTE Act

85. The next question that arises for the consideration of this Court is what are the measures that can be adopted to ensure that the provisions of the RTE Act and/other orders passed by the Directorate of Education (DoE) under the Act are not violated. To decide this, two sub-issues have been framed: *firstly*, what is the ambit of powers of the Directorate of Education to pass binding orders to the schools under the RTE Act as well as the DSE Act; and *secondly*, what are the measures that can be adopted by the DoE in case of non-compliance with the same.

86. It is pertinent to peruse various salient provisions of the Act as well as the Rules framed.

87. Section 2(a) defines appropriate government as:

“(a) “appropriate Government” means—

(i) *in relation to a school established, owned or controlled by the Central Government, or the administrator of the Union territory, having no legislature, the Central Government;*

(ii) *in relation to a school, other than the school referred to in sub-clause (i), established within the territory of—*

NEUTRAL CITATION NO:2022/DHC/005590

(A) a State, the State Government;

(B) a Union territory having legislature, the Government of that Union territory”

88. In the instant case, since Delhi is the National Capital Territory (NCT) with its own legislature, the Government of NCT of Delhi is the appropriate government in relation to private unaided schools situated within the territory of Delhi. The DoE, being the concerned department under the Government of NCT of Delhi, can thus exercise the powers under the provisions of the Act.

89. Having settled the appropriate authority, it is now pertinent to seek recourse of the provisions of the Act and Delhi RTE Rules to delineate the scope of the powers of the DoE.

90. Section 2(n) defines school under the scheme of the RTE Act as under:

““school” means any recognised school imparting elementary education and includes—

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;”

91. Chapter III of the RTE Act deals with the duties of Appropriate Government, Local Authority, and Parents. Sections 6 and 7 provide as under:

“6. Duty of appropriate Government and local authority to establish school.—For carrying out the provisions of this Act, the appropriate Government and the local authority shall establish, within such area or limits of neighbourhood, as may be prescribed, a school, where it is not so established, within a period of three years from the commencement of this Act.

7. Sharing of financial and other responsibilities.—(1) The Central Government and the State Governments shall have concurrent responsibility for providing funds for carrying out the provisions of this Act.

(2) The Central Government shall prepare the estimates of capital and recurring expenditure for the implementation of the provisions of the Act.

(3) The Central Government shall provide to the State Governments, as grants-in-aid of revenues, such percentage of expenditure referred to in sub-section (2) as it may determine, from time to time, in consultation with the State Governments.

(4) The Central Government may make a request to the President to make a reference to the Finance Commission under sub-clause (d) of clause (3) of article 280 to examine the need for additional resources to be provided to any State Government so that the said State Government may provide its share of funds for carrying out the provisions of the Act.

(5) Notwithstanding anything contained in sub-section (4), the State Government shall, taking into consideration the sums provided by the Central Government to a State Government under sub-section (3), and its other resources, be responsible to provide funds for implementation of the provisions of the Act.

(6) The Central Government shall—

NEUTRAL CITATION NO:2022/DHC/005590

- (a) develop a framework of national curriculum with the help of academic authority specified under section 29;*
- (b) develop and enforce standards for training of teachers;*
- (c) provide technical support and resources to the State Government for promoting innovations, researches, planning and capacity building.”*

92. Section 8 of the Act that deals with the Duties of Appropriate Government provides as under:

“8. Duties of appropriate Government.—The appropriate Government shall—

- (a) provide free and compulsory elementary education to every child:*

Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school.

Explanation.—The term “compulsory education” means obligation of the appropriate Government to—

- (i) provide free elementary education to every child of the age of six to fourteen years; and*
 - (ii) ensure compulsory admission, attendance and completion of elementary education by every child of the age of six to fourteen years;*
- (b) ensure availability of a neighbourhood school as specified in section 6;*

NEUTRAL CITATION NO:2022/DHC/005590

- (c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;*
- (d) provide infrastructure including school building, teaching staff and learning equipment;*
- (e) provide special training facility specified in section 4;*
- (f) ensure and monitor admission, attendance and completion of elementary education by every child;*
- (g) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;*
- (h) ensure timely prescribing of curriculum and courses of study for elementary education; and*
- (i) provide training facility for teachers.”*

93. Section 12 prescribes the extent of school's responsibility for free and compulsory education, and the same is reproduced hereunder:

12. (1) For the purposes of this Act, a school,—

- (a) specified in sub-clause (i) of clause (n) of section 2 shall provide free and compulsory elementary education to all children admitted therein;*
- (b) specified in sub-clause (ii) of clause (n) of section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent.;*
- (c) specified in sub-clauses (iii) and (iv) of clause (n) of section 2 shall admit in class I, to the extent of at least twenty-five per cent. of the strength of that class, children belonging to weaker section and disadvantaged group in the*

NEUTRAL CITATION NO:2022/DHC/005590

neighbourhood and provide free and compulsory elementary education till its completion:

Provided further that where a school specified in clause (n) of section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education.

(2) The school specified in sub-clause (iv) of clause (n) of section 2 providing free and compulsory elementary education as specified in clause (c) of sub-section (1) shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed:

Provided that such reimbursement shall not exceed per-child-expenditure incurred by a school specified in sub-clause (i) of clause (n) of section 2:

Provided further that where such school is already under obligation to provide free education to a specified number of children on account of it having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation.

(3) Every school shall provide such information as may be required by the appropriate Government or the local authority, as the case may be.”

94. Section 15 deals with the period for carrying out admission. It reads as under:

“15. No denial of admission.—A child shall be admitted in a school at the commencement of the academic year or within such extended period as may be prescribed:

Provided that no child shall be denied admission if such admission is sought subsequent to the extended period:

Provided further that any child admitted after the extended period shall complete his studies in such manner as may be prescribed by the appropriate Government.”

95. Section 18 deals with the requirement of recognition and provides as under:

“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 sub-section (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

NEUTRAL CITATION NO:2022/DHC/005590

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 ten thousand rupees for each day during which such contravention continues.”

96. Rule 15 of the DTE Rules permits withdrawal of recognition to a school which fails to fulfil conditions for grant of such recognition. The provision is reproduced hereunder:

“15. Withdrawal of recognition to school. — (1) Where the concerned District Education officer on his own motion, or on any representation received from any person, has reason to believe, to be recorded in writing, that a school recognised under rule 14, has violated one or more of the conditions for grant of recognition or has failed to fulfil the norms and standards specified in the Schedule, the said officer shall act in the following manner:--

(a) Issue a notice to the school specifying the violations of the condition of grant of recognition and seek its explanation within one month.

(b) In case the explanation is not in conformity with the norms and standards as specified in the Schedule or no explanation is received within the stipulated time period, the concerned District Education Officer may cause an inspection of the school, to be conducted by a Committee of three to five members which shall make due inquiry and submit its report, along with its recommendations for continuation of recognition or its withdrawal, to the Director of Education who may pass an order for continuation of recognition or withdrawal, as the case may be:

Provided that no order for withdrawal of recognition shall be passed without giving the school adequate opportunity of being heard;

Provided further that no such order shall be passed by the said officer without prior approval of the Government.

NEUTRAL CITATION NO:2022/DHC/005590

(2) The order of withdrawal of recognition passed shall be operative from the immediately succeeding academic year and shall specify the neighbourhood schools to which the children of that school shall be admitted.”

97. Chapter VII deals with various miscellaneous provisions, few of which are relevant for the purpose of this Judgment are cited hereinafter. Section 35 permits the Central Government and the appropriate Government to issue necessary guidelines and directions for implementation of the RTE Act, as quoted hereunder:

“35. Power to issue directions.—(1) The Central Government may issue such guidelines to the appropriate Government or, as the case may be, the local authority, as it deems fit for the purposes of implementation of the provisions of this Act.

(2) The appropriate Government may issue guidelines and give such directions, as it deems fit, to the local authority or the School Management Committee regarding implementation of the provisions of this Act.

(3) The local authority may issue guidelines and give such directions, as it deems fit, to the School Management Committee regarding implementation of the provisions of this Act.”

98. Section 38 confers the powers upon the appropriate Government to make necessary rules. It is important to highlight that the list provided under sub-clause (2) is ‘without prejudice to the generality’ of the general power to make rules. The said provision is reproduced hereunder:

“38. Power of appropriate Government to make rules.—(1) The appropriate Government may, by notification, make rules, for carrying out the provisions of this Act.

NEUTRAL CITATION NO:2022/DHC/005590

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the manner of giving special training and the time-limit thereof, under first proviso to section 4;

(b) the area or limits for establishment of a neighbourhood school, under section 6;

(c) the manner of maintenance of records of children up to the age of fourteen years, under clause (d) of section 9;

(d) the manner and extent of reimbursement of expenditure, under sub-section (2) of section 12;

(e) any other document for determining the age of child under sub-section (1) of section 14;

(f) the extended period for admission and the manner of completing study if admitted after the extended period, under section 15;

(g) the authority, the form and manner of making application for certificate of recognition, under sub-section (1) of section 18;

(h) the form, the period, the manner and the conditions for issuing certificate of recognition, under sub-section (2) of section 18;

(i) the manner of giving opportunity of hearing under second proviso to sub-section (3) of section 18;

(j) the Other functions to be performed by School Management Committee under clause (d) of sub-section (2) of section 21;

(k) the manner of preparing School Development Plan under sub-section (1) of section 22;

NEUTRAL CITATION NO:2022/DHC/005590

(l) the salary and allowances payable to, and the terms and conditions of service of, teacher, under sub-section (3) of section 23;

(m) the duties to be performed by the teacher under clause (f) of sub-section (1) of section 24;

(n) the manner of redressing grievances of teachers under sub-section (3) of section 24;

(o) the form and manner of awarding certificate for completion of elementary education under sub-section (2) of section 30;

(p) the authority, the manner of its constitution and the terms and conditions therefor, under sub-section (3) of section 31;

(q) the allowances and other terms and conditions of appointment of Members of the National Advisory Council under sub-section (3) of section 33;

(r) the allowances and other terms and conditions of appointment of Members of the State Advisory Council under sub-section (3) of section 34.

(3) Every rule made under this Act and every notification issued under sections 20 and 23 by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

NEUTRAL CITATION NO:2022/DHC/005590

(4) Every rule or notification made by the State Government under this Act shall be laid, as soon as may be after it is made; before the State Legislatures.”

99. Having perused the salient relevant provisions of the RTE Act, it is now pertinent to refer to the Delhi RTE Rules framed by the Government of NCT of Delhi.

100. Under Rule 11, the procedure for reimbursement of expenditure to the schools has been provided, and is reproduced as under:

“11. Reimbursement of per-child expenditure by the Government. — (1) The total annual recurring expenditure incurred by the Government, whether from its own funds or funds provided by the Central Government or by any other authority, on elementary education in respect of all schools referred to in sub clause (i) of clause (n) of section 2 divided by the total number of children enrolled in all such schools, shall be the per child expenditure incurred by the Government. Explanation: For the purpose of determining the per child expenditure, the expenditure incurred by the Government or the Local Authority on schools referred to in sub-clause (ii) of clause (n) of section 2 and the children enrolled in such schools shall not be included.

(2) Every school referred to in clauses (iii) and (iv) of clause (n) of section 2 shall maintain a separate bank account in respect of the amount received by it as reimbursement under sub-section (2) of section 12 of the Act.

(3) The schools mentioned in second proviso of sub-section (2) of section 12 shall continue to fulfil their obligation for providing free education beyond elementary education and till completion of secondary/senior secondary education, as the case may be, and shall not be entitled for reimbursement to the extent of their obligation.”

101. Rule 14 pertains to recognition of schools and states as under:

“14. Recognition of schools. — (1) Every recognised school, other than a school established, owned or controlled by the Government or Local Authority, established and functioning before the commencement of the Act shall be deemed to be recognised under section 18 of the Act. However, each such school shall make a self declaration within a period of two months of the Notification of these rules in Form 1 (A) to the concerned District Education Officer regarding its compliance or otherwise with the norms and standards specified in the Schedule and fulfilment of the following conditions namely:-

(a) The school is run by a society registered under the Societies Registration Act 1860 (21 of 1860) or a Public Trust constituted under any law for the time being in force;

(b) The school is not run for profit to any individual, group or association of individuals or any other persons;

(c) The school conforms to the values enshrined in the Constitution;

(d) The school buildings or other structures or the grounds are used only for the purpose of education and skill development.

(e) The school is open to inspection by any authorised officer of Directorate of Education or Local Authority.

(f) The school furnishes such reports and information as may be required from time to time and complies with such instructions of Government or local authority as may be issued to secure the continued fulfilment of the condition of recognition or the removal of deficiencies in working of the school;

(2) Every self declaration received in Form 1(A) shall be reviewed by the concerned District Education officer.

NEUTRAL CITATION NO:2022/DHC/005590

(3) During the course of annual inspection or otherwise if the concerned officer observes that school does not conform to the norms and standards and conditions mentioned in sub-rule(1) but has submitted self declaration Form 1(A) stating conformation with norms, a suitable action shall be initiated by the District Education Officer.

(4) Schools which do not conform to the norms, standards and conditions mentioned in sub rule (1) within three years from the commencement of the Act shall cease to function.

(5) Every school, other than a school established, owned or controlled by the Government or local authority, established after the commencement of the Act and existing unrecognised schools shall conform to the norms and standards and conditions mentioned in sub-rule (1) in order to qualify for recognition. Such school shall apply for recognition in Form 1(B) to the Director of Education or any person authorised by him. Schools found to be conforming to the norms, standard and the condition shall be granted recognition by Appropriate Authority in Form 2. In case the application is rejected the reasons thereof shall be intimated to the applicant.”

102. Rule 26 grants powers to the DoE to issue necessary directions for implementation of the provisions of the RTE Act. The provision reads as under:

“26. Power to issue instructions: The Director may, if he is of the opinion that in order to implement the provisions of the Act in Delhi it is necessary to do so, issue such instruction in relation to any matter, not covered by these rules, as he may deem fit.”

103. It is also pertinent to peruse the forms prescribed for recognition of schools. Relevant portion of Form-1(A) being the Self-declaration for recognized school is extracted hereinbelow:

FORM-1(A)

SELF-DECLARATION FORM FOR RECOGNIZED SCHOOL

(see sub-rule (1) of rule(14)

“2. Certified that the school undertakes to furnish such reports and information as may be required by the Director of Education from time to time and complies with such instructions of the appropriate authority or the D.D.E or Education Officer as may be issued to secure the continued fulfilment of the condition of recognition or the removal of deficiencies in working of the school...”

104. Relevant portions of Form-II being the application for recognition is reproduced hereunder:

FORM II
OFFICE OF DISTRICT EDUCATION OFFICER
(Name of District/Union Territory)

Subject: *Recognition Certificate for the school under sub-rule (5) of rule 14 of Delhi Right of Children to Free and Compulsory Education Rules, 2011 for the purpose of section 18 of Right of Children to Free and Compulsory Education Act, 2009.*

1. The grant for recognition is not extendable and does not in any way imply an obligation to recognize/affiliate beyond class VIII.

2.The School shall abide by the provisions of Right of Children to Free and Compulsory Education Act, 2009 and the Delhi Right of Children to Free and Compulsory Education Rules, 2011.

3.The School shall admit in class I (or in entry class, as the case may be), to the extent of 25% of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary

education till its completion.

4. For the children referred to in paragraph 3, the School shall be reimbursed in accordance with the provisions of sub-section (2) of section 12 of the Act. To receive such reimbursements school shall maintain a separate bank account.

5. The Society/School shall not collect any capitation fee and subject the child or his or her parent or guardian to any screening procedure.

17. The School is run by a society registered under the Societies Registration Act, 1860 (21 of 1860), or a public trust constituted under any law for the time being in force.

18. The School is not run for profit to any individual, group or association of individuals or any other persons.”

105. A bare reading of the provisions in the said forms as cited hereinabove outrightly establishes that the applicant schools have willfully consented to abide by the provisions of the RTE Act, Delhi RTE Rules, as well as the directives/instructions of the appropriate authority. There is also no dispute to the fact that under the provisions of RTE Act as well as DSE Act, recognition is a condition precedent for imparting education in the NCT of Delhi. It is also evident that the Form II as aforestated and appended to the Delhi RTE Rules specifically mandates admission to the extent of 25% of the strength of the class to students of EWS category, to which the schools have willfully consented.

106. From the aforesaid analysis, there is no iota of doubt that the DoE is empowered to pass orders for compliance of the provisions of the RTE Act as well as the Delhi RTE Rules; and that the schools are duty bound to implement the said orders issued for compliance of the RTE Act as well as the Delhi RTE Rules.

107. The impugned Circular dated 09.07.2021, in furtherance of the judgments as dealt with earlier, issued by the DoE specifically states that all the concerned Private Unaided Schools must grant admission to all eligible candidates allotted to them as per the declared strength of the entry level classes and if the school is refusing the admission there should be genuine and *bona fide* reason as well as attempt to admit the sufficient number of general category students and apply to the DOE for the exemption. The said circular was challenged in the case of ***Action Committee Unaided Recognized Schools v. Directorate of Education WP(C) 10839/2021***, where the Court vide its Order dated 24.09.2021 the Circular and dismissed the prayer to stay its effect and operation. The Court held as under:

“6. Read in this context, I am of the view that the impugned circular is not contrary to the judgment in Sovereign School (supra). The direction in the second paragraph to grant admission to all eligible candidates allotted to the schools, is subject to the qualification contained in the following paragraph that a school can seek exemption from the DOE on the ground of lesser general admission. The circular, in fact, itself makes reference to the judgment in Sovereign School. On a holistic reading of the circular, it requires schools to admit all the EWS/DG candidates whose names have been forwarded by the DOE, subject to the exemption granted on the ground of lesser general category

admissions. The circular to this extent incorporates the judgment of this Court in Sovereign School.

8. The mechanism of the circular appears to be that if a school despite its best effort is unable to admit the sanctioned number of candidates in the general category, then it may seek exemption from admitting all the eligible EWS/DG category candidates. The school will naturally be required to admit the number of EWS/DG category candidates forwarded by the DOE corresponding to the number of general category candidates admitted. In the event the school contends that it has been unable to admit the sanctioned number of general category candidates despite its best efforts, it may make an application for exemption to DOE and the admission to the balance number of EWS/DG category candidates will be subject to the result of the exemption application, which is required to be considered in terms of the parameters laid down in Sovereign School.”

108. Having delineated the ambit of powers of the DoE to pass binding orders to the schools under the RTE Act, it is now pertinent to analyse the second issue, as to what are the measures that can be adopted to ensure implementation of the provisions of the Act, reliance is required to be placed on various provisions of the Act as well as the Rules under the Delhi RTE Rules.

109. The Act also envisages the formation of a School Management Committee, the provisions pertaining to which are reproduced hereunder:

“21. School Management Committee.—(1) A school, other than a school specified in sub-clause (iv) of clause (n) of section 2, shall constitute a School Management Committee consisting of the elected representatives of the local authority, parents or guardians of children admitted in such school and teachers:

NEUTRAL CITATION NO:2022/DHC/005590

Provided that at least three-fourth of members of such Committee shall be parents or guardians:

Provided further that proportionate representation shall be given to the parents or guardians of children belonging to disadvantaged group and weaker section:

Provided also that fifty per cent. of Members of such Committee shall be women.

(2) The School Management Committee shall perform the following functions, namely:—

- (a) monitor the working of the school;*
- (b) prepare and recommend school development plan;*
- (c) monitor the utilisation of the grants received from the appropriate Government or local authority or any other source; and*
- (d) perform such other functions as may be prescribed:*

Provided that the School Management Committee constituted under sub-section (1) in respect of,—

- (a) a school established and administered by minority whether based on religion or language; and*
- (b) all other aided schools as defined in sub-section (ii) of clause (n) of section 2, shall perform advisory function only.”*

110. Part II of the Delhi RTE Rules deal with the School Management Committee and is reproduced hereunder:

3. Composition and functions of the School Management Committee.— (1) A School Management Committee (hereafter in this rule referred to as the said committee) having not less than 16 members shall be constituted in every school, other than an unaided school, within six months of the coming into force of these

rules and reconstituted every two years: Provided that fifty percent of the members of this committee shall be women. Provided further that there shall be a proportionate representation of parents/guardians of children belonging to disadvantaged group and weaker sections. Provided also that the committee's role would be limited to elementary education level.

(2) Seventy five percent of the strength of the School Management Committee shall be from amongst parents or guardians of children.

(3) The remaining twenty five percent of the strength of the School Management Committee shall be from amongst the following persons, namely :- (a) One member of the committee shall be an elected representative of the local authority; (b) Head of the school shall be the member of the committee; (c) One member of the committee shall be a teacher of the school to be decided by the teachers of school; (d) One member shall be a social worker involved in the field of education.

(4) The following teachers of school shall be included in the School Management Committee as special invitee. (i) One social science teacher. (ii) One science teacher. (iii) One mathematics teacher.

(5) To manage its affairs, the School Principal shall be the ex-officio Chairperson of the School Management Committee. Vice Chairperson shall be from among the parent members. The member teacher of the committee shall act as the convenor.

(6) The said Committee shall meet at least once in two months and the minutes and decisions of the meetings shall be properly recorded and made available to the public.

(7) The said Committee shall, in addition to the functions specified in clauses (a) to (d) of sub section (2) of section 21 of the Act, perform the following functions, namely:-

(a) Communicate in simple and creative ways to the population in the neighbourhood of the school, the right of the child as enunciated in the Act; as also the duties of the Government , Local Authority, school, parents and guardian;

NEUTRAL CITATION NO:2022/DHC/005590

(b) Ensure the implementation of clauses (a) and (e) of section 24 and section 28 of the Act;

(c) Monitor that teachers are not burdened with non academic duties other than those specified in section 27 of the Act;

(d) Ensure the enrolment and continued attendance of all the children from the neighbourhood in the school;

(e) Monitor the maintenance of the norms and standards specified in the Schedule;

(f) Bring to the notice of the Government or local authority as the case may be any deviation from the rights of the child, in particular mental and physical harassment of children, denial of admission, and timely provision of free entitlements as per section 3(2) of the Act;

(g) Identify the needs, prepare a plan, and monitor the implementation of the provisions of section 4 of the Act;

(h) Monitor the identification and enrolment of, and facilities for education of children with disabilities and ensure their participation in, and completion of elementary education;

(i) Monitor the implementation of the mid-day meal in the school.

(8) Money if received by the said committee for the discharge of functions under the Act, shall be kept in a separate account, to be audited annually.

(9) The accounts referred to in sub-rule (8) should be signed by the Chairperson/Vice Chairperson and Convenor of the School Management Committee and made available to the authority releasing the fund within one month of their preparation.

111. The provisions under the Act regarding the redressal of grievances is reproduced hereunder:

NEUTRAL CITATION NO:2022/DHC/005590

“32. Redressal of grievances.—(1) Notwithstanding anything contained in section 31, any person having any grievance relating to the right of a child under this Act may make a written complaint to the local authority having jurisdiction.

(2) After receiving the complaint under sub-section (1), the local authority shall decide the matter within a period of three months after affording a reasonable opportunity of being heard to the parties concerned.

(3) Any person aggrieved by the decision of the local authority may prefer an appeal to the State Commission for Protection of Child Rights or the authority prescribed under sub-section (3) of section 31, as the case may be.

(4) The appeal preferred under sub-section (3) shall be decided by State Commission for Protection of Child Rights or the authority prescribed under sub-section (3) of section 31, as the case may be, as provided under clause (c) of sub-section (1) of section 31.”

THE MANDATE OF THE SCPCR/NCPCR

112. Chapter VI of the RTE Act deals with the Protection of Rights of Children. The provisions pertaining to the National Commission for Protection of Child Rights (hereinafter referred to as the “NCPCR”) and the State Commission for Protection of Child Rights (hereinafter referred to as the “SCPCR”) as reproduced hereunder pertains to monitoring of the child’s right to education:

“31. Monitoring of child's right to education.—(1) The National Commission for Protection of Child Rights constituted under section 3, or, as the case may be, the State Commission for Protection of Child Rights constituted under section 17, of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006), shall, in addition to the functions assigned to them under that Act, also perform the following functions, namely:—

NEUTRAL CITATION NO:2022/DHC/005590

(a) examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation;

(b) inquire into complaints relating to child's right to free and compulsory education; and

(c) take necessary steps as provided under sections 15 and 24 of the said Commissions for Protection of Child Rights Act.

(2) The said Commissions shall, while inquiring into any matters relating to child's right to free and compulsory education under clause (c) of sub-section (1), have the same powers as assigned to them respectively under sections 14 and 24 of the said Commissions for Protection of Child Rights Act.

(3) Where the State Commission for Protection of Child Rights has not been constituted in a State, the appropriate Government may, for the purpose of performing the functions specified in clauses (a) to (c) of sub-section (1), constitute such authority, in such manner and subject to such terms and conditions, as may be prescribed.

113. Section 32 pertains to the redressal of grievances under the RTE Act. The said provision is furnished hereunder:

“32. Redressal of grievances.—(1) Notwithstanding anything contained in section 31, any person having any grievance relating to the right of a child under this Act may make a written complaint to the local authority having jurisdiction.

(2) After receiving the complaint under sub-section (1), the local authority shall decide the matter within a period of three months after affording a reasonable opportunity of being heard to the parties concerned.

(3) Any person aggrieved by the decision of the local authority may prefer an appeal to the State Commission for Protection of Child Rights or the authority prescribed under sub-section (3) of section 31, as the case may be.

(4) The appeal preferred under sub-section (3) shall be decided by State Commission for Protection of Child Rights or the authority prescribed under sub-section (3) of section 31, as the case may be, as provided under clause (c) of sub-section (1) of section 31.”

114. Rule 24 of the Delhi RTE Rules provides for a mechanism to approach the Delhi Commission for Protection of Child Rights for registering complaints under the RTE Act. It reads as under:

“24. Manner of furnishing complaints before the Delhi Commission for Protection of Child Rights. — The Delhi Commission for Protection of Child Rights may set up a child helpline to register complaints regarding violation of rights of the child under the Act, which may be monitored by it through a transparent on-line mechanism.”

115. Before parting away with the analysis and proceeding to the conclusion, it is pertinent to reflect for a while on the role of NCPCR. The NCPCR is a statutory body constituted under Section 3 of the Commission for Protection of Child Rights Act (CPCR) Act, 2005 to protect and safeguard the rights and interest of children.

116. From a bare perusal of the aforementioned provisions, it is evident that the NCPCR is tasked with the duties and responsibilities to examine and review the safeguards for rights provided by or under this Act and recommend measure for their effective implementation and to inquire into complaints relating to child's right to free and compulsory education.

117. At this juncture, it is pertinent to take cognizance of a letter issued by the NCPCR bearing F. No. DL-225244/2022-23/NCPCR/RTE/250390 dated 20th June 2022, addressed to the Chief Secretary of Delhi titled

“Regarding denial of admission to children under EWS category by private schools in Delhi”.

118. In the said letter, it has been stated that the NCPCR has received various complaints of denial of admission to children under EWS category by private schools in Delhi, even after being selected in the due process for admission under EWS category prescribed by law. It is also stated therein that the concerned Officer from the DoE had been virtually summoned to seek clarification regarding the delay of admission to children belonging to EWS category by private schools.

119. It was stated that during the summon hearing, it had come to light that in the academic year 2021-2022, approximate seats allotted for admission of EWS category children in Delhi Private Schools were 40,000 wherein admission had been given to 28,000 children. Further, in the academic year 2022-2023, approximate seats allotted for admission of EWS category children in Delhi Private Schools were 33,000 wherein admission has been given to around 27,000 children.

120. The Commission in the said letter further noted that in addition, only 33,000 seats have been allotted in the academic year 2022-23 as against 40,000 seats allotted in the academic year 2021-22; evidently, 7,000 seats are yet to be allotted for admission of EWS category children by the Directorate of Education in the current academic year. It was further stated that it had *prima facie* come into light that in the past two years, that around 18,000 children were not provided admission in Delhi under the EWS category even after allotment by the DoE. Concluding the

same, the Chief Secretary was directed to take cognizance of the issue and take appropriate legal remedy to ensure uninterrupted education of the concerned children in private schools in wake of the situation over the last two years.

121. As aforestated, it is undisputed that the NCPCR is the body tasked with the powers to examine, review the safeguards for rights provided under the RTE Act and to recommend measures for their effective implementation. It is also mandated to inquire into complaints relating to the child's right to free and compulsory education. When a body tasked with such important functions expresses an opinion on the basis of its findings, the same cannot be brushed aside as worthless. The overall scenario depicted paints a gloomy picture.

122. As per the statement made by learned counsel for the DoE, despite directions and circulars issued from time to time, the private schools have been reluctant to obey the same and have been blatantly violating the same thus, outrightly undoing the mandate and intent of the RTE Act. Thus, there is no doubt that the implementation of the provisions of the RTE Act is in tatters and the fiasco warrants the intervention of this Court.

CONCLUSION

“The one thing that is at the root of all evils in India is the condition of the poor... The only service to be done for our lower classes is to give them education, to develop their lost individuality...They are to be given ideas; their eyes are to be opened to what is going on in the world around them; and then

NEUTRAL CITATION NO:2022/DHC/005590

they will work out their own salvation... Now if the mountain does not come to Mohammed, Mohammed must go to the mountain. If the poor boy cannot come to education, education must go to him."

"Education, education, education alone! Travelling through many cities of Europe and observing in them the comforts and education of even the poor people, there was brought to my mind the state of our own poor people, and I used to shed tears. What made the difference? Education was the answer I got. Through education comes faith in one's own Self, and through faith in one's own Self the inherent Brahman is waking up in them, while the Brahman in us is gradually becoming dormant." [Extracts from The Complete Works of Swami Vivekananda: Volume IV - "Our Duty to the Masses" & "The Education that India needs"]

123. It is high time that the judiciary reaches the people and not wait for the people to reach out to the judiciary, as the poor kids are being forced in the instant set of petitions to knock the doors of the Court for availing their Fundamental Right to Education. In view of the aforesaid analysis as well as to alleviate and ameliorate the miserable state of affairs as prevalent in the NCT of Delhi *qua* implementation of the RTE Act at elementary education level, it is pertinent to exercise the powers of this Court under Article 226 of the Constitution to issue directions to the DoE for ensuring admission to the poor children belonging to weaker sections. It is accordingly directed as under:

- a. All the schools within the meaning of Section 2(n) of the RTE Act shall ensure that the provisions of the Act as interpreted herein shall be given effect in letter as well as in spirit;
- b. All such schools as aforementioned shall also ensure that no student, belonging to 'Weaker Sections' as defined in the RTE Act

NEUTRAL CITATION NO:2022/DHC/005590

and recommended by the DoE for being admitted in an Academic Session, shall be denied admission or treated with conduct that is unwelcoming of them on any pretext whatsoever including that of suspicion of credentials;

- c. Any exemption/waiver if required by the schools under the provisions of the RTE Act, in the most exceptional and unforeseen circumstances, can be availed by making such request to the DoE as per the scheme as delineated below:
 - i. The Application must be made within one week of recommendation and the notification of admission of a particular student under the 'weaker section' quota to the neighborhood school.
 - ii. The said Application must state the reasons and circumstances under which the limited liberty or one-time limited exemption is being sought, or in any format as the DoE may deem fit including other details therein in addition to the reasons for the request.
 - iii. Upon receiving the said Application, the DoE shall give an opportunity of hearing to the concerned school within a week and decide the said application within a week thereafter, upon ascertaining that the prayers and reasons asserted therein are *bona fide* and stand the test of most exceptional circumstances and accordingly to its satisfaction, if deemed fit, grant a one-time limited exemption to the concerned school.

NEUTRAL CITATION NO:2022/DHC/005590

- iv. It is, however, made clear that no such exemption would be granted at the cost of causing prejudice to the admission of the child and shall only be passed after admitting the child, who would otherwise be aggrieved, to an alternate school that is in the closest neighborhood.

- d. The DoE shall exercise its powers under the Act and Rules to ensure that the provisions are duly complied with;

- e. The DoE shall ensure that all the students shortlisted and notified to be admitted in a neighborhood school shall be admitted at the earliest within one month or within the period prescribed by the appropriate authority subject to the provisions of the Act;

- f. In case of erring schools, the DoE shall issue strict directions as may be necessary to ensure the implementation of the RTE Act in a time-bound manner;

- g. The DoE shall not hesitate in initiating the process of de-recognition of the schools which have been found to be indulging in any acts/omissions in contravention of the RTE Act and the Delhi RTE Rules.

124. The schools have *inter alia* raised a contention regarding frauds being committed by the parents of the students seeking admission, misrepresenting themselves as belonging to weaker section by forging documents and adopting other scrupulous means. In that regard, having

considered the entire scheme of Act as well as the Rules and the various rulings passed by the Courts, this Court deems it fit, under the provisions/scheme as notified under the RTE Act/Delhi RTE Rules, to direct the DoE to carry out necessary screening as well as to mandate the submission of necessary documents to authenticate the credentials of the child and his/her parents and to verify the facts regarding eligibility while shortlisting, allotting and notifying the candidates who are found fit for admission to respective neighborhood schools under the said quota.

125. However, it is made clear that the admission of a student shortlisted and allotted under the said category by the DoE for being admitted shall not be denied for want of satisfaction of *bona fides* of the candidate by the school. Mere suspicion or doubt on the credentials of the candidate on the basis of fact-finding exercise carried out by the school, cannot be a ground to deny admission, otherwise it will render a death-knell to the spirit of the RTE Act. The schools as such, in the matters of admission under the Act/Rules, cannot bestow upon themselves the roles of the complainant, advocate as well as the adjudicator in such cases. Rather, if despite the due process adopted by the DoE for screening, in case the school, after admitting the child, suspects fraud being committed by the ward or their parents, they can seek recourse to legal remedies as available.

126. The instant set of petitions is accordingly disposed of.

NEUTRAL CITATION NO:2022/DHC/005590

127. Pending applications, if any, also stand disposed of.
128. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 16, 2022
gs/Adityak.

