

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JULY, 2019

BEFORE

THE HON'BLE MRS.JUSTICE S.SUJATHA

W.P.Nos.24310 – 24315/2019 (EDN-RES)

BETWEEN:

1. P.SRIDHANYA
AGED ABOUT 4 YEARS,
REP BY HER NATURAL GUARDIAN
& MOTHER SMT.SRILEKHA,
W/O PRASHANT PARAMATMUNI,
AGED ABOUT 28 YEARS,
R/AT #45/66, FLAT A3,
HIGHTECH AQUARIUS APARTMENTS,
LKR NAGAR, DEVI NAGAR,
BENGALURU-560 094.
2. AARUSH DESAI
AGED ABOUT 8 YEARS,
REP BY HIS NATURAL GUARDIAN
& MOTHER SMT.POONAM DESAI,
W/O MANISH DESAI,
AGED ABOUT 36 YEARS,
R/AT #35, KRISHINAGAR,
7TH CROSS, UAS LAYOUT,
RMV II STAGE, BENGALURU-560 094.
3. NIDHI N.,
AGED ABOUT 7 YEARS,
REP BY HER NATURAL GUARDIAN
& MOTHER SMT.MAMATHA V.P.,
W/O NANDEESH KUMAR C.B.,
AGED ABOUT 37 YEARS

4. HRITHIKESH N.,
AGED ABOUT 12 YEARS,
REP BY HIS NATURAL GUARDIAN
& MOTHER SMT.MAMATHA V.P.,
W/O NANDEESH KUMAR C.B.,
AGED ABOUT 37 YEARS,

PETITIONERS 3 AND 4
R/AT NO.72, 4TH MAIN,
1ST CROSS, BALAJI LAYOUT,
VIDYARANYAPURA,
BENGALURU-560 097.

5. SAKSHAM P. JAIN
AGED ABOUT 11 YEARS,
REP BY HIS NATURAL GUARDIAN
& MOTHER SMT.SUNITHA P. JAIN,
W/O J.B.PADAM KUMAR,
AGED ABOUT 45 YEARS,
R/AT NO.98, VISHWAS MANSION,
FLAT NO.201 B, 2ND FLOOR,
4TH MAIN, 5TH CROSS,
N.G.E.F. LAYOUT, SANJAY NAGAR,
BENGALURU-560 094.

6. AJAY ANAND
AGED ABOUT 13 YEARS,
REP BY HIS NATURAL GUARDIAN
& MOTHER SMT.P.S.ABHIRAMI,
W/O A.P.RAJU,
AGED ABOUT 43 YEARS,
R/AT #250, 8TH CROSS,
5TH MAIN, TATA NAGAR,
BENGALURU-560 092.

... PETITIONERS

[BY SRI M.I.ARUN, ADV. A/W SRI P.N.RAJESHWARA, ADV.]

AND:

1. STATE OF KARNATAKA
REP BY ITS SECRETARY,
DEPARTMENT OF PRIMARY

& SECONDARY EDUCATION,
M.S. BUILDING,
BENGALURU-560 001.

2. THE COMMISSIONER
DEPARTMENT OF PUBLIC INSTRUCTIONS,
NRUPATHUNGA ROAD,
BENGALURU-560 001.
3. DIRECTOR OF PUBLIC INSTRUCTIONS
OFFICE OF THE COMMISSIONER OF
PUBLIC INSTRUCTIONS,
NRUPATHUNGA ROAD,
BENGALURU-560 001.
4. THE DEPUTY DIRECTOR OF
PUBLIC INSTRUCTIONS
BENGALURU NORTH,
K.G. ROAD, BENGALURU-560 009.
5. THE BLOCK EDUCATION OFFICER
BENGALURU NORTH ZONE-4,
YELAHANKA,
BENGALURU-560 064.
6. KARNATAKA STATE COMMISSION
FOR PROTECTION OF CHILD RIGHTS,
REP BY ITS CHAIR PERSON,
4TH FLOOR, KRUSHI BHAVAN,
NRUPATHUNGA ROAD,
RANI CHENNAMMA CIRCLE,
BENGALURU-560 002.
7. VYASA EDUCATIONAL AND
CULTURAL TRUST
BEING A PUBLIC CHARITABLE TRUST
UNDER INDIAN TRUST ACT 1882 ACT
AND HAVING ITS OFFICE AT
SURVEY NO.101/2,
DODDABOMMASANDRA,
BEL NORTH GATE,
VIDYARANYAPURA POST,
BENGALURU-560 097,

REP BY ITS CHAIRPERSON
Mr. V.SRINIVASA RAJU.

8. VYASA INTERNATIONAL SCHOOL
SURVEY NO.101/2,
DODDABOMMASANDRA,
BEL NORTH GATE,
VIDYARANYAPURA POST,
BENGALURU-560 097,
REP BY ADMINISTRATIVE MANAGER,
Mr. PRASAN VENKATESH RAO. ...RESPONDENTS

[BY SMT.PRAMODHINI KISHAN, AGA FOR R-1 TO R-5;
SMT.VIDYULATHA, ADV. FOR R-6;
SRI G.L.VISHWANATH, ADV. FOR R-7 & R-8.]

THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE DIRECTION HOLDING THAT THE R-7 AND 8 ARE NOT ENTITLED IN LAW TO ISSUE OF MANUAL TRANSFER CERTIFICATES TO THE PETITIONERS AND THEREFORE QUASH THE TRANSFER CERTIFICATES AT ANNEXURES-B TO B5 ENCLOSED TO THE LETTERS ALL DATED 03.04.2019 AT ANNEXURES-A TO A5.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED, IS COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PASSED THE FOLLOWING:

ORDER

Petitioners, children studying in VYASA International School i.e., respondent No.8 affiliated to CBSE run by respondent No.7-Trust have filed these writ petitions seeking for the following reliefs.

- i) *Issue appropriate Writ/Order/ Direction holding that the respondent Nos.7 and 8 are not entitled in law to issue manual Transfer Certificates to the petitioners and therefore quash the Transfer Certificates at Annexures B to B5 enclosed to the letters all dated 03.04.2019 at Annexures A to A5;*
- ii) *Issue appropriate Writ/Order/ Direction to the respondent Nos.1 to 5 to implement the order bearing No.KSCPCR/50-05/2019/2019-20 dated 21.05.2019/ 30.05.2019 issued by respondent No.5 at Annexure-F;*
- iii) *Issue a Writ of Mandamus directing the respondent Nos.7 and 8 to forthwith give admissions to the petitioners for the academic year 2019-20 to their respective classes;*
- iv) *Pass such other orders as this Hon'ble Court deems fit under the facts and circumstances of the case, including the award of costs, in the interest of justice and equity.*

2. The petitioners are represented by their respective natural guardians/mothers.

FACTS:

3. The petitioners are aggrieved by the respective letters dated 07.04.2019 enclosed with photocopies of the Transfer Certificates to the petitioners issued by the respondent Nos.7 and 8 without their parents requesting for Transfer Certificates. The petitioners/parents had approached the Block Educational Officer against the action of the school who has issued a show-cause notice dated 04.04.2019 to the respondent-School and gave instructions to collect the fees and give admission. It is contended that the respective parents of the petitioners were regularly paying the fees ever since their admission, the respondent Nos.7 and 8 have expelled the petitioners from the school as the parents have raised their voice against the exorbitant fees

demanded for the academic year 2018-2019 and the lack of facilities/amenities given in the school. The said issue is now seized of, in litigation before this Court in W.P. Nos.52083-52084/2018.

4. W.P. Nos.19477-19585/2019 were filed by several parents including the parents of the four petitioners herein, to enforce the reports obtained by respondent Nos.1 to 5, as no interim order was granted, the petitioners filed Writ Appeal Nos.1293 and 1304-1411/2019. On the parents of the students/appellants expressing their willingness to pay 75% of the fees relating, to Academic Year 2018-19 and first installment of Academic Year 2019-20, the Hon'ble Court directed the respondent Nos.7 and 8 to give admission to such children/students to their respective classes if such fees are paid by the parents of the children (certain appellants therein) within a period of ten days and to issue Transfer Certificates to

the children whose parents had opted for the same [certain appellants]. As regards these children/petitioners are concerned, the Division Bench provided liberty to approach the learned Single Judge. Hence, these writ petitions are filed.

Submissions on behalf of petitioners

5. Learned Senior Counsel Sri.M.I.Arun representing the petitioners submitted that elementary education is free and compulsory under the provisions of the Right of Children to Free and Compulsory Education Act, 2009 ('RTE' Act for short). Once a student is admitted to a school, for no reason, can be expelled from the school till the completion of elementary education. The attention of the court was drawn to the provisions of the Act particularly, Section 16(4) of the Act which contemplates that no child admitted in a school shall be held back in any class or expelled from the School till the completion of elementary education. Attention was drawn to Section

3 which deals with Right of Child to Free and Compulsory Education. Every child of the age of 6 to 14 years shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education.

6. Learned counsel has referred to the Circular dated 25.05.2019 produced at Annexure-J wherein it is stated that without the request of the parents, no Transfer Certificates can be issued and the issuance of such Transfer Certificates would result in disciplinary action. To substantiate the arguments, the copies of Transfer Certificates at Annexure-B series were referred to, wherein Column No.27 which refers to the date on which the application for Transfer Certificate was received has been left blank whereas, the "note" appended therein specifies that this Transfer Certificate is issued on the application made by the parents or the guardian. The Transfer

Certificates issued without the request of the parents of the children is not valid and issuance of manual Transfer Certificate is not permitted under law. Hence, it was argued that issuance of Transfer Certificates is illegal and unjustifiable. Learned counsel referred to Annexure-F, the order of the Karnataka State Commission for Protection of Child Rights dated 21.05.2019 wherein, the said Transfer Certificates issued are withdrawn and cancelled directing the Block Education Officer to ensure that the children herein shall be allowed by the respondent school to attend the school on its re-opening. In support of his contentions, learned Senior counsel has placed reliance on the following judgments:

1. *Society for unaided private schools of Rajasthan Vs. Union of India and another reported in (2012) 6 SCC 1.*
2. *The Praga Tools Corporation Vs. Shri C.A.Imanual and others reported in 1969(1) SCC 585.*

3. *Master Vatsal Khakhariya Vs. State of Chattisgarh reported in AIR 2018 Chh 135.*
4. *Mrs. Sobha George Adolfus Vs. State of Kerala reported in 2016 SCC Online 18552.*
5. *Jayashree Vijay Mundaware Vs. The Principal/Head Mistress of Ashoka Universal School Chandsi/Wadala & others 2015 (6) MhLJ 792.*

Submissions on behalf of respondent Nos.7 & 8

7. Learned Senior counsel Sri.G.L.Vishwanath representing the learned counsel on record submitted that the writ petitions are not maintainable since the reliefs sought in the writ petitions ultimately rests against the respondent Nos.7 and 8 who are the private respondents. No writ lies against the private institutions under Articles 226 and 227 of Constitution of India as the children-petitioners herein were not admitted under the RTE quota, as such, the provisions of the RTE Act are not applicable as far as the petitioners herein are concerned. The parents of the petitioners have defaulted in paying the fees relating

to the academic year 2018-2019 which was due in December 2018. Similarly, fees for the academic year 2019-2020 which was due in May 2019 has not been paid. Annexure-F, the order of the Karnataka State Commission for Protection of Child Rights has been challenged by the respondent Nos.7 and 8 in W.P. Nos.25201-25202/2019 and an interim order is granted by this Court not to take any precipitate or coercive action against the petitioner-Institution. The respondent-school does not get any aid from the State, the fee collected by the students is used to defray expenses in relation to the school. The parents of the petitioners having not paid 75% of the prescribed fee for the Academic year 2018-19 inspite of an interim order to this effect by this Court in W.P. No.52083-84/2018 and the application for vacating the said interim order preferred by the parent of petitioner No.5 being rejected, the school was

compelled to issue a final reminder to the respective fathers of the petitioners that the Transfer Certificates will be issued, if fee remains unpaid. Despite the same, no fees has been paid. The father of petitioner No.5 has threatened, harassed and intimidated the staff of the school and behaved in an unruly manner with the Principal and staff of the school. In order to take action against the errant parents and restore the conducive atmosphere in the school, the school Managing Committee in its meeting held on 23.06.2019, resolved to issue Transfer Certificates to the petitioners. The school being a private unaided educational institution has a fundamental right to establish and administer the same under Article 19(1)(g) of the Constitution. The said right of the school includes autonomy with respect to admission. The school is now functioning for the academic year 2019-2020 and the intake is full, any direction to

these respondents to admit the petitioners would disrupt the educational pattern, adversely affecting the other students in addition to creating a volatile atmosphere and trauma in the minds of the staff and the students. The autonomy vested with the private unaided institution cannot be disturbed. It was argued that the Transfer Certificates issued to these children are not violative of any law. There is absolutely no short coming as complained by the parents of the petitioners. The action of the parents of the petitioners has resulted in the respondent Nos.7 and 8 facing unwanted multiple litigations. The parents of these petitioners cannot make allegations against school and simultaneously claim admission to their wards. The learned counsel has placed reliance on the following judgments:

1. *TMA Pai Foundation and Others Vs. State of Karnataka* reported in (2002) 8 SCC 481.

2. *Ajay Hasia Vs. Khalid Mujib Sehravardi & others reported in AIR 1981 SC 487.*
3. *K K Saksena Vs. International Commission on Irrigation and Drainage and others reported in (2015)4 SCC 570.*
4. *Committee of Management Delhi Public School Vs. M.K.Gandhi and others reported in (2015)17 SCC 353.*
5. *Susmita Basu & others Vs. Ballygunge Shiksha Samithy reported in (2006)7 SCC 680.*
6. *Satimbia Sharma Vs. St. Paul's Senior Secondary School & others reported in (2011)13 SCC 760.*
7. *Master Akshit Ashok Vs. Union of India reported in 2004(2) JKJ 232.*

Submissions of the State-Respondent Nos.1 to 6:

8. Learned Government Advocate argued that the Respondent-school is governed by the provisions of the RTE Act and cannot expel the children contrary to Section 16(4) of the Act and the Circular dated 21.05.2019 issued by the Government of Karnataka. It was submitted that respondent authorities have cancelled the No Objection Certificate issued in

respect of the Respondent-Institution vide order dated 03.06.2019 for the deficiencies/violations committed by the Institution.

I have carefully considered the rival submissions of the learned counsel for the parties and perused the records.

9. The points that arise for consideration in these writ petitions are:

- 1. Whether writ petitions are maintainable under Articles 226 and 227 of the Constitution of India against an unaided private educational institution seeking for a writ of mandamus to admit the children to their respective classes?*
- 2. Whether the provisions of RTE Act are applicable to the Respondent No.8 unaided private school?*
- 3. Whether the Transfer Certificates issued by the respondent Nos.7 and 8 are justifiable?*
- 4. Whether the petitioners are entitled to the relief/s claimed for?*

RELEVANT STATUTORY PROVISIONS

Sections 1(4), 2(c) (d) (e), (n), 3, 1, 16, 17, 18 of the RTE Act are extracted hereunder for ready reference.

1(4) Subject to the provisions of Articles 29 and 30 of the Constitution, the provisions of this Act shall apply to conferment of rights on children to free and compulsory education.

2(c) "child" means a male or female child of the age of six to fourteen years.

(d) "child belonging to disadvantaged group" means a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification;

e. "child belonging to weaker section" means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification;

n. "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;

3. Right of child to free and compulsory education.-

1. Every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education.

2. For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or

her from pursuing and completing the elementary education.

16. Prohibition of holding back and expulsion.-

1. xxxx
2. xxxx
3. xxxx
4. No child shall be expelled from a school till the completion of elementary education”.

17. Prohibition of physical punishment and mental harassment to child.-

1. No child shall be subjected to physical punishment or mental harassment.
2. Whoever contravenes the provisions of sub-section (1) shall be liable to disciplinary action under the service rules applicable to such person.

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 subsection (3), no such school shall continue to function.*

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

Re: Maintainability :

10. To begin with, it is beneficial to refer to Article 21-A which contemplates thus:

“ 21-A. Right to education – 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.”

11. Free and compulsory education to all children of the age group of 6 to 14 years is the obligation of the State. However, the manner in which it has to be provided is left to the State whether through the Government schools or Government aided schools or through unaided private schools. In this direction, RTE Act has been enacted primarily, to achieve the object of Article 21-A. Constitutional validity and applicability of the RTE Act was considered by the Hon'ble Apex Court in the case of ***Society for Unaided Private Schools of Rajasthan*** (Supra). It is relevant to quote the following paragraphs of the said judgment:

"37. Thus, from the scheme of Article 21A and the 2009 Act, it is clear that the primary obligation is of the State to provide for free and compulsory education to children between the age of 6 to 14 years and, particularly, to children who are likely to be prevented from pursuing and completing the elementary education due to inability to afford fees or charges. Correspondingly, every citizen has a right to establish and administer educational institution under Article 19(1)(g)

so long as the activity remains charitable. Such an activity undertaken by the private institutions supplements the primary obligation of the State. Thus, the State can regulate by law the activities of the private institutions by imposing reasonable restrictions under Article 19(6).

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

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 section 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 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.

53. On reading *T.M.A. Pai Foundation and P.A. Inamdar* in proper perspective, it becomes clear that the said principles have been applied in the context of professional/higher education where merit and excellence have to be given due weightage and which tests do not apply in cases where a child seeks admission to class I and when the impugned Section 12(1)(c) seeks to remove the financial obstacle. Thus, if one reads the 2009 Act including Section 12(1)(c) in its application to unaided non-minority school(s), the same is saved as reasonable restriction under Article 19(6).

64. Accordingly, we hold that the *Right of Children to Free and Compulsory Education Act, 2009* is constitutionally valid and shall apply to the following:

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

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

(iii) a school belonging to specified category; and

(iv) an unaided non-minority school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority."

12. Article 226(2) of the Constitution of India reads thus:

"226. Power of High Courts to issue certain writs.

2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

13. In **Praga Tools Corporation (Supra)**, the

Hon'ble Apex Court has observed thus:

"6. In our view the High Court was correct in holding that the writ petition filed under Art. 226 claiming against the company mandamus or an order in the nature of mandamus was misconceived and not maintainable. The writ obviously was claimed against the company and not against the conciliation officer in respect of any public or statutory duty imposed on him by the Act as it was not he but the company who sought to implement the impugned agreement. No doubt, Art. 226 provides that every High Court shall have power to issue to any person or authority orders and writs including writs in the nature of habeas corpus, mandamus etc., or any of them for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. But it is well understood that a mandamus lies to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest. Thus, an application for mandamus will not lie for an order of restatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute. (see *Sohan Lal v. Union of India*) (1). In *Regina v. Industrial Court & Ors.* (2) mandamus was refused against the Industrial court though set up under the Industrial Courts Act, 1919 on the ground that the reference for arbitration made to it by a minister was not one under the Act but a private reference.

"This Court has never exercised a general power" said Bruce, J., in R. v. Lewisham Union (1)"to enforce the performance of their statutory duties by public bodies on the application of anybody who chooses to apply for a mandamus. It has always required that the applicant for a mandamus should have a legal and a specific right to enforce the performance of those duties". Therefore, the condition precedent for the issue of mandamus is that there is in one claiming, it is a legal right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in form, a command directed to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purposes of fulfilling public responsibilities. (cf. Halsbury's Laws of England, (3rd ed.) Vol. 11, p. 52 and onwards).

7. The company being a non-statutory body and one incorporated under the Companies Act there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought

by means of a mandamus, nor was there in its workmen any corresponding legal right for enforcement of any such statutory or public duty. The High Court, therefore, was right in holding that no writ petition for a mandamus or an order in the nature of mandamus could lie against the company."

14. The Hon'ble High Court of Chhattisgarh at Bilaspur in **Master Vatsal Khakhariya** referring to the principle of law laid down by the Madras High Court in *Ka. Kalaikottuthayam*, which has been followed with approval by the Calcutta High Court in **Master Arkaprava Basu Vs. Patha Bhavan** has held as under:

"The applicability of the said Act to the petitioner's school and availability of the protection guaranteed under Article 21A of the Constitution of India as well as under the aforesaid Act to the petitioner No.1 cannot be doubted in view of the provisions contained in the said Act. In this regard reliance may also be made to the unreported decision of Madras High Court delivered on 08/06/2010 in the case of W.P. No. 11168 of 2010; Ka Kalaikottuthayam vs. the State of Tamil Nadu , wherein it was held that the object behind Section 16 of the said Act is that no student should leave the school within

the age group of 6 to 14 years for any reason i.e. due to non-payment of fees, not passing the examination etc. It was further held therein that when the right to education upto the age of 16 years is guaranteed as a fundamental right under Article 21A of the Constitution of India and right to free and compulsory education also has now been declared as a statutory right apart from fundamental right as per Act 35 of 2009 with effect from 1st April, 2010, the State respondent cannot issue any circular giving direction to the school authorities to give promotion by fixing any norm to the students of standard 1 to 8."

15. The Hon'ble High Court of Kerala at Ernakulum in ***Mrs.Sobha George Adolfus*** [supra], has observed thus:

"The State under Article 21A of the Constitution is obliged to provide free and compulsory education upto the age of 14 years. Thus, there may not be any difficulty in holding that, even an unaided educational institution imparting education to the children upto the age of 14 years is discharging a State function. Thus, a W.P.(C).No.30712/2015 writ petition would be maintainable as against a private body which discharges a State function of imparting education to the children upto the age of 14 years".

16. In the case of **Jayshree Vijay Mundaware** (Supra), the Hon'ble High Court of Bombay while considering the maintainability of the writ petition against an Un-aided Private Minority Educational Institution/School, at the instance of parents, whose children were expelled/debarred from the school/college of such institution, because of stated mis-behavior and/or bad behavior of the parents/relatives/for non-payment of disputed enhanced fee/payment, has observed thus;

34. a) We hold that writ petition filed by petitioners is maintainable against respondent Nos.1 and 2 (Un-aided Minority Educational School/Institution) in the facts and circumstances of the case.

b) We hereby declare that the impugned action/orders of expelling the petitioner's son and daughter are illegal, impermissible and bad in law, including the endorsement "Terminated because of parents

indecent and illegal behaviour”, therefore quashed and set aside accordingly.”

17. Even accepting the settled law that RTE Act is not applicable to Minority Institutions, Hon’ble High Court of Bombay has held that writ petition is maintainable albeit the parents agitating against the hike in the fee structure and facing the allegation of misbehaviour. In paragraph 23 and 24 it is observed thus:

“24. The rights of the Institution/School to increase fees every year is a matter, which just cannot be overlooked. We are not deciding the issue raised by the parents about the yearly increased fees. The remedy is elsewhere and so also the mechanism so provided under the State Acts. The matters are pending in this Court. The Petitioner has also not pressed the prayer with regard to the power and validity of the Management to increase and enhance the yearly fees within sphere of ordinance and/or even otherwise. The agitation, even if any, by the Petitioner's husband along with others, in

no way can be permitted to result into disturbing the peace and harmony of the School/Management. It affects everyone, including students, teacher, staff, apart from the name and fame of the School. The agitation needs to be solved and resolved through the prescribed procedure and not by such personal allegations and counter allegations to the extent of filing/lodging Criminal cases.

24. Notwithstanding, the agitation and the stated misbehavior of the parents cannot be the reason and/or empower the School, for want of specific provisions under any rules, regulations and/or Act, to expel their students in such fashion, by unilaterally issuing the Transfer Certificate/Leaving Certificate, though not asked for by putting the endorsement "Terminated because of parents indecent and illegal behavior".

18. It is almost the similar facts in the present case except the Institution being unaided, non-

minority private School which would rather come within the purview of RTE Act.

19. The Hon'ble Apex Court in the case of **Ajay Hasia Vs. Khalid Mujib Sehravardi and others** (Supra) has laid down the tests inasmuch as the maintainability of the writ petition qua the definition of State under Article 12 of the Constitution which is quoted hereunder:

"It is in the light of this discussion that we must now proceed to examine whether the Society in the present case is an "authority" falling within the definition of "State" in Article 12. Is it an instrumentality or agency of the Government? The answer must obviously be in the affirmative if we have regard to the Memorandum of Association and the Rules of the Society. The composition of the Society is dominated by the representatives appointed by the Central Government and the Governments of Jammu & Kashmir, Punjab, Rajasthan and Uttar Pradesh with the approval of the Central

Government. The monies required for running the college are provided entirely by the Central Government and the Government of Jammu & Kashmir and even if any other monies are to be received by the Society, it can be done only with the approval of the State and the Central Governments. The Rules to be made by the Society are also required to have the prior approval of the State and the Central Governments and the accounts of the Society have also to be submitted to both the Governments for their scrutiny and satisfaction. The Society is also to comply with all such directions as may be issued by the State Government with the approval of the Central Government in respect of any matters dealt with in the report of the Reviewing Committee. The control of the State and the Central Governments is indeed so deep and pervasive that no immovable property of the Society can be disposed of in any manner without the approval of both the Governments. The State and the Central Governments have even the power to appoint any other person or persons to be members of the Society and any member of the Society other than a member

representing the State or the Central Government can be removed from the membership of the Society by the State Government with the approval of the Central Government. The Board of Governors, which is in charge of general superintendence, direction and control of the affairs of Society and of its income and property is also largely controlled by nominees of the State and the Central Governments. It will thus be seen that the State Government and by reason of the provision for approval, the Central Government also, have full control of the working of the Society and it would not be incorrect to say that the Society is merely a projection of the State and the Central Governments and to use the words of Ray, C.J. in Sukhdev Singh's case (supra), the voice is that of the State and the Central Governments and the hands are also of the State and the Central Governments. We must, therefore, hold that the Society is an instrumentality or agency of the State and the Central Governments and it is an 'authority' within the meaning of Article 12."

20. In **K.K.Saksena** (Supra), the term "authority" used in Article 226 and in Article 12 has been considered and it is observed that the guiding factor is the nature and the extent of duty imposed on such a body namely, it's a public nature and extent to make it exigible to Article 226 of the Constitution. The relevant paragraph is quoted hereunder for ready reference:

"43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is a 'State' within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. Reason is obvious. Private law is that part of a legal system which is a part of Common Law that involves

relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is 'State' under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law.

45. *On the other hand, even if a person or authority does not come within the sweep of Article 12 of the Constitution, but is performing public duty, writ petition can lie and writ of mandamus or appropriate writ can be issued. However, as noted in Federal Bank Ltd. (supra), such a private body should either run substantially on State funding or discharge public duty/positive obligation of public nature or is under liability to discharge any function under any statute, to compel it to perform such a statutory function."*

21. The Hon'ble High Court of **Allahabad in M.K.Gandhi & others** (Supra) has observed that DPS

school is not a State within the meaning of the Article 12 of the Constitution. It is beneficial to refer to para 7, 8 and 36 of the judgment:

" 7. The counsel for the parties have cited numerous decisions (see Endnote 2) laying down the guidelines to find out when a body can be held to be the State within the meaning of Article 12 of the Constitution. However, the majority decision in P.K. Biswas v. Indian Institute of Chemical Biology, 2002 (5) ESC 286 has summarised the principles as follows : "The picture that ultimately emerges is that, the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, ex-hypothesis, be considered to be a State within the meaning of Article 12. The question in each case would be--whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control

is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."

In light of these principles, let's consider whether the D.P.S. School and the Board are the State within the meaning of Article 12 or not.

D.P.S. School--Not State :

8. The D.P.S. School is managed by a private committee of management. There is neither any pleading nor any averment that it is a State within the meaning, of Article 12 of the Constitution. There is also no pleading that it receives any financial aid from the Government or a body that is State within the meaning of Article 12 of the Constitution. During arguments a statement was made at the bar that the D.P.S. School does not receive any financial aid or grant-in-aid from any Government agency. There is no Government control. The D.P.S. School is not a State within the meaning of the Article 12 of the Constitution.

Board--State :

36. *Is a writ petition maintainable for, violation of the bye-laws that do not have statutory force? enforcement of a private contract between the school and the teacher? We are afraid; our answer has to be in the negative. The Full Bench of our Court in Aley Ahmad Abidi v. District Inspector of Schools, (The Aley Abidi Case) has held that:*

The Committee of Management of an Intermediate College is not a statutory body. Nevertheless, a writ petition filed against it is maintainable if such petition is for enforcement of performance of any legal obligations or duties imposed on such committee by a statute."

This judgment has been approved by the Hon'ble Supreme Court. However, this judgment was rendered prior to the Eighty Sixth Constitutional amendment, Article 21-A and the RTE Act, 2009 coming into force.

22. In **Master Akshit Ashok** (Supra), the Hon'ble High Court of Jammu & Kashmir at Jammu (D.D. 08.03.2004) has held thus:

18. I have carefully considered the judgments referred to by the parties on the question of maintainability of the writ petition, though a mandamus can be issued where a person is enjoined with public duty irrespective of its status as that of a State or authority. In case *Unikrishanan JP*, the Apex Court subjected private educational institutions imparting professional education to the mandate of Article 14 being affiliated and recognized bodies. It is also observed that they supplement the duties of the State in imparting education but these institutions particularly unaided institutions, have not been declared as an authority or State within the meaning of Article 12 of the Constitution. In (2003) 8 SCC 639, writ petition preferred against a Cooperative Society having certain nominees of the government on its management, was declared not to be a State within the meaning of Article 12 of the Constitution. A writ petition filed by employees against the Sugar Mill run by a Cooperative Society was held not maintainable, Society being not amenable to the writ jurisdiction of the court. In case of *Army School Society* where the entire

management was of the Army Officials, who are admittedly employees of the Union, has been held not a State within the meaning of Article 12 and was not subjected to writ jurisdiction of the court.

*19. In view of the position of the law referred to above, I am unable to accept the contention of the petitioner that the management of K.C. Public School or its-
functionaries are amenable to writ jurisdiction of this court. It was also contended by Mr.Johal that he is seeking direction against the CBSE, therefore, writ jurisdiction should be exercised. The question of issuing direction to CBSE will only arise, if CBSE failed to perform in its duties or obligation enjoined upon it or there has been any violation of statute or rules by the Board.*

20. In view of the admitted factual position, that the form of the petitioner was never forwarded to CBSE, therefore, CBSE has had no role to play. In these facts and circumstances, the CBSE has not failed to discharge any of its duty. The dispute in the writ petition is primarily between the student

and the management of unaided school run by a society. Petitioner has not brought any material on record to show that the conditions applied by the Apex Court in case of Ajay Hasia, AIR 1984 SC 454, are fulfilled to declare educational society which runs K.C. Public School a State or any other authority within the meaning of Article 12 of the Constitution.

Even this judgment relates to the period prior to Article 21-A and the RTE Act coming into force.

23. In the case of **Anand Kumar Jain** (supra), Hon'ble High Court of Madhya Pradesh (D.D. 09.02.1959) has observed thus:

"His contention is that on a commonsense principle, he must be given preference because he is a graduate while none of the said respondents is. In proceedings under Article 226 of the Constitution, we cannot sit in judgment on the wisdom of the Selection Board who gave preference to the respondents. In the absence of any Rules as to how candidates are to be selected for the

unfilled seats after exhausting Rules 8 to 11 it is not for this Court to lay down additional rules.

The result of this discussion is that the petitioner completely fails to satisfy us that the administrative authorities are not doing what it is their duty to do because no rule has been placed before us which has been transgressed.

In **Asha Latha** (supra) (D.D. 13.11.1958), the Hon'ble High Court of Allahabad has observed thus:

10. It is evident from the discussion attempted above that neither the Agra University Act nor the Rules framed thereunder give the petitioner any right to secure admission into the class she wants, nor is there any legal or statutory duty on the Principal of the College to admit her. I do not imagine that Acts and Rules which govern other educational institutions in Uttar Pradesh contain anything different.

It is highly significant that learned counsel have not been able to cite before me a single authority, either of this country or

elsewhere, where a school or College has been compelled to admit a student: such matters are deemed to be domestic affairs of the institution concerned and are left to the discretion of the authorities who are charged with the responsibility of managing it.

The petitioner was ill-advised in approaching this Court for relief; the Principal alone had the authority to do what he wants, and it is not inconceivable that the rude letters of her father Om Prakash contributed towards the disinclination of the Principal to admit her.

Be that as it may, it is clear, that she has failed to establish the rights and duties without which her claim cannot succeed. Consequently her petition fails and is dismissed with costs. The interim order dated the 12th September 1958 passed by the Hon'ble Application Judge is hereby vacated.

In the light of the subsequent judgments of the Hon'ble Apex Court in T.M.A. Pai, Inamdar, unaided private Schools of Rajasthan, these judgments would be of little assistance to respondent Nos.7 & 8.

24. The Hon'ble Apex Court in **Basireddy**, supra, while considering whether a writ under Article 226 would lie against ICRISAT, an international organization, held thus:

"25. A writ under Article 226 lies only when the petitioner establishes that his or her fundamental right or some other legal right has been infringed [Calcutta Gas Co. vs. State of W.B.; AIR 1962 SC 1044, 1047-1048]. The claim as made by the appellant in his writ petition is founded on Articles 14 and the claim would not be maintainable against ICRISAT unless ICRISAT were a 'State' or authority within the meaning of Article 12. The tests for determining whether an organization is either, has been recently considered by a Constitution Bench of this Court in Pradeep Kumar Biswas v. Indian Institute of Chemical Biology & ors. (2002) 5 SCC 111 at p. 134 in which we said:

" The question in each case would be whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under

the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State". It is true that a writ under Article 226 also lies against a 'person' for "any other purpose". The power of the High Court to issue such a writ to "any person" can only mean the power to issue such a writ to any person to whom, according to well- established principles, a writ lay. That a writ may issue to an appropriate person for the enforcement of any of the rights conferred by Part III is clear enough from the language used. But the words "and for any other purpose" must mean "for any other purpose for which any of the writs mentioned would, according to well established principles issue. A writ under Article 226 can lie against a "person" if it is a statutory body or performs a public function or discharges a public or statutory duty [Praga Tools Corporation v. C.A. Imanual, (1969) 1 SCC 585; Andi Mukta Sadguru Trust v. V.R. Rudani, (1989) 2 SCC

691, 698; *VST Ind. Ltd. v. VST Ind. Workers' Union & Another*, (2001) 1 SCC 298]. ICRISAT has not been set up by a statute nor are its activities statutorily controlled. Although, it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity. The primary activity of ICRISAT is to conduct research and training programmes in the sphere of agriculture purely on a voluntary basis. A service voluntarily undertaken cannot be said to be a public duty. Besides ICRISAT has a role which extends beyond the territorial boundaries of India and its activities are designed to benefit people from all over the world. While the Indian public may be the beneficiary of the activities of the Institute, it certainly cannot be said that the ICRISAT owes a duty to the Indian public to provide research and training facilities. In *Praga Tools Corporation V. C.V. Imanuel* AIR 1960 SC 1306, this Court construed Article 226 to hold that the High Court could issue a writ of mandamus "to secure the performance of the duty or statutory duty" in the performance

of which the one who applies for it has a sufficient legal interest". The Court also held that:

".. an application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute.[See Sohan Lal V. Union of India, 1957 SCR 738]

In this case, writ of mandamus was declined as ICRISAT owes no duty/statutory duty to the Indian Public to provide research and training facilities. This Judgment may be of little relevance to the facts of the present case.

25. In W.P.Nos.19477-19585/2019, the only interim relief prayed was in terms of clause (i) of the writ petition and there was no challenge to the act of the respondent Nos.7 & 8 in issuing the Transfer

Certificates to these petitioners. Hence, the Hon'ble Division Bench relegated the petitioners to this court to apply in the pending writ petitions. However, the petitioners have filed these fresh petitions. The rights of the children challenging the Transfer Certificates impugned flows from the constitutional and statutory rights affecting the fundamental rights guaranteed under Article 21-A of the Constitution. Respondent Nos.7 and 8 are under positive obligation to discharge their functions of public nature/statutory function under RTE Act.

Re: APPLICABILITY OF THE RTE ACT:

25. The primary argument of the learned counsel for the respondent Nos.7 and 8 that the RTE Act is applicable only relating to 25% of the students who are admitted under the RTE quota and not with respect to other 75% of the Students like the petitioners admitted by the School exercising the

autonomy vested in it cannot be countenanced for the following reasons.

It is trite that Article 19(1)(g) provides a right to the citizen to carry an occupation. Imparting education is an occupation in terms of T.M.A. Pai Supra. As per P.A. Inarndar, it is subject to regulation to prevent profiteering. No unfettered powers can be conferred on the Institutions without any regulatory mechanism. The autonomy/discretion vested with the unaided private school to admit or reject admission relating to 75% of children would be subject to other provisions of the RTE Act. However, ordinarily no school is authorized to expel a student for short payment of fees/misbehavior of parents of student while considering the admission for the next higher class of elementary education between the age group of children of 6 to 14 years. Much emphasis was made by the learned Senior counsel on the case of

T.M.A. Pai Foundation (Supra) to contend that this autonomy vested with the school cannot be questioned by the children or their parents seeking a writ of mandamus for admission. The Constitutional Bench of the Hon'ble Apex Court in the case of Rajasthan (Supra) referring to T.M.A. Pai Foundation case has categorically observed that the principles laid down in the T.M.A. Pai foundation and P.A.Inamdar have been applied in the context of professional/higher education where merit and excellence have to be given due weightage and which test do not be applied in cases where a child seeks a admission to class 1 and when section 12(1)(c) seeks to remove the financial obstacle. Hence, the autonomy of admission of the unaided private school provided under the guidelines with respect to Section 13 of the RTE Act, if any, cannot be extended to Section 16 and other provisions of the Act. Indeed

guidelines/circulars are issued by the Central/State Governments under Section 35 of the RTE Act regarding admission in schools as far as the provisions of Section 13 of the Act but no such guidelines are issued relating to Section 16 of the Act.

26. A conjoint reading of Section 2(c) with 2(n)(iv) makes it clear that the petitioners and the Respondent-School come under the ambit of RTE Act. The statement of objects and reasons of the RTE Act makes it clear that the Provisions of RTE Act are applicable to the unaided private Schools without any further division or discrimination amongst 25% and 75% admissions. It is desirable to extract the statement of objects and reasons of the Bill which reads thus:

"The proposed legislation is anchored in the belief that the values of equality, social justice and democracy and the creation of a

just and human society can be achieved only through provision of inclusive elementary education to all. Provisions of free and compulsory education of satisfactory quality to children from disadvantaged and weaker section 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”.

27. Equality and excellence to be judged on the touchstone of Article 14. As observed in Indian Medical Association Vs. UOI & others¹.

“Education is a recognised head of charity.” A charitable activity, is also a philanthropic activity. Charity, the basis on which the charitable activity is undertaken, such as the setting up of, managing and operating educational institutions, is defined to include the following meanings: giving voluntarily to those in need, an institution or

¹ AIR 2011 SC 2365

an organization for helping those in need, kindness & benevolence, tolerance in judging others and love of one's fellow men. In a similar vein, philanthropy involves a love of mankind. If one were to take a synoptic view of history of mankind, one would realize that educational institutions, as formal structures for learning, were invariably started by the State, or by citizens who had a great love for their fellow human beings. In societies which were homogenous, and not hierarchically ordered, this love extended to all its members. The idea was that equipping as many youngsters as possible with knowledge would strengthen the society, bring in the benefits of enlightenment that darkness, caused by ignorance, prejudices and unfounded beliefs, denies to the individuals as well as the society. No philanthropist, with love for mankind, would want to educate a person who says that he or she wants to be enlightened only for personal benefit or for using the knowledge gained to perpetuate injustices in the society or The Concise Oxford Dictionary (1990) strengthen inequality. Of course TMA Pai, by declaring that reasonable fees has to be collected, to cover

capital costs, day to day operations etc., has brought in an element of financial viability. However, one should not then view that TMA Pai would have intended, when it accepted that education as an occupation could only be charitable in nature, that it would also be devoid of intrinsic and essential qualities such as love for mankind as the motivating factors in starting educational institutions.”

As per the Sanskrit Shloka '**Vidya danam sarva dhane pradhanam**', imparting education is the most pious activity and considered to be a paramount charity.

28. The arguments that the provisions of the RTE Act are applicable only to the admissions of the Children made under Section 12(1)(c) of the Act if accepted would defeat the purpose and object of the Act vis-à-vis the constitutional right guaranteed under Article 21-A rendering the provisions of RTE Act redundant and otiose.

Thus no school can expel a child for short payment of the fees or the misbehavior of the parents by issuing Transfer Certificates without the request of the parents much against the circular instructions issued by the Government of Karnataka dated 25.05.2019.

Applying the tests propounded by Ajay Hasia supra, it can be held that the school discharging the function of public nature of imparting education, the state function/statutory function to achieve the avowed objects enshrined under Article 21-A of the Constitution, is certainly amenable to writ jurisdiction under Article 226 of the Constitution.

Applicability of Karnataka Education Act, 1983 ('Act 1983')

29. Learned counsel for the respondent Nos.7 and 8 argued that amendment to Section 1(3)(iii-a)

wherein, ICSE and CBSE schools were brought within the purview of the said Act, substituted by Act No.25/17 with effect from 22.4.2017, has been challenged by the MICSA-K, wherein the respondent school is also a member in W.P.No.6185-6189/2019. In the said proceedings, the Hon'ble Court has recorded the undertaking of the learned Additional Advocate General that "no precipitatory or coercive action would be taken against the Institutions". Further, the respondent school has also independently challenged the amendment to Karnataka Education Act, 1983 in W.P.No.52993-994/2018. The pending proceedings aforesaid, would not absolve the respondent school from complying with the provisions of the RTE Act. It was pointed out that amendment to Section 1(3)(iii-a) is extended to ICSE and CBSE schools subject to the condition that the provisions of Sections 5-A, 48, 112-A and 124-A of the Act, 1983

shall continue to apply to these institutions but not with respect to Section 47 dealing with Admission etc.

30. As aforesaid, the autonomy vested with admission if any, exercised by the Respondent-School shall be subject to the provisions of the RTE Act. Such autonomy shall not confer any unbridled power to expel the children pursuing elementary education by issuing Transfer Certificates without the request of the parents. Section 16 of the RTE Act statutorily prohibits the school to expel the children from a school till the completion of elementary education. Hence, the action of the respondent Nos.7 & 8 in issuing Transfer Certificates suo moto cannot be held to be justifiable. At the same time, the conduct of the respective fathers of the petitioners more particularly father of the petitioner No.5 cannot be appreciated in the circumstances of the case. Instead of resolving the dispute amicably in the interest of the children, the

parents are making allegations and counter allegations creating a volatile atmosphere finally hampering the smooth functioning of the School in imparting education. In the process, the young minds would be disturbed. The mental trauma caused to these children would certainly have an impact in the long run. To avoid further damage to these young minds and in view of the fervent plea made on instructions by the learned counsel for the petitioners that the parents of the petitioners are ready and willing to pay 75% of the total fees relating to academic year 2018-2019 and 75% of the first installment of academic year 2019-2020 on par with the children permitted to pay the same by the Division Bench, it is necessary to balance the equities. Hence, the following.

ORDER

1. Issue of Transfer Certificates by the Respondent Nos.7 & 8 at Annexures – B to B5 to the

petitioners without the request of their parents are held to be unsustainable.

2. The Respondent Nos.7 & 8 shall admit the petitioners to their respective classes subject to their respective parents paying 75% of the total fees relating to the academic year 2018-2019 and 75% of first installment of the fees for the present academic year within seven days from to-day.

3. The parents of the petitioners shall not indulge in any derogatory act to bring down the morale of the Staff and disturb the conducive atmosphere of the Respondent-School.

4. It is needless to observe that the payment of fees shall be subject to result of W.P.Nos.52083-52084.2018.

Dvr:

**Sd/-
JUDGE**