

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.9026 OF 2014****WITH****CIVIL APPLICATION NO. 2659 OF 2014**

Sindhudurg Zilla Shikshan Sanstha
Chalak Mandal, Pandur (Registered),
having office at Pandur, Tal. Kudal,
Dist. Sindhudurg,
Through its Chairman/Secretary.

..... Petitioner

Vs.

- 1 The Union of India,
Ministry of Human Resources
Development, Government of India,
New Delhi, Through
its Chief Secretary.
- 2 The State of Maharashtra,
Through Principal Secretary,
School Education & Sports Department,
Mantralaya, Mumbai-400 032.
- 3 The Director of Education,
(Secondary and Higher Secondary),
Maharashtra State, Pune-1.
- 4 The Director of Education (Primary),
Maharashtra State, Pune-1.
- 5 The Deputy Director of Education,
Kolhapur Region, Kolhapur.
- 6 The Chief Executive Officer,
Zilla Parishad, Sindhudurg,
Having Office at Sindhudurnagari-Oros.

- 7 The Education Officer (Secondary),
Sindhudurg, Zilla Parishad,
Sindhudurg, At Sindhudurnagari-Oros.
- 8 The Education Officer (Primary),
Sindhudurg, Zilla Parishad,
Sindhudurg, At Sindhudurnagari-Oros. Respondents

WITH
Writ Petition NO. 3722 OF 2015

NANDA GAMBHIRDAS ANGRE ...Petitioner(s)
Versus
STATE OF MAHARASHTRA, AND ORS. ...Respondent(s)

WITH
Writ Petition NO. 3881 OF 2015

THE AKOLA ZILLA SHIKSHAN SANSTHA
SANCHALAK MANDAL, ...Petitioner(s)
Versus
STATE OF MAHARASHTRA AND ORS ...Respondent(s)

WITH
Writ Petition NO. 4960 OF 2015

ANJUMAN ISHAAT-E-TALEEM TRUST,
THROUGH ITS SECRETARY, GULAM
MOHAMMAD S/O GULAM RASOOL AND ORS. ...Petitioner(s)
Versus
THE STATE OF MAHARASHTRA ...Respondent(s)

WITH
Writ Petition NO. 4969 OF 2015

ANJUMAN ISHAAT-E-TALEEM TRUST, AND ANR. ...Petitioner(s)
Versus
THE STATE OF MAHARASHTRA AND ORS ...Respondent(s)

WITH
Writ Petition NO. 10025 OF 2015

ANJUMAN ISHAAT-E-TALEEM TRUST, ROSHAN GATE, AURANGABAD AND OTHR.	...Petitioner(s)
<i>Versus</i>	
THE STATE OF MAHARASHTRA	...Respondent(s)

WITH
Writ Petition NO. 3884 OF 2015

SARITA MANOHAR PANDE	...Petitioner(s)
<i>Versus</i>	
STATE OF MAHARASHTRA AND ORS	...Respondent(s)

WITH
Writ Petition NO. 10233 OF 2015

SINDHUDURG ZILLA SHIKSHAN SANSTHA CHALAK MANDAL, PANDUR THROUGH ITS CHAIRMAN/SECRETARY	...Petitioner(s)
<i>Versus</i>	
THE STATE OF MAHARASHTRA THROUGH SECRETARY AND ORS	...Respondent(s)

WITH
Writ Petition NO. 10313 OF 2015

MAHARASHTRA RAJYA MADHYAMIK VA UCHHA MADHYAMIK SHALA MUKHYADHYAPAK SANGH MAHAMANDAL	...Petitioner(s)
<i>Versus</i>	
THE STATE OF MAHARASHTRA THROUGH PRINCIPAL SECRETARY, SCHOOL EDU. AND SPORTS DEPT. AND ORS.	...Respondent(s)

WITH
Writ Petition NO. 5480 OF 2014
WITH
CIVIL APPLICATION NO. 2110 OF 2015

SINDHUDURG ZILLA SARVA PRATHAMIK
SHIKSHAK SANGHATANA SAMANVAY
SAMITI-SINDHUDURG

...Petitioner(s)

Versus

STATE OF MAHARASHTRA, THROUGH
PRINCIPAL SECRETARY, EDUCATION DEPT
AND ORS

...Respondent(s)

WITH
Writ Petition NO. 5464 OF 2014
WITH
CIVIL APPLICATION NO. 2644 OF 2014

MAHARASHTRA RAJYA PRATHAMIK
SHIKSHAK SANGH, THROUGH PRESIDENT,
SHRI. RAJARAM DINKARRAO VARUTE

...Petitioner(s)

Versus

THE STATE OF MAHARASHTRA, THROUGH
PRINCIPAL SECRETARY, EDUCATION DEPT
AND ORS

...Respondent(s)

WITH
Writ Petition NO. 6234 OF 2014

MR. CHANDRAKANT BHASKAR KHAPRE

...Petitioner(s)

Versus

THE STATE OF MAHARASHTRA, THROUGH
PRINCIPAL SECRETARY, EDUCATION DEPT
AND ANR

...Respondent(s)

WITH
Writ Petition (ST) NO. 14860 OF 2014

MR. LAXMIKANT VISHWAMBHAR KARAD

...Petitioner(s)

Versus

THE STATE OF MAHARASHTRA THROUGH
THE PRINCIPAL SECRETARY, EDUCATION
DEPT. AND ANR.

...Respondent(s)

WITH
Writ Petition NO. 6511 OF 2014

UDAY DATTU KOLI AND ORS ...Petitioner(s)

Versus

STATE OF MAHARASHTRA, THROUGH
PRINCIPAL SECRETARY, EDUCATION DEPT
AND ANR ...Respondent(s)

WITH
Writ Petition NO. 9624 OF 2014

SHRI. BHAIRAVNATH SHIKSHAN SANSTHA
AND ORS. ...Petitioner(s)

Versus

THE STATE OF MAHARASHTRA THROUGH
ITS SECRETARY, DEPT. OF SCHOOL
EDUCATION AND ORS. ...Respondent(s)

WITH
Writ Petition NO. 12380 OF 2015

SHRI. PARMESHWAR HARIDAS SHINDE
AND ANR. ...Petitioner(s)

Versus

THE STATE OF MAHARASHTRA AND ORS. ...Respondent(s)

WITH
Public Interest Litigation NO. 72 OF 2015

SHRIKANT GOVIND DESHPANDE ...Petitioner(s)

Versus

STATE OF MAHARASHTRA AND ORS ...Respondent(s)

WITH
Public Interest Litigation NO. 73 OF 2015

URDU HIGH SCHOOL AND JR. COLLEGE
HEAD MASTER'S WELFARE ASSOCIATION
LYAVATMALTAL. AND ...Petitioner(s)

Versus

THE STATE OF MAHARASHTRA AND ORS. . ..Respondent(s)

Mr. A.V. Anturkar, Sr. Advocate i/by Mr. Prashant S. Bhavake for the Petitioner in WP No. 9026 of 2014 and CAW No. 2659 of 2014 and WP No. 10233 of 2015.

Mr. Prashant Bhavake for the Petitioner in WP No. 10313 of 2015 and WP No. 12380 of 2015.

Mr. Mihir Desai, Senior Advocate a/w Ms. P.P. Hingmire for the Petitioner in WP No. 9624 of 2014 and WP No. 3881 of 2015.

Ms. P.P. Hingmire for the Petitioner in WP No.3884 of 2015 and WP No. 3722 of 2015.

Ms. P.P. Hingmire i/by Mr. A.R. Deshpande for the Petitioner in PIL No. 72 of 2015.

Mr. A.S. Khandeparkar a/w Mr. Rakesh Pathak i/by Khandeparkar & Associates for the Petitioners in WP No. 5480 of 2014.

Mr. Chetan G. Patil for the Petitioner in WP No. 6511 of 2014.

Mr. R.S. Apte, Senior Advocate a/w Ms. S.S. Bhende, AGP for the State.

Ms. Neeta V. Masurkar a/w Mr. D.P. Singh for Respondent No.1 in WP No. 9026 of 2014.

Mr. Ramesh D. Rane for Respondent No.3 in WP No. 5480 of 2014 and WP No. 5464 of 2014 and for Respondent No.2 in WP No. 6511 of 2014 and WPST No. 14860 of 2014.

Mr. S.C. Mangle for Respondent No.2 in WP No. 6234 of 2014.

Mr. Wasim Khan i/by S.S. Kazi for the Petitioner in WP No. 4960 of 2015, WP No. 4969 of 2015 and WP No. 10025 of 2015.

Mr. Firdos T. Mirza a/w A.I. Sheikh for the Petitioner in PIL No. 73 of 2015.

Mr. A.I. Patel, AGP for the State in WP No. 12380 of 2015.

**CORAM : ANOOP V. MOHTA AND
A.A. SAYED, JJ.**

DATE : 15 DECEMBER 2015.

ORAL JUDGMENT:- (PER ANOOP V. MOHTA, J.):-

Rule, made returnable forthwith.

Heard finally by consent of the Counsel appearing for the

respective parties. All these Petitions are disposed of by this common Judgment, as common facts and circumstances, issues and laws are involved.

2 The Petitioners are the “Head Masters”, permanent schools “Teachers” including Assistant Head, supervisor of aided “non-minority” recognized “private/primary Schools”, governed by the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, “*MEPS Act*”) and the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, “*MEPS Rules*”) made thereunder, apart from Circulars/Notifications/GRs (“The Circulars”) issued by the State of Maharashtra (“The State”), from time to time. The “teachers” of the recognized schools run by the “Local Authorities” are also involved. Some petitions are by the respective Teachers and Association of institutions. Petitions are filed by the “recognized” aided “minority school/management also. All the “employees” of the recognized schools including the teaching and non-teaching staff are governed by these provisions, whether aided and/or not aided by the State.

3 We are concerned with the grievances of the Petitioners revolving around the “*Staffing Pattern*” and related aspects, based upon the education policy (“The Policy”) of the Central Government and the State, declared also under the Right of Children to Free and Compulsory Education Act, 2009 (for short, “*the RTE Act*”) and The Right of Children to Free and Compulsory Education Rules, 2010 (Central Rules) & The Maharashtra Right of Children to Free and Compulsory Education Rules, 2011 (State Rules) and the Circulars. The Petitioners have challenged the related Circulars, issued under the Governing Laws, stating it to be unconstitutional and contrary to the law as it affects their constitutional and legal rights. The challenges are raised to the pupil-teacher ratio (“PTR”)so fixed in the schedule of the RTE Act and the related Circulars and implementation of the same, by giving their respective interpretation.

“Staffing Pattern”

4 The concept of “*Staffing Pattern*” and related aspects have been in existence since long in Education field as it is interlinked and essential for the effective service conditions keeping in mind the Central and State financial burden also. All the concerned are fully

aware of such concept and the PTR so fixed and prescribed by the State from time to time to run, administer and control the schools, as defined. All these “teachers”, “Schools” are bound by the governing laws and the policies. The role of the State and its policies in this regard are important for all the concerned.

The Governing Laws

5 Basic provisions on which both the Counsel have relied upon are:-

The Constitution of India:-

“Article 21A. 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.”

Right of children to free and compulsory education and the quality education for all.

6 The right of free and compulsory education to all the children has been reinforced by Article 21A of the Constitution of India. The RTE Act and Rules made thereunder, apart from related

State Circulars so issued, bind all the concerned. The relevant Sections of the RTE Act are as under:-

“Section 8(g) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;”

“Section 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.”

“Section 19. Norms and standards for school- (1) No school shall be established or recognized under section 18, unless it fulfills the norms and standards specified in the Schedule.

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

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

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

(5) Any person who continues to run a school after the recognition is withdrawn, shall be liable to fine which may extend to one lakh rupees and in case of continuing

contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.”

“Section 20. Power to amend Schedule- *The Central Government may, by notification, amend the Schedule by adding to, or omitting therefrom, any norms and standards.”*

“Section 25. Pupil-Teacher Ratio- *(1) Within three years from the date of commencement of this Act, the appropriate Government and the local authority shall ensure that the Pupil-Teacher Ratio, as specified in the Schedule, is maintained in each school.*

(2) For the purpose of maintaining the Pupil-Teacher Ratio under sub-section (1), no teacher posted in a school shall be made to serve in any other school or office or deployed for any non-educational purpose, other than those specified in section 27.”

“Section 26. Filling up vacancies of teachers.- *The appointing authority, in relation to a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or by a local authority, shall ensure that vacancy of teacher in a school under its control shall not exceed ten per cent of the total sanctioned strength.”*

7 The relevant Sections of MEPS Act and the MEPS Rules
are as under-

“Section 2(7) *“employee” means any member of the teaching and non-teaching staff of a recognized school [and includes Assistant Teacher (Probationary)*

2(8) “existing private school” means a recognized private school which is in existence on the appointed date.

2 (9) “Head of a school” or “Head” means the person, by whatever name called, in charge of the academic and administrative duties and functions of a school conducted by any Management and recognized or deemed to be recognized under this Act, and includes a principal, vice-principal, head master, head mistress, assistant head master, assistant head mistress, or superintendent thereof.

2(11) “local authority” means a Zilla Parishad, a Municipal Corporation, or a Municipal Council, as the case may be.

Section 4(6)- No employee of a private school shall be suspended, dismissed or removed or his services shall not be otherwise terminated or he shall not be reduced in rank by the Management, except in accordance with the provisions of this Act and the rules made in that behalf.”

“Rule 21. Workload- (1) A full-time teacher shall be present on the school premises during the working hours of the school upto 30 hours a week exclusive of daily recess according to the requirement of the school.

(2) A full-time teacher in a Secondary School or Junior College or Junior College of Education who is teaching in classes with an average enrollment of 30 or less number of pupils shall do actual teaching work for 19 hours per week. A teacher who is teaching in classes with an average enrollment from 31 to 50 pupils shall do actual teaching work for 18 hours per week. A teacher who is teaching in classes with an average enrollment of more than 60 pupils shall do actual teaching work for 17 hours per week.

(3) For schools having more than 20 classes, the Head, the Assistant Head and the Supervisor shall do teaching work for at least, 4,8 and 10 hours per week respectively. For schools having 20 or less classes the Head and the Supervisor shall do teaching work for at least 6 and 12 hours per week, respectively.

(4) The hours of working and attendance of non-teaching staff of the school shall be 38 ½ hours per week (inclusive of lunch recess) in the case of clerical staff, Librarians and Laboratory Assistant etc., and 50 hours per week (inclusive of lunch recess) in the case of lower grade staff such as peons, hamals etc.

“Rule 26 Retrenchment on account of abolition of posts:-

26(9) *In case, the fall in the number of pupils, classes or divisions affects the scale of the employee or his status, the facility of absorption admissible as per provisions of clause (iii) of sub-rule (2) shall not be admissible to him and he shall have to work on the lower scale or lower post or part time post, as the case may be. In the event of such an employee showing unwillingness to work on such a post, the authorities mentioned in clause (iii) of sub-rule (2) shall permit the Management to retrench him after giving him three months' notice or, as the case may be, after completion of the notice period if already given.”*

The State Circulars/GRs

8 The following State Government Resolutions including impugned Circulars are also read and referred by the learned Counsel appearing for the parties-

- a) Government Resolution, School Education & Sports
Dept., No.:SSN 1091/2579/ SE-1, dated 30.11.1991;
- b) Government Resolution, School Education & Sports
Dept., No.:SSN 1096/ 6000 /SE-1 dated 20.4.1996;
- c) Government Resolution, School Education & Sports

- Dept.,No.:SEA-2208/(918/08)/ SE-1, dated 2.04.2009;
- d) Government Resolution, School Education & Sports
Dept.,No.:SET-2013/(107/13)/SE-1, dated 20.11.2013;
- e) Government Resolution, School Education & Sports
Dept.,No.:PTR-1113/(1/2013)/SM-4dated 13.12.2013;
- f) Government Resolution, School Education & Sports
Dept., No.: Misc.- 2014/(177/2014)/ SM-4, dated
27.06.2014;
- g) Government Resolution dated 12 October 2014
regarding absorption of surplus teachers and non-
teaching staff and their payment of salary.
- h) Government Resolution No.SSN-2015/C.R.16/15/TNT-
2 dated 28 August 2015;
- i) Government letter dated 7 September 2015 addressed
to Competent Authorities about staffing pattern to be
followed for the year 2014-2015 and 2015-2016.
- j) Government Resolution dated 7 October, 2015
regarding creation of Guest Instructor/Panel as per
High Court order;
- i) Government Resolution-8 December, 2015 regarding

absorption of surplus teachers and their on-line payment of salary and to retain them in the same school/establishment till absorption and to take steps based upon the earlier circulars.

The Schedule and Circulars about PTR:-

9 The Schedule under the RTE Act referred by all the learned counsel appearing for the respective parties is re-produced as under:-

THE SCHEDULE (See sections 19 and 25)

NORMS AND STANDARDS FOR A SCHOOL

Sr. No.	Item	Norms and Standards	
1.	Number of teachers: (a) For first class to fifth class	Admitted children Up to Sixty Between sixty-one to ninety Between Ninety-one to one hundred and twenty-one Between One hundred and twenty-one to two hundred Above One hundred and fifty children Above Two hundred children	Number of teachers Two Three Four Five Five plus one Head-teacher Pupil-Teacher Ratio (excluding Head-teacher)

			shall not exceed forty.
	(b) For sixth class to eighth	(1) At least one teacher per class so that there shall be at least one teacher each for – (i) Science and Mathematics; (ii) Social Studies; (iii) Languages; (2) At least one teacher for every thirty-five children. (3) Where admission of children is above one hundred- (i) a full time head-teacher; (ii) part time instructors for-- (A) Art Education; (B) Health and Physical Education; (C) Work Education;	

2 Building

All-weather building consisting of--

(i) at least one class-room for every teacher and an office-cum-store-cum-Head teacher's room;

- (ii) barrier-free access;
 - (iii) separate toilets for boys and girls;
 - (iv) safe and adequate drinking water facility to all children;
 - (v) a kitchen where mid-day meal is cooked in the school;
 - (vi) playground;
 - (vii) arrangements for securing the school building by boundary wall or fencing.
- 3 Minimum number of working days
- (i) two hundred working days for first class to days/instructional hours in an fifth class; academic year;
 - (ii) two hundred and twenty working days for sixth class to eighth class;
 - (iii) eight hundred instructional hours per academic year for first class to fifth class;
 - (iv) one thousand instructional hours per academic year for sixth class to eighth class.
4. Minimum number of working days Forty-five teaching including preparation hours
- 5 Teaching learning equipment Shall be provided to each class as required.

6. Library There shall be a library in each school providing newspaper, magazines and books on all subjects, including story-books.
7. Play material, games Shall be provided to each class as and sports required. equipment.

10 The relevant Central Rules, including financial responsibility of Central Government, read with the State Government, are as under:-

“Rule.22 Maintaining pupil-teacher ratio- (1) The sanctioned strength of teachers in a school shall be notified by the Central Government, appropriate Government or the local authority, as the case may be, within a period of three months of the appointed date.

Provided that the Central Government, appropriate Government or the local authority, as the case may be, within three months of such notification, redeploy teachers of schools having strength in excess of the sanctioned strength prior to the notification referred to in sub-rule (1).

(2) If any person of the Central Government, appropriate Government or the local authority violates the provisions of

sub-section (2) of section 25, he or she shall be personally liable for disciplinary action.

“Rule 7. Financial responsibility of the Central

Government- (1) The Central Government shall prepare annual estimates of capital and recurring expenditure for carrying out the provisions of the Act, for a period of five years, within one month of the appointed date, which may be reviewed for every three years.

(2) In order to implement the provisions of the Act, the Central Government shall, within a period of six months of the appointed date, ensure that its programmes for elementary education are in conformity with the provisions of the Act.

(3) The Central Government shall, within a period of six months from the appointed date, hold consultation with the State Government and determine the percentage of expenditure which it shall provide to the State Governments as grants-in-aid of revenues for implementation of the act.

(4) Within one month of the appointed date, the Central Government shall cause a reference to be made to the

Finance Commission, and cause similar references to be made every time the estimates are revised;

Provided that in case there is no Finance Commission in existence at the time of a particular reference, the Central Government may set up an alternative mechanism for the purpose of providing resources to the State Government.”

11 The relevant Sections 19, 24 and 25 of the RTE Act, read with the Schedule and the Rules made thereunder, prescribe mechanism for deciding “PTR”. The staffing pattern is also to assess and determine the required sanctioned strength and if necessary, to re-deploy excess/surplus teachers. All the concerned parties have been implementing and acting upon such/similar pattern since long. The prescribed recruitment conditions, qualification of teaching and non-teaching staff are important for regularization and/or for controlling and/or managing such schools on the foundation of governing laws and the policies. The Central/State's obligation to provide financial aid to such schools also depend upon the same.

CONSTITUTIONAL VALIDITY OF THE SCHEDULE

12 The challenge to the Constitutional validity of the Schedule of RTE Act is raised in some of the Petitions including Writ Petition No. 9026 of 2014. We are inclined to observe that the Supreme Court in Society for Unaided Private Schools of Rajasthan Vs. Union of India & Anr.¹ has already upheld the Constitutional validity of the RTE Act. The same is further reinterpreted in Pramati Educational and Cultural Trust & Ors. Vs. Union of India & Ors.² Therefore, the challenge to the Schedule of the Act, of which the constitutional validity is already upheld, there is no case to permit to re-agitate the challenge only to the Schedule and related Circulars. All the related aspects revolving around the Schedule elaborated in these circulars need to be followed by all the concerned. The Central and the State is under obligation to implement the governing laws and the education policies. The PTR is interlinked and interconnected in every aspect. The Schedule needs to be read subject to provisions of the governing laws, including the State Circulars/GRs so issued from time to time. The challenge of the scheduled to the Act, in our view, is untenable and therefore, the prayers as asked for, are rejected.

1 (2012) 6 SCC 102=(2012)6 SCC 1

2 AIR 2014 SC 2114

13 In this background, it is relevant to note the Supreme Court Judgment specifically paragraph 8 of the Society for Unaided Private Schools of Rajasthan, (Supra) which reads as under:-

“8 By virtue of the 2009 Act, all schools established prior to the commencement of the said Act are thus obliged to fulfill the norms and standards specified inter alia in Sections 25, 26 and the Schedule of that Act. [See Section 19(2)]. The State is also expected to first weed out those schools which are non-performing, or under-performing or non-compliance schools and upon closure of such schools, the students and the teaching and non-teaching staff thereof should be transferred to the neighbourhood school. The provision is meant not only to strengthen the latter school by adequate number of students but to consolidate and to impart quality education due to the addition of teaching staff. Needless to observe, that if there is inadequate response to the government funded school, it is but appropriate that either the divisions thereof or the school itself be closed and the students and staff of such schools be transferred to a neighbourhood school by resorting to Section 18(3) of the 2009 Act. Only after taking such decisions could the School Development Plan represent the correct position regarding the need of government aided schools in every locality across the State. Besides, it will ensure proper and meaningful utilization of public funds. In absence of such exercise, the end result would be that on account of existing non-performing or under-performing or non-compliance schools, the School Development Plan would not reckon that locality for establishment of another school. In our view, even the State Government(s), by resorting to the provision of the 2009 Act, must take opportunity to re-organise its financial outflow at the micro level by weeding out the non-performing or under-performing or non-compliance schools receiving grant-in-

aid, so as to ensure that only such government funded schools, who fulfill the norms and standards, are allowed to continue, to achieve the object of the 2009 Act of not only providing free and compulsory education to the children in the neighbourhood school but also to provide quality education. Thus, there is a power in the 2009 Act coupled with the duty of the State to ensure that only such government funded schools, who fulfill the norms and standards, are allowed to continue with the object of providing free and compulsory education to the children in the neighbourhood school.

14 The Apex Court has observed in Pramati Educational and Cultural Trust (Supra) while dealing with Articles 14, 15(5), 19(1)(g), 21-A, as under so far as the non-minority private Schools are concerned as under:-

“44.These provisions of the 2009 Act, in our view, are for the purpose of providing free and compulsory education to children between the age group of 6 to 14 years and are consistent with the right Under Article 19(1)(g) of the Constitution, as interpreted by this Court in T.M.A. Pai Foundation (supra) and are meant to achieve the constitutional goals of equality of opportunity in elementary education to children of weaker sections and disadvantaged groups in our society. We, therefore, do not find any merit in the submissions made on behalf of the non-minority private schools that Article 21-A of the Constitution and the 2009 Act violate their right Under Article 19(1)(g) of the Constitution.”

The State Circulars/GRs to implement the RTE Act and Education Policy

15 The State Government, therefore, in the background have been issuing various Circulars/GRs based upon the existing provisions of State Act and now after 2009 by virtue of RTE Act and the Judgment so referred above since 2013, till this date. Recent impugned Circulars/GRs are revolving around the Schedule for its implementation, dealing with PTR of the standards/classes of elementary school, from 1st to 4th and 5th standards and 6th, 7th and 8th and also for 9th and 10th standards.

16 The RTE Act came into force w.e.f. 1 April 2010. The Government issued Circulars/GRs in reference to the right to children to free and compulsory education in the month of June 2010, including of 18 June 2010, referring to Section 25 to deal with the PTR, as per the Schedule. The information was accordingly called for from the concerned schools/management/institutions. The information has been accordingly submitted and forwarded by the institutions of all the divisions/standards through the respective forms. The Circulars/GRs are issued referring to Sections 17, 21 and 29(1) and (2) in the year 2010-11 for the 1st to 8th Standard elementary level, covering the aspects of continuity in evaluation and

assessment of board based learning and summative evaluation, keeping in mind the quality education and multiple development of the students. Circular/GR was also issued referring to Article 21A of the Constitution of India, dealing with the minimum working days period and weekly period to conduct classes in respect of every division/section as per the Schedule. Minimum working periods are also fixed. Specific Circulars/GRs are also issued dealing with the special reservation/obligation for disadvantage class/group, its admission and related aspects. The Maharashtra State Council of Educational Research and Training, Pune is also constituted as an academic authority. The Circulars/GRs are also issued to collect various data, to establish schools within the prescribed/ neighbourhood area. Various procedures have been published through the Circulars/GRs about the “Letter of Intent” and “permission of recognition” in the requisite recognition form, including the affiliation from international institutions for English medium. The respective provisions and the regulations which are applicable to all the concerned and specifically to the “teacher”, “School” as defined under the Act, which includes aided and/or unaided “management” even run by the minority and/or non-minority

institutes. By specific notifications, the process of admissions and to make available the schools for the children for class 1st to 8th standards are also provided covering the aspect of distance. The provisions of de-recognition, as contemplated under Section 18(2) of the Act is also provided. The provisions are also made through Circulars/GRs about the qualification and relaxation in given case apart from, NCTE (The National Council For Teacher Education) directions and eligibility tests and the time to acquire the qualification so prescribed.

17 So far as the impugned Circular/GR dated 13 December 2013 is concerned, the State Government in pursuance to the Schedule in question, apart from the mandate so expressed in the judgment, proceeded further to determine the teacher's post based upon the standards strength in respect of the "Schools" and respective divisions from 1st to 8th Standards. Based upon the material so collected, by this Circular/GR, the State has decided to implement and regulate the same keeping in mind the duty of the State to ensure that only such Government funded schools, fulfills the norms and standards are allowed to continue with the object of providing free and compulsory education to the children as contemplated under the

RTE Act.

18 In the impugned Circulars/GRs/letters, the PTR so fixed for the respective classes (a) for 1st to 5th standards 1:30; (b) for 6th to 8th standards, 1:35; (c) for higher 6th to 8th standards 1:35 and (d) for 9th to 10th standard 1:40 as per Schedule is within the permissible limit of the Schedule. By this, the State has also decided to proceed further with clear rider to have such endeavour to fix PTR from time to time, based upon the information collected and received by 15/31st December of every year. The decision is also taken even to shift the students, if strength of students is less than 20%.

19 The directions are made for UDISE (United District Information System of Education) to collect the data. The provisions are made to permit to open/start schools of 5th and 8th standard as per the requirement, if not in existence. All the appropriate Governments, Local bodies, Authorities and their respective Committees have been provided to take steps to implement the Constitutional provisions and the RTE Act. The Redressal Committees are also constituted. The provisions are also made to appoint part-time teachers, handicraft and

work experience and their service conditions.

20 The State has also appointed/designated various Authorities to control and regulate through the Authorities of Local Bodies, including of aided and/or non-aided institutions from Standard 1st to 12th, taking into consideration the object, duties and obligation of Local Authorities, as per the provisions of the Act. The grievance redressal mechanism are also provided for redressing the complaints at all levels.

21 Even so far as the minority management/schools are concerned, the mandate of Section 12 of the RTE Act, in view of Pramati (Supra), though not extended, still for all other purposes starting from recognition of school, appointment of teachers, teaching and non-teaching staff, their service conditions and respective duties and obligations of such schools along with the local bodies are governed by these Circulars/GRs, so far as the staffing pattern of teaching and/or non-teaching staff, including related service conditions.

22 The provisions of MEPS Act are applicable to all private schools in the State of Maharashtra receiving any grant-in-aid from the State Government or not. It deals with the employees of teaching, as well as, non-teaching. All are regulated by the provisions of the Act, Rules and Circulars/GRs so issued from time to time. The minority educational institutions are also therefore, governed by the same, except the exception so carved out by Article 29 and 30 and related laws including recruitment of head of minority schools and other persons as notified. The present impugned Circulars/GRs can in no way said to be disadvantageous to such minority institutions, neither it disturb the affairs of the management/school and/or selection of the school head.

23 The term “Employee” includes, teaching and non-teaching staff of recognized school including Assistant Teacher (professional). The terms Primary Education, Primary School, Private School Management condition of recognition, withdrawal of recognition, appointment of teaching and non-teaching staff, training of teachers and recruitment of qualification are also well defined and well-known to all the concerned, even prior to the provisions of Central Act. The

teacher includes, the head of the school also. The challenge, therefore, so raised under the background, in our view, is untenable and unsustainable, as there is nothing, which is unconstitutional and contrary to the provisions of the Central Act, as well as, the State Act. Having once held that the Provisions/Circulars/GRs and/or the contents of the Circulars/GRs are within the framework of law, the interpretation sought to be placed by the learned Counsel appearing for the Petitioners in their respective Petitions dealing with every aspects, in our view, is unacceptable. We are inclined to observe that the State Government Circulars/GRs and the interpretation so put to the Circulars referring to the provisions in question, need to be accepted and we are accordingly doing so with clear rider that the State Government may re-visit, re-assess and re-valuate the position, based upon the information so collected from time to time. Even Section 20 of the RTE Act provides that the Schedule can be awarded by the Central Government by Notification.

24 The Circulars/GRs are also in the background have dealt with and considered to give importance to the existing teachers/teaching staff and non-teaching staff and the Head-masters

and related aspects of their services, apart from maintaining the mandate of Schedule with regard to the PTR. There are provisions whereby, the services of teachers and head-masters have been even protected. The provisions are also made to provide salary and/or continue and/or to accommodate them, if the State find, after assessing and evaluating the actual strength of school and the students of respective classes/divisions and the existing teachers strength and so also the respective Head-masters and/or senior teachers and/or head teachers. The State Government is definitely concerned with the finance and related aspects, in the background of provisions of Article 21A of the Constitution of India, read with the provisions of the Governing laws.

25 The State, by an affidavit-in-reply dated 18 November 2015 in Writ Petition No. 9026 of 2014, submitted as under:-

“5 I say that Government Resolution dated 13/12/2013 was issued exactly in consonance with the Schedule mentioned under Section 19 and 25 of the RTE Act dealing with norms and standards for a school. And to give more clarity to certain provisions, Government Resolution dated 28/08/2015 has been issued whereby norms and standards for a school as mentioned in the Schedule attached to Section 19 and 25 of RTE Act and Pupil – Teacher ratio has been relaxed as mentioned hereinabove in the Chart for providing quality education

and in the interest of compulsory education of all students.

- 6 I say that Rule 26 of M.E.P.S. Rules, 1981 deals with Retrenchment of a Permanent Employee from the service by the Management. And as per Rule 26(iii) of M.E.P.S. Rules, 1981, the employees from aided schools whose services are proposed to be retrenched shall be absorbed by the Education Officer in the case of primary and secondary schools or by the Deputy Director in the case of higher secondary schools and junior colleges. I say that in pursuant to the said Rule, the School Education and Sports Department to the State Government issued a Circular dated 14/10/2014 whereby guidelines ave been given for absorption of teaching and non-teaching staff and payment of salary. By the said Circular, it has been clarified that the teaching and non-teaching staff who has been declared as surplus would be paid salary by the State Government on off-line basis till they are absorbed elsewhere. Thus, interest of the teaching and the non-teaching staff who will be declared surplus has been protected. Hereto annexed and marked as **Exhibit-1** is the copy of the said Circular dated 14/10/2014.
- 7 I say that as there was no provision under any of the Acts or by way of Government Resolutions for protecting pay-scale of Headmasters who become surplus or will be demoted as Assistant Teachers on account of reduction in number of students, by the Government Resolution dated 28/08/2015, the State Government protected pay-scale of Headmasters who will become surplus till their absorption even otherwise if the Headmasters are demoted to the post of Assistant Teacher.
- 8 I say that, pursuant to Government Resolutions dated 13/12/2013 and 28/08/2015, for staffing pattern, number of pupils as per UDISE data in primary, upper primary, secondary and higher secondary is considered as on 30th September of every year. Such staffing pattern is

finalized every year on the basis of Pupil – Teacher ratio.

- 9 *I say that by common order dated 19/08/2014, the Division Bench of this Hon'ble High Court (Coram:- Anoop V. Mohta and A.S. Gadkari, JJ) directed to maintain status-quo as of that day with regard to demotion of the Petitioners who were declared as surplus Headmasters. Relying on the said order, various orders were passed by Division Bench of this Hon'ble High Court in Writ Petitions having similar issue. By order dated 31/12/2014, His Lordships Mr. Justice G.S. Patel (Vacation J) directed the State Government not to act in furtherance of Government Resolution dated 13/12/2013 which deals with staffing pattern for the year 2014-15. Because of the said order, the State Government could not finalize staffing pattern for the year 2014-15. Thereafter, the State Government filed Civil Application No. 2109 of 2015 in Writ Petition No. 9026 of 2014 for recalling/modification of the order dated 31/12/2014 passed by His Lordships Mr. Justice G.S. Patel (Vacation J). By order dated 12/08/2015, the Division Bench of this Hon'ble High Court (Coram Anoop V. Mohta and V.L. Achaliya, JJ) recalled and cancelled the order dated 31/12/2014 passed by His Lordships Mr. Justice G.S. Patel (Vacation J).*
- 10 *I say that pursuant to the abovesaid order dated 12/08/2015, the State Government could start proceeding with finalization of staffing pattern for the year 2014-15. By issuing a letter dated 07/09/2015, the State Government informed all the Competent Authorities that for the academic year 2014-15, staffing pattern would be done as per the directions issued vide Government Resolution dated 13/12/2013 and from the year 2015-16, staffing pattern would be done pursuant to the guidelines mentioned vide Government Resolution dated 28/08/2015. Hereto annexed and marked as **Exhibit-2** is the copy of the letter dated 07/09/2015 addressed by the State Government to the Competent*

Authorities.

- 11 *I say that as mentioned above vide Government Resolution dated 28/08/2015 and Circular dated 14/10/2014, the State Government has protected pay-scale of Headmasters/teachers/non-teaching staff who have become surplus and State Government will be making payment to such surplus teaching and non-teaching staff including Headmasters till their absorption even though their services are not utilized.*
- 12 *I say that under M.E.P.S. Act and S.S. Code, there is no provision of Pupil – Teacher ratio. However, in the Schedule under RTE Act, such ratio is prescribed for First class to Fifth class, one teacher is admissible for every 30 children and for Sixth class to Eighth class one teacher is admissible for every 35 children. To streamline the procedure, by issuing a Government Resolution dated 28/08/2015, for secondary school having Ninth and Tenth class, one teacher is made admissible for 40 children. This norm for IX and X standard is derived from Rashtriya Madhyamik Shiksha Abhiyan implemented by the Government of India all over the country.”*

26 The State Government also by an affidavit-in-reply dated 4

November 2015 in PIL No. 73 of 2015 submitted as follows:-

- “2) *By the present PIL, the Petitioner has challenged a Government Resolution dated 20/11/2013 being ultra-vires to Article 30 of the Constitution of India.*

I say that the Hon'ble Apex Court in Pramati Educational and Cultural Trust and Ors. Vs. Union of India and Ors. has held that Right of Children to Free and Compulsory Education Act, 2009 (hereinafter

referred to as “RTE Act”) is not applicable to minority institutions. Under Section 3 of RTE Act, every child of the age of 6 to 14 years shall have right to free and compulsory education till completion of elementary education i.e. 1st class to 8th class. Whereas the impugned Government Resolution dated 20/11/2013 prescribes norms for sanction of new divisions and continuation of it by secondary school i.e. 9th and 10th classes. I, thus, say that the said impugned Government Resolution dated 20/11/2013 has not been issued under RTE Act as the said Act is applicable for 1st to 8th classes only. But the said Government Resolution has been issued as per the policy framed by the State Government from time to time for secondary schools and as mentioned in the impugned Government Resolution dated 20/11/2013.

3 I say that before RTE Act came into force, 1st to 7th classes were classified as primary schools and 8th to 10th classes as secondary schools. After RTE Act came into force, 1st to 5th classes are called primary schools and 6th to 8th classes are called Upper Primary School and 9th and 10th classes fall under secondary schools.”

“5 I say that pursuant to Government Resolution dated 20/11/2013, the Respondent No.3 has issued a communication dated 28/10/2014.”

27 These supporting affidavits to the impugned Circulars/GRs cover all other Petitions also as commons issues and challenges are raised. We are inclined to accept the interpretation and the submissions made by the senior Counsel for the State.

28 We have gone through those Circulars/GRs, as well as, the provisions so read and referred by the learned Senior Counsel appearing for the respective parties and specifically the Schedule in question, including the PTR so referred above. Once the Schedule is upheld, the effect is that the ratio so fixed by the Central Act, needs to be followed by all the concerned. For actual implementation of the provisions of the Act and in view of the observations so made by the Supreme Court and even otherwise, the State has to take various steps to regularize the teaching and non-teaching staff and related aspects by giving protection of their services and all related benefits, we see there is no reason, basically at the instance of the Petitioners where the Head-masters and/or the teachers and/or the institutions and/or their respective associations, and/or the non-teaching staff, to disturb and/or interfere with the ratio so fixed and declared by the Act. Once the mandate of Schedule and the ratio so fixed is accepted, then there is no reason to disturb the Circulars/GRs so issued by the State to regularize the mandate of provisions, keeping in mind the Schedule so prescribed by the RTE Act, apart from the judgments and orders so issued in this regard. The respective challenges to the Circulars/GRs, in our view, needs no interference, basically when the State, as

recorded above, is taking the positive steps through these Circulars/GRs to implement the Schedule and related aspects in the interest of all.

29 Circular/GR dated 28 August 2015, being the Circular/GR in detailed, dealing with the respective provisions and the PTR and related aspects, covering the primary school students of 1st to 4th standards and students of 1st to 5th standards, higher primary school students of 5th to 7th and 6th to 8th standards, secondary school students of 9th and 10th standards, cannot be stated to be contrary to the ratio so provided in the Schedule. The Circular/GR has taken care of all clauses of the Schedule, which are already reproduced above. We have gone through the individual clauses of the Schedule and we are inclined to observe that there is no patent illegality and/or there is nothing contrary to the Governing laws.

The aspect of workload.

30 The submission revolving around Rule 21 of the MEPS Act referring to the workload is also in our view, and as stated by the learned counsel appearing for the Respondents, in no way disturb

and/or reason to disturb the Circulars/GRs, which have the foundation of the provisions of the Schedule, so prescribed. Once the PTR is fixed and finalized, including the strength in the particular class and/or Division, the related aspects required to be revisited and/or revalidated by the State which is definitely in the interest of all.

31 We cannot overlook the obligation of the State while dealing with the quality education/ standard and for that, to prescribe qualification for teaching and non-teaching staff, staffing pattern, service conditions and the respective salaries. We have noted that the State has given sufficient protection to all such teachers, after re-assessing and/or re-visiting the details, which they have been collecting since long, based upon the earlier Circulars/GRs so referred above. These informations and materials are relevant and now to implement the provisions, they have actually moved ahead by taking effective steps, including by declaring the teaching, as well as, non-teaching staff as surplus including the Head-masters. If occasion arises, they have to re-arrange and fix and accommodate everyone concerned in accordance with the policy so declared from time to

time. Therefore, for actual implementation of the Government circulars/GRs, some leverage need to be given. The time is also required to streamline and regularize everything as per the provisions, to achieve the constitutional aims and objects. These Circulars/GRs, in our view, are those steps which are well within the framework of law, so declared and in furtherance to the Schedule in question. We have noted that there are no discrepancies to the extent of declaring whole Circulars/GRs to be bad in law and/or contrary to the provisions of Central, as well as, the State Act.

The existing procedure to declare surplus under MEPS Act/Rules

32 The submission of the stated reduction of rank of head-master or penalty, if declared surplus, is also unacceptable. The MEPS Act itself provides and make the provisions to deal with the situation on account of abolition of post and closure of school and/or de-recognition of school. The provisions are also made to deal with the situation on account of abolition of post like retrenchment. The principle of termination of service, in the event of retrenchment, are also laid down. The concept of removal or termination of service cannot be equated with the situation like this, where the State

Government to bring at par and to have uniformly to implement the PTR and to take necessary steps, in a given case, even if required to declare certain surplus teachers, head-masters cannot be extended to treat such reduction and/or retrenchment as removal or termination of services, specifically in view of the clear declaration by the State that they are not terminating the services of such teachers, though declared surplus and such teachers will be retained in the same school and will be getting salary unless they are absorbed and/or accommodated. The provision of grant of salary equal to the head-masters, though for want of strength of particular class/division, such head-masters asked to work as senior teacher and/or as head of the school, even protect the interest of such teachers. This, in no way, can be termed as penalty of reduction of rank without due notice and/or inquiry or removal or termination of service from the post. In our view, the Government has taken all due care to protect the interest of all the concerned. There is nothing illegal, unjust and/or contrary to law. The impugned circulars, in our view, are therefore, are well within the framework of the Constitution of India and the law.

The quality Education

33 The interpretation sought to be placed by the learned counsel appearing for the Petitioners referring to the individual class/group is not acceptable, as ultimately the State needs to take policy decision to achieve the objects by keeping in mind the Constitutional provisions and the State's obligation to provide free and compulsory education to the children, as defined under the RTE Act. The policy, therefore, so announced from time to time including the Circulars/GRs so read and referred, in no way disturb the aims and objects of the State to provide “*Good Quality Elementary Education*”.

Composite/Joint classes 1 to 4/5 standards

34 The concept to the composite/joint classes of 1st to 4th /5th standard is not new. The statement is made that even such joint classes are conducted on regular basis. There is no statutory bar. The Central Government and/or the State Government may take appropriate decision and/or amend the Schedule and issue appropriate directions in future, if so required. However, we see there is no reason to disturb the existing schedule so provided along with the PTR and the conduct of classes as mentioned in Schedule 1(a).

Schedule 1(b) itself recognized that one teacher per class for the 6th to 8th classes for respective subjects. The ratio of 1:35 therefore, keeping in the background and as per the existing provisions, needs to be followed, even by the State Government. The Circulars/GRs therefore, so issued, in no way, can be stated to be contrary to the provisions of the Central Act and/or the State Act.

35 Two teachers for 60 students of I to V class is permissible. There is no bar. The good quality of elementary education is required and it is necessary for the State to take steps in this regards also. The Circulars/GRs are within the frame of this part of Schedule. Some steps even if required to be taken to bring uniform policy, including the transfer of teacher or staff in another school, but of the same management, if available, or otherwise cannot be stated to be bad in law. The staffing pattern and binding PTR need to read together for uniform policy, as are interlinked and interconnected. This, in no way, affect the appointment of qualified teacher and quality education for all the level education. The submission of shortage of teacher is also unacceptable. It is no way illegal curtailment of admissible post of teacher. Everything will be re-fixed and same will be required for

implementation of the education policy. The workload/working hours/periods aspects are also provided in the Schedule. We are not inclined to accept the contention that the State has no power to close down the school or declare teaching and non-teaching surplus even based upon the data. The discrepancies, even if any between the Schedule under the RTE Act and the Government Circulars/GRs, the State will need to take steps and follow the Schedule in all respects. Therefore, no case to disturb the intent and implementation of the Circulars/GRs and the policy so declared.

IX AND X Standard- PTR

36 So far as 9th and 10th standard classes are concerned, the provisions of RTE Act are not applicable to the extent of providing free and compulsory education as are applicable for 8th standard, but actually, most of the schools in State have been providing the education to the students not upto 8th standard, but continuing upto 10/12th standards also. The staffing pattern so provided for earlier classes, based upon the RTE Act, therefore, needs to be extended for IX and X Classes also on the basis of existing provisions and the formula so decided. The State is under obligation to control and

regularize these classes on similar staffing pattern to bring uniformity for all the purposes. Therefore, by these Circulars/GRs, specifically after 2013, provided and made arrangements to follow the similar formula/specific formula for these classes also. The protection so available to other teachers are also extended to the teachers of these 9th to 10th standard and all other similar benefits. After considering the provisions of the RTE Act and MEPS Act and the Circulars/GRs so issued, we see there is no reason to dissect the same staffing pattern, which the Government has decided to extend to these 9th to 10th standard classes.

37 The submission that the provisions of RTE Act are not applicable, and therefore, the Circulars/GRs so issued based upon the State provisions and the Judgment so referred, as stated to be illegal or impermissible is unacceptable. We are inclined to reject the said contention as the “staffing pattern” so provided earlier, is required to be modified in view of the staffing pattern and the Schedule so prescribed for 1st to 8th Standard. For proper control and regulation, the related and continuing of similar pattern, in our view, in the background, in no way can be stated to be unjust and/or contrary to

the provisions of any law, specifically when there is no dispute that prior to this staffing pattern and the related aspects, including the appointment and regularization of services and all benefits have been on the basis of the MEPS Act, and the Circulars/GRs so issued by the State. The competency of the State to issue and/or revisit and/or modify the earlier Circulars/GRs and/or replace the new Circular/GR and adopt the new staffing pattern, in no way, can be disturbed and/or interfered with, at the instance of the Petitioners. The State policy decision of providing such staffing pattern, is therefore, in our view, needs no interference.

Head Master- Head of School

38 The submission revolving around the Head-master, Deputy Head-master and/or supervisor posts of respective institutions, minority and/or non-minority, has been specifically dealt with in this Circular/GR. After hearing the learned counsel appearing for the parties and even after going through the relevant provisions of Circulars/GRs, Act and Rules, specifically Rule 3 of the MEPS Act, we are inclined to observe that the concept of the posts “Head-master” and/or “Deputy Head-master” and/or “Supervisor” have been

recognized even prior to the provisions of the Act. The situations are also contemplated, in case, if the Head-master is not available for any reason, the next senior teacher of such institution, in a given case, may control and/or take charge of duties of the head so provided under the Act, as well as, the Rule. The Schedule in question nowhere provides the words “The Head-master”, The State, in our view, based upon the existing practice and the Rules so reproduced above, has made specific provisions keeping in mind the ratio so fixed and the number of students which are required for the post of Head-master. The post of Head-master will not be permitted if the number of students is less than 135 in the existing school, in no way read to mean that there will be no head and/or no one to perform the duties of head and perform administrative function. The MEPS Act and the Rules provide the duties of head. The head, so defined under the MPS Act, in a given case, may include the senior teacher and/or in-charge and/or the person in-charge, if the student numbers are less than 135. Similar provisions are made in the impugned Circular/GR 26 August 2015 even for the higher primary school and secondary school.

“2.4 Headmaster/Deputy Headmaster and Supervisor Posts:-

2.4.1 Primary School (1st to 5th Std.)

2.4.1.1 If the number of students more than 150, then the post of headmaster will be permitted.

2.4.1.2 If the number of students is less than 135 in the existing schools presently, then the post of headmaster will not be permitted.

2.5.2 Higher Primary School (6th to 8th).

2.5.2.1 If the students more than 100 then the post of Headmaster will be permitted.

2.5.2.2 If the number of students is less than 90 in the existing school presently, then the post of headmaster will not be permitted.

2.5.3 Secondary School (Class 9th & 10th)

2.5.3.1 If the students more than 100 then the post of Headmaster will be permitted.

2.5.3.2 If the number of students is less than 90 in the existing school presently, then the post of headmaster will not be permitted.”

39 The provisions are also made that if the post of Headmaster is declared surplus, then they will also be absorbed in other schools of that Management. There is a specific provision for protecting their services and additional factor is to pay the salary to

such Head-master who is declared surplus. It means that, such surplus declared Head-master will be provided same pay-scale as that of Head-master, though he is declared surplus.

40 The provisions are specifically made about the posts of “Supervisor” and “Deputy Head-master”. All these respective clauses, for the above reasons, also need no interference.

41 The specific provisions are also made while sanctioning the number of teachers and/or deciding such teachers, who are excess in number, and an endeavour will be made to implement the reservation policy. The specific provisions are also made with regard to the adjustment and/or accommodation of the teachers, based upon the prevailing criteria as per the provisions of Maharashtra Private School Employee (Condition of Service) Regulation, 1981.

42 The State Government has also issued related Circular/GR of 8 December 2015 whereby, it is further clarified that the teachers, even if they are declared as surplus, they will be continuing in their respective institutions, as far as possible under the same Management

and/or they will be accommodated accordingly until they are absorbed elsewhere.

Minority aided management/school/institution

43 So far as the minority institutions are concerned, the submissions are made in view of the Judgment of *Pramati Educational and Cultural Trust (Supra)* that the provisions of the Rte Act are not applicable to such minority institutions. The submission is therefore, made that the Schedule is also not applicable and so also the State impugned Circulars/GRs, based upon the judgments and the provisions. There is no issue that these minority institutions are governed and controlled by the State, as their establishment and/or as well as, the permission to start educational school/institution is under the control and within the framework of the MEPS Act and the Circulars/GRs so issued from time to time. The reasons so recorded above, including the principle behind such “*staffing pattern*”, though based upon the Schedule under the Act, in no way affect the rights of minority institutions to admit the students or charge the reasonable fee structure and to take action, if there is dereliction of duties on the part of any employee. Even the appointment of staff, teaching and

non-teaching, are within the power of minority institutions, however, there is no issue that the teaching and/or non-teaching staff, qualification and the related contentions are as per the provisions, Rules and Regulations and the Circulars/GRs so issued by the State for the minority institutions, if getting the aid from the State, to contend that this “*staffing pattern*” and the Circulars/GRs so issued for the same, are not applicable to them, in our view, is unacceptable situation. It is the obligation of the State to have a uniformity in every aspect of education providing uniform education pattern and qualification of teachers and/or staff. For uniformity, the standard of education and the staffing pattern so adopted by the State, though based upon the RTE Act and MEPS Act, just cannot be overlooked while regulating such minority institutions. This in no way takes away their rights, even to appoint the head of minority institutions. The provisions are also made and so also the statement that, the surplus teachers and the Head-masters of minority institutions are adjusted and/or accommodated in another minority school/institutions. Therefore, the circular so issued by the State in this background, in our view, in no way can be stated to be contrary to the judgment so referred above including T.M.A. Pie Foundation Vs.

The State of Karnataka & Ors.³ and Pramati Educational and Cultural Trust (Supra). On the contrary, it is in the interest of all the concerned without disturbing the minorities rights so provided under Articles 29 and 30 of the Constitution of India for the State to maintain the uniformity of the education as such institutions are also recognized and permitted by the State and the staffing pattern so prescribed, need to be extended even to such institutions, including the related aspects.

44 It is important to note that there is no total bar that such minority institutions are not permitted to admit the students of other category by keeping the mandate of 50% and/or not rigid percentage so provided. (St. Stephen's College Vs. University of Delhi⁴). This is also in the background that till the impugned Circulars/GRs, even based upon the then existing Circulars/GRs and the provisions of State Act and the Regulation made thereunder, the minority school/institutions themselves have been following the “staffing pattern”, as directed by the State, along with others. There is a power of the State to change the policy and fixed the staffing pattern by revisiting the issue. The

3 (1994) 2 SCC 199

4 (1992) 1 SCC 558

submission of minority institutions, so far as this part is concerned, is therefore not acceptable. The staffing pattern so announced as a policy decision by the State, even for the minority institutions, as they are otherwise regulated by every such other aspects, we see there is no reason to interfere with the policy decision through this circular issued by the State even at the instance of minority institutions/school.

45 Certain degree of State control is definitely required considering the obligation of the State's Appropriate Authority and the Local Bodies, keeping in mind the uniformity standards of education to be maintained in all such schools/institutions. (Modern Dental College and Research Centre & Ors. Vs. State of Madhya Pradesh & Ors.⁵)

46 Even in T.M.A. Pai Foundation (supra), it is recorded that certain degree of State control even to the unaided private professional institutions for the reasons that the recognition has been granted by the State Authorities and also for the fact that the Committee of the State to issue high standard of education, are

5 (2009) 7 SCC 751

maintained. There is no total bar as per the case in PA. Inamdar Vs. State of Maharashtra⁶. It is recorded that “*the admission procedure so adopted by a private institution or group of institutions, if it fails to satisfy the triple tests, substituting by its own procedure*”. The public elements are involved and so also issue of Constitutional rights of children education and proper administration of State schools, covering the qualification of teachers, appointment of teaching and non-teaching staff, including the staffing pattern and their salary, as are interlinked and interconnected.

47 In Kolawana Gram Vikas Kendra Vs. State of Gujarat & Ors.⁷ referring to Article 30 of the Constitution of India dealing with the minority educational institution and appointment of staff and when the institution receiving 100% Government grant, prior approval of the State Government and/or the Competent Authority, with a view to verify whether there was a vacancy as per the workload and/or candidate possesses minimum prescribed qualification, it is declared that such circulars and/or requirements and insistence of the State Government, does not amount to unconstitutional interference with

6 (2005) 6 SCC 537

7 (2010) 1 SCC 133

internal working of the minority institutions. It is specifically observed as under:-

“7 In our considered view, we do not view this to be the interference in the selection process. It would be perfectly all right for a minority institution to select the candidates without any interference from the Government. However, the requirement of this prior approval is necessitated because it is for the Government to see as to whether there was actually posts available in the said institution as per the strength of students and secondly; whether the candidates, who were sought to be appointed, were having the requisite qualifications in terms of the rules and regulations of the Education Department. That is precisely the stand taken by the State of Gujarat before us in its counter-affidavit.”

48 Reliance was placed by the learned counsel appearing for the Petitioners on behalf of aided minority schools on Pramati Educational and Cultural Trust (Supra) whereby the Supreme Court while dealing with Article 12(1)(b) read with Section 2(n)(iii) and Article 12(1)(c) read with Section 2(n) (iv) and Articles and 29 and 30, observed as under:-

“47. In the result, we hold that the Constitution (Ninety-third Amendment) Act, 2005 inserting Clause (5) of Article 15 of the Constitution and the Constitution (Eighty-Sixth Amendment) Act, 2002 inserting Article 21-A of the Constitution do not alter the basic structure or framework of the Constitution and are constitutionally valid. We also hold that the 2009 Act is not ultra vires Article 19(1)(g) of the Constitution. We, however, hold that the 2009 Act insofar as it applies to

minority schools, aided or unaided, covered under Clause (1) of Article 30 of the Constitution is ultra vires the Constitution.”

49 Even in Managing Board of the Milli Talini Mission, Bihar. Ranchi and Ors. Vs. State of Bihar & Ors.⁸ the Supreme Court has recognized that “it is permissible for the State or the University, as the case may be, to laid down the reasonable contention to maintain the excellence of standard of education.” By the present staffing pattern, we are inclined to observe that this will not be disturb the individuality and personalty of the minority institutions, freedom of Management and/or the Administration of the institutions.

50 In Frank Anthony Public School Employees' Association Vs. Union of India & Ors.⁹ referring to Article 30 (1) and 14, it is recorded that the statutory measures, regulating terms and conditions of the minority educational institutions for maintaining the educational standard and excellence would not offend in Article 30(1). In the present case, teachers and employees of such institutions/school are also given equal protection, if they are declared surplus with a clear

8 (1984) 4 SCC 500

9 (1986) 4 SCC 707

rider to get them in some other similarly placed minority institutions and they will also get regular salary until they are absorbed along with others.

51 In Brahmo Samaj Education Society & Ors. Vs. State of W.B. & Ors.¹⁰ it is settled that right to establish and administer an educational institution falls within the ambit of Article 19(1) (g) and (6). It is always subject to reasonable restrictions for proper maintenance of standard of education and to check mal-administration in the interest of general public. The State is empowered to prescribe basic qualification for appointment of teachers and all necessary steps/things to achieve the same.

52 It is also clear that the State, by this staffing pattern and/or related aspect in no way controlling and/or tried to control the day-to-day administration of the minority institutions. (Society for Unaided Private Schools of Rajasthan (Supra).

10 (2004) 6 SCC 224

Part time instructor in respective cadre.

53 The learned counsel appearing for the Petitioners has relied upon the Judgment of this Court (Aurangabad Bench), Balaji s/o. Kishan Ade Vs. The State of Maharashtra & Ors. Writ Petition No. 7106 of 2013 dated 9 May 2014. The relevant paragraphs of the said Judgment are as under:-

“87. The provisions of Article 21-A and Article 45 of the Constitution of India if read conjointly with the provisions of RTE Act and the expositions of the Supreme Court, referred to herein above, there is no slightest doubt that, the State of Maharashtra is under Constitutional and statutory obligation to implement the provisions of RTE Act. Therefore, in the light of the discussion herein above, we have to observe that, the State Government and in particular the concerned department has failed in its obligation to formulate final policy document and thereby frustrated the mandate of Article 21-A of the Constitution of India and the provisions of RTE Act and in particular Sections 19 and 23 and Scheduled thereunder and other provisions of the RTE Act as well.”

“89 As already observed, due to failure of the State Government not to formulate final policy document within three years from the date of commencement of RTE Act, in the academic year 2013-14, though budgetary provision was to be made by the Central Government and also by the State Government, as reflected from the documents placed on record, since no final policy document was prepared by the State Government, the Central Government did not release the funds to the extent of its share of 65%, and as a result, the State government did not appoint the petitioners

and other candidates for the academic year 2013-14. We are constrained to observe that, it is the sheer failure of the State Government in not formulating the policy document within three years from the date of commencement of RTE Act, the Central Government did not sanction and release 65% of the funds though provision was made by the Central Government and resultantly the petitioners' appointments might be for specified period and clock hour basis, could not be continued for the academic year 2013-14. The petitioners are not at fault on their part, and therefore, they have rightly knocked the doors of this Court by invoking writ jurisdiction for redressal of their grievance."

"118 In the light of elaborate/detailed discussion in foregoing paragraphs, this Court has reached to following final conclusions:-

- i) It is the failure of the State Government and in particular concerned Education Department, not to formulate final policy document within three years from 1.4.2010 i.e. the date when the RTE Act 2009 came into force.*
- ii) Since the State Government did not formulate final policy document within three years, as contemplated under RTE Act, and in particular keeping in view provisions of Sections 19 and 23 thereof, funds were not released for the academic year 2013-14 by the Central Government. Therefore, the petitioners have to file hundreds of petitions for redressal of their grievances. No slightest fault can be attributed to the petitioners.*
- iii) The State Government while taking final policy decision in respect of appointments is bound to consider the length of services rendered by the respective petitioners working on the post of Instructors in (a) Art Education, (b) Health and*

Physical Education and (c) Work Education, mental agony faced by them in not appointing them for the academic year 2013-14 because of failure of State Government in not performing its obligation. The State Government while making fresh appointments is bound to give due weightage to the experience gained by the petitioners and their requisite qualifications and mental agony faced by them by not continuing them for the academic year 2013-14, for the failure of the State Government in not formulating permanent policy document.

- iv) The State Government keeping in view the provisions of Article 21-A of the Constitution of India and the provisions of RTE Act, Rules thereunder and the Schedule prescribed, will have to take decision to create permanent infrastructure and also appointments on permanent basis as a long time measures so as to perform its Constitutional and statutory obligations under the provisions of Constitution of India and RTE Act.*
- v) The State Government can certainly keep in view and consider to create permanent cadre of part time Instructors in (a) Art Education, (b) Health and Physical Education and (c) Work Education as specified in Section 9 of RTE Act and Rule 20 of Rules 2010, in all Zilla Parishad Schools having 5th to 7th standards and minimum strength of 100 students in the State of Maharashtra. Since the State Government has not formulated final policy document, we leave it to the State Government to perform its obligation in view of the provisions of RTE Act.*
- vi) As already observed, it would be open for the State Government while appointing the candidates on the posts of part time Instructors*

in (a) Art Education, (b) Health and Physical Education and (c) Work Education, or on any other post under RTE Act, the State Government has to inform them that due to inadequate work load in particular schools, they will have to attend other school so as to complete the work hours/work load. The State Government can very well keep in view the policy formulated by the State of Kerala or any other welfare State, as a guiding factor.

- vii) *The posts sanctioned by the State Government, as reflected in affidavit in reply filed by the State authorities and in the light of the Government Resolution placed on record cannot be considered for the particular academic year. Therefore, the State has to make appointments on these sanctioned posts keeping in view long term plan.*

119 *In the light of discussion herein before, and the conclusion reached, we direct the State Government to take immediate steps/decision, as expeditiously as possible, however well in advance before commencement of next academic year 2014-15, in all respects, in the light of para 118 of this Judgment, keeping in view the provisions of the RTE Act, Rules and Schedule thereunder.*

54 The learned senior Counsel appearing for the State has placed on record a Circular/GR dated 7 October 2015 whereby, the State Government has accepted the above judgment and the directions and accordingly issued a Circular/GR, as referred and dealt with the rights of part-time instructor, Art Education, Health and Physical Education and Work Education.

**Central and State Finance obligations and
importance of staffing pattern**

55 So far as the observations in paragraph 87 of the judgment of *Balaji S/o Kishan Ade (Supra)* with regard to the provisions of Articles 21 and 45 of the Constitution of India and for the provisions of RTE Act and its requirement need no further discussion. It is settled and accepted even by the State Government. We have already noted the relevant provisions of the Governing laws referring to the financial obligation of Central Government and State Government. There is also no issue that it is Central Government, who is also responsible to provide and make all provisions including finance to the State to implement the Constitutional obligation. The State, by these Circulars/GRs in no way, taking away the salary rights of the teachers who would be declared surplus. On the contrary, the protection is provided to continue them in service and absorb them and also continue to pay their salary, until they get absorbed. The Head-master, once appointed, though reverted for some reasons including for want of students, still is entitled for full salary as Head-master. This judgment, therefore, in no way assist the Petitioners further in this regard.

56 We cannot overlook the requirement of more teachers, Head masters or absorption of such teachers', based upon the data so collected from time to time, and the creation of additional posts in view of addition of 5th and 8th standards, to achieve the requisite standard of education. The timely action is the solution and not the halting of intended improvement and development in education policy. The data so collected/prepared to implement the mandate of the RTE Act, show the substantial positive progress. This will be subject to requisite changes and improvement by and for all the concerned.

57 We are inclined to observe that the State has carried out huge exercise and accordingly, since long, taking effective steps to achieve the aims and objects of the Act, apart from the Constitutional obligation. All the Schedules so declared, after revisiting and/or revaluation and after considering the present or future need, may amend the Schedule by adding and/or omitting non-standards as provided under Section 20 of the RTE Act and/or even otherwise. The State Government and/or the Local Authorities and/or the Appropriate Government, therefore, are under obligation to take joint

steps including parents, teachers and educational institutions to see that the quality education, as contemplated under the Constitution of India, be provided to all the children at all levels. The steps, therefore, so taken by the State Government in furtherance to achieve the aims and objects of Article 21-A, in no way, need to be interfered with, at the instance of the Petitioners, at this stage. We are inclined to observe that in appropriate individual cases and/or similarly placed persons, it is always open for them to invoke appropriate remedy which is available to them, under the law, in case of patent breach of their legal or constitutional rights.

Education Policy decision – no interference

58 We are inclined to observe that the policy decision so taken by the Respondent-State through these circulars for the reasons so recorded is not arbitrary and/or irrational. The possible view and/or second view and/or alternate interpretation is also no reason to interfere with the policy decisions. We are inclined to dismiss all these Petitions including public interest litigation, also in view of the following observations of the Supreme Court in Parisons Agrotech

Private Limited & Anr. Vs. Union of India & Ors. ¹¹ :-

14 No doubt, the writ court has adequate power of judicial review in respect of such decisions. However, once it is found that there is sufficient material for taking a particular policy decision, bringing it within the four corners of Article 14 of the Constitution, power of judicial review would not extend to determine the correctness of such a policy decision or to indulge into the exercise of finding out whether there could be more appropriate or better alternatives. Once we find that parameters of Article 14 are satisfied; there was due application of mind in arriving at the decision which is backed by cogent material; the decision is not arbitrary or irrational and; it is taken in public interest, the Court has to respect such a decision of the Executive as the policy making is the domain of the Executive and the decision in question has passed the test of the judicial review.

59 For the reasons so recorded above, we are declined to entertain these Petitions and similarly based petitions and pass the following order:-

ORDER

- a) The challenge to the Constitutional validity of Schedule under RTE Act is rejected.
- b) No interference in the State education policies and the Circulars/GRs including Government Resolution dated 13 December 2013, 26 August 2015, so also

11 (2015) 9 SCC 657

related State Circulars/letters/orders.

- c) The State Government to re-visit, re-assess and re-evaluate the education policies from time to time, and implement it in accordance with the governing laws.
- d) The services of surplus “permanent teachers” including, Head-masters are protected to the extent of providing them all the financial benefits till they are continued in same school or they are accommodated or absorbed elsewhere or declared surplus.
- e) The surplus declared head-masters are entitled for their salary as of Head-masters, though required to work as Senior teacher in the School.
- f) The State to proceed as per the Government Circulars and take effective steps to achieve the constitutional and RTE Act objects.
- g) All the Petitions, including Public Interest Litigation are disposed of accordingly.
- h) In view of above reasons, all the interim orders,

even if any, granted earlier, stand vacated.

- i) Rule in all the matters are discharged accordingly.
- j) In view of the dismissal of the Petitions, all the connected Civil Applications are also disposed of.
- k) There shall be no order as to costs.

(A.A. SAYED, J.)

(ANOOP V. MOHTA, J.)