

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8300 OF 2019

1. The Association of the Managements of Polytechnics, a society registered under the Act having its registered office at C/o K.K. Wagh Education Society, Amrutdham, Panchavati, Nashik-422 003, Maharashtra through its President Balasaheb Deoram Wagh
2. K.K. Wagh Polytechnic, Hirabai Haridas Vidyanagari, Amrutdham, Panchavati, Nashik - 422 003, through its Principal Kadave Prakash Trambak
3. Prof. Kallapa Shankar Bandi, Secretary, K.K. Wagh Education Society, Hirabai Haridas Vidyanagari, Amrutdham, Panchavati, Nashik - 422 003.

.... Petitioners

- Versus -

1. Election Commission of India, through Chief Election Officer, Nirvachan Sadan, Ashok Road, New Delhi – 110 001.
2. State Election Commissioner, The State Election Commission, First Floor, New Administrative Building, Hutatma Rajguru Chowk, Madam Cama Road, Mumbai-32.
3. The Chief Electoral Officer, General Administrative Department, Mantralaya, Mumbai-400 032.
4. Voter Registration Officer, Nashik (West) Assembly Constituency, Nashik.

5. The State of Maharashtra
through Principal Secretary,
Higher & Technical Education
Department, Mantralaya-Annex
Bldg., Mumbai – 400 032.

.... Respondents

WITH
WRIT PETITION {STAMP} NO.25419 OF 2019

1. The Association of the Management
of Unaided Engineering Colleges
(Maharashtra), a Society registered
under the Act, having its registered
office at C/o K.K. Wagh Education
Society, Amrutdham, Panchavati,
Nashik-422 003, Maharashtra,
through its President Balasaheb
Deoram Wagh

2. Jawahar Education Society's
Institute of Technology, Management
& Research, Nashik, Survey No.48,
Gowardhan, Gangapur Road,
Nashik-422 222, through its Principal
Dr. Mangalkumar Vishwanath Bhatkar

3. Kunal Rohidas Patil,
Secretary, Jawahar Education Society,
Thane, 6, Purna Complex, Sir
Pochkhanwala Road,
Mumbai – 400 025.

.... Petitioners

- Versus -

1. Election Commission of India,
through Chief Election Officer,
Nirvachan Sadan, Ashok Road,
New Delhi – 110 001.

2. State Election Commissioner,
The State Election Commission,
First Floor, New Administrative
Building, Hutatma Rajguru Chowk,
Madam Cama Road, Mumbai-32.

3. The Chief Electoral Officer,
General Administrative Department,

Mantralaya, Mumbai-400 032.

4. Voter Registration Officer,
125 Nashik (West) Assembly
Constituency, Nashik.

5. The State of Maharashtra
through Principal Secretary,
Higher & Technical Education
Department, Mantralaya-Annex
Bldg., Mumbai – 400 032.

.... Respondents

Ms Chandana Salgaonkar Radia with Mr. Sandeep
R. Waghmare for the Petitioners in both petitions.

Mr. Pradeep Rajagopal with Ms Drishti Shah for
Respondent No.1-ECI.

Mr. B.V. Samant, Assistant Government Pleader,
for Respondent No.5-State.

CORAM: S.C. DHARMADHIKARI &
G.S. PATEL, JJ.

DATE : OCTOBER 01, 2019

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. By these petitions under Article 226 of the Constitution of India, the petitioners are challenging communications from the Election Commission of India dated 15/24-7-2019 and 23-8-2019. Copies of these communications are annexed as Exhibits “K” and “L” to the memo of Civil Writ Petition (Stamp) No.25419 of 2019.

2. Since both the petitions project identical questions of law and fact, they were heard together and, therefore, are being

disposed of this common Judgment. We proceed to issue Rule in both petitions. The respondent Nos.1 and 5 waive service. The respondent Nos.2 to 4 are formal parties. However, an affidavit in reply has been filed on behalf of respondent Nos.3 and 4 in Civil Writ Petition No.8300 of 2019. Hence, on the basis of the petitions and the annexures thereto, by consent, Rule is made returnable forthwith.

3. The petitions are filed by the Association of the Managements of Polytechnics and others and the Association of the Managements of Unaided Engineering Colleges (Maharashtra) and others. We take the facts from the writ petition of the Unaided Engineering Colleges. The first petitioner therein is described as an Association of the Managements of Private Unaided Engineering Colleges in Maharashtra. It is registered as a Society under the Societies Registration Act, 1860 and also as a public trust under The Bombay Public Trusts Act, 1950. Annexed as Exhibits "A" and "B" are copies of the Registration Certificates. The first petitioner says that it is concerned for its Members who are unaided engineering colleges situated in different parts of the State of Maharashtra. The members of the first petitioner are private unaided engineering Colleges. They have been established over the last 20-30 years and have a total intake of about 1,00,000 students per year. They are conducting full time

professional degree courses in engineering and technology with prior approval of the All India Council for Technical Education (“**AICTE**”), recognition of State Government and affiliation of respective Universities. The members of the first petitioner do not receive any aid from the Government and their funding is through the fees received from trust funds. The second petitioner is a member of the first petitioner and the third petitioner is a citizen of India, and an office bearer of the second petitioner.

4. The first respondent before us is the Election Commission of India which is entrusted with the duty of conducting and supervising free and fair elections within the territory of India. The second respondent is the Election Commissioner of the State of Maharashtra entrusted with the duty of conducting and supervising free and fair elections within the territory of the State of Maharashtra. The forthcoming State Legislature elections will be held under the supervision of the first and the second respondents. While the third respondent is the Chief Electoral Officer, the fourth respondent is the Voter Registration Officer. The fifth respondent before us is the State of Maharashtra through its Principal Secretary, Department of Higher and Technical Education.

5. The members of the first petitioner are engaged in providing college education to students and for that purpose they set up necessary facilities and employ requisite teaching and non-teaching staff. It is stated that the second petitioner, Jawahar Education Society, Thane, was granted permission to establish an engineering institute on a permanent unaided basis. There is a Government Resolution dated 30-6-2012 based on which this permission has been granted vide letter dated 18-7-2012. At Exhibit "D" is a copy of this letter. The letter in categorical terms states that the petitioner No.2 before us applied for grant of permission and that was considered. The petitioner was communicated that the AICTE granted recognition for commencement of an engineering institute from the academic year 2012-13. Bearing in mind that approval, the petitioners were permitted to commence and start engineering courses, subject to the terms and conditions set out in this communication. The institute is to function on a permanent unaided basis. The first condition is that, for the educational course the Government will not provide any aid. The permission is subject to a Government Resolution dated 21-5-1983. That incorporates and inserts certain terms and conditions which would be binding upon the second petitioner. For the purposes of the full-time course, the institute must appoint full-time teachers and these teachers should be paid salaries and emoluments as per the AICTE Rules and Regulations. If any

complaint is received with regard to the payment and disbursement of salaries, allowances and perquisites of the teaching and non-teaching staff and such complaints are received from the students, then the Department will not be responsible for any legal proceedings. And if any such legal proceedings are instituted, the State will take strict action at the costs and consequences of petitioner No.2. Condition No.4 requires a deposit of money to be made and in favour of the State Government. Conditions Nos.5 and 6 are important. Condition No.5 says that the institute would be bound by the decisions taken by the State Government, the Directorate of Technical Education, Government of Maharashtra, the Mumbai Shikshan Shulka Samiti, Mumbai, the Admission Regulatory Authority, Mumbai, the AICTE, New Delhi and insofar as this institute is concerned, petitioner No.2 would be bound to follow all the rules and regulations in relation to admission of students, reservation, tuition and other fees. The rules and decisions in that behalf would, therefore, have to be followed and implemented by petitioner No.2. Condition No.6 says that to determine the fees, a proposal will have to be forwarded by the Institute to the Shikshan Shulka Samiti (the Committee established for the purposes of fixation of fees). The fees would have to be approved by such Committee. No fees over and above that which is approved by the Committee can be charged. If any such fees over and above the fixed fees are

charged, then, the rate and the amount in relation thereto would have to be subject to such legal proceedings as are permissible in law. The consequences of the same would have to be faced entirely by petitioner No.2. Condition No.7 says that, for the purposes of the library of petitioner No.2, the required books, magazines and periodicals, etc., would have to be purchased in terms of the stipulations of the AICTE and the Registrar of the Pune University, Pune. The library must have the necessary facilities, including a reference room.

6. Condition No.8 says that the Director or his representative would have power to carry out a surprise inspection of the facilities provided, including the infrastructure and to ensure whether that is as per the norms prescribed by the AICTE. Further, it will check if the institution is providing the amenities and facilities to the teaching and the non-teaching staff. Condition No.9 says that, inspection can be carried out by the Directorate of Technical Education or the Registrar of Pune University, Pune and these authorities can also appoint officers for carrying out such inspections. They would also have the power to take the necessary action. Condition No.10 says that the institution would function and operate under the control of the Director of Technical Education, Government of Maharashtra and the exams for the courses would have to be held under the auspices of the Pune University. The Pune

University would have to be moved to seek affiliation and approval of the courses. For the purposes of examinations, the institute would have to abide by the centralised admission process. The institution cannot charge any capitation fee nor accept donations from students and the admissions would be granted strictly on merits. The institution would have to abide by The Maharashtra Prohibition of Ragging Act, 1999. If the institution is found to be not abiding by the terms and conditions and the norms prescribed by the AICTE, the State Government and the Pune University, then the State can exercise powers to close down the institution. In that regard, the recommendations of the AICTE would guide the Government. Now these are the conditions which have been summed up by us. Thus, the important conditions are condition Nos.5 to 15.

7. The petitioners then state that, in terms of the letter at Exhibit "D" petitioner No.2 never sought any financial help either from the Central/State Government or the local self-government. The institute type, in terms of the AICTE approval norms, is "Unaided – Private". Further, the Director of Technical Education, on its web portal, has shown the status of petitioner No.2-institute as unaided. The petitioners have conceded that the fees of the courses in which the education is imparted in unaided institutions are determined by the Fee Fixation Authority and the institutes cannot take even a rupee more than

the fees fixed by the Authority. The institutes are not permitted to collect fees from the students seeking admission on reserved seats, that is 50% of the intake capacity. The fees of the students who are given admission on reserved seats are reimbursed by the respective Departments of the Government of Maharashtra under the policies framed by the fifth respondent. There is inordinate delay in such reimbursement and though there is a tight fiscal discipline, it has become impossible for the institute to employ teaching and non-teaching staff more than the minimum required for efficiently managing the institute.

8. A reference is then made to Section 26 of The Representation of the People Act, 1951 (“**RP Act of 1951**”) and it is contended that as per Section 159(2) Clause (iv) of this Act, only the staff of any institution which is established under the Central or State Act, or which is controlled or financed wholly or substantially by funds of the Central Government can be directed to attend to election work. None of the institutes and Members of petitioner No.1-Association would fall under this clause of sub-section (2) of Section 159 of this Act.

9. A reference is made to Writ Petition No.3093 of 2019 and Writ Petition (O.S.) No.572 of 2019 filed in this Court raising a similar issue and it is stated that, at the hearing of the same the

Election Commission through its counsel conceded that this Act is not applicable to private unaided institutes and therefore the requisition was withdrawn. The petitioners are similarly situated.

10. Now, the petitioners have already pointed out their difficulties, particularly of shortage of teaching and non-teaching staff. If they were deputed for election duty, then, the grievance that was earlier raised with the State Election Commissioner would have to be reiterated and that is indeed reiterated. A representation in that behalf was forwarded to the third respondent for necessary action. It was expected that the third respondent would not take any steps much less invoking Section 159(2) of the RP Act of 1951. There is a prosecution in terms of Section 134 of the RP Act of 1951. The fourth respondent, however, called for certain information regarding employees serving with the institute and possibly for their deployment for election duties. Though the information was submitted, that was after the first petitioner's member institutes were warned of the consequences. However, the stand taken was that the provisions of the Act invoked by the Election Commission do not apply to the petitioners and their Members.

11. Then, reliance is placed upon certain orders passed by the Aurangabad Bench of this Court. That interpreted somewhat identical provision according to the petitioners.

12. Thus the argument is that the Members of petitioner No.1- Association being not established under the Central or State Act, nor controlled or financed wholly or substantially by the funds of Central or State Government, they cannot therefore be subjected to Section 159 of the RP Act of 1951 and their employees are exempt from the said provision. The law would not enable the authorities to requisition the services of their staff.

13. Incidentally, the petitioners have also annexed a copy of the communication styled as Extension of Approval for the academic year 2019-20 addressed by the AICTE. That is a communication of 29-4-2019. That also impresses upon the petitioners to strictly comply with the AICTE Regulations and the anti ragging measures. The reservation policy would also have to be abided by provided it is in place. Thus, in this petition under Article 226 of the Constitution of India, the requisitions, copies of which are at pages 110 and 111 of the paper-book, are challenged on various grounds.

14. An affidavit in reply has been filed and on a copy of the petition being served on the respondents. That affidavit is filed in Civil Writ Petition No.8300 of 2019. It is filed on behalf of respondent Nos.3 and 4. That is an affidavit by the Deputy Collector (Resettlement @ Voter Registration Officer, Nashik

(W) Assembly Constituency, Nashik. He says that information is being provided to this Court and that information is on two points: (1) Whether petitioner No.2 in that petition is an aided institute or not? and (2) whether it gets any financial aid or grant, directly or indirectly, from the Government? In that regard, the information is, that this is a permanently unaided institute. This institute does not receive any financial grant or aid directly or indirectly. However, the students of petitioner No.2 obtain scholarship under different Government schemes, the details of which are also set out in para 8 of this affidavit. Thus the institute does not get any financial aid or benefit from the Government. However, in para 11 of this affidavit, it is stated that, insofar as the issue of control of the institute is concerned, the respondents reserve their right to make legal submissions. It is the State Election Commission which is authorised to comment on this legal aspect and the concerned respondents filing this affidavit will make joint legal submissions in that behalf together with the Central Election Commission.

15. Pertinently, the Central Election Commission has not filed any affidavit. According to that Commission, the petition raises a legal issue and therefore must be dealt with accordingly.

16. It is on the above material that we have heard the counsel appearing for the parties.

17. Ms Chandana Salgaonkar Radia, appearing for the petitioners together with Mr. Waghmare, would submit that Section 159(2) Clause (iv) of the RP Act of 1951 employs the words establishment, control and finance. Each of these words are separated by the word “or”. The petitioners do not fall within this clause and particularly the latter part of it which has been invoked in this case. She would submit that if one excludes the first part, namely, establishment by or under a Central, Provincial or State Act, then mere registration of the institution or the Association under The Societies Registration Act, 1860 and The Maharashtra Public Trusts Act, 1950 would not mean establishment under that Act. Therefore, it can be safely termed that these are not institutes established by or under the Central, Provincial or State Act. The first part, therefore, has no application. Insofar as the financing part is concerned, there as well it is clear that once the institutions are operating on permanent no-grant-in-aid basis, then they are not financed, directly or indirectly, by the Central or State Government. As far as the aspect of control is concerned, she would submit that the minimal regulatory conditions or the terms and conditions based on which the educational institution is allowed to function and operate by the Government of Maharashtra would not mean that the institutions are controlled, directly or indirectly, by the Central or the State Government. In this case, the approval to

the courses is sought from the AICTE under a statute or law made by Parliament. In addition, the terms and conditions imposed on the petitioners in the communication of 18-7-2012 at best is an attempt to regulate the fees and admissions. That is to ensure transparency and fairness in grant of admissions and conduct of the courses. Such an exercise, in regulating the limited aspects of management of the institutes and their functioning, cannot be equated with control. Therefore the regulatory measures, without any pervasive control, would not enable the Election Commission to invoke the subsequent part of the provision contained in Section 159 sub-section (2) of the RP Act of 1951.

18. It is submitted that the requisition notices are liable to be quashed and set aside as the members of petitioner No.1 do not fall within the scope of the entities set out in Section 159(2) (iv) of the RP Act of 1951.

19. Section 159 of the RP Act of 1951 reads as under:-

“159. Staff of certain authorities to be made available for election work.- (1) The authorities specified in sub-section (2) shall, when so requested by a Regional Commissioner appointed under clause (4) of Article 324 or the Chief Electoral Officer of the State, make available to any returning officer such staff as may be necessary for the performance of any duties in connection with an election.

(2) The following shall be the authorities for the purposes of sub-section (1), namely:-

- (i) *every local authority;*
- (ii) *every university established or incorporated by or under a Central, Provincial or State Act;*
- (iii) *a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);*
- (iv) *any other institution, concern or undertaking which is established by or under a Central, Provincial or State Act or which is controlled, or financed wholly or substantially by funds provided, directly or indirectly, by the Central Government or a State Government."*

20. It is further submitted that the petitioners are also not controlled by the Central and State Governments as they are autonomous unaided institutions which exercise autonomy in their management and the conduct of their affairs. Although the field of education is regulated by various Central and State Acts, the same would not amount to being "controlled" by the Central and State Governments.

21. It is then submitted that private individuals have come together to form a Trust registered under the Public Trusts Act. The Trust is governed by the Trust Deed. The petitioner No.1 is registered as a Society under The Societies Registration Act. The member-institutes of petitioner No.1 have complete autonomy in determining the type and quality of education they wish to impart, the number of students they wish to admit, the teachers to be appointed, etc..

22. Then, by placing reliance in the case of **Modern Dental College and Research Centre vs. State of Madhya Pradesh & Others**, reported in (2016) 7 SCC page 353, the counsel for the petitioners submits that, the Hon'ble Supreme Court has provided for regulation of fees and admissions made by the institutions in the larger interest and welfare of student community to promote merit, achieve excellence and curb malpractices. She further submits that, however, the financial and managerial control remains with petitioner No.2 and other member institutions, as is amply clear from the following:-

- (i) The institutes are formed by acts of private persons coming together to form a Public Trust or a Society under The Societies Registration Act.
- (ii) The funds for forming the Society and or Trust are generated from the individuals who form the Trust.
- (iii) The further inflow of funds is from the Trustees or from fees collected from students. Not a single paisa comes from the Central or the State Government.

On this note, the counsel submits that it is stated in the affidavit filed by the State that the institutes receive monies from the

State for reimbursement of fees. She submits that the monies are not received by the institutes, but by the students who then pass it on to the institutes by pressing the “redeem” button on the DBT portal. She further submits that:-

(iv) The salaries and other expenses of the staff are completely paid for by the Trust.

(v) The institutes have autonomy in the matter of appointing the staff, as also the authority in terminating the staff.

(vi) All management decisions are taken by the managing body of the institutes.

(vii) Neither the Central Government nor the State Government is involved in the management and the autonomy of the private unaided institutions, and their functioning, save and except to prescribe norms and standards to ensure a degree of excellence, and for merit based admissions.

It would thus be seen that it is the management of the institutes which administers the institutions, exercises control and supervision over the working and functioning of the institutes.

23. Another reason to give a restricted meaning to the applicability of Section 159(2)(iv) to petitioner No.2 and the other members of petitioner No.1-Association is that, there are penal provisions provided under Section 134 of the RP Act of 1951 for breach of official duty in connection with elections. Section 134(1) provides that, if any person to whom this section applies is without reasonable cause guilty of any act or omission in breach of his official duty, he shall be punished with fine which may extend to Rs.500/- and the offence is cognizable. It is, therefore, submitted that the penalty provisions must relate to persons covered under Section 159(2)(iv) and cannot apply to any person unless specifically provided for. In support of her contention, the counsel for the petitioners relied upon the observations made by the Hon'ble Supreme Court in the case of **Election Commission of India vs. State Bank of India Staff Association Local Head Office Unit, Patna & Others**, reported in 1995 Supp (2) SCC page 13. The said observations read thus:-

“25. The penalty provisions under the two Acts on which reliance was placed cannot but relate to those officers who are covered thereunder and not any person as is urged by the Election Commission. There can be no question of invoking the penalty provisions against those employees whose services the Election Commission cannot requisition.”

24. Ms Salgaonkar Radia would then submit that Article 324(6) of the Constitution of India would have an important bearing on the interpretation of this provision. She would submit that Article 327 of the Constitution of India, under which the Election Commission of India is established and functions, says that its provisions are subject to the Constitution and that would therefore include Clause (6) of Article 324 of the Constitution of India. In that clause, it is the staff under the President, or the Governor of a State, who can alone be called upon to discharge the functions relating to conduct of elections by the Election Commission. Thus the services of such staff can be requisitioned by the Election Commission. There is nothing in the clause which permits the Election Commission to requisition the staff of purely private entities. Ms Salgaonkar Radia, in the alternative, would submit that the Handbook published by the Election Commission of India also throws light on this aspect and it says that the staff of the educational institutions shall not be summoned or requisitioned for election duties. For all these reasons, she would submit that these writ petitions be allowed by quashing and setting aside the communications.

25. In support of her submissions, apart from the Section of the RP Act of 1951 and in addition to placing reliance on the afore-stated two decisions of the Hon'ble Supreme Court of

India, Ms Salgaonkar Radia would also rely on the following Judgments of the Hon'ble Supreme Court:-

- (1) **Dalco Engineering Private limited vs. Satish Prabhakar Padhye & Others**, reported in (2010) 4 SCC page 378,
- (2) **S.S. Dhanoa vs. Municipal Corporation, Delhi & Others**, reported in (1981) 3 SCC page 431,
- (3) **T.M.A. Pai Foundation & Others vs. State of Karnataka & Others**, reported in (2002) 8 SCC page 481, and

26. On the other hand, Mr. Rajagopal, appearing for the Election Commission of India, would submit that none of the arguments of Ms Salgaonkar Radia should be accepted. He would submit that the arguments of the petitioners are premised on the Judgment of the Hon'ble Supreme Court of India rendered in the case of **Election Commission of India Vs. State Bank of India Staff Association Local Head Office Unit, Patna and others** (supra). Mr. Rajagopal would submit that post this Judgment of the Hon'ble Supreme Court, the law has been amended. The substitution of Section 159 is by Act 12 of 1998 w.e.f. 23-12-1997. The Statement of Objects and Reasons leading to this substitution would enable us, according to Mr. Rajagopal, to construe and interpret the substituted provision. He would submit that the intent of the Parliament in bringing such substitution is precisely to get over the Judgment

of the Hon'ble Supreme Court of India in **State Bank of India's** case (supra). He would submit that no reliance can be placed on any of the Judgments delivered by the Supreme Court in the case of private educational institutions which were claiming independence, autonomy in management and administration of their affairs and conduct of educational courses. We must, therefore, not refer to any of the Judgments relied upon by the petitioners.

27. Mr. Rajagopal would submit that Section 159(2) is in three parts. There is no effective answer to the argument why the petitions are filed by Associations of Managements. For the purposes of invoking the necessary constitutional protection, one of the institutes is impleaded as petitioner in both petitions together with their office bearers. The petitions could not have been filed even by them for there is no legal right vesting in favour of either the Association or the institution. If at all a complaint can be made with regard to requisition of the staff, that complaint can be made only by the staff members individually. No rights of the Association are invaded. He submits that only the affected parties can approach this Court. The word "person" is defined in the RP Act. That is defined in the other Legislation – The Representation of the People Act, 1950 ("**the RP Act of 1950**"). The words and expressions not defined in the RP Act of 1951 would carry the same meaning as

assigned to them by the RP Act of 1950. Section 2 Clause (g) of the RP Act of 1950 does not define the word “person” to include a body of persons, meaning an artificial one. It is, therefore, a natural person alone who can contend that his right or any of the rights vesting in him or accrued in his favour are affected by the requisition. Mr. Rajagopal would, therefore, submit that the writ petitions be dismissed.

28. His essential argument is that the word “controlled” would have to be interpreted in a manner consistent with the object and purpose of substituting Section 159 of the RP Act of 1951. The word “controlled” would have to be given its ordinary and plain or dictionary meaning. So read, that word would mean “to regulate, govern and manage”. That is the meaning of the word and expression employed in the law. Therefore, nothing like “deep or pervasive control” can be read into this expression. One of the meanings assigned to this word “control” means to exercise power, or in his power, to regulate or govern, to have a controlling interest. The word in turn is also defined to mean to control (activity or process) established through the implementation of rules.

29. The word “managed” is defined to mean exercising executive, administrative and supervisory power. Thus according to Mr. Rajagopal, a liberal interpretation will have to

be placed on this clause and particularly the word control appearing therein so as to advance the object and suppress the mischief. It is not open for the petitioners therefore to contend that the requisitions are contrary to law or the Commission has exceeded its powers in requisitioning the staff of the educational institutions. It is clear that though the services of the staff are requisitioned, their deployment is entirely within the executive and administrative discretion of the Election Commission and care will be taken so as to cause minimal inconvenience. However, mere inconvenience cannot be held to be enough and would not enable the petitioners to invoke this Court's writ jurisdiction under Article 226 of the Constitution of India. Mr. Rajagopal therefore would submit that, firstly, there is no right vesting in the petitioners to invoke this Court's jurisdiction under Article 226 of the Constitution of India. Secondly, and assuming that there is some right which can be protected by approaching this Court in its writ jurisdiction, even that is not absolute in terms. That is subject to Section 159 of the RP Act of 1951 and the power of the Election Commission to requisition the staff so as to enable performance of any duties in connection with the holding of free and fair elections to the State Assembly which are due on 21-10-2019. This Court should not therefore allow the petitioners to obstruct the Commission in requisitioning the necessary staff. Finally, Mr. Rajagopal would argue that these writ petitions do not project

breach of any right, if at all claimed and vesting in the petitioners but are founded on mere inconvenience and on that ground alone no writ can be issued.

30. Ms Salgaonkar Radia would submit, in rejoinder, that the word “controlled” appearing in the section cannot be given such a liberal interpretation as is sought to be placed by the Election Commission. That would mean nominal or minimum governance as well. If that is said to be controlling the affairs of the member institutes of petitioner No.1, then, we are stretching the language of the provision by placing on Section 159(2)(iv) an interpretation *de hors* the object and purpose sought to be achieved. A strict interpretation is therefore called for and not a liberal one. In that regard, our attention is invited to Section 134 of the RP Act of 1951 which would enable launching of prosecution by the election machinery if the impugned communications are not abided by the petitioners. Thus, breach of official duty in connection with election being a punishable offence, we must not liberally interpret this provision.

31. For properly appreciating and understanding the controversy before us, a reference will have to be made to some of the Articles in the Constitution of India and the two enactments of the Parliament concerning elections.

32. Article 327 of the Constitution of India reads as under:-

“327. Power of Parliament to make provision with respect to elections to Legislatures.- Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.”

33. This Article enacts the power of the Parliament to make provision with respect to elections to Legislatures. That Article 327 is subject to the provisions of this Constitution would therefore mean that Article 324, appearing in Part XV, titled as “Elections” cannot be ignored. By that Article, the superintendence, direction and control of elections vests in an Election Commission. Clauses (1) to (5) of that Article enable establishment of an Election Commission so as to hold elections to the Houses of People and to the Legislative Assembly of each State. Clause (5) states that the provision of any law made by Parliament would have to be considered and borne in mind and subject to that the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be determined by the President. In that regard a rule has to be framed. Clause (6) therefore says that the President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the

Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1). Clause (1) of Article 324 says that, the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission known as the Election Commission.

34. The Parliament has made the election laws and they are traceable to this Constitutional provision. The first law is The Representation of the People Act, 1950. That law is enacted so as to provide for the allocation of seats in and the delimitation of constituencies for the purpose of election to, the House of the People and the Legislatures of States, the qualifications of voter at such elections, the preparation of electoral rolls, the manner of filling seats in the Council of States to be filled by representatives of Union territories, and matters connected therewith. Section 2 of this Act of 1950 contains definitions and this section, as is normal, opens with the words “unless the context otherwise requires”. The definition of the term “person” is not including a body of persons.

35. The RP Act of 1951 is enacted to provide for the conduct of elections of the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision on doubts and disputes arising out of or in connection with such elections. The difference in the two enactments is therefore apparent. The latter enactment has comprehensive provisions. These comprehensive provisions, *inter alia*, enable the Election Commission to take steps and measures to hold elections in a free and fair manner. Part IX of the latter Act, namely, the RP Act of 1951 contains miscellaneous provisions. Sections 152 to 158 thereof are not relevant for our purpose. Then follow Sections 159, 160 and 161. Section 159 is relevant for our purpose. It is reproduced above. A perusal of this section would indicate that by sub-section (1) the authorities specified in sub-section (2) shall, when so requested by a Regional Commissioner appointed under clause (4) of Article 324 or the Chief Electoral Officer of the State, make available to any Returning Officer such staff as may be necessary for the performance of any duties in connection with an election. Now, sub-section (2) sets out the authorities. There is no room for the sweeping apprehension raised before us that the provision would be invoked to requisition the staff of almost every private entity. That is not

even the case before us. In these petitions, we are only concerned with the staff of educational institutions. These educational institutions fall in a defined class. They are permanently unaided educational institutions. They are managed and administered by the Trustees and members who are elected and appointed in terms of the necessary deeds and documents and these entities are registered under The Societies Registration Act, 1860 or The Maharashtra Public Trusts Act, 1950. That they are so registered under these laws is not our concern at all. Therefore, we are not concerned with purely private entities like companies, private banks, etc., and as and when the provision is invoked in their case, the said entities can challenge the necessary steps and measures of the Election Commission. We do not think that our present Judgment expresses any opinion on such a controversy. We are also not concerned with purely private entities and therefore the present Judgment does not deal with their difficulties or their concern as well. The argument before us is that permanently unaided educational institutions imparting education in specified courses are out of the purview of the clause which is invoked. In that regard, it is apparent that the authorities whose staff can be requisitioned are specified in the section itself. Sub-section (1) indicates the power whereas sub-section (2) sets out the authorities who can be called upon or who can be requested by the Regional Commissioner or the Chief Electoral Officer of the

State to make available to any Returning Officer such staff as may be necessary for the performance of any duties in connection with the election. We have a democratic form of Government. It is a representative democracy. This form of Government mandates holding of elections periodically to the House of the People and the Legislative Assembly in each State. That such elections have to be held in a free and transparent manner is equally the mandate of the law. The Constitution of India itself provides for establishment of an independent and autonomous commission known as the Election Commission and vest in it all powers necessary for the administration, supervision and holding of elections. These vast powers are to be exercised in tune with the mandate of the laws made by the Parliament. That the laws made by the Parliament would provide for vesting of additional or incidental and ancillary powers in the Election Commission for holding a free and fair election is but consequential to the conferment of the main power. In fact, the powers of the Election Commission are coupled with a duty. It is the sole repository of the voter's trust. It is always bound to hold the elections and it cannot be prevented from or directed by any authority including the party in power from performing its obligation in accordance with law.

36. We have no challenge before us to the law or to the power to make the law or the specific legal provision. Sub-

section (2) of Section 159 says that every local authority, every university established or incorporated by or under a Central, Provincial or State Act, a Government company as defined in Section 617 of the Companies Act, 1956 are the authorities which can be requested by the Regional Commissioner or the Chief Electoral Officer of the State to make available to any Returning Officer their staff. In addition to every local authority, every university, a Government company and defined in Section 617 of the Companies Act, there is another category and that is, any other institution, concern or undertaking. That such 'other institution, concern or undertaking' could be an educational institution which is established by or under a Central, Provincial or State Act is thus logical. This is distinct from a University established or incorporated by or under a Central, Provincial or State Act. It could be any other institution, concern or undertaking which is controlled or financed wholly or substantially by funds provided by the Central or State Government, but the section does not end there. The element of control or finance is very much there. That such control or finance can be direct or indirect. It is conceded that financing means by the providing of funds, wholly or substantially, by the Central or the State Government. It is not therefore the intent of the law makers to bring in the sweep of this provision in addition to every local authority, every university, a Government company, any other institution, concern or undertaking

whatever. It is only such institution, concern or undertaking which is established by or under a Central, Provincial or State Act or which is controlled or financed wholly or substantially by funds provided, directly or indirectly, by the Central Government or a State Government which is included or brought in this provision. In these cases, we are not concerned with the aspect of establishment of any institution, concern or undertaking. Equally, we are not concerned with the financing wholly or substantially by funds provided by the Central or a State Government. We are only concerned with the element of control, directly or indirectly, by the Central or the State Government. Pertinently, the provision in question is not challenged. Its legality and validity is not in issue. The attempt however is to dilute its rigour by placing a strict interpretation on the Clause (iv) to Section 159(2) of the RP Act of 1951.

37. In that regard, a careful perusal of the letter/communication dated 18-7-2012 under which the Directorate of Technical Education, Government of Maharashtra has permitted the petitioner/individual members of the Association to establish a college or an educational institution to impart engineering or polytechnic education or courses would enable us to effectively deal with the situation or the controversy before us. The terms and conditions are comprehensive. The communication is not challenged nor any

terms and conditions thereof. The terms and conditions referred by us in the earlier paragraphs of this Judgment read as a whole, harmoniously and together with the statutes in the field leave us in no manner of doubt that there is a control by the respective Governments on the activities of the petitioners/member institutions. These institutions may have been operating on permanent no grant or no aid basis but that by itself is not decisive much less conclusive. Nobody can function as an educational institution uncontrolled or unregulated by either Governments. The regulation in this case is so comprehensive that it takes care of not only the component of fees to be charged but the manner in which admissions have to be made. The admissions to the courses would have to abide by all the norms prescribed by an expert body – AICTE, the State Government and that would include abiding by the Constitutional and other reservations. There is no freedom in that regard because the courses, the subjects and the syllabus as a whole has to meet the approval of the AICTE, established under a Central statute, the University to which the institution is affiliated and of the Directorate of Technical Education, Government of Maharashtra. The admissions have to be made through a centralized admission process and in the manner prescribed by these authorities which may include holding an entrance examination. In such circumstances, to contend that there is no control, would not be

a proper reading of the provision. Ms Salgaonkar Radia would submit that control would have to be understood in the context of funding and funding alone. Such a reading of the clause is not permissible for that would mean “controlled” or “financed” are expressions conveying the same meaning. A control can be direct or indirect by the Central or a State Government and that is distinct from “financing wholly or substantially by funds provided by these Governments”. In the cases before us, merely because there is no funding or there is no financial aid does not mean that there is no control. To hold otherwise would mean that the Election Commission is hampered in requesting institutions other than every local authority, every University and a Government company to make available to the Returning Officer such staff as may be necessary for the performance of any duties in connection with an election. Pertinently, the sweep of the words in clause (6) of Article 324 of the Constitution of India and the RP Act of 1951 is such that apart from a local authority, a University, a Government company, any other institution, concern or undertaking which is established by or under a Central, Provincial or State Act is brought in its purview. The clause does not end there. Apart from establishment under such laws, the institutions, concerns or undertakings could be the ones controlled, directly or indirectly, by the Central Government or a State Government or financed wholly or substantially by funds provided by such Governments. Each of

the parts of the clause are separated by the word “or”. Though financing and controlling are by themselves distinct acts, interpreting them as one and the same would be rendering these phrases and expressions, as inserted and separated by the word “or”, wholly redundant and nugatory. If they are understood and interpreted as suggested by the petitioners, then, that would be doing violence to the plain, clear and unambiguous language of the law.

38. In the Judgment rendered in the case of **The Balasinor Nagrik Co-operative Bank Ltd. Vs. Babubhai Shankerlal Pandya and others**, reported in AIR 1987 SC 849, the Hon'ble Supreme Court, in para 4, observed thus:-

“4. It is an elementary rule that construction of a section is to be made of all parts together. It is not permissible to omit any part of it. For, the principle that the statute must be read as a whole is equally applicable to different parts of the same section.”

39. Then in the case of **Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and others**, reported in AIR 1987 SC 1023, the Hon'ble Supreme Court, in para 33 of the Judgment, observed thus:-

“33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best

interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With those glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the court construed the expression 'Prize Chit' in Srinivasa and we find no reason to depart from the Court's construction."

40. Then again, in the case of **Utkal Contractors & Joinery Pvt. Ltd. And others etc. Vs. State of Orissa and others**, reported in AIR 1987 SC 1454, the Hon'ble Supreme Court, in para 9 of its Judgment, has observed as under:-

"9. In considering the rival submissions of the learned counsel and in defining and construing the area and the content of the Act and its provisions, it is necessary to make certain general observations regarding the interpretation of statutes. A statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. How do we discover the reason for a statute? There are external and internal aids. The external aids are Statement of Objects and Reasons when the Bill is presented to Parliament, the reports of Committees which preceded the Bill and the reports of Parliamentary Committees. Occasional excursions into

the debates of Parliament are permitted. Internal aids are the preamble, the scheme and the provisions of the Act. Having discovered the reason for the statute and so having set the sail to the wind, the interpreter may proceed ahead. No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be construed. The setting and the pattern are important. It is again important to remember that Parliament does not waste its breath unnecessarily. Just as Parliament is not expected to use unnecessary expressions, Parliament is also not expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something, Parliament does not legislate where no legislation is called for. Parliament cannot be assumed to legislate for the sake of legislation; nor can it be assumed to make pointless legislation. Parliament does not indulge in legislation merely to state what it is unnecessary to state or to do what is already validly done. Parliament may not be assumed to legislate unnecessarily. Again, while the words of an enactment are important, the context is no less important. For instance, "the fact that general words are used in a statute is not in itself a conclusive reason why every case falling literally within them should be governed by that statute, and the context of any Act may well indicate that wide or general words should be given a restrictive meaning" (see Halsbury, 4th Edn. Vol.44 para 874)."

41. The Hon'ble Supreme Court holds that a section, sub-section or clauses or sub-clauses would have to be read in their entirety. We must not attribute to Parliament wastage or surplusage. When Parliament employs a word or an expression, it is to give it a definite meaning. It is not employed because Parliament falls short of words or is struggling to find the right word or expression. It is not as if a convenient phrase or word or expression is inserted thoughtlessly but it finds place

in a Section only because then the enactment becomes a consistent whole. This is how the Hon'ble Supreme Court guides us and by laying down a salutary principle of interpretation of a statute. Apart from not losing sight of the intent of the Parliament we must not ignore the language of the Law. Therefore, we have no hesitation in holding that the word "controlled", directly or indirectly, by the Central or State Government would include amongst others regulatory measures or taking steps so as to effectively and efficiently regulate the activities of educational institutions established by private entities. Their non-financing or aiding is irrelevant once the degree of control is involved. The element of aid or finance apart, it is the control which is determinative and conclusive in this case. Once the terms and conditions prescribed by the functionaries of the Government are comprehensive and wide enough to take care of not only the establishment, the imparting of education, holding of examinations and awarding of degrees etc., then in the present cases the member institutions are definitely under the control of the Governments. The control need not be deep or pervasive for the statute itself employs the words, "controlled directly or indirectly". We have cases of the State controlling or regulating the relevant processes, stages and phases of the education through the Directorates established and functioning under Parliamentary and other statutes enacted by the Legislative Assembly of Maharashtra

covering the field. Apart from relevant statutes governing academic matters we have another comprehensive legislation of the State Legislature. The Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admissions and Fees) Act, 2015 is very vital in this regard. That law made by the State Legislature though challenged and the legal proceedings in that regard are pending, still so long as that statute is in force, its provisions cannot be brushed aside. The managements who are before us are not disputing that this Act of the State Legislature is holding the field and applies to them. To our mind, therefore, a reading of this Act would also enable us to hold that the word “controlled”, directly or indirectly, by the State Government would have to be interpreted as suggested by Mr. Rajagopal.

42. Once we take the view that the Regional Commissioner or the Chief Electoral Officer can invoke Section 159 of the RP Act of 1951 by making a request to the member institute of the first petitioner-Association, then none of the Judgments cited before us are relevant. In the view that we have taken, we have only gone by the plain language of the applicable statute, namely, the RP Act of 1951.

43. The reliance placed on the case of **Dalco Engineering Private Limited** (supra) is misplaced. There the construction of

the word “established” by or under any law made by the Central or the State Government was the issue. That is not what we are concerned with in these cases. We are, therefore, not required to make a detailed reference to this Judgment at all.

44. In the second case, namely, **S.S. Dhanoa** (supra), the controversy was entirely distinct. There, the Supreme Court was concerned with the question, whether a member of the Indian Administrative Service and whose services were placed at the disposal of the Co-operative Store Limited, a Society registered under the Bombay Co-operative Societies Act, 1925, was a public servant within the meaning of clause Twelfth of Section 21 of the Indian Penal Code, 1860, for the purposes of Section 197 of the Code of Criminal Procedure, 1973? We do not think that any discussion which is focused and limited to this issue carries the case of the petitioners any further.

45. Then comes reliance on the decision in **T.M.A. Pai Foundation** (supra). That was a landmark decision of the Hon’ble Supreme Court. In that, the Hon’ble Supreme Court was concerned with several questions, one of which was the right of minorities to establish and administer educational institutions of their choice under Article 30(1) r/w Article 29(2) of the Constitution of India. The question or the issue arose in the backdrop of several Judgments rendered by Benches

comprising of five or seven Judges and therefore the Supreme Court sat in a larger bench of 11 judges. The questions have been crystallized and those are: Is there a fundamental right to set up educational institutions and if so, under which provision? In case of private institutions (unaided and aided), can there be Government regulations and, if so, to what extent? In order to determine the existence of a religious or linguistic minority in relation to Article 30, what is to be the unit, the State or the country as a whole? To what extent can the rights of aided private minority institutions to administer be regulated? We are not concerned even remotely with these questions. At best can there be regulations of the Government in case of private institutions (unaided and aided) can be an issue but even in relation to that the paragraphs of the Judgment relied upon by Ms Salgaonkar Radia would have to be noted in the backdrop of the essential controversy. Can there be Government regulations or not? In that light, the Supreme Court emphasized that the right to establish an educational institution can be regulated, but such regulatory measure must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and prevention of maladministration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating

students for admissions would be unacceptable restrictions. In fact the paragraphs highlighted before us would assist us in resolving the issue before us properly. The emphasis on these paragraphs militate against the submissions of the petitioners themselves. The right to establish an educational institution is not absolute and is subject to regulatory regime. That it should not be so rigid and pervasive as to dictate everything is therefore the exception. The Parliament's concern is that education is not a business. That education is an occupation and that education is charitable as well. That it is not a profit making venture. That it is not a commercially exploitative mechanism, therefore, would enable us to construe clause (iv) of sub-section (2) of Section 159 of the RP Act of 1951. Any other institution would include unaided institutions before us.

46. Reliance on the decision in the case of **State Bank of India Staff Association** (supra) is entirely misplaced. In that case, there, a provision under consideration in the statute existed prior to its substitution. The very purpose of substitution of the provision by the amendment is to get over that Judgment. That a part of the Statement of Objects and Reasons is being read so as to restrict or read down the provision or the clause means neither here nor there. We have to consider the ordinary meaning of the words inserted or substituted. That may or may not be necessarily as per the Statement of Objects and

Reasons. In the circumstances, we do not think any of these Judgments relied upon are of any assistance to the petitioners.

47. Even the extract of the Handbook for Returning Officers devised by the Election Commissioner is of no assistance for construing and interpreting the legal provision. We have no doubt that the individual Returning Officer would abide by this Handbook and the guidelines enunciated therein.

48. Once we have interpreted the provision consistent with the principle pressed into service by Mr. Rajagopal, then his reliance on the Judgment in **District Mining Officer and others vs. Tata Iron and Steel Co. and another**, reported in (2001) 7 SCC page 358 requires no further reference.

49. We also need not refer to in detail the written submissions tendered by the petitioners for they are not inserting or incorporating anything over and above the oral submissions canvassed before us.

50. As a result of the above discussion, each of these petitions fail. Rule is discharged therein. There will be no order as to costs.

(G.S. PATEL, J.)

(S.C. DHARMADHIKARI, J.)