CASE NO.:
Appeal (civil) 2699 of 2001

PETITIONER:
Modern School

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 27/04/2004

BENCH:
S.B. Sinha

JUDGMENT:
J U D G M E N T
with C.A. Nos. 2700, 2701, 2702, 2703, 2704,
2705-2706, 2707, 2708, 2709 and 2710 of 2001

S.B. SINHA, J :

INTRODUCTION:

How far and to what extent unaided private institutions can be subjected to regulations is the core question involved in these appeals which arise out of a common judgment and order dated 30.10.1998 passed by the High Court of Delhi in C.W.P. No. 3723, 4021, 4119, 5330 of 1997.

THE LAW OPERATING IN THE FIELD:

The Delhi School Education Act, 1973 (for short 'the Act') was enacted inter alia to provide for better organisation and development of school education. By reason of the provisions of the Act, school education, whether imparted in a government institution, a minority institution, an aided or unaided private institutions is sought to be regulated. The power of Administrator to regulate education in all the schools in Delhi, however, is to be made in accordance with the provisions of the Act. Section 4 of the Act provides for recognition of the institution. A scheme of management for managing the affairs of the school is required to be framed in terms of Section 5 thereof conforming to the provisions of the rules made thereunder.

However, in relation to the recognised private school which does not receive any aid, the scheme of management may apply with such variations and modifications in the rules as may be prescribed. It has not been brought to our notice as to whether any separate rules have been framed as regard scheme of management of recognised unaided private schools. The second proviso appended to Section 5, however, states that the scheme relating to the previous approval of the appropriate authority shall not apply to a scheme of management for unaided minority school. Section 6 of the Act provides for grant of aid to recognised schools. The matter relating to payment to salary to the employees of the school is controlled by Section 10 of the Act stating that the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than the amount payable to employees of the corresponding status in school run by the State.

Chapter V of the Act applies to unaided minority schools. Section 15 relates to contract of service in terms whereof a written contract is required to be entered into by and between the managing committee and every employee of a school. Section 17 regulates fees to be charged by aided schools. No such provision has been made in relation to the

recognised unaided schools. Sub-Section (3) of Section 17 merely requires the manager of every recognised school whether aided or unaided to file with the Director a full statement of the fees to be levied by such school during the ensuing academic session, and, furthermore, except with the prior approval of the Director, no school shall charge during that academic session any fee in excess thereof. The Act, therefore, does not provide for any regulation as regards charging of any fee or any other amount by the unaided recognised schools.

Section 18 the Act provides for a School Fund. Sub-sections (1) and (2) of Section 18 relate to aided schools whereas Sub-section (3) thereof provides for Recognized Unaided School Fund.; and such fund may be credited with income accrued to the School by way of fees, any charges or payments which may be realized by the School for other specific purposes or any other contribution, endowment, gift and the like. Clause (a) of Sub-section 4 of Section 18 specifies that that the income derived by unaided schools by way of fees shall be utilized only for such educational purposes as may be prescribed whereas in terms of Sub-Clause (b) thereof, charges and contributions received by the school are required to be utilised for the specific purpose wherefor they were received. Any endowment or gift to a Society/trust for establishment of a new school or establishing any branch thereof, therefore, is not prohibited.

Section 22 provides for establishment of Delhi Schools Education Advisory Board. Section 24 provides for inspection of schools which is in the following terms:

"24. Inspection of schools \026 (1) Every recognised school shall be inspected at least once in each financial year in such manner as may be prescribed.

(2) The Director may also arrange special inspection of any school on such aspects of its working as may, from time to time, be considered necessary by him.

(3) The Director may give directions to the manager to rectify any defect or deficiency found at the time of inspection or otherwise in the working of the school.

(4) If the manager fails to comply with any direction given under sub-section (3) the Director may, after considering the explanation or report, if any, given or made by the manager, take such action as he may think fit, including \026

(a) stoppage of aid,
(b) withdrawal of recognition, or
(c) except in the case of a minority school, taking over of the school under section 20."

The Administrator in exercise of its power conferred upon it under Section 28 of the Act framed rules known as the Delhi School Education Rules, 1973 (The Rules). Rule 44 mandates that every society or trust desiring to establish a new school (not being a minority school) shall give an intimation therefor in writing communicating their intention to establish the school. Rule 50 provides for the conditions for recognition. Rule 51 enumerates the facilities to be provided by a school seeking recognition. Rule 59 provides for the scheme of management of recognised schools. Chapter VI of the Rules provide for grant-in-aid and conditions therefor. Chapter VIII provides for recruitment and terms and

conditions of service of the employees of private schools other than unaided minority ones. Chapter XIII of the Rules specifies the mode and manner in which fees and other charges in aided schools should be expended. Rule 151 provides for development fees.

The expression 'Fees' has been defined in Rule 157. Chapter XIV provides for establishment of a school fund. Rules 172 to 177 provide for the manner in which the fees realised by the aided and unaided institutions are to be utilised.

Rules 176 and 177 of the Rules read thus :

"176. Collections for specific purposes to be spent for that purpose \026

Income derived from collections for specific purposes shall be spent only for such purpose.

177. Fees realized by unaided recognized schools how to be utilized -

(1) Income derived by an unaided recognized school by way of fees shall be utilised in the first instance, for meeting the pay, allowances and other benefits admissible to the employees of the school.

Provided that savings, if any, from the fees collected by such school may be utilised by its managing committee for meeting capital or contingent expenditure of the school, or for one or more of the following purposes, namely :-

a) award of scholarships to students;
b) establishment of any other recognised school, or
c) assisting any other school or educational institution, not being a college, under the management of the same society or trust by which the first mentioned school is run.
(2) the savings referred to in sub-rule (1) shall be arrived at after providing for the following, namely :-
(a) pension, gratuity and other specified retirement and other benefits admissible to the employees of the school;
(b) the needed expansion of the school or any expenditure of a development nature;
(c) the expansion of the school building or for the expansion or construction of any building or establishment of hostel or expansion of hostel accommodation;
(d) co-curricular activities of the students;
(e) reasonable reserve fund not being less than ten per cent, of such savings;
(3) Funds collected for specific purposes, like sports, co-curricular activities, subscriptions for excursions or subscriptions for magazines, and annual

charges, by whatever name called, shall be spent solely for the exclusive benefit of the students of the concerned school and shall not be included in the savings referred to in sub-rule (2).
(4) The collections referred to in sub-rule (3) shall be administered in the same manner as the monies standing to the credit of the Pupils Fund as administered."

Rule 180 mandates that the unaided schools shall submit returns.
ANALYSIS:

The said Act and the rules framed thereunder provide for a complete code not only as regard regulation of education but also organisation and development thereof.

Establishment of a private educational institutional has been held to be a fundamental right by this Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others [(2002) 8 SCC 481]. The fundamental right to establish educational institution as contained in Article 19(1)(g) of the Constitution of India would, however, be subject only to the reasonable restrictions which may be imposed by any law in terms of Clause (6) thereof. The Act is a law regulating education. The Act seeks to regulate education \026 necessary corollary whereof would be that education imparted in an individual institution may also be subjected to regulation. But any control or regulation over education or educational institution must be imposed only by a legislative act and not by any executive instruction. [See Union of India Vs. Naveen Jindal and Anr., (2004) 2 SCC 510]

This Court analysing the provisions of Articles 19, 26 and 30 of Constitution of India in T.M.A. Pai Foundation (supra) inter alia stated:
a) The majority community as well as linguistic and religious minorities would have a right under Articles 19(1)(g) and 26 to establish educational institutions. In addition, Article 30(1), in no uncertain terms, gives the right to the religious and linguistic minorities to establish and administer educational institutions of their choice.
b) The Scheme framed by this Court in Unni Krishnan, J.P. Vs. State of A.P.[(1993) 1 SCC 645] is unconstitutional as thereby restrictions imposed make it difficult, if not impossible, for the educational institutions to run efficiently. The restrictions thus imposed cannot be said to be reasonable ones.
c) The private unaided educational institutions imparting education cannot be deprived of their choice in matters, inter alia, of selection of students and fixation of fees and it is not open to the court to insist that statutory authorities should impose any condition for the purpose of grant of affiliation or recognition which would completely destroy the institutional autonomy and the very objective of establishment of the institution.
d) Education, particularly, higher education must be perceived in the light of the idea of an academic degree as a "private good" that benefits the individual rather than a "public good" for society which is now widely accepted. The logic of today’s economics and an ideology of privatization have contributed to the resurgence of private higher education and the establishing of private institutions where none or very few existed before.
e) The right to establish and administer broadly comprises of the following rights :-
(a) to admit students;
(b) to set up a reasonable fee structure;

(c) to constitute a governing body;
(d) to appoint staff (teaching and non-teaching); and
(e) to take action if there is dereliction of duty on the part of any employees.

f) While the private educational institutions in the matter of setting up a reasonable fee structure may not resort to profiteering but they may take into consideration the need to generate funds to be utilized for the betterment and growth of the educational institution, the betterment of education in that institution and to provide facilities necessary for the benefit of the students. The regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure and the prevention of mal-administration by those in charge of management. The fixing of a rigid fee structure would be an unacceptable restriction. The essence of a private educational institution is the autonomy that the institution must have in its management and administration.

g) There, necessarily, has to be a difference in the administration of private unaided institutions and the government aided institutions. In the latter case, the Government will have greater say inter alia in fixing of fees but in the case of private unaided institutions, maximum autonomy in the day-to-day administration has to be with the private unaided institutions. Bureaucratic or governmental interference in the administration of such an institution will undermine its independence.

h) While running an educational institution is not a business, in order to examine the degree of independence that can be given to a recognized educational institution, like any private entity that does not seek aid or assistance from the Government, and that exists by virtue of the funds generated by it, including loans or borrowings, it would be important to note that the essential ingredients of the management of the private institution include the recruiting students and staff, and the quantum of fee that is to be charged.

i) An unaided institution can charge fee from the students. One cannot lose sight of the fact that we live in a competitive world today, where professional education is in demand. A large number of professional and other institutions have been started by private parties who do not seek any governmental aid. In a sense, a prospective student has various options open to him/her where normally economic forces have a role to play. The decision on the fee to be charged must necessarily be left to the private educational institution that does not seek or is not dependent upon any funds from the Government. The object of setting up an educational institution is by definition "charitable", the making of profit should not be the object. . There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution.

The Judgment of this Court in T.M.A. Pai Foundation (supra) came to be interpreted by a Constitution Bench of this Court in Islamic Academy of Education & Anr. Vs State of Karnataka & Ors. [(2003) 6 SCC 697] wherein inter alia the following question was raised for consideration:
"Whether the educational institutions are entitled to fix their own fee structure;"

Answering the said question, this Court held:

"7. So far as the first question is concerned, in our view the majority judgment is very clear. There can be no fixing of a rigid fee

structure by the Government. Each institute must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefits of the students. They must also be able to generate surplus which must be used for the betterment and growth of that educational institution. In paragraph 56 of the judgment it has been categorically laid down that the decision on the fees to be charged must necessarily be left to the private educational institutions that do not seek and which are not dependent upon any funds from the Government. Each institute will be entitled to have its own fee structure. The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and/ or betterment of the institution etc. Of course there can be no profiteering and capitation fees cannot be charged. It thus needs to be emphasized that as per the majority judgment imparting of education is essentially charitable in nature. Thus the surplus/ profit that can be generated must be only for the benefit/ use of that educational institution. Profits/ surplus cannot be diverted for any other use or purpose and cannot be used for personal gain or for any other business or enterprise..."

The Court, having regard to the fact that the validity of the statutes/ regulations governing the fixation of fees had not been considered, directed constitution of a committee headed by a retired High Court Judge for the said purpose. One of us while concurring with the said directions stated:

"147. On a bare reading of the relevant paragraphs of the judgment some of which are referred to hereinbefore, it is beyond any doubt that in the matter of determination of the fee structure the unaided institutions exercise a greater autonomy. They, like any other citizens carrying on an occupation, must be held to be entitled to a reasonable surplus for development of education and expansion of the institution. Reasonable surplus doctrine can be given effect to only if the institutions make profits out of their investments. As stated in paragraph 56, economic forces have a role to play. They, thus, indisputably have to plan their investment and expenditure in such a manner that they may generate some amount of profit. What is forbidden is (a) capitation fee and (b) profiteering.

154.The fee structure, thus, in relation to each and every college must be determined separately keeping in view several factors including, facilities available, infrastructure made available, the age of the institution, investment made, future plan for expansion and betterment of the educational standard etc. The case of each institution in this behalf is required to be considered by an appropriate

Committee. For the said purpose, even the books of accounts maintained by the institution may have to be looked into. Whatever is determined by the Committee by way of a fee structure having regard to relevant factors some of which are enumerated hereinbefore, the management of the institution would not be entitled to charge anything more."

The principles for fixing fee structure of particular institutions have, thus, been illustrated in T.M.A. Pai Foundation (supra) and Islamic Academy of Education (supra) but it must be borne in mind that those principles were laid down in absence of any statute operating in the field. Where, however, a statute operates in the field, regulation of education would be governed thereby. In this case, as the regulation of education is governed by a Legislative Act, the court cannot impose any other or further restrictions by travelling beyond the scope, object and purport thereof.

The High Court by reason of the impugned judgment travelled beyond the legislative scheme as regards administration of a private institution as also fixation of fee while issuing the impugned directions in the light of the decision of this Court in Unni Krishnan (supra). It is not in dispute that pursuant to or in furtherance of the directions issued by the High Court a Committee known as Duggal Committee was constituted. The said Committee has submitted its report. Pursuant to the recommendations made by the Committee, a circular dated 15th December, 1999 has been issued purported to be in terms of Sub-Section (3) and (4) of Section 24 of the Act. The same apparently is beyond the scope and purport of the Act and the Rules as the directions thereunder can be issued only for the purpose of rectifying the defect and deficiencies found at the time of inspection or otherwise in the working of the school and not pursuant to the recommendations made by a committee constituted in terms of the judgment of the High Court. 'Defects and deficiencies' within the meaning of the said provisions would mean defects and deficiencies while applying the provisions of the Act and the rules framed thereunder only and not the recommendations of a committee de'hors 'the Act' and 'the rules'. The said directions, therefore, do not have the force of law within the meaning of Clause (6) of Article 19 of the Constitution of India. State indisputably can issue directions which would only meet the criteria of a 'law' within the meaning of Article 13 of the Constitution of India. (See Naveen Jindal (supra)

This Court in T.M.A. Pai Foundation (supra), thus, not only upheld the right to establish and administer educational institutions as being guaranteed by Articles 19(1)(g) and 26 subject to the provisions of Articles 19(6) and 26(a) and, particularly, minorities under Article 30, it emphasised the requirement of grant of greater autonomy to the private unaided institutions. The Court while holding that the scheme framed in Unni Krishnan (supra) as unconstitutional made an observation that thereby 'education' in respect of important features thereof is sought to be nationalised, viz., right of a private unaided institution to give admission and to fix fee. By reason of such a scheme, as private institutions became indistinguishable from the government institutions which would amount to curtailing of all essential features of the right of administration of a private unaided educational institution, the same was liable to be struck down being unfair and unreasonable. The Court in no uncertain terms held that 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. It is true that a declaration was made to the effect by the Court that since the object of setting up of educational institution is by definition "charitable" as fee cannot be charged which would not be required for the purpose of fulfilling that object. The Object of an educational institution although

may not be to make profiteering but generation of a reasonable revenue surplus for the purpose of development of education and expansion of the institution is permissible. In the case of unaided private schools, this Court held that the maximum autonomy must be with the management as regards administration, disciplinary powers, admission of students and the fees to be charged. This Court noticed that the examination results at all levels of unaided private schools despite stringent regulations of the governmental authorities were far superior to the results of the government-maintained schools. The Court held that curtailment of income of such private schools is impermissible as it disables those schools from affording the best facilities because of lack of funds. It was suggested that if the lowering of standards from excellence to a level of mediocrity is to be avoided, the solution lies in the States not using their scanty resources to prop up institutions that are able to otherwise maintain themselves out of the fees charged, but in improving the facilities and infrastructure of state-run schools and in subsidizing the fees payable by the students there.

We are bound by the decisions of the larger Benches of this Court.

This Court, having regard to T.M.A. Pai Foundation(supra) cannot thus issue any direction or make a scheme which would not be constitutional being violative of clause (6) of Article 19 of the Constitution.

Indisputably, the standard of education, the curricular and co-curricular activities available to the students and various other factors are matters which are relevant for determining of the fee structure. The courts of law having no expertise in the manner and/ or having regard to its own limitations keeping in view the principles of judicial review always refrain from laying down precise formulae in such matters. Furthermore, while undertaking such exercise the respective cases of each institution, their plans and programmes for the future expansion and several other factors are required to be taken into consideration. The Constitution Bench in Islamic Academy of Education (supra) which as noticed hereinbefore subject to making of an appropriate legislation directed setting up of two committees, one of which would be for determining fee structure. This Court both in T.M.A. Pai Foundation (supra) and Islamic Academy of Education (supra) had upheld the rights of the minorities and unaided private institutions to generate a reasonable surplus for future development of education.

Dawn Oliver in Constitutional Reform in the UK under the heading 'The Courts and Theories of Democracy, Citizenship, and Good Governance' at page 105 states:

"However, this concept of democracy as rights-based with limited governmental power, and in particular of the role of the courts in a democracy, carries high risks for the judges - and for the public. Courts may interfere inadvisedly in public administration. The case of Bromley London Borough Council v. Greater London Council ([1983] 1 AC 768, HL) is a classic example. The House of Lords quashed the GLC cheap fares policy as being based on a misreading of the statutory provisions, but were accused of themselves misunderstanding transport policy in so doing. The courts are not experts in policy and public administration - hence Jowell's point that the courts should not step beyond their institutional capacity (Jowell,2000). Acceptance of this approach is reflected in the judgments of Laws LJ in International Transport Roth GmbH Vs. Secretary of State for the Home Department ([2002] EWCA Civ

158, [2002] 3 WLR 344) and of Lord Nimmo Smith in Adams v. Lord Advocate (Court of Session, Times, 8 August 2002) in which a distinction was drawn between areas where the subject matter lies within the expertise of the courts (for instance, criminal justice, including sentencing and detention of individuals) and those which were more appropriate for decision by democratically elected and accountable bodies. If the courts step outside the area of their institutional competence, government may react by getting Parliament to legislate to oust the jurisdiction of the courts altogether. Such a step would undermine the rule of law. Government and public opinion may come to question the legitimacy of the judges exercising judicial review against Ministers and thus undermine the authority of the courts and the rule of law."

The aforementioned paragraph has been noticed by this Court in Chairman and M.D., BPL Ltd. Vs. S.P. Gururaja & Ors [(2003) 8 SCC 567].

The States have a duty to impart education and particularly primary education having regard to the fact that the same is a fundamental right within the meaning of Article 21 of the Constitution of India, but as the Government had neither resources nor the ability to provide for the same, it appears, the Legislature permitted the Societies/Trusts to establish the educational institutions from the savings made by them from the Unaided Institutions.

It is not the case of the respondents that Rule 177 is unconstitutional. The vires or otherwise of the said rule may be considered in an appropriate proceedings but without going into the said question in great details, it may not be appropriate for us to read down the provisions thereof and issue any direction in derogation thereto. I do not find any conflict in Rules 176 and 177 of the Rules.

In view of the fact that the plain language has been employed in Rule 177 of the Rules, a strict construction thereof may not be justified. The proviso appended to Rule 177 is not exhaustive. There is no reason as to why the expression "capital or contingent expenditure" of the school should be given a narrow meaning, particularly having regard to the fact that Clause (b) thereof permits the Managing Committee to establish any other recognised school out of the saving from the fees collected by such school and clause (c) thereof permits rendition of assistance to any other school or educational institution under the Management of the same society or trust by which the first mentioned school is run.

The provisions of the Act and the rules framed thereunder in my opinion are absolutely clear and unambiguous. This Court has to interpret the provisions of the Act and the Rules framed thereunder in the light of the fundamental rights of the appellants. Any direction, therefore, which would further curtail their fundamental rights would be wholly unwarranted.

Furthermore, the impugned judgment of the Delhi High Court was rendered having regard to the decision of this Court in Unni Krishnan (supra). Unni Krishnan (supra) no longer holds the field. Its dicta that imparting of education is not a fundamental right stands overruled. The scheme framed by it has also been held to be unconstitutional. All orders and directions issued by the High Court pursuant to or in furtherance of the directions in Unni Krishnan (supra) or any decision following the same must, therefore, be kept out of consideration.

Thus, the question posed in these matters needs to be answered differently as imparting of education is now a fundamental right. Such a right, therefore, requires a fresh look and not through the glasses of Unni Krishnan (supra).

An 11-Judge Bench as also a Constitution Bench of this Court in T.M.A. Pai Foundation (supra) and Islamic Academy of Education (supra), as

noticed hereinbefore, have merely forbidden profiteering. 'Profiteering' has been defined in Black's Law Dictionary, Fifth edition as:
"Taking advantage of unusual or exceptional circumstances to make excessive profits"

Although decisions are galore the purpose would be better served by referring to G.P. Singh Principles of Statutory Interpretation, Ninth Edition, 2004, pages 120-122 which is in the following terms:

"4. Regard to Consequences:

If the language used is capable of bearing more than one construction, in selecting the true meaning regard must be had to the consequences resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results. This rule has no application when the words are susceptible to only one meaning and no alternative construction is reasonably open.

(a) Hardship, inconvenience, injustice, absurdity and anomaly to be avoided

In selecting out of different interpretations "the court will adopt that which is just, reasonable and sensible rather than that which is none of those things" as it may be presumed "that the Legislature should have used the word in that interpretation which least offends our sense of justice". If the grammatical construction leads to some absurdity or some repugnance or inconsistency with the rest of the instrument, it may be departed from so as to avoid that absurdity, and inconsistency. Similarly, a construction giving rise to anomalies should be avoided. As approved by Venkatarama Aiyar, J., "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence."

It would not, therefore, be proper to impose any further restrictions in this behalf and interpret T.M.A. Pai Foundation (supra) in a different way so as to take away some of the rights of the appellants which are recognised therein.
We have noticed hereinbefore that T.M.A. Pai Foundation (supra) gave a new look to the concept of 'education', viz., opening up of economy and concept of globalisation. We, therefore, cannot look at the question differently. It must further be borne in mind that by reason of judicial direction this Court cannot override a statute or statutory rules governing the field and, thus, no direction can be issued by this Court

contrary thereto or inconsistent therewith.
Furthermore, the expression 'development of education' is a broad term. There does not exist any reason as to why the said right would be limited, regulated or curtailed in absence of any provisions contained in the Act or the rules framed thereunder. When the law permits utilisation of surplus fund of an institution for setting up another institution, the Court should not come in their way from doing so.
This Court, when such legislations are operating in the field should be loathe to impose any further restrictions. This Court normally does not pass an order even in exercise of its jurisdiction under Article 142 of the Constitution of India which would be contrary to the law. (See Government of West Bengal Vs. Tarun K. Roy and Ors. 2003 (9) SCALE 671, paragraphs 32 to 34 and Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai and Another, (2004) 3 SCC 214)
The need of the day, therefore, is strict implementation and enforcement of the statute. The administration, in the event, comes to the conclusion that the rules are required to be amended, they are free to do so; but only because there are a few cases of mismanagement, the same by itself should not be considered to be an indicia that all institutions are being run in an unprofessional or unethical manner.

Once, the legislature has laid down an educational scheme, the jurisdiction of the court is merely to interpret the same. It cannot and should not issue any other or further direction. It would not supplant a statutory provision by issuing any direction except in some exceptional cases.

The statutory scheme of the Act must be considered also from the point of view that a Society running several institutions may have to impart education in different areas; slum, semi urban or urban. It may not, therefore, be improper for an institution to generate some surplus fund from an institution which is situated within a metropolitan area for the purpose of starting a school in a slum or a semi urban area.

It may also not be necessary to issue direction as to how and in what manner the institutions should maintain their accounts. In absence of any statutory provision governing the field, it is for the administration of the educational institution to determine the same having regard to the prevailing law like Income Tax Act, 1961.

I am, furthermore of the opinion, that as it is permissible in law, the excess income from an institution may be spent by the Society/Trust to establish another school keeping in view the fact that more and more educational institutions are required to be established particularly in rural or semi urban area.

So far as allotment of land by the Delhi Development Authority is concerned, suffice it to point out that the same has no bearing with the enforcement of the provisions of the Act and the rules framed thereunder but indisputably the institutions are bound by the terms and conditions of allotment. In the event such terms and conditions of allotment have been violated by the allottees, the appropriate statutory authorities would be at liberty to take appropriate step as is permissible in law.

For the reasons aforementioned, I respectfully dissent with the opinion of Brother Kapadia,J. I would allow the appeals. No costs.