**IN THE HIGH COURT OF MADRAS**

W.P. No. 20336 of 2011 and M.P. Nos. 1 and 2 of 2011

Decided On: 28.10.2011

Appellants: **V. Krishnamoorthy and Ors.**
**Vs.**
Respondent: **The State of****Tamil Nadu, rep. by Secretary to Government, Department ofEducation, Fort St.George, Chennai 9 and Ors.**

**Hon'ble Judges/Coram:**
Honourable Mr. Justice N. Paul Vasanthakumar

**ORDER**

**Honourable Mr. Justice N. Paul Vasanthakumar**

1. This writ petition is filed by 13 parents of the students studying in 'A' School Chettinad Foundation situated at 18th Avenue, Ashok Nagar, Chennai, and in other branches at Chennai, praying for direction to the respondents 1 to 6 to take legal action to discontinue the functioning of the Units of "A' School ChettinadFoundation" and direct the respondents 7 and 8 to return the fees amount collected from the petitioners with compensation fixed by this Court.

2. The facts necessary for disposal of this writ petition as per the pleadings are as follows:

(a) Petitioners are hailing from Middle Class and Upper Middle Class educated families. They are employed in IT Industries and to educate their children they searched for good school in their residential surroundings.

(b) Petitioners came across an advertisement issued by the 7th and 8th respondent made in the name of 'ChettinadFoundation 'A' Schools' by advertisement boards and in their official website. The advertisement contained the list of institutions established by the Chettinad family including Chettinad Vidyashram, Chettinad Hari ShriVidyalayam, Kumara Rani Meena Muthiah Matriculation Higher Secondary School, Raja Muthiah Higher Secondary School, Kumara Raja Muthiah Higher Secondary School and various other institutions.

(c) In the prospectus published in the website of Chettinad 'A' Schools in www.aschool it was declared that the admissions are open for play group/Pre-KG, LKG, UKGcontinues on till XII (CBSC) at one of their main schools. It is also stated that the curriculum is based on CBSCsyllabus. The framework is built on universally accepted developmental milestones of a child and designed keeping in mind skills that are age appropriate. The method of teaching is built on montessori principle and is oriented to promote Activity Based Learning method.

(d) The infrastructural facilities mentioned in the website are, every centre is carefully chosen so that it is located in safe neighbourhood, independent, bright, well ventilated and spacious; the interior and exterior of the centre including stairways, balconies and terrace are made to be child safe and supportive and child friendly, hygienic and functional environment that inspires and allows child development.

(e) The teacher-student ratio as mentioned in the website is 1:15. The fees mentioned are Application feeRs.500/-; Registration fee Rs.9,000/-; Term fee (3 terms in a year) Rs.7,800/-for pre-KG and play school;Rs.9,600/-for Lower KG, Upper KG and standard one. A note was put up stating that the said fee does not include charges for uniform, work sheets, books, play and learning materials ,field trips, supplies, etc., and fees once paid cannot be refunded.

(f) The petitioners among other parents approached the 7th respondent for admission as they were attracted bythe brand name of 'Chettinad Foundation'. The administrator of the School had promised that classes presently conducted in the individual houses are only for pre-KGstudents and they will be shifted to bigger and specious structure soon. The parents were also informed that additional sum of Rs.2,000 to Rs.3,000 is to be paid per annum for materials and separate cost for uniform will be collected.

(g) The petitioners admitted their children in 'A' Schools of Chettinad Foundation. They are studying in various classes viz., LKG, UKG, Standard I, and admissions for the said classes started in the year 2009. According to the petitioners, after collecting a sum of Rs.9,000/-towards admission fee, 7th respondent issued acknowledgement, which do not contain the break-up details of fee structure and it was informed that the same will be issued later.

(h) The students were sent to the respective schools and petitioners came to know that no infrastructural facilities are available and there were only few toilets available for all classes. The toilets were unhygienic and unusable by the children. The children were not taken care of by sufficient number of maids. There was no transportation facility as assured. No books were supplied even for reading alphabets. Except activity sheets, no study materials were provided and the children were terrorised by corporal treatment by the teachers and attenders, who claim to be supervising the school. On enquiry by the parents it was learnt that the children are threatened by the teachers stating that they will be put in dark room for any mistake.

(i) It is stated in the affidavit that the children developed urinary track infections and the cause was found by the parents through Doctors that they are controlling urinating during School hours as the toilets are not clean. The 7th respondent has not provided ID cards even after collecting registration fee of Rs.9,600/-and term fees. The 7th respondent collected Rs.5,000/-for materials and uniforms and only two sets of uniforms were supplied in December, 2010, just three months prior to summer vacationland the uniforms were also not stitched to measurement of individual child and the same are not fitting to the children. After some time, the students were told not to wear uniform. The term fees were collected much in advance.

(j) All these facts were reported to Supervisors and Administrators of the School. The parents of the children who reported those issues before the Administrators, were harassed. It is alleged that the Administrators have assured the parents that they will solve the deficiencies in the academic year 2011-2012 and more facilities will be provided by constructing new buildings. Due to the said assurance, petitioners did not seek admission to their children in other school.

(k) It is contended that the parents received Misinformation to their mobile phones directing them to pay Registration fee of Rs.9,600/-for the year 2011-2012. The parents objected for collection of Registration fee every year as registration in the pre-primary and primary classis to be on one time basis and thereafter annual fee and Term fee alone has to be paid. It is alleged that the parents were coerced and ultimately they were forced to pay Registration fee with fine at the rate of Rs. 50/-per day for the delayed payments. Again SMS was received on 24.6.2011 to pay administration fee and programmed fee, which comes to Rs. 6,200/-and Rs.3,600/-. For Physical fitness, which is part of regular curriculum, a term fee of Rs.9,600/-is collected, which comes to Rs. 3, 200/-per month. It is alleged that on the guise of education the respondents 7 and 8 are grabbing money.

(l) It is further contended that about 95 parents, whose children are studying in Ashok Nagar 18th Avenue branch, submitted a joint representation on 27.6.2011 before the 7th and 8th respondents, who paid no attention to the said representation and the parents were ill-treated bythe Supervisors and denied entry into the School to meet the Administrative staff and they were informed through SMS that they should apply through E-Mail to get appointment to meet the Administrators.

(m) Again on 5.7.2011 further representation was submitted stating that the school lacks basic amenities as per the standards prescribed by the Government and the fees collected do not commensurate with care andeducation given to the children.

(n) According to the petitioners, there are 36 schools (Branches) run by the Chettinad Foundation 'A' School on their own franchise and all the schools have no affiliation/recognition either from the State Government or from the Central Board of Secondary Education; that there is no prescribed curriculum; that the schools do not have play ground as per the Government norms; that the schools are functioning in individual houses without sufficient toilets proportionate to students strength; that for more than 280 students in 18th Avenue, Ashok Nagar branch, on lyses toilets are available; that the fee structure fixed is without following the fee prescribed by the Government; that the said violations are serious and are threat to the safety of the children. Again a SMS message was received on 18.7.2011 by the parents alleging that those students, who have not submitted proof of payment for administration and programmed fees with late fee by 20.7.2011, will be emotionally tortured; that some of the parents were called separately and given bona fide certificate with instruction to admit their child in any other school without issuing any transfer certificate.

(o) It is also alleged in the affidavit that some of the children came with hitting on their head and the enquiry revealed that the teachers instigated some of the students to hit them. An agitation was organised before the 'A' School office, Ashok Nagar on 22.7.2011 by the parents and after the agitation, the parents met the Commissioner of Police, Chennai with a representation and requested to take action. It is stated in the affidavit that the police allegedly abused the parents in support of the school management.

(p) On 11.7.2011 a representation was submitted to the first respondent pointing out the said violations and harassments. A SMS message was received on 4.8.2011 stating that there will be a meeting with the Founder. Some of the parents who visited to attend the meeting were denied entry. In the meeting, instead of giving patient hearing, the Administrator snubbed the parents. On 10.8.2011 a public notice was published in the Times of India newspaper stating that public not to be deceived by unauthorised use of the Trademark "Chettinad" by unscrupulous persons.

(q) Petitioners further alleged that the ChettinadFoundation 'A' Group Schools violates the conditions laid down under Section 18 and 19 of the Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009(Central)) viz., Schools were established without obtaining certificate of recognition and without fulfilling the norms and standards; that Section13 of the Act is violated as the management is collecting capitation fee in the name of Registration fee every year; that CBSC Bye-laws Chapter-II is violated; that the Tamil Nadu (Madras) Elementary Education Act, 1920 is violated; that the provision of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and Rules framed there under are violated; that the Code of Regulation for the Approved and Nursery and Primary Schools issued by the Government is violated; that Article 19 and 20 of the United Nations Convention on the Rights of the Child is violated; and more particularly, fundamental right guaranteed under Article 21A of the Constitution of India to their children is violated. Pointing out all these violations petitioners have filed this writ petition with the above said prayer.

3. The respondents 7 and 8 have filed counter affidavit contending that the 8th respondent is the Founder of the Schools belonging to a Philanthropic family, dedicated to the cause of education. The 7th respondent is a reputed group of Schools run by Chettinad Foundation, imparting high standard of education to children in the age group of 1« to 8 years. The 7th respondent is running school at Ashok Nagar and has 36 branches in Chennai, and in the said branches about 3,397 children are studying. It is alleged that the writ petition has been filed with oblique motive by suppression of facts. The prayer sought for in the writ petition is beyond the representation submitted. As per the affiliation bye-laws of the CBSE, request for approval of middle class syllabus should be made only when the school reaches Class VI. The schools run only up to classes of pre-primary level and requisite permission will be duly obtained from the CBSC at the appropriate level that is prior to reaching class VI. The safety measures are made meticulously in several branches by raising compound wall to 8 feet from the ground level. Every school is provided with fire fighting equipments and trained staff members, having sufficient toilets and other infrastructural facilities. Filtered drinking water is provided in all the schools and all class rooms are adequately ventilated. The School curriculum are based on CBSE syllabus, which is based on universally accepted developmental milestone. The 7th respondent set up schools with conscious decision to run schools for children in a homely atmosphere. The foundation for the location of main schools will be declared in December 2011. The toilets are cleaned every day and adequate number of maids are engaged at the ratio of 1: 40. Transport facility is provided as promised and no corporal punishment is imposed. Administrators are regularly supervising and Teachers are warned not to indulge in any corporal punishment. A sum of Rs. 450/-was collected for uniform and materials during the academic years 2010-2011 and 2011-2012.

4. All the children are provided with photo ID. The one time Registration fee of Rs.9,000/-is collected during the time of registration and not yearly. A sum of Rs. 3,600/-is being collected towards various programmers being held in school like fitness, music, abacus, reading, etc. The Government has not fixed any fee structure to the schools and the respondent school are not collecting any exorbitant fees. The Registration fee is utilised towards the cost of setting up the respective schools including alteration, modification and renovation, outdoor and in door play materials, toilets, play areas, safety proofing, raising compound wall, etc. The Term fee is used for payment of rent, electricity, communication and conveyance expenses and also for salary for Teachers and Assistants. Several parents have not paid fees and the Chettinad Trust has suffered a loss of over Rs. 40 lakhs. The alleged SMS message regarding emotional torture due to non-payment of fee is denied. Stating all the said reasons, the respondents 7 and 8 have prayed for dismissal of the writ petition.

5. The second respondent has filed counter affidavit stating that as per the provisions of theTamil Nadu Recognised Private Schools (Regulation) Act, 1973, before establishing a private school, permission has to be obtained and subsequently recognition has to be obtained. The schools run by the 7th respondent has not obtained prior permission from the competent authority of education department of the State. The Government received complaints from the parents of the students studying in 'A' School at Ashok Nagar, Chennai, and called for explanation from the management. The Chief Educational Officer, Chennai inspected the 'A' School at Ashok Nagar and filed his inspection report. It was informed by the management that they are following CBSE syllabus curriculum in their school. There are 36 schools, which proposes to get recognition from the CBSE and it is alleged that the management informed the parents while admitting their children. All the 36 schools are functioning in independent bungalows taken on lease. The 'A' school, functioning at Plot No. 22 Sriman Srinivasan Road, Alwarpet, Chennai-28 was inspected and found that in Pre-KG 23 students; in LKG 17 students; in UKG 21 students; and in I standard 16 students are admitted, and five teachers and two non-teaching staff are employed of which only one teacher has passed Teacher Training and others are not trained teachers. All the schools are functioning in rented building on three years agreement from 17.5.2009 onwards. The class rooms are small in size; there is no play ground and the toilets are only four in number, which is inadequate. During the visit the Correspondent highlighted Rule 4(1) of CBSE Affiliation Bye-laws and contended that only while reaching Class VI approval has to be obtained after forwarding application by the State Government with no objection certificate for affiliation by CBSE.

6. It is further stated in the counter affidavit that the highest and lowest fees fixed by the Fee Committee for LKG, UKG and Standards I and II are, for LKG and UKG Rs. 24,000/-; for I & II Standards Rs. 18,050/-(highest);and for LKG and UKG Rs. 1,500/-and for I & II Standards Rs. 1,800/-(lowest). It is also stated in the counter affidavit that under the Right of Children to Free and Compulsory Education Act, 2009, no school other than a school established or owned by the Government or local body can function without obtaining a certificate of recognition from the authority and the said provision is not followed by the 7th respondent school. The 36 schools of ChettinadFoundation will be advised to approach either the State Government or Central Government for necessary recognition as per the rules. The second respondent ultimately prayed for issuing appropriate directions by this Court.

7. The imp leaded respondents viz., respondents 9 and 10 have opposed the prayer made in the writ petition contending that if any adverse order is passed, they will be affected and the respondents 7 and 8 are conducting the schools satisfactorily and if the schools are closed, about 3,397 students studying in 'B' schools will be affected as they may not be in a position to get admission in any reputed school.

8. Ms. A. Arulmozhi, learned counsel for the petitioner submitted that the respondents 7 and 8 can establish schools as private schools only after getting permission from the competent authority as well as recognition from the competent authority under the provisions of the TamilNadu Recognised Private Schools Regulation Act, 1973 and the Rules framed there under. Prior to the said enactment of the said Act, Tamil Nadu (Madras) Elementary Education Act, 1920 and Act and Rules were issued and the same was governing the establishment of schools including private Schools. The said Rules clearly contemplates several aspects for starting/establishing private schools within the State of Tamil Nadu. Under the provisions of theTamil Nadu Recognised Private Schools (Regulation) Act, 1973, permission has to be obtained for establishing Schools and the Government has got power to regulate school education as per Section 3. The management of private school shall submit an application before the competent authority seeking permission and no person shall establish a school without prior permission of the competent authority and except in accordance with the terms and conditions specified in such permission. Separate procedure is contemplated for submission of application seeking permission as well as for recognition and only on compliance of requirements which are mandatory to be followed, the competent authority can issue permission and subsequently separate application shall be submitted for recognition.

9. Rule 4 of the Tamil Nadu (Recognised) Private Schools Regulation Rules, 1974 prescribes the competent authorities for the grant of permission and recognition of pre-primary, primary and middle schools, high schools and higher secondary schools. Separate fee is also prescribed for each category of school to be paid at the time of seeking permission. As per Rule 6 the application shall be considered and on satisfaction, permission can be granted. Rule 9 deals with recognition for which also competent authorities are prescribed for pre-primary, primary, middle school, high school and higher secondary schools. Qualifications and conditions of service of teachers and other persons employed in private schools is also prescribed in each category of schools. Separate guidelines are issued regarding the infrastructures to be satisfied for the grant of permission and recognition to each category of private schools.

10. The learned counsel further submitted that the respondents 7 and 8 can establish and administer 36 private schools with standards 1 and 2 including pre-primary schools, only after getting permission and recognition students can be admitted. Respondents 7 and 8, without even applying for permission and recognition before the competent authorities as mentioned in theTamil Nadu Recognised Private Schools (Regulation) Act and Rules, are running 36 schools and the said action of the respondents 7 and 8 is to be taken serious note of, particularly regarding not obtaining building license as required under the Tamil Nadu Public Buildings License Act, 1965, stability certificate, sanitary certificate, etc. It is also submitted by the learned counsel for the petitioner that CBSE Affiliation Bye-laws relied on by the respondents 7 and 8 in the counter affidavit stating that only on reaching Standard VI application for affiliation has to be submitted is unsustainable as the said affiliation can be applied only if NOC is issued by the State Government, which clearly establishes the fact that affiliation has to be obtained from Standard VI onwards and up to Standard V, permission and recognition must be obtained from the concerned State Government. The school, which is recognised intends to get affiliation with CBSE, NOC can be issued bythe State Government for changing the pattern of education to CBSE. The learned counsel also submitted that the second respondent has misconstrued the said provision and is contending that for the schools which are following CBSE pattern need not obtain permission and recognition from any authority till VI standard and the said stand of the second respondent is unreasonable and erroneous and violative of the provisions of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules.

11. The learned counsel also relied on the provisions contained in the Right of Children to Free andCompulsory Education Act, 2009, particularly Sections 18 and 19 of the Act, which clearly states that no school shall be established without certificate of recognition and the norms and standards for schools to be followed for establishment. Learned counsel also relied on the penal provision enabling action on any person, who contravene the provisions of the Tamil NaduRecognised Private Schools(Regulation) Act, 1973 and Central Act 35 of 2009. The learned counsel also relied on Articles 28 and 29 of the UN Convention on the Rights of Child in support of her contention and also cited the Judgment of the Honourable Supreme Court reported in : (2009) 6 SCC 398 Avinash Mehrotra v. Union of India; Judgment of the Kerala High Court reported in CDJ 2009 Ker 194 S. Shafeek Manager v. State of Kerala; decisions of this Court reported in (2009) 5 MLJ 1387 L. Bhavanibai v. Director of School Education(Matriculation), Chennai and (2010) 5 MLJ 1139 Ka. Kalaikottuthayam v. State of T.N..

12. Mr. Satish Parasaran, learned counsel for the respondents 7 and 8 submitted that more than 3,397 students are undergoing their education from pre-KG to II Standard and only 13 parents of students are before this Court seeking action against the management. The learned counsel contended that the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed there under are not applicable as the respondents 7 and 8 are running the institutions under the CBSE pattern, which contemplates submission of application for affiliation only when the school is having Standard VI and above. The learned counsel further submitted that as per section19(2) of the Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009) if the schools are established before the commencement of the said Act, which has not fulfilled the norms and standards, can fulfill the same within a period of three years from the date of commencement and therefore the respondents 7 and 8 are having one more year to satisfy the norms and till such time 36 schools can be allowed to be continued. The learned counsel further submitted that the management will apply for building licence and also apply for fixing of fee structure for 36 schools before the Fee Committee appointed by the State Government and for that purpose, sufficient time may be given to the respondents 7 and 8 to satisfy the norms and standards and get appropriate orders from the competent authority.

13. Mr. A. Navaneethakrishnan, learned Advocate General appearing for respondent 1 to 4 and 6 relying on the counter affidavit submitted that the respondents 7 and 8 are claiming that they are running 36 schools under CBSE pattern, the educational authorities of the State Government are unable to take any action and only when the said schools apply for NOC, the State Government can consider the same and take a decision. The learned Advocate General further submitted that if any direction is given by this Court, the respondents 1 to 4 and 6 will comply with the same.

14. Mr. R.C. Paul Kanagaraj, learned counsel appearing for the imp leaded respondents 9 and 10 submitted that if the 36 schools are ordered to be closed, the future of the students admitted in all the 36 schools will be affected and if the petitioners are not willing to educate their children through the 7th respondent school, it is for them to get their children admitted in other schools and they cannot seek a direction as prayed for in the writ petition.

15. In reply, the learned counsel for the petitioners submitted that in any event the State Government is responsible for giving education and safety of all students and the contention that up to V Standard any body can run schools without permission for any authority is irrational.

16. I have considered the rival submissions made bythe learned counsel for the petitioners as well as the respective learned counsels for the respondents.

17. The point arises for consideration in this writ petition on the basis of the pleadings and arguments advanced is that whether the respondents 7 and 8 can establish and administer/continue to run the pre-primary and primary schools numbering 36 without any permission/recognition from any authority ?

18. For considering the issue raised in this writ petition the following enactments are to be borne in mind.

(i) The Tamil Nadu (Madras) Elementary Education Act, 1920 (TamilNadu Act VIII of 1920) was governing the establishment and administration of elementary education before the enactment of theTamil Nadu Recognised Private Schools (Regulation) Act, 1973. Section 3(xii) defines "public management" and "private management". "Elementary School" is defined under Section 3(vi) as,

a school or department of a school recognized as anelementary school by the Director of Public Instruction or by such authority as may be empowered by him in this behalf.

Rules were also framed called Tamil Nadu (Madras) ElementaryEducation Rules. Rule 3(v)(a) defines 'elementary education ' as

education upto and including Standard V of an ElementarySchool or upto and including Class V of a Secondary School and for purposes other than compulsion, also includeseducation in Standards VI, VII and VIII of an elementaryschool.

The School age for admission is provided in Rule 3(viii) and accommodation for each student is mentioned in Rule 3(vii). Rule for the grant of recognition was mentioned in Chapter I. Power to grant permission to open new schools, additional classes in the existing schools including basic schools and pre-basic sections attached to basic schools shall vest in the officers of the Education Department other than the District Boards. Application for recognition of schools or of additional standards shall be made to the District Educational Officer through the Deputy Inspector of Schools. For the grant of permission and recognition several infrastructural requirements are to be satisfied including appointment of qualified teachers. Qualification of the staff were prescribed in Rule 15. Proportion of teacher-pupil is prescribed in Rule 17 and strength of each section is mentioned in Rule 18.

(ii) The Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 enacted in the year 1973 came into force from 24.6.1974. The said Actexclusively deals with private schools including pre-primary, primary, middle, high schools and higher secondary schools.

(iii) Establishment and administration of Matriculation Schools are governed under the Code of Regulations for Matriculation Schools in TamilNadu, which came into force from 1.6.1978. Rule 10 deals with permission and recognition of new matriculation schools.

(iv) For the establishment and administration of Anglo-Indian Schools, Code of Regulations for Anglo-Indian Schools was issued, which deals with recognition of Anglo Indian Schools.

(v) In the year 1991, the Tamil Nadu Government issued Code of Regulation for the Approved Nursery and Primary Schools through G.O.Ms. No. 484 Education Department dated 24.4.1991. Rule 8 specifically states that this Code shall be applicable to primary class standards I to V of the Approved Nursery/Primary Schools. All unrecognized Nursery/Primary schools were also directed to apply for approval.

(vi) The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009) formally declared the right to education upto the age of 14 years to all child came into force from 1.4.2010. The said Act was enacted pursuant to the declaration of law made by the Honourable Supreme Court in the judgments reported in Mohini Jain vs. State of Karnataka ( : 1992 (3) SCC 666, Unnikrishnan J.P. vs. State of Andhra Pradesh ( : 1993 (1) SCC 645 and TMA Pai Foundation vs. State of Karnataka ( : 2002(8) SCC 481.

19. On a perusal of the above Acts, Rules and Code of Regulations it is evident that all private schools are to be established including pre-primary schools only under the statutory enactments right from 1920. None of the above enactment permit any private person/management to establish any private school including pre-primary school, without permission from the competent authority.

20. Coming to the case on hand, it is an admitted case of respondents 7 and 8 that 36 Schools were established in the year 2009 and so far no application for permission/recognition/affiliation is submitted either before the authorities of the State Government or before the CBSE. It is the specific contention of the respondents 7 and 8 that they are following CBSE pattern of educationand only when the school commences Standard VI, the managements are required to apply for affiliation with CBSE with NOC from the State Government. Therefore the first and foremost point to be decided is whether the respondents are justified in establishing 36 schools in Chennai City i.e, within the State of Tamil Nadu and whether they can continue without any permission and recognition order from the competent authority upto Standard V.

21. The CBSE Affiliation Bye-laws, Rule 2(1)(i) defines "affiliation" which reads as follows:

"Affiliation" means formal enrolment of a school among the list of approved schools of the Board following prescribed/approved courses of studies upto class VIII as well as those preparing students according to prescribed courses for the Board's examinations.

Rule 2(1)(xvi) defines "institution" as follows:

"Institution" means an educational institution affiliated to the Board.

"Middle Class syllabus" is defined in Rule 2(1)(xix) as follows:

"Middle Class Syllabus" means syllabus approved by the Board for classes upto VIII on the pattern of syllabus/guidelines for these classes given by N.C.E.R.T.

Rule 2(1)(xxvii) deals with "composite affiliation" as follows:

"Composite Affiliation" means affiliation from Class I to X or I to XII.

Rule 3 deals with Norms for affiliation. Relevant portion of the Rule upto Regular Affiliation is extracted hereunder:

3. Norms for Affiliation.- (1) The Board may affiliate several categories of schools all over India and abroad, as for example:

(i) Government or Government aided schools;

(ii) Schools run by autonomous Organisations under the Government like Kendriya Vidyalaya Sangathan (KVS), Navodaya Vidyalaya Samiti (NVS), Central Tibetan Schools Organisation (CTSO), Sainik Schools Society etc;

(iii) Schools run by Government Deptt. directly like Defence, Railways etc.

(iv) Schools managed directly by Public Sector Undertakings or by reputed societies for Public Sector Undertakings under the financial control of such Public Sector Undertakings or by Societies formed by such undertakings.

(v) Private, unaided schools established by Societies registered under the Societies Registration Act 1860 of the Government of India or under Acts of the State Governments as educational, charitable or religious societies having non-proprietary character or by Trusts.

(2) Applications for affiliation may be considered under the following four categories:

(i) approval of middle class syllabus.

(ii) provisional affiliation of a secondary school.

(iii) up gradation/provisional affiliation of a school for senior secondary stage.

(iv) Regular affiliation to schools run by the Govt./Govt. Aided/Kendriya Vidyalaya Sangathan (KVS)/Navodaya Vidyalaya Samiti (NVS)/Central Tibetan Schools Organization (CTSO).

(v) Permanent Affiliation.

Note: The Board may grant Affiliation in vocational courses only as per provision contained in clause 13.9.

(3) Any educational institution in India or outside India which fulfils 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. Govt. Its application either should be forwarded by the States Govt. or there should be a No Objection Certificate to the effect that State Government has no objection to the affiliation of the school with the C.B.S.E. No Objection Certificate? once issued to any school will be considered at par even if it prescribes a specific period unless it is withdrawn. Condition of submitting a No Objection Certificate will not be applicable to categories 3.1 (i) to (iv).

(a) The School/Society/Trust, or the Congregation or other Religious Body controlling the Society/Trust managing the school must have about two acres (or as otherwise permitted measurement) of land and a building constructed on a part of land and proper playgrounds on the remaining land.

Provided that the school may be graded as Category A+, Category A & Category B School as per the following criteria:

Category A + School Permanently affiliated school

Category A School Provisionally affiliated school with land of at least 2 acres or of such measurement as has been permitted under Rule 3(ii), (b), (c), (d) & (e)

Category B School Provisionally affiliated school with following criterion:

a) recognized by the Education Department or whose application has been forwarded by it.

b) does not possess land as per Category ?A? but has not less than 1.5 acre of land and also satisfies the following:

• 250 sq. mtr. of area + 1 sq.mtr. for every student on the rolls (for a middle school) .

• 500 sq.mtr. of area +1 sq.mtr. for every student on the rolls (for a Secondary school).

• 750 sq.mtr. of area +1 sq.mtr. for every student on the rolls (for a Senior Secondary school).

c) pays salaries as per State Govt./U.T. scales of pay

d) satisfies all the other conditions of Affiliation Bye-Laws

(b) In metropolitan cities with a population exceeding 25 lacs, the land should not be less than one acre with adequate building & arrangement with other institution/organization for imparting Physical & HealthEducation and for conducting games, to the satisfaction of the Board. In case of lease, it will be accepted if it is for at least 30 years. Provided further that in case of any portion which is leased out below 30 years, such case may be considered provided that land has been allotted by the Govt. or Govt. Agencies and it is as per the Law of the land. In all such cases school should have at least one acre of land by ownership or by lease for 30 years and in all case the total land area should not be less than about 2 acres.

(c) In hilly areas, the land should not be less than one acre. The norms as prescribed by the Planning Commission shall be applicable for determining the hilly areas.

(d) The land area for the schools seeking affiliation in NCT, Delhi should not be less than the following:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1. | Senior Secondary | Classes from pre-primary To Class XII | All the 4 streams | 4000 sq.mts. |
| 2. | Senior Secondary | Classes from pre-primary To class XII | Maximum 2 streams | 3000 sq.mts. |
| 3. | Senior Secondary | Classes from pre-primary To class X |   | 2000 sq.mts. |

(e) Classified cities under A -1 viz. Mumbai, Kolkata and Chennai within their limits of Municipal Corporation be at par with the relaxation in land requirement as has already been prescribed for Delhi under Sub-Clause (d) above.

(f) The schools which were granted affiliation upto Secondary level on or before the year 1996 under the (relaxed condition of land requirement under category ?B? or ?C? may be considered for Upgradation to +2 stage provided. that they should have atleast one acre of land.

Provided further that such school will have only two sections at +2 level preferably one for no vocational stream and one for vocational stream with the provision that the number of candidates shall not exceed 40 in each section.

Provided further also that if the school is found to have opened more than two sections it will attract violation of provisions of Affiliation Bye-Laws of the Board.

(iii) The Trust or Society/Management running the school should be of non-proprietary character. The list of members with their addresses, occupations, qualifications and an affidavit from the Chairman/Secretary stating how the members are related to each other or they are not related to each other duly attested by first class magistrate should be submitted.

(iv) The school should have well qualified staff as per the norms of the Board given in Chapter IX.

(v) The school in India must pay salaries and admissible allowances to the staff not less than the corresponding categories of employees in the State Government schools or as per scales etc. prescribed by the Government of India. The schools outside India should pay salaries not lower than those of the teachers in government schools in that country or not less than the salaries and foreign allowances payable to KVS teachers if officially posted to that country. A certificate to this effect should be obtained from the Indian Diplomatic Mission.

(A) Provisional Affiliation :

Those schools which fulfil the essential conditions of the Affiliation Bye-Laws may be considered for Provisional Affiliation for a period of three years subject to fulfilling all the norms and conditions of the Affiliation Bye- Laws with in this period. In case the school(s) do not fulfil the norms and conditions of the affiliation due to some prudent reasons the Board may grant extension of provisional affiliation granted for a further period of 3 years to 5 years subject to fulfill the conditions of affiliation in the extended period.

(B) Regular Affiliation :

The schools run by Govt./Govt. Aided/KVS/NVS/CTSO will be granted one time regular affiliation subject to satisfying and fulfilling all the norms/conditions of the Affiliation Bye ? Laws including of the land etc. Such school need not apply for extension of affiliation, but they have to remit annual fee as may be prescribed.

(C)....

On perusal of Rule 3(3)(1), it is evident that for seeking provisional affiliation, formal prior recognition of the State/Union Territory is mandatory and its application should be forwarded by the State Government or there should be a NOC to the effect that the State Government has no objection to grant affiliation of the school with CBSE. The said rule clearly establishes the fact that approval of middle class syllabus/affiliation of CBSE can be obtained by any private school, only if it is having prior recognition of the State Government or Union Territory concerned and for change over to CBSE pattern i.e., to get affiliation, NOC of the State Government is required. Therefore as rightly contended by the learned counsel for the petitioner, without permission of the State authority and recognition given by the State authority for any private school, the school is not entitled to apply for affiliation to CBSE from Standard VI. Respondent No. 7 herein are admittedly coming under the category of private management. Therefore all schools established by 7th and 8th respondent management can only be treated as private schools as defined under section 2(7) of the Tamil Nadu Recognised Private Schools (Recognition) Act, 1973.

22. Section 3 of the Act empowers the Government to regulate the different stages ofeducation and courses of instruction in private schools, which reads as follows:

Section 3. Power of Government to regulate school education.- The Government may regulate the different stages of education and courses of instruction in private schools.

23. For establishing and administering a school, preprimary, primary, middle, High School or Higher Secondary School, permission from the competent authority is bound to be obtained under Section 4 of the Tamil Nadu Recognised Private Schools (Recognition) Act, 1973. Section 4 reads thus,

Section 4. New private school to obtain permission.- Save as other wise expressly provided in this Act, no person shall, without the permission of the competent authority and except in accordance with the terms and conditions specified in such permission, establish on or after the date of the commencement of this Act, any private school.

Section 4 is prohibitory in nature stating that no person shall establish any private school without the permission of the competent authority and except in accordance with the terms and conditions specified in such permission on or after commencement of the Act, which came into force from 24.6.1974.

Section 5 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 reads as follows:

"Section 5. Application or permission and sending of statement.-

(1) The educational agency of every private school proposed to be established on or after the date of the commencement of this Act shall make an application to the competent authority for permission to establish such school.

(2) Every such application shall-

(a) be in the prescribed form;

(b) be accompanied by such fee not exceeding one thousand rupees as may be prescribed; and

(c) contain the following particulars, namely:-

(i) the name of the private school and the name and address of the educational agency;

(ii) the need for the private school in the locality;

(iii) the course for which such private school proposes to prepare, train or guide its pupils for appearing at any examination conducted by, or under the authority of the Government;

(iii-a) the extent of the playground available to pupils and the adequacy of the playground with reference to the strength of the pupils in the school;

(iv) the amenities available to pupils and teachers;

(v) the equipment, laboratory, library and other facilities for instruction;

(vi) the sources of income to ensure the financial stability of the private school;

(vii) the situation and the description of the buildings in which such private school is proposed to be established; and

(viii) such other particulars as may be prescribed."

Section 5 mandates submission of application in the prescribed form by stating the extent of infrastructural facilities available, financial stability, description of the building, etc., and after inspection and satisfaction the competent authority is required to grant permission and after getting permission, the private school not being a minority School, shall apply for recognition. Section 11 of the Act states that certificate of recognition will be granted only on compliance of recognition conditions, viz., adequacy of schools already existing in the locality, the need for private schools in the locality, the number of pupil studying in the locality, the extent of play ground and adequacy of the play ground with reference to strength, the amenities available to pupil and teachers and other requirements viz., equipment, laboratory, library and other facilities for instructions. Thus, it is beyond doubt that for any private school to be established within the State of Tamil Nadu, it has to necessarily apply for permission followed with recognition and without permission, no school can be established. If schools are allowed to be established without any permission and recognition, the object of regulating the establishment, management and control of private schools will be defeated.

24. The respondents 7 and 8 are conducting 36 schools neither under the Code of Matriculation or Anglo-Indian Schools. Hence they are estopped from contending that the provisions of theTamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 are not applicable to them.

25. The U.N. Convention of Rights of the Child (1989 recognised the rights of the child under Article 28 and in Article 29 specifically states that the child are entitled to get education from institutions, which conform such minimum standards as may be laid down by the State. Bearing the above and the law declared by the Honourable Supreme Court, the Parliament enacted the Right to Children to Free and Compulsory Education Act, 2009 and the said Act came into force from 1.4.2010.

26. Sections 2(n), 18 and 19 of the Right of Children to Free and Compulsory Education Act, 2009 (Central Act 35 of 2009) are also relevant for deciding the issue in this writ petition, which read as follows:

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

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

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

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

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

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

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

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

19. Norms and standards for school.:

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

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

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

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

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

(Emphasis Supplied)

Section 2(n) defines school as follows:

(n) "school" means any recognised school impartingelementary education and includes:

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

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

(iii) a school belonging to specified category; and

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

From the perusal of Section 2(n) read with 18 it is evident that all schools established other than Government and local authority must have certificate of recognition for establishment and such recognition can be granted only on fulfilling the norms and standards as prescribed in Section 19. Sub-section (2) of Section 19, provides three years time to fulfil norms and standards for already established schools.

27. Sub-section (2) of Section 19 will apply to schools duly established with permission and recognition, having regard to the definition of school mentioned in Section 2(n). It is an enabling provision to the existing recognised schools to fulfil the new norms to continue recognition. The respondents 7 and 8 herein are admittedly running 36 schools from the year 2009 without any permission or recognition from any authority. The said 36 schools are not schools coming within the definition of Section 2(n) of Act 35 of 2009. Therefore three years time given in sub-section (2) of section 19 has no application to 36 schools managed by the respondents 7 and 8. Consequently, the submission made by the learned counsel for respondents 7 and 8 to that effect is rejected.

28. A similar question arose in respect of Teacher Training Institutions before the Honourable Supreme Court as to whether awarding of degrees/diplomas by the recognised institutions (recognition granted prior to coming into force of NCTE Act, 1993) and pending their applications before the NCTE submitted in terms of Section 14(1) provision are valid in the decision reported in 2010 (8) Supreme 690 State of U.P. & Others vs. Bhupendra Nath Tripathi & Others. The Supreme Court held that such degrees are valid as the institution was duly recognised prior to the date of coming into force of NCTE Act, 1993.

29. Section 2(8) of the Tamil Nadu Public Buildings Licence Act, 1965, defines "public building" which means any building used as a School (including a tutorial college) or University or other educational institution. The respondents 7 and 8 are admittedly running 36 schools upto Standard II in 36 rental buildings and the said buildings are definitely coming within the definition of pubic building. Section 3 mandates getting licence from the competent authority for using any building as a public building and application for licence is required to be submitted under Section 4. Thereafter the appropriate authority will conduct inspection under section 5 and satisfy regarding the structural soundness of the building and whether necessary precautions have been taken for having access to such buildings. Therefore for running a school in any building on lease building, licence under the said Act (Tamil Nadu Act 13 of 1965) is mandatory and it will be given only for a period of three years subject to renewal on verifying the structural soundness of the building. For all the 36 schools, respondents 7 and 8 have not even applied for building licence as required under the said statutory provision. Therefore the respondents 7 and 8 are running 36 schools in violation of the said statutory provisions, which enactment was made bearing in mind the safety of school going children and staff members. To be more precise to prevent incidents happened in Sri Krishna School at Kumbakonam, where 93 children were burnt alive.

30. The contention of the respondents 7 and 8 are that there are 3,397 children studying in 7th respondent school. In the counter affidavit filed by the second respondent, after visiting the school functioning at Alwarpet, Chennai-28, it was noticed that there was only one trained teacher for the classes conducted form pre-Kg to I standard. The class rooms are small in size and there is no playground. It is also the contention of the respondents 7 and 8 that building will be constructed and now the schools are functioning in rented building only. Even though the TamilNadu Recognised Private Schools (Regulation) Act, 1973 and Rules 1974 permit private schools to be located in a rented building, infrastructural facilities and instructional facilities are bound to be provided as per the norms and standards viz., appointing fully qualified teachers, adequate space in class rooms, sufficient play grounds, etc., are mandatory. The respondents 7 and 8 are not even able to contend that the schools are having all infrastructural and instructional facilities.

31. The concern regarding education for children is expressed by the Honourable Supreme Court in the decision reported in  : 2003(1)SCC 687 Rohit Singhal v. Jawahar N. Vidyalaya. In paragraph 6, it is held thus:

6. Children are not only the future citizens but also the future of the earth. Elders in general, and parents and teachers in particular, owe a responsibility for taking care of the well being and welfare of children. The world shall be a better or worse place to live according to how we treat the children today. Education is an investment made by the nation in its children for harvesting a future crop responsible adults productive of a well functioning society. However, children are vulnerable. They need to be valued, nurtured, caressed and protected.

32. The condition of getting permission and recognition from the competent authority for establishing and administering educational institutions like schools, colleges of any kind in accordance with the relevant Act and Rules/Regulations after fulfilling the conditions prescribed therein is no longer res integra. The following decisions can be usefully cited for the said proposition.

(a) In 1993 WLR 545 C. Stephenson Roobasingh v. State of Tamil Nadu & Others and 1993 WLR 604 P.M.Joseph v. State of Tamil Nadu & Others the question arose before the Division Bench of this Court was whether any Teacher Training Institution can be permitted to conduct courses without recognition from the competent authority and the norms prescribed for getting recognition was reasonable or not. This Court held that no institution including minority institution can establish Teacher Training Institution without getting recognition/permission and the rules and guidelines issued are bound to be complied with as the said guidelines/norms were issued to promote excellence of education in the field of teacher training course. The said decisions were upheld by the Honourable Supreme Court in the decision reported in : AIR 1994 SC 43 St.John's T. T. Institute (For Women) Madurai vs. State of Tamil Nadu. In paragraph 14 of the judgment, the time prayed by temporarily recognised Teacher Training Institutes to fulfil their new norms issued was negatived by the Supreme Court.

14. Mr. K. K. Venugopal contended that a distinction has to be made between the institutions which are functioning earlier to the coming into force of the recognition rules and those which have applied for recognition for the first time. According to him changeover period should be given to the existing institutes which are functioning on the basis of temporary recognition. We do not agree with Mr. Venugopal. The training institutes which are functioning on the basis of temporary recognitions are neither properly organised nor fully equipped to train the teachers. These institutes have done more harm than good to the cause of education.

(b) Safety of the students should be the paramount consideration while establishing the educational institutions apart from instructional facilities, which is guaranteed under Article 21 and 21A of the Constitution of India. In the decision reported in  : (2009) 6 SCC 398 Avinash Mehrotra v. Union of India in paragraphs 35, 36, 38, 39, 46, 47 and 48 (in SCC) the Supreme Court held thus,

35... Parents should not be compelled to send their children to dangerous schools, nor should children suffercompulsory education in unsound buildings.

36. Likewise, the State's reciprocal duty to parents begins with the provision of a free education, and it extends to the State's regulatory power. No matter where a family seeks to educate its children, the State must ensure that children suffer no harm in exercising their fundamental right and civic duty. States thus bear the additional burden of regulation, ensuring that schools provide safe facilities as part of a compulsory education.

38. This Court in Ashoka Kumar Thakur case ( : (2008) 6 SCC 1) observed as under: (SCC p. 660, para 482)

482. It has become necessary that the Government set a realistic target within which it must fully implement Article 21-A regarding free and compulsory education for the entire country. The Government should suitably revise budget allocations for education. The priorities have to be set correctly. The most important fundamental right may be Article 21-A, which, in the larger interest of the nation, must be fully implemented. Without Article 21-A, the other fundamental rights are effectively rendered meaningless. Education stands above other rights, as one's ability to enforce one's fundamental rights flows from one's education. This is ultimately why the judiciary must oversee the Government spending on free andcompulsory education.

39. In view of the importance of Article 21-A, it is imperative that the education which is provided to children in the primary schools should be in the environment of safety.

46. It is the fundamental right of each and every child to receive education free from fear of security and safety. The children cannot be compelled to receive education from an unsound and unsafe building.

47. In view of what happened in Lord Krishna Middle School in District Kumbakonam where 93 children were burnt alive and several similar incidences had happened in the past, therefore, it has become imperative to direct that safety measures as prescribed by the National Building Code of India, 2005 be implemented by all government and private schools functioning in our country. We direct that:

(i) Before granting recognition or affiliation, the State Governments and Union Territories concerned are directed to ensure that the buildings are safe and secure from every angle and they are constructed according to the safety norms incorporated in the National Building Code of India.

(ii) All existing government and private schools shall install fire extinguishing equipments within a period of six months.

(iii) The school buildings be kept free from inflammable and toxic material. If storage is inevitable, they should be stored safely.

(iv) Evaluation of structural aspect of the school may be carried out periodically. We direct that the engineers and officials concerned must strictly follow the National Building Code. The safety certificate be issued only after proper inspection. Dereliction in duty must attract immediate disciplinary action against the officials concerned.

(v) Necessary training be imparted to the staff and other officials of the school to use the fire extinguishing equipments.

48. The Education Secretaries of each State and the Union Territories are directed to file an affidavit of compliance with this order within one month after installation of fire extinguishing equipments.

(Emphasis supplied)

(c) In  : (2010) 12 SCC 609 Rajasthan Pradesh Vaidya Samiti v. Union of India in paragraphs 21 to 23 and 25 the Supreme Court held thus,

21. In Kerala Education Bill, 1957, In re ( : AIR 1958 SC 956) and T.M.A. Pai Foundation v. State of Karnataka  : (2002) 8 SCC 481 this Court held that it is always open to the State or the statutory authority to lay down conditions for recognition of an educational institution, namely, that the institution must have particular amount of funds or properties or number of students or standard of educationand so on and so forth and it is also permissible for the legislature to make a law prescribing conditions for such recognition, however, such a law should be constitutional and should not infringe any fundamental right of the minorities, etc. Recognition is a governmental function.

22. This Court has persistently deprecated the practice of an educational institution admitting the students and to allow them to appear in the examinations without having requisite recognition and affiliation. This kind of infraction of law has been treated as of very high magnitude and of serious nature. Students of an unrecognised institution cannot legally be entitled to appear in any examination conducted by any Government, university or board. Vide Sunil Oraon v. CBSE, (2006) 13 SCC 673

23. Similarly, recognition must be there with the school to make it subject to the provisions of the Act. Recognition signifies an admission or an acknowledgment of something existing before. To recognise is to take cognizance of a fact. It implies an overt act on the part of the person taking such cognizance. (Vide T.V.V. Narasimham v. State of Orissa  : AIR 1963 SC 1227)

25. In view of the above, it is evident that any institution which is not recognised cannot impart an education and students thereof cannot appear in the examination held by the Government, university or board.

(d) In the decision reported in  : (2011) 3 SCC 436 State of Orissa v. Mamata Mohanty in para 58, the Honourable Supreme Court emphasised the need for getting recognition. Paragraph-58 reads thus,

58. We are fully alive of the object and purpose of according recognition and affiliation to educational institutions. It is the educational authorities of the State which grant recognition to a Committee of Management for opening or running an educational institution. Affiliation is granted by the particular university or Board for undertaking the examination of the students of that college for awarding degrees and certificates. Therefore, while granting the recognition and affiliation even for non-governmental and non-aided private colleges, it is mandatory to adhere to the conditions imposed by them, which also include the minimum eligibility for appointment of teaching staff. The authority at the time of granting approval has to apply its mind to find out whether a person possessing the minimum eligibility has been appointed. In the instant case, it appears to be a clear-cut case of arbitrariness which cannot be approved.

(Emphasis supplied)

(e) In (2011) 7 MLJ 324 (SC) Chairman, Bhartia Education Society v. State of H.P. the Supreme Court pointed out that students admitted before getting recognition in the Teacher Training Institution have no right to appear for the examination, even though the institution got recognition for subsequent years. The only direction issued was to admit the affected students if they seek fresh admission by relaxing the age.

33. For admitting students before getting recognition and affiliation, the Supreme Court awarded compensation of Rs. 1 Lakh to each student and the students, who passed their examinations were held ineligible to get appointment and these certificates were held not valid for any purpose in the judgment reported in AIR 2011 SCW 3569 Abhyudya Sanstha vs. Union of India and Others. Heavy cost of Rs.2 lakhs was also imposed for getting interim order by suppression of facts. The plea of the students that their rights will be affected was also not accepted by the Honourable Supreme Court.

34. Thus, it is beyond doubt that without permission and recognition no educational institution viz., Schools and Colleges of any kind are entitled to admit students and continuance of educational institutions without recognition was not permitted by the Courts of Law.

35. The Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009 (hereinafter called "Tamil Nadu Act 22 of 2009) was enacted by the Government of Tamil Nadu to prevent exorbitant collection of fees by private schools. In the said Act, 'fee' is defined under Section 2(e)as follows:

2(e) "fee" means any amount, by whatever name called, collected directly or indirectly by a school for admission of a pupil to any standard or course of study"

'Private School' is defined in Section 2(j) which states,

(j) ?private school? means any preprimary school, primary school, middle school, high school or higher secondary school, established and administered or maintained by any person or body of persons and recognized 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 instruction 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;

(2)(i) pre-primary school shall consist of Pre-KG to UKG;

(ii) primary school shall consist of LKG to Standard V or Standards I to V;

(iii) middle school shall consist of LKG to Standard VIII, Standards I to VIII or Standards VI to VIII;

(iv) high school shall consist of LKG to Standard X, Standards VI to X or Standards IX and X;

(v) higher secondary school shall consist of LKG to Standard XII, Standards I to XII, Standards VI to XII or Standards XI and XII.

(3) aided school conducting any classes or courses, for which no money is paid as aid out of the State funds, shall be construed as a private school in so far as such classes or courses are concerned.

Section 3 prohibits the collection of excess fee. Fixation of fee by the Government is stated in Section 4 and for private Schools a Committee constituted for that purpose is competent to fix the fee considering the factors mentioned in Section 6. After arriving at the fee leviable to the schools, the said decision shall be communicated to the concerned School as per Section 6(2)and any aggrieved private school can file their objection before the Committee within 15 days and the Committee is competent to consider the objection and pass orders and the orders passed therein will be final and binding for three academic years.

36. The provisions of the Act and Rules were challenged before this Court by various managements and the Division Bench of this Court upheld the said Act, except Section 11 of theAct and Rules 4(4) and 4(5) of the Rules, in the decision reported in 2010 (4) CTC 353 (cited supra). In paragraph 40 of the said judgment the Division Bench held thus,

40... we do not find any merit in the petitions, except to the extent that Section 11 of the Act is held as ultra vires Article14 of the Constitution of India. The power of the Committee or its members under Section 11(2) of the Act and Rules 4(4) and 4(5) of the Rules thereunder to enter the private schools or its premises or those of the management at any time for the purposes of search, inspection and seizure are held to be arbitrary and violative of Article 14 of the Constitution of India. Subject to this limited intervention, the challenge to the other provisions of the Act is repelled.

S.L.P. filed against the said Division Bench judgment in S.L.P. No. 13428 of 2010 was dismissed by the Honourable Supreme Court on 7.5.2010.

37. In this case, the collection of fees by the 36 schools, the school fee is not fixed by the Fee Committee constituted by the State Government. The learned Advocate General submitted that since the 36 schools run by respondents 7 and 8 are not recognised under the Tamil NaduRecognised Private Schools (Regulation) Act and Rules, Fee Committee has not fixed any fee to be collected from the students.

38. It is the grievance of the petitioners that exorbitant fee is being collected from the students viz., Registration fee every year, tuition fee and other fee. Since the respondents 7 and 8 are running the schools in the State of Tamil Nadu without recognition from any authority, the TamilNadu Recognised Private Schools (Regulation) Act and Rules are fully applicable to the schools run by them. As the respondents 7 and 8 are running 36 schools without permission and recognition from the competent authority, they cannot contend that any fee can be fixed to the students in respect of their schools. The said stand is virtually defeating the object of the Act 22 of 2009 (Tamil Nadu Act), which was already upheld by the Supreme Court.

39. The respondents 7 and 8 though have a right to establish educational institutions under Article19(1)(g) of the Constitution of India, the said right can be exercised subject to Acts, Rules and Regulations, which are held reasonable restrictions in terms of Article 19(6) of the Constitution of India. Even the respondents guaranteed to minorities under Article 30(1) of the Constitution of India is subject to regulatory measures and no one can claim that one has got absolute right to establish educational institutions without recognition from the competent authority.

40. In short, the contention of the respondents 7 and 8 seems to be that they will not be subjected to any law till the schools are admitting students in VI standard and above and they can collect any amount of fee as they think and no one is vested with any jurisdiction to interfere in their 36 schools which are established and is being administered from 2009 onwards. The said contention is definitely in violation of the statutory provisions stated supra and the respondents 1 to 4 who are the controlling authorities of school education in Tamil Nadu are bound to initiate action in accordance with law.

41. How the State should behave in the matter of education is explained by the Honourable Supreme Court in the decision reported in  : 2011(8) SCC 737 State ofTamil Nadu vs. K. Shyam Sunder. In paragraph-86, it is held thus:

86. The State Government should have acted bearing in mind that "destiny of a nation rests with its youths". Personality of a child is developed at the time of basic education during his formative years of life. Their career should not be left in dolorific conditions with uncertainty to such a great extent. The younger generation has to compete in global market.Education is not a consumer service nor can the educational institution be equated with shops, therefore, "there are statutory prohibitions for establishing and administering educational institutions without prior permission or approval by the authority concerned.

42. The contention of respondents 9 and 10 that if the schools are not permitted to run the students already admitted will be affected is not a ground to be accepted by this Court or the Department. Section 5 of the Act 35 of 2009 enables the parents to get transfer to nearby schools as a matter of right and no student shall be denied admission even during the extended period as per Section 15 of the said Act.

43. For the foregoing reasons, this Court is of the firm view that the petitioners have made out a case for taking appropriate action against 36 schools run by the respondents 7 and 8, by respondents 1 to 4. Hence, a direction is issued to the respondents 1 to 4 to initiate action against 36 schools in compliance with the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules 1974 and Code of Regulations for approved Nursery and Primary Schools in Tamil Nadu notified in G.O.Ms. No. 484, Education Department, dated 24.4.1991 and relevant laws within four weeks. As the petitioners are objecting the exorbitant demand of fees from their children, the respondents 7 and 8 are restrained from demanding any further fee from the petitioners till action is taken by respondents 1 to 4.

The writ petition is partly allowed with the above directions. No costs. Connected miscellaneous petitions are closed.