

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

+ **W.P.(C) NO. 7802 OF 2011 & CM No.20148/2011**

% RESERVED ON: 18th January, 2012
PRONOUNCED On: 27th January, 2012

SOCIAL JURIST, A CIVIL RIGHTS GROUP ...**PETITIONER**

through : Mr. Ashok Agarwal, Ms. Kusum
Agarwal, Mr. Khagesh B. Jha,
Advocates

VERSUS

GOVT. OF NCT OF DELHI & ANR ...**RESPONDENTS**

through: Ms. Ruchi Sindhwani, Adv. for
Respondent No.1
Ms. Shobha Gupta with Ms.Hema
Shekhawat, Advs. for Respondent No.2

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI, ACTING CHIEF JUSTICE:

1. In this petition filed by the petitioner, categorizing the same as Public Interest Litigation, the petitioner complains about the following purported failures on the part of Respondent No.1, Government of NCT of Delhi:

- (i) Failure to prevent unaided recognized private schools of Delhi from admitting children below 4 years age in formal schools.
- (ii) Failure to ensure that all unaided recognized private schools in Delhi have only one year of pre primary class in formal

schools where children of 4+ age are admitted directly and are not promoted from nursery / pre-school.

- (iii) Failure to ensure that children admitted in pre primary classes are not burdened with bags and books.
- (iv) Failure to start pre primary classes in all schools.
- (v) Failure to frame guidelines in regard to pre-school in terms of Clause 21 of the Recognized Schools (Admission Procedure for Pre Primary Class) Order – 2007.

It is the submission of petitioner that the aforesaid failures and inaction on the part of Respondent No.1 violates the fundamental right of the children as guaranteed to them under Articles 14, 15, 21 and 21A of the Constitution of India. It is also termed as violative of Articles 38 and 39 of the Constitution as well as provisions of Delhi School Education Act, 1973 and The Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the RTE Act) and UN Convention Rights of Child, 1989.

2. The genesis of the controversy raised in this writ petition can be traced to the exercise which started pursuant to earlier writ petition being W.P. No. 12490/2006 filed by this very petitioner, exercise done by the Government pursuant to orders passed therein culminating in the final orders dated 26th September, 2007 and certain events which have taken place thereafter. It is now time to recapitulate all these events in brief to appreciate the cause of aforesaid grievances.

3. Writ Petition No.12490/2006 was filed by the petitioner highlighting the fact that different unrecognized private schools in Delhi were applying different age criteria for admission of children in nursery class and sought directions from this Court to the Government to ensure that all the schools follow uniform age criteria in accordance with Section 16 of the Delhi School Education Act, 1973 which provides that a child who has not attained the age of 5 years shall not be admitted in class 1 in a recognized school. Taking cognizance of the vital issue raised by the petitioner in the said writ petition, this Court constituted Ashok Ganguly Committee to look into the matter and submit its report, inter alia, ascertaining as to what should be the suitable age for a child for the purpose of admission in pre-primary. The Ashok Ganguly Committee undertook the job with alacrity and after in-depth analysis of all the facets of the issue raised on the basis of various inputs provided by experts from different fields, submitted its report dated 31st march, 2007 with certain recommendations to the Respondent No.1.

Copy of the Ashok Ganguly Report is annexed with this petition. This report is in five chapters with following headings:

- (i) Chapter I – Introduction.
- (ii) Chapter II – Present Position and some Policy Perspective.
- (iii) Chapter III – Feedback from stakeholders.
- (iv) Chapter IV – The Rationale.
- (v) Chapter V – Recommendations.

Along with the Report, there is one annexure also which stipulates “Some Guidelines for Pre Primary and Pre School

Education”. Some of the portions of the said report which were highlighted by the counsel for the parties are reproduced at this stage itself:

**“REPORT OF THE COMMITTEE ON PRE-
PRIMARY AND PRE SCHOOL
EDUCATION IN DELHI”**

Chapter – I

Introduction

- 1.1 Early Childhood Care and Education has globally been recognized as critical for human resource development. The first 8 years of a child’s life are the most crucial years because during this period of early childhood the pace of development is extremely rapid, determining the cognitive and physical growth and laying the foundation for shaping the social and personal habits and values. There is a growing body of research evidence to prove that the synoptic connections in the brain that are critical for the full development of the brain’s potential take place during the early phase of childhood.
- 1.2 Early Childhood Development includes two main aspects, i.e., care and education. Care is a comprehensive term that includes proper nutrition, medical attention particularly in regard to immunization, security and safety and emotional support. The ‘education’ component includes pre-school education programmes aimed at 3-6 year olds and extends to Class I and II to cover children upto the age of 8 under the Early Childhood Care and Education (ECCE). However it is to be clearly understood that ECCE is an integrated programme that takes into account the synergistic and interdependent relationship between health, nutrition, intellectual, social and emotional development and

education, addressing the imperative of holistic and all round development of the child.

Thus it can be seen that any discussion on pre-primary education cannot exclude other aspects of early childhood development. On the contrary an examination of issues relating to pre-primary education should necessarily focus on the developmental paradigm so that the cognitive, affective and psychomotor issues are comprehensively addressed in the context of education.

- 1.3 Changing socio-economic conditions have also thrown up new challenges. The changes in family structure brought about by transition from joint families to nuclear families coupled with the increasing propensity of both parents going to jobs have put greater pressure on Early Childhood Education especially in urban and semi-urban areas. As parents face the compulsion of keeping their children in 'safe custody' when they are out on work, they invariably turn to crèches, Kindergarten and Play Schools. Parents are taking their children out of the home environment much earlier than ever before. While sending children to 'creches' by parents who are both employed with no elders to take care of their children cannot be faulted, the growing tendency on the part of overenthusiastic parents to initiate their children into 'education' much before the children are ready for it is a cause of great concern. So the first question that is to be answered is: What is the suitable age for a child to begin pre-schooling? The other important question is about what is going on in the name of pre-schooling in a majority of schools in Delhi.
- 1.4 The enormous demand for pre schooling facilities has led to a mushrooming of play-schools, nursery schools, Kindergarten, Preparatory Schools etc.

indicative of a veritable boom in the ‘Alphabet Industry’. A majority of ‘big schools’ (schools which have classes upto XII) run not only nursery and Kindergarten or preparatory classes before class I, some of these schools also have pre-nursery. Thus a child of 2-2½ years of age enters into a system which also has adolescents of 17-18 years of age. Parents’ wish is to put their children early on into such a system so that they need not worry about their children’s future schooling upto class XII. It defies all logic of ‘child-centric’ education. Instead the prevalent system has become either ‘parent-centric’ or ‘school-centric’. It is seen that, barring a few exceptions, these schools are nothing more than mere downward extension of the formal and structured education at the level of Class I and above. The unrealistic expectations of parents for early stimulation of their children and the inappropriate learning environment offered by schools staffed by either untrained or unsuitably trained teachers have resulted in a confusing and often chaotic situation. To compound the matters further, pre-schooling by whatever name, does not come under any regulation.

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- 1.6 Subsequently, in disposing of an application vide Writ Petition (C) No. 12490/2006 on the subject of the minimum age for admission to pre-primary school and related issues, the Hon’ble High Court of Delhi requested Ganguly Committee ‘to try and find out a viable and all comprehensive policy for pre-primary education in Delhi so that admission to the pre-primary education class/classes as the case may be is made homogeneous and uniform.

The main issues figuring in the court’s directive are as follows:

1. What should be the minimum age for a child to be eligible for admission to pre-primary class at the entry level?
2. What should be the cut off date for determining the age of a child for the purpose of admission to pre-primary class keeping Section 16 of Delhi School Education Act in view?
3. What should be the duration of pre-primary class?

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2.17 The provisions under the Constitution of India for Early Childhood Education are included in the Constitution (Eighty Sixth Amendment) Act, 2002. Article 21 A has been introduced as a Fundamental Right after Article 21 to read: “The State shall provide Free and Compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law, determine”. The needs of Early Childhood Care and Development are addressed by Article 45 under Directive Principles of State Policy. The article reads: “The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years”. Read together, though free and compulsory education covers children in the age group of 6-14 years, there is no stipulation that prescribes that formal schooling of children would begin at the age of six. The dichotomy between free and compulsory education beginning at the age of six and the general practice and in some cases as in the Delhi School Education Act of treating 5+ as the minimum age for children to be eligible for admission to class I, has to be resolved.

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2.20 The National Policy on Education (NPE), 1986 states that “Early Childhood Care and Education is a crucial

input in the strategy of human resource development as a feeder and support programme for primary education and also as a support service for working women”. The other policy perspectives provided by NPE in this regard include the following:

- The National Policy on Children specially emphasizes investment in the development of the young child, particularly children from sections of the population in which first generation learners predominate.
- Recognizing the holistic nature of child development, viz., nutrition, health and social, mental, physical, moral and emotional development, Early Childhood Care and Education (ECCE) must receive high priority and be suitably integrated with the Integrated Child Development Service Programme.
- Programmes of ECCE will be child-oriented, focused around play and the individuality of the child. Formal methods and introduction of the 3 R's will be discouraged at this stage. The local community will be fully involved in these programmes.
- A full integration of child care and pre-primary education will be brought about, both as a feeder and a strengthening factor for primary education and for human resource development in general. In continuation of this stage, the School Health Programme will be strengthened.

2.21 Yashpal Committee, in its report titled ‘Learning without Burden’ observes that ‘deeply harmful practices in pre-schools and primary schools such as early emphasis on shapely drawing, writing and memorizing information’ result in a lot of stress and anxiety for the children. “A curriculum policy

that takes away the elements of joy and inquiry from learning obviously contributes to the rate at which children leave school in the early years”, states the report.

2.22 The committee recommends that appropriate legislative and administrative measures be adopted to regulate the opening and functioning of early childhood education institutions (pre-schools). Norms regarding accommodation, staff, apparatuses, play materials be laid down for the recognition of these schools. It should be ensured that these institutions do not perpetrate violence on young children by inflicting a heavy dose of ‘over-education’ in the form of formal teaching of Reading, Writing and Numbers. The practice of holding tests and interviews for admission to nursery class be abolished.

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3.03 The views of Dr. Veena Kalra are summarized below:

- Taking the process of child’s development into account we should provide for at least two years of pre-primary/pre-school education.
- It is a crucial period in a child’s growth when children begin to explore the world, get to know and communicate with others, learn to self-feed and learn to train themselves in toilet habits. The home environment may not always provide all the opportunities for the child, particularly in respect of developing social skills and community language. In such a context, one year of pre-schooling would not be adequate.
- Further, in the present scenario of increasing number of working parents, the home may not provide an effective learning environment for a three year old child. Parents do not have enough

time to develop the child's faculties in a holistic manner.

- Lack of adequate pre-school facilities is one of the main causes for early school drop out. Poor and inadequate acclimatization to out-of-home-environment is one of the reasons for some children dropping out of school at an early stage.
- The two years of pre-primary could be part of main school or it could be divided between a main school and an exclusive play school.
- If pre-school is part of a main school, the space and facilities should be defined and provided completely separately. Since small children can feel thwarted in the presence of bigger children, care should be taken to provide a safe, secure and conducive learning environment to them.

3.04 In order to formulate clear-cut guidelines for the age criteria for admission to pre-primary classes and to obtain views on the admission procedure based on Ganguly Committee recommendations a meeting of Delhi School Advisory Board, a statutory body under section 22 of the Delhi School Education Act – 1973, was held on 12th February, 2007. The meeting was attended amongst others by educationists, principals of various recognized aided and unaided schools of Delhi, representatives of parents etc.

3.05 The consensus opinion that emerged in the meeting was that three years is too early for a child to start pre-primary education. Most of the members and invitees felt that the minimum age should be 3½ years for nursery, 4½ years for preparatory and 5½ years for class I to be calculated as per the earlier system, i.e. as on 30th September of the year preceding the year of admission. However many schools had interpreted the provision as denoting 30th September of the year

of admission and consequently a child who had not attained 5 years as on 1st April of the year of admission also was admitted to class I. Similarly children who had not attained 4 years were admitted to the second year of pre-primary i.e. the class immediately prior to class I. Be that as it may, the consensus that emerged from the meeting was that the minimum age for class I admission must be 5+ which is in consonance with Section 16 of Delhi School Education Act – 1973.

3.06 Shri Ashok Agarwal, Senior Counsel and a petitioner in the case was also invited to give his views. The main points of his submission are as follows:

- Pre-school and pre-primary should be differentiated. Pre-school classes may be conducted by separate and exclusive play schools but pre-primary should be part of the main school.
- Pre-primary should be for one year prior to class I and children who are 4 years and above should be eligible for admission to pre-primary class.
- The common admission procedure and norms should come into operation at the pre-primary class.
- The provisions in the Constitution (Article 21A), 165th Law Commission Report and the CABE Report (2005) specify 6 years as the minimum age for a child to begin formal education, i.e., class I. Though it is an ideal situation, it is necessary to take into account the increase in number of years of schooling from 11 years to 12 years after the introduction of 10+2 system uniformly in the country. There is also a binding imposed by the Delhi School Education Act (1973) that has fixed 5+ as the minimum age for children to be admitted

in class I. This dichotomy has to be resolved by the committee.

- Also the Article 21A of the Constitution stipulates that free and compulsory education to all children of the age of six to fourteen is the state's responsibility. Does it mean there will be no education before the age of six? What will happen to children of underprivileged sections with regard to their pre-school and pre-primary education?
- As regards the cut off date to determine the age of a child for the purpose of admission to schools, there is much divergence and variation. As per the Delhi Primary Education Act (1960) the age was to be calculated as on 1st April of the year of admission and the minimum age was fixed as 6 years. But the Delhi School Education Act (1973) reduced it to 5+ years and the subsequent circular dated 09.04.1997 sent by Delhi Education Directorate had asked schools to calculate age as on 30th September. This has caused much confusion. Since the academic year commences on 1st April in all the recognized schools in Delhi it would be logical to consider 31st March of the year of admission as the cut-off date for calculating the age of child.

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4.8 **Pre-primary and Pre-school**

As mentioned in the first chapter of this report there is much divergence and variation in the name given to pre-school facilities provided by both the government and private sectors in Delhi. At present pre-school classes are variously called Nursery, Montessori, Kindergarten, Pre-primary, Play-school, Prep-school etc. It is relevant here to point out that the committee's earlier report had followed the court's directive and used the nomenclature of 'Nursery' while making recommendations for a common

admission procedure and criteria for admission to the pre-primary class. Some schools had created a little confusion with reference to the connotation of the term 'nursery'. There is also some ground for suspecting willful misinterpretation by a few institutions so as to exempt themselves from implementing the Committee's recommendation in this regard. So it is necessary to agree upon a name to be applied to the pre-school classes for which this committee has been entrusted with the responsibility to make recommendations. Another aspect that emerges from the Court's order also deserves attention. The Court seems to make a distinction between pre-primary and pre-school in its order. While dwelling on the issue of duration of pre-primary class, the Court's order observes: "Therefore, there may not be any objection if it is decided that pre-primary section will be of one year duration only and a child completing the age of four years on or before 31st of March of the said academic year will be eligible for admission into the said pre-primary class. In that event, if any child is admitted to the class prior to the said age, the same could be in the nature of pre-school class and would not be considered as pre-primary class".

- 4.9 In a sense the court's order has spelt out the distinction between 'Pre-school class' and 'Pre-primary Class'. Pre-primary class is the one year of schooling of a child immediately before the child enters Class-I and pre-school class/classes constitute that section of schooling which precedes the pre-primary class. The committee would adhere to this nomenclature and the rationale is that the one year of schooling before primary education in Class I does become pre-primary and will be part of a regular school. What precedes pre-primary class will not be part of a school and hence it will be treated as pre-school. Though pre-primary would be part of a regular school, it would still be in an informal setting,

differentiated from the classroom organization that begins at Class-I.

- 4.10 There cannot be any prescription of a standard nomenclature for pre-school classes because such facilities would, to a large extent, derive their names from the system they follow such as Montessori, Kindergarten etc and also from their purpose and function, such as crèche, nursery and day care centre. etc. What is important is that pre-primary education as described above will be called only by the name, 'Pre-primary class.' The recommendations of the committee, accordingly, would specify whether they are applicable to pre-primary class or pre-school classes, though most of them would be dealing with the former with some guidelines for the latter.

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Recommendations

... Keeping the suggestions of all the stakeholders and the directive of the Hon'ble High Court of Delhi in view, the Committee makes the following recommendations:

5.01 Duration of Pre-primary Education

Pre-primary Education shall uniformly be of one year duration in all the schools of Delhi and it shall be the class immediately prior to Class I. The Committee recommends that this class be uniformly known as Pre-primary Education.

5.02 Minimum Age and Cut-off date for Admission

A child should have attained four years on or before 31st March of the year of admission to be considered eligible for gaining admission to pre-primary class. Consequently children completing five years on or before 31st March of

the year of admission would progress to Class I. Thus the cut-off date for determining the age of children for the purpose of admission shall be 31st March of the year of admission for the academic session starting from 1st April.

5.03 Time and Space for Pre-primary Class

One year of Pre-primary education shall become part of all recognized, full-fledged schools, whether upto primary, middle, secondary or senior secondary level. However the section/sections of pre-primary class shall have separate designated space and ambience even though they may be located in the same campus. Such a provision would ensure that small children feel secure and have their own identity and play space and are not overawed by older children. The school hours will also be different and the Committee feels that three to four hours of duration daily for five days a week would be adequate. The Committee also recommends that the pre-primary class may start at a later time according to the convenience of the schools, parents and children.

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5.05 Facilities for Children below Four (Pre-school Class/Classes)

As mentioned earlier, the one year class of early childhood education that is offered by all recognized schools immediately prior to Class I shall be known as Pre-primary class. Facilities such as Child Day Care Centre, Nursery, Kindergarten, Crèche etc that parents avail of, depending on their needs, shall come under the term: 'Pre-school Class/Classes'. The Committee recognizes the need for such facilities for the children who are below the age of four. However, such Pre-school classes shall not be part of main schools. Such facilities should be provided by the residents of the community as neighbourhood play-schools/day care centres so that children below the age of 4 are not forced to commute long distances. Presently exclusive play-schools,

nurseries, day care centres and crèches are functioning without any regulation and supervision by the government.

It has also been observed that the infrastructural facilities offered by these establishments vary depending on the fee structure, the management, the locality and other factors. Besides the appropriateness and adequacy of physical facilities, what is transacted in terms of activities for the children is also a matter of grave concern. Many of these nursery schools are teaching the curriculum of Class I and even Class II in an effort to get a head start leading to a flourishing 'Alphabet industry'. This is a very unhealthy trend. Hence, efforts should be made to correct it. The Committee recommends that there shall be no school bag for carrying any prescribed books in all such pre-school class(es). The children will carry only tiffin box and play materials etc. from home to school and back home.

To effectively implement this, the Committee recommends the setting up of a monitoring mechanism that may be evolved by the Government of Delhi to regulate the establishment and supervision of such play-schools for children below the age of four.

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5.10 The Road Ahead

- The unprecedented expansion of Early Childhood Education facilities in the country in general and urban areas like Delhi in particular has neither been uniform nor quality-driven. Care and education of young children at this critical stage can not be merely custodial but must be developmental in nature. In order to streamline this critical stage in a child's education, reliable information and data about the pre school facilities available in Delhi have to be collected. The Directorate of Education, Delhi may take the initiative and conduct a survey of schools of Delhi to ascertain the position with reference to both pre-primary and pre school facilities available to the children of Delhi. After

collecting the data, the unserved habitations can be identified and appropriate measures can be taken to provide the requisite facilities.

- Experts in ECCE could be involved in developing the necessary guidelines with regard to the infrastructure, trained teachers and supporting staff, content and methodology within a fixed time frame. Apex national organizations like National Council for Educational Research and Training (NCERT) may be involved who may develop the appropriate content for pre-primary as well as pre school class.
- Availability of trained teachers for pre school and pre-primary education should receive the attention it deserves. So training of teachers, both pre service and in-service, must receive greater focus. Apex national institutions like National Council for Teacher Education (NCTE) and other organizations providing quality Kindergarten and Montessori education, may be requested to evolve a module of teacher training specially meant for this stage of education for children. It may be necessary to even revise the existing curriculum of pre service teacher training courses in different institutions.
- Maintaining a good adult-child ratio at this stage is very important. So while changing over to one year of pre-primary education in future, redeployment of teachers should be made in such a manner that a good adult-child ratio is maintained.
- While expanding the facility of pre-primary education to all the government and government aided schools, attention should be paid to quality parameters. The pre-primary education offered in the government schools should be of comparable quality so that the children coming from the sections of society that these schools are serving get a solid foundation for all round development.

Drawing up norms and standards for pre-primary and pre school education, evolving a responsive and responsible monitoring mechanism and providing appropriate curricular inputs with teacher training facilities are the main areas that deserve immediate attention. A good beginning can be made in Delhi if all the educational institutions including schools come together and make a concerted effort to raise the standards of Early Childhood Care and Education. Our young children deserve the best and Delhi has the potential to deliver. If this vision could be realized in a fixed time frame, it will set in motion a change process in other parts of the country that will lead to a total transformation of Early Childhood Care and Education for the children of our nation.”

4. After the aforesaid Report was submitted, this Court passed orders dated 4th April, 2007 directing the Respondent No.1 to consider the Report and take its conscious decision thereupon. The Respondent No.1 considered the material and filed affidavit dated 5th September, 2007 in the writ petition, inter alia, stating that it had accepted the entire recommendations of the Ashok Ganguly Committee and undertook to implement the same from the academic year 2008-09. On the basis of this stance which was taken by the Respondent No.1 in its affidavit, writ petition was disposed of on 26th September, 2007 in terms of the affidavit of the Government.

5. Thereafter, in order to implement recommendations of the said Committee report, Respondent No.1 issued Recognized Schools (Admission Procedure for Pre Primary School) Order, 2007. This Order has been issued in exercise of powers under Section 3(1) of the Delhi School Education Act, 1973 read with Rule 43 of the

Delhi School Education Rules, 1973. It, thus, has statutory flavour. Some of the clauses of this Order, 2007 which are material for us, are reproduced below:

“3. Within a period of three years from the date of coming into force of this Order, every school shall introduce a pre-primary class for the admission of children, who have completed the age of minimum four years as on the 31st March of the year in which admission is being sought:

Provided that no admission shall be made in standard one unless the child has completed the age of minimum five years as on the 31st March of the year in which admission is being sought.

4. With effect from the date of coming into force of this Order, all admissions, in the pre-primary class shall be made in the manner provided in this Order.

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20. Special Provision for the session commencing April 2008:-

- (i) In case the Management of any school finds that the school does not have any vacancy for pre-primary class for academic session starting from April, 2008, then, it shall notify the same on its website, prospectus and notice board, respectively and shall also inform the Deputy Director of the District concerned, in writing, by 15th December, 2007.
- (ii) All children who have been given admission for academic year 2007-08 in a class lower to pre-primary class shall move to the pre-primary class for the academic session starting from April 2008.

21. There shall be one year of pre-primary class in every school. A class of one year duration proceeding this called pre-school may be set-up as a neighbouring pre-school and the Education Department shall frame the guidelines in this regard, in consultation with experts. The schools which are already running pre-school class may continue to do so subject to the following conditions:-

- (a) Every child admitted to pre-school shall be of minimum three years by 31st March of the year in which admission is being sought.
- (b) The schools shall frame their own guidelines for admission to pre-school class and the same criteria as for admission to the pre-primary level may be adopted, until such time as the guidelines for pre-schools are framed.
- (c) Any such school which has a pre-school class from the session commencing in April 2008, shall move those students to the pre-primary class for the session commencing in April 2009. After that, the final norms to be notified for the pre-school class shall be followed.

Explanation. – For the purpose of this clause, the ages stipulated for entry into standard one, pre-primary class and pre-school class are the minimum ages and there is no bar to children older than the ages specified in this clause being given admission to these classes.”

6. Though not stated in the present writ petition, we may mention that schools have filed Special Leave Petition(s) challenging the aforesaid orders of this Court in the Supreme Court. The schools have also challenged validity of the aforesaid Order, 2007. These matters are still pending in the Supreme Court.

7. It is the case of the petitioner that all the unaided recognized private schools are going ahead with the admission of 3+ year children in nursery class, i.e. children below 4 years of age, and the same is wrongly treated as part and parcel of the formal school. This has given cause to the petitioner to present the instant petition alleging inactions/failures on the part of the Government which have been mentioned in the beginning of this judgment. We may summarize the position by stating that in the earlier proceedings, two aspects were dealt with on the basis of which, Order, 2007 was also passed. These are (i) age criteria for admission to class 1, Pre Primary Class and Pre School; and (ii) admission criteria. Clause 3 of Order, 2007 deals with admission criteria in respect of Pre Primary Class. In so far as age consideration is concerned, this Court had mentioned that a child seeking admission to class 1 must have attained the age of five years on the 30th September of academic session in which admission is sought. This is also the mandate of Section 16 of the Delhi School Education Act, 1973. As per the Ganguly Committee Report, which was accepted by Delhi Government and was made the basis of the orders of this Court, a child can be admitted to Pre Primary Class (Primary Class starts from Class 1) at the age of 4+. Prior to Pre Primary Class is Pre School and for admission to Pre School, minimum age should be 3 years by 31st March of the year in which admission is being sought.

8. What follows from the above is that concept of Pre School has been recognized and accepted judicially as well as legislatively. The controversy, however, is as to whether Pre School is to be treated as part of formal education or it would be only an informal education.

Mr. Ashok Agarwal, learned counsel appearing for the petitioner took pains to refer to various legal provisions from certain enactments as well as Ganguly Committee Report and Order, 2007 to buttress his submission that Pre School is only 'Play way' and is not to be treated as part of formal schooling which according to him starts only from Pre Primary Class. He, thus, argued that when the minimum age for admission to Pre Primary Class is at the age of 4+ and the admission criteria which is to be followed as per Order, 2007 applies to Pre Primary Class, for the purpose of formal education, the schools should admit the children of the age 4+ years and not below that age. His submission was that while there could not be any objection for those schools to give admission to children in Pre Schools as well, if they have such facilities, such admission should be standalone; not part of formal admission process and has to be segregated from the admission to Pre Primary Class. In other words, submission was that there should not be any admission criteria for Pre School which admission could be given to whosoever approaches and as a necessary corollary, there cannot be any promotion from Pre School to Pre Primary. According to Mr. Agarwal, since Pre School is not compulsory and part of formal education, it should be left to the choice and discretion of parents to send their children at Pre School level or not. Those parents who do not want their children to get admission at Pre School level and find their home environment better for the purpose of 'care' of the children of that age, should not be prejudiced when they want to admit their children in Pre Primary at the age of 4+. If promotion is

made from Pre School to Pre Nursery, then such parents would suffer great prejudice.

9. To bolster his submission that Pre School is not a part of formal education, Mr. Agarwal articulated his thoughts as under:

(i) If Pre School is made as part of formal education, then it becomes necessary to admit the child at 3+ age. However, such a compulsion cannot be thrust upon the children as that would not only be contrary to the earlier judgment of this Court but the Order, 2007 as well.

(ii) Definition of 'school' in Section 2(u) of the Delhi School Education Act does not recognize Pre School, implying thereby that the school starts only from Pre Primary. This definition reads as under:

"school" includes a pre-primary, primary, middle and higher secondary school, and also includes any other institution which imparts education or training below the degree level, but does-not include an institution which imparts technical education."

Likewise, Rule 4 of Delhi School Education Rules is to the same effect which would be clear from a reading of this Rule. It reads:

"4. Classification of Schools

The schools in Delhi shall be classified by the Director into any of the following categories, namely :—

(a) (i) pre-primary schools, that is to say, schools imparting education below the primary stage,

(ii) primary schools, that is to say, schools imparting primary stage of education, whether or not in addition to any education below the primary stage,

(iii) middle schools, that is to say, schools imparting middle stage of education, whether or not in addition to any education below the middle stage,

(iv) secondary schools, that is to say, schools imparting secondary stage of education, whether or not in addition to any education below the secondary stage.

(v) senior secondary schools, that is to say, schools imparting senior secondary stage of education, whether or not in addition to education below the senior secondary stage.] whether any such school is run by:

(A) any individual, group of individuals, trust or society either with aid, or without aid, from the Administration or any local authority, or

(B) any local authority or the Director;

(b) Government Teachers Training Institute;

(c) Government Industrial Schools;

(d) Government Social Education and Community Centre in rural areas;

(e) institutions which prepare candidates for such examinations in Arabic, Persian or Sanskrit as are recognised by the Central Government or which prepare candidates for examinations in such other languages as may be recognised by the Central Government;

(f) Government schools or aided private schools for fine arts, music, crafts or physical culture.

- (2) where the Director is of opinion that as a result of:—
- (a) the change in the policy of Government with regard to school education, or
 - (b) a school, falling in one category, ceasing to fall in that category or the acquisition by a school of a status justifying its re-classification to a higher or lower category, it is necessary so to do, he may reclassify such school into such category as he may think fit.”

It is for this purpose, even para 2.17 of the Ganguly Committee Report read with para 4.15 thereof talks of only admission to Pre Primary Class.

- (iii) In the same vein is Clause 3 of Order, 2007 which deals with admission to Pre Primary Class and reads as under:

3. Within a period of three years from the date of coming into force of this Order, every school shall introduce a pre-primary class for the admission of children, who have completed the age of minimum four years as on the 31st March of the year in which admission is being sought.

Provided that no admission shall be made in standard one unless the child has completed the age of minimum five years as on the 31st March of the year in which admission is being sought.”

He also referred to Section 2(c), Section 2(e), Section 2(i), Sections 8, 9, 16, 18 and 20 of Delhi School Education Act, 1973 in support of his above plea.

- (iv) According to Mr. Agarwal, the child is not mature enough to be a part of formal schooling at the age of 3+ and, therefore, Pre School cannot be treated as part of formal education.

10. We may mention here that in the separate counter affidavits filed by respondents No.1 and 2, they have taken the position that The Right of Children to Free and Compulsory Education Act, 2009, which is a Central Legislation and enacted after the judgment of this Court in earlier case, recommendation of the Ganguly Committee Report and Order, 2007, had materially altered the position. According to these respondents, the case was to be examined in the light of the provisions contained in the statute which has given statutory recognition to Pre School making it a part of formal schooling. Though their detailed contentions would be noted afterwards at the appropriate stage, we should point out that Mr. Agarwal had argued that the RTE Act had not made any difference. His alternate submission is that the provisions of Constitution, particularly Articles 21A, 45 and 51A(k) should be allowed to prevail.

11. Ms. Ruchi Sindhwani, learned counsel appearing for Government of NCT of Delhi countered the aforesaid submissions. She argued that even the Ganguly Committee recognized that Early Childhood Care and Education (ECCE) had been globally recognized as critical for human resource development and first eight years of child in life are the most crucial. Early childhood development includes two main aspects, i.e., care and education. Therefore the pace of development at the early childhood was of

paramount importance. Her submission was that due care needs to be given to the children at this age and that is a component of 'education'. It includes Pre School education programmes aimed at 3-6 year olds. Thus, the Pre School education can start from the age of 3 years, was her submission. Her argument was that Delhi School Education Act does not prescribe any minimum age for pre schooling. On the other hand, RTE Act had changed the entire complexion as it was the duty of the Government now to take care of children of this age as well. She further submitted that at Pre School level, children get accustomed to that particular school and therefore it was in the interest of the children themselves that they are treated as part of the same school where they are admitted at Pre School as changing their environment within one year and putting them in different schools would be counter-productive. She also argued that the spirit behind the provisions of Section 12 of the RTE Act was also that Pre School is to be treated as part of the main school. Therefore, those parents who do not want to send their children at the age of 3+ and want their admission only when their children are 4+ years of age, they can get their children admitted in those schools who take admission at 4+ level at their own risk but the children who go to Pre School at the 3+ should not be allowed to suffer. Explaining the Government's stand on Ganguly Commission in the earlier round of litigation, she argued that such a position was taken at the time when RTE Act had not come into place and since statutory provisions are available now, it is the duty of the Government to follow the same. She further submitted that even Order, 2007 recognizes need for Pre-school. She further justified

not taking action on Clause 25 by setting the norms as the said Order, 2007 was challenged and matter was pending in the Supreme Court and in the meantime, RTE Act had appeared on the statute book. She further submitted that the Government had issued Notification dated 7.6.2011 on the basis of RTE Act which still holds the field as validity thereof has not been questioned by the petitioner. She also referred extensively to the other material to support her submission that there was no distinction between Pre School and Pre Primary and Pre School also should be treated as entry level.

12. Ms. Shobha Gupta, learned counsel appeared on behalf of respondent No.2. She pointed out that there are 1000 recognized schools with Pre School system. Referring to certain material placed on record, she argued that this early childhood care and education which is commonly known as Montessori level recognizes child needs and care at the age of 3+. She referred to the Education Policy of 1968 as well as 1986 in this behalf. Her emphasis was that there were sufficient factors in favour of making age 3+ as part of the schooling system. Not only it ensures continuous process (which was emphasized by Ms. Sindhwani as well), it gives chance for preparedness for Pre Primary in same environment and familiar atmosphere. There was a need for trained teachers even at that level to give the kind of education which the child requires at this age and also to take care of the early childhood care and education.

13. She further argued that in *Miss Mohini Jain v. State of Karnataka & Ors.*, (1992) 3 SCC 666 and *Unni Krishnan, J.P. and*

Ors. v. The State of Andhra Pradesh and Ors., (1993) 1 SCC 645, mandate was given not only to the Government but even to private schools for providing education at primary level, i.e. up to the age of 14 years. She traced out the historical facts leading to compulsory education in India and also referred to Law Commission Report in this behalf. She made a passionate plea that even Pre School where the child is admitted at the age of 3+ is to be treated as part of Primary School education system as it ensures continuous process and preparedness for Pre Primary in same environment with familiar atmosphere.

14. She also argued that when the petitioner concedes that Pre School system can be adopted by the normal schools without segregation and it can even be in the same premises, there was no rationale in admitting the students at the age of 3+ in Pre School and thereafter forcing such children to undergo the admission process afresh at Pre Primary level in the next year at the age of 4+. Her argument was that for integration of the child, two things which were emphasized in all the studies were (i) retention of children with emphasis on brining Pre School in Pre Primary and linkage between Pre School and Pre Primary to make the bonding more effective; and (ii) to check drop outs.

15. Her further submission was that even the Statement of Objects and Reasons of the RTE Act highlights this. She also submitted that when proviso to Section 12(c) of the RTE Act provides for continuity of persons belonging to economically weaker section (EWS) to the extent of 25% and, therefore, such students were entitled to be

promoted to Pre Primary from Pre School, there was no reason to deny this treatment to remaining 75% students. Much material was referred to in support of the aforesaid submissions including provisions of the Delhi School Education Act, 1973, RTE Act as well as the Order, 2007 and Notification dated 7th January, 2011 which would be referred to at the appropriate stage.

16. We have given our due consideration to the submissions of learned counsel for the parties as noted above. Before we embark on the journey of analyzing the arguments with our observations, we would like to study the constitutional as well as statutory provisions that are required to be kept in mind.

CONSTITUTIONAL PROVISIONS

21A. Right to Education – The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

xxx xxx xxx

38. State to secure a social order for the promotion of welfare of the people. – [(1)] The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

[(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.]

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

(a) to (e) xxx xxx xxx

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

xxx xxx xxx

41. Right to work, to education and to public assistance in certain cases. - The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

xxx xxx xxx

45. Provision for early childhood care and education to children below the age of six years.- The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

xxx xxx xxx

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health. – The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for

medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

xxx xxx xxx

51A. Fundamental duties. –

to (j) xxx xxx xxx

(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

STATUTORY PROVISIONS

Delhi School Education Act, 1973

2. Definitions. – In this Act, unless the context otherwise requires, -

(a) to (t) xxx xxx xxx

(u) "**school**" includes a pre-primary, primary, middle and higher secondary school, and also includes any other institution which imparts education or training below the degree level, but does-not include an institution which imparts technical education.”

xxx xxx xxx

16. Admission to recognised schools. – (1) A child who has not attained the age of five years, shall not be admitted to class I, or an equivalent class or any class higher than class I, in a recognised school.

(2) A student seeking admission for the first time in a recognised school in a class higher than class I, shall not be admitted to that class if his age reduced by the number of years of normal school study between that class and class I or an equivalent class, falls short of five years.

(3) Admission to a recognised school or to any class thereof shall be regulated by rules made in this behalf.

Delhi School Education Rules, 1973

2. Definitions. – In these rules, unless the context otherwise requires, -

(a) to (g) xxx xxx xxx

(h) “Pre-primary stage” means a stage of school education previous to the primary stage;

(i) “Primary stage” means a stage of education from classes I to V (both inclusive);

xxx xxx xxx

4. Classification of schools. – The schools in Delhi shall be classified by the Director into any of the following categories, namely:-

(i) pre-primary schools, that is to say, schools imparting primary stage.

xxx xxx xxx

5. Free Education. – (1) The Administrator shall make suitable arrangements for imparting free education for all children until they complete the VIIIth class or until they attain the age of fourteen years, whichever is earlier.

(2) Save as otherwise provided in rule 149, no school maintained or aided by Government or any local authority shall levy any fee or other charge in relation to the education of the children studying up to the VIIIth class or until they attain the age of fourteen years, whichever is earlier.

xxx xxx xxx

13. Provisions of other facilities. – The Administrator shall also provide for the following facilities, namely –

(a) Adult Education Centres;

(b) Bal Kendras;

(c) Badwadies;

(d) Education of children who have discontinued studies;

(e) Literacy centres.

(emphasis supplied)

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

INTRODUCTION

For strengthening the social fabric of democracy through provision of equal opportunities to all has been accepted since inception of our Republic. The Directive Principles of the State Policy enumerated in our Constitution lays down that the State shall provide free and compulsory education to all children up to the age of fourteen years. With the insertion of article 21A in the Constitution by the Constitution (Eighty-sixth Amendment) Act, 2002 wherein it is provided that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State, by law, provides, it became imperative to enact a law to implement the provision of article 21A of the Constitution. Accordingly the Right of Children to Free and Compulsory Education Bill was introduced in the Parliament.

STATEMENT OF OBJECTS AND REASONS

The crucial role of universal elementary education for strengthening the social fabric of democracy through provision of equal opportunities to all has been accepted since inception of our Republic. The Directive Principles of State Policy enumerated in our Constitution lays down that the State shall provide free and compulsory education to all children up to the age of fourteen years. Over the years there has been significant spatial and

numerical expansion of elementary schools in the country, yet the goal of universal elementary education continues to elude us. The number of children, particularly children from disadvantaged groups and weaker sections, who drop out of school before completing elementary education, remains very large. Moreover, the quality of learning achievement is not always entirely satisfactory even in the case of children who complete elementary education.

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

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

- (a) that every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards;
- (b) 'compulsory education' casts an obligation on the appropriate Government to provide and ensure admission, attendance and completion of elementary education;
- (c) 'free education' means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education;
- (d) the duties and responsibilities of the appropriate Government, local authorities, parents, schools and teachers in providing free and compulsory education; and
- (e) a system for protection of the right of children and a decentralized grievance Redressal mechanism.

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

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

6. The Bill seeks to achieve this objective.

2. Definitions. – In this Act, unless the context otherwise requires, -

(a) & (b) xxx xxx xxx

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

xxx xxx xxx

(f) "elementary education" means the education from first class to eighth class;

xxx xxx xxx

(n) "school" means any recognised school imparting elementary education and includes--

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

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

(iii) a school belonging to specified category; and

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

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

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

(2) For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education:

Provided that a child suffering from disability, as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act, 1996 (1 of 1996), shall have the right to pursue free and compulsory elementary education in accordance with the provisions of Chapter V of the said Act.

XXX XXX XXX

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

XXX XXX XXX

11. Appropriate Government to provide for pre-school education. – With a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate Government may make necessary arrangement for providing free pre-school education for such children.

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

(a) specified in sub-clause (i) of clause (n) of section 2 shall provide free and compulsory elementary education to all children admitted therein;

(b) specified in sub-clause (ii) of clause (n) of section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent.;

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

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

(2) The school specified in sub-clause (iv) of clause (n) of section 2 providing free and compulsory elementary education as specified in clause (c) of sub-section (1) shall be reimbursed expenditure so incurred by it to the

extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed:

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

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

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

xxx xxx xxx

14. Proof of age for admission. - (1) For the purposes of admission to elementary education, the age of a child shall be determined on the basis of the birth certificate issued in accordance with the provisions of the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886) or on the basis of such other document, as may be prescribed.

(2) No child shall be denied admission in a school for lack of age proof.

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

2. Definitions. – In these Rules, unless the context otherwise requires, -

(a) xxx xxx xxx

(b) "anganwadi" means an Anganwadi Centre established under the Integrated Child Development Service Scheme of the Ministry of Women and Child Development of the Government of India

XXX XXX XXX

5. Special Training. – (1) The School Management Committee of a school owned and managed by the appropriate Government or local authority shall identify children requiring special training and organise such training in the following manner, namely:-

(a) the special training shall be based on specially designed, age appropriate learning material, approved by the academic authority specified in sub-section (1) of section 29;

(b) the said training shall be provided in classes held on the premises of the school, or in classes organised in safe residential facilities;

(c) the said training shall be provided by teachers working in the school, or by teachers specially appointed for the purpose;

(d) the duration of the said training shall be for a minimum period of three months which may be extended, based on periodical assessment of learning progress, for a maximum period not exceeding two years.

(2) The child shall, upon induction into the age appropriate class, after special training, continue to receive special attention by the teacher to enable him to successfully integrate with the rest of the class, academically and emotionally.

XXX XXX XXX

10. Maintenance of records of children by the local authority. – (1) The local authority shall maintain a record of all children in its jurisdiction, through a household survey, from their birth till they attain the age of 14 years.

XXX XXX XXX

11. Admission of children belonging to weaker section and disadvantaged group. – (1) The school referred to in clauses (iii) and (iv) of clause (n) of section 2 shall ensure that children admitted in accordance with clause (c) of sub-section (1) of section 12 shall not be segregated from the other children in the classrooms nor shall their classes be held at places and timings different from the classes held for the other children.

Notification No.(172)/DE/Act/2010 Dated 7th January, 2011

No.15 (172)/DE/Act/2010____: In exercise of the powers conferred by sub-section (1) of section 3 of the **Delhi School Education Act, 1973** (18 of 1973) read with rule 43 of the Delhi School Education Rules, 1973 and under the provisions of the **Right of Children to Free and Compulsory Education Act, 2009** and in supersession of Order No.F/DE/15/ACT/2006/424 dated 25.1.2007 or any other order issued in this regard, except as respects things done or omitted to be done before such suppression, the Lt. Governor of the National Capital Territory of Delhi, hereby makes the following order, namely:-

1. **Short Title and Commencement** – (1) This Order may be called the **Delhi School Education (Free seats for students belonging to Economically Weaker Sections and Disadvantage Group) Order, 2011.**

(2) This order shall come into force with immediate effect.

2. **Definitions** – In this order, unless the context otherwise requires:-

- (a) “**Act**” means the Delhi School Education Act, 1973 (18 of 1973)
- (b) “**Class**” includes the entry level class such as pre-school or first class as the case may be.

xxx xxx xxx

(g) “school” means a school as defined under section 2(n)(iii) and (iv) of RTE Act-2009.

3. **Free seats for students belonging to weaker section and disadvantaged group:**

- (a) All schools shall admit children in class one to the extent of at least twenty-five per cent of the strength of that class, children belonging to weaker sections and disadvantaged groups in neighbourhood and provide free and compulsory elementary education till its completion: Provided that where such school imparts pre-school education, the provisions shall apply for admission to such pre-school education.
- (b) No separate or exclusive class or shift shall be arranged for imparting education to the students admitted against free seats mentioned in sub-paragraph (a)
- (c) No tuition fee or any other charges or fee or fund shall be charged from the student admitted against the free seat.

4. **Manner of admission against free seats** – (a) The school shall display the total number of seats, the free seats available at entry level, the date of submission of applications for admissions against free seats in entry level, the date(s) of display of list of eligible candidates for draw, date(s) of draw, date(s) of display of list of successful candidates, date(s) of display of waiting list,

date(s) of deposition of fees, last date of admission as per prescribed proforma (Annexure-I enclosed) on the notice board in the school and shall also notify the same to be concerned Dy. Director of Education by the 10th January 2011 and thereafter by 31st December of the year proceeding the academic year for which such admissions are being made.

(b) Total number of seats at the entry level i.e. nursery or Ist Class as the case may be shall not be less than the total number of seats in any other class of the school.”

The Issue

17. As pointed out above, the petitioner does not question either the system or rationale of Pre-Schooling and also that a children can be admitted to Pre-School at the age of 3+. The exclusive focus of the petitioner is that Pre-School, as the name suggests, is a step before the formal schooling and at this stage, it should exclusively be a play school and be not part of the main school which should start from Pre Primary at the age of 4+. As a fortiori, learned counsel for the petitioner has argued that in so far as school starting from Pre Primary is concerned, admission to the school system should be at the age of 4+ and Pre-School children should not be part of the main system and at Pre-School level, there is no need to undergo the admission process. It is this issue which needs to be addressed by us.

Our Analysis

18. Though necessity of having a Pre-School is not questioned by the petitioner, in order to have a proper insight into the issue and

take an overall view keeping in mind all its parameters, it still becomes necessary to understand the conceptualization of Pre-School as well as its necessity and importance. That is the first step to be taken and thereafter we need to examine the issue in the context of legal provisions to arrive at the our conclusion. We accordingly propose to proceed step by step in the manner suggested above.

A. Pre-School, its necessity and importance:

19. Since the Ganguly Committee Report has remained pivotal throughout the hearing and the petitioner has placed strong reliance upon the said Report on the basis of which earlier writ petition filed by the petitioner was decided, we may first peep into this report to find out what Ganguly Committee had to say on Pre-Schooling. Relevant portions of this Report have already been extracted by us. We may first remind ourselves that it was a report on ‘Pre Primary and Pre-School Education in Delhi’. In the opening remarks of this report itself, the Committee emphasized the importance of early education. It is emphasized by the Committee that Early Childhood Care and Education (ECCE) has globally been recognized as critical for human resource development. It is also highlighted that first 8 years of a child’s life are the most crucial years because during this period of early childhood, the pace of development is extremely rapid, determining the cognitive and physical growth and laying the foundation for shaping the social and personal habits and values. The report also mentions that the early childhood development

includes two main aspects, i.e., care and education. It is specifically mentioned that in so far as 'education' component is concerned, it includes pre-school education program which is to start at the age of three. At this stage, when ECCE is understood as an integrated programme, the focus is to be on developmental paradigms so that the cognitive, affective and psychomotor issues are comprehensively addressed in the context of education. Necessity of kindergarten and play schools is noticed also because of the reason that transitions from joint family to nuclear family have resulted in compulsion of keeping children in 'safe custody'. Though it is mentioned that Pre-schooling can be at the age of 3+, at the same time, Ganguly Committee has not accepted that children at this age are put into a school system going up to class 12. This aspect would be discussed at a later stage. What is noted at this juncture is the importance of Pre-School and ECCE even by the Ganguly Committee. The Ganguly Committee had also taken views of various experts which included Dr. Veena Kalra, a psychologist, whose opinion was that Pre-Schooling is a crucial period in child's growth when children begin to explore the world and get to know and communicate with others. Home environment may not provide all the opportunities for child, particularly in respect of developing social skills and community language. She suggested that even one year of Pre-Schooling is not adequate and lack of adequate Pre-School facilities was one of the main causes for early school dropout.

20. Ms. Shobha Gupta, learned counsel appearing for respondent No.2, during her submissions, had referred to and handed over copy of 'National Curriculum Framework : 2005' prepared by National

Council of Educational Research and Training. It is the product of flurry of ideas generated through a series of intensive deliberations by eminent scholars from different disciplines, principals, teachers and parents, representatives of NGOs, NCERT faculty and several other stakeholders at various levels. Contributions were also made by the State Secretaries of Education and Directors of SCERTs as well as inputs provided in the regional seminars organized in this behalf, amongst others. Preamble to this document stipulates that members of National Focus Group of ECE had unequivocally agreed that this Group be renamed as National Focus Group on ECCE instead of ECE. Obviously, for early childhood development, the emphasis is not to be on Early Child Education (ECE), but care as well as education, i.e. ECCE. Reasons given for replacing ECE by ECCE in the Preamble of the said document read as under:

“Early childhood is the period from conception to age 8, a period that presents a developmental continuum, according to the theoretical framework of developmental psychology and learning theories. The other reason for extending the span of early childhood from 6 to 8 years is to ensure a gradual and smooth transition from preprimary to primary education, which is a structured and formal learning system requiring effective interface. The term ‘Care’ has been added in recognition of the fact that young children need care and nurturing. In addition to their health and nutritional needs, their psychosocial and emotional needs also have to be met adequately for their holistic development. The term Education covers learning, a process of acquiring knowledge, skills, habits, attitudes, etc. It also indicates an important focus, viz., to prepare the young child to enter the formal educational stream/system.

Thus, the term ECCE refers to a philosophy of providing opportunities/experiences to young children up to 8 years of age in order to promote their holistic development, as well as arranging and providing services and support systems to communities and families to meet the needs of their young children. For the sake of convenience and for purposes of programming and institutional location, ECCE can be divided into three substages: birth to 2+, 3 to 5+, and 6 to 8+. Each substage can be located in a different institutional setting.”

In the Executive Summary, global perspective of early childhood is given in the following manner:

“A Global Perspective on Early Childhood

The first 6 to 8 years of a child’s life are globally acknowledged to be the most critical years for lifelong development since the pace of development in these years is extremely rapid. Recent research in the field of neuroscience, particularly on the brain, has provided convincing evidence of the ‘critical periods’ located within these early years for the forming of synaptic connections in the brain and for the full development of the brain’s potential. Research has also indicated that if these early years are not supported by, or embedded in, a stimulating and enriching physical and psychological environment, the chances of the child’s brain developing to its full potential are considerably, and often irreversibly, reduced. This stage in life is also important as a foundation for the inculcation of social values and personal habits, which are known to last a lifetime. What follows logically is the crucial importance of investing in these early years to ensure an enabling environment for every child, and thereby a sound foundation for life, which is not only the right of every child but which will also impact, in the long term, the quality of human capital available to a country. Early Childhood Care and

Education (ECCE) derives its importance from this rationale.”

This Executive Summary also emphasise major policy shifts before curricular reforms are discussed. In respect of ECCE, the policy paradigm which needs to be changed is stated as under:

“Value of ECCE: The first step is the recognition and acceptance that ECCE is a vital developmental need of all children, and that every child has a right to ECCE of equitable quality. ECCE must be the first step in the educational ladder and should be a part of Education for All (EFA). DEE & L must take responsibility for all programmes for children 3+, and DWCD for all programmes for children below 3 years.”

Curriculum framework for ECCE is mentioned as under:

“Curriculum Framework for ECCE:

The three broad objectives of ECCE are:

- holistic development of the child to enable him/her to realize his/her maximum potential;
- preparation for schooling; and
- providing support services for women and girls.

The curriculum is defined as age appropriate, all round, play based, integrated, experiential, flexible and contextual. The guiding principles of the ECCE curriculum are:

- Play as the basis of learning
- Art as the basic of education
- Recognition of the special features of children’s thinking.
- Primacy of experience rather than expertise
- Experience of familiarity and challenge in everyday routines

- Mix of formal and informal interaction
- Blend of the textual (basic literacy and numeracy) and the cultural
- Use of local materials, arts, and knowledge
- Developmentally appropriate practice, flexibility, and plurality
- Health, well-being, and healthy habits.”

The curriculum, therefore, has to be activity based, child centered, age appropriate, aiming at all round development, adopted to context and flexible. It is also of utmost importance that the teachers who have to deal with these children at Pre-School level are sufficiently motivated and appropriately trained to work with young children through experiential ‘hands on’ training, recognized with status of teacher and rewarded with appropriate pay. In this context, ideal teacher-child relationship is reflected as follows:

“Teacher-Child Relationship

- Allow children to express their feelings.
- Share their trials and triumphs.
- Be responsive and reach out to children.

Ultimately, even the best curriculum can be transacted only by a trained and sensitive teacher. To make a success story of ECCE from 0 to 8 years, a new type of teacher is required, one who is professionally trained and specifically sensitised to the perspectives of child development. The professional preparation of teachers for this stage, hitherto unplanned and uncared for, calls for thoughtful planning of training sequences relevant to the developmental needs of early childhood.”

It is necessary to undertake capacity building of trainers to evolve a process-based methodology of teaching. It is also

emphasized that curriculum should be such that it is able to help the child to adjust to the routines of Primary School as well as to the demands of more formal teaching. The report outlines the various domains of developmental characteristics of each subgroup within the period of ‘birth to 8 years’, and the needs of the child in terms of experiences that help the child attain the goals of development. The age-specific curricular frameworks for each of the subgroups, 0-2+, 3-5+, and 6-8, are then spelled out in the light of the basic principles. Inclusive education and language policy are also dealt with. The developmental characteristics of children at different ages are spelled out in the Report. We would like to reproduce the portion which relates to 0 to 2+ and 3 to 5 year olds:

“Development characteristics of children at different ages

Infants and toddlers (0 – 2+)

Infants and toddlers learn by experiencing the environment through their senses (seeing, hearing, tasting, smelling, and feeling), by physically moving around, and by being in the midst of socially responsive adults. Infants who are not mobile also absorb and organize a great deal of information about the world around them, and benefit from caregivers who carry them around and show them interesting events and people. Mobile infants and toddlers increasingly use toys language and other learning materials in their play. Adults play a vital socialisation role with infants and toddlers. Warm and positive relationship with adults help infants develop a sense of trust in the world around them and endanger feeling of competence in them. These interactions are critical for the development of the child’s healthy self-esteem. The trusted adult becomes the secure base from which the mobile infant or toddler explores the environment. Solitary play (0-2 years) in

the norm at this age. Children enjoy playing with an adult or older child but cannot interact much with peers.

Important skills are being acquired during these years, including personal-care habits such as toileting, feeding, and dressing, all of which serve as key life skills. The most appropriate teaching technique for this age group is to give ample opportunities to the child to use self-initiated repetition, to practice newly acquired skills, and to experience feeling of autonomy and success. Infants will bat at, grasp, bang, or drop their toys. Patience is essential as a toddler struggles to put on a sweater. Imitation, hiding, and naming games are also important for learning at this age. Realistic toys will enable children to engage in increasingly complex types of play.

Two-year-olds are learning to produce language rapidly. They need simple books, pictures, puzzles, music, and time and space for active play such as jumping, running, and dancing. Toddlers are beginning to acquire social skills, but in groups there should be several of the same toy because egocentric toddlers are not yet able to understand the concept of sharing.

3 to 5 year-olds

Three-year-olds love to talk and listen but they also need activity and movements, with major emphasis on large-muscle activity. They enjoy dramatic play, wheel toys and climbers, puzzles and blocks, and opportunities to talk and listen to simple stories.

Four-year-olds enjoy a greater variety of experiences and more small-motor activities such as using a pair of scissors, doing art work, playing with manipulative objects like puzzles, and cooking. They are more able to concentrate and remember as well as recognize objects by shape, colour, or size. Four-year-olds are developing an understanding of basic mathematical concepts and problem-solving skills. At 3+

children like to play with two or three others; by 4+ they can readily participate and cooperate in activities involving five to eight children in a group, and are also ready to manage and handle group play independently.

Some 4-year-olds and most 5-year-olds combine ideas into more complex relations (for example, number concepts such as one-to-one correspondence) and have growing memory capacity and fine motor physical skills. Some 4-year-olds and most 5-year-olds display a growing interest in the functional aspects of written language, such as recognising meaningful words and trying to write their own names. Activities designed solely to teach the alphabet, phonics, and penmanship are much less appropriate for this age group than providing a print-rich environment that stimulates the development of language and literacy skills in a meaningful context.

Most 4-and 5-year-olds can go beyond the child's immediate experience of self, home, and family. Five-year-olds are developing an interest in the community and the world outside their own, and enjoy special events and trips.”

21. What follows from the above discussion is that not only 0 to 8 years of age is most crucial and significant part of the development, it needs special kind of attention in so far as child care and education is concerned. For our purposes, following salient features are to be kept in mind:

- (i) ECCE, i.e. development of a child up to the age of 8 years is an integrated process where interface between ‘care’ and ‘education’ has to be recognized.
- (ii) Entire period from 0 to age 8 presents a developmental continuum which is divided into three sub-stages, namely,

birth to 2+, 3 to 5+ and 6 to 8 +. Thus, 3 to 5+ is one stage before child enters class 1 at the age of 6. Thus, sub-stage of 3 to 5+ includes Pre-School as well as Pre Primary.

- (iii) The pedagogical process of ECCE includes a significant step, namely, at Pre-School level, preparing the child for entry and success in Primary school. In this process, the curriculum has to be such that it is able to help the child to adjust to the routines of primary schools as well as to the demands of formal teaching.
- (iv) It is to be ensured that at Pre-School level, not only proper ‘care’ is given but ‘education’ curriculum (which has to be more geared towards play way system of learning encompassing right kind of activity and movements including dramatic play, wheel toys and climbers, puzzles and blocks and opportunities to talk and listen to simple stories) is such that child gets interested in education when he is to take next step at Pre Primary and thereafter formal education from class 1.
- (v) The challenge at this stage is that there are no drop outs when formal learning starts. That is why there is need to have trained teachers.
- (vi) This also necessitates emphasis on the school environment to which the child at Pre-School level is to be exposed to.

Constitutional vision, Constitutional mandate and concerned statutes

22. We have already extracted all relevant provisions of the Constitution as well as statutes on the subject. In fact, when one looks into the historical perspective, the undivided opinion is that India is a wealth of traditional practices in ECCE that date back almost 5000 years. The early pioneers of the movement were Gijubhai Badheka, Tarabai Modalk, Maria Montessori and several others. We also have writings of Mahatma Gandhi, Rabindra Nath Tagore and Zakir Hussain drawing attention to this important aspect of education on the formative years of child's life. At the time of independence, the need for Pre-School education was primarily fulfilled by voluntary organisations and/or private institutions.

23. The Constitution of India, through its several provisions, put obligation even on the State for providing education to young children. There are several provisions in the Constitution of India, either as Fundamental Rights or as Directive Principles of State Policy, that have been used to promote ECCE services in the country. As a Fundamental Right, Article 15(3) of the Constitution of India empowers the State to practice positive discrimination favouring economically and educationally weaker groups, which allows for special provisions for girls and children of disadvantaged social groups, and in difficult situations not to discriminate against any citizen. Article 15(3) asserts, "*Nothing in this article shall prevent the State from making special provisions for women and children*". Specific Articles under the Directive Principles of State Policy of the Constitution of India that provide a supportive

framework for ECCE in the country are Article 39(f), Article 42, Article 45 and Article 47. Keeping in view the aforesaid directives of good governance, there have been plethora of policies on education from time to time. First policy known as the National Policy on Education (NPE) was declared in 1968 which was replaced by the NPE of 1986. The aim was to bring about a full integration of child care and pre-primary education to both feed and strengthen primary education.

24. The Government also came out with National Policy for the Child, 1974 which declared that “*it shall be the policy of the State to provide adequate services to children, both before and after birth and throughout the period of growth.....*”. Then, we have National Plan of Action (NPA), 1992. It was followed by the formulation of the State Plan of Action for Children (SPAC) aimed at protection, survival, development and growth of children. National Nutrition Policy of 1993, National Population Policy of 2000, National Policy for the Empowerment of Women, 2001 and National Health Policy, 2002 are some of the other policies which deal with child care and education. Another significant move of the Government was to ratify Convention on the Rights of the Child (CRC), 1992 and affirm the country’s commitment to children which resulted in formulation of a policy framework to prepare a National Charter for Children that ensures that no child remains illiterate, hungry or lacks medical care.

25. A significant paradigm shift has taken place with the Constitution (86 Amendment) Act, 2001 which has divided 0 to 14

year old children into two clear categories to cover their interests under separate Articles of the Constitution. Article 21A has been introduced as a Fundamental Right after Article 21 to read: “*The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.*” Articulating the intent to cater to the needs of 0-6 year-old children, the Constitution (Eighty-sixth Amendment) Act has altered Article 45 (Directive Principles of State Policy) to read: “*The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years*”. It is clear from the above that while education to children of the age of 6 to 14 years is now a fundamental right of such children, Early Childhood Care and Education (ECCE) which is now constitutionally recognized term, has remained in the chapter ‘Directive Principles of State Policy’. The objects and reasons attached to the aforesaid 86th Amendment to the Constitution gives a glimpse of the rationale for this shift in approach and making education for the children in the age group of 6 to 14 years as Fundamental Right. We reproduce the same to ascertain the said rationale:

Objects and Reasons

The Constitution of India in a Directive Principle contained in article 45, made a provision for free and compulsory education for all children up to the age of fourteen years within ten years of promulgation of the Constitution. We could not achieve this goal even after 50 years of adoption of this provision. The task of providing education to all children in this age group gained momentum after the National Policy of Education

(NPE) was announced in 1986. The Government of India, in partnership with the State Governments, made strenuous efforts to fulfil this mandate and, though significant, improvements were seen in various educational indicators, the ultimate goal of providing universal and quality education still remained unfulfilled. In order to fulfil this goal, it was felt that an explicit provision should be made in the Part relating to Fundamental Rights of the Constitution.

2. With a view to making right to free and compulsory education a fundamental right, the Constitution (Eighty-third Amendment) Bill, 1997 was introduced in Parliament to insert a new article, namely, article 21A conferring on all children in the age group of 6 to 14 years the right to free and compulsory education. The said Bill was scrutinised by the Parliamentary Standing Committee on Human Resource Development and the subject was also dealt with in its 165th Report by the Law Commission of India.

3. After taking into consideration the report of the Law Commission of India and the recommendations of the Standing Committee of Parliament, the proposed amendments in Part III, Part IV and Part IVA of the Constitution were made. These are as follows:

(a) to provide for free and compulsory education to children in the age group of 6 and 14 years and for this purpose, a legislation would be introduced in Parliament after the Constitution Amendment Bill was enacted;

(b) to provide in article 45 of the Constitution that the State shall endeavour to provide early childhood care and education to children below the age of six years and

(c) to amend article 51A of the Constitution with a view to providing that it shall be the obligation of the parents to provide opportunities for education to their children between the age of 6 and 14 years.”

26. Still the importance of these Directive Principles cannot be undermined particularly when we keep in mind the importance of this phase of life in a human being, i.e. 0 – 8 years, as discussed in detail above. Such importance has been emphasised by the Supreme Court in various cases. Our purpose can be served by reproducing, illuminating an erudite discussion contained in *Unni Krishnan* (supra) where interplay of Fundamental Rights and Directive Principles is revisited, after taking stock of various earlier judgments, in the following manner:

“Interplay of Parts III and IV:

153. This Court has also been consistently adopting the approach that the fundamental rights and directive principles are supplementary and complementary to each other and that the provisions in Part-III should be interpreted having regard to the Preamble and the directive principles of the State policy. The initial hesitation to recognise the profound significance of part ' has been given up long ago. We may explain.

154. While moving for consideration the interim report on fundamental rights, Sardar Vallabhai Patel described both the rights mentioned in Parts III and IV as 'fundamental rights' – one justiciable and other non-justiciable. In his supplemental report, he stated:

“There were two parts of the report; one contains fundamental rights which were justiciable and the other part of the report refers to fundamental rights which were not justifiable but were directives.

155. This statement indicates the significance attached to directive principles by the founding fathers. It is true that in *State of Madras v. Champakam Dorairajan*, fundamental rights were held permanent vis-a-vis Directive Principles but since then there has been a

perceptible shift in this Court's approach to the inter-play of Fundamental Rights and Directive Principles.

156. As far back as in 1958, in the Kerala Education Bill a Special Bench of this Court speaking through S.R. Das, C.J., while affirming the primacy of Fundamental Rights, qualified the same with the following observations:

“Nevertheless, in determining the scope and ambit of the fundamental rights relied upon by or on behalf of any person or body, the court may not entirely ignore these directive principles of State policy laid down in Part-IV of the Constitution but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible.

157. This is also the view taken in *Hanif v. State of Bihar* 1959 SCR 629.

158. In *Keshavananda Bharati v. State of Kerala* more than one learned Judge adverted to this aspect. In the words of Hegde and Mukherjee, JJ.:

“The Fundamental Rights and Directive Principles constitute the conscience' of the Constitution.... To ignore Part IV is to ignore the sustenance provided for in the Constitution, the hopes held out to the nation and the very ideals on which our Constitution is built.... There is no anti-thesis between the Fundamental Rules and the Directive Principles.... One Supplements the other.”

159. Shelat and Grover, JJ. in their judgment observed: (SCC pp.427 and 459, paras 533 and 596)

“Both Parts III and IV have to be balanced and harmonized – then alone the dignity of the individual can be achieved.... They (Fundamental Rights and Directive Principles) were meant to supplement each other.”

160. Mathew, J. while adopting the same approach remarked:

“The object of the people in establishing the Constitution was to promote justice, social and economic liberty and equality. The modus operandi to achieve these objectives is set out in Parts III and IV of the Constitution. Both Parts III and IV enumerate certain moral rights. Each of these parts represents in the main the statements in one sense of certain aspirations whose fulfillment was regarded as essential to the kind of society which the Constitution makers wanted to build. Many of the articles, whether in Part iii or Part IV, represent moral rights which they have recognised as inherent in every human being in his country. The task of protecting and realising these rights is imposed upon all the organs of the State, namely, legislative, executive and judicial. What then is the importance to be attached to the fact that the provisions of Part III are enforceable in a Court and the provisions in Part IV are not? Is it that the rights reflected in the provisions of Part III are somehow superior to the moral claims and aspirations reflected in the provisions of Part IV? I think not. Free and compulsory education under Article 45 is certainly as important as freedom of religion under Article 25. Freedom from starvation is as important as right to life. Nor are the provisions in Part III absolute in the sense that the rights represented by them can always be given full implementation...”

161. Y.V. Chandrachud, J. (as he then was) put the same idea in the following words:

“As I look at the provisions of Parts III and IV, I feel no doubt, that the basic object of conferring freedoms on individuals is the ultimate achievement of the ideals set out in Part-IV. May I say that the directive principles of State policy should not be permitted to become 'a mere rope of sand.' If the State fails to create conditions in which the fundamental freedoms

can be enjoyed by all, the freedoms can be enjoyed by all, the freedom of the few will be at the mercy of the many and then all freedoms will vanish.”

162. In *State of Karnataka v. Ranganatha Reddy*, Krishna Iyer, J. stated:

“Our thesis is that the dialectics of social justice should not be missed if the synthesis of Part III and Part IV is to influence State action and Court pronouncements.”

163. In *U.P.S.C. Board v. Harishankar* A.I.R. 1979 S.C. 65 it was observed:

"Addressed to courts, what the injunction (Article 37) means is that while courts are not free to direct the making of legislation, courts are bound to evolve, affirm and adopt principle of interpretation which will further and not hinder the goals set out in the Directive Principles of State Policy. This command of the Constitution must be ever present in the minds of the Judges while interpreting statutes which concern themselves directly or indirectly with matters set out in the Directive Principles of State Policy." This is on the view that the "State' in Article 36 read with Article 12 includes the judiciary as well.

164. In *Minerva Mills v. Union of India*, Chandrachud, C.J. quoted with approval the similier of Granville Austin that Parts III and IV are like two wheels of a chariot and observed that "to give absolute primacy to one over the other is to disturb the harmony of the Constitution." The learned Chief Justice observed further:

“Those rights (Fundamental Rights) are not an end in themselves but are the means to an end. The end is specified in Part-IV.”

165. It is thus well established by the decisions of this Court that the provisions of Parts III and IV are supplementary and complementary to each other and that

Fundamental Rights are but a means to achieve the goal indicated in Part-IV. It is also held that the fundamental Rights must be construed in the light of the Directive Principles. It is from the above stand-point that Question No. 1 has to be approached.”

27. It is in this context we proceed to discuss the provisions of RTE Act. Introduction to this Act categorically exemplify that this Act was introduced in the Parliament to fulfil the mandate of Article 21A of the Constitution as inserted by 86th Amendment Act, 2001. In the Statement of Objects and Reasons, it is stated that the crucial role of universal elementary education for strengthening the social fabric of democracy through provision of equal opportunities to all has been accepted since inception of Indian Republic. This hard fact is also recognized that though State was obligated to provide free and compulsory education to all children up to the age of 14 years, the goal of universal elementary education continues to elude the nation. More importantly, this fact is recognized that number of children, particularly children from disadvantaged groups and weaker sections, drop out of schools before completing elementary education and this number remains very large. The Act seeks to provide the following:

- (a) that every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards;
- (b) ‘compulsory education’ casts an obligation on the appropriate Government to provide and ensure admission, attendance and completion of elementary education;

- (c) ‘free education’ means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education;
- (d) the duties and responsibilities of the appropriate Government, local authorities, parents, schools and teachers in providing free and compulsory education; and
- (e) a system for protection of the right of children and a decentralized grievance Redressal mechanism.”

28. Another important statement which is made is that the legislation is anchored in the belief that the values of quality, social justice and democracy and the creation of just and humane society can be achieved only through provision of **inclusive elementary education to all**. No doubt, in the definition of ‘child’ contained in Section 2(c) of the Act, age of 6 to 14 years is stipulated. Likewise, ‘elementary education’ defined in Section 2(f) of the Act means the education from first class to eighth class. Even compulsory education which is the obligation of the appropriate Government is to provide free and elementary education to every child of the age of 6 to 14 years. However, for our purpose, Section 11 becomes important. This provision deals with Pre-School education and casts an obligation upon the appropriate Government to make necessary arrangements for providing Pre-School education for such children. Therefore, it cannot be said that RTE Act does not deal with Pre-school education at all. In order to answer the issue at hand, the provision of Section 11 has to be read in conjunction with Section

12 thereof. Clause (c) of sub-section (1) of Section 12 puts an obligation on the schools to admit atleast to the extent of 25% of the strength of the class, children belonging to weaker sections and disadvantaged groups in the neighbourhood and provide free and elementary education till its completion. Proviso thereto is a very significant provision. It states that wherever a school imparts Pre-School education, provisions of clause (a) to (c) are applied for admission even to Pre-School education. The effect of this proviso is that 25% children belonging to weaker sections and disadvantaged groups are to be admitted even at Pre-School stage by those schools which are having Pre-school education. What follows from this provision? It means that 25% of the children belonging to weaker sections and disadvantaged groups are to be admitted to Pre-school and they are to continue for further studies as well at Pre Primary level and when they attain the age of six years and are admitted to class 1. This continuum has to be maintained. There cannot be a situation where different children belonging to weaker sections and disadvantaged groups are admitted at Pre-School stage and those children are replaced by some other children belonging to same section of society when it comes to primary school, or for that matter class 1 at the age of six. That was not even suggested by learned counsel for the petitioner as this kind of a situation would amount to negating the entire concept of free and compulsory education coupled with obligations on the schools to provide such education to 25% children belonging to weaker sections and disadvantaged groups. When this position is accepted and 25% children admitted at Pre-school level and allowed to be promoted to

Pre Primary class, can there be a different treatment for the remaining 75% children? The answer has to be in the negative, as otherwise such a situation would be fraught with many dangers and not conducive to the education of those children.

29. Keeping in view the aforesaid directive in mind contained in RTE Act, the Right of Children to Free and Compulsory Education Rules, 2009 have been framed. Rule 11 thereof is of great significance which provides that children admitted in accordance with clause (c) of sub-section (1) of Section 12 of the RTE Act (which would include Pre-School children) “*shall not be segregated from the other children in the class room.....*”. Likewise, in order to implement the objective of RTE Act in its true spirit, Government of Delhi has issued Notification dated 7.1.2011. ‘Class’ in para 2(b) of this Order is defined as under:

“**Class**” includes the entry level class such as pre-school or first class as the case may be.”

30. It is thus clear that Pre-school, wherever a school imparts such education at that level, is treated as entry level class. How free seats for children belonging to weaker sections and disadvantaged groups are to be allocated and manner of admission against free seats is provided in para 3 and 4 of the said Order, 2011 which inter alia stipulates that where such school imparts Pre-school education, the provision shall apply for admission to such Pre-school education. Thus this Notification dated 7.1.2011 makes it clear that in so far as children belonging to weaker sections and disadvantaged groups are

concerned, for them entry level is Pre-school. We state at the cost of repetition that while examining the issue as to what should be the entry level, once it is found that it is Pre-school education for 25% of strength in a class belonging to weaker sections and disadvantaged groups, it cannot be different for remaining 75%. Reason is obvious. In determining the entry level education, there cannot be two different yardsticks, one for weaker sections and other for children belonging to general class.

Conclusion

31. The aforesaid discussion leads to the conclusion that in those schools where Pre-school education is imparted, it has to be treated as entry level and entry level would not start from Pre Primary in respect of such schools. As a fortiori, children admitted at Pre-school at the age of 3+ will get promotion to Pre Primary in the next year and for that, they will not have to undergo the admission process all over again. However, in those schools where there is no Pre-school level, it would be the Pre Primary which would be treated as entry level where admission is to be given to the children at the age of 4+. This conclusion which is arrived at on the basis of aforesaid detailed discussion is summed up in the following manner:

- (i) Early Childhood Care and Education (ECCE) which has been globally recognized as critical for human resource development starts from the period of conception to age 8. This entire period presents a developmental continuum and

the Pre-school care and education has to be treated as part of this developmental continuum. It, thus, becomes an integrated process.

- (ii) Every child has a right to ECCE of equitable quality and when ECCE is treated as first step in educational ladder and as a part of Education For All (EFA), the Government as well as schools have responsibility for all programmes for children of 3+ age as well, which is integral part of ECCE.
- (iii) Entire period from 0 to age 8 presents a developmental continuum which is divided into three sub-stages, namely, birth to 2+, 3 to 5+ and 6 to 8 +. Thus, 3 to 5+ is one stage before child enters class 1 at the age of 6. This sub-stage of 3 to 5+ includes Pre-School as well as Pre Primary and is clubbed together.
- (iv) The pedagogical process of ECCE includes a significant step, namely, at Pre-School level, preparing the child for entry and success in Primary school. In this process, the curriculum has to be such that it is able to help the child to adjust to the routines of primary schools as well as to the demands of formal teaching.
- (v) At the level of Pre-school, curriculum has to be such which should ensure that child gets interested in education when he is to take next step at Pre Primary level and thereafter, formal education from class 1. This can be ensured only when the child who gets admission in Pre-school remains in the same

milieu and environment. Therefore, those schools which have Pre-school level as well, this Pre-school level cannot be totally segregated as standalone basis. Such a situation will be derogatory to and prejudicial to the interest of children.

- (vi) It is in the interest of a child who is admitted to Pre-school that he remains in the same environment to which he is admitted to at Pre-school level and continuity is maintained.
- (vii) When need of healthy teacher-child relationship at ECCE level is recognized and the role of teachers at the stage of Pre-school becomes important, it would be in the interest of these children to remain in touch with those teachers at Pre Primary school level as well. It is more so when at Pre-school as well as Pre Primary, the system needs trained teachers who understand the psychology and needs of the children and are able to give due emphasis to the kind of care and education which the children need at that stage.
- (viii) Even for ensuring that there are no drop outs when the formal learning starts, the continuum from Pre-school to Pre Primary and higher level becomes essential. This is recognized by the Right to Education Act as well as mandate is particularly

incorporated in section 11 and Section 12 thereof which lay emphasis on “inclusive elementary education to all”.

- (ix) Providing integrated system for 25% children belonging to weaker sections and disadvantaged groups which is the mandate of the RTE Act and denying the same to remaining 75% children not only be unhealthy for the system and may create many other logistic problems, it would be discriminatory as well.
- (x) This is even sought to be achieved by the Government vide Notification dated 7.1.2011 to which no challenge is laid by the petitioners.
- (xi) Subjecting the parents and children to double admission test, first at Pre-school level and again at Pre Primary level would not only work against the welfare of the children, it would be counter-productive and may have serious psychological and other repercussions on the children. Though the petitioner has suggested that at Pre-school level, there should not be any admission criterion and all those who approach be given admission, this suggestion may be relevant for those institutions having only nursery/kindergarten/Montessori etc. but is totally impractical for the schools which have primary and/or senior level education as well.

32. It is to be kept in mind that for proper and effective implementation of ECCE, the private schools have equal role and

duty to play as the Government schools which was highlighted in the case of *Mohini Jain* (supra) and *Unni Krishnan* (supra).

33. Thus, we do not find any proper reason or rationale to keep Pre-school apart and segregated by those regular schools where Pre-school facilities exist and admission starts from that stage. It is in the interest of all stakeholders that in such schools, Pre-school is treated as entry level. Therefore, on this specific aspect, we may not entirely agree with the observations contained in Ganguly Committee Report and in any case, as noted above, the position has changed after the introduction of RTE Act.

34. Having said so, we want to make it clear that the focus on ‘care’ and ‘education’ at Pre-school level has to be altogether different. The children are not to be burdened with any textbooks or home works. This part of school may be treated as nursery, Montessori, kindergarten, play school, etc. Schools also have to keep in mind the specific curriculum framework for ECCE which keeps in mind the guiding principles like play as basis of learning, art as the basis of education, recognition of specific features of children thinking, etc. The ideal teacher-child relationship which is required at this age allowing the children to express their feelings, sharing their trials and triumphs and teachers being responsive, reaching out to children, is to be given due attention. To achieve this, professionally trained and specifically sensitized teachers are required. We make it clear that by no means we are attaching any less importance to these aspects which have to apply with all vigour, sincerity and sensibilities. Therefore, to that extent, Pre-school is

not to be treated as part of formal education and at that stage, education has to be only informal.

35. We answer the issue accordingly and dispose of the writ petition in the aforesaid manner.

ACTING CHIEF JUSTICE

**(RAJIV SAHAI ENDLAW)
JUDGE**

JANUARY 27, 2012
Pk