

PRESENT:

THE HONOURABLE MR.JUSTICE C.N.RAMACHANDRAN NAIR

&

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

FRIDAY, THE 14TH DAY OF SEPTEMBER 2012/23RD BHADRA 1934

WA.No. 1042 of 2012 ()

AGAINST THE ORDER IN WPC. NO.32928/2011 DATED 20.04.2012

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APPELLANT/RESPONDENT IN THE WPC:

STATE OF KERALA,

REPRESENTED BY THE SECRETARY,

GENERAL EDUCATION DEPARTMENT,

GOVERNMENT SECRETARIATE, THIRUVANANTHAPURAM.

BY ADDL. ADVOCATE GENERAL SRI.K.A.JALEEL

BY GOVT. PLEADER SRI.T.T.MUHAMOOD

RESPONDENT(S)/PETITIONER & 2ND RESPONDENT IN THE WPC.

1. THE MYTHRI VIDYA BHAVAN ENGLISH MEDIUM SCHOOL
REPRESENTED BY ITS MANAGER SMT. RAJANANDINI
W/O. VALSAN CHAMAKKALA P.O., CHENTRAPPINI
THRISSUR DISTRICT-680687 (RESIDING AT KOTTEKKATTU HOUSE
THRISSUR DISTRICT-680687).

2. THE CENTRAL BOARD OF SECONDARY EDUCATION
REPRESENTED BY ITS SECRETARY, SHIKSHA KENDRA 2
COMMUNITY CENTRE, PREETH VIHAR, DELHI-110092.

BY ADV. SRI.DEVAN RAMACHANDRAN, SC, CBSE

BY ADV. SRI.V.V.RAJA, SC, ICSE.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
08/08/2012, ALONG WITH WPC. 26779/2011 AND CONNECTED CASES,
THE COURT ON 14/09/2012 DELIVERED THE FOLLOWING:

C.R.

C.N.RAMACHANDRAN NAIR, &

C.K.ABDUL REHIM, JJ.

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Writ Appeal No.1042 of 2012,

W.P.(C) Nos.26779, 28963, 32928 & 32940 of 2011,

42, 6138,1452, 1455, 2474, 5272, 5495, 6315, 6792,

9098, 2435, 11948, 11918, 11949, 11061, 11108,

11968, 9737, 13524, 10305, 16949, 16902, 16027,

15732, 15853, 15398, 15394, 15392, 15326, 15325,

14803, 14580, 14339, 14207, 13566, 13464, 13385,

13724, 12773, 12592, 12388, 17133 & 17132 of 2012

.....
Dated this the 14th day of September, 2012.

JUDGMENT

Ramachandran Nair, J.

Kerala has 12600 and odd schools in the Government; Aided and Unaided sector imparting education mostly in Malayalam under the Kerala syllabus which is not upto the standards of education under the CBSE/ICSE syllabus which is in English. Very few Central Schools are established by the Central Government in big cities mainly for the children of Central Government employees through the Kendriya Vidyalaya Sangham and a few schools following CBSE/ICSE syllabus are run by the Armed Forces and few large Central Public Sector Undertakings in their locations. The limited and restricted availability of facility for schooling in English medium under CBSE/ICSE syllabus and consequent public demand for such schools led to establishment of large number of CBSE/ICSE-private schools, which as of now is over 900 in the State. The more intelligent and ambitious lot of students prefer CBSE/ICSE syllabus and the less clever join schools following Kerala syllabus. The demand for CBSE/ICSE schools in the State is on the increase and the same is evident from the fact that more and more CBSE schools are being set up by missionaries, private trusts and other agencies in small towns and even in village areas in Kerala. Even though the State Government was rather liberal and was not discouraging setting up of quality CBSE/ICSE schools by private managements, for the last 6-7 years, the Government turned hostile and did not grant NOC for new schools for five years. After protracted litigation in the High Court and the Supreme Court, 169 out of 250 unaided schools have been granted NOC in the recent past by the State Government for seeking affiliation from the CBSE/ICSE Boards. Many of the school managements in these cases are in second and third round of litigations against the State Government for several years for getting NOC which is the requirement for getting affiliation under the CBSE/ICSE Affiliation Byelaws. The position canvassed by all the school managements althrough the litigation is that they have no contest against the norms of CBSE/ICSE Affiliation Byelaws and all what they are opposing is State Government's Policies and norms which are in conflict with the Affiliation Byelaws of CBSE/ICSE Boards for granting NOC. The first guidelines for NOC was issued by the Government as per G.O.(Ms.)No.18/88/G.Edn. dated 12.01.1988. However, when G.O.(P).No.107/07/G.Edn. dated 13.6.2007 was issued by the Government

limiting consideration of applications for grant of NOC to five northern districts in the State, this court allowed Writ Petitions filed by managements vacating the Government Order, against which Government filed SLP Nos.11666-11667/2009 before the Honourable Supreme Court. By the time the said SLPs. Were taken up, the Government framed new policy for grant of NOC vide G.O.(MS).No.137/2011/G.Edn. dated 10.6.2011 which rendered the SLPs. virtually infructuous. The Honourable Supreme Court, therefore, recorded the statement of the Government that NOCs. will be issued to eligible school managements satisfying norms and conditions fixed by CBSE/ICSE Boards subject to further guidelines that may be issued by the Government and disposed of the SLPs. filed by the State directing orders to be passed within three months from the date of the order. However, Government issued G.O.(Ms).No.202/11/G.Edn. dated 7.10.2011 framing completely new set of guidelines prescribing norms for grant of NOC to new schools for affiliation and for existing schools for renewal of affiliation required in every five years under the CBSE/ICSE Affiliation Bye-laws. Since the central challenge in all the writ petitions is this Government Order running into three pages, we feel instead of extracting the objectionable clauses of the Order challenged by the petitioners which is produced as Ext.P16 in W.A. 1042/2012 filed by the State, it would be desirable to attach full text of this Government Order to make it part of the judgment and we, therefore, direct the Registry to attach copy of G.O.(Ms). No.202/11/G.Edn. dated 7.10.2011 as annexure to this judgment. When interim applications filed along with writ petitions came up for admission, the learned Single Judge after hearing both sides passed a considered order on 20.4.2012 staying operation of clauses (iv) and (xiv) of the impugned Government Order which prescribe minimum three Acres of land for the schools and 300 students for entitlement for NOC against which State filed the Writ Appeal. Since the decision in the Writ Appeal filed against the interim order in the writ petition would render the writ petitions infructuous, both sides preferred to have all the cases heard by the Division Bench and accordingly we ordered posting of all the W.P.(C)s. along with the Writ Appeal No.1042/2012 and we have heard Sri.T.P.M.Ibrahim Khan, Advs. Sri.A.N.Rajan Babu, Sri.Pius C. Mundadan, Sri.Benoy Thomas, Sri.Mohan Jacob Geroje and all other counsel appearing for the management of schools which are petitioners in W.P.(C)s., Additional Advocate General Sri.K.A.Jaleel for the State, Assistant Solicitor General appearing for the Central Government and separate Standing Counsel appearing for CBSE/ICSE Boards.

2. Before proceeding to consider the challenge against impugned notifications prescribing norms for issuance of NOC, we feel since education is in the Concurrent List, there is a need to address certain broad issues pertaining to authority of the State Government under the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter called "the RTE Act") and also the principles of law laid down by consistent decisions of the Supreme Court particularly in T.M.A. PAI FOUNDATION Vs. STATE OF KARNATAKA reported in 2002(8) SCC 481 holding that right to establish and run schools is a fundamental right under Article 19(1)(g), though subject to Article 19 (6) of the Constitution and the latest decision of the Supreme Court dated 12.4.2012 in SOCIETY FOR UN-AIDED PRIVATE SCHOOLS OF RAJASTHAN Vs. UNION OF INDIA & ANOTHER reported in CDJ 2012 SC 277 wherein the Honourable Supreme Court held that the provisions of the RTE Act do not apply to minority schools covered by Article 30(1) of the Constitution of India. While the case of the Government is that the impugned notification is issued in exercise of powers conferred on them under the RTE Act and the Kerala Rules framed thereunder, the case of the petitioners is that State Government has no authority to issue the notification because the "appropriate Government" under Section 2(a) of the RTE Act for schools affiliated to CBSE and ICSE Boards which are under the control of the Department of Human Resources Development of the Central Government, is the "Union Government". The preliminary objection, therefore, raised by the petitioners is that since in relation to CBSE/ICSE Schools Central Government is the

"appropriate Government" under the RTE Act, the State has no authority to issue the impugned order prescribing norms for grant of NOC/recognition to self-financed schools seeking affiliation to CBSE/ICSE Boards. The "appropriate Government" as defined under Section 2(a) of the RTE Act is as follows:

"S.2(a) ""appropriate Government" means--

(i) in relation to a school established, owned or controlled by the central Government, or the administrator of the Union Territory, having no Legislature, the Central Government;

(ii) in relation to a school, other than the school referred to in sub- clause

(i), established within the territory of--

(A) a State, the State Government;

(B) a Union Territory having Legislature, the Government of that Union Territory;"

The contention raised by the petitioners is that since their schools in the unaided sector are affiliated to CBSE/ICSE Boards which are under the control of the Department of Human Resources of the Central Government, their schools should be treated as controlled by the Central Government and so much so, Central Government is the "appropriate Government". The Additional Advocate General referring to the above definition submitted that under the definition clause except in respect of the schools owned or controlled by the Central Government or administered by the Union Territory, the appropriate Government for all other schools will be the State Government or the Union Territory within which such school is located. We are unable to accept the contention of the petitioners in this regard because CBSE/ICSE Boards are independent Boards, though constituted by Human Resources Department of Central Government, and cannot be called Central Government as such and so much so, the control over petitioners' schools by the CBSE/ICSE Boards cannot be treated as control by the Central Government. However limited may be the control the State Government may have over the schools of the petitioners, the "appropriate Government" for the self-financed schools affiliated or seeking affiliation to CBSE/ICSE Boards in Kerala is the State Government. Further, we are of the view that petitioners cannot challenge the requirement of NOC from State Government for affiliation to CBSE/ICSE Boards because under the Affiliation Byelaws of both these Boards, NOC from State Government is mandatory. Moreover, when the SLPs. were taken up before the Honourable Supreme Court, none of the school managements canvassed the position that NOC is not required and State Government has no role in respect of affiliation of self-financed schools functioning in the State to CBSE/ICSE Boards. However, in our view, nothing else but only the educational need of the children of the area where the school is located should weigh with the Government in the consideration for grant of NOC. In this regard Government should keep in mind the fundamental rights of children for elementary education in neighbouring schools under the RTE Act and under Article 21A of the Constitution which in our view includes right to have education in English medium under CBSE/ICSE syllabus. Grant of NOC, therefore, turns out to be a constitutional and statutory obligation of the Government. Keeping this in mind we now proceed to consider serially the challenge against the norms framed under impugned Order for grant of NOC.

(i) Requirement of minimum three Acres of land (Clause (iv)):-

Clause (iv) of the impugned order stipulates that in order to be eligible for NOC for seeking affiliation, school must have three Acres of land, out of which two Acres should be in the actual location of the school. The petitioners have referred to the norms of the CBSE/ICSE wherein the requirement of land for affiliation is only a

minimum of two Acres, and in towns with a population of 25 lakhs or above the land required is minimum of one Acre. We find force in the contention of the petitioners that the Supreme Court has recorded the submission of the State Government in the order in the SLPs. wherein the State clearly committed that those schools fulfilling norms and conditions of CBSE/ICSE Boards with regard to land and basic facilities i.e. infrastructural facilities, will be given NOC in terms of policy dated 10.6.2011. However, Additional Advocate General defended the impugned order issued by the State Government stating that in the submission made before the Supreme Court, State has clearly reserved right to issue guidelines which is what is done through the impugned order. We are unable to accept this contention on behalf of the State because "further guidelines" referred to in the SLP order certainly does not visualise guidelines directly in conflict with the commitment of the State Government recorded by the Supreme Court that those satisfying norms and conditions of CBSE/ICSE Boards will be given NOC. Besides this, in our view, the insistence of three Acres of land irrespective of location, nature and type of school and number of students, is an arbitrary and impractical decision taken by the State Government. Land constitutes the major infrastructure facility for schools and the Affiliation Rules of CBSE/ICSE takes a realistic stand that in big towns with a population of 25 lakhs or more land will be scarce, and therefore it would be practically impossible for any promoter of school to find even an extent of 2 Acres of land for setting up of a school and that is why they have limited it to one Acre. When the State Government enjoys the power to issue norms on infrastructure namely, land, they have to take a decision reasonably, sensibly and realistically and it should not be difficult or impossible to achieve. In the first place, hundreds and thousands of CBSE/ICSE schools are run all over India in lands ranging from one Acre to two Acres and there is no reason why the State Government should prescribe a norm by themselves in conflict with the Affiliation norms of the CBSE/ICSE Boards. Urbanisation is taking place in an unprecedented and fast pace in Kerala and land cost in any town in Kerala ranges from Rs.5 lakhs to Rs.20 lakhs per cent and if State Government's norm is to be followed, hardly any organisation can afford to invest so massive amounts for purchasing land for new schools and if this norm is insisted, existing schools also will be closed as they will not be eligible for renewal of affiliation for want of NOC. In our view, the practical solution to the problem is to insist on construction of multi-storied school building in the limited space of one to two Acres required under the CBSE/ICSE norms so that sufficient vacant land is available to the children to have play grounds and recreation facilities. Multi-storied school buildings in towns with lift facility will make the class rooms at higher levels free from sound and dust pollution providing congenial environment to children for studies. The State cannot probably visualise school buildings any way different from the Kerala's old type traditional school sheds and tile roofed single storey buildings without even sufficient light or ventilation. School-buildings have to be designed keeping in mind sound and dust pollution in towns at ground level and the developments atleast in the construction industry in the State. Scarcity of land in the towns has driven everyone except the super-rich to go for multi-storied flats for residence which is the only solution to solve the problem. If only the Government prohibits construction of independent houses in every 3 cents and 5 cents of land in towns and insists on people pooling land for construction of multi-storied residential buildings, there would be sufficient space for treatment of waste and to have some greenery, parking space, play ground for children or atleast some space for people to move around. We are, therefore, of the view that minimum 3 Acres land prescribed by the Government for CBSE/ICSE schools is a discouragement and an interference with the fundamental rights of the citizens and minority community to set up schools following the Affiliation norms and Byelaws of CBSE/ICSE Boards. We, therefore, hold that clause (iv) of the impugned order prescribing requirement of minimum 3 Acres of land for CBSE/ICSE schools for getting affiliation and for renewal of affiliation is arbitrary and hence declare the said

provision invalid. Therefore, all the petitioners who have the required land in terms of CBSE/ICSE norms are entitled to get NOC to set up new schools or to renew affiliation of the existing schools.

(ii) Compulsory requirement of "Malayalam" as part of curriculum(Clause (vi)):-

We do not know on what basis the State Government can prescribe curriculum for schools following CBSE/ICSE syllabus. Additional Advocate General tried to sustain the provision i.e. clause (vi) of the impugned order, by referring to Rule 20 of the Kerala Rules prescribed under the RTE Act wherein the academic authority for the purpose of Section 29 of the Act is the State Council for Education Research and Training (SCERT). The petitioners rightly contended that the academic authority for the purpose of schools following CBSE/ICSE syllabus is the National Council for Education Research and Training (NCERT) and so much so, the State cannot interfere with the academic standards and curriculum followed by schools under the CBSE/ICSE Boards. The State also has no case that they can prescribe one additional subject along with other subjects under the CBSE/ICSE syllabus. In fact, Central schools are established by the Kendriya Vidyalaya Sangham in various towns mainly to provide facility for education of children of Central Government employees who come from various parts of India on transfer and we do not know on what basis the State Government has decided to compulsorily teach Malayalam to children from other States. We do not find any basis for the State to interfere with the curriculum of schools following CBSE/ICSE syllabus. We, therefore, vacate clause (vi) of the impugned order as outside the jurisdiction of the State Government.

(iii) Minimum strength of students and compulsory UIID enrollment for students (Clause (xiv)):-

The petitioners have challenged the first part of the above condition by relying on the Division Bench decision of this court in QUEEN MARY PUBLIC SCHOOL Vs. STATE OF KERALA reported in 2007(4) KLT 706 wherein this court held that the requirement of 500 students for affiliation of school from standard 1 to 10 under a Government Order is against the CBSE Affiliation Byelaws and hence unsustainable. The petitioners contended that the above provision is contrary to the CBSE Affiliation Byelaws and for that reason alone it has to be struck down. Besides this, by referring to the scheme of stage-wise affiliation of CBSE schools they contended that State cannot insist on minimum number of students at 300 for issuing NOC. We find force in this contention because under the CBSE Affiliation norms there is no requirement for prior permission to commence a school following CBSE/ICSE syllabus. In fact, affiliation itself is required stage-wise, first for the middle class syllabus i.e. upto standard VIII which is elementary education covered under the RTE Act and then school with upto standard X which falls under the definition of secondary school and later school with upto standard XII called senior secondary school. In fact, as per clause 4(1) of the CBSE Affiliation Byelaws, first time application for approval of middle class syllabus should be submitted only when the school reaches atleast class VI. Clause 15.1.(a) of the Affiliation Byelaws provides for procedure for affiliation i.e. to submit the application on or before 30th June of the year preceding the year in which Class VII/IX/XI as the case may be is proposed to be started. The management can commence the school with standard 1 probably with number of divisions in proportion to the number of students available and progressively when the school reaches class VI only, they need to apply for approval of middle class syllabus. So much so, as on the date of reaching the VIth standard if a school applies for CBSE affiliation with one division each in each standard, even according to the State norms the school will have only 180 students. Further, a school with 30 students in each division and one division in every standard would have 300 students only when it becomes a secondary school i.e. upto standard X and in

between an affiliation is compulsorily required for middle school syllabus that is, upto standard VII i.e. after commencement of class VI. So much so, the requirement of 300 students is not only contrary to CBSE/ICSE Rules of Affiliation but is practically impossible. Student strength increases in a school in the course of time when the school earns reputation as a school with infrastructural and instructional facilities. We feel the progressive stages of affiliation under the CBSE Affiliation Byelaws has a rational basis and the prescription of minimum 300 students for getting NOC for affiliation by the State Government completely goes against the scheme. Sufficient number of students is a compulsory requirement for viability of a school. The number of students in a school will certainly depend upon the area wherein it is located, number of students seeking quality education under CBSE/ICSE syllabus and the reputation the school gains in the course of time. We do not find there is any justification for Government prescribing minimum number of students in a school for considering NOC. For quality coaching, student strength in a division may be 25 to 30 and, therefore, when a school seeks affiliation for the middle class syllabus, it may have around 150 to 180 students and so much so, we do not know how the Government has arrived at 300 as the minimum required number of students for eligibility for NOC. So much so, we vacate this provision leaving it open to the CBSE/ICSE Boards to consider whether affiliation can be granted having regard to the number of students of the applicant-school concerned. The provision of Unique Identification Number for students is seriously opposed by the petitioners by contending that the assignment of UIID Enrollment and numbering is not complete in the State. Additional Advocate General supported the provision by stating that when facility is available, it is for the parents to get the family members including children enrolled and obtain UIID number and there is nothing unreasonable about it is his contention. We do not think the Government can insist the management to satisfy a condition which is not within their powers. Probably those students who are covered by UIID Number can be required to furnish the details through the school management. However, so long as the school has no authority or facility to arrange for giving UIID Number for parents or children, they cannot be compelled to produce the same. If for statistics of the student community the said number is required, we feel the Government should take steps to enroll the parents and family members including the students of every school, whether already affiliated or being affiliated. We, therefore, do not find any rationale behind the compulsory requirement of allotment of UIID numbers to all the students in a school to entitle the school for NOC for seeking affiliation to CBSE/ICSE Boards.

(iv) Requirement of payment of salary to employees and teachers at same scales as in Government for equivalent categories(Clause viii):-

The petitioners have challenged this provision mainly on the ground that it is discriminatory and violative of Article 14 of the Constitution because the direction to give salary to staff and teachers at par with teachers in Government schools is not applicable to unaided schools following State syllabus. The petitioners have produced copy of G.O.(Ms.)No.36/11/G.Edn. dated 14.2.2011 wherein State Government has prescribed salary to unaided school teachers at the following rates:

<i>Designation</i>	<i>Minimum Monthly rate of pay</i>
Headmaster	`7000
H.S.A.	`6000
Primary Teacher	`5000
Clerk	`4000

We have to consider this question with reference to the general complaint in the State that school teachers in unaided schools following CBSE/ICSE syllabus are paid meagre salary and in fact, there are reports of agitations by school teachers in unaided CBSE schools leading to disruption of classes. When the issue contested by the petitioners before this court got published in newspapers, both of us got several letters specifically narrating the clever ways of managements paying very low salaries to teachers but by showing in records that the salary payments are very high. In fact, specific allegation made which appear to us to be quite possible is that managements open separate bank accounts for school teachers in a bank near to the school and the Principal of the school operates individual accounts of teachers by retaining Cheque books issued to all the teachers. On record the school management pays reasonable salary to all the teachers through cheques, but amounts credited in the individual accounts of teachers are drawn by the Principal by getting cash cheques signed by the teachers simultaneously and the Principal after withdrawing the entire cash, pays only very low amount to the teachers and allows the management to pocket the balance amount. This is outright cheating of teachers for which action is not only called for against school management for violation of CBSE Affiliation Norms and also the above order of the Government, but criminal case should also be booked against the managements and the principals colluding with them. Though the petitioners are challenging the above Government norm prescribed as without jurisdiction, we do not know what purpose will be served by petitioners challenging the Government norms because Rule 20 of the RTE Rules prescribed by the Central Government provides for payment of salary and allowances to teachers as follows:

"R20. Salary and allowances and conditions of service of teachers:-

(1) The Central Government or the appropriate Government or the local authority, as the case may be, shall notify terms and conditions of service and salary and allowances of teachers of schools owned and managed by them in order to create a professional and permanent cadre of teachers.

(2)

(3) The scales of pay and allowances, medical facilities, pension, gratuity, provident fund, and other prescribed benefits of teachers shall be at par for similar qualification, work and experience."

What is clear from the above provision is that the appropriate Government or local authority has the authority to fix terms and conditions of service of teachers and staff which includes the salary, allowances and all other service benefits payable to them including pension. Sub-rule (3) specifically states that pay and allowances, medical facilities, pension, gratuity, provident fund etc. shall be at par for similar qualification, work and experience. This condition in the impugned order gets validated by virtue of sub-rule (3) of Rule 20 above, though the Central Government has not issued any notification prescribing salary and allowances payable to staff and teachers of unaided schools following CBSE/ICSE syllabus in terms of sub-rule(1) of Rule 20. Clause 3.3.(v) of the CBSE Affiliation Byelaws under Chapter II provides as follows:

"(v) The school in India must pay salaries and admissible allowances to the staff not less than the corresponding categories of employees in the State Government schools or as per scales etc. prescribed by the Government of India. The schools outside India should pay salaries not lower than those of the teachers in government schools

in that country or not less than the salaries and foreign allowances payable to KVS teachers if officially posted to that country. A certificate to this effect should be obtained from the Indian Diplomatic Mission."

The above provision is in the same way Rule 20(3) is worded and so much so, there is no need for this court to consider the authority of the State Government to prescribe salaries and allowances payable to staff and teachers of unaided schools seeking NOC for affiliation to CBSE/ICSE syllabus. We, therefore, hold that the petitioners are bound by Rule 20(3) of the Central Rules prescribed under the RTE Act and the above provision of the CBSE Affiliation Byelaws to pay salary and allowances to teachers and staff as stated therein.

This leaves us with the next question as to whether there is violation of Article 14 in as much as the above norm is contrary to Government Order referred above wherein Government has prescribed very low rates of wages to teachers and staff of unaided schools following State syllabus. The Additional Advocate General contended that unaided schools following State syllabus are very few and what Government had prescribed is the minimum salary payable and in order to attract qualified teachers, management has to pay reasonable wages. Further, according to him, it is open to the Government to reconsider the above G.O. in the light of the norm prescribed above and the provisions of the RTE Act and the Rules framed thereunder. In other words, there is every likelihood of Government considering increasing the rates of pay provided in the above order. Some of the petitioners being minority institutions contended that by virtue of the declaration made by the Supreme court in the decision above referred, RTE Act does not apply to minority educational institutions and so much so, Rule 20 providing for payment of wages to staff, principal and teaching staff at par with government schools do not apply to them. What we notice is that even before the RTE Act came, the above provision of the Affiliation Byelaws of the CBSE was there and is still in force based on which petitioners are claiming affiliation. Obviously when there is a violation of any of the provisions of the Affiliation Byelaws, the CBSE as well as ICSE Boards are entitled to withdraw affiliation and, therefore, dehorse Rule 20(3) issued under the RTE Act, the school managements, whether minority institutions or otherwise, are required to follow CBSE Rules on affiliation and when it provides for payment of salary at rates par with employees of State Government schools, violation will lead to forfeiture of affiliation and disentitlement for affiliation by CBSE/ICSE Boards, no matter State Government issues NOC or not. All the petitioners have raised contention that the provision under the impugned order issued by the State Government and the Rules prescribed under the RTE Act and the provision in the Affiliation Byelaws for payment of salary at rates applicable to Government school teachers will lead to heavy financial burden on all educational institutions and if they recoup the same by enhancing the fees, most of the students will not be able to pay such heavy fees leading to their leaving the schools for schools following State syllabus. We find force in this apprehension of the petitioners because fee structure is something accepted by the parents at the time of admission of the students and all on a sudden if fees is increased to make up for payment of salary to teachers and staff at Government school levels, several students will be compelled to leave the school. We have already noticed that the very object of the RTE Act is to accomplish the objective of fundamental right of children conferred under Article 21A of the Constitution to get quality education, that too, free and compulsorily to all children in neighbouring schools. The definition of "school" contained under Section 2(n)(iv) includes unaided schools which do not receive any kind of grant or aid from Government or local authority. Further, Section 8(a) of the Act specifically isentitles parents and students from getting reimbursement of the cost incurred for education in self-financed schools. So much so, unaided schools run by collecting fees from the student community is permissible under the RTE Act. Therefore, fixation of pay to staff and teachers at par with Government schools which is beyond the financial capacity of many managements, will

lead to increase in fees above reasonable levels, compelling children to leave schools with syllabus and medium of education of their choice defeating the objective of RTE Act which is to impart education through schools run by the Government, local authority, aided schools as well as unaided schools. There is nothing wrong in Government funding unaided schools or reimbursing fees to students from economically weaker sections so that State/Central Governments can save by avoiding starting of neighbouring Government schools with CBSE/ICSE syllabus. In our view, Government should take all steps to ensure survival of the 900 and odd schools already running and encourage setting up of more self-financed schools in the State following CBSE/ICSE syllabus and, therefore, salary and fees structure fixed should not be a killer dose on the schools which cannot be substituted by the Government with their schools, more so when State Government does not run any school following CBSE/ICSE syllabus. The larger question that arises is whether Government or Boards of CBSE/ICSE in the course of prescribing norms for NOC and for affiliation has the power to fix the terms of employment between private employer and the employees. However, what cannot be dispensed with is fair and reasonable wages without which no school can expect able and qualified teachers to serve the school. Rule 7(1)(a) of the Kerala Rules prescribed under the RTE Act provides that it shall be the duty of the Government to ensure provision for quality education uniformly in all schools which includes unaided schools as well. As already stated, there is heavy demand from the student community in the State for schools following CBSE/ICSE syllabus and, therefore, in order to cater to the needs of the students seeking admission in CBSE/ICSE schools, State Government has to issue NOC to such of the schools which has sufficient number of students demanding education under the CBSE/ICSE syllabus. Government has expressed its anxiety about dwindling number of students in Government and aided schools following Kerala syllabus and in order to prevent closure of such schools, Government is creating obstacles in the way of private schools being established with CBSE/ICSE syllabus. This approach of the Government has to be necessarily condemned because fundamental right conferred under Article 21A includes right to education of the individual choice of the student. The only way for the Government to attract students to their schools is either to jack up the standards of Kerala syllabus at par with CBSE/ICSE syllabus or to at least start CBSE/ICSE sections in Government schools so that those desiring to have studies in CBSE/ICSE syllabus should be given the facility. So long as Central Government does not expand Central schools and State Government has no interest to convert any Government or aided school following Kerala syllabus to CBSE schools, necessarily the Government is obliged to issue NOC to such of the schools started following CBSE/ICSE syllabus and achieve student strength in terms of CBSE rules for affiliation. After hearing the petitioners on the one side and the arguments of the Central and State Governments and also counsel for CBSE/ICSE Boards, we feel the provision in the Affiliation Byelaws as well as Rule 20(3) of the Central Rules prescribed under the RTE Act requires reconsideration by the Central Government under Rule 20(1) in consultation with these Boards. It is a matter for detailed consideration as to whether there is a requirement to pay salary and allowance to teachers and staff in unaided schools at par with Government schools because it may not be financially viable for the managements and the student community. However, unless fair wages are paid to both teaching and non-teaching staff and their service conditions reasonably fixed, the unaided private schools will not get quality teaching staff which will affect the coaching and in turn the educational standards of the students. Pending decision by the State and Central Governments in consultation with each other and the CBSE/ICSE Boards on this issue under the RTE Act, keeping in mind the scales of pay of Government and Aided school teachers in Kerala, the lowest of which is around Rs.15,000/- a month and the fact that even Last Grade employees of the State Government are paid above Rs.10,000/- a month, as an interim measure we direct CBSE/ICSE Boards to immediately enforce as condition for continued affiliation payment of monthly salary provisionally, at the rate of Rs.10,000/- for

primary and middle school teachers, Rs.15,000/- for secondary school teachers and Rs.20,000/- for senior secondary school teachers with an additional allowance to Headmasters/Principals of Schools by all self-financed schools in Kerala affiliated to them including the petitioners herein. So far as the non-teaching staff are concerned, we direct payment of minimum of Rs.6,000/- to clerical staff and Rs.4,500/- to peons and class IV staff as an interim measure until decision is taken by Governments as above. The CBSE/ICSE as well as the Educational authorities are directed to enforce the above direction immediately and also ensure that no manipulations take place in regard to payment of salary to teachers and staff and no school should be allowed to operate bank accounts of teachers through Principal or any other agent. Every teacher should be allowed to start and operate bank account in any branch of any Bank of his choice and no institution should be allowed to retain cheque books of any teacher. If any manipulation or violation is found leading to actual payment below amounts shown as paid or payment below the amounts payable under affiliation norms, appropriate action including withdrawal of NOC and affiliation as well as permissible criminal action should be taken against the managements and the principals involved.

Before parting with the subject, we feel the State Government while considering NOC has to only consider educational need of the area and also availability of infrastructural and instructional facilities of the school with reference to the Affiliation Byelaws of CBSE/ICSE Boards. So far as the educational need is concerned, for issuing NOC to a new CBSE/ICSE school or for renewal of affiliation of such a school, Government should not take into account the availability of Government or aided schools following Kerala syllabus in the area. On the other hand, the availability of schools following CBSE/ICSE syllabus in the nearby areas only should be considered. No new NOC should be issued for starting a new CBSE/ICSE school near to another school following the same syllabus, unless there is sufficient number of students desiring studies in CBSE/ICSE syllabus. Certainly there is need for more CBSE schools in the cities and towns in Kerala because inadequate facility leads to collection of heavy capitation fees by existing schools and crowding of students in schools beyond capacity results in erosion in standards of coaching. Modernisation through construction of multi-storied school buildings, commencement of CBSE sections etc. in Government and Aided schools in cities and towns will be one way to address the needs of the urban community. Since CBSE/ICSE schools are not there in village areas and there are students desiring for studies in such schools, Government should be liberal in granting NOC to unaided schools following CBSE/ICSE syllabus in village areas. However, new school should not be permitted anywhere if it affects the student-strength of any neighbouring CBSE school.

In view of the findings and observations above, we dismiss the Writ Appeals filed by the State against the interim order issued by the learned Single Judge and allow all the W.P.(C)s. by declaring on the validity of the provisions of the impugned Government order as above and by directing the Government to grant NOC to all schools satisfying CBSE/ICSE norms of affiliation under their Byelaws.

Sd/- C.N.RAMACHANDRAN NAIR Judge

Sd/- C.K.ABDUL REHIM Judge

True copy P.S. to Judge pms