**IN THE HIGH COURT OF MADRAS**

W.P. Nos. 15373, 16022, 16024, 17532, 17882, 18454, 19547, 19737, 21310, 25792 of 2011 and 6857, 13725, 17107, 17701, 22217, 22391, 22392 of 2012 and W.P. Nos. 28305 and 28306 of 2010 and 15036, 16919, 19744 and 22668 of 2011

Decided On: 21.09.2012

Appellants: **Lakshmi School, Veerappanchan, Karuppayurani Post, Madurai 625 020, (Represented by the Secretary, Lakshmi Vidya Sangham, "TVS Building", West Veli Street, Madurai 625001) and Ors. etc. etc.**
**Vs.**
Respondent: **State of Tamil Nadu, The Secretary to Government, Education Department, Fort St. George, Chennai, Chief Educational Officer, CEO Campus, Madurai and The Committee Private Schools Fee Determination Committee Chennai 600006 and Ors. etc. etc.**

**Hon'ble Judges/Coram:**
Hon'ble Mrs. Justice R. Banumathi and Mr. Justice R. Subbiah

**ORDER**

**R. Banumathi, J.**

1. The writ petitioner schools, which are recognised under CBSE/ICSE Regulations, have filed these writ petitions challenging the applicability of Tamilnadu Schools (Regulation of Collection of Fee) Act 2009 (Tamil Nadu Schools Fee Act, 2009) to CBSE/ICSE Schools and the fee determined by School Fee Determination Committee on the ground that it is vitiated by arbitrariness. In W.P. No. 21310 of 2011, Writ Petitioner Association seeks for a writ of declaration to declare Section 3(3) and Section 7(3) of Tamil Nadu Schools Fee Act, 2009 as ultra vires and beyond the scope of the Act and forbear the respondents from applying the provisions of Tamil Nadu Schools Fee Act, 2009.

2. The writ petitioners are self financing schools governed by CBSE Regulations/ICSE Regulations. Earlier, by order dated 3.5.2012 in a batch of Writ Petitions W.P. No. 8489 of 2011 etc., filed by the private schools recognised under Tamil Nadu Recognised Private Schools (Recognition) Act, we have referred to background facts and the provisions of Act No. 22 of 2009 and the circumstances under which the impugned orders thereon came to be passed. Since the applicability of T.N. Schools Fee Act, 2009 to C.B.S.E./ICSE Schools is under challenge, these batch of writ petitions were ordered to be segregated and heard separately. For proper appreciation of the contentious issues raised and for sake of completion, we need to refer to the background facts of constitution of Tamil Nadu Schools Fee Determination Committee and also the circumstances under which the impugned orders were passed.

3. Background facts:- Till 2009, all private unaided schools like the writ petitioner schools were fixing their own fee structure and collecting the same from the students either as annual fee or term fee or monthly fee. Tamil Nadu Government enacted a law - Tamilnadu Schools (Regulation of Collection of Fee) Act, 2009 (hereinafter, referred to as "the Act") on 07.08.2009 to provide for the regulation of collection of fee by the Schools in the State of Tamil Nadu and matters connected therewith and incidental thereto. Section 16 is the enabling provision to make rules for carrying out all or any of the purposes of the Act. In exercise of the powers conferred under Section 16 of the Act, Government framed the Rules, viz., Tamilnadu Schools (Regulation of Collection of Fee) Rules 2009, which came into force on 7.12.2009. The vires of the Act and the Rules were challenged in a batch of writ petitions. In the judgment dated 9.4.2010 in 2010(4) CTC 353 - Tamilnadu Nursery Matriculation and Higher Secondary Schools Association (Regd.) rep. by its General Secretary Vs. The State of Tamilnadu rep. by the Principal secretary, Department of School Education, First Bench of this Court upheld its validity of the Act except Section 11 of the Act and Rules 4(4) and 4(5) of the Rules, which gave power to the educational authorities for entering the School for such inspection and seizure. As against the said judgment, Special Leave Petition was filed before the Supreme Court in S.L.P. No. 13428 of 2010 and the same was dismissed by the Hon'ble Supreme Court by order dated 11.05.2010.

4. Even before the challenge to the validity of the Act, the Government by G.O. (Ms) No. 320, School Education Department, dated 7.12.2009, constituted the Committee under the Chairmanship of Justice K. Govindarajan, a retired Judge of this Court and the Committee prepared the questionnaire and sent the same to 10934 private schools through respective Chief Educational Officers. After getting response from the individual schools, on 7.5.2010, orders were issued by the Fee Determination Committee fixing the fee to be collected for three academic years 2010-2011 to 2012-13. On receipt of such fee determination orders, about 6400 schools have submitted their objections under Section 6(3) of the Act objecting to the determination of fee fixed by the Committee. The Committee issued a Press Release on 11.08.2010 stating that the Committee has received 6400 representations from the schools seeking for revision of the fee fixed by the Committee and it was stated that fee may be fixed after personally inspecting the schools and that revised fee may be fixed from the academic year 2011-2012 and so far as the academic year 2010-2011, fee already fixed by the Committee will be in force.

5. The Orders passed by the Committee and the Press Release were challenged in a batch of writ petitions. In the miscellaneous petitions, the writ petitioners thereon prayed for stay of the operation of the fee fixation committee and the press release. By Order dated 14.9.2010 in M.P. Nos. 2 of 2010 in W.P. No. 18854 of 2010, single judge of this Court granted injunction restraining the State from enforcing the order of the Fee Fixation Committee for the academic year 2010-11. As against the said interim order, State as well as parents have preferred appeals. By Order dated 5.10.2010, First Bench set aside the order of the single judge dated 14.9.2010. In order to give quietus to the entire controversy, the First Bench disposed of the appeals in 2010(5) CTC 721 - P.B. Prince Gajendra Babu Vs. Federation of Association of Private Schools in T.N., First Bench interalia issued directions, directing the Committee to consider the objections of the 6,400 Institutions by affording opportunity of personal hearing to the Institutions to enable them to submit materials for consideration of the Committee and thereafter pass individual orders by considering all the materials as expeditiously as possible, preferably within a period of four months from the date of receipt of copy of the order. In the meanwhile Court directed the Institutions not to demand any fee more than what has been indicated in the order.

6. The said order was taken on appeal to the Supreme Court by way of Special Leave Petition and the Special Leave Petition was dismissed by the Supreme Court on 16.12.2010 deleting the period of four months fixed by the High Court. In the mean time, a review petition was also filed before High Court to review the said order dated 5.10.2010 and the said review petition also came to be dismissed on 2.12.2010.

7. In the meanwhile, since the former Chairman of the Committee Justice K. Govindarajan resigned, Justice K. Raviraja Pandian was appointed as the Chairman of School Fee Determination Committee. As per the above said order, fresh questionnaires were sent to the schools and upon submission of filled in questionnaires by the Schools, personal hearing was given to each one of the schools. The grievances of the respective schools were heard by a Committee of three members and taking into account the various factors stated in Section 6(1) of the Act, final orders fixing the fee structure were passed in respect of each individual schools.

8. Before the Committee, the writ petitioner Schools challenged applicability of the provisions of T.N. Schools Fee Act, 2009 to CBSE/ICSE Schools and contended that Committee has no jurisdiction to determine fee with regard to CBSE/ICSE Schools. Committee held that "mere affiliation of the School to the CBSE/ICSE syllabus would not exclude the private schools from the application of the provisions of the State Act. Referring to Circular No. 2 of CBSE, Delhi dated 21.2.2011 directing the Schools to abide by the Regulation of the State Act, Committee held that merely on the basis of affiliation to a particular syllabus, the CBSE/ICSE Schools do not become different class from other private schools as defined under Section 2(j) of the Act and the Committee held that the CBSE as well as ICSE schools are governed by T.N. Schools Fee Act, 2009. The Committee then determined the fees to be collected by the respective Schools for the next three academic years i.e., 2010-11 to 2012-13 or until further orders of the Committee, whichever is earlier. Challenging the orders now the writ petitioner schools have preferred these writ petitions mainly challenging the applicability of the T.N. Schools Fee Act, 2009 to CBSE and ICSE schools.

9. In W.P. No. 21310 of 2011, the petitioner Association of Management of Private Schools seek for a writ of declaration to declare Section 3(3) and Section 7(3) of Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009 as ultra vires and beyond the scope of the Act and to forbear the State Government/ School Fee Determination Committee from applying the provisions of T.N. Schools Fee Act, 2009 to the members of petitioner Association.

10. Heard Mr. R. Krishnamoorthy, learned Senior Counsel appearing for Mr. S. Thankasivan in W.P. Nos. 15373 of 2011 and 17107 of 2012, and also for Mr. V. Ayyadurai in W.P. No. 13725 of 2012; Mr. R. Muthukumaraswamy, learned Senior Counsel appearing for Mr. R. Natarajan in W.P. No. 17532 of 2011; Mr. A.R.L. Sundaresan, learned Senior Counsel appearing for Mr. L. Muralikrishnan in W.P. Nos. 16022, 16024 and 21310 of 2011 and 17701, 22391, and 22392 of 2012; Mr. N.R. Chandran, learned Senior Counsel appearing for Mr. N. Sivakumar in W.P. No. 18454 of 2011; Mr. A.L. Somayaji, learned Senior Counsel appearing for Mr. K. Harishankar in W.P. No. 19737 of 2011; Mr. Vijay Narayan, learned Senior Counsel appearing for Dr. P. Vasudevan in W.P. No. 19547 of 2011; Mr. M.V. Swaroop, learned counsel appearing for petitioners in W.P. Nos. 17882 of 2011 and 22217 of 2012; Mr. K.F. Manavalan, learned counsel appearing for petitioner in W.P. No. 25792 of 2011 and Mr. B. Rabu Manohar, learned counsel appearing for petitioner in W.P. No. 6857 of 2012.

11. On behalf of CBSE, heard Mr. G. Masilamani, learned Senior Counsel appearing along with Mr. G. Nagarajan. On behalf of the State Government, heard Mr. A. Navaneethakrishnan, learned Advocate General appearing along with Mr. E. Sampath Kumar, Special Government Pleader and Mr. P. Sanjay Gandhi, Additional Government Pleader.

12. Contentions as to the applicability of Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009 to CBSE Schools:-

Contending that CBSE schools would not come within the definition of

"private school", on behalf of the writ petitioners, the following submissions were made:-CBSE Schools are affiliated to the Central Board of Secondary Education, which is registered under Societies Act and governed under a set of Bye-laws framed by CBSE. CBSE Schools would not come within the definition of "private school" as defined under Section 2(j) of Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009. Explanation 1 thereof, defining "Code of Regulation" includes only the Code of Regulations for Approved Nursery and Primary Schools, Code of Regulations for Matriculation Schools and Code of Regulations for Anglo-Indian Schools", and does not include CBSE Schools and the provisions of the Act completely exclude the applicability of T.N. Schools Fee Act, 2009 to CBSE Schools.

Once "No Objection Certificate" is issued by the State Government and after affiliation to CBSE, State Government has no further control and CBSE schools are governed by Bye-laws of CBSE. CBSE Bye-laws provide for complete Code in management of schools and CBSE schools are subject to regular monitoring by the Board. If the provisions of Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009 are made applicable to CBSE schools, it will amount to dual control affecting the management of the school and academic excellence.

13. The main contention of the writ petitioners is that the provisions of the T.N. Schools Fee Act, 2009 do not apply to CBSE Schools. Mr. Vijay Narayan, learned Senior Counsel submitted that in any event, under Sub-section (3) of Section 3 of T.N. Schools Fee Act, 2009, fees fixed by CBSE Schools should be commensurate with the facilities provided. Under Section 7(3) of the Act, the power of the Committee is to verify whether fee collected by CBSE Schools is commensurate with the facilities provided by the School. It is therefore contended that at the most, under Section 7 of the Act, the Committee has only limited power of verifying whether the fee collected is commensurate with the facilities provided by the school and in case if the fee collected is excessive, it can only recommend to CBSE for disaffiliation of the school.

14. Mr. G. Masilamani, learned Senior Counsel for CBSE contended that the Central Board of Secondary Education was originally formed and registered under the Societies Registration Act, which is having its own Bye-laws and the schools are affiliated to CBSE from all over the country and abroad in accordance with Affiliation Bye-laws. The learned Senior Counsel would further submit that CBSE schools have a right to decide about their fee structure but the right is circumcised to the extent that the fees charged must be commensurate with the facilities provided by the institution. Though the 2009 Act says Fees fixed by CBSE schools should be commensurate with the facilities provided, there is no provision under the 2009 Act to verify whether the fee collected is in commensurate with the facilities unlike in other private schools. It was further contended that the schools, which are affiliated, act on the parameters prescribed under the Affiliation Bye-laws and the State Government will not be entitled to regulate the fees by providing the rigid fee structure. Learned Senior Counsel would further submit that private schools affiliated to CBSE do not come under the purview of definition of 2(j) "private school" and the question of applying fee regulation to CBSE Schools is absolutely unsustainable.

15. On behalf of the State Government and the School Fee Determination Committee, Mr. A. Navaneetha Krishnan, learned Advocate General submitted that T.N. Schools Fee Act, 2009 was promulgated by State of Tamil Nadu to regulate collection of fee by private schools and in a batch of Writ Petitions filed by private schools challenging the vires of the Act, the First Bench in the case of 2010(4) CTC 353 -Tamil Nadu Nursery Matriculation case, upheld the validity of the Act except Section 11(2) of the Act and Rules 4(4) and 4(5) of the Rules, 2009 and when all the provisions of the Act were upheld, the writ petitioners cannot further challenge the vires of the Act. For the private schools seeking affiliation from CBSE, the Norms for Affiliation stated in Bye-law3(3)(i) mandates that the schools must have prior recognition and must have obtained No Objection Certificate (NOC) from the competent State authorities and the very coming into existence of CBSE schools emanate from the NOC obtained from the competent State authorities notified.

16. Learned Advocate General submitted that Section 2(j) of T.N. Schools Fee Act, 2009 states that the schools established and administered or maintained by any person or body of persons and recognised or approved by the competent authority under any law. Contending that definition of Section 2(j) is generic in nature, learned Advocate General urged us to adopt purposive interpretation of Section 2(j) of Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009 in the light of the Right of Children to Free and Compulsory Education Act, 2009.

17. Drawing our attention to Bye-law No. 11, the learned Advocate General submitted that in view of CBSE Bye-laws No. 11 and 13, State Government is well within its power in regulating collection of fee by CBSE schools. The learned Advocate General would further submit that Section 18 of Right of Children to Free and Compulsory Education Act 2009, (Central Act No. 35 of 2009) (in short, "Right to Free Education Act, 2009) mandates that no school without obtaining certificate of recognition can run the school and therefore as per the provisions of the Right to Free Education Act, 2009, there is a statutory mandate for the schools to obtain recognition and even de hors Bye-laws of CBSE, there is a statutory mandate to obtain recognition from the State to run the CBSE schools with Classes I to VIII. The learned Advocate General would further submit that CBSE Schools cannot wriggle out of its statutory obligation of accommodating 25% of the children belonging to disadvantaged group and weaker sections by contending that they fall outside the purview of "Private School" within the meaning of Section 2(j).

18. We have heard the argument of Mr. P. Wilson, learned Senior Counsel appearing for petitioner in M.P. No. 2 of 2012 in W.P. No. 21310 of 2011. However, since the petition is dismissed by a separate order, we are not referring to the submissions of Mr. P. Wilson, who only reiterated the submissions of Advocate General.

19. Heard Mr. N.G.R. Prasad, learned counsel appearing along with Mr. Christopher, learned counsel appearing for petitioner in M.P. No. 1 of 2012, who was impleaded as respondent No. 3 in W.P. No. 21310 of 2011.

20. Learned counsel Mr. N.G.R. prasad appearing for Mr. Christoper, for impleaded 3rd respondent in W.P. No. 21310 of 2011 - Kavibarathi Vidyalaya School Parents Association by placing reliance on the decision of Supreme Court in D. Saibaba Vs. Bar Council of India and Another, (  : (2003) 6 SCC 186 = CDJ 2003 SC 586) urged us to adopt purposive interpretation of Section 2(j) of Tamil Nadu Schools (Regulation of Collection of Fee) Act in the light of constitutional obligation. The learned counsel would submit that if CBSE affiliated schools are excluded from the purview of Section 2(j) of the Act, it would defeat the objects of the T.N. Schools Fee Act, 2009, which is to regulate the collection of fee by the schools in the State of Tamil Nadu. Laying emphasis upon Bye-law No. 11, the learned counsel submitted that as per the Bye-laws, the collection of fees and supervisory control are well within the powers of the State Government and the State Government can regulate the collection of fee.

21. We have carefully considered the rival contentions and also perused the materials on record and gone through various judgments.

22. Upon consideration of the submissions, the following points arise for determination in these writ petitions:-

1. Whether the private unaided educational institutions affiliated to CBSE are immune from regulations by the State and the provisions of Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009 (T.N. Schools Fee Act, 2009)?

2. Whether CBSE affiliated schools, which conform to the regulations of CBSE, are not private schools within the meaning of Section 2(j) of the Act?

3. Whether Sections 3(3) and 7(3) of Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009 are to be struck down on the ground that they are unguided by any guidelines?

4. Assuming that the provisions of the Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009 are applicable, what is the scope of the power of the Committee in relation to CBSE Schools?

and

5. If the Committee has power for determination of fee, what are the parameters it should use for such fixation?

23. Tamil Nadu Schools (Regulation of Collection (Regulation of Collection of Fee) Act, 2009 (T.N. Schools Fee Act, 2009):-

To provide for the regulation of collection of fee by the schools in the State of Tamil Nadu, State Legislature enacted Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009, which came into force on 7.8.2009 and Tamil Nadu Schools (Regulation of Collection of Fee) Rules, 2009, which came into force on 7.12.2009. Section 2 contains definitions. Section 2(j) of the Act defines "Private School". Section 3 prohibits collection of excess fee. Section 6 deals with factors to be taken into account for determination of fee. Section7 deals with the powers and functions of the Committee and the procedure to be followed by the Committee. Section 9 of the Act deals with penal consequences. The Act contains penal provisions for any violation or contravention of the provisions of the Act and also the order passed by the Committee.

24. For the purpose of Determination of fee to be collected by schools, the State Government constituted a Committee (vide Section 5 of T.N. Schools Fee Act, 2009) viz., Schools Fee Determination Committee. The vires of the Act and Rules were challenged in a batch of Writ Petitions and the First Bench of this Court in 2010(4) CTC 353 - Tamil Nadu Nursery Matriculation case, upheld its validity except Section 11 of the Act and Rules 4(4) and 4(5) of the Rules giving power for entering the school for such inspection and seizure. The Special Leave Petition filed against the said Judgment in S.L.P. No. 13428 of 2010 was dismissed by the Hon'ble Supreme Court by order dated 11.5.2010.

25. CBSE and its Affiliation Norms:-

Central Board of Secondary Education (CBSE) having its head office at New Delhi was originally formed and registered under Societies Registration Act on 2.1.1935. Schools are affiliated to CBSE Board from all over the country and abroad in accordance with the Affiliation Bye-laws. The main objects of the Board are that the Board shall conduct examinations at the secondary stage of education and such other examinations as it may consider fit, subject to the approval of the controlling authority. The objectives of the CBSE are to serve educational institutions more effectively and to be responsive to the educational needs of those students, whose parents are employed in the Central Government and have frequently transferable jobs.

26. We have perused copy of affiliation Bye-laws promulgated by CBSE effective from 28.1.1988 (amended from time to time), which was produced before us. The CBSE bye-laws enumerate the norms for affiliation (Chap. II) including as to provisional, regular and permanent affiliation, infrastructure, quality of education; provisions prescribing composition of the society or trust running the school, the school management committee; norms regarding financial resources and others.

27. Learned Senior Counsel for CBSE contended that CBSE is not a creature by the statute, but a Society registered under Indian Societies Registration Act. It was further submitted that Society is functioning under the directions of Human Resources Department, Government of India and merely because Society has got extra- territorial jurisdiction, State cannot seek to exercise the control over CBSE Schools by fixing the fees for CBSE schools.

28. Contention of Writ Petitioner Schools is that CBSE Schools are recognised by a registered society viz., Central Board of Secondary Education and those schools are not recognised by a competent authority of the State Government or the competent authority in Code of Regulations and therefore Section 2(j) of T.N. Schools Fee Act, 2009 does not cover CBSE Schools. According to the Writ Petitioners, in 2010(4) CTC 353 -Tamilnadu Nursery Matriculation and Higher Secondary Schools Association (Regd.) rep. by its General Secretary Vs. The State of Tamilnadu, the question as to whether the provisions of T.N. Schools Fee Act, 2009 would apply to CBSE Schools was not put in issue and Court had no occasion to decide the issue as to whether the Act would be applicable to CBSE Schools. Therefore, the matter was heard at length spread over for about a month and elaborate submissions were made by the respective parties. We have proceeded to consider the question as to whether the provisions of the Act are applicable to CBSE schools.

29. Recognition/No Objection Certificate from State Government - CBSE -Bye-laws:- As pointed out earlier, various categories of schools are affiliated to CBSE. As per Bye-law 3.1, the Board may affiliate several categories of schools all over India and abroad. Schools are affiliated to CBSE from all over the country and in abroad in accordance with the Affiliation Bye-laws. Chapter II deals with "Norms for Affiliation". Chapter II Bye-law No. 3(3) reads as under:-

3. Any educational institution in India or outside India which fulfills the following essential conditions (without which the case cannot be processed) can apply to the Board for affiliation:

(i) The school seeking Provisional Affiliation with the Board must have formal prior recognition of the State/U.T. Government. Its application either should be forwarded by the States Government or there should be a No Objection Certificate (NOC) to the effect that State Government has no objection to the affiliation of the school with the CBSE. 'No Objection Certificate' once issued to any school will be considered at par even if it prescribes a specific period or stage unless it is withdrawn and there will be no need for further NOC for the school. Condition of submitted a No Objection Certificate will not be applicable to categories 3.1(i) to (iv).

....

(underlining added)

30. "No Objection Certificate" is defined in Bye Law No. 2(xx) as under:

No Objection Certificate" means a letter issued by the appropriate authority of the Education Department of the State/Union Territory in respect of School situated in the State/U.T. for affiliation of the school to the Central Board of Secondary Education (CBSE)

31. By a combined reading of Bye-law No. 3(3)(i) and 2(xx), it is evident that for seeking provisional affiliation, formal prior recognition of the State/ Union Territory Government is mandatory and its application should be forwarded to the State Government or there should be a 'No Objection Certificate' to the effect that the State Government has no objection to grant affiliation of the School with CBSE. Bye-law 3.3(i) mandates that the Schools seeking affiliation from CBSE must have prior recognition or there should be a "No Objection Certificate" from the State Government.

Recognition/NOC is required for all CBSE affiliated schools established in the State.

32. As pointed out earlier, for getting affiliation from CBSE, prior recognition of the State Government/Union Territory or obtaining NOC from the State Government is a pre-requisite. For obtaining NOC, schools seeking CBSE affiliation are to submit their applications in the prescribed format to the concerned Chief Educational Officer. In the said application, various details of the schools, its location, infrastructure available and existence of other schools and need for such school in the locality and other details have to be stated. On such application, the Inspecting Officer of Office of Chief Educational Officer inspects the school and submits his report in the proforma. The application along with the proforma filled in by the Inspecting Officer along with the recommendations/remarks of the Chief Educational Officer are forwarded to the competent authority i.e., Director of School Education. Upon perusal of the application and proforma report of the Inspecting Officer, and on being satisfied about the infrastructure available and the steps taken and the remarks of the Chief Educational Officer, the competent authority/Director of School Education issues NOC for affiliation of the School to CBSE, subject to the requirements stipulated by the Board and other conditions imposed by the competent authority.

33. Whether CBSE affiliated schools fall within the definition of Section 2(j) of T.N. Schools Fee (Regulation and Collection of Fee) Act, 2009:- Now let us consider the definition of "Private School" in T.N. Schools Fee Act. Section 2(j) of T.N. Schools Fee Act, 2009 defines "private school" as under:

"Private School" means any pre-primary school, primary school, middle school, high school or higher secondary school, established and administered or maintained by any person or body of persons and recognised or approved by the Competent Authority under any law or Code of Regulation for the time being in force, but does not include, -

(i) an aided school;

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

(iii) a school giving, providing or imparting religious institution alone but not any other instructions;

Explanation. - For the purpose of this clause,-

(1) "Code of Regulation" means the Code of Regulations for Approved Nursery and Primary Schools, Code of Regulations for Matriculation Schools and Code of Regulations for Anglo-Indian Schools;.....

34. It is the contention of the learned Advocate General that all the schools established and administered or maintained by any person or body of persons and recognised or approved by the Competent Authority under any law or Code of Regulation would come within the purview of the Act, particularly when there is no specific exclusion for the CBSE and ICSE Schools under the Act. Had it been the intention of the Legislature to exclude the CBSE and ICSE schools from the purview of the Act, they could have used the same phrase that was urged in the definition of "Private Schools" under Act, 1973. The phrase "but does not include a school or an institution" did not find place in the 2009 Act; on the other hand, specifically three categories of schools were alone excluded.

35. On the other hand, it is the submission made by the learned counsel appearing for CBSE that there is no specific exclusion for CBSE or ICSE schools and the 'private school' defined under Section 2(j) says that there should be recognition or approval from the competent authority from any law for the time being in force. The competent authority was defined only under 1973 Act, whereas the CBSE and ICSE Schools do not require any recognition or approval from the competent authority. Therefore, if any interpretation is made to bring the CBSE or ICSE Schools within the ambit of Act, the same will go wrong.

36. As pointed out earlier, CBSE bye-law No. 2(xx) defines 'No Objection Certificate'. No objection certificate is a letter given by the appropriate authority. Therefore, without 'No Objection Certificate', the schools cannot be affiliated to CBSE Board. NOC is nothing but implied permission to run the CBSE schools within the State. Clause of 11 of the Bye-laws deals about the 'fees' and it clearly says that fees should normally be charged under the heads prescribed by the Department of Education of the State/Union Territory for Schools of different categories. Clause 13 gives a power to the Education Department of the State to inspect the CBSE schools.

37. Section 2(j) of T.N. Schools Fee Act, 2009 defines "Private School" as......... a school established and administered or maintained by any person or body of persons and recognised or approved by the Competent Authority under any law or Code of Regulation." As discussed earlier, for getting affiliation from CBSE, schools obtain NOC from the competent authority/Director of School Education. Since formal recognition of the State Government/ issuance of NOC are the essential pre-requisites for affiliation of the Schools to CBSE, CBSE affiliated schools are the schools recognised or approved by the authority under law within the meaning of Section 2(j).

38. Purposive interpretation of Section 2(j):- Government's contention is that T.N. Schools Fee Act, 2009 was enacted when it saw the parents agitating in protest of fee hike. T.N. Schools Fee Act, 2009 is intended to regulate the collection of fee by private schools. Recognised rule of interpretation of statute is that expressions used therein should obviously be understood in a sense in which they best harmonise with the object of the statute and effectuate the object of the legislature. While interpreting the expressions, keeping in mind the object of the legislation, the Court should adopt an object oriented approach. The terminology in the definition of "Private School" in Section 2(j) "recognised or approved by the Competent Authority under any law" has to be purposefully interpreted keeping in view the benevolent object of the Act.

39. In D. Saibaba vs. bar Council of India and Another, (  : (2003) 6 SCC 186 = CDJ 2003 SC 586), referring to Book of "Principles of Statutory interpretation (Eighth Edition, 2001), in paragraph No. 17, the Supreme Court has held as under:

17. The learned author states again, "In selecting out of different interpretations 'the court will adopt that what is just, reasonable and sensible rather than that which is none of those things" as it may be presumed "that the legislature should have used the word in that interpretation which least offends our sense of justice". (p.113, ibid) "The courts strongly lean against a construction which reduces the statute to a futility. A statute or any enacting provision therein must be so construed as to make it effective and operative "on the principles expressed in the maxim: utres magis valeat quam pereat'. (p.36, ibid) "if the language used is capable of bearing more than one construction, in selecting the true meaning regard must be had to the consequences resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results." (pp. 112-113, ibid).

40. It is well settled that in interpreting the statute, the Court must adopt that construction which suppresses the mischief and advances the remedy. (vide   : (2006) 6 SCC 456 (D. Vinod Shivappa vs. Nanda Belliappa). Here, the object of the Act is to regulate the fees collected by the Schools.

41. Though yet another submission was made that while interpreting the Act, only plain meaning of the wordings should be taken into consideration, we are of the opinion that the interpretation shall be done only in consonance with the object of the Act. Here, the object of the Act is to provide for the regulation of collection of fee by schools in the State of Tamil Nadu and matters connected therewith. Therefore, the purpose of interpretation should be only to fulfil the object of the Act and not to defeat the object of the Act.

42. While interpreting the statute, the Court must give effect to the purport and object of the Act. In UCO Bank. vs. Rajinder Lal Capoor (2008(5) SCC 259), the Hon'ble Apex Court has held as follows:

26. It is now a well-settled principle of interpretation of statutes that the court must give effect to the purport and object of the Act. Rule of purposive construction should, subject of course to the applicability of the other principles of interpretation, be made applicable in a case of this nature.

43. It is trite saying that the object of interpreting a statute is to ascertain the intention of the legislature enacting it. An interpretation defeating the object of a Statute is, of course, not permissible., vide  : AIR 1966 SC 346 (South Asia Industries Pvt. Ltd. vs. S. Sarup Singh and Others). The provisions of the Act must receive such construction as would advance the object and purpose underlying the Act and at any rate not to defeat it. The court is entitled to ascertain the intention of the Legislature to remove the ambiguity by construing the provision of the statute as a whole keeping in view what was the mischief when the statute was enacted and to remove which the legislature enacted the statute. It would be the duty of the court to adopt that construction which would advance the object underlying the Act. (vide  : (1984) 2 SCC 183 R.S. Nayak vs. A.R. Antulay).

44. The object of the Act is to regulate the fees collected by the schools and to see that the schools do not collect exorbitant fee and commercialize education. We must therefore adopt purposive interpretation of Section2(j) so that the provisions of the Act be effectively exercised. Based on 'No Objection Certificate' issued by the appropriate authority/competent authority of the Education Department of the State, the writ petitioner schools are affiliated to CBSE. A combined reading of all the provisions would show that NOC is not a mere formality; on the other hand, it gives an inference that CBSE Schools can be run only in accordance with the rules and regulations of the State Government.

45. Section 2(j) of the T.N. Schools Fee Act clearly defines and spells out meaning of "private school". Section2(j) of the Act excludes aided schools, schools established, administered and maintained by Central or State Government or local authority and the schools providing religious instructions. Nowhere, Section 2(j) excludes the schools affiliated with CBSE or ICSE. If the legislature intended to exclude CBSE and ICSE Schools, it would have specifically stated so to exclude CBSE/ICSE Schools.

46. By issuance of NOC by the competent authority of the State Government, the very origin of existence of CBSE affiliated schools emanate from the State Government. The essential pre-requisites for CBSE affiliation viz., recognition or issuance of NOC by the State Government is to be meaningfully interpreted, as that it is the recognition or approval by the competent authority under any law within the meaning of Section 2(j) of the Act. Issuance of "No Objection Certificate" by the State Government to the Schools is the implied permission to run the CBSE Schools in the State and the ultimate control is with the appropriate authority i.e., the State Government. If No Objection Certificate is denied by the State Government, the schools cannot be affiliated to CBSE syllabus. We find that CBSE schools will fall within the ambit of Section 2(j) of Act, 2009, when there was no specific exclusion given to them. Since the CBSE affiliated schools are 'private schools' within the meaning of Section 2(j) of the Act, the provisions of Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009 are applicable to CBSE Schools.

47. CBSE affiliation Bye-laws Power of the State Government to regulate BSE Schools:- Since States have the concurrent power to legislate regarding matters of education, the CBSE insists for no objection certificate from the State Government, so that there may not be any conflict between the rules and regulations framed by the State Government regarding school education and the rules and regulations of CBSE. On a reading of Norms for Affiliation to CBSE Schools, it is seen that notwithstanding the schools affiliation to CBSE, State Governments do have the supervisory control over CBSE Schools. As per Bye-law No. 11, Fees charged should be commensurate with the facilities provided by the CBSE Schools. As per Bye-law No. 11, the fees should normally be charged under the heads prescribed by the Department of Education of the State/U.T. for schools of different categories.

48. As per Bye-law No. 13.1, it is seen that the school seeking Board's affiliation/already affiliated to CBSE shall be open to inspection by the Inspection Committee deputed by the Board or the Education Department of the State/Union Territory in which it is situated. As per Bye-law No. 13.3, "the School shall supply information and returns called for by the Board/State or Central Government within the prescribed time given for its furnishing to the authority concerned."

49. In the Circular No. 02 of CBSE/AFF. Circular/2011, dated 21.2.2011, CBSE reiterated Bye-law No. 11 that the fee charged from the students should be commensurate with the facilities provided by the Institution and fee should normally be charged under the heads prescribed by the Department of Education of State/U.T. for schools of different categories. We may usefully refer to the relevant portion of the Circular, which reads as under:

Fees should normally be charged under the heads prescribed by the Department of Education of the State/U.T. for schools of different categories. No capitation fee or voluntary donations for gaining admission in the school or for any purpose should be charged for collection in the name of the school.

50. In an information furnished to a query under Right to Information Act, CBSE also clarified that every affiliated school is required to follow the rules/instructions issued by the State Government from time to time. We may usefully refer to a portion of the letter dated 7.3.2011 in No. CBSE/AFF/RTI-3480/191/2011/ 298749 of CBSE, New Delhi addressed to Sh. Syed Athher Ahmed, 9/5, Mushthura Begum Street, Royapettah, Chennai 600 014 in response to the information sought, which reads as under:-




51. Concessions/benefits availed by CBSE affiliated schools on par with other recognised schools:- Apart from obtaining No Objection Certificate from the State Government, CBSE affiliated schools situated in the State of Tamil Nadu avail concessions and benefits under various enactments. Under Section 83(c) of Tamil Nadu District municipalities Act, buildings used for educational purpose including hostels attached thereto, are exempted from payment of property tax. Likewise, as per G.O. Ms. No. 3 Energy (A2 Department dated 7.1.2000, educational institutions are given concession rate Low Tension Tariff II-B in respect of recognised educational institutions, hostels run by recognised institutions. CBSE affiliated schools run in the State are also availing various other concessions like concession in tax for their buses and other concessions that are extended to the recognised educational institutions. While availing all the benefits and concessions extended by the State Government, CBSE affiliated schools cannot contend that the State has no power to regulate the fee collected by the CBSE affiliated schools.

52. The Right of children to Free and Compulsory Education Act, 2009:- Now, with the enactment of Right of Children to Free and Compulsory Education Act, 2009, it is constitutional and statutory mandate of the State Government to implement free and compulsory education to all children of the age 6-14 years.

53. The learned Advocate General submitted that as per Section 18 of Right to Free Education Act, without recognition from the prescribed authority, no school shall be established or function and on failure to run without recognition, fine of Rs. 1,00,000/- per day could be imposed. The learned Advocate General submitted that even de hors the CBSE Bye-laws, now it is the statutory mandate to obtain recognition for the private schools. The learned Advocate General has drawn our attention to various provisions of Right to Free Education Act.

54. As per Section 2(a) of Right to Free Education Act, appropriate Government is defined as under:

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 -

(A) a State, the State Government;

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

55. Under Section 2(f) of the Act, "elementary education" means the education from first class to eighth class. As per Section 18, no school is to be established without obtaining certificate of recognition. Section 18 reads 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......

The Schedule appended to the Act prescribes norms and standards for establishment of the school.

56. As per Section 34 of the Act, the State Government shall constitute, by a notification, a State Advisory Council for implementation of the provisions of the Act in an effective manner. According to Rule 15 of Right of Children to Free and Compulsory Education Rules, every private school has to apply to the District Educational Officer in Form No. I within a period of three months from the commencement of the Act. The Rules have already come into force in the State of Tamil Nadu and Government Order in G.O. Ms. No. 189 was also issued on 12.7.2010. Hence, for Standards I to VIII, CBSE affiliated schools and other schools are under Right to Free Education Act, 2009. We find much force in the submission of the learned Advocate General that in terms of provisions of Right to Free Education Act, 2009, even de hors CBSE Bye-laws, it is the statutory mandate for CBSE affiliated schools to have recognition from the State Government. A close reading of Section 2(a)(ii)(A)would show that the State Government alone is the 'appropriate Government' for all the schools established within the territory of the State, except the schools established and owned or controlled by the Central Government as defined under Section 2(a)(i). CBSE schools are being the schools affiliated to the CBSE Board, which Board is regulated under Societies Registration Act, the State Government, as a appropriate Government, can exercise domain over the CBSE Schools established within the State. We are of the view that on this score also, CBSE schools fall within the definition of Section 2(j) of Act 22 of 2009.

57. Challenge to Section 3(3) and Section 7(3):- The object of the Act is to regulate collection of fee by private schools and to see that the schools do not collect exorbitant fee and involve in profiteering. Prohibition of collection of excess fee is set forth in Section 3 of the Act, which reads as under:-

3. Prohibition of collection of excess fee. - (1) No Government school or aided school shall collect any fee in excess of the fee fixed by the Government for admission of pupils to any Standard or course of study in that school.

(2) no fee in excess of the fee determined by the Committee under this Act shall be collected for admission of pupils to any Standard or course of study in a private school,-

(a) by any person who is in charge of, or is responsible for, the management of such private school; or

(b) by any other person either for himself or on behalf of such private school or on behalf of the management of such private school.

(3) The fee collected by any school affiliated to the Central Board of Secondary Education shall commensurate with the facilities provided by the school.

58. The powers and functions of the Committee constituted under T.N. Schools Fee Act, 2009 are spelt out in Section 7 of the Act. Section 7 of the Act reads as under:

7. Powers and functions of the Committee. - (1) The powers and functions of the Committee shall be. -

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

(b) to hear complaints with regard to collection of fee in excess of the fee determined by it or fixed by the Government, as the case may be. If the Committee, after obtaining the evidence and explanation from the management of the private school or aided school concerned or from the Government school, comes to the conclusion that the private school or the Government school or aided school has collected fee in excess of the fee determined by the Committee or fixed by the Government, as the case may be, it shall recommend to the appropriate competent authority for the cancellation of the recognition or approval, as the case may be, of the private school or aided school or for any other course of action as it deems fit in respect of the private school or Government school or aided school.

(2) The Committee shall have power to, -

(i) require each private school to place before the Committee the proposed fee structure of such school with all relevant documents and books of accounts for scrutiny within such date as may be specified by the Committee;

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

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

(3) The Committee shall have power to, -

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

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

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

(underlining added)

59. Mr. G. Masilamani, learned Senior Counsel for CBSE contended that Section 6 of the Act Factors for determination of fee; Section 7(1)(a) to determine the fee to be collected by private schools; and Section 7(2)(ii)- verifying fee proposed by the private schools, are not applicable to CBSE schools. The learned Senior Counsel submitted that under Section 7(3), the Committee shall have power to verify whether the fee collected by the School affiliated to the Central Board of Secondary Education is commensurate with the facilities provided by the School. The learned Senior Counsel would submit that for exercise of power under Section 7(3), no guidelines are provided as to how the Committee will determine that the fee collected by CBSE schools is in commensurate with the facilities provided by the school. Learned Senior Counsel would further submit that absolutely there is no basis to determine as to how the fee collected by the School is in commensurate with the facilities provided and the power under Section 7(3) cannot be exercised unless there are specific guidelines and Sections 3(3) and 7(3) are arbitrary and ultra vires. It was further submitted that the Committee could straightaway recommend to the Central Board of Secondary Education for disaffiliation of the School if it comes to the conclusion that the School has collected excess fee and there is no provision to communicate the order of the Committee to the school and there are no provisions affording opportunity to the schools for raising their objection regarding the orders passed by the Committee.

60. Learned Senior Counsel Mr. A.R.L. Sundaresan sought to make a distinction between the State Board Schools and Central Board of Secondary Education (CBSE) schools by drawing our attention to a comparative chart pointing out the differences between CBSE schools and other private schools in respect of (i) academic year; (ii) land area; (iii) salary payment and (iv) infrastructure i.e., class room and furniture, library, computers, laboratory and room/space for extra curricular activities, constitution of school Management Committee. Laying emphasis upon the differences between the facilities provided in CBSE schools in contra distinction from other private schools, the learned Senior Counsel Mr. A.R.L. Sundaresan contended that CBSE is a different system of education having different curriculum and syllabus and that the facilities provided by the schools should be on par with the CBSE schools in other States and while so, the standards maintained in the CBSE schools in the State of Tamil Nadu cannot be crippled by fixing the fee for CBSE Schools by the Committee. As per Affiliation Bye-laws, various facilities are provided by the Schools and determination of fee in respect of CBSE schools in the State of Tamil Nadu would be a disabling factor to provide better facilities in CBSE schools and that it would amount to discrimination between the CBSE schools within the State of Tamil Nadu and CBSE schools, which are in other States. Therefore, the learned Senior Counsel urged that Sections 3(3) and 7(3) of T.N. Schools Fee Act, 2009 are not applicable to CBSE Schools and are liable to be struck down.

61. Re. Contention - Committee has only limited power to verify the fees collected by CBSE Schools:- Contention of writ petitioners is that by incorporating Sections 3(3) and 7(3) in T.N. Schools Fee Act, 2009, a clear dichotomy is made for CBSE schools and even as per the Act, the CBSE schools are not on par with that of the private schools. It is further contended that the distinction shown in respect of CBSE schools in Sections 3(3)and 7(3) would clearly show that the schools affiliated to CBSE could collect fees in commensurate with the facilities provided by the schools and Sections 3(3) and 7(3) would make it clear that T.N. Schools Fee Act, 2009 does not provide for determination of fees by the Committee in respect of CBSE schools. Further contention of writ petitioners is that a comparison of Sections 7(1) and 7(3) would make it clear that in so far as schools affiliated to CBSE are concerned, the powers and functions of the Committee are limited only to the extent of verifying whether the fees collected by CBSE schools are commensurate with the facilities provided by the School and to recommend to Central Board of Secondary Education for disaffiliation of the school if the Committee concludes that the School has collected excess fee. In other words, it is the submission of the counsel appearing for CBSE that the Committee has no power to fix fee for CBSE Schools and the Committee has only a supervisory power over CBSE schools.

62. The above argument of CBSE and the writ petitioner schools does not merit acceptance. The said argument proceeds on the footing that CBSE affiliated schools are not 'private schools' within the meaning of Section 2(j) of the Act. We have held that CBSE affiliated schools having been recognised or approved by the competent authority of the State, CBSE schools fall within the definition of "private school" under Section 2(j) of the T.N. Schools Fee Act, 2009. Since CBSE affiliated schools are private schools, the provisions of the Act viz., Section 6Factors for determination of Fee; Section 7(1)(a) determination of fee to be collected; Section 7(2)(ii)- to verify fee structure proposed by the private school and also Section 9 penalties and other provisions of the Act apply in all force to CBSE schools. As per Section 3(3), the fee collected by any school affiliated to CBSE shall be commensurate with the facilities provided by the Schools. Section 7(3) empowers the Committee to verify as to whether the fee collected by the CBSE Schools is commensurate with the facilities provided by the Schools. By incorporating separate provisions - Sections 3(3) and 7(3), in respect of CBSE schools, the Legislature has provided the parameters for exercise of power by the Committee.

63. As per Affiliation Bye-laws, CBSE schools are to provide necessary infrastructure equipment and also adequate facilities for providing recreation activities and physical education as well as for conduct of various activities and programmes for developmental education and for social, cultural and moral development of the students and also for safeguarding their health. The schools affiliated to CBSE are from all over India and also in abroad. It is stated that throughout the country there are about 11,000 schools affiliated to CBSE. So far as Chennai region is concerned, 2350 schools are affiliated to CBSE. The CBSE schools in the Chennai region are to keep up the standards as per Affiliation Bye-laws and also maintain the schools competitive on par with CBSE schools in other parts of the country. For up keeping the standards, CBSE schools shall collect fee in commensurate with the facilities provided.

64. In so far as the contention that power of Committee under Section 7 is without any guidelines, as per CBSE Bye-law No. 11, fees should normally be charged under the head prescribed by the Department of Education of the State/U.T. for schools of different categories. Section 6 stipulates factors for determination of fee:- (a) the location of the private school; (b) the available infrastructure; (c) the expenditure on administration and maintenance; (d) the reasonable surplus required for the growth and development of the private school; and (e) any other factors as may be prescribed. The words in Section 6(1)(e) - any other factors as may be prescribed may be interpreted in such a manner to take into account various facilities provided by CBSE schools. Therefore, it cannot be said that the power under Section 7 is without any guidelines.

65. While Section 3 of Act No. 22 of 2009 prohibits collection of excess fee for private schools, Section 3(3), which deals with CBSE Schools proceeds on a positive note. Section 3(3) states that the fee collected by CBSE affiliated schools shall be in commensurate with the facilities provided by the schools. Section 7(1) - to determine the fee collected by the private schools; Section 7(2)(ii) - verifying the proposed fee structure; and under Section 7(3), Committee to verify that the fee collected by CBSE is in commensurate with the facilities provided by the School. We find much force in the contention of the learned Advocate General that Section 3(3) and 7(3)cannot be read in isolation and are to be read along with Section 6 Factors for determination of fee. In respect of CBSE schools, power of the Committee is to be exercised as per Sections 6, 7(1) and 7(2) of the Act. The contention that the power under Section 7(3) is arbitrary and ultra vires has no merits.

66. While exercising its power of verifying whether the fee proposed by the CBSE school is reasonable, the School Fee Determination Committee has to verify whether the fee collected by the School affiliated to CBSE is commensurate with the facilities provided by the School. In respect of CBSE schools, the Committee has the power to determine the fee to be collected by private schools keeping in view Section 6 of the Act Factors for determination of fee and Section 7(3) of the Act that the fee collected by the school is commensurate with the facilities. A specific mention of CBSE schools is made in Section 3(3) and 7(3) of the Act only to provide flexibility to CBSE schools so that there may not be any rigidity in determining the fee structure. In our considered view, Section 3(3) and 7(3) provide parameters in determining whether fee collected by CBSE schools is commensurate with the facilities provided by the schools. The contention that by making specific mention of CBSE schools in Section 3(3) and 7(3) a dichotomy is made for CBSE schools is liable to be rejected.

67. Responsibility of Schools:- After the Right to Education Act, schools have responsibility for free and compulsory education. As per Section 12(1)(c), schools shall admit students to the extent of at least 25% of the strength of the class from among the children belonging to weaker sections and disadvantaged group in the neighbourhood and provide free and compulsory education. As per Section 12(2), the expenditure incurred by the school for providing free and compulsory education to those students of weaker sections and disadvantaged group shall be reimbursed by the State. To implement the provisions of Right to Free Education Act, Tamil Nadu Government framed Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011. Section 11 deals with reimbursement of purchase and expenditure by the State Government for the purpose of sub-section 2 of Section 12. Rule 9(1) reads as under:

9. Reimbursement of per-child expenditure by the State Government for the purpose of sub-section (2) of section 12:-

(1) The per-child expenditure shall be the expenditure incurred by the State Government for a child in the Government School or the fee fixed by the Committee constituted under the Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009 (Tamil Nadu Act 22 of 2009) in respect of the school where the child is admitted, whichever is less.

68. The schools owe a duty and social responsibility to the public so that the fee charged is reasonable and commensurate with the facilities provided. As rightly submitted by the learned Advocate General, when the State Government is reimbursing the educational expenditure of the children of weaker sections and disadvantaged group, the CBSE schools cannot levy exorbitant fee and burden the State exchequer. Therefore, the CBSE schools cannot contend that they are out of the purview of T.N. Schools Fee Act and that the State Government cannot regulate the fee.

69. Re-contention CBSE Bye-laws self contained regulations:- As per Bye-law No. 11, fees charged should be commensurate with the facilities provided by the institution. No capitation fee or voluntary donations for gaining admission in the school or any other purpose should be charged/collected in the name of the school. In case of any malpractices, the Board may take drastic action leading to disaffiliation of the school. Contention of writ petitioners is that the affiliation Bye-laws contain self sufficient regulations and in case of any malpractices on complaints for the Board itself may take drastic action leading to disaffiliation of the school. Further contention of writ petitioners is that when CBSE Bye-laws provides for such drastic action States cannot exercise further or dual control over CBSE schools by fixing the fee structure. The above contention cannot be accepted.

70. There is no Central Act or other statutory body to regulate CBSE schools. Even though the Bye-laws provide for disaffiliation in case of charge of excess fee, in CBSE Bye-laws, there is no effective mechanism provided for regulation of collection of fee. As pointed out earlier, since the States have concurrent power to legislate regarding matter of education, CBSE insists for 'no objection certificate' from the State Government, so that there may not be any conflict between rules and regulations framed by the State Government regarding school education and the rules and regulations of CBSE. It is the bounden duty of the State to ensure that the private schools in the State do not indulge in profiteering in the name of imparting education. There has to be a mechanism to check the private schools from charging exorbitant fees. In so far as CBSE schools, State Government has the bounden duty to see that the fee collected by CBSE schools are commensurate with the facilities provided and see that CBSE schools do not indulge in profiteering or charging capitation fees, when there is no Central Act or statutory body to regulate the fee. On a combined reading of Bye-law Nos. 11, 13.1 and 13.3, it is evident that State Government has the power to regulate the collection of fees in CBSE schools.

71. Supreme Court Judgments - No profiteering or capitation fee:- In   : (2002) 8 SCC 481 - T.M.A. Pai Foundation and others Vs. State of Karnataka and others, the Supreme Court was dealing with the case of minority and professional educational institutions. In the said case, Supreme Court expressed the view of granting autonomy to provide unaided professional colleges as well as undergraduate colleges with regard to management as well as prescribing the fee to be collected from the students. In paragraph No. 53 of the said judgment, Supreme Court held as under:

53. With regard to the core components of the rights under Articles 19 and 26(a), it must be held that while the State has the right to prescribe qualifications necessary for admission, private unaided colleges have the right to admit students of their choice, subject to an objective and rational procedure of selection and the compliance of conditions, if any, requiring admission of a small percentage of students belonging to weaker sections of the society by granting them freeships or scholarships, if not granted by the Government. Furthermore, in setting up a reasonable fee structure, the element of profiteering is not as yet accepted in Indian conditions. The fee structure must take into consideration the need to generate funds to be utilized for the betterment and growth of the educational institution, the betterment of education in that institution and to provide facilities necessary for the benefit of the students....

72. Subsequently, Bench of five judges was constituted in   : (2003) 6 SCC 697 -Islamic Academay of Education vs. State of Karnataka and in the said case, relying upon the decisions of T.M.A. Pai Foundation case, Management submitted that complete autonomy has been given to the institutions not only with regard to admission of students, but also with regard to the determination of their own fee structure. Per contra, Government contended that Government had a statutory right to fix the fees to ensure that there was no profiteering. Supreme Court framed four questions. With regard to the first question i.e., whether educational institutions are entitled to fix the fee, the Supreme Court framed four questions on the rival submissions made and with regard to the first question, i.e., whether educational institutions are entitled to fix their own fee structure, it was held that there can be no rigid fee structure. Each institution must have freedom to fix its own fee structure after taking into account the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. It was also observed that they must be able to generate surplus which must be used for betterment and growth of that educational institution. Such fee structure must be fixed keeping the infrastructure and facilities available, the investment made, salaries paid to the teachers and staff, future plans for expansion and/or betterment of the institution subject to two restrictions, namely, (a) Non-profiteering and (b) non-charging of capitation fees. It was further held that surplus/profit that can be generated shall be used for the benefit of that educational institution and cannot be diverted for any other use or purpose or for personal gains and other business of enterprise."

73. Again, in a batch of cases, in   : (2004) 5 SCC 583 - Modern School vs. Union of India and others, the Supreme Court had the occasion to consider the questions framed by it with reference to Delhi School Education Act, 1973. Reiterating the decision in Islamic Academy of Education case, the Supreme Court disposed of the appeals filed by various school Managements holding that the Director of Education can regulate the fees in accordance with Section 17(3) of Delhi School Education Act, 1973 and the rules framed thereunder. The decisions of the Apex Court in T.M.A. Pai Foundation case, Islamic Academic of Education case and Modern School case are clear that the private educational institutions though have a right to fix their own fees to be collected from the students, such fixation of fees should be on taking into account the funds required to run the institution and to provide facilities necessary for the benefits of the students But under no circumstances, the charging of fee should amount to profiteering or collection of capitation fee. The consistent view taken by the Supreme Court is that under no circumstances the levy of fee should amount to profiteering or collection of capitation fee. On behalf of the writ petitioners, it was contended that CBSE affiliation Bye-laws is a self contained Code, which contain provisions interdicting the CBSE schools from charging the capitation fee or collecting exorbitant fee. It is the further contention of the writ petitioners that in case of complaints of excessive fee CBSE can disaffiliate the schools.

74. 2010(4) CTC 353 - Provisions of the Act No. 22 of 2009 held intra vires: Referring to the judgment of the Supreme Court in T.M.A. Pai Foundation, Islamic Academy case and Modern School Case, in the judgment of this Court dated 9.4.2010 in 2010(4) CTC 353 - Tamilnadu Nursery Matriculation and Higher Secondary Schools Association (Regd.) rep. by its General Secretary Vs. The State of Tamilnadu, First Bench of this Court upheld its validity of the Act except Section 11 of the Act and Rules 4(4) and 4(5) of the Rules, which gave power to the educational authorities for entering the School for such inspection and seizure. By perusal of the judgment, it is seen that on behalf of the Government, considerable material has been placed on record showing that private schools are charging exorbitant fee. Referring to those materials, while upholding the provisions of the T.N. Schools Fees Act, 2009 (vide paragraph Nos. 13, 14, 15, 17, 18, 20 and 21) and observing that the Scheme of the Act is in consonance with law, it was held by First Bench of this Court as under:

28. In view of what is stated above, it can be said that the scheme of the present Act is in consonance with the law laid down by the Apex Court, and it by and large strikes a balance between the autonomy of the institutions and measures to be taken to prevent commercialization of education. There are sufficient guidelines in the statute for either approving or fixing the fees. The procedure prescribed provides for appropriate opportunity to the managements. The Committee is headed by a retired High Court Judge. The minority educational institutions have also to maintain non-exploitative terms as held in P.A. Inamdar's case. The impugned Act, therefore, cannot be said to be in any way in violation of Articles 19(1)(g) and 26 or 30 of the Constitution of India.....

75. State can regulate CBSE Schools Judgments of Other High Courts:-After many agitations by parents and civil society groups, Andhra Pradesh High Court issued G.O. Ms. No. 91 Education (SE:PS-1) Department, dated 06.08.2009 making provision for regulation of fee in private schools. Several writ petitions were filed by Managements of several educational institutions challenging the constitutional validity of the G.O. claiming that they were affiliated to the Central Board of School Education (CBSE) and that the State Government had no power to regulate them. In their challenge, the schools contended that the G.O. was against various judgments of Supreme Court. Elaborately referring to various judgments of Supreme Court, in   : 2011(2) ALD 163 =   - Nalanda Educational Soceity Vs. Government of Andhra Pradesh, Andhra Pradesh upholding many provisions of G.O. Ms. No. 91 dated 6.8.2009 and holding State can regulate fees charged by CBSE/ICSE schools held as under:-

The bye-laws of the CBSE neither expressly nor by any compelling inference exclude the exercise of regulatory power by the State in the matter of regulating the fee structure or the other complementary provisions, contained in G.O. Ms. No. 91, The provisions of G.O. Ms. No. 91 are not facially or in substance inconsistent with the obligations of a school to conform to the CBSE regulations or bye-laws.

76. In another judgment of Karnataka High Court in Air Force School Parent's Welfare Association Rep. BY Its Secretary VS. State of Karnatka, (W.P. No. 34192 of 2009 ETC., Batch), writ petitions were filed against the State of Karnataka challenging the constitutional validity of Karnataka Act No. 8 of 1998 inserting sub-section (iii-a) in Section 1 and thereby excluding the schools affiliated to ICSE and CBSE syllabus from the purview of Karnataka Education Act and the private unaided educational institutions affiliated to the State syllabus are governed by the provisions of Karnataka Education Act. By the said amendment, the private unaided schools affiliated to ICSE or CBSE syllabus were excluded from the application of the provisions of Karnataka Education Act. Holding that the impugned amendment is violative of Article 14 of the Constitution of India and that the impugned insertion of Section 1(iii-a) of Karnataka Education Act is violative of Article 14 of the Constitution of India, single Judge of Karntaka High Court held as under:

22...... Under the impugned Act 8 of 1998, the schools affiliated to ICSE or CBSE syllabus are excluded from the purview of Education Act. By this exclusion the State Government cannot regulate the admission of students, fee structure, service conditions of the employees etc., in the schools affiliated to ICSE or CBSE syllabus. There is no central Act or any other statutory body to regulate these schools. Thus, these schools are autonomous institutions. But these institutions are enjoying various concessions and exemptions from the State Government. Thus the impugned amendment Act 8 of 1998 is contrary to the objects sought to be achieved under the Education Act. Therefore the impugned insertion of Section 1(iii-a) in the Education Act is violative of Article 14 of Constitution of India

21...... Both these schools are private unaided schools and they are deriving various concessions and exemptions from the State Government. Merely because the respondent schools are affiliated to the ICSE or CBSE syllabus they are excluded from the application of provisions of Education Act by amendment Act of 1998. This differentia between private unaided educational institution affiliated to the State syllabus and respondent schools affiliated to ICSE or CBSE syllabus has no rational nexus. On the basis of affiliation to a particular syllabus the said school do not become different class from others. Therefore the impugned amendment is violative of Article 14 of the Constitution.

We fully agree with the views of the learned single judge of Karnataka High Court. In the absence of any Central Act or any other statutory body to regulate these schools, education, being the subject in Entry 25 of List-III of Schedule VII of the Constitution of India, State Government does have control to regulate these schools.

77. Other contentions:- Section 7(2)(i) requires each private school to place before the Committee the proposed fee structure and the Committee shall verify whether the fee proposed by the private school is justified. Under Section 7(3), the Committee shall verify whether the fee collected by the CBSE school is commensurate with the facilities provided by the School.

78. On behalf of CBSE, the learned Senior Counsel Mr. G. Masilamani submitted that CBSE schools are not called upon to submit the documents and the Act is silent as to how the information would flow to the Committee to judge the fee structure and there is no provision in the Act providing opportunity to the CBSE schools which would amount to violation of principles of natural justice. The learned Senior Counsel would further submit that as per Section 7(3) of the Act, if the Committee finds that the fee is not commensurate with the facilities provided, the Committee can recommend to CBSE for disaffiliation of the school if it comes to the conclusion that the school has collected excess fee. The learned Senior Counsel Mr. G. Masilamani contended that the power under Section 7(3) is arbitrary and without specific guidelines and that when such recommendation for disaffiliation is made, the School is not afforded any opportunity of hearing and the school is left without any remedy. Per contra, the learned Advocate General submitted that the Committee has power to verify whether the fee collected by CBSE school is in commensurate with the facilities provided by the School and only when Committee comes to the conclusion that the school has collected excess fee Committee recommends to CBSE for disaffiliation. We find much force in the contention of the learned Advocate General that any provision, which is capable of abuse or misuse, cannot be a ground to declare it as unconstitutional. In any event, it is not as if the Schools are without any remedy. Any erroneous order passed by the Committee is always subject to judicial review and can be challenged under Article 226.

79. Maintainability of Writ Petition W.P. No. 21310 of 2011 filed by Association:- Contentions were advanced regarding maintainability of writ petition filed by Association. Learned Senior Counsel Mr. P. Wilson contended that the writ petition filed by Association is not maintainable by placing reliance on decision of Supreme Court in  : (1995) 1 SCC 85 Mohinder Kumar Gupta and Others Vs. Union of India; 2001(2) CTC 103 - The Tamil Nadu Outdoor Advertising Association Vs. Government of Tamil Nadu and   : 2005(2) MLJ 526 Formation of Indian Network Marketing Association vs. M/s. Apple F.M.C.G. Marketing Pvt. Ltd. Per contra, Mr. A.R.L. Sundaresan, learned Senior Counsel appearing for the writ petitioner placed reliance upon decisions of Supreme Court in   : 1983(1) SCC 305 D.S. Nakara vs. Union of India and (2006) 8 SCC 399 Confederation of Ex. Servicemen Associations vs. Union of India to contend that the Association can maintain the writ petition. Since we have heard the matter at length, we are not inclined to go into the question of maintainability of writ petition W.P. No. 21310 of 2011 filed by the Association.

80. Challenge to impugned orders passed by the Committee:- Though some of the writ petitions were filed challenging the orders passed by the School Fee Committee, arguments were advanced mainly challenging the applicability of the T.N. School Fees Act, 2009 to CBSE schools and powers of the Committee to determine fee for CBSE Schools. In W.P. No. 17532 of 2011, learned Senior Counsel Mr. Muthukumaraswamy made submission that the fee determined by the Committee in respect of Dr. G.S. Kalyanasundaram Memorial School does not reflect the actual expenditure. We have perused the details given in the tabular column prepared by the Committee and we do not find any reason to interfere with the fee determined by the Committee. That apart, Schools Fee Determination Committee fixed the fee for three academic years 2010-2011, 2011-2012 and 2012-2013. In the current academic year 2012-2013, we are already in September. The Committee would determine the fee to be collected by CBSE schools for next academic year 2013-14. Therefore, it is always open to writ petitioner schools to place the materials before the Committee for determining the fee. In these circumstances, we are not inclined to interfere with the fee determined by the Committee in respect of all the writ petitioner schools.

81. Conclusions - CBSE schools:- we summarise our conclusions as under:-

(i) CBSE schools are "private schools" within the meaning of Section 2(j) of Tamilnadu Schools (Regulation of Collection of Fee) Act, 2009 and the provisions of Tamilnadu Schools (Regulation of Collection of Fee) Act, 2009 are applicable to CBSE schools.

(ii) Under Section 7 of Tamilnadu Schools (Regulation of Collection of Fee) Act, 2009, the Committee has the power to determine the fee and verify whether the fee collected by the CBSE schools is commensurate with the facilities provided and while so determining the fee, the Committee shall keep in view the parameters in Section 3(3)and 7(3) of the Act apart from the factors provided in Section 6 of the T.N. Schools Fee Act, 2009.

82. Applicability of T.N. Schools Fee Act, 2009 to ICSE Schools:- Learned Senior Counsel Mr. A.L. Somayaji contended that Council for the Indian School Certificate Examinations, New Delhi is a private society registered under the Societies Registration Act and is not a competent authority for granting any recognition or approval to any school and affiliation guidelines have no statutory backing and therefore the ICSE schools cannot be considered as the schools recognised or approved by any law. Taking us through the affiliation guidelines, learned Senior Counsel contended that ICSE affiliation guidelines are complete Code in itself and the norms stipulated for ICSE schools are applicable throughout the country and it cannot be the intention of the State legislature to regulate ICSE schools on par with other recognised private schools. Learned Senior Counsel also contended that there is not even a reference to ICSE Schools under T.N. Schools Fee Act and even to the limited extent that CBSE schools are referred to under Sections 3(3) and 7(3) of the T.N. Schools Fee Act.

83. Learned Advocate General Mr. A. Navaneethakrishnan contended that the schools, which desire to get affiliation with ICSE, are to obtain 'No Objection Certificate' from the State and that the same is made clear under Chap. I(1) of ICSE guidelines for affiliation. It was further submitted that Chapter IV of ICSE guidelines for affiliation refer about periodical inspection by the Council and also by the State Department Education. The learned Advocate General would further submit that T.N. Schools Fee Act, 2009 does not contemplate a rigid fee structure. On the other hand, it only provides factors to be taken into consideration for the purpose of determining the fee. Since education is a subject under Entry 25 of List-III of Schedule VII of the Constitution of India, State Legislature has the power to regulate the collection of fee by ICSE schools.

84. By the Order dated 3.9.2012 made in M.P. Nos. 1 and 2 of 2012 in W.P. No. 19744 of 2011, Lakshmi School Parents Association and Lakshmi School Parents & Well-wishers Association were impleaded as respondent Nos. 4 and 5 in W.P. No. 19744 of 2011. Reiterating the submissions made by the learned Advocate General, on behalf of impleaded 4th respondent in W.P. No. 19744 of 2011, Mr. P. Wilson, learned Senior Counsel contended that even though T.N. Schools Fee Act, 2009 does not refer to ICSE affiliated schools, the guidelines contemplated under Sections 3(3) and 7(3) of T.N. Schools Fee Act cannot be restricted to CBSE Schools and only it is an example and guideline for all the CBSE Schools and Schools of other syllabus. We have also heard Mr. J. Anandkumar, learned counsel appearing for impleaded respondent No. 5 in W.P. No. 19744 of 2011.

85. Upon hearing the submissions made by the learned counsel either side, in respect of ICSE Schools, the following points arise for consideration:

1. Whether Private unaided educational institutions affiliated to ICSE are immune by regulations from the State and the provisions of Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009?

2. Whether ICSE affiliated schools, which conform to the regulations of Council for the Indian School Certificate Examinations, New Delhi, are not private schools within the meaning of Section 2(j) of Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009?

3. Whether the Writ Petitioner Schools are right in contending that T.N. Schools Fee Act, 2009 does not apply to ICSE Schools since there is no reference to ICSE Schools in the Act even to the limited extent that CBSE schools are referred to under Section 3(3) and7(3) of T.N. Schools Fee Act.

4. What is the scope of power of School Fee Determination Committee in relation to ICSE Schools?

86. ICSE and its affiliation Norms:- The Council for the Indian School Certificate Examinations was established in 1958 by the University of Cambridge Local Examinations Syndicate with the assistance of the Inter-State Board for Anglo Indian Education. It is registered under the Societies Registration Act No. XXI of 1860. The Delhi Education Act, 1973 passed by Parliament in Chap. I under Definitions Section 2(s), recognises the Council as a body conducting public examinations. The Council is administered by an Executive Committee consisting of the Chairman and four members. The Chief Executive and Secretary of the Council is ex-officio Secretary of the Committee.

87. In Chap. 1 of Regulations of Indian Certificate of Secondary Education examination, the scope of Examinations is stated as under:-

1. The Indian Certificate of Secondary Education Examination has been designed to provide an examination in a course of general education, in accordance with the recommendations of the Education Policy 1986, through the medium of English.

2. The Indian Certificate of Secondary Education examination will ensure a general education and all candidates are required to enter and sit for seven subjects (as detailed on pages 3 and 4) and Socially Useful Productive Work.

3. The Indian Certificate of Secondary Education Examination is a school examination and the standard of the examination presupposes a school course of ten years duration (Classes I-X).

4. Private candidates are not permitted to appear for the examination.

88. Council for the Indian School Certificate Examinations provide for affiliation guidelines. The procedure for obtaining permanent affiliation is spelt out in Chapter I. Chapter II deals with qualifications of the teaching staff. Chapter III prescribes detailed Guidelines to Inspectors/Principals of Schools when they conduct inspection to determine compliance with Affiliation Guidelines. Chapter IV deals with matters such as school year, minimum instructional hours, number of students in the class, syllabi, prescription of text books, promotional criteria, continuous assessment besides elaborately detailing the non-scholastic curricular and co-curricular activities providing opportunities to students to learn Socially Useful Productive Work (SUPW). ICSE regulations further elaborate the examinations conducted by the ICSE.

89. ICSE is only an affiliating body, which prepares the syllabus for the students and conducts examination as stated in introduction in Chapter 1. ICSE has no power to grant permission or recognition to commence a school seeking affiliation to the Council or to make application. As per Chap. I Para 1(i), requisite essential condition for getting affiliation is to obtain NOC/Certificate of Recommendation from the State. Chap. I Para 1(1) reads as under:

Application for Affiliation

a. Applications for affiliation to the Council will be processed under the following conditions;

(i) The school has to obtain a No Objection Certificate (NOC) / Certificate of Recommendation from the state.

(ii) The school should have started Class VI as affiliation must leave sufficient time for the purpose of preparing candidates and presenting them, in the first instance, for the Indian Certificate of Secondary Education Examination.

It may be noted that no school may admit students to class IX without the Council's written approval for affiliation.

b. No Objection Certificate:

Affiliation is processed on the basis of the inspection report submitted to the Council by the Inspector(s) deputed by the Executive Committee. An N.O.C. is not the sole requirement for grant of affiliation. The school must also fulfil the conditions as per the guidelines of the Council.

Mere submission of application form for affiliation or its pendency with the Council shall not entitle any school to be affiliated to the C.I.S.C.E.

c. Any Branch(s) or Unit(s) of an affiliated school shall not be deemed to be affiliated to the Council unless such Brach(es) or Unit(s) apply afresh and are granted affiliation by the Council in terms of these Guidelines.

'NOC' is granted by the Director of School Education. We are of the view that 'NOC' is nothing but implied permission to run the ICSE schools within the State. Obtaining 'NOC' for the ICSE Schools amount to 'recognition or approval by competent authority under any law' and therefore ICSE schools fall within the definition of Section2(j) of T.N. Schools Fee Act, 2009.

90. The essential requisite for obtaining NOC/Certificate of Recommendation from the State is in pari materia with Bye-law No. 3(3)(i) of Affiliation Bye-laws of CBSE and our reasonings in respect of CBSE schools shall hold good for concluding that ICSE affiliated schools are also "private schools" within the meaning of Section 2(j).

91. On behalf of Lakshmi School - writ petitioner in W.P. No. 19744 of 2011, it was contended that grant of 'No Objection Certificate' does not refer to any statutory provision based on which it has been issued and therefore grant of No Objection Certificate is only a matter of courtesy and has no statutory basis. In support of their contention, the writ petitioner Lakshmi School placed reliance upon the observations of the Division Bench of Andhra Pradesh High Court in Paragraph No. 39 of Nalanda Educational Society VS. Government of Andhra Pradesh, ( ), which reads as under:

No provision of any statute or a statutory instrument, rule or regulation made by or under the authority of the State of Andhra Pradesh is brought to our notice which enjoins that a school must obtain NOC before applying for affiliation to a non-State Board such as the CBSE or the ICSE. The practice of applying for or grant of NOC by a State agency thus appears to be a matter of courtesy. In any event the mere grant of NOC by an administrative agency or instrumentality of the State or by a State official would not immunize an educational institution including a private unaided school from the obligation of fidelity to valid regulation by the State, in exercise of its legislative or complementary executive power, as the case may be.

(underlining added)

92. The contention that 'No Objection Certificate' granted by the State Government is only a matter of courtesy cannot be countenanced. The competent authority to grant No Objection Certificate is the Director of School Education. As per Chap. I -(I)(i) GUIDELINES FOR AFFILIATION, it is seen that as in the case of CBSE schools, Schools, which are seeking affiliation from ICSE, have to obtain 'No Objection Certificate' from the State. The necessary application is to be made in the prescribed format and on being satisfied about the infrastructure and other facilities, Chief Educational Officer of the District will have to make the recommendation to the Government and the Director of School Education, being the competent authority, has to issue No Objection Certificate. Therefore, for obtaining 'No Objection Certificate', the authorities are to be satisfied about the existence of infrastructure as well as the other facilities commensurate with ICSE regulations and it cannot be contended that grant of 'No Objection Certificate' by the State Government is only a matter of courtesy.

93. Though the Division Bench of Andhra Pradesh High Court has expressed its opinion that the practice of applying for grant of 'No Objection Certificate' by the State Agency appears to be a matter of courtesy, in the said Nalanda Educational Society case, the Division Bench of Andhra Pradesh High Court proceeded to hold that mere grant of No Objection Certificate would not in any way immunise an educational institution from the regulation by the State Government. In Paragraph No. 37, the Division Bench of Andhra Pradesh High Court held as under:-

37..... In any event the mere grant of NOC by an administrative agency of instrumentality of the State or by a State official would not immunize an educational institution including a private unaided school from the obligation of fidelity to valid regulation by the State, in exercise of its legislative or complementary executive power, as the case may be. The petitioners also do not plead or establish that any State agency or instrumentality had promised by the NOC or otherwise, immunity from existing or potential State regulatory measures. On no account therefore is the State denuded of or its power eclipsed, to regulate affairs of private unaided schools, including on the aspect of prescribing the fee structure or other complementary measures, on the mere circumstance that a State agency or instrumentality has granted NOC for affiliation to a non-State board.

94. ICSE guidelines for affiliation Control of the State Government to regulate ICSE Schools:- By a perusal of ICSE guidelines for affiliation, it is seen that the State Government thus have the control over ICSE affiliated schools. In Chapter I, Regulation 6 deals with "Fees", which reads as under:-

6. Fees

(a) The fees charged by the School should be commensurate with the facilities provided. The tuition fees and other charges may be charged on a monthly, quarterly or annual basis. Other fees may be levied in accordance with the requirement of the students.

(b) No school is allowed to charge capitation fees in any term or to accept donations for the purpose of admission of pupils.

The Regulations also contemplate periodical inspection by the State Government. Chap. I (V) of the Regulations states that School is under regular inspection of the State department of Education. Chap. I (VI) deals with withdrawal of applications. Chap. I V(c) and (d) reads as under:

V. Periodic Inspection

(a).....

(b).....

(c) Where a school is under regular inspection of the State Department of Education, the Chief Executive and Secretary may request the Department that a copy of the inspection report be made available to him. If, however, such schools are not inspected by the State Education Department once in three years, the Executive Committee may, arrange for such an inspection.

(d) Inspection reports will be placed before the Executive Committee for information and necessary action.

95. It is seen from Chap. I (VI)(2)(j) of ICSE guidelines that the ICSE affiliated Bye-laws are bound by the regulations of the State and in case of non-compliance of regulations, ICSE has power to withdraw affiliation. Chap. I-(VI)(2)(j) reads as under;

VI. Withdrawal of Affiliation

Power to withdraw

1.

2.....

(a) to (i)....

(j) Non compliance of the applicable Rules, Regulations, Byelaws, Directives and Guidelines of the State/Central Government and Courts in respect of all matters concerning the administration and running of the School......

96. It is pertinent to note that ICSE does not prescribe syllabus or courses of study for Classes I to VIII, but it recommends that affiliated schools have to follow the syllabus of those Classes by the Inter-State Board for Anglo Indian Education. Chapter IV (4) reads as under:

4. Syllabuses

The Council prescribes syllabuses in various subjects of examination for the Indian Certificate of Secondary Education (Classes IX & X and for the Indian School Certificate (Classes XI & XII) examinations.

The Council does not prescribe syllabuses or courses of study for Classes I to VIII but it recommends that Schools affiliated to the Council follow the syllabuses for various subjects prepared by the Inter-State Board for Anglo Indian Education.

97. ICSE Guidelines do not prevent the State Government in regulating ICSE affiliated schools. Per contra, the reading of the ICSE guidelines make it very clear that the State Government has the control over ICSE Schools and power to regulate ICSE affiliated schools in respect of collection of fees as well as the administration.

98. Re. Contention ICSE Affiliation Guidelines are a Complete Code in itself and State Government has no further control over ICSE affiliated Schools: it was submitted by Mr. A.L. Somayaji that procedure for obtaining permanent affiliation is spelt out in Chap. I of ICSE Guidelines and ICSE affiliation guidelines contain elaborate and comprehensive procedure for securing affiliation, both provisional and permanent and since Regulations are a complete Code in itself and cover all the matters, the State Government has no further control over ICSE affiliated Schools. The learned Senior Counsel for writ petitioner has contended that Chapter I - 1.6 of ICSE Guidelines specifically provides that the fees charged by the school affiliated to the ICSE "should be commensurate with the facilities provided". It is further contended that the standard adopted by ICSE schools is therefore consistent with the principle enshrined in section 3(3) of the T.N. Schools Fee Act as applicable to CBSE.

99. The learned Senior Counsel would further contend that no school is allowed to charge capitation fee or accept donation and if at all, if any person has any grievance, the complaint may be sent to Council for the Indian School Certificate Examinations, New Delhi and the consequence is also provided in Chapter I-I(6), which gives power to the Council to withdraw or suspend affiliation of the School and thus the Affiliation Guidelines constitutes a Complete Code in itself.

100. The learned Senior Counsel further contended that the norms stipulated by the Council for the Indian School CISCE are not merely applicable to Tamil Nadu, but across India and the syllabus and infrastructure prescribed are uniform with respect to schools across India, and therefore it cannot be the intention of State Legislature for these schools in any manner to be regulated on par with recognised private schools for whom different standards are prescribed with respect to infrastructure and syllabus.

101. The above contention does not merit acceptance. Even though ICSE affiliation Bye-laws contain detailed guidelines in respect of the administration of ICSE affiliated schools, as pointed out earlier, there are provisions in the affiliation guidelines viz., Chap. I(v)(c) and (d) and Chap. I(VI)(2)(j), which would show that the State has control over the ICSE affiliated schools. Like CBSE schools, ICSE affiliated schools also avail the benefits under District Municipalities Act and also enjoy tariff concession in respect of electricity consumed and also other concessions that are extended to the recognised schools by the State Government. Since States have concurrent power to legislate regarding the matters of education, ICSCE insist for "No Objection Certificate' from the State Government so that there may not be any conflict between the Rules and Regulations framed by the State Government regarding School Education and Rules and Regulations of ICSE. Education, being, subject under Entry 25 of List-III of Schedule VII of the Constitution of India, notwithstanding the detailed guidelines for administration of the School, State Government does have the control over ICSE affiliated schools. On a reading of guidelines for affiliation of ICSE Schools, it is seen that notwithstanding the guidelines of ICSE, State Governments do have the control over ICSE Schools.

102. Re. Contention Non-mention of ICSE Schools in Tamil Nadu Schools Fees Act. 2009 even to the limited extent that CBSE Schools are referred to under Section 3(3) and 7(3) of the Act:- Taking us through the provisions of T.N. Schools Fee Act, 2009, learned Senior Counsel for the writ petitioner Schools contended that there is a reference to CBSE schools under Section 3(3) and 7(3) of the Act and there is a conspicuous omission to refer to ICSE schools even to that limited extent. The learned Senior Counsel would further contend that the express reference to CBSE schools in Sections 3(3) and 7(3) exclude the application of T.N. Schools Fee Act, 2009 to ICSE schools even to that extent.

103. There is no force in the contention that because of the omission to refer to ICSE schools in the T.N. Schools Fee Act, the provisions of the T.N. Schools Fee Act are not applicable. Section 3(3) makes a specific reference to collection of fees by CBSE affiliated schools that such fee should be commensurate with the facilities provided by the School. Section 7 deals with the powers and functions of the Committee. As per Section 7(1)(a), the Committee shall determine the fee to be collected by the private schools. As per Section 7(1)(b), the Committee shall have power to hear complaints with regard to collection of fee in excess of the fee determined by it or fixed by the Government. As per section 7(2)(i), the Committee can require private school to place before the Committee the proposed fee structure of such school with all relevant documents. As per Section 7(2)(ii), the Committee has the power to verify whether the fee proposed by the private school is justified. As per Section7(2)(iii), the Committee shall approve the fee structure or determine some other fee, which can be charged by the private school. As per Section 7(3) of the Act, the Committee shall have power to verify whether the fee collected by CBSE affiliated school is commensurate with the facilities provided by the school.

104. We have held that ICSE schools are "private schools" falling with the purview of Section 2(j) of the Act. Though there is no mention of ICSE affiliated schools in Sections 3(3) and 7(3), the power of the Committee is exercisable in respect of the schools falling within the purview of Section 2(j) of the Act. In our considered view, though there is no mention of ICSE schools in Sections 3(3) and Section 7(3), the Legislature's intention is to have ICSE and other private schools, but it has omitted to say so in Sections 3(3) and 7(3), in our considered view, is only 'casus omissus'.

105. When there is an omission to expressly mention ICSE Schools in Sections 3(3) and 7(3), by applying the principle of "casus omissus", the Court could fill up the said gap by reading ICSE School into the interpretation of Sections 3(3) and 7(3) and other provisions of T.N. Schools Fee Act. In this regard, we may refer to the Constitution Bench Judgment of the Hon'ble Supreme Court in Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh reported in   : 1990 (3) SCC 682, wherein the Hon'ble Supreme Court has held as follows:-

.... However, a judge facing such a problem of interpretation can not simply fold his hands and blame the draftsman. Lord Denning in his Discipline of Law says at p. 12: "Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsman of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be lettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature.....

106. Applying the above law laid down by the Constitution Bench, considering the intention of the Legislature to regulate collection of fee in respect of all the schools, even though Sections 3(3) and 7(3) do not specifically refer to ICSE Schools, we are of the view that ICSE Schools are not exempted from the provisions of T.N. Schools Fee Act. Therefore, the guidelines contemplated in Sections 3(3) and 7(3) cannot be restricted to CBSE schools alone. As rightly contended by the learned Advocate General Mr. A. Navaneethakrishnan and also learned Senior Counsel Mr. P. Wilson, Sections 3(3) and 7(3) can only be an example and guideline for all the schools like that of CBSE and the provisions of the Act have to be harmoniously interpreted and should not be made unworkable. Though unlike CBSE Schools, no mention was made with regard to ICSE Schools, ICSE Schools will fall within the definition of "private schools" as defined under Section 2(j) under which provision extension was given only to other categories of schools.

107. The T.N. Schools Fee Act aims at promoting equal opportunity to all and the provisions of Act is a benevolent legislation aimed which are to regulate the collection of fee so that the quality education is uniformly distributed by giving level playing field for both poor and rich. The provisions of the Act have to be harmoniously interpreted and should not defeat the objects of the Act. In the absence of any regulatory statutory body prescribed by the Council for the Indian School Certificate Examinations and also by the Central Government, education, being Subject under Entry 25 of List-III of Schedule VII of the Constitution of India, State Government has the power to regulate the fees collected by the ICSE schools. The various regulations in ICSE Bye-laws clearly show that the State Government has power to regulate ICSE Schools. If the stand of the ICSE schools is accepted it would defeat the very object of the enactment.

108. Under Right of Children to Free and Compulsory Education Act, 2009, ICSE schools have a duty and social responsibility to the public and therefore the fee collected by the schools must be commensurate with the facilities provided by the schools. The analysis and reasonings in respect of CBSE schools shall hold good for ICSE schools.

109. Conclusions:- For the foregoing reasons, we summarise our conclusions as under:-

It is incorrect to state that State Government is totally alien to have a control over the CBSE Schools under Section 2(a)(ii)(A) and appropriate Government for all the Schools established within the territory of the State is only State Government, which can exercise domain over all the States including CBSE and ICSE Schools. The ultimate object of the T.N. Schools Fee Act, 2009 is to regulate the collection of fee by schools in the State of Tamil Nadu. Excluding the CBSE Schools and ICSE Schools from the ambit of the Act would defeat the object of the Act.

Now by virtue of Section 12(1)(c) of Right of Children to Free and Compulsory Education Act, all the schools established within the territory of the State shall admit students to the extent of 25% of the strength of the Class from among the children belonging to the weaker sections and disadvantaged group. The expenditure incurred by the Schools for providing free and compulsory education to those students of weaker sections and disadvantaged group shall be reimbursed by the State as per Rule 9 of Tamil Nadu Right of Children to Free and Compulsory Education Rules. When such being the situation, the State Government should have right to regulate the collection of fee by the State.

CBSE schools:-

(i) CBSE schools are "private schools" within the meaning of Section 2(j)of Tamilnadu Schools (Regulation of Collection of Fee) Act, 2009 and the provisions of Tamilnadu Schools (Regulation of Collection of Fee) Act, 2009 are applicable to CBSE schools.

(ii) Under Section 7 of Tamilnadu Schools (Regulation of Collection of Fee) Act, 2009, the Schools Fee Determination Committee has the power to determine the fee and verify whether the fee collected by the CBSE schools is commensurate with the facilities provided by the School and while so determining the fee, the Committee shall keep in view the parameters in Section 6, Section 3(3) and 7(3) of the Act;

ICSE Schools:-

(i) ICSE schools are "private schools" within the meaning of Section 2(j) of Tamilnadu Schools (Regulation of Collection of Fee) Act, 2009 and the provisions of Tamilnadu Schools (Regulation of Collection of Fee) Act, 2009 are applicable to ICSE schools.

(ii) Under Section 7 of Tamilnadu Schools (Regulation of Collection of Fee) Act, 2009, the Schools Fee Determination Committee has the power to determine the fee and verify whether the fee collected by the ICSE schools is commensurate with the facilities provided by the school and while so determining the fee, the Committee shall keep in view the parameters in Section 6, Section 3(3) and 7(3) of the Act.

In the result, all the writ petitions are dismissed. However, there is no order as to costs. Consequently, all the connected miscellaneous petitions are closed.