

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (C) No. 5455 of 2019

Jharkhand Private School Association, Ranchi, a Society registered under the Societies Registration Act, 1860, having its registered office at Sanjay Gandhi Memorial College Gate, Pandra, P.O. Kamre, P.S. Pandra O.P., District Ranchi-835222; through its General Secretary, Ramranjan Kumar Singh, aged about 61 years, son of late Bashistha Narayan Singh, resident of Thanapara, Pakur, P.O. and P.S. Pakur, District- Pakur, PIN 816107.

.... ... Petitioner

Versus

1. The State of Jharkhand, through the Principal Secretary, Department of School Education and Literacy, having its office at MDI Building, Besides Project Building, Dhurwa, P.O. and P.S. Dhurwa, District-Ranchi-834004.
2. Deputy Secretary, Department of School Education and Literacy, having its office at MDI Building, Besides Project Building, Dhurwa, P.O. and P.S. Dhurwa, District-Ranchi-834004.
3. District Superintendent of Education, Pakur, P.O. and P.S. Pakur, District Pakur.
4. District Superintendent of Education, Dhanbad, P.O. and P.S. Dhanbad, District Dhanbad.
5. District Superintendent of Education, Palamau, P.O. and P.S. Daltonganj, District Daltonganj. Respondents

With

W.P.(C) No. 4972 of 2019

Jharkhand Gair Sarkari Vidyalay Sangh having its office at Sana Complex, Sakchi, P.O. & P.S. Sakchi, Town Jamshedpur, District East Singhbhum through its President Md. Tahir Hussain, aged about 37 years, son of Sohrab Ahmed, resident of House No. 43A, Road No. 13, Taiwa Nagar, Jawahar Nagar, P.O. Azad Nagar, P.S. Mango, Town Jamshedpur, District East Singhbhum Petitioner

Versus

1. The State of Jharkhand
2. Secretary-cum-Commissioner, Department of Human Resources, Government of Jharkhand, having its office situated at Project Building, P.O. & P.S. Dhurwa, Town and District Ranchi.
3. Director of Primary Education, Human Resource Development Department (Directorate of Primary Education), Jharkhand Government,

having its office situated at Project Building, P.O. & P.S. Dhurwa, Town and District Ranchi.

4. District Superintendent of Education, East Singhbhum, Jamshedpur, having its office situated at Stocking Road in front of Blood Bank, CH Area, P.O. & P.S. Bistupur, Town Jamshedpur, District East Singhbhum

... .. Respondents

With

W.P. (C) No. 5559 of 2019

Jharkhand Private School Trust, Hazaribag having its office at I.G.M. Public School, Mandai Kalan, P.O., P.S. & District- Hazaribag, through its Secretary Prabhu Dayal Mahto aged about 53 years, son of Bhatu Mahto, resident of Sarouni Kala, Rolla Barkagaon, P.O.- Rolla, P.S. & District- Hazaribag.

.... ... Petitioners

Versus

1. The State of Jharkhand through the Principal Secretary, Human Resource Development Department, Govt. of Jharkhand, having its Office at Project Bhawan, P.O. & P.S.- Dhurwa, District-Ranchi.
2. The Director, Human Resource Development Department (Primary Education), Govt. of Jharkhand, having its Office at Project Bhawan, P.O. & P.S.- Dhurwa, District-Ranchi.
3. The District Superintendent of Education, Hazaribag, P.O.,P.S. & District- Hazaribag.

... .. Respondents

With

W.P.(C) No. 5966 of 2019

1. Akhilesh Kumar Giri, Aged about 48 years, son of Late Munilal Giri, Resident of Simaldih P.O. Damodarpur, P.S. Dhanbad, District- Dhanbad, President, Private School Association, Jharkhand having office at East End Convent, Bhuda, Dhanbad, P.O. & P.S. Dhanbad, District- Dhanbad.
2. Anil Kumar, Aged about 43 years, son of Late Rama Singh, Resident of New Colony, Duhatand, P.O. Dhanbad, P.S. Dhansar District- Dhanbad, Assistant Secretary, Private School Association, Jharkhand having office at East End Convent, Bhuda, Dhanbad, P.O. & P.S. Dhanbad, District- Dhanbad

.... ... Petitioners

Versus

1. State of Jharkhand.

2. Principal Secretary, School Education and Literacy Department having office at Project Building, P.O. & P.S. Dhurwa, District-Ranchi.
3. Director, Primary Education, School Education and Literacy Department having office at Project Building, P.O. & P.S. Dhurwa, District-Ranchi.
4. Deputy Commissioner-cum-Chairman, District Elementary Education Committee, Dhanbad, P.O. & P.S. Dhanbad, District-Dhanbad.
5. District Superintendent of Education-cum-Secretary, District Education Establishment Committee, P.O. & P.S. Dhanbad, District-Dhanbad.
6. Chairman, Jharkhand Academic Council having office at Gyandeep Campus, Bargama, Namkum, P.O. & P.S. Namkum, District-Ranchi.
7. Secretary, Jharkhand Academic Council having office at Gyandeep Campus, Bargama, Namkum, P.O. & P.S. Namkum, District-Ranchi.

... .. Respondents

With

W.P.(C) No. 6097 of 2019

Ram Prakash Tiwari aged about 45 years Son of Late Jeet Narayan Tiwari, Post- Kendriya Adhyaksh, Jharkhand Gair Sarkari School, Sanchalak Sangh, having registered office at Swarnima Academy Parisar, Boreya, Kanke, P.O. & P.S.- Kanke, Ranchi-834006, State-Jharkhand

.... ... Petitioner

Versus

1. State of Jharkhand, through the Principal Secretary, Department of School Education and Literacy, Jharkhand Government having its office at MDI Building Besides Project Building, Dhurwa, P.O. and P.S. Dhurwa, District Ranchi-834004.
2. Deputy Secretary, Department of School Education and Literacy, Jharkhand Government having its office at MDI Building, Besides Project Building, Dhurwa, P.O. and P.S. Dhurwa, District Ranchi-834004.
3. District Superintendent of Education, Ranchi having its office at Collectorate Building, Block-A, Room No. 206, P.O.- G.P.O., P.S.- Kotwali, District- Ranchi.
4. District Superintendent of Education, Pakur, having its office at Pakur, P.O. & P.S.- Pakur, District- Pakur.
5. District Superintendent of Education, Dhanbad, having its office at Dhanbad, P.O. & P.S.- Dhanbad, District- Dhanbad.

6. District Superintendent of Education, Sahibganj, having its office at Sahibganj, P.O. & P.S.- Sahibganj, District- Sahibganj

... .. Respondents

With

W.P.(C) No. 6652 of 2019

Private Schools and Children Welfare Association, Deoghar through its President Jaya Verma age-46 years w/o Raj Kumar Verma R/o Williams Town, P.O., P.S. & Dist-Deoghar

.... ... Petitioner

Versus

1. State of Jharkhand through the Principal Secretary, Department of School Education and Literacy, having its office at MDI Building, Besides Project building, Dhurwa, P.O. & P.S. Dhurwa, Dist-Ranchi.
2. Deputy Secretary, Department of School Education and Literacy, having its office at MDI Building Besides Project building, Dhurwa P.O. & P.S. Dhurwa, Dist-Ranchi
3. District Superintendent of Education, Deoghar, P.O. & P.S. & Dist-Deoghar.

... .. Respondents

With

Cont. (Civil) Case No. 281 of 2025

Ram Prakash Tiwari, aged about 51 years, Son of Late Jeet Narayan Tiwari, Post- Kendriya Adhyaksh, Jharkhand Gair Sarkari School, Sanchalak Sangh, Having registered office Swarnima Academy Parisar, Boreya, Kanke, P.O. & P.S.-Kanke, Ranchi, (Jharkhand)

.... ... Petitioner

Versus

1. The State of Jharkhand
2. Sri Umashankar Singh, Deputy Secretary, Department of School Education and Literacy, Jharkhand Government, Father's name not known to the petitioner, having its office at-MDI Building, Besides Project Building, Dhurwa, P.O.+P.S. –Dhurwa, District- Ranchi-834004

... .. Respondents

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner(s): Mr. Ajit Kumar, Sr. Advocate
M/s Sumeet Gadodia, Ritesh Kumar Gupta,
Rishav Kaushal, Aditya Kumar, Rupendra Prasad,

	Rajiv N. Prasad, Bhanu Kumar, Bharti Kumari, Abhay Kumar Singh, Rajesh Kumar, Onkar Nath Tewary, Shahid Yunus, Manoj Kumar Sinha, Talat Parween, Seema K. Singh, Krishna Prajapati, Tanya Singh, Advocates
For the State:	M/s D.P. Mishra (AAG-I), Sachin Kumar (AAG-II), Gaurav Raj (AC to AAG-II), Ashok Kumar (AAG-IV), Faisal Allam (A.C. to S.C. Mines-III), Rakesh Kumar Shahi [AC to SC (L&C)-1], Awanish Shekhar (A.C. to AAG-I),
For the JAC:	M/s Richa Sanchita, Suman Roy, Advocates

<u>Reserved on: 20.03.2025</u>	<u>Pronounced on: 02 / 05 /2025</u>
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M.S. Ramachandra Rao, C.J.(Oral)

1. Since common questions of law arise for consideration in this batch of cases, they are being disposed of by this common order.
2. The basic facts as in W.P.(C) No. 5455 of 2019 are set out below.
3. The said Writ petition is filed by the Apex Association of Private Schools registered under the Societies Registration Act, 1860 operating in the State of Jharkhand.
4. All the members of the said Society are Private School Managements running schools in various districts of the State of Jharkhand and the private schools run by them have been granted from time to time recognition by the State of Jharkhand under a Code known as Unified District Information System of Education (U-DISE).

Back ground facts

5. The 86th Constitutional Amendment Act, 2002 inserted Article 21A in the Constitution of India with an object to provide free and compulsory education to all children of age groups of 6-14 years and this was also recognized as ‘fundamental right’ under Article 21A of the Constitution of India.

The Right of Children to Free and Compulsory Education Act, 2009

6. Pursuant to the said Constitutional Amendment, the Right of Children to Free and Compulsory Education Act, 2009 (for short ‘**the Act**’) had been enacted. It casts obligation upon appropriate State Government to provide for and ensure compulsory education to children belonging to the age groups of 6-14 years for providing free education if they had not been admitted to school by their parents or if parents are not able to support the educational expenses of their children.

7. Under Section 18 of the said Act, it is mandated for all schools to obtain recognition from the appropriate government or local authority in such form and manner as may be prescribed.

8. A Recognition certificate could be issued under Section 18(2) of the Act in favour of schools only upon fulfillment of norms and standards specified under Section 19 thereof.

9. Section 20 of the Act confers on the Central Government the power to amend the Schedule by adding or omitting therefrom any norms and standards and the said Schedule prescribes norms and standards for the school.

10. Section 38 of the said statute enables the appropriate Government, by notification, to make rules for “carrying out the provisions of the Act”.

The 2011 Rules

11. In exercise of the said power conferred by Section 38 of the Act, the State of Jharkhand framed the Jharkhand Right of Children to Free and Compulsory Education Rules, 2011 (for short ‘*the 2011 Rules*’).

12. Rule 12(7) of the said Rules (as framed in 2011) stated that ‘*schools established after the commencement of Act shall have to conform to the norms,*

standards and conditions mentioned in the schedule to the Act in order to qualify for recognition under the Rules’.

The 2019 amendment to the 2011 Rules

13. The State of Jharkhand issued a notification in Memo No. 629 dt. 25.4.2019 amending the 2011 Rules vide “*Jharkhand Right of Children to Free and Compulsory Education (First Amendment) Rules, 2019.* (for short ‘2019 Amendment’)

A. New requirement of application fee and security deposit added in 2019

14. Rule 12(1) of the 2011 Rules as it originally stood is as under:

“12. **Recognition of schools.**

(1) Every category of schools established before the commencement of the Act shall make a self declaration within a period of three months from the notified date in Form 1 to the concerned District Education Superintendent regarding its compliance or otherwise with the norms and standards specified in the Schedule of the Act and fulfillment of the following conditions namely –

- (a) That the school is run by the State Government or a society registered under the Societies Registration Act, 1860 (21 of 1860), or a public trust constituted under any law for the time being in force;*
- (b) That the school is not run for profit to any individual, group or association of persons;*
- (c) That the school conforms to the values enshrined in the constitution;*
- (d) That the school building or other structures or the grounds are used only for the purposes of education and skill development;*
- (e) That the school is open to inspection by any Officer authorized by the State Government or Local Authority;*
- (f) That the school shall furnish such reports and information as may be required and comply with such instructions of the State Government or Local Authority as may be issued to secure the continued fulfillment of the condition of recognition.”*

15. Clause (g) was added by the 2019 amendment to Clause 12(1) after clause

(f) . The English translation of the same is as under:

“that the arrangement for online application from schools for recognition would be made soon; and Offline application will be accepted till this arrangement comes into effect. Applications/inspection fee will be Rs. 12500/- (twenty thousand five hundred rupees) for class 1 to 5 and Rs. 25000/- (twenty five thousand rupees) for class 1 to 8, which will be non refundable. The amount will be deposited by the concerned school through treasury challan and a copy of the challan will have to be submitted in the District Superintendent of Education office along with the application.”

The head under which the said fee was to be deposited was also mentioned.

16. There was a further addition by a clause in Section 12(1) of a provision for making a mandatory fixed deposit of Rs. 1,00,000/- (one lakh rupees) by an applicant for recognition of a school in the name of the said school as a permanent security fund, and mandating its photocopy to be submitted to the office of the competent authority for information.

B. New requirements as to ownership/lease hold/extent of land etc added

17. Sub Rule (7) of Rule 12 in the 2011 Rules (as it originally stood) stated that *“every school established after the commencement of the Act, shall have to conform to the norms, standards and conditions mentioned in the schedule to the Act in order to qualify for recognition under the Rules”*.

18. Clauses (a) to (j) were added in sub-rule (7) of Rule 12 on the ground that under Section 19 and 25 of the Act, provision for playground and boundary wall has to be made in Schedule 2 (vi) and (vii) of the standards and norms prescribed for the school.

19. But since Clauses (e) to (j) introduced by 2019 Rules are not in challenge in these cases, we are not referring to the same and *we are referring only to those clauses (a) to (d) which have been challenged*. They state:

“(a) For establishing a school, the land must be registered in the name of the school.

(b) *In case of non-availability of registered Sale Deed of the land in the name of the school, it will be mandatory to have a registered Lease Deed of at least 30 years in the name of the school. The certificate related to the land will be obtained from the District Registration Office in the prescribed form and should be attached with application form.*

(c) *In case of middle school, 0.75 acre in urban area and 1.00 acre in rural area.*

(d) *In case of primary school, 40 decimal in urban areas and 60 decimal in rural areas.*

(e) to (j) ”

C. Expansion of the Committee for considering recognition of private schools

20. Sub Rule (8) of Rule 12 in the 2011 Rules mentioned that “*the District Education Superintendent shall issue order regarding recognition of any school only after getting approval of the State Government*”.

21. This was substituted in 2019 by way of amendment after deleting the Sub-Rule (8) of Rule 12 as framed in 2011 in the following manner:-

“ (8) (i) *The recognition of non-government private schools will be considered in the District Elementary Education Committee. The District Elementary Education Committee will be constituted in the following manner-*

- a) *Deputy Commissioner-Chairman.*
- b) *Deputy Development Commissioner-Member*
- c) *District Education Officer-Member*
- d) *District Education Superintendent is- Member Secretary.*
- e) *District School Inspector-Member.*
- f) *Sub-Division Education Officer-Member.*
- g) *Four (04) MLAs/MPs nominated by the State Government (This will be covered under paragraph-5(iii)).*
- h) *3 members interested in education who belong to that district will be nominated by the Chairman of the Committee.*

(ii) *Besides this, if the Deputy Commissioner wishes, the Chairman of the Zila Parishad, or a technical officer of the Right to Free and Compulsory Education Rules and a competent revenue officer such as Additional Collector (Revenue) may be special invitee members, who will be responsible for verification of the reported plot etc.*

- (iii) *All MLSs/MPs of the district will be invited.*
- (iv) *Generally the post of Sub-Divisional Education Officer remains vacant and in order to have adequate representation in the Education Department, it can also be abolished.”*

Contentions of counsel for petitioners

22. Sri Ajit Kumar, Senior Counsel and Sri Sumeet Gadodia, counsel for the petitioners contended that the amendments made in Sub Rule (1) of Rule 12, clause (a) to (d) of Sub Rule (7) of Rule 12 and the amendment made to Sub-Rule (8) of Rule 12 of the 2011 Rules by the 2019 amendment have to be struck down.

23. It is contended that under 2011 Rules no fee was originally prescribed for making application seeking recognition and it was the responsibility of the State to grant recognition by fulfilling its statutory duty, but in the 2019 amendment, the respondents have prescribed a very high and exorbitant inspection fee of Rs.12,500/- and Rs.25,000/- respectively apart from a fixed deposit of Rs.1,00,000/-.

24. It is contended that the Act did not empower or authorize the State to realize any application fee or inspection fee from a schools for processing application of such school for grant of recognition; and in the absence of such enabling power contained under the Act for demanding such levy or fee, the said provision compelling the private school managements to pay the amount of Rs. 12,500/- or Rs. 25,000/- along with a fixed deposit of Rs. 1,00,000/- would be wholly without jurisdiction.

25. Alternatively, it is contended that the said rate fixed is exorbitant and confiscating, and on that ground also, it is liable to be struck down particularly when such amount is being charged *every year* for grant of recognition.

26. Coming to the amendment made to clause (7) of Rule 12 prescribing conditions relating to the land on which the private school is to be run, it is contended that the requirement prescribed under the 2019 Amendment is beyond the delegated power being exercised by the State under the Act and is *ultra vires* to the provisions of Section 18 to 20 of the Act.

27. It is contended that the statute did not prescribe any minimum criteria of the area of land required to be possessed by a private school, whether for middle or primary school, for establishment in urban and/or rural area, and so the prescription of minimum area of land under the amended rule is *ultra vires* the Act and beyond the legislative competence of the State.

28. It is pointed out that the Schedule to the Act mentioned that the school should have a playground and should make an arrangement of securing the school building by boundary wall or fencing, and the extent of land over which the school has to be situated or whether it should to be owned by the private school or the duration of the lease for the land where the school is situated, ought not to have been prescribed.

29. It is contended that under Section 20 of the Act only the Central Government can amend the schedule and when it has not done so, the State Government cannot make such amendments.

30. As regards to the amendments made in 2019 to sub rule (8) of Rule 12, it is contended that prescription of more than 15 persons therein for forming the District Elementary Education Committee, which would be considering grant of recognition to non-Government private schools, causes grave hardship because it involves the participation of Members of the Legislative Assembly and Members of Parliament and several Government Officials; that if any of the

posts of the Government Officials are unfilled, or if the officers mentioned are not available, or if the members of the Parliament and members of the Legislative Assembly are not available prior to the beginning of the academic year when such applications for recognition are usually made, it would be difficult for the full committee to meet and much inconvenience would be caused to the applicants for recognition of schools.

31. It is contended that the State ought to have at least prescribed a minimum quorum for the said Committee considering the large number of private schools as they exceed more than 10000 in State and keeping in mind the fact that the said exercise needs to be done every year.

32. It is contended that prescribing such a large number of persons to be the members of the Committee, which would consider applications for grant of recognition, will undoubtedly delay the process of decision making regarding the grant of recognition to private schools.

33. Counsel for the petitioners has placed reliance on the following decisions:-

*Society for Unaided Private Schools of Rajasthan v. Union of India and another*¹, *State of Kerala v. Mythri Vidya Bhavan English Medium School*², *State of Kerala and another v. Mythri Vidya Bhavan English Medium School and others*³, *Kerala Samsthana Chethu Thozhilali Union v. State of Kerala and Others*⁴, *Cellular Operators Association of India and others v. Telecom Regulatory Authority of India and others*⁵, *Global Energy Limited and*

¹ (2012) 6 SCC 1

² 2012 SCC OnLine Ker 21698

³ 2018 SCC OnLine 481

⁴ (2006) 4 SCC 327

⁵ (2016) 7 SCC 703

*Another v. Central Electricity Regulatory Commission*⁶, *Punjab Association v. Director of Matriculation Schools*⁷, *Sunil Kumar Kori and Another v. Gopal Das Kabra and Others*⁸ and *TISCO Limited and Another v. State of Bihar and Ors*⁹, *Corporation of Calcutta and another v. Liberty Cinema*¹⁰ and the decision of the Division Bench of Punjab & Haryana High Court in 2014 SCC OnLine Punjab & Haryana 8180.

34. Counsel also reiterated that an interim order had been issued on 21.10.2019 and on 22.8.2023 in WPC No. 4972 of 2019, 5559 of 2019, 5966 of 2019, 6097 of 2019, 6652 of 2019 and 5455 of 2019 mandating that no coercive steps should be taken against the members of the petitioners' association, but the members of the petitioners' association are being harassed by the respondents by issuing certain notifications on 10.12.2024 and 24.12.2024.

35. It is further contended by the counsel for the petitioners that only the private schools are being compelled to follow the above norms. They point out that the norms prescribed in the 2019 Rules are being fulfilled by only 17983 Government Schools out of 32741 Schools in State of Jharkhand in 2018-2019, and the respondents cannot be permitted to discriminate in the application of the 2019 Rules by enforcing them only against the private schools and not applying them to the Government schools which have not fulfilled the norms. Reference is made to Annexure-10 in W.P.(C) No. 5455 of 2019 wherein the above information was furnished under the Right to Information Act to the petitioner on 24.9.2019.

⁶ (2009) 15 SCC 570

⁷ W.P.No. 14498 of 2016 (Madras High Court)

⁸ (2016) 10 SCC 467

⁹ (2018) 12 SCC 107

¹⁰ AIR 1965 SC 1107

Stand of the State Government

36. In the counter affidavit filed on behalf of the State Government by the Under Secretary to the Primary Education Department, it is contended that under clause (h) of sub-section (2) of Section 38 of the Act, the State Government is empowered to make rules by notification with regard to the form, the period, the manner and conditions for issuing certificate of recognition under sub-section (2) of Section 18 of the Act, and that under clause (g) of sub-section (2) of Section 38, it is also empowered to prescribe form and manner of making application for certificate of recognition, under sub-section (1) of Section 18.

37. It is contended that Rule 12 is framed under Section 38 of the Act; that the State has the power to decide the procedure for making applications for recognition under Rule 12 of the Rules framed under the Act by the State including levying of minimum fee as well as fixed deposit for application for recognition by the private schools.

38. It is contended that the prescription of the minimum fee and the fixed deposit is to ensure that frivolous and uninterested applicants do not submit applications for recognition as it would lead to wastage of time as well as the resources of the government.

39. While admitting that the norms laid down would apply to Government schools also apart from private schools, it is contended that the petitioners cannot question the jurisdiction and power of the State Government to make or amend the rules laying down norms for recognition.

40. It is contended that the subject of Education is in the Concurrent list and the amendments made in 2019 cannot be said to have encroached upon the power and jurisdiction of the Central Government under the Act.

41. It is contended that there is a tendency of private schools being opened in large numbers without requisite infrastructure, capacity to impart education and accommodate enough students; that parents of such students who are admitted in the schools are duped by the private school owners; and to cut short the malpractices and exploitation done by the private schools, the State Government has laid down the norms to protect the right of children and parents under the Act.

42. Reliance is also placed on the norms laid down in Uttar Pradesh and Andhra Pradesh for running a private school where minimum area of land required to set up the school based upon minimum student area, size of each classroom, have been prescribed.

43. It is also defended that right to use any immovable property or land for the purpose of school by the Managing Committee of a private school has to be through a valid registered sale deed; that there are Tenancy Laws in the State of Jharkhand prohibiting transaction of certain category of lands; in such properties, private school cannot be run; and registration of such agreement or lease deed is also mandatory under the Transfer of Property Act, 1882.

44. It is stated that the amendment to Rule 12 made by 2019 Rules is to ensure transparency, fairness, accountability and uniformity across all the Districts with respect to the procedure of recognition of private schools and control individual decentralized decision making, leading to ambiguity and difference in the procedure eventually converting into litigation.

45. It is denied that the provisions contained in Section 20, which confers power on the Central Government to amend the schedule by adding to or omitting therefrom any norms and standards, restricts the power of the State Government to amend the norms and standards given in the schedule.

46. It is also contended that there is immunity conferred by Section 37 of the 2009 Act of actions taken in good faith by the Central Government, State Government etc., and, therefore, amendment made to the Rules prescribed under the Act by the State of Jharkhand exercising power under Section 38 of the Act, cannot be interfered with.

47. It is contended that the Court cannot substitute its wisdom for the Government on the ground that a better formula or public policy could be evolved; that the Executive authority of the State is competent to frame a policy; and the Court cannot interfere with such policy unless it is patently arbitrary and capricious thereby offending Article 14 of the Constitution or where there is a conflict with any statutory or constitutional provision.

48. It is stated that there is limited judicial review in policy related matters and reliance is made on the judgments of the Supreme Court in *Union of India and others v. M Selvakumar and anr*¹¹, *State of Himachal Pradesh & Others v. Himachal Pradesh Nizi Vyavsayik Prishikshan Kendra Sangh*¹² and the judgment of the Madras High Court in *Parents Union for Students Educational Rights v. State of Tamil Nadu*¹³. It is contended that the petitioners are not entitled to any relief and the Writ petitions should be dismissed.

¹¹ (2017) 3 SCC 504

¹² (2011) 6 SCC 597

¹³ W.P. No. 13536 of 2014

49. It is also contended that there is no contempt committed by the respondents in encouraging private schools to apply for recognition as per the norms prescribed in the 2019 amendments and no contempt has been committed by the respondents of the interim order prohibiting taking of coercive steps passed by this Court.

The direction of this Court on 5.3.2021

50. During the course of the hearing of these Writ petitions on 5.3.2021, this Court directed the respondents to file supplementary counter affidavit on the following aspects:

- (a) *What is the extent of tribal and non-tribal lands available in the State of Jharkhand and in non-tribal land, what is the figure which is available for such type of activity barring the forest area and other prohibited areas?*
- (b) *Whether the Government schools are also following the norms and satisfying the amended provisions?*
- (c) *If yes, then the details should be given especially when the petitioner has brought on record the information given under the Right to Information Act that more than 50% of the Government Schools of the State of Jharkhand are not having play grounds.*
- (d) *In such a situation, if Governments schools themselves are not fulfilling the criteria, but they are allowed to run, whether it would be reasonable and not arbitrary to expect everything from the private institutions or minority institutions whatever the case may be?*

First Supplementary affidavit filed by State

51. In response thereto, a supplementary counter affidavit is filed by the State Government contending that:

- (i) the total tribal area in the State is 35,741.66 Sq. k.m.; total non tribal area in the State is 3,98,235.44 Sq. k.m.; total non tribal area available for education purpose is 24,576.95 Sq. k.m.;
- (ii) the total number of schools in Jharkhand is more than 34850;
- (iii) the amendment of 2019 would not apply retrospectively and that they would apply only for the schools established after the making of the Rules;
- (iv) the amended rules would apply equally to government schools as they are applicable to private schools; all government schools which are currently operational in the State were built long before the amendment;
- (v) Government is taking steps for improving the infrastructure, land and play ground conditions in the Government schools under school consolidation which was done in two phases in 2018-2019 ;
- (vi) and such consolidated schools are 4,600;
- (vii) that the State is in the process of rolling out scheme of School of Excellence called Leader Schools with proper infrastructure in consonance with the Act and the Constitutional mandates in a phased manner.

52. It is pointed out that State of Gujarat and Haryana have also prescribed minimum per student area and size of the class room as well as condition for providing recognition to private schools and that the High Court of Punjab & Haryana in the case of *Balraj Singh and another v. State of Punjab and*

*another*¹⁴ had upheld the actions of the State Government for closing down of the schools which did not adhere to the norms which made by the Government under the Act.

53. It is pleaded that the rules and regulations formulated by the State Government with respect to minimum area of land and adequate play ground requirement are in consonance with the CBSE Affiliation Rules as similar norms are prescribed by the CBSE as well.

Second Supplementary affidavit filed by State

54. The Secretary of Department of School Education and Literacy of the Government of Jharkhand filed another supplementary counter affidavit on 16.11.2022.

55. He first referred to the settled legal principle that Right to Education is a fundamental right and part of the right to life and liberty guaranteed under Article 21 of the Constitution of India; and that Article 21A introduced by the 86th Amendment Act, 2002 of the Constitution of India on 12.12.2002 created a fundamental right for free and compulsory education to all children of the ages of 6 to 14 years; and this is implemented through the 2009 Act.

56. Reference is made to the judgment of the Supreme Court in *Society for Unaided Private Schools of Rajasthan (1 supra)* which upheld the validity of 2009 Act.

57. It is contended that that there is no merit in the plea of the petitioners' Association that the State Government had exceeded its jurisdiction while making amendments to the 2011 Rules.

¹⁴ C.W.P. 7388 of 2010

58. It is contended that the Screening Committee was constituted under the Chairmanship of the Director, Primary Education on 23.6.2016; the said Committee decided to procure information regarding ownership and area of private schools; that it also looked into the rules of affiliation/recognition followed by CBSE, ICSE and other States with regard to ownership and area requirement; meetings were also held with the Principals of schools affiliated to CBSE/ICSE and representatives of 29 out of 86 such schools attended the meeting.

59. It is contended that all the private schools are required to obtain recognition from the Government under the provision of 2009 Act, but schools having recognition for Classes 1 to 10 or 12 are not required to obtain such recognition; after due deliberations, the Screening Committee decided to lay down terms, conditions, rules and procedure requirement with respect to the registration, ownership and the area of the schools seeking recognition from the State Government. It is stated that the Rules were notified after being approved by the Cabinet.

60. It is contended that the petitioners cannot challenge the prescription of fees of Rs. 12,500/- and Rs. 25,000/- as the State machinery would have to be deployed for processing, filtering, inspecting and visiting the school seeking recognition within the State.

61. The stand taken in the earlier counter affidavits is again reiterated and therefore, it is not being referred to avoid repetition.

Consideration by the Court

62. In these Writ Petitions certain amendments made in 2019 vide The Jharkhand Right of Children to Free and Compulsory Education (First

Amendment) Rules, 2019 through a notification issued bearing memo No. 629 dt. 25.04.2019 amending the Jharkhand Right of Children to Free and Compulsory Education Rules, 2011, are in challenge.

63. These Rules, according to the respondents have been made in exercise of power conferred on the State Government under Section 38 of Clause (h) of the Act.

64. Section 38(1) permits the State Government, by notification to make rules for carrying out the provisions of the Act and Clause (h) of Sub Section (2) enables the State Government to prescribe the *form, the period, the manner and the conditions for issuing certificate of recognition under Sub Section (2) of Section 18.*

65. Sections 18 and 19 state as under:

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

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

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

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

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

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

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

(5) Any person who establishes or runs a school without obtaining certificate of recognition, or continues to run a school after 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 18 shall 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)

66. There is a Schedule to the Act prescribing the norms and standards for a school. It enumerates the norms and standards for buildings and prescribes that there should be all-weather building consisting of—

- (a) at least one class-room for every teacher and an office-cum-store-cum-Head teacher’s room;
- (b) barrier-free access;
- (c) separate toilets for boys and girls;
- (d) safe and adequate drinking water facility to all children;

- (e) a kitchen where mid-day meal is cooked in the school;
- (f) playground;
- (g) arrangements for securing the school building by boundary wall or fencing.

67. Under Section 20 the Central Government is permitted to amend the Schedule by adding to, or omitting therefrom any norms and standards.

68. No doubt normally policy decisions cannot be interfered with by the Courts as contended by the respondents. But there is no absolute immunity to policy decisions in our jurisprudence.

69. In *Vishal Tiwari (Adani Group Investigation) v. Union of India and others*¹⁵ it was held as under:

“17. From the above exposition of law, the following principles emerge:

(a) Courts do not and cannot act as appellate authorities examining the correctness, suitability, and appropriateness of a policy, nor are courts advisors to expert regulatory agencies on matters of policy which they are entitled to formulate;

(b) The scope of judicial review, when examining a policy framed by a specialised regulator, is to scrutinise whether it : (i) violates the fundamental rights of the citizens; (ii) is contrary to the provisions of the Constitution; (iii) is opposed to a statutory provision; or (iv) is manifestly arbitrary. The legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review;

(c) When technical questions arise — particularly in the domain of economic or financial matters — and experts in the field have expressed their views and such views are duly considered by the statutory regulator, the resultant policies or subordinate legislative framework ought not to be interfered with;

(d) ...” (emphasis supplied)

Similar view was taken in *Federation Haj PTOs of India v. Union of India*¹⁶. It was held:

¹⁵ (2024) 4 SCC 115

“19. The scope of judicial review is very limited in such matters. It is only when a particular policy decision is found to be against a statute or it offends any of the provisions of the Constitution or it is manifestly arbitrary, capricious or mala fide, the Court would interfere with such policy decisions.” (emphasis supplied)

Validity of prescription of application/inspection fee/security deposit

70. Firstly we shall deal with the prescription of norms for application/inspection fee amounting to Rs. 12,500/- for Classes 1 to 5 and Rs. 25,000/- for Classes 1 to 8 which is to be non-refundable introduced by amending Rule 12(1) by adding a clause to the original Rule as made in the year 2011 i.e. Clause (ए) in Rule 12(1); and also Clause (क) introducing the security deposit requirement of Rs.1,00,000/-.

71. In the supplementary counter affidavit dt. 16.11.2022 filed by the Secretary of the Department of School Education and Literacy of the Government of Jharkhand, these are justified on the ground that the inspection fee is required as the State machinery would have to be deployed on processing, filtering, inspecting and visiting the school seeking recognition within the State.

72. However, as pointed out by the counsel for the petitioners there is no provision in the Act empowering the State Government to impose such an inspection fee or demand a security deposit, and in the absence of any power conferred on the State Government under the statute to levy such inspection fee or security fee, the question arises whether such imposition is valid.

73. It is settled law that the expression ‘fee’ is also comprehended in the expression ‘tax’ for purpose of Article 265 of the Constitution of India which prescribes that “*no tax is levied or collected except by the authority of law*”.

¹⁶ (2020) 18 SCC 527, at page 535

74. In *CIT Vs. MacDowell and Company Limited*¹⁷ the Supreme Court held while interpreting Article 366 (28) and also Article 265 of the Constitution of India that ‘Law’ in the context of Article 265 means an Act of legislature and cannot comprise an executive order or rule without express statutory authority; the term ‘Tax’ under Article 265 read with Article 366(28) includes imposts of every kind i.e. *tax*, *duty*, *cess* or *fees*. The Supreme Court held:

“21. “Tax”, “duty”, “cess” or “fee” constituting a class denotes to various kinds of imposts by State in its sovereign power of taxation to raise revenue for the State. Within the expression of each specie each expression denotes different kind of impost depending on the purpose for which they are levied. This power can be exercised in any of its manifestation only under any law authorising levy and collection of tax as envisaged under Article 265 which uses only the expression that no “tax” shall be levied and collected except authorised by law. It in its elementary meaning conveys that to support a tax legislative action is essential, it cannot be levied and collected in the absence of any legislative sanction by exercise of executive power of State under Article 73 by the Union or Article 162 by the State.

22. Under Article 366(28) “Taxation” has been defined to include the imposition of any tax or impost whether general or local or special and tax shall be construed accordingly. *“Impost” means compulsory levy. The well-known and well-settled characteristic of “tax” in its wider sense includes all imposts. Imposts in the context have following characteristics:*

- (i) The power to tax is an incident of sovereignty.*
- (ii) “Law” in the context of Article 265 means an Act of legislature and cannot comprise an executive order or rule without express statutory authority.*
- (iii) The term “tax” under Article 265 read with Article 366(28) includes imposts of every kind viz. tax, duty, cess or fees.*

¹⁷ (2009) 10 SCC 755

(iv) As an incident of sovereignty and in the nature of compulsory exaction, a liability founded on principle of contract cannot be a “tax” in its technical sense as an impost, general, local or special.”

(emphasis supplied)

75. This interpretation was also reiterated in ***Jindal Stainless Limited and another Vs. State of Haryana and others***¹⁸ and in ***TISCO Limited (9 supra)***.

76. Counsel for the respondents has not been able to point out any provision in the Act which empowers the State to demand Rs.25,000/- or Rs.12,500/- towards non-refundable application/inspection fee or a security deposit of Rs. 1,00,000/- by way of mandatory fixed deposit.

77. In the absence of any power conferred under the Act to levy such inspection/application fee or security deposit, the prescription of the same by the State Government by way of amendment in 2019 to 2011 Rules cannot be sustained. It would in effect amount to levy of a ‘tax’ imposed by the State which cannot be traced to the statute, and so it’s levy would violate Article 265 of the Constitution of India.

78. After all, under Section 38(1) the Government is empowered to make rules for carrying out the provisions of the Act and any Rule made under Sub Section (2) of Section 38 cannot be framed in matters that are not contemplated under the Act.

79. In ***Kerala Samsthana Chethu Thozhilali Union (4 supra)*** the Supreme Court held that in para-26, 27, 28, 37 and 38 as under:

“26. Its power, therefore, was to make rules only for the purpose of carrying out the purposes of the Act and not dehors the same. In other

¹⁸ (2017) 12 SCC 1

words, rules cannot be framed in matters that are not contemplated under the Act.

27. The State may have unfettered power to regulate the manufacture, sale or export-import sale of intoxicants but in the absence of any statutory provision, it cannot, in purported exercise of the said power, direct a particular class of workers to be employed in other categories of liquor shops.

28. The Rules in terms of sub-section (1) of Section 29 of the Act, thus, could be framed only for the purpose of carrying out the provisions of the Act. Both the power to frame rules and the power to impose terms and conditions are, therefore, subject to the provisions of the Act. They must conform to the legislative policy. They must not be contrary to the other provisions of the Act. They must not be framed in contravention of the constitutional or statutory scheme.

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37. Furthermore, the terms and conditions which can be imposed by the State for the purpose of parting with its right of exclusive privilege more or less has been exhaustively dealt with in the illustrations in sub-section (2) of Section 29 of the Act. There cannot be any doubt whatsoever that the general power to make rules is contained in sub-section (1) of Section 29. The provisions contained in sub-section (2) are illustrative in nature. But, the factors enumerated in sub-section (2) of Section 29 are indicative of the heads under which the statutory framework should ordinarily be worked out.

38. Neither Section 18-A nor sub-sections (c) and (d) of Section 24 of the Act confer power upon the delegatee to encroach upon the jurisdiction of the other department of the State and take upon its head something which is not within its domain or which otherwise would not come within the purview of the control and regulation of trade in liquor. The conditions imposed must be such which would promote the policy or secure the object of the Act. To grant employment to one arrack worker in each toddy shop in preference to the toddy workers neither promotes the policy nor secures the object of the Act. It is not in dispute that the purport and object of such Rules is to rehabilitate the former employees of arrack shops.

Rehabilitation of the employees is not within the statutory scheme and, thus, the Rules are ultra vires the provisions of the Act.”

(emphasis supplied)

80. There is also another reason why the inspection fee cannot be sustained. The work of inspection being done by the respondents is only to see that the private schools fulfill the requirements provided in the Rules and in the schedule to the Act. It is not a service being rendered to the applicants for recognition to run the schools and so a ‘fee’ cannot be collected for that purpose.

81. In *Corporation of Calcutta (10 Supra)*, the Supreme Court considered the question under the Calcutta Municipal Act, 1951. Section 443 thereof and Sub Section (2) of Section 548 of the said statute empowers the Corporation to grant a licence to a person to open any cinema house for public amusement. The Corporation was permitted to charge a fee for every licence under the Act at a rate which may be prescribed.

It was contended in that case that the levy authorised by Sections 443 and 548 was a fee in return for services to be rendered and not a tax and it had therefore, to be commensurate with the costs incurred by the Corporation in providing those services and the levy of Rs. 6000/- per year as such licence fee was far in excess of those costs and for that reason invalid.

The Corporation defended the same contending that the levy was a Tax and not a fee taken in return for services and no question of its being proportionate to any costs for services arises.

The Supreme Court interpreted the provisions of Sections 443 and 548 of the Calcutta Municipal Act, 1951 and held that the Sections do not refer to the

rendering of any service by the Corporation and it cannot be said that the levy is a fee in return for services.

It held that the work of inspection done by the Corporation which is only to see that the terms of licence are observed by the licensee is not a service to him.

Therefore, the justification offered by the State Government that such amounts are required for inspection would practically amount to a tax for which there is no power conferred on the State under the Act.

The Supreme Court held:

“13. It is however said that the by-law earlier quoted requires inspection of the cinema houses by the Corporation and that that was the service that the Corporation had to render in return for the licence fee. We are unable to accept this contention. The inspection was not certainly a service to the licensee; it was necessary only to make sure that he carried out the conditions on which the licence had been granted to him. It was something to be done to control the licensee’s activities and to make him observe the conditions of the licence on pain of cancellation of the licence. This is clear from sub-section (3) of Section 548 which states that “any licence... granted under this Act may at any time be suspended or revoked ... if any of its restrictions or conditions is infringed or evaded by the grantee”. This non-observance of the conditions of the licence would expose the licensee to penalty under Section 537 of the Act. The inspection was therefore necessary also for enforcing the conditions of the licence by penalising a breach of them by the licensee. We cannot imagine that an inspection by the Corporation for such purposes can at all be said to be rendering of service to the licensee.” (emphasis supplied)

82. According to the first supplementary counter affidavit filed by the State Government there are more than 34850 schools within the State of Jharkhand. If the levy at the rates referred to above both for inspection fee and for security deposit for each school is taken into account, since it is not denied by the State

that recognition process has to be undertaken every year, it would result in a great windfall to the State which was certainly not the intention of the Parliament when it enacted the law or Right of Children to Free and Compulsory Education Act, 2009.

83. Therefore, the provisions enacted in the year 2019 Rules both with regard to the application/inspection fee of Rs.25,000 or Rs.12,500/- and the security deposit of Rs. 1,00,000/- are declared unconstitutional and are struck down.

Validity of prescription in 2019 Rules of sale deed /lease deed registration and prescription of area for starting/running a primary school/middle school.

84. The next challenge by the petitioners is to Clause (7) of Rule 12 and in particular Clause (a) to (d) thereof requiring that for establishing a school, land must be registered in the name of the school; and in absence of a sale deed, there should at least be a lease deed of 30 years in the name of the school. Also particular area for starting/running a middle school and primary school in urban area and rural area is mentioned i.e. in case of middle school 0.75 acre in an urban area and acre 1.00 in rural area; and in the case of primary school 40 decimal in an urban area, 60 decimal in a rural area.

85. The State had sought to justify the same contending that similar norms have been prescribed by the CBSE, and after discussions with the private school managements, and also after looking at the rules framed in other States like Uttar Pradesh, Andhra Pradesh, Haryana, Gujarat these requirements have been introduced.

86. We do not see anything unreasonable on the part of the State in introducing these requirements by way of amendment in 2019 in the 2011 Rules since the same do not appear to be arbitrary or unreasonable and the State Government is

empowered to prescribe such norms under Sub Section (2) of Section 18 read with Section 38(2)(h) of the Act. After all, it is necessary to ensure that the private school management is serious in establishing and continuing the school for a long period in a spacious premises so that the parents of children who study there feel secure that the school will not shut down suddenly within a short time of its establishment and their children will get to study in a spacious school which is not congested.

87. Though it is contended by the counsel for the petitioners that there are many Government schools which do not fulfill these requirements and these norms are not being applied to them, and so such requirements cannot be applied to private schools, we do not agree with the said contention. This is because, Section 18(1) specifically excludes school *established, owned or controlled by the appropriate Government or the local authority* and only private schools are required to get recognition. Therefore, the norms mentioned in Rule 12 as amended in 2019 would not apply to such schools.

88. We are not however stating that standards of Government schools need no improvement. True, necessary steps may also be required to be taken in that direction by the State Government, but that does not imply that private schools are not to comply with the mandate, when they collect more fees from the students than what is charged in the Government Schools.

89. Therefore these norms prescribed by 2019 Rules are upheld.

Validity of clause in 2019 Rules expanding membership of the District Elementary Education Committee

90. Coming to the substitution made in Sub-Rule (8) of Rule 12 in 2019 to the original Sub-Rule (8) of Rule 12 prescribing consideration by District

Elementary Education Committee of recognition of non-government private schools, it is to be noticed that the said Committee consists of several employees of the Education Department along with four Members of Legislative Assembly or Members of Parliament and three other members interested in Education who belong to that district nominated by the Chairman of the Committee.

91. All put together this makes the Committee consist of 13 people.

92. We may point out that while in principle there may be no objection as to formation of a Committee for considering the recognition of the non-Government private schools in each District, having such a large number of persons in this Committee makes it unwieldy particularly when no quorum is prescribed for the Committee to function.

93. It is possible that some of the posts mentioned in the amended Clause (8) of Rule 12 may be vacant in a particular District. Also it may not be always possible for the Members of Legislative Assembly or Members of Parliament to attend the Committee meetings.

94. Since normally, the process of recognition is undertaken in each district before the commencement of the academic year, if at that point of time there is a situation where some of the posts of Government servants mentioned in the amended clause are not vacant, then it would cause considerable inconvenience and delay in considering the applications for recognition of non-Government private schools.

95. We therefore, direct the respondents to consider amending this Rule by prescribing either a lesser number of members in the Committee or prescribing a quorum which would suffice for considering applications made for recognition by non Government private schools in any academic year so that the process of

such recognition can be taken up quickly and expeditiously and benefit the District concerned.

Other provisions

96. Though there are several provisions in the Rules which are also challenged, arguments are not advanced as regards them. Therefore, we have confined the consideration only to the above referred three provisions in 2019 amending Rules.

The Contempt Case No. 281 of 2025

97. As regards the contempt case filed by the petitioner therein is concerned, it cannot be said that there is any willful disobedience of the interim direction given by this Court not to take any coercive action against the petitioner/private school management pending the hearing of the Writ petition merely because the respondents have issued letters asking the respective schools to apply for recognition under the amended Rules.

Conclusion

98. In the result:

- (a) The Writ petitions are partly allowed;
- (b) Clause (ख) in Rule 12(1) added by the 2019 amendment to Clause 12(1) prescribing application/inspection fee and the also Clause (क) introducing the mandatory security deposit requirement of Rs.1,00,000/- as permanent security fund are struck down;
- (c) Clauses (a) to (d) of Sub Rule (7) of Rule 12 are valid;
- (d) The respondents shall consider within 8 weeks amending Sub-Rule (8) of Rule 12 (as amended in 2019) by either reducing the members

of the District Elementary Education Committee or prescribing a quorum of 5 or 6 members for its meetings, as deemed advisable.

- (e) The private schools which have not yet adhered to the 2019 amended Rules (except those norms which have now been struck down in this judgment) are granted 6 months time from today to comply with the same. This is because the academic year has already started and several students who joined such private schools will suffer if the recognition is now abruptly withdrawn on account of non-fulfilment of the norms under the 2019 amended Rules.

99. Therefore, the contempt case is closed and the Writ Petitions are partly allowed as above. No costs.

100. Pending Interlocutory Application, if any, stands disposed of.

(M. S. Ramachandra Rao, C.J.)

(Deepak Roshan, J.)

N.A.F.R.

Sharda/VK