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

\+ W.P.(C) 3004/2020 & CM APPLS. 10415-10417/2020, 10675/2020, 12235-12236/2020

JUSTICE FOR ALL ..... Petitioner

Through: Mr. Khagesh B. Jha, Advocate with Ms. Shikha Sharma Bagga, Secretary of petitioner.

versus

GOVT. OF NCT OF DELHI & ORS. ..... Respondents

Through: Mr. Ramesh Singh, Standing Counsel, Mr. Santosh Kumar Tripathi, ASC with Ms. Bhawna Kataria, Advocate for R-1/GNCTD.

Mr. Harish Vaidyanathan Shankar, CGSC and Mr. Varun Kishore, Advocate for R-2/UOI.

Mr. Amit Bansal, Advocate with Ms. Seema Dolo, Advocate for R-3/CBSE.

Mr. Akhil Mittal, Standing Counsel for R-4/North DMC.

Mr. Sriharsha Peechara, Advocate for R-5/SDMC.

Mr. Harish Kumar Khinchi, Standing Counsel with Mr. Akash Rajawat, Advocate for R-6/EDMC

Mr. Anil Grover, Standing Counsel with Ms. Noopur Singhal, Mr. Mishal Vij and Mr. Satish Kumar, Advocates for R-7/New Delhi Municipal Council.

Mr. Ajit Kumar Sinha, Sr. Advocate with Mr. Srijan Sinha, Advocate for R-8 (Sanskriti School).

Mr. Puneet Mittal, Sr. Advocate with Mr. Rupender Pratap Singh, Mr. Vasudha Bajaj , Mr. Abhiesumant Gupta and Ms. Pratima Gupta, Advocates for R-9.

Mr. H.L. Tiku, Senior Advocate with Ms. Yashmeet Kaur, Advocate for R-11/Apeejay School.

Ms. Apoorva Pandey, Advocate for respondent No.12.

Mr. Vedanta Varma and Ms. Mannat Sandhu, Advocates for R-13.

Mr. Anirudh Bakhru with Mr. Ayush Puri, Advocates for R-14 & R-16.

Mr. Piyush Gupta, Advocate with Mr. Kapil Goyal, Advocate for R-15.

Mr. Sunil Gupta, Senior Advocate with Mr. Kamal Gupta, Advocate with Mr. Nikhil Kukreja and Mr. Vaibhav Mehra, Advocates for R-10, 17 & 18.

% Reserved On: 02nd September, 2020
Date of Decision: 18th September, 2020

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

MANMOHAN, J

1. It has been wisely said "*education is the passport to the future".* But what if some passports are better than others, giving the holder access to a better mode and method of education and in turn, a more prosperous future.

2. Inequality in education has been around long before Covid-19, but the pandemic has exacerbated the same by adding another strand/element to it, namely, digital divide.

3. The unparalleled education disruption from the Covid-19 pandemic is far from over, as despite lapse of nearly six months, Union of India and Government of NCT of Delhi (for short "GNCTD") are yet to announce a date for reopening of physical classroom for elementary schools.

4. According to UN Secretary General, Antonio Guterres, the Covid-19 pandemic has the potential to exacerbate entrenched inequalities and waste untold human potential as well as undermine decades of progress.

PRAYERS IN THE WRIT PETITION

5. Initially, the instant public interest litigation was filed seeking a direction to the respondents to supply free laptops/android mobile phones/Electronic Tablets with high speed internet to children belonging to Economically Weaker Sections or Disadvantaged Groups (hereinafter referred to as "EWS/DG") so that they could attend their classes by way of video conferencing just like fee paying students in their classes. The initial writ petition was confined to the following children, as their schools only were conducting online classes at that time: -

> *(A) A child admitted under section 12(1)(c) of the Act, 2009 in non-minority private schools.*
>
> *(B) A child admitted under notification dated 30th December, 2013 in schools which had been allotted land by government agencies at concessional rates.*

(C) A child admitted in minority school Protected by para 65A of ***Society for Unaided Private Schools of Rajasthan Vs. Union of India and Another, (2012) 6 SCC 1****.*

6. As during the pendency of the present petition, some other schools also started online classes, the petitioner sought modification in the prayer clause to include children studying in these schools, so that comprehensive orders could be passed under Article 21A of the Constitution of India for all the children other than fee paying students. Learned counsel for the petitioner stated that for children studying in minority schools, the State should bear the burden. Accordingly, the modification in the prayer clause was allowed vide order dated 06th August, 2020 and the following students were added subsequently as beneficiaries:-

(A) A child admitted in government School.

(B) A child admitted in non-minority aided school.

(C) A child admitted in aided minority school prior to judgment of the Supreme Court in ***Pramati Educational and Cultural Trust (Registered) And Others vs. Union of India & Ors., (2014) 8 SCC 1****.*

(D) A child suffering from multiple disabilities who has opted for home-based education as his or her choice under proviso Section 3(iii) of the Act, 2009.

7. The amended prayer clause in the writ petition is reproduced hereinbelow:-

"i) an appropriate writ order or direction to respondents to ensure that the free laptop/I-pad/Mobile Phone and high speed Internet or any other equipment required for on-line classes through video conferencing, be provided free of cost to every child defined under section 2(c) of the RTE Act except fee paying children with immediate effect irrespective of their school where they study or they have opted for home based education as a choice permitted to them under section 3(iii) of the RTE Act, 2009.

ii) an appropriate writ order or direction to the respondents R-1 to R-6 to ensure the EWS/DG children defined under the RTE Act, studying in pvt schools should not face any financial barrier which may prevent him or her from getting equitable quality education in the same manner and with the same equipment their fee paying counterpart is getting in schools recognized by them.

iii) An appropriate writ order or direction to R-1, R-3, R-4, R-5 and R-6 to ensure Uniform Equitable Education through in-tractive on-line classes in school run by them and provide free equipments so their students shall not be segregated from their counterpart studying in the private schools recognized by them.

iv) To pass an appropriate order or direction to the R-2 to disburse the central share for implementation of on-line education as prayed in prayer (i) to (iii) and also for the construction of hostels for destitute children as per the provisions of RTE Act.

v) to pass any other order or further orders this Hon'ble court deems fit on the basis of above mentioned facts and circumstances of the case.

vi) Allow the present writ petition with cost."

ARGUMENTS ON BEHALF OF THE PETITIONER

8. Mr. Khagesh B. Jha, learned counsel for the petitioner stated that the present petition highlights the non-implementation of the right to free and compulsory education created under Article 21A of the Constitution of India read with Sections 3 and 8 of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as 'RTE Act, 2009'). According to the petitioner, use of different technologies to teach children at both the inter-school and intra-class level amounts to discrimination.

9. He submitted that Articles 19(1)(a), 21 and 21A guarantee the right to free and compulsory education to every child between six and fourteen

years, which was earlier granted under Article 45, subject to financial constraints. According to him, the intent behind Article 21A is that the State should not deny the aforesaid right of education on the ground of non-availability of funds.

10. Mr. Khagesh B. Jha submitted that a Fundamental Right, especially one declared as *'an axis to the Indian Constitution'*, cannot be allowed to be violated. He submitted that as per Section 2(c) of the RTE Act, 2009 all children between six and fourteen years of age fall within the definition of "*child"* and Section 3 of the RTE Act, 2009 is a statutory transcription of Article 21A. He emphasized that the word "*manner*" appearing in Article 21A cannot be read in a way that would dilute the right of education guaranteed through word *"free"* – which means that the right to education is free from cost, from discrimination, from fear, from mental trauma, from State inaction, from bureaucratic mindset, from inaction of parents etc.

11. He submitted that Section 12(1)(c) of the RTE Act, 2009 transferred the burden of providing free and compulsory education of a limited number of children (25%) to private schools (which were otherwise charitable in law) and the proviso to the said section stipulates/clarifies that free education as defined under RTE Act, 2009 includes everything.

12. Learned counsel for the petitioner relied upon the judgment of the Supreme Court in ***Society For Unaided Private Schools of Rajasthan*** (supra) wherein the word "free" has been given a wide interpretation by the Court. The relevant portion of the said judgment relied upon by him is reproduced hereinbelow:-

> *"40. Indeed, by virtue of Section 12(2) read with Section 2(n)(iv), a private unaided school would be entitled to be reimbursed with the expenditure incurred by it in providing free and compulsory education to children belonging to the above category to the extent of per child expenditure incurred by the State in a school specified in Section 2(n)(i) or the actual amount charged from the child, whichever is less. Such a restriction is in the interest of the*

general public. It is also a reasonable restriction. Such measures address two aspects viz. upholding the fundamental right of the private management to establish an unaided educational institution of their choice and, at the same time, securing the interests of the children in the locality, in particular, those who may not be able to pursue education due to inability to pay fees or charges of the private unaided schools.

41. We also do not see any merit in the contention that Section 12(1)(c) violates Article 14. As stated, Section 12(1)(c) inter alia provides for admission to Class I, to the extent of 25% of the strength of the class, of the children belonging to weaker sections and disadvantaged group in the neighbourhood and provide free and compulsory elementary education to them till its completion. The emphasis is on "free and compulsory education". Earmarking of seats for children belonging to a specified category who face financial barrier in the matter of accessing education satisfies the test of classification in Article 14. Further, Section 12(1)(c) provides for a level playing field in the matter of right to education to children who are prevented from accessing education because they do not have the means or their parents do not have the means to pay for their fees.

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45. At the outset, we may reiterate that Article 21-A of the Constitution provides that the State shall provide free and compulsory education to all children of the specified age in such manner as the State may, by law, determine. Thus, the primary obligation to provide free and compulsory education to all children of the specified age is on the State. However, the manner in which this obligation will be discharged by the State has been left to the State to determine by law. The State may do so through its own schools or through aided schools or through private schools, so long as the law made in this regard does not transgress any other constitutional limitation. This is because Article 21-A vests the power in the State to decide the manner in which it will provide free and compulsory education to the specified category of children. As stated, the 2009 Act has been enacted pursuant to Article 21-A.

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47. The above judgments in T.M.A. Pai Foundation [(2002) 8 SCC 481] and P.A. Inamdar [(2005) 6 SCC 537] were not concerned

with interpretation of Article 21-A and the 2009 Act. It is true that the above two judgments have held that all citizens have a right to establish and administer educational institutions under Article 19(1)(g), however, the question as to whether the provisions of the 2009 Act constituted a restriction on that right and if so whether that restriction was a reasonable restriction under Article 19(6) was not in issue.

48. Moreover, the controversy in T.M.A. Pai Foundation [(2002) 8 SCC 481] arose in the light of the scheme framed in Unni Krishnan case [(1993) 1 SCC 645] and the judgment in P.A. Inamdar [(2005) 6 SCC 537] was almost a sequel to the directions in Islamic Academy of Education v. State of Karnataka [(2003) 6 SCC 697] in which the entire focus was institution-centric and not child-centric and that too in the context of higher education and professional education where the level of merit and excellence have to be given a different weightage than the one we have to give in the case of Universal Elementary Education for strengthening social fabric of democracy through the provision of equal opportunities to all and for children of weaker sections and disadvantaged group who seek admission not to higher education or professional courses but to Class I."

13. He also relied upon the judgment of the Supreme Court in ***Pramati Educational and Cultural Trust (Registered) And Others*** **(**supra) wherein judgment in ***Society For Unaided Private Schools of Rajasthan*** **(**supra) has been reaffirmed and the Court rejected most of the arguments which, according to him, have now been raised in the counter affidavits filed by the private schools herein. The relevant portion of the Supreme Court judgment in ***Pramati Educational and Cultural Trust (Registered) And Others*** (supra) is reproduced hereinbelow:-

"56. In the result, we hold that the Constitution (Ninety-third Amendment) Act, 2005 inserting clause (5) of Article 15 of the Constitution and the Constitution (Eighty-sixth Amendment) Act, 2002 inserting Article 21-A of the Constitution do not alter the basic structure or framework of the Constitution and are constitutionally valid. We also hold that the 2009 Act is not ultra vires Article 19(1)(g) of the Constitution. We, however, hold that the 2009 Act

insofar as it applies to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is ultra vires the Constitution….."

14. Mr. Jha stated that Section 12(2) of the RTE Act, 2009 makes provision for and defines the extent of reimbursement to the private unaided schools as defined under Section 2(n)(iv), which are providing free and compulsory education in terms of Section 12(1)(c). However, he submitted that the proviso to Section 12(2) stipulates that if schools are pre-paid in terms of concessional land or other facilities, the said schools are not entitled to reimbursement.

15. Learned counsel for the petitioner further relied upon the judgments in ***Social Jurists, A Lawyers Group vs. Government of NCT of Delhi & Ors., 140 (2007) DLT 698 (DB)*** and ***Union of India Vs. Moolchand Kharaiti Ram Trust, 2018 SCC Online SC 675*** wherein it has been held that in enforcing charities, Article 19(6) does not come in the way. In the said case, the Court held that pre-determined rate is concessional in nature and the condition to impose any charity can be enforced without any law as that is the purpose behind allotment of land.

16. He emphasized that Section 8(d) of the RTE Act, 2009 casts a duty upon the State/GNCTD to provide all the requisite infrastructure including school building, teaching staff as well as learning equipment, which includes the gadgets required to participate in virtual classrooms/online education.

17. He stated that the intent of the legislature behind including anything and everything in Article 21A of the Constitution and Sections 3 and 8 of RTE Act, 2009 is keeping in mind the dynamic nature of requirement which is different for every child and the same is regulated only by the norms enumerated in Section 19 read with the Schedule to the RTE Act,

2009 and the curriculum decided by the academic authority under Section 29 of the RTE Act, 2009.

18. He further stated that the academic authority is not authorised to customize the curriculum on any ground i.e. one for government school and another for private school or one for students having means and another for students not having means. According to him, if the academic authority, like in the present case, has already decided that online classes through video conferencing is good for education, then the GNCTD is bound to spend on the same, as they are not allowed to create a vertical divide between government schools and private schools. He pointed out that even if the academic authority wanted to depart from the policy, they cannot do so in view of the New Education Policy, 2020 wherein online education is one of the essential features. He contended that if the arguments of the respondents in their counter affidavits are accepted, it would render Article 21A infructuous.

19. He also contended that in violation of Rule 10(2) of the Delhi RTE Rules, 2011 and Article 21A of the Constitution read with Sections 3 and 8 of the RTE Act, 2009, some schools were using different methods for teaching the fee-paying students as compared to the students belonging to EWS/DG category and the said practice amounts to a vertical divide. He pointed out that the counter-affidavits filed by NDMC-respondent no.7 and Sanskriti School-respondent no. 8 categorically admit that children from EWS category and their fee-paying counterparts are using different methods and modes of education. He contended that this practice is violative of Article 21A read with Sections 3 and 8 of the RTE Act, 2009 and constitutes a clear vertical divide.

20. Learned counsel for the petitioner stated that even though respondent no.1 supported the case of the petitioner, it has narrowed down the entitlement of children facing difficulty. According to him, anything that is

unavailable to the children belonging to EWS/DG but is available to their counterpart i.e. fee-paying students, amounts to prevention from pursuing and completing elementary education as mentioned in Section 3(2) of the RTE Act, 2009.

21. He submitted that fee-paying parents cannot be compelled to pay to school management (which has other sources of income) for charity as cross-subsidy is illegal in view of the Apex Court's judgment in ***Unni Krishnan, J.P. and Others Vs. State of Andhra Pradesh and Others, (1993) 1 SCC 645***.

22. He contended that it is the duty of the State to identify the said challenges and the onus is not on the parents or child to prove whether there is something preventing the child from pursuing his/her education. He further contended that inaction of respondent no.1 amounted to an abrogation of duty under the RTE Act, 2009 inasmuch as the State has no power to transfer the burden upon parents of the child by forcing them to file a complaint.

23. He stated that as per the mandate of Section 7 of the RTE Act, 2009, the Central Government and State Government/GNCTD have a concurrent responsibility to provide funds for carrying out the provisions of the Act.

24. He pointed out that respondent no.2 in its counter affidavit has stated that funding for the *Sarva Shiksha Abhiyan* which has now been converted into *Samagra Shiksha Abhiyan* is sufficient discharge of their obligations under Section 7 of the RTE Act, 2009. However, according to Mr. Jha, the said plea is contrary to the plain reading of Section 7 of the RTE Act, 2009 inasmuch as the *Sarva Shiksha Abhiyan* scheme which was started much before the RTE Act, 2009 was enacted by the Parliament and the funding therein was much higher than the present funding. He stated that *Samagra Shiksha Abhiyan* is not limited to elementary education as provided under Section 3 of the RTE Act, 2009 and in fact deals with all the branches of

education. He contended that the Union of India does not have the authority to spend the money collected (as education cess and otherwise) for elementary education on higher education and if the defense of respondent no.2 is accepted, it would render the RTE Act, 2009 redundant.

ARGUMENTS ON BEHALF OF GNCTD-RESPONDENT NO. 1

25. Mr. Ramesh Singh, learned standing counsel for respondent no. 1 submitted that Article 21A is a unique article inasmuch as it creates a new fundamental right as opposed to other Articles under Part III of the Constitution of India which protect pre-existing Rights.

26. He submitted that 'State' in Article 21A includes the State Government as well as the Central Government and local authorities. He stated that the law giving effect to Article 21A is the RTE Act, 2009, which is a Central legislation.

27. He elaborated upon the Scheme of the RTE Act, 2009 and submitted that: -

i. Heart of Article 21A is Section 3, which contemplates '*Right to free and compulsory education'* to all children between the ages of 6-14 years *viz-a-viz* their elementary education.

ii. Section 3(2) discusses the scope of *'free'* education and contemplates that there should not be any financial barrier of any kind, which can have the effect of preventing a child from getting education.

iii. Section 12 provides a scheme for certain obligations of the State to be passed on to the private unaided schools and the extent thereof.

28. Learned standing counsel contended that even though Section 3 creates corresponding obligation, on both the State as well as the private

unaided schools, to provide free and compulsory education, yet the manner of discharge of this obligation is for the respective private schools as well as the State government to decide. He clarified that the said freedom is subject to fulfillment of certain minimum criteria prescribed under the RTE Act, 2009. He submitted that the minimum criteria apart from being envisaged in paragraph 3(a) of the Objects and Reasons, is set out in Section 8 read with the Schedule to the RTE Act, 2009 (for Private Schools the corresponding Provision being Section 19 read with the Schedule) as well as Sections 23, 24, 25 and 29. Moreover, he stated that the said essential norms and standards have to be read keeping in mind that the Act contemplates a "No Detention Policy" (Section 6 read with Section 30).

29. He pointed out that there are about 1750 private unaided schools in Delhi, out of which about 1300 schools have fee ranging between Rs.500 to Rs.1,000 per month as opposed to the top private unaided schools where the fee ranges between Rs.10,000 to Rs.15,000 per month, whereas the per child expenditure in government schools for the purpose of Section 12(2) for the year 2018-2019 stood at Rs.2,250 per month. He stated that due to market forces the private unaided schools started imparting education through online digital means. He contended that due to differential fee structure, the method, manner and mode of education is different in different schools. Consequently, he submitted that the method and manner of imparting elementary education need not be similar or identical in all schools.

30. Insofar as the State Government is concerned, he stated that during the pandemic they have started the teaching activities in their schools through a combination of strategies using digital device and support of parents and School Management Committees (hereinafter referred to as 'SMC') as mentioned in the Circular dated 02nd July, 2020. He further stated that the said circular has been supplemented by another circular

dated 13th July, 2020 whereby telephonic instructions have been directed to be given by the teachers to the students. Since the Circulars dated 02nd July, 2020 and 13th July, 2020 were extensively relied upon by learned Standing counsel for GNCTD, the relevant portion of the same are reproduced hereinbelow:-

A. CIRCULAR DATED 02nd JULY, 2020

"Subject: Teaching Learning Activities for July 2020

As per the circular No.DE.23/(08)/Sch. Br/2020-21/414 dated 30/6/2020, the schools shall continue to remain closed till 31/07/2020. However, the teaching learning activities for the students of the Govt. schools under Directorate of Education shall commence, using alternate strategies, from the first week of July 2020. It is important that the academic loss of the students is minimized.

A plan of action in this regard has been worked out for the students of classes KG to 12 through a combination of strategies using digital device and support of parents and School Management Committees.

All classes between KG to XII have been divided into three cohorts to follow three distinct strategies to support the learning of students in these classes. These are as follows:

Cohort 1: KG to Class VIII

Daily syllabus agnostic worksheets with content and questions/activities that will promote Reading, Writing, Understanding, Basic Numeracy and Happiness among children.

Daily one worksheet with questions/tasks/activities in a maximum of one page.

In sub groups:

- *For classes KG to II*
- *For classes III to V*
- *For classes VI to VIII*

Through these worksheets, the teachers are expected to stay connected with their students and support their learning.

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<u>Mode of implementation</u>:

For Cohorts 1 and 2:

All Heads of Schools must ensure that all Class Teachers have updated the WhatsApp group of parents/students in their respective section. They must separately maintain a list with numbers of parents on WhatsApp group and those that are not.

Preferably two WhatsApp groups must be created by each class teacher – one for Admin only where only the class teacher can post the worksheets and message and other where children/parents can respond.

A team of DoE teachers from Core Academic Unit, Mentor Teachers and Primary branch shall develop/shortlist single page worksheets for classes KG to X.

These class wise and date wise worksheets will be sent by IT branch to all HoS and two other senior teachers of each school on every Saturday of the week through WhatsApp. Worksheets for the next one week would be sent at one time.

The HoS, assisted by the two other teachers (one TDC and one Computer Science Teacher) must ensure that all respective class teachers receive the worksheets for their classes as soon as they receive it from the IT branch.

Between Monday and Saturday (irrespective of public holiday or otherwise), the concerned Class teacher must send the worksheet day-wise to students in their WhatsApp group alongwith audio message explaining how it has to be done with children at home.

For parents who are not in WhatsApp group, the concerned class teacher is required to make a phone call to each such parent and invite him/her to school at a mutually convenient time and date to collect the worksheets for their child. Interactions with parents be conducted in school following the social distancing protocol and not more than 5 parents be called together at any given time.

When the parent comes, the class teacher should give a print out of the worksheets for the entire week and explain what needs to be done.

When the child completes the assignment in their note book or any plane sheet or any audio/video message, the parents should assist the child to take a picture of the sheet or audio/video and sent it back to their class teacher. The teachers must give brief feedback to the child with positive message.

Similarly, those parents who have physically collected the worksheet should be invited next week to collect the new worksheets and return the previous ones with child's work to the class teacher. The teachers must congratulate parents and their child for completing the assignment.

The class teachers may also take the help of SMC members to contact the parents and seek their help in getting the children engaged with their teachers in teaching learning activities.

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<u>General Instructions</u>:

All Heads of schools are:

- *Authorized to call teachers of their school as per requirement and assign such task which cannot be done from home, maintaining the protocol of social distancing.*
- *Required to assign the section of a teacher to any other teacher in case the previous class teacher is not available due to COVID duty or otherwise.*
- *Directed to make available adequate number of copies of worksheets to the class teachers that they can provide to the parents who are not on WhatsApp using SMC/Examination fund.*
- *Required to ensure that all their class teachers (KG to Class X) maintain weekly record in the following template:*

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All DDEs (District/Zone) are directed to review/monitor the coverage and effectiveness of remote teaching learning approach on a weekly basis."

B. CIRCULAR DATED 13th JULY, 2020

"In view of the gravity of COVID-19, Directorate of Education, Govt of NCT of Delhi issued directions vide Circular no.DE/5/260/digital/Online classes/Exam/2020/638-643 dated 2.7.2020 for compliance by the heads of Govt. Schools regarding Teaching Learning Activities for classes KG to XII for minimizing the academic loss of the students during the academic session 2020-21.

Further, it is a comprehensive effort and responsibility of all the stakeholders to stay connected with every student through regular follow up to know what they are doing to support their learning at home during COVID-19 Pandemic and also to extend all possible help that the students may require.

Accordingly, all the Heads of Schools are hereby advised to engage the willing Guest teachers and Contract teachers wherever required for the aforementioned on-line teaching learning activities. All such engaged teachers shall be treated as on duty and will be paid as per norms.

This issues with the prior approval of the Competent Authority."

31. He submitted that the aforesaid method adopted by the GNCTD for imparting curricular education to its school children in the present scenario is effective, satisfactory and good enough to cover the minimum required obligations inasmuch as: -

i. The process under the said circular lays down the structure of teaching/learning and involves using daily syllabus agnostic worksheets prepared by a team of DoE teachers from core Academic unit, Mentor teachers and primary branch.

ii. In the first instance, an audio message would be sent on the WhatsApp of the parents explaining the contents and the associated concepts involved in the worksheet;

iii. In cases, where the parents do not have the facility of accessing the worksheet and the audio message through WhatsApp, they are to physically approach the teacher with the child in their respective schools where the worksheet would be handed over and the contents thereof with associated concepts involved in the said worksheet would be explained in person;

iv. Thereafter, there is constant one to one oral interaction (through telephone) between the teacher and the child to check, ensure and explain, if needed, the concept in the worksheet to the child and only thereafter the child would be asked to do the assignment. The whole process is a two way dynamic and real-time process, which the students and DoE teachers are familiar with inasmuch as the said process was being followed in normal times also during summer and the supplemented learning material called '*PRAGYATA'*;

v. As the aforesaid approach requires greater involvement of teachers to assist in the learning of students, the DoE issued a circular dated 13th July, 2020 to provide adequate reinforcement in form of guest/contract teachers.

vi. Once the worksheet is completed, the students would send them back to the teachers through WhatsApp after scanning the same or hand them over in person; which are then evaluated and comments/ feedback are shared;

vii. The Minister of Education as well as other officers conduct reviews at zonal level to ensure that the aforesaid personalized attention is given to the children.

viii. Moreover, in the recent times the implementation of the overall teaching / learning process in the government schools has been of a very high standard as has been reflected in the results of the students passing out of government schools.

ix. There have hardly been any dropouts of the students in Government Schools as it has consistently maintained its percentage both in the pre-primary to 8th standard as well as in pre-primary to 12th standard. Pertinently, the total number of students in the academic year 2019-20 in the Government and Government aided schools was approximately 8 Lakhs in pre-primary to 8th standard and approximately 16.5 Lakhs in pre-primary to 12th standard.

32. Learned standing counsel emphasized that the obligations of the State in the present scenario have to be viewed keeping in mind the extraordinary circumstances of the pandemic. On the point of methods adopted by the Private Unaided schools as well as by the GNCTD schools, he contended that:-

a. The best of the virtual and / or online classroom studies can never be a substitute for a physical classroom and therefore, there would be an overall compromise across the board in level of quality of imparting of education including achieving all the prescribed minimum standards in the present scenario from the days of the physical classroom;

b. The minimum obligation as contemplated under Section 3 of the RTE Act, 2009 has to be seen in the light of the present

unique circumstances and not the obligations as contemplated under the Act when physical classroom dissemination of instructions was happening;

c. The general endeavor and approach by all the stakeholders is to minimize the loss of learning as much as possible;

33. He contended that an inherently intertwined facet of the meaningful fulfillment of obligation under Section 12(1)(c), particularly in light of Section 3 of the Act, is that EWS/DG children should not be discriminated on any grounds that would prevent them from pursuing and completing elementary education. He emphasized that the enactment proscribes intra-class discrimination of children. He relied upon Section 8(c) of the RTE Act, 2009 and Rule 8(3) of the Delhi RTE Rules, 2011 to supplement his submission. He contended that any kind of intra-class discrimination would indisputably result in dropouts of such children. He stated that equipment with minimum configuration must be provided to EWS/DG students in a class where Online Education is being imparted as without such gadget/equipment dissemination of education would not be possible and it would operate as a financial barrier.

34. Mr. Ramesh Singh stated that even though the DoE did not regulate the manner of adoption of dissemination of instructions through online learning by various Private Unaided Schools, yet as it received complaints which showed that within such private unaided schools there was discrimination between the 75% fee paying students and 25% EWS/DG students *viz*-a-*viz* access to online learning inasmuch as the EWS/DG students were not able to access the said services on account of non-availability of means / equipment to such students by the schools, the DoE issued circular dated 29th April, 2020 whereby it directed such schools to ascertain whether all EWS/DG students are able to avail of online learning

facilities, why any EWS/DG students are not able to do so, and if shortcoming is on account of lack of equipment/ internet connections then such schools were duty bound to ensure that such facility is made available to EWS/DG students.

35. He also submitted that even though the present circumstances had not been specially contemplated under the provisions of the RTE Act, 2009, yet the scope of Section 3 as well as Section 12(1)(c) has to be construed in accordance with the principle of 'dynamic interpretation'. In support of his submission, he relied upon the judgment in ***Senior Electric Inspector & Ors. vs. Laxminarayan Chopra & Anr., (1962) 3 SCR 146***.

36. He submitted that Section 12(2) of the RTE Act, 2009 provides for reimbursement of expenditure incurred by such school, which is not of the actual amount incurred by the school, but an amount that the Government incurs per child in their school for imparting elementary education. He emphasized that in terms of second proviso to Section 12(2), in case of those schools which are situated on government land, even the prescribed limitation of reimbursement is confined to only 5% out of the said 25% of EWS/DG students.

37. He further stated that the tuition fee which is charged from the students in case of physical classroom studies, apart from covering salaries, also covers the cost spent towards establishment as well as towards curricular facilities like library, lab, science fee, computer fee, examination expenses etc. Consequently, according to him, the identical tuition fee that is paid by the student, for attending virtual classroom, would clearly and necessarily include the cost incurred by the schools for providing the aforesaid equipment (a tool for dissemination of instructions) to the EWS/DG students. In support of his submission, he relied upon the judgment of this Court in ***Delhi Abibhavak Sangh vs. Union of India –***

2002 (62) DRJ 818 (DB), wherein the heads for fixing tuition fee have been discussed.

38. He contended that the schools are saving and not utilizing the entire tuition fee as they are not providing various curricular activities in the present COVID time, i.e. library, lab, science fee, computer fee, as well as examination expenses, etc. He pointed out that upon examination of fee statements filed by private unaided recognized schools, it has been found that expenditure on salary and establishment ranges between 40% to 70% with the average figure being around 60% of the tuition fee charged by the schools. Therefore, he stated that on the said account also, there are less significant additional expenses, over and above what is already collected as tuition fees, which the schools would incur for performing their present obligation.

39. In any event, he submitted that even if the expenditure for the schools exceeds the tuition fee amount, then also the schools cannot shrug their statutory obligations simply because performance of such obligation has become onerous.

40. Learned standing counsel submitted that assuming *arguendo*, if the cost of such equipment is not a part of the tuition fee, then also reimbursement of such expenses under Section 12(2) of the RTE Act, 2009 would be limited to the additional expenditure incurred per child in Government Schools on account of implementing its obligations of distant / digital dissemination of instructions in terms of circulars dated 2nd July, 2020 and 13th July, 2020.

41. He further submitted that as per Section 7(1) of the RTE Act, 2009, providing funds for carrying out the provisions of the Act is a concurrent or joint responsibility of the Central Government as well as that of the State Government. He stated that in terms of Section 7(2) read with Section 7(3), Central Government is required to grant approval qua expenditure estimate

(both capital and recurring) for implementing all the provisions of the Act. He stated that such estimate would necessarily incorporate the approved budget of the State (given the fact that such exercise is done with the consultation of the State Government). According to him, the Central Government is to determine what percentage of such expenditure could be borne by the Central Government and post thereto, provide the State Government, as grant-in-aid of revenues after determining the figures of such grant-in-aid based on the said percentage. In any event, he contended that under Section 7(4), the Central Government is obliged to initiate necessary steps for reference to Finance Commission to provide additional resources to the State Government to enable it to pool in their share of the fund for carrying out the provisions of the Act.

42. He admitted that even though *sans* the aforesaid exercise, State Government is still responsible to provide its share of funds, yet the said provision nevertheless recognizes the primary responsibility of the Central Government to ensure necessary support to States in genuine cases so that the responsibility/ obligations under the Act are implemented. Consequently, according to him, the Central Government plays the principal role and is the primary mover for arranging of funds for ensuring that the obligations of the State Government are met. In support of his aforesaid submissions, he extensively relied upon the following:-

i. 213th Parliamentary Standing Committee Report on The Right of Children to Free and Compulsory Education Bill, 2008: as, it recognizes that the expenditure towards elementary education is not just confined to financial requirement under *Sarva Shiksha Abhiyan*; on the contrary there will be additional enhanced cost of making elementary education a fundamental right.

ii. Lok Sabha Debate on the Right of Children to Free and Compulsory Education Bill, 2008: As per the statement of the

introducer of the Bill, this is *"a national enterprise and this has nothing to do with the State Government or the Central Government"* and that the primary responsibility of the financial obligations is with the Central Government and the *Sarva Shiksha Abhiyan* norms are to be harmonized with the present enactment.

iii. Rajya Sabha Debate on the Right of Children to Free and Compulsory Education Bill, 2009: As per the statement of the introducer of the Bill, it is the fundamental right of a child to get education and *"there is no way in the world that we don't have finances to implement it".*

43. He submitted that the aforesaid documents, especially the statements of the introducer of the Bill, are relevant for the purpose of interpretation of the provisions of the Act as held by the Supreme Court in ***Commissioner Of Income Tax v. Meghalaya Steels Limited, (2016) 6 SCC 747***.

44. In view of the foregoing submissions, he argued that the stand taken by the Central Government - respondent no.2 in its counter affidavit i.e. the reimbursement of the expenditure incurred by the State under Section 12 would have a *"maximum ceiling of 20% of the total AWP & B approved by GoI for the State / UT under the Samagra Shiksha Program"* flies in the face of their otherwise statutorily contemplated responsibility for providing funds under Section 7 of the RTE Act, 2009 as well as the Central Government's stand in paragraph 7 of their counter affidavit, wherein they have stated that their existing funds sharing pattern is 60:40 for all the States.

45. He emphasized that while as per recommendation of the 14th Finance Commission of Government of India, the devolution of funds to the States, have increased to 42% of the Net Union Tax receipts, which in case of

Delhi would work out to be around Rs.50,000 crores (42% of about Rs.1.25 lakh crores), whereas Delhi gets a mere Rs.325 crores as its share in Central tax, which figure has remained constant/unchanged since 2001-2002. Hence, according to him, in such a scenario, it becomes the prime responsibility of the Central Government to ensure that in a genuine case like the present one, the State is given additional necessary support so that their responsibility/obligations under the RTE Act, 2009 are implemented.

ARGUMENTS ON BEHALF OF RESPONDENT NO.2 /UOI

46. Mr. Harish Vaidyanathan Shankar, learned counsel for the respondent no. 2 submitted that the RTE Act, 2009, which came into force on 29th August, 2009 is an Act which provides free and compulsory education to all the children of the age of 6-14 years.

47. He relied upon his counter affidavit filed to contend that various schemes and measures have been put in place by respondent no.2 to provide and promote elementary education all over India. He stated that the Central Government has taken numerous steps keeping in view the welfare of the children and their education. He submitted that the said steps are all part of the concurrent responsibility of the Central Government under Section 7 of the RTE Act, 2009 and this has been done all over the country. According to him, to that extent the Central Government is cognizant of and has discharged its duties as required under the various laws, including the RTE Act, 2009.

48. He contended that the Central Government is also carrying out its obligations as per the RTE Act, 2009 in respect of the schools it administers, namely *Kendriya Vidyalayas*. He stated that *Kendriya Vidyalayas'* students have access to Online Education and those who do not have laptop or phones are imparted education through TV channels, contact programmes, worksheets and assignments sent by post. He submitted that

different means can be adopted to teach different students in the same class. According to him, the issue of discrimination amongst students would only arise if a student is not given access to education. He relied upon his Additional Affidavit to highlight the various steps taken by the Central Government in its schools, namely the *Kendriya Vidyalayas.* The relevant portion of the additional affidavit of respondent no.2-UOI is reproduced hereinbelow:-

> *"4. The status of the Central Government Schools and the minimum standards prescribed for the purpose of imparting online education may be read as under:-*
>
> ***Kendriya Vidyalaya Sangathan:-****The Delhi Region, Kendriya Vidyalaya Sangathan has total 69 (46+23) Kendriya Vidyalayas including 23 KVs running in second shift also. Total 106905 students are studying from class II to XII, and as per a survey conducted by the Sangathan, total 82798 students have devices as per requirement and 16529 students have limited access to devices. Thus, Overall Total 99327 students (92.91%) have access to devices. Initially the classes started with the available devices with the teachers, parents and students. Wherever limited devices were available the following steps were taken:*
>
> *i. Meeting with parents and, working out timetable so that limited devices can be used optimally by all the children in the family.*
>
> *ii. Where no devices were available, the students were contacted on phone. They were provided details to join classes through TV channels live Swayam Prabha DTH Channel etc.*
>
> *The measures taken by Delhi Region for Online classes:*
>
> *a)* ***SWAYAM PRABHA:*** *Using NIOS platform, the KVS started the schedule lessons- recorded and live programmes of NIOS for Secondary and Senior Secondary Classes from 7th April 2020. The question answer session was taken by teachers through live chat, skype.*

*b) **Facebook:** Live Classes were conducted by teachers.*

*c) **YouTube:** Teachers uploaded Videos lessons and informed students through twitter and whatsapp groups*

d) Regional office, KVS, Delhi Region started its own Channel. Subject wise best teachers were identified and were assigned with the responsibility of live classes.

After all the above efforts, it was felt that a common platform will be a great solution to conduct, track, monitor the Online classes and G-Suite Education platform was hired and Regional Office, Delhi registered its domain.

After getting a common platform, all the students classes II to XII, Principals, Teachers, Vice Principals, Head Masters were registered. Unique ID and password of each individual were created in G-Suite with Security features in place.

Three days online training of teachers was conducted to familiarize the use of platform on G-Suite platform wherein:

a. Live classes are conducted

b. Teachers uploaded assignments

c. Assignments solved by students were uploaded

d. Online Evaluation was done by teacher

To reduce inhibitions of teachers, a group of techno savvy teachers was formed who helped other teachers to solve teething troubles in handling the technical issues. It motivated teachers and to prepare lessons to be taught online.

Presently, around 98% students strength are fruitfully attending the Online Classes. The online supervision of classes is being done by the Assistant Commissioners and Deputy Commissioners. Panel Inspection of Classrooms/Vidyalayas is also being experimented now. Parent Teacher Meeting is also being conducted. Flexi timings have been assigned to teachers to conduct Classes as per the availability of devices.

5. Measures taken by KVS to deal with issues of digital divide with reference to accessibility of online education of children during the COVID-19 Pandemic

1. Every school has taken responsibility to work out the ***accessibility*** *issues of each individual student. This was done by:-*

a) Mapping the availability/non-availability of devices for each student.

b) Organising online Parent Teacher Meeting to apprise parents about the mode of conduct of online classes and also to seek their support in smooth and efficient transaction of the content. Parents who were not able to connect through online mode were connected telephonically for inputs regarding the possible ways and means to connect with their wards for teaching learning.

c) Exploring avenues for making provisions for providing devices through local community and management help, CSR, NGO's etc. ***Various NGOs & Alumni have donated 112 mobile phones to students belonging to EWS.***

d) ***The following efforts are made for those children who were not reachable at all:***

- *Schools prepared photocopies of sets of self-explanatory notes which were sent to the students via courier. Many students received it and are using them, but many couriers were returned due to non-availability of the parents at the address.*

- *Peers were roped in to find out the location of these students.*

- *Parents of other students were also involved in finding out the whereabouts of those students with whom the contact could not be made.*

- *As on 01.08.2020, total enrolment of students was 106905 (Admission process is still going on). 3042 students could not be contacted as on 15.07.2020. However, after concerted efforts by the schools, now only 2614 students have remained not contacted.*

e) ***Further, the following efforts are made for those children who have been contacted but do not have devices:***

• These students were encouraged to use other Live Resources and Learning portals such as DIKSHA Portal, NCERT Official YouTube channel to ensure continuous learning.

• The term Phone-pool (Sharing of Device) was introduced for ensuring attendance in Live Online Classes.

• Students were asked to watch DTH channels of SWAYAM PRABHA for their continuous learning on TV.

• Teachers are in contact with the students, guiding them on self-learning and clearing their doubts on content either from books or after watching various educational channels/portal etc.

• Efforts made to tap other options for donations or devices like Alumni, NGOs, CSR etc.

• Worksheets and Handouts were prepared in all subjects and delivered to the students at their home.

• Content material was also made available in pen drives and CDs where there was poor internet connectivity.

• Question and Answers were send through SMS.

• Community Teaching maintaining Social Distancing was undertaken.

• Guided Peer Learning for students staying in the same locality.

• Use of ***Asynchronous mode of transaction such as:***

Free e-resources available on various platforms like NROER, DIKSHA, SWAYM PRABHA, NPTEL, e-pathshaala, NCERT NIOS portals, Khan Academy are being used.

f) Alternative Academic Calendar prepared by NCERT was made available to all the students. Queries/doubts of students were addressed through SMS/phone.

g) Feedback from Parents/Teachers/Students regarding conduct of classes was taken for necessary intervention required for further improvement.

h) Counselling session on mental well being of students was conducted.

i) Viable means for realistic evaluation for assessment of learning was undertaken."

49. He emphasized that the Central Government is ensuring that EWS/DG children are not deprived of education and provided access to education through Television Channels, All India Radio, the Internet, etc.

50. Learned counsel for respondent no.2 contended that while online education is interactive, it is no one's case that it is the only mode or mean for imparting education. He stated that various State Governments in India and various countries world-over have been successfully using Television and the Radio to provide access to education and to ensure the continuity of children's education. In support of his contention he relied upon a World Bank Report regarding some of the means used by various Countries *(https://www.worldbank.org/en/topic/edutech/brief/how-countries-are-using-edtech-to-support-remote-learning-during-the-covid-19-pandemic)* and a UNESCO Study which had looked into the manner in which Television and Radio had been found to be extremely helpful *(https://en.unesco.org/news/learning-through-radio-and television-time-covid-19).*

51. He submitted that the Supreme Court in various cases such as ***Society for Unaided Private Schools of Rajasthan*** (supra) and ***Pramati Educational and Cultural Trust (Registered)*** (supra) has held that the RTE

Act, 2009 provides for access to free and compulsory education and the removal of barriers to access the same. He further submitted that once the entry barriers are removed, the obligation under Section 8 has to be necessarily read in a manner such as to mean that the Child is "not discriminated against and prevented from pursuing and completing elementary education on any grounds" and this can be achieved by various means. He contended that there could be different modes and means of providing access to education within a class depending upon the circumstances of a child i.e. one child without access to a device could study through a radio broadcast, whereas his classmate who has access to a device could attend online classes. In support of his contention, he relied upon one of the examples given in PRAGYATA issued by Department of School Education & Literacy, Ministry of Human Resource Development, Government of India and prepared by National Council for Education Research and Training (NCERT). The relevant portion thereof is reproduced hereinbelow:-

"Online Learning for Class IV students
An Exemplar

PLAN:
Lesson Plan for the following is prepared by the teacher in great details

REVIEW:
- *Teacher conducts a brief survey with the children via mobile about their access to digital devices and finds that:*
  1. *15 Households have a Television, Smartphone with internet connectivity and also a Laptop.*
  2. *10 Households have a Smartphone with internet connectivity and a Television but no Laptop.*
  3. *4 Households have a basic mobile.*
  4. *1 Household does not have even a mobile.*

ARRANGE:

- ***After this survey teacher may make arrangements in the following manner.***
    - *Giving immediate attention to children belonging to households at (c) and (d). For children belonging to households at (c), teachers may plan calls early morning on the mobile as there is a possibility that the parent who will go out for work may take the mobile along with him/her.*
    - *Teachers select a theme (Example – a theme from EVS, i.e. family).*
    - *So, she/he will call the parent or student and ask them to discuss with their family members (their age, what work they do, etc.).*
    - *For a child belonging to a household at (d), teachers may explore contacting them via the child's friends. After getting the contact of a student residing nearby, the teacher may explore communication channels with the household at (d) such as identifying his/her accessibility to a mobile belonging to a neighbour. The teacher will guide the parents, child or guardians.*
    - *For children belonging to households at (a) and (b), she may plan to call them via Google Hangout or WhatsApp calls, etc. Teachers may create three groups of eight students each, and guide on the same theme- 'family' by asking them to discuss and make a chart as discussed above……"*

52. He stated that in the present circumstances, the Central Government has taken quick and responsive steps to ensure that education is seamless, continuous and available to all students.

53. He contended that the obligations of the Government schools cannot be equated or compared with the obligations of the Private Schools inasmuch as Government schools, though mandated to take 25% of their strength as EWS students, in fact, cater to far higher number of students from the EWS categories. He stated that this is because of the higher affordability of the school, due to much lower fees being charged, as

compared to unaided private schools. He stated that even though the private unaided schools are far lesser in numbers, the Central Government caters to a larger number of students and carries out its obligations and does not do so for profit. He emphasized that the Central Government has already taken out a number of initiatives for children in general across India without any discrimination or distinction to ensure that education is continuous and seamless and access to the same is ensured across the board.

54. Mr. Harish Vaidyanathan Shankar submitted that the present Petition is regarding online means of education and provision of devices to EWS/DG children or the 25% of the children that are mandated under the Act to be admitted by the schools as per Section 12(1)(c) of the RTE Act, 2009 and the various obligations (as outlined in Sections 12 and 8) to be undertaken by Schools and the Appropriate Government (as defined under Section 2(a)(i)(ii) of the RTE Act, 2009). He stated that as per the Act, the primary responsibility in respect of access to the free and compulsory education is on the private unaided Schools as per Section 12(1) and under Section 12(2) such schools will have to be reimbursed for the same by the State Government as that is the prime focus of the Act itself. In view of the same, he contended that the scope of the present petition need not extend to Section 7, as it is nobody's case that reimbursements have not been given. He submitted that in the operability and the execution of the RTE Act, 2009, Sections 8 and 7 operate in different spheres and in fact, it is only Section 8 that primarily delineates and fixes the complete responsibility on the Appropriate Government, which is the respective State Government. He emphasized that a bare perusal of Section 8 of the RTE Act, 2009 reveals that it is the Appropriate Government that shall provide not only free and compulsory elementary education, but also, "Learning Equipment". He contended that the issue regarding the share of funds, which has been mentioned by the State Government, is completely

unwarranted and unnecessary as the RTE Act, 2009 lays particular stress on the duties of Appropriate Government. He submitted that in the conspectus of the various provisions of the RTE Act, 2009 it was clear that although the Act so promulgated is a Central Act, yet its operability and applicability is substantially centric to "Appropriate Government".

55. He contended that RTE Act, 2009 applies in a generic state of affairs and not to any exigent situation such as the current Pandemic, which from every perspective is a wholly unforeseen and extraordinary situation. He extensively relied upon the measures outlined in his Counter Affidavit to argue that the Central Government has already taken measures to deal with the Pandemic and its effect on education in India. He also stated that the Central Government has, as a wholesome all-encompassing measure, provided for a staggering sum of Rs.20 Lakh Crores to cater to any fall out of the Covid 19 Pandemic. He emphatically stated that to now read Section 7 in the manner as sought by the respondent No.1, over and above the obligations already performed and in addition to the measures already taken in this respect by the respondent No.2, would tantamount to a palpable erroneous reading of the Act and its true applicability. He lastly contended that the Central Government cannot be further burdened in the manner as has been contended by the respondent No.1 in its counter affidavit.

ARGUMENTS ON BEHALF OF NORTH MUNICIPAL CORPORATION OF DELHI-RESPONDENT NO.4

56. Mr. Akhil Mittal, learned counsel for respondent no. 4 stated that there are about seven hundred primary schools under the jurisdiction of respondent no.4, who are providing free education to all its students in classes 1 to 5 in terms of the RTE Act, 2009.

57. He pointed out that respondent no.4 has issued circular dated 9th April, 2020 to provide 'Online Teaching Learning Activities' through WhatsApp groups for students of about seven hundred schools run by them, in addition to twenty one aided and one hundred eighteen recognized private primary schools. He stated that in continuation of previous circulars, respondent no. 4 has also issued another circular dated 7th July, 2020 to all Head Mistresses/ School in charge of MPL/ MPL aided and recognized schools to remain present in their respective schools for distributing worksheets with recorded videos to parents whose children are not able to access WhatsApp and further request the parents to submit the worksheets on weekly basis. He stated that private unaided recognized schools are also following the aforesaid guidelines.

58. He stated that the respondent no.4 had also written a letter dated 24th April, 2020 to CEO, Prasar Bharti Broadcasting Corporation for allotting one hour airtime on Doordarshan Channel (Delhi region) for providing online education through television mode and in response to the said letter, Joint Director NCERT has launched PM eVidya program containing broadcasting/ telecasting/ podcasting all e-contents (over TV, radio and internet) of all subjects from Class 1 to 12. He further stated that the twelve DTH channels, each catering to one class, will be launched in September, 2020 and in addition to the same, twenty seven radio channels will also be added. He also stated that in addition to the aforesaid, a separate QR code will be available on Diksha website wherein the recorded videos, worksheets and entire contents shall be available for downloading.

59. He emphasized that the respondent no.4 is trying its level best to assist the students through WhatsApp etc. as well as through offline means, so that each child has free access to education. He pointed out that parents and children of EWS category have raised no grievance with respondent no.4.

60. Mr. Akhil Mittal lastly stated that considering the relief claimed in the present petition, an approximate sum of Rs. 312 crore would be required by respondent no.4 for supplying basic gadgets to provide interactive online classes to all the students under its jurisdiction alone.

ARGUMENTS ON BEHALF OF SOUTH DELHI MUNICIPAL CORPORATION – RESPONDENT NO. 5 AND EAST DELHI MUNICIPAL CORPORATION–RESPONDENT NO.6.

61. Mr. Sriharsha Peechara, learned counsel for respondent no.5 and Mr. Harish Kumar Khinchi, learned counsel for respondent no. 6 stated that they have been implementing policies and circulars being followed by North Delhi Municipal Corporation. However, Mr. Sriharsha Peechara, learned counsel for respondent no. 5 admitted that only fifty percent of the students are attending classes in primary schools under the jurisdiction of respondent no. 5. He stated that respondent no. 5 is trying to collect data of fifty percent missing students. He assured this Court that worksheets/assignments shall be provided to the fifty percent students who had not been attending the classes in the recent past.

ARGUMENTS ON BEHALF OF NEW DELHI MUNICIPAL COUNCIL – RESPONDENT NO.7

62. Ms. Noopur Singhal, learned counsel for respondent no.7 stated that the schools under the jurisdiction of respondent no.7 are following the Pragyata Guidelines of Central Government for imparting education and they are using means like Google Meets, WhatsApp, T.V., Radio etc. She stated that the Navyug schools which come under the jurisdiction of respondent no. 7 have a 70% reservation for EWS category students.

ARGUMENTS ON BEHALF OF RESPONDENT NO.18

63. At the outset, Mr. Sunil Gupta, learned senior counsel for respondent no.18 stated that the RTE Act, 2009 does not deal with the unforeseen,

unanticipated and unprecedented situation prevailing today due to Covid-19 pandemic. He stated that neither the Covid-19 pandemic nor the physical closure of classroom in neighbourhood school or the concept of online education was at the back of the mind of the Parliament at the time of enacting the RTE Act, 2009. He submitted that as the aforesaid outbreak of a pandemic and development in technology had not been visualized by Parliament while passing the RTE Act, 2009, this Court cannot apply the RTE Act, 2009 to such a situation.

64. Learned senior counsel for respondent no.18 stated that during the present COVID-19 crisis, educational activity under the RTE Act, 2009 and Delhi School Education Act and Rules, 1973 is dysfunctional. He submitted that RTE Act, 2009 contemplates providing of education by a neighbourhood school in a physical classroom and not online education by digital means. He contended that during the pandemic, online education is being provided as a social service by certain private unaided schools. He emphasized that the said schools have not done so because of any legal or statutory obligation cast on them.

65. He also submitted that even the Government cannot enlarge the scope of the RTE Act, 2009 by any circular by executive or Departmental Instructions to include online education or learning materials, much less electronic devices. In support of his submission he relied upon the judgment of this Court in ***Forum For Promotion Of Quality Education For All vs. Lt. Governor of Delhi & Ors., W.P.(C) 202/2014*** and ***Action Committee Unaided Recognized Private Schools vs. Directorate of Education, W.P.(C) 448/2016.***

66. He emphasized that there is no automatic or all-embracing Fundamental Right to free and compulsory education prescribed under Article 21A as it only provides for a Fundamental Right to be available to children in such manner as the State may, by law, determine. He submitted

that in Article 21A, the expression '*manner*' is distinct from the expression 'free and compulsory' inasmuch as '*manner*' pertains to the method or mode by which education is imparted by any person whereas '*free and compulsory*' describes only the terms of the contractual transaction or service of education rendered by any person. According to him, other than the manner determined by law made by the Parliament i.e. physical classroom, there is no Fundamental Right given by Article 21A to any child and there would be no other legal or statutory right under the RTE Act, 2009. He relied upon the Statement of Objects and Reasons of the RTE Act, 2009 to contend that the Act provides for the some kind of education of satisfactory quality in a formal school which satisfies certain essential norms and standards.

67. He emphatically stated that the RTE Act, 2009, does not contemplate online education as a manner of education. He submitted that Article 21A and the RTE Act, 2009 provide only for neighbourhood schools i.e. physical classrooms and not online education. According to him, online education is not a core and non-derogable facet of Article 21A of the Constitution. He submitted that if the Court includes '*online education*' by way of interpretation, it would unduly expand the scope of the RTE Act, 2009 even when the legislature has expressed a narrow intent by using the unmistakably qualifying and restrictive word '*neighbourhood'* before the word '*school*' in the most relevant provisions [*viz.* Sections 3, 6, 8(b), 9(b), 10, 12 (1)(c) etc.] of the RTE Act, 2009 and prescribed the '*essential norm and standard'* which a school should possess *viz*. an '*all-weather building consisting of ...classrooms, barrier free access, toilets, drinking water, kitchen, playground, boundary wall, fencing, library, play material, games and sports equipment etc.'* in Section 19 read with the Schedule so as to limit and prevent any wide connotation of the word '*education'* or the word '*school'* thereby excluding from the scope of the Act not only hitherto

unknown mechanisms such as Synchronous Face-to-Face Real Time Education, namely, Online Education, but even the somewhat known practices of Remote or Distance or Digital Education by means of Correspondence, Television, Radio etc.

68. He contended that whatever manner of education applies for private unaided schools; the same applies also for government schools and vice versa. He reiterated that the manner of education '*determined*' as a right of a child under Section 3 of the RTE Act, 2009 is education imparted '*in a neighbourhood school*' i.e. in a physical school comprising land, walls, brick and mortar and located in the local vicinity or neighbourhood of the child and it is this manner of physical '*neighbourhood school*' education which is required by the Act to be imparted on contractual or service terms which are '*free and compulsory*' for every child. He stated that there cannot be two different interpretations and applications of the Act with respect to online education. He emphasised that as per the scheme of the RTE Act, 2009, only education in a physical classroom is provided under the statute and other methods or manner of education (such as online education, TV, Radio, WhatsApp etc.) are not covered or required or expected to be available as free and compulsory education in either a government school or an unaided school under the Act.

69. In view of the aforesaid, he submitted that the Court could not evolve a legislative intent that is not found in the statute by way of a '*dynamic interpretation*'. He emphasised that a Court cannot legislate under the garb of interpretation. In support of his submission, he relied upon the judgment of the Supreme Court in ***EERA through Dr Manjula Krippendorf vs. State (NCT of Delhi) and Another (2017) 15 SCC 133*** wherein it has been held as under: -

> *"95. To elaborate, an addition of the word "mental" by taking recourse to interpretative process does not come within the*

purposive interpretation as far as the POCSO Act is concerned. I have already stated that individual notion or personal conviction should not be allowed entry to the sphere of interpretation. It has to be gathered from the legislative intention and I have already enumerated how the legislative intention is to be gathered. Respect for the dignity of a person, as submitted, has its own pedestal but that conception cannot be subsumed and integrated into a definition where the provision is clear and unambiguous and does not admit of any other interpretation… In certain circumstances, it would depend upon the degree of retardation or degree of understanding. It should never be put in a straitjacket formula. It is difficult to say in absolute terms.

xxxx xxxx xxxx xxxx

97. Needless to emphasise that courts sometimes expand or stretch the meaning of a phrase by taking recourse to purposive interpretation. A Judge can have a constructionist approach but there is a limitation to his sense of creativity.…

xxxx xxxx xxxx xxxx

139. A reading of the Act as a whole in the light of the Statement of Objects and Reasons thus makes it clear that the intention of the legislator was to focus on children, as commonly understood i.e. persons who are physically under the age of 18 years. The golden rule in determining whether the judiciary has crossed the Lakshman Rekha in the guise of interpreting a statute is really whether a Judge has only ironed out the creases that he found in a statute in the light of its object, or whether he has altered the material of which the Act is woven. In short, the difference is the well-known philosophical difference between "is" and "ought". Does the Judge put himself in the place of the legislator and ask himself whether the legislator intended a certain result, or does he state that this must have been the intent of the legislator and infuse what he thinks should have been done had he been the legislator. If the latter, it is clear that the Judge then would add something more than what there is in the statute by way of a supposed intention of the legislator and would go beyond creative interpretation of legislation to legislating itself. It is at this point that the Judge crosses the Lakshman Rekha and becomes a legislator, stating what the law ought to be instead of what the law is."

70. He submitted that Section 7 fixes the financial and other responsibilities for providing the funds for carrying out the purposes of the RTE Act, 2009 only on the Central and State Governments and Sections 8 and 9 impose the duty of '*free and compulsory education*' only on appropriate Government and local authorities. Therefore, according to him, Private schools have no such legal responsibility or duty to provide '*free and compulsory education*' and they have to provide the children with '*access*' to education only. He contended that the mode, manner and method of education could be different in different schools as well as in the same class.

71. He pointed out that the Government of India Guidelines for Digital education 'PRAGYATA' applicable to all Government and Private schools throughout India and GNCTD / Department of Education Circulars meant for Covid-19 pandemic period permit different methods of Education: Online Education, Digital, TV Radio or '*WhatsApp and Worksheet*' Telephonic instruction depending on whether a particular child in the class possesses or does not possess a particular kind of device. According to him, they divide households with children in schools all over the country into six categories depending on the availability of 4G, 3G, 2G, Internet, Basic Mobile, TV, DTH, Cable, Radio, FM etc. devices (gadgets) and connections or no device and no connection whatsoever. The relevant portion of PRAGYATA Guidelines relied upon by Mr. Sunil Gupta is reproduced hereinbelow:-

> *"COVID-19 pandemic has led to secure disruptions in normal life, including closure of schools. It has impacted over 240 million children of the country who are enrolled in schools. Extended school closures may cause loss of learning. To mitigate the impact of the pandemic, schools will not only have to remodel and reimagine the way teaching and learning have happened so far, but will also need to introduce a suitable method of*

delivering quality education through a healthy mix of schooling at home and schooling at school.

While digital or online education cannot replace classroom learning, it has some advantages. It allows flexible and personalized learning at the speed of the learner and one can continuously augment and expand content through digital means. The rapid increase in internet penetration and various government initiatives such as Digital India campaign have created a conducive environment for moving towards digital education. This shall be complemented by the recent launch of PM e-Vidya by the Ministry of Human Resource Development (MHRD), a national campaign which will unify all efforts related to digital/online/on-air education. This includes, DIKSHA (one nation – one digital platform), TV (one class-one channel), SWAYAM (online MOOCS on various topics), IITPAL (platform for exam preparation), AIR (through community radio and CBSE Shiksha Vanipodcast) and study materials for differently abled students developed by NIOS. All these areas of e-learning shall be expanded and developed further in a systematic and unified manner by the MHRD in a phased manner.

Following guidelines have been developed from the perspective of learners, with a focus on online/blended/digital education for students who are presently at home due to lockdown. These guidelines also provide a roadmap or pointers for carrying forward online education to enhance the quality of education. The guidelines will be relevant and useful for a diverse set of stakeholders including school heads, teachers, parents, teacher educators and students.

Digital Education is an evolving area which is primarily concerned with the teaching-learning-process using digital medium. This has evolved from activities such as sharing of text resources and students submitting assignments online to availability of various types of content such as audio, video and multimedia resources. The continuous advancement in the field of Information and Communication Technology (ICT) and the internet (with virtually unlimited supply of digital resources) has made multiple modes of digital education possible……

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…….There are two kinds of online learning and teaching that schools will need to balance based on the feasibility:

*a) **Synchronous**: This is real-time teaching……examples of synchronous learning are online teaching through video conference (two-way video, one-way video, two-way audio), audio conference (two way audio) using satellite or telecommunication facilities.*

*b) **Asynchronous**: This is anytime, anywhere learning but not connected on real time, for example, emails, SMS, MMS, surfing e-content on DIKSHA, listening to radio, podcasts, watching TV channels, etc."*

72. He contended that differential treatment of children for the purposes of online education in Covid-19 time is not treated by the Government of India Guidelines for Digital Education 'PRAGYATA' (which has been made applicable by the Directorate of Education circular dated 27th July, 2020) as discrimination inasmuch as it permits different manners, methods and modes of education for different children in the same class. He also relied upon the press release dated 3rd August, 2020 which was issued during the course of the arguments.

73. Mr. Gupta contended that discrimination, if any, is a result of personal supply of equipment by the parents of 75% of fee-paying schools – a wholly private transaction. He contended that this was the actual *lis* projected in the present petition and the alleged cause of mental trauma in the minds of 25% EWS children. Even so, he submitted that '*mental trauma*' without any legal right is not a legal injury and it cannot constitute '*cause of action*' to approach a Court of law. He stated that it is strange that the 25% EWS children are being compared with the 75% fee paying children in private unaided schools who are studying at their own homes and are not even anywhere physically around the 25% EWS children. He

contended that the whole ground of alleged discrimination, inequity, metal trauma etc. is wholly false, concocted and fabricated.

74. Learned senior counsel for respondent no.18 submitted that private unaided schools are engaged in the '*occupation*' of imparting education, which is their Fundamental Right under Article 19(1)(g). He submitted that the Fundamental Right to do business also includes the Fundamental Right not to do certain kind of business, which means that the schools also have a Fundamental Right under Article 19(1)(g) not to do the business of sale, procurement or supply of laptops, mobiles etc. He stated that the RTE Act, 2009 provides for '*imparting*' education i.e. education in the abstract sense to connote dissemination of knowledge, ideas etc. as opposed to '*distributing*' physical objects. He pointed out that since the schools do not do such business even for the 75% fee-paying students, they cannot be compelled to do such business for the sake of the 25% EWS students, whether with government subsidy, reimbursement or otherwise. According to him, such compulsion violates Article 19(1)(g) and is not saved by Article 19(6) as no law has been made by the Legislature for private unaided schools to provide free laptops, phones etc. to EWS students.

75. In view of the aforesaid, he argued that the GNCTD's Circular dated 29th April, 2020 (whereby respondent no.1 has directed the private unaided schools to provide online learning material to EWS to students) is unconstitutional, ultra vires, illegal and unenforceable. He submitted that it is immaterial that the circular has not been challenged by any school inasmuch as an ultra vires and illegal circular deserves to be ignored by the Court even if a respondent who is confronted with it has not challenged the same. In support of his submission, he relied upon the judgment of the Supreme Court in ***Bharathidasan University & Anr. vs. All-India Council for Technical Education & Ors., (2001) 8 SCC 676.***

76. Mr. Gupta submitted that in view of the submissions made by respondent no.1, it was evident that if the GNCTD does not spend on devices there will be no reimbursement for the schools and since there is no online education with laptops, smartphones, high speed Internet etc. provided by the GNCTD in its own schools, there is '*no per child expenditure incurred by the State*'. Accordingly, he submitted that the reference parameter required by Section 12(2) is missing and the reimbursement provision in Section 12(2) is rendered incapable of being applied to any private unaided school. He stated that in the event the Court finds that the private unaided schools have to provide devices to EWS students, reimbursement of such expenses on devices and high speed internet has to be necessarily provided by the GNCTD under the RTE Act, 2009 and any breach of the said obligation would be violative of Articles 14 and 19(1)(g) of the private unaided schools. He also relied upon the judgment and order dated 24th April, 2020 passed in ***Naresh Kumar vs. Director of Education & Anr., W.P.(C) 2993/2020,*** whereby a co-ordinate Bench of this Court has dealt with online education and held that it is not for the Court to arrive at a policy decision, which involves financial implications.

ARGUMENTS ON BEHALF OF THE HERITAGE SCHOOL – RESPONDENT NO.14 AND THE INDIAN SCHOOL – RESPONDENT NO.16

77. Mr. Aniruddh Bakhru, learned counsel for respondent nos. 14 and 16 stated that the relief sought in the present petition needs to be modified because by the time the entire exercise of identifying, procuring and financing the devices would be complete, physical classes in the schools would start and such devices would become redundant.

78. He contended that if the schools are burdened with supplying devices to students, they will inevitably resort to the method prescribed under

DoE's circular dated 2nd July, 2020 i.e. education through WhatsApp and worksheet, which would result in lowering the educational standard and quality.

ARGUMENTS ON BEHALF OF SANSKRITI SCHOOL – RESPONDENT NO.8

79. Mr. Srijan Sinha, learned counsel for respondent no. 8 stated that it has three hundred twenty five EWS category students (aged about six to fourteen years) in its school and out of them three hundred twenty students have access to a device in the form of a mobile or laptop. He further stated that respondent no.8 had recognized the special needs of students belonging to EWS category and had put measures in place even before the Government had imposed the lockdown. He listed measures taken by the Respondent School, which included creating WhatsApp groups for EWS category students, creating special videos for them to clarify their doubts, and taking regular feedback from students as well as teachers to ensure doubt removal. He stated that during lockdown, additional facilities were introduced to aid the EWS category students which included support WhatsApp groups with parents of EWS category students to communicate all important instructions, circulars, class schedules etc., counselling sessions to enquire about the well being of students and telephonic support of teachers i.e. the teachers personally reach out to the parents of the EWS category students and ask about their concerns and issues they are facing.

80. He emphasized that the respondent no.8 is fulfilling its obligations under the RTE Act, 2009 and going beyond the minimum mandate of the law to ensure that no child is left behind. He stated that all the EWS/DG category children admitted to its school have access to online education at par with their fee-paying counterparts.

ARGUMENTS ON BEHALF OF APEEJAY SCHOOL - RESPONDENT NO.11

81. Ms. Yashmeet Kaur, learned counsel for respondent no.11 stated that if devices are given only to few EWS category students, it would amount to discrimination and therefore, even fee-paying students are entitled to receive devices. She pointed out that the petitioner has not accounted for the repair cost that will be incurred in case of a device malfunction or failure. She stated that since the mobiles/laptops etc. require constant upkeep and are expensive to repair, the said amount has to be considered also.

ARGUMENTS ON BEHALF OF DPS RK PURAM - RESPONDENT NO.9

82. Mr. Puneet Mittal, learned senior counsel for respondent no.9 contended that since neither respondent no.1 nor respondent no.2 has clarified what sort of devices they would use in their schools, there is no standardization of equipment. According to him, this would ultimately lead to arbitrariness in granting reimbursement to schools.

83. He pointed out that large amounts of money that were recoverable by respondent-school under Section 12(2) of RTE Act, 2009 are still outstanding with the GNCTD. Details of such outstanding amounts are given in the following table:-

Summary of Amount Recoverable and Received for EWS Students

	DPS Mathura Road	*DPS R.K. Puram*	*DPS Vasant Kunj*	*DPS Rohini*	*DPS Dwarka*	*Total*
Amount Claim/Raised	*10,36,31,400*	*13,82,32,920*	*1,15,36,658*	*2,21,17,944*	*2,81,25,812*	*30,36,44,734*
Amount Received	*15,72,432*	*1,97,91,977*	*70,05,349*	*-*	*9,23,091*	*2,92,92,849*
Balance outstanding	*10,20,58,968*	*11,84,40,943*	*45,31,309*	*2,21,17,944*	*2,72,02,721*	*27,43,51,885*

ARGUMENTS ON BEHALF OF AHLCON PUBLIC SCHOOL - RESPONDENT NO.15

84. Mr. Kapil Goyal, learned counsel for respondent no.15 stated that in accordance with the respondent no.15's land allotment deed, freeship is limited to only tuition fee. He pointed out that reimbursement of about Rs.2 crores on account of tuition fees of EWS students is still pending with the Government and even a proposal of fee hike has been rejected by the GNCTD.

85. He stated that respondent no.15 has been conducting online classes and about 80% of the EWS category students are attending the same. He further stated that providing devices to students would cause financial strain on respondent no.15 and therefore, the GNCTD should directly supply the same. He, however, pointed out that all hundred per cent (including fee paying and EWS) students would be entitled to the devices and if any is left out, it would amount to discrimination.

CLARIFICATION ON BEHALF OF GNCTD-RESPONDENT NO.1

86. In rejoinder, Mr. Ramesh Singh clarified that respondent no.1 has two kinds of specified category schools as defined under Section 2(p) of the RTE Act, 2009 namely: Schools of Excellence and Rajkiya Pratibha Vikas Vidyalaya. He stated that the 'Schools of Excellence' impart education to students from nursery to Class 12th and admission in Nursery is done through draw of lots, on the basis of neighborhood criteria with 25% of total seats for entry class reserved for EWS/ DG category (including 3% CWSN) and no fee or other expenses are charged from any of the students.

87. He stated that as far as Rajkiya Pratibha Vikas Vidyalaya are concerned, these schools impart education from Class 6th to Class 12th only and students of Government/Government aided schools of DoE, MCD/

NDMC schools and Delhi Cantonment Board Schools who have studied continuously for 2 years, i.e. class 4th & class 5th and secured minimum 60% marks in class 5th can apply for admission to these schools in class 6th and the admission is based upon results in the entrance / screening test. He further stated that since the entry level admission in such schools is in class 6th, there is no EWS/DG reservation as contemplated in section 12(1) of the RTE Act, 2009 (which provision is confined to admission in class 1/ pre school stage).

88. He clarified that even in both these schools no fee or other expenses are charged from any of the students. He pointed out that in present COVID times, impartation of education in both these schools is done in the same manner as effected in any other Government school.

REJOINDER ARGUMENTS ON BEHALF OF THE PETITIONER

89. In rejoinder, learned counsel for the petitioner re-emphasized that the word 'free' in Article 21A includes 'free from cost' as mentioned in Section 3 and 'free from discrimination' as stated in Section 8 of the RTE Act, 2009.

90. He submitted that in the absence of physical class room owing to the current pandemic, online virtual classroom is the best available option. He further submitted that the discrimination at macro level includes discrimination amongst government and private schools and at the micro level, it means discrimination in a classroom. He contended that irrespective of whether the discrimination is at macro or micro level, none is permissible.

91. He emphasised that whether the right under Section 3 is denied or right under Section 8 is denied, either by the State at macro level or the private school at micro level, it amounts to violation of Article 21A of the Constitution. He stated that if the decision to impart education/teach by

SMS/WhatsApp is only due to fund constraint, then all schools must be asked to start Synchronous Face-to-Face Real Time Online Education.

92. He further contended that if 50% students are not attending school in a Municipal Corporation, then there is no access to education and there is failure of constitutional and statutory obligations by the respondents. He submitted that any denial of facility on ground of lack of finance is prohibited or barred by the RTE Act, 2009.

93. He submitted that PRAGYATA is advisory in nature and has no binding force. According to him, the State also has the duty to initiate appropriate action against any violators/infringers irrespective of the fact whether any complaint has been filed by a parent or not.

COURT'S REASONING

THE RTE ACT, 2009 IS A 'CHILD CENTRIC' LEGISLATION AND WHILE INTERPRETING IT ARTICLE 21A HAS TO BE THE GUIDING PRINCIPLE.

94. Article 21A of the Constitution imposes an enforceable / justiciable obligation upon the State to provide free and compulsory elementary education to each and every child between the age of six and fourteen in a manner as determined by law. Article 21A is reproduced hereinbelow:-

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

95. In pursuance to the aforesaid constitutional obligation, the Central Government enacted the RTE Act, 2009 under Entry 25, List III (Concurrent List), which reads as follows:

> *"25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."*

96. From the Statement of Objects and Reasons of the RTE Act, 2009, it is apparent that Education is a public good and the Centre as well as State and local authorities have to ensure universal access to inclusive and equitable quality education and learning, leaving no one behind. After all it is central to the realization of sustainable development as it promotes social, economic and political equality and peace. The Statement of Objects and Reasons of the RTE Act, 2009 is reproduced hereinbelow:-

"INTRODUCTION

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

STATEMENT OF OBJECTS AND REASONS

The crucial role of universal elementary education for strengthening the social fabric of democracy through provision of equal opportunities to all has been accepted since inception of our Republic. The Directive Principles of State Policy enumerated in our Constitution lays down that the State shall provide free and compulsory education to all children up to the age of fourteen years. Over the years there has been significant spatial and numerical expansion of elementary schools in the country, yet the goal of universal elementary education continues to elude us. The number of children, particularly children from disadvantaged groups and weaker sections, who drop out of school before completing elementary education, remains very large. Moreover, the quality of learning achievement is not always entirely satisfactory even in the case of children who complete elementary education.

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

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

(a) that every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards;

(b) 'compulsory education' casts an obligation on the appropriate Government to provide and ensure admission, attendance and completion of elementary education;

(c) 'free education' means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education;

(d) the duties and responsibilities of the appropriate Governments, local authorities, parents, schools and teachers in providing free and compulsory education; and

(e) a system for protection of the right of children and a decentralized grievance redressal mechanism.

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

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

6. The Bill seeks to achieve this objective."

97. In ***Brown Vs. Board of Education, 98 L Ed 873,*** Earl Warren, C.J., while emphasising the importance of the right to education said, *"Today, education is perhaps the most important function of State and local Governments… It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."*

98. In ***Learning: The Treasure Within (UNESCO, Paris, 1996)***, it was stated *'.....education is not a miracle cure or a magic formula opening the door to a world in which all ideals will be attained, but as one of the principal means available to foster a deeper and more harmonious form of human development and thereby to reduce poverty, exclusion, ignorance, oppression and war*'.

99. Universal elementary education as a constitutional goal and obligation is a salutary principle and while interpreting the provisions of the RTE Act, 2009, Article 21A has to be the guiding principle. In ***Ashoka Kumar Thakur vs. Union of India & Ors., (2008) 6 SCC 1***, it has been so held. Consequently, the RTE Act, 2009, which is a social welfare legislation, has to be read as a '*child centric*' legislation.[**See**: ***Society For Unaided Private Schools of Rajasthan*** (supra)]

100. Further, the Supreme Court in ***Jindal Stainless Limited & Anr. vs. State of Haryana & Ors., (2017) 12 SCC 1*** has held that the Constitution being a living and dynamic document ought to receive a dynamic and pragmatic interpretation that harmonizes and balances competing aims and objectives and promotes attainment of natural goods and objections. It was further held that this may at times involve ironing out rough edges, which a

Constitutional Court may necessarily undertake to avoid confusion and negation of the constitutional objective.

THIS COURT CAN APPLY AN UPDATING CONSTRUCTION AND/OR DYNAMICALLY INTERPRET THE PROVISIONS OF THE RTE ACT, 2009 ACCORDING TO THE EVOLVING NEEDS OF THE SOCIETY.

101. It is submitted that Acts are usually regarded as *'always speaking'*. According to *'Bennion on Statutory Interpretation (Seventh Edition)',* it is presumed that Parliament intends the Court to apply a construction that allows for changes that have occurred since the Act was initially framed (an 'updating construction'). Exceptionally, an Act like a historical Act, may be intended to be applied in the same way whatever changes might occur after its passing. An updating construction is not therefore applied to it.

102. In his treatise, *Bennion (Seventh Edition)* states, each generation lives under the law it inherits. Constant formal updating is not practicable, so an Act takes on a life of its own. Although the language originally used endures as law, its current subjects may find that law more and more ill-fitting. Viewed like this, an Act resembles a vessel launched on some one-way voyage from the old world to the new. The vessel is not going to return nor are its passengers. Having only what they set out with, they try to cope as best they can. On arrival in the present, they deploy their native endowments under conditions originally unguessed at. Parliament, in the wording of an enactment, is expected to anticipate developments over time and drafters will try to foresee the future and allow for it in the wording. However, the Court may apply an updating construction even if the drafter's efforts in this regard have not been successful.

103. In construing an Act (other than one whose meaning and application are, exceptionally, fixed in time), the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way

as to give effect to the true original intention, making allowances for any relevant changes that have occurred since the Act's passing.

104. The changes that may give rise to the question as to whether an updating construction appropriately includes technological or scientific developments, new natural phenomena or diseases, changes in social conditions or in the way that society views particular matters. However, the categories of changes that might be relevant are not fixed.

105. The presumption however is that an updating construction is to be applied to an Act, since this is the nature of statute law: an Act is always speaking. So there must be some reason adduced on account of which Parliament is taken to depart in a particular case from this principle. Leggatt J said in ***R (on the application of ZYN) v. Walsall Metropolitan Borough Council, [2014] EWHC 1918 (Admin)*** :

> '*It is not difficult to see why an updating construction of legislation is generally to be preferred. Legislation is not and could not be constantly re-enacted and is generally expected to remain in place indefinitely, until it is repealed, for what may be a long period of time. An inevitable corollary of this is that the circumstances in which a law has to be applied may differ significantly from those which existed when the law was made-as a result of changes in technology or in society or in other conditions. This is something which the legislature may be taken to have had in contemplation when the law was made. If the question is asked "is it reasonable to suppose that the legislature intended a court applying the law in the future to ignore such changes and to act as if the world had remained static since the legislation was enacted?" the answer must generally be "no". A "historical" approach of that kind would usually be perverse and would defeat the purpose of the legislation*.'

106. An updating construction may involve changes, over time, in the way an expression is construed. In ***Fitzpatrick v Sterling Housing Association, [2001] 1 AC 27***, the House of Lords considered whether a same sex partner of a tenant was a member of the tenant's '*family*' for the purpose of the Rent Act 1977. That Act was a consolidation of (amongst

other Acts) a 1920 Act. It was held that the same sex partner was a member of the family. Lord Slynn said, '*It is not an answer to the problem to assume (as I accept may be correct) that if in 1920 people had been asked whether one person was a member of another same-sex person's family the answer would have been "No". That is not the right question. The first question is what were the characteristics of a family in the 1920 Act and the second whether two same-sex partners can satisfy those characteristics so as today to fall within the word "family". An alternative question is whether the word "family" in the 1920 Act has to be updated so as to be capable of including persons who today would be regarded as being of each other's family, whatever might have been said in 1920....*" Lord Nicholls said,'……*When circumstances change, a court has to consider whether they fall within the parliamentary intention. They may do so if there can be detected a clear purpose in the legislation which can only be fulfilled if an extension is made. How liberally these principles may be applied must depend upon the nature of the enactment, and the strictness or otherwise of the words in which it was expressed. In the present case Parliament used an ordinary word of flexible meaning and left it undefined. The underlying legislative purpose was to provide a secure home for those who share their lives together with the original tenant in the manner which characterises a family unit. This purpose would be at risk of being stultified if the courts could not have regard to changes in the way people live together and changes in the perception of relationships. This approach is supported by the fact that successive Rent Acts have used the same undefined expression despite the far reaching changes in ways of life and social attitudes meanwhile. It would be unattractive, to the extent of being unacceptable, to interpret the word family in the Rent Act, 1997 without regard to these changes*.'

107. The nature of an always speaking Act requires the Court to take account of changes in technology, and treat the statutory language as modified accordingly when this is needed to implement the legislative intention. For instance, in ***Lockheed-Arabia Corpn v. Owen***, ***[1993] QB 806 at 814***, Mann LJ relied upon the above statement in holding that the reference to *'any writing proved . . . to be genuine*' in the Criminal Procedure Act 1865, Section 8 (which permits comparison of a disputed writing with any such genuine writing) must now be taken to allow comparison with a photocopy of the genuine writing since the legislators of 1865 could not have foreseen 'the *facsimile reproductions which now we both suffer and enjoy*'.

108. The Foreign Enlistment Act 1870, Section 4 makes it an offence for a British subject to accept any engagement in '*the military or naval service*' of a foreign State which is at war with a friendly State. The mischief at which Section 4 is aimed requires this phrase to be taken as now including '*air force service*'. Textual updating of the 1870 Act was recommended in the Report of the Committee of Privy Councillors appointed to inquire into the recruitment of mercenaries, but has not been done. Even so, according to *Bennion,* it seems that a modern court should treat 'military or naval service' in Section 4 as including any service in the armed forces of the State in question.

109. In ***R (Quintavalle) v. Secretary of State for Health***, ***[2003] UKHL 13***, Lord Steyn expressed the desirability of applying an updating construction in cases where there have been technological developments in the following terms:

> '*25 In such a case involving the application of a statute to new technology it is plainly not necessary to ask whether the express statutory language is ambiguous. Since nobody suggests the contrary, I say no more about the point ... in order to give effect to a plain parliamentary purpose a statute may sometimes be*

held to cover a scientific development not known when the statute was passed. Given that Parliament legislates on the assumption that statutes may be in place for many years, and that Parliament wishes to pass effective legislation, this is a benign principle designed to achieve the wishes of Parliament.'

110. In ***Attorney General v. Edison Telephone Co of London Ltd., (1880) 6 QBD 244***, the Court considered whether the Telegraph Act 1869, which gave the Postmaster-General an exclusive right of transmitting telegrams, applied to communications by telephone (which was invented after the Act had been passed). The term '*telegram*' was defined as '*any message or other communication transmitted or intended for transmission by a telegraph*'. The term '*telegraph*' included '*any apparatus for transmitting messages or other communications by means of electric signals*'. It was held that the exclusive right applied to communications by telephone. The fact that the telephone was a new invention did not prevent the Act applying in relation to it. As Stephen J. said, *'Of course no one supposes that the legislature intended to refer specifically to telephones many years before they were invented, but it is highly probable that they would, and it seems to us clear that they actually did, use language embracing future discoveries as to the use of electricity for the purpose of conveying intelligence.'*

111. Similarly, developments which take place in medical science and techniques may require an updated construction of statutory language. In ***R v. Chan-Fook, [1994] 1 WLR 689,*** the Court was concerned with the phrase *'actual bodily harm*' in the Offences against the Person Act 1861, Section 47. Hobhouse LJ cited the dictum of Lynskey J that '*There was a time when shock was not regarded as bodily hurt, but the day has gone by when that could be said*.' A further change with the passage of time is indicated by Hobhouse LJ's remark that '*the conventional phrase "nervous*

shock" is now inaccurate and inappropriate' - rather, the question was whether there was a psychiatric injury.

112. In ***R v Secretary of State for Health, ex p Hammersmith and Fulham LBC, (1999) 31 HLR 475 at 479***, Sir Christopher Staughton said, '*It is undoubtedly the law that an Act of Parliament is not to be confined to those situations which were covered by its wording when it was first enacted. One could not, for example, say that a nineteenth-century enactment dealing with "infection" or "disease" did not apply to Aids, which (as far as we know) did not then exist. In that sense almost all Acts are "always speaking", to use the phrase quoted from Bennion on Statutory Interpretation (2nd ed.).....'*

113. A perusal of the Statement of Objects and Reasons of the RTE Act, 2009 reproduced hereinabove, reveals that it is not a historical Act, but an *'always speaking statute'* which intends to achieve social, economic and political equality and human progress over a period of time. Accordingly, this Court is of the view that RTE Act, 2009 is not a static but a living and a dynamic document and it ought to receive a pragmatic interpretation. Consistent with the legislative intent, an updating construction has to be applied to RTE Act, 2009 and the Court of law can deal with a drastically changed situation, like Covid-19 pandemic, even if it was not known or visualized by Parliament when the Act was enacted.

114. Consequently, this Court can dynamically interpret the provisions of the RTE Act, 2009 according to the evolving needs of the society and extend the same to advent of new technologies like synchronous online learning/communication in the current Covid-19 pandemic situation, even if, the Parliament while passing the RTE Act, 2009 did not anticipate the Covid-19 crisis and/or the unforeseen and unprecedented situation as prevailing today.

THE WORD EDUCATION HAS A FLEXIBLE MEANING. THE NEIGHBOURHOOD SCHOOLS IMPART SYNCHRONOUS FACE-TO-FACE REAL TIME ONLINE EDUCATION NOT AS A VOLUNTARY OR SOCIAL SERVICE BUT AS A PART OF THEIR RESPONSIBILITIES UNDER THE RTE ACT, 2009.

115. The word Education is not defined under the RTE Act, 2009. According to a group of educationists, the word Education has been derived from the Latin term "*Educatum*" which means the '*act of teaching or training*', while according to another group of educationists, it has come from the Latin word "*Educare*" which means "*to bring up*" or "*to raise*". For others, the word Education has originated from another Latin term "*Educere*" which means "*to lead forth*" or "*to come out*". All these meanings broadly indicate that education seeks to nourish the good qualities in man and draw out the best from every individual. Education seeks to develop the innate inner capacities of man.

116. According to English dictionaries, Education means the act or process of imparting or acquiring or disseminating information, knowledge, skill, developing the process of reasoning and judgment and generally of preparing oneself or others intellectually for mature life. The purpose of Education has always been to give knowledge, skill and information to the young in order to develop in an orderly sequential way into members of society.

117. Two prominent Sanskrit words equivalent to the word Education are "*Shiksha*" and "*Vidya*". *Shiksha* means to "*control or to discipline*". The term "*Vidya*" is derived from "*Vidh*" which means "*to know*". Discipline and Knowledge were the most important aspects of human personality during the ancient period of education. Education has been interpreted by various philosophers and texts differently. For instance, according to Rigveda, *"Education is something which makes man self-reliant and selfless*", while according to Upanishads, *"Education is for liberation*" and

Bhagavad Gita states, *"Nothing is more purifying on earth than wisdom*." Similarly, according to Vivekanand, *"Education is the manifestation of the divine perfection, already existing in man*", while according to Gandhi, *"by education, I mean an all-round drawing out of the best in the child and man body, mind and spirit*." Rabindranath Tagore was of the view that *"the widest road leading to the solution of all our problems is education*." According to him, *"Education means enabling the mind to find out that ultimate truth which emancipates us from the bondage of dust and gives us wealth not of things but of inner light, not of power but of love. It is a process of enlightenment. It is divine wealth. It helps in realization of truth*."

118. The new National Education Policy, 2020 prepared by the Government of India states that education is fundamental for achieving full human potential, developing an equitable and just society, and promoting national development. Accordingly, education has to aim at the full development of the human personality, promote mutual understanding, tolerance, friendship and peace. Providing universal access to quality education is the key to India's continued ascent, and leadership on the global stage in terms of economic growth, social justice and equality, scientific advancement, national integration, and cultural preservation. Universal high-quality education is the best way forward for developing and maximizing our country's rich talents and resources for the good of the individual, the society, the country and the world. India will have the highest population of young people in the world over the next decade, and our ability to provide high-quality educational opportunities to them will determine the future of our country.

119. The global education development agenda reflected in the Goal 4 (SDG4) of the 2030 Agenda for Sustainable Development, adopted by India in 2015 - seeks to "*ensure inclusive and equitable quality education*

and promote lifelong learning opportunities for all" by 2030. Such a lofty goal will require the entire education system to be reconfigured to support and foster learning, so that all of the critical targets and goals (SDGs) of the 2030 Agenda for Sustainable Development can be achieved.

120. This Court is of the view that the RTE Act, 2009 intentionally does not define the word Education as it needs to deal with changes in society as well as technological advances, outbreak of diseases, natural calamities and a broad range of circumstances that are not possible to anticipate in advance.

121. Consequently, the word Education is not a static one but an evolving and a dynamic concept. The mode, manner and method of imparting education have evolved from time to time and if universal good quality education has to be achieved in future, the mode and method of education have to undergo a complete revolution.

122. As rightly pointed out by Mr. Ramesh Singh, learned Standing counsel for GNCTD, even the Supreme Court of India in ***Senior Electric Inspector & Ors.*** (supra), has held that a dynamic interpretation has to be given to words used in an Act. The relevant portion of the said judgment reads; *"But in a modern progressive society it would be unreasonable to confine the intention of a Legislature to the meaning attributable to the word used at the time the law was made, for a modern Legislature making laws to govern a society which is fast moving must be presumed to be aware of an enlarged meaning the same concept might attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other fields of human activity. Indeed, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situations, if the words are capable of comprehending them."*

123. The judgment in ***EERA Through Dr Manjula Krippendorf*** (supra) referred to by the learned senior counsel for respondent No.18 is clearly distinguishable as the said case was under the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the 'POCSO Act') dealing with criminal offence based entirely on age. Such enactment therefore has to be construed strictly. Secondly, para 134 of the said judgment defines child and its para 135 sets out Section 5(k) dealing with sexual assault, which in turn, includes cases of taking advantage of a child's mental / physical disability. In other words, the mental facet of the child was very much in contemplation of the legislature at the time of drafting of POCSO Act.

124. This Court is of the opinion that the word Education is a broad term which has a wide import and it must be given the widest amplitude as well as a dynamic interpretation having regard to the context, requirement, mode, method and in the light of all relevant interpretative criteria.

125. This Court is further of the view that Article 21A of the Constitution when read with Sections 8, 9, 10 and 19 of RTE Act, 2009 along with Schedule to the Act contemplate providing of education by a neighborhood school, which schools, in turn, are free to choose their mode and method of imparting education provided they fulfill the minimum statutory requirement. Consequently, the concept of Synchronous Face-to-Face Real Time Online Education like any other alternate means/methods of dissemination of education, in that sense, is covered under the RTE Act, 2009.

126. It is pertinent to mention that Sections 3(1), 8 and 12(1)(c) of the RTE Act, 2009 do not restrict education in a neighborhood school to offline education. Further, there is no statutory bar on neighbourhood schools imparting online education by digital means.

127. It is nobody's case that schools imparting Synchronous Face-to-Face Real Time Online Education are not teaching as per the curriculum/syllabus as laid down by the Academic Authority under Section 29 or the said schools do not fulfill the minimum requirements with respect to the qualifications of teachers as contemplated in Section 23 of the RTE Act, 2009. Accordingly, the private schools which are providing Synchronous Face-to-Face Real Time Online Education are the very same neighborhood schools which satisfy all the requirements of RTE Act, 2009.

128. Hence, the teaching through online means is in accordance with RTE Act, 2009 requirements. Therefore, both the requirements of Article 21A and Section 3 of RTE Act, 2009 are clearly fulfilled even in respect of education being imparted through online means.

129. The only difference is that the set-up/ platform used for providing education is different. But then, it cannot be said that the said schools are, in fact, not providing education, even though the set-up/ platform / mode / method may be different. Since mode and method of imparting education is flexible, it cannot be said that the RTE Act, 2009 contemplates providing education only in a formal physical classroom, even though the school which is providing education through online means is indisputably a neighborhood school. Even Section 19 read with the Schedule to RTE Act, 2009 does not so indicate. The said provision only means that in case of dissemination of instructions through physical classroom, the prescribed minimum infrastructure as contemplated in the said provision/ Schedule are required.

130. In view of the foregoing, the expression '… *shall provide …education*' in Article 21A and '*provide… elementary education'* in Sections 3, 8(a) and 12(1)(c) of RTE Act, 2009 ought to be interpreted to also include providing education through digital means including through online means. Consequently, at the present, the neighborhood schools are

still open but the physical classrooms are closed and the mode / method of providing education has changed. In fact, the Private Unaided Schools, despite closure / shutdown of physical class-rooms under the Disaster Management Act, 2005 due to outbreak of Covid-19 pandemic, are charging tuition fees, on the ground that they are providing Synchronous Face-to-Face Real Time Online Education. This Court is of the view that tuition fees is payable towards imparting education and not for a lien on a seat. Accordingly, the word Education includes Synchronous Face-to-Face Real Time Online Education and respondent schools are estopped from contending to the contrary. In fact, a Coordinate Bench of this Court in ***Naresh Kumar*** (supra) has held as under:-

> *"13. ……Schools, being presently closed, Dr. Sharma would seek to rely on this proviso to submit that tuition fees cannot be charged by schools, during the period of such closure. We do not agree. So long as education is being imparted online, and students are availing the benefit thereof, in our opinion, schools cannot be treated as "closed", so as to disentitle them from charging tuition fees.*
>
> *xxxx xxxx xxxx xxxx*
>
> *15. ……The petitioner seeks that, for the period during which the lockdown is in place, no tuition fees be charged by schools as, in his submission, they are "closed". We find the submission to be fundamentally misconceived. ……we cannot agree that, during the period of lockdown, or during the period when online education is being provided by the schools, and availed of, by students, tuition fees should be exempted. So long as schools are disseminating education online, they are certainly entitled to charge tuition fees. ....."*

131. Consequently, the neighbourhood schools impart Synchronous Face-to-Face Real Time Online Education not as a voluntary or social service but as part of their responsibilities under the RTE Act, 2009.

THE GOVERNMENT SCHOOLS ARE FREE TO DEPART FROM THE MODE AND METHOD OF EDUCATION ADOPTED BY PRIVATE SCHOOLS PROVIDED THE BASIC MINIMUM STANDARD OF IMPARTATION OF EDUCATION IS MET. THIS COURT IS OF THE VIEW THAT SYNCHRONOUS FACE-TO-FACE REAL TIME ONLINE EDUCATION IS NEITHER A CORE NOR A NON-DEROGABLE FACET OF EITHER ARTICLE 21A OF THE CONSTITUTION OR THE RTE ACT, 2009.

132. Undoubtedly, Government and private schools are at the same footing with regard to norms and standards under the RTE Act, 2009. However, insofar as method and mode of providing education is concerned, the same can be different amongst the private schools themselves; between private schools and government schools; between Central Government schools and State Government schools. The only common bottom line among all the schools is that the method and means of providing education in all such classes should adhere to the minimum prescribed standard under the RTE Act, 2009.

133. In fact, the provisions of Delhi School Education Act, 1973 (hereinafter referred to as 'DSE Act') as well as the RTE Act, 2009 themselves contemplate differential methods/means of providing elementary education amongst private schools themselves inasmuch as DSE Act does not prescribe a fee cap and regulates tuition fee only to the extent that such fee charged has to be justified qua the cost incurred by the school towards curricular activities. In ***Modern School vs. Union of India & Ors., (2004) 5 SCC 583*** the Court has discussed the extent of disclosure to be made by the school in a fee proposal submitted before commencement of the academic year. Further, Section 12(2) of the RTE Act, 2009 supports the differential method as it contemplates reimbursement of not the actual cost of tuition fees incurred by the private school but of one common amount i.e. per child cost incurred by government in its schools. Section 12(2) of the RTE Act, 2009 also

contemplates that there could be schools where the fees is even lower than what the government incurs per child in its schools. Therefore, Section 12(2) unequivocally proves the existence of a differential fee structure amongst private unaided schools and consequently, differential methods/means of dissemination of instructions amongst the private schools.

134. This Court is of the view that just as private schools are free to adopt the mode and method of imparting education they feel the most appropriate, the government schools also have similar freedom and flexibility.

135. On account of the COVID-19 pandemic and the consequential directives issued by Central and State Governments, under the Disaster Management Act, 2005 imparting of curricular education through physical classrooms had come to a halt. As during the present period of pandemic, the method/means of education was not regulated and/or dictated by the State Government under any circular and both the teaching and non-teaching staff of private unaided schools were still employed as well as entitled to their salaries, the private unaided schools at their own initiative started imparting education through virtual/online means.

136. Though learned counsel for petitioner submitted that in the absence of a physical classroom owing to the current pandemic situation, Synchronous Face-to-Face Real Time Online Education is the best available option, yet the experts seem divided over this issue.

137. Both *PRAGYATA Guidelines* for digital education issued in August, 2020 by Department of School Education & Literacy, Ministry of Human Resource Development, Government of India and *Students' Learning Enhancement Guidelines* prepared by NCERT on behalf of Government of India, Ministry of Education, Department of School Education and Literacy recommend a combination of video conferencing and other distant/digital

means as mode and method of education during the pandemic. According to them, this combination of imparting education may serve the best interests of the child. *PRAGYATA* Guidelines for digital education states *"Schools should not assume that teaching-learning through synchronous communication is the only requirement or even desirable in order to support effective digital learning. The goal is NOT to try and recreate face-to-face (F2F) classrooms over the internet. Anytime, anywhere, online and blended learning provide opportunities for learners to work more independently, expand their agency, intellectual horizon, learn to use tools and strategies that otherwise may not be feasible in classrooms for teaching-learning and assessment…… keeping in mind the detrimental effect of the internet and gadgets, judicious use of the internet may be monitored by the parents*." In the New Education policy, 2020 even though provisions have been made for digital education, yet it has not prescribed for virtual classroom education as a serious alternative to physical classroom *viz-a-viz* access to education. Consequently, there is no unanimity amongst experts that Synchronous Face-to-Face Real Time Online Education is the only mode of imparting education during the Covid-19 pandemic.

138. Further, there is neither any statutory obligation under the RTE Act, 2009 nor any recommendation by any statutory authority like State Academic Authority that the Synchronous Face-to-Face Real Time Online Education is the only suitable option during a pandemic. There is also nothing on record to conclude that the decision of GNCTD or other authorities or some private schools to impart education/teach by SMS/WhatsApp or by assignment is only due to fund constraints.

139. This Court is of the opinion that in view of geographical location of a school or non-availability of technologically savvy teachers or poor availability of electricity or lack of internet penetration in the

neighbourhood, it may also not be appropriate for a school to opt for Synchronous Face-to-Face Real Time Online Education.

140. In fact, PRAGYATA suggests to the States to develop a short-term and a long-term learning plan based on an assessment of the capacity of the State systems, resources to support a multi-faceted remote learning model, including a combination of technologies and delivery mechanisms based on the data of students and their access to digital technologies. It also states that equity should be a top consideration in all planning efforts, as the many vulnerable students most likely lack the ability to access digital resources. The short-term plan should focus on the immediate response to continue learning for all students, the medium-term plan will prepare the schools to reopen and function normally. A number of considerations have been outlined in the document which the State has to keep in mind while planning digital education at the State/Institution/Board level.

141. Consequently, this Court is of the view that the Government schools are free to depart from the mode and method of education adopted by private schools provided the basic minimum standard of impartation of education, which in the present situation would be such mean/method through which the prescribed curriculum is covered by the school, in a meaningful manner. But, it would not include any such means/methods which is nothing more than an eyewash or a sham. In other words, there has to be one common minimum level/standard of impartation of education for all schools. Further, the said school has to then ensure that the same is uniformly adopted and followed *sans* any discrimination.

142. As far as the plea of the petitioner that this Court must frame guidelines for dissemination of education during the pandemic by Government schools is concerned, this Court is of the view that it can exercise its constitutional power to frame guidelines for online education, provided it is in connection with the fundamental rights of the citizen when

either some exercise in the said field has been undertaken by an expert or there is unanimity on the issue and also when there is no legislation covering the said field, for example in ***Vishaka and Ors. vs. State of Rajasthan & Ors., (1997) 6 SCC 241***, guidelines were framed by the Supreme Court regarding sexual harassment in workplaces as there was no legislation in place. In the present case, this Court refuses to exercise its constitutional power to adjudicate upon the guidelines framed by Ministry of Education like *PRAGYATA* and *Students' Learning Enhancement Guidelines* issued by NCERT, to the extent they permit different schools to adopt different modes and methods of education as they are not in conflict with any constitutional/statutory provision.

143. Accordingly, this Court is of the view that Synchronous Face-to-Face Real Time Online Education is neither a core nor a non-derogable facet of either Article 21A of the Constitution or the RTE Act, 2009.

KEEPING IN VIEW RTE ACT, 2009 AS WELL AS GUIDELINES FOR DIGITAL EDUCATION ISSUED BY UNION OF INDIA AND NCERT, IT CANNOT BE SAID THAT THE EDUCATION BEING PROVIDED BY GNCTD SCHOOLS DOES NOT SATISFY THE BASIC MINIMUM REQUIRED LEVEL OF IMPARTATION OF EDUCATION IN THE PRESENT EXTRAORDINARY SCENARIO.

144. Insofar as GNCTD is concerned, it is providing education under the Circular dated 2nd July, 2020 read with Circular dated 13th July, 2020.

145. This Court is of the view that PRAGYATA, which is a recommendation by an expert body, supports the method/manner of impartation of education as undertaken by GNCTD. In fact, the said two Circulars are in conformity with Model 2 of Partially Online Mode of Education suggested by PRAGYATA. The said Model 2 suggests, *"Teachers instruct students to read the textbook and other reference materials physically available with the student and then the teacher (once a*

week) interacts with students through WhatsApp, phone call, video call to clarify/enrich/teach the content."

146. Consequently, this Court is of the view that it cannot be said that the education being provided by GNCTD schools does not satisfy the basic minimum required level of impartation of education in the present extraordinary scenario.

DIFFERENTIAL ACCESS TO EDUCATION AMONGST FEE PAYING STUDENTS IS PERMISSIBLE UNDER THE RTE ACT, 2009.

147. Sub-Sections (1) and (2) of Section 3 of the RTE Act, 2009 specifically stipulate that every child of the age of six to fourteen years including a child belonging to disadvantaged group as well as weaker sections shall have the right to free and compulsory elementary education. Section 3(2) clarifies that the State is duty bound to ensure that no fee, charges or expenses prevents a child, including EWS/DG children studying in private schools, from pursuing and completing elementary education.

148. Consequently, elementary education is now a fundamental human right as well as an enabling right and every child irrespective of his/her financial status is guaranteed the right to free and compulsory education. Paragraph 4 of the Objects and Reasons of the RTE Act, 2009 and the judgment of the Supreme Court in ***Society for Unaided Private Schools of Rajasthan*** (supra) reinforces the said interpretation.

149. Section 8 of RTE Act, 2009 provides a corresponding obligation on the appropriate government to provide free, compulsory and good quality elementary education in a neighbourhood school subject to one exception as set out in proviso to Section 8(a) whereby fee paying parents are excluded from getting any financial support from the State.

150. Upon a holistic reading of Sections 3, 8 and 12(1)(c), it is apparent that the obligations of the State as well as private unaided schools under the

RTE Act, 2009 are to the students studying in government schools and 25% EWS/DG students except for fee paying students.

151. Consequently, differential access to Education amongst fee paying students is permissible under the RTE Act, 2009. Accordingly, if amongst fee paying students in a class, 15 students have a smartphone and a laptop with internet connectivity, 10 students have a smartphone with internet connectivity but no laptop, 4 students have a basic mobile phone and 1 student does not have even a mobile phone, then no one can allege discrimination and/or seek financial aid under the RTE Act, 2009 to purchase a gadget to access or avail online education.

INTRA-CLASS DISCRIMINATION, INTER-SE 75% FEE PAYING STUDENTS VIZ-A-VIZ 25% EWS/DG STUDENTS' WITH REGARD TO ACCESS TO EDUCATION AMOUNTS TO DISCRIMINATION AS WELL AS 'DIGITAL APARTHEID' AND IS VIOLATIVE OF THE CONSTITUTION AND RTE ACT, 2009.

152. In terms of Section 12(1)(c) of the RTE Act, 2009, schools specified in Section 2(n)(iii) and (iv) have to provide free and compulsory elementary education to the EWS/DG children (which constitute 25% of the total strength of the class) in the neighbourhood school. The expression used in Section 12(1)(c) namely *'provide free and compulsory education till its completion'* is identical to the one used in Section 3(1) and therefore, the private unaided schools' obligations under Section 12(1)(c) is to completely take care of the corresponding rights of 25% EWS/ DG children) as stipulated under Section 3(2) read with Section 3(1) i.e. imparting elementary education to such children between the age of six to fourteen years *sans* any financial barrier.

153. Section 8(c) of RTE Act, 2009 casts an obligation on the State to ensure that no child belonging to EWS/DG group is discriminated against and prevented from pursuing and completing elementary education.

Section 8(d) of RTE Act, 2009 specifically casts an obligation on the State to provide infrastructure including learning equipment to the children. In the opinion of this Court, the expression '*learning equipment*' would include gadgets required for accessing and availing online education, if imparted by the school.

154. Accordingly, Sections 3, 8 and 12(1)(c) of the RTE Act, 2009 provide EWS/DG students a level playing field with regard to access to education by providing a complete waiver of fees as well as expenses. All the expenditure necessary for pursuing and completing the elementary education qua EWS/DG students including the cost of providing of gadgets for providing access to elementary education in a school has not to be borne by their parents.

155. Rule 11(1) and 11(2) of the Central RTE Rules, 2010 as well as Rule 10(2) of the Delhi RTE Rules, 2011 clarify beyond doubt that the EWS/DG children admitted in accordance with Section 12(1)(c) cannot be discriminated qua rest of the children in any manner pertaining to entitlements and facilities which includes information and communication technology facilities i.e. digital education. Rule 11(2) of the Central RTE Rules, 2010 is reproduced hereinbelow:-

> *"**11. Admission of children belonging to weaker section and disadvantaged group.-***
>
> *xxx* *xxx* *xxx*
>
> *(2) The school referred to in clauses (iii) and (iv) of clause (n) of section 2 shall ensure that children admitted in accordance with clause (c) of sub-section (1) of section 12 shall not be discriminated from the rest of the children in any manner pertaining to entitlements and facilities such as text books, uniforms, library and Information, Communication and Technology (ICT) facilities, extra-curricular and sports."*

156. The argument that private unaided schools are required to provide equipment to EWS/DG students only if they are providing such equipment to the 75% fee paying students is mis-conceived. Section 12(1)(c) requires private unaided schools to inter alia provide free and compulsory elementary education to 25% EWS/DG students; which means education *sans* financial barrier *viz-a-viz* those things which are indispensable for access to elementary education. Section 12(1)(c) obligation is in no way dependent upon what school gives to the fee paying children, free or otherwise. The equipment in question is indispensable/mandatory for the purpose of accessing and availing elementary education through online means and therefore has to be provided free of cost under Section 12(1)(c). Moreover, everything which is necessary for pursuing and completing elementary education which fee paying students are also required to have, are not provided free to such students. They pay for it. For example, in case of uniform, reading materials and textbooks, even the said articles come under Section 12(1)(c), and are therefore to be provided free to 25% EWS/DG students, even though the 75% fee paying students have to pay for them and they may or may not have. Consequently, intra-class discrimination, inter-se 75% fee paying students *viz-a-viz* 25% EWS/DG students' with regard to access to education amounts to discrimination under the RTE Act, 2009.

157. The discrimination in the classroom is far more serious as the same has direct nexus with the possibility of a child dropping out of school and disturbing other children belonging to EWS/DG category which would defeat the very object of the RTE Act, 2009. Dropout, even if partial, would have an adverse domino effect inasmuch as the same would result in the percentage of EWS/DG students falling below 25% limit which has been statutorily recognized to be the critical mass for the purpose of achieving the object behind the RTE Act, 2009. Consequently,

interpretation of Article 21A and Sections 3, 8, 12(1)(c) which might cause learning loss and encourage dropout of EWS/DG children has to be avoided. Accordingly, the expression '*manner*' cannot be read in a way that abridges or whittles down Article 21A or prevents EWS/DG children from having access to education.

158. Though *PRAGYATA* as well as *Students Learning Enhancement Guidelines* do not specifically refer to intra-class differentiation between 75% fee paying students and 25% EWS/DG students, yet even if they were to, they '*would have to give way*' as they are advisory in nature and cannot be contrary to the Statute i.e. Sections 3, 8 and 12(1)(c) of the RTE Act, 2009.

159. In ***Shamsara Begum vs. Directorate of Education & Ors., W.P.(C) 2887/2010***, a coordinate Division Bench (in which one of us Manmohan, J was a member) has observed that any vertical division in a classroom is not permissible. In the Declaration adopted at the Special UN Session on Children, it was stated, '*each girl and boy is born free and equal in dignity and rights; therefore, all forms of discrimination affecting children must end'*.

160. Since some private unaided schools and Government schools like Kendriya Vidyalayas are using Synchronous Face-to-Face Real Time Online Education as a method/mode for teaching, they will have to ensure that the students belonging to EWS/DG category have access and are able to avail the same. As online learning facility is nothing but a virtual classroom, i.e. simulation of a physical classroom by replacing dissemination of instructions in direct physical presence by virtual dissemination, by not providing the required indispensable equipment to the EWS / DG category students (who, otherwise, are not in a position to buy /source such equipment from their own means) the schools are putting a financial barrier qua such students and thereby preventing them from

opening the link and pursuing and completing their elementary education in the present pandemic at par with other students in the same class. Consequently, the right of EWS/DG children under Section 3 of the RTE Act, 2009 has been clearly undermined by such schools and same amounts to a vertical divide, digital divide or digital gap and segregation of EWS/DG students.

161. In order to address this discrimination and fulfill their obligations, the private unaided schools under Section 12(1)(c) and Government schools like Kendriya Vidyalayas under Section 3(2) of RTE Act, 2009 are directed to provide equipment of optimum configuration which is sufficient to enable EWS / DG students to get access to online learning.

162. This Court is of the view that the tuition fee charged by the private unaided schools is governed and regulated by the DSE Act and the same does not include expenses on devices such as laptops, phones, high speed internet at children's homes etc. Even though the cost of such gadget/digital equipment which enables access to online learning facilities is not a part of tuition fee, yet it has to be provided free of cost to the EWS / DG students in terms of Section 12(1)(c) read with Section 3(2) of the Act, 2009 as cost of such equipment would be covered under Rule 11 of the Central RTE Rules, 2010 as well as Rule 10 of the Delhi RTE Rules, 2011 and Section 3(2) of the RTE Act, 2009 inasmuch as absence of such equipment '*will prevent the child from pursuing his or her elementary education'* at par with other students in the same class in the present scenario.

163. Consequently, to ensure level playing field and to remedy this digital divide or digital gap or *'digital apartheid*' in addition to segregation, if the private unaided school has to bear any additional cost, it must bear it in the first instance with a right to claim reimbursement from the State in accordance with Section 12(2) of the RTE Act, 2009.

OBLIGATIONS OF THE CENTRAL GOVERNMENT AND STATE GOVERNMENTS UNDER THE RTE ACT, 2009

164. This Court is further of the view that obligation of the State governments under RTE Act are three fold, namely, obligation to establish schools under Section 6 of the RTE Act, 2009; duties provided under Section 8 of the RTE Act, 2009 *viz-a-viz* government schools and students studying in such schools and the obligation of reimbursement to private schools as contemplated under Section 12(2) of the RTE Act, 2009.

165. The Central Government obligations are as an appropriate government under Section 6 of the RTE Act, 2009 for setting up of schools and under Section 8 of the RTE Act, 2009 wherever it is running schools like Kendriya Vidyalayas as well as sharing financial responsibility with the state government, as stipulated under Section 7 and Central Government's obligations under Section 7(6) of the RTE Act, 2009.

166. Though it is the stand of the respondent no.1 - GNCTD that despite it spending 26% of its budget on education, it has not been able to fully discharge its obligations under the RTE Act, 2009 for want of additional funds/financial support from the Central Government under Section 7 of the RTE Act, 2009 as the Central Government spends only 4.43% of GDP on education, yet this Court is of the view that Section 7(5) of the RTE Act, 2009 provides that the right of children shall not suffer due to any delay in sharing of financial responsibilities and the State/GNCTD shall be responsible to provide funds.

167. Moreover, this Court refuses to adjudicate upon the dispute with regard to finances between the Centre and GNCTD even before the private schools have undertaken their obligation under Section 12(1)(c) of the RTE Act, 2009 and incurred expenses thereof. This is more so when Section 7(5) of the RTE Act, 2009, as stated hereinabove, stipulates that irrespective of a finance dispute between the Centre and State, in the first

instance the State shall be responsible to provide funds for implementation of the said Act. This Court is further of the opinion that the GNCTD is neither weak nor remediless and it can certainly file appropriate legal and constitutional proceedings to seek redressal of its grievances, if any.

168. Similarly the contention that the extent of reimbursement by the State/GNCTD under Section 12(2) is dismal is irrelevant for the present case as the private unaided schools are at liberty to file appropriate proceedings in accordance with law.

169. In the opinion of this Court, the judgments of the Supreme Court in ***Society for Unaided Private Schools of Rajasthan*** (supra), ***Pramati Educational and Cultural Trust (Registered) And Others*** (supra) and Hospital Cases i.e. ***Social Jurists, A Lawyers Group*** (supra) and ***UOI vs. Moolchand*** (supra) are not apposite to the present case inasmuch as neither the pandemic conditions nor online education were discussed or adjudicated by the Court in these cases.

170. However, this Court is of the view that the Union of India must seriously consider increasing its Education budget from the current 4.43% of GDP and investing in digital literacy and infrastructure in order to strengthen and enable the education system to respond promptly to future crisis.

171. This Court is further of the view that GNCTD must consider rewarding the schools that innovate. For instance, the schools that started Synchronous Face-to-Face Real Time Online Education on their own initiative could be considered for the title of innovative schools during the current year. Such rewards would ensure that the private unaided schools who have started disseminating Synchronous Face-to-Face Real Time Online Education do not revert to Whatsapp and Worksheets method and mode of education.

SUMMARY OF FINDINGS / CONCLUSIONS

172. Universal elementary education as a constitutional goal and an enforceable obligation is a salutary principle. The RTE Act, 2009, is a '*child centric*' legislation and while interpreting it Article 21A has to be the guiding principle.

173. Acts are usually regarded as '*always speaking*'. It is presumed that Parliament intends the Court to apply a construction that allows for changes amongst others technological or scientific developments or new natural phenomena or diseases or changes in social conditions that have occurred since the Act was initially framed. Further, RTE Act, 2009 is not a historical Act, but a living and a dynamic document and it ought to receive a pragmatic interpretation.

174. Consequently, this Court can apply an updating construction and/or dynamically interpret the provisions of the RTE Act, 2009 according to the evolving needs of the society as well as advent of new technologies like synchronous online learning/communication in the current Covid-19 pandemic situation, even if, the Parliament while passing the RTE Act, 2009 did not anticipate the Covid-19 crisis and/or the unforeseen and unprecedented situation prevailing today.

175. The word Education is a broad term which has a wide import and it must be given the widest amplitude as well as a dynamic interpretation, especially when the said word has been left undefined by the Parliament under the RTE Act, 2009.

176. Undoubtedly, the RTE Act, 2009 lays emphasis on education in a classroom by a neighborhood school, but the RTE Act, 2009 does not restrict it to offline education. There is also no statutory bar on neighbourhood schools imparting online education by digital means. The private schools which are providing Synchronous Face-to-Face Real Time

Online Education are the very same neighborhood schools which satisfy all the requirements of RTE Act, 2009. The only difference is the set-up/ platform used for providing education. Since mode and method of imparting Education is flexible, it cannot be said that the RTE Act, 2009 contemplates providing education only in a formal physical classroom. At the present the neighborhood schools are still open but the physical classrooms are closed and the mode / method of providing education has changed. In fact, a Coordinate Bench of this Court in ***Naresh Kumar*** (supra) has held that so long as education is being imparted online, and students are availing the benefit thereof schools cannot be treated as "*closed*", so as to disentitle them from charging tuition fees. Consequently, the neighbourhood schools which impart Synchronous Face-to-Face Real Time Online Education or online education by any means do not do so as a voluntary or social service but as a part of their responsibilities under the RTE Act, 2009. Further, merely because the Synchronous Face-to-Face Real Time Online Education is being provided due to the temporary nature of the present pandemic, it will not place the said mode of imparting education outside the purview of the RTE Act, 2009.

177. Government and private schools are at the same footing with regard to norms and standards under the RTE Act, 2009. However, insofar as method and mode of providing education is concerned, the same can be different amongst the private schools; between private schools and government schools; between Central Government schools and State Government schools.

178. There is neither any statutory obligation under the RTE Act, 2009 nor any recommendation by any statutory authority like State Academic Authority that the Synchronous Face-to-Face Real Time Online Education is the only suitable option during a pandemic. Further, there is no unanimity amongst experts that Synchronous Face-to-Face Real Time

Online Education being imparted by some schools is the only mode of imparting education during the Covid-19 pandemic.

179. GNCTD is providing education through SMS/WhatsApp or by assignment under the Circular dated 2nd July, 2020 read with Circular dated 13th July, 2020. In fact, the said two Circulars are in conformity with Model 2 of Partially Online Mode of Education suggested by PRAGYATA. Consequently, this Court is of the view that it cannot be said that the education being provided by GNCTD schools does not satisfy the basic minimum required level of impartation of education in the present extraordinary scenario.

180. Therefore, this Court is of the view that Synchronous Face-to-Face Real Time Online Education is neither a core nor a non-derogable facet of either Article 21A of the Constitution or the RTE Act, 2009 and schools are entitled in law to adopt different modes and methods of education as long as they adhere to the minimum prescribed standard under the RTE Act, 2009.

181. Section 3 of the RTE Act, 2009 stipulates that every child irrespective of his/her financial status is guaranteed the right to free and compulsory education and no child including those belonging to EWS/DG shall be prevented from pursuing and/or completing elementary education on account of fees or expenses. However, Section 8(a) excludes fee paying parents from getting any financial support from the State. Consequently, according to RTE Act, 2009, differential access to Education amongst fee paying students is permissible.

182. Under Section 12(1)(c) private unaided schools are obliged to take care of 25% EWS/ DG children as stipulated under Section 3 i.e. impart elementary education to such children *sans* any financial barrier. Rule 11 of the Central RTE Rules, 2010 as well as Rule 10 of the Delhi RTE Rules, 2011 clarify beyond doubt that the EWS/DG children admitted in

accordance with Section 12(1)(c) cannot be discriminated qua rest of the children in any manner pertaining to entitlements and facilities which includes information and communication technology facilities i.e. digital education.

183. If a school decides to voluntarily provide Synchronous Face-to-Face Real Time Online Education as a method/mode for teaching, they will have to ensure that the students belonging to EWS/DG category also have access and are able to avail the same. After all, equality of status and opportunity is one of the cherished goals of Indian Constitution. To separate the EWS/DG students from others in the same class due to non-availability of a gadget / device would generate a feeling of inferiority as to their status in the class that may affect their hearts and minds unlikely ever to be undone. Segregation in Education is a denial of equal protection of the laws under Article 14 of the Constitution and in particular Sections 3(2) and 12(1)(c) of RTE Act, 2009. Colin Powell former Secretary of State USA, characterised the gap between those who have access to the wonders of digital technology and the Internet, and those who do not, as *"digital apartheid"*.

184. In fact, by not providing the required indispensable equipment to the EWS / DG category students the schools are putting a financial barrier qua such students and thereby preventing them from opening the link and pursuing and completing their elementary education in the present pandemic in violation of Sections 3, 8, 12(1) (c) of the RTE Act, 2009.

185. The argument that private unaided schools are required to provide equipment to EWS/DG students only if they are providing such equipment to the 75% fee paying students is mis-conceived. Section 12(1)(c) requires private unaided schools to *inter alia* provide free and compulsory elementary education to 25% EWS/DG students; which means education sans financial barrier *viz-a-viz* those things which are indispensable for

access to elementary education. Section 12(1)(c) obligation is in no way dependent upon what school gives to the fee paying children, free or otherwise. For example, uniform, reading materials and textbooks are provided free to 25% EWS/DG students, even though the 75% fee paying students have to pay for them.

186. Consequently, intra-class discrimination, especially inter-se 75% fee paying students *viz-a-viz* 25% EWS/DG students' upsets the *'level playing field'* and amounts to discrimination as well as creates a vertical division, digital divide or digital gap or '*digital apartheid'* in addition to segregation in a classroom which is violative of RTE Act, 2009 and Articles 14, 20 and 21 of the Constitution.

THANKS

187. This Court places on record its appreciation for the assistance rendered by all counsel who appeared in the present matter.

RELIEF

188. To address the intra-class discrimination between 25% EWS as well as DG students and 75% fee paying students, (once a school has voluntarily selected Synchronous Face-to-Face Real Time Education as its mode and method of impartation of education), the private unaided schools and Government Schools like Kendriya Vidyalayas under Section 12(1)(c) and Section 3(2) of RTE Act, 2009 are directed to supply gadget(s)/equipment(s) of optimum configuration as well as internet package so that EWS / DG students have access to online learning, inasmuch as absence of such equipment(s) prevents the children from pursuing their elementary education.

189. The cost of such gadget(s)/digital equipment(s) as well as internet package are not a part of tuition fee and have to be provided free of cost to

the EWS / DG students by private unaided schools and Government Schools like Kendriya Vidyalayas subject to the right of private unaided schools to claim reimbursement from the State in accordance with Section 12(2) of the RTE Act, 2009.

190. Accordingly, this Court directs that the private unaided schools shall be entitled to claim reimbursement of reasonable cost for procurement of the said gadget(s)/digital equipment(s) as well as internet package from the State under Section 12(2) of the RTE Act, 2009, even though the State is not providing the same to its students. The expression '*expenditure incurred by the State*' in the Section 12(2) of RTE Act, 2009 would have to be read as '*expenditure incurred or would have been incurred by the State*', to give effect to the legislative intent of reimbursing reasonable costs to private schools on account of their imparting education to 25% EWS/DG students in accordance with the mandate of RTE Act, 2009. It is settled law that in some cases, an updating construction may involve the Court applying a strained construction, in order to achieve an Act's purpose in the light of changes that have occurred since enactment. For instance, the Carriage by Air Act, 1961 gives legislative force to certain Carriage by Air Conventions. The 1955 Convention limited liability for loss of or damage to *'registered baggage'*, but did not explain what 'registered' meant or what *'registration'* entailed. In ***Collins Vs. British Airways Board, (1982) QB 734 at 743-744***, Lord Denning MR explained that originally airlines kept register books in which all baggage was entered, but that this had been discontinued. He stated, *"What then are we to do? The only solution that I can see is to strike out the words "registered" and "registration" wherever they occur in the articles. By doing this, you will find that all the articles work perfectly, except that you have to find out what a "baggage check" is".*

191. This Court is further of the view that its interpretation is in accordance with settled law that Constitutional Courts ought to give a dynamic interpretation to the provisions of the Constitution as well as a statute, particularly keeping in mind the evolving needs of the society, more so when such an interpretation is in consonance with the intent and object of the Act.

192. To ensure uniformity as well as to expedite and streamline the process of identification and supply of gadgets/equipments to EWS/DG students, this Court directs constitution of a three member committee within a week comprising Secretary, Education, Ministry of Education, Central Government or his nominee, Secretary Education, GNCTD or his nominee and a representative of respondent No.18 to frame a Standard Operating Procedure (SOP) for identification of standard gadget(s)/equipment(s) as well as the manufacturer/supplier and internet package so that EWS/DG students can access elementary education through digital online means. The Committee shall identify gadget(s)/equipment(s) taking into account all relevant factors including their utility, ease of operation, cost, maintenance charges, life of the gadget(s), reputation of the manufacturer, child lock etc. within two weeks from its constitution. The Committee shall also decide as to whether any gadget(s)/equipment(s) needs to be purchased by cluster bidding or by individual schools or hired by way of lease or licence agreement. The private unaided schools shall either purchase or hire or lease the gadget(s)/equipment(s) as directed by the said Committee and supply the same along with internet package to the EWS/DG students within further two weeks. The private unaided schools shall file their claims for reimbursement under Section 12(2) to the GNCTD within eight weeks from the date of supply of such gadget(s)/equipment(s). The said claim shall be processed and reimbursed to the schools within eight weeks from

the date of their submission. With the aforesaid directions, present writ petition and pending applications stand disposed of.

POST SCRIPT

193. This Court clarifies that it has answered the issues raised in the writ petition in accordance with the Constitution and RTE Act, 2009. However, nothing stated herein prevents the Legislatures as well as Executive from re-examining the issues and taking a fresh decision with regard to use and availability of technology and digital means of education as this Court is of the view that the present pandemic is both a challenge as well as a generational opportunity to re-imagine education by removing connectivity barriers and related equity gaps and take a quantum jump by assimilating and incorporating latest technology that helps in providing and delivering quality education. The new initiatives could even bridge the digital divide between different schools and between fee paying and non fee-paying students that has become evident during the Covid-19 crisis. At a time, when benefits have started showing results under social welfare Acts and Schemes, the digital divide has started threatening the homogeneity. If the poor and needy do not have access to digital education and if the State does not come forward to provide the much needed access to the Digital Education for the disadvantaged sections, the dreams of the founding fathers of Constitution would be in jeopardy.

194. According to many thinkers, the world would be divided by technology not by ideology in the near future. The initiatives/decisions that central as well as state governments and local authorities take now will have lasting impact on hundreds and millions of young people and on the development prospects of India for decades to come. After all, to achieve education for all, Digital Education is a major component of the solution,

though not a replacement for formal classroom schooling, provided digital-divide is erased from Indian Society.

195. One should also not forget that continuity of learning should not break because once children step out of learning, coming back is very difficult. It is important to ensure that retrogression, if any, is temporary and redressed timely. The relationship between children and schools is of paramount importance and should be continued at all costs in order to safeguard the learning progress made in the past several years. This Court is of the view that creating a better and resilient elementary education system is increasingly important as a child's starting point in life determines his/her future.

MANMOHAN, J

Per SANJEEV NARULA, J (Concurring)

1. I have had the advantage of going through the lucid and elaborate judgment authored by my esteemed colleague Manmohan, J. I respectfully agree with the conclusion drawn by him, and by way of this concurring note, would like to add a few observations of my own.

The Quintessential Purpose of the RTE Act & a Note of Caution on Digital or Online Format for Elementary Education

2. It has been extensively discussed by my brother Manmohan J. that the RTE Act, 2009 and the term "education" are required to be interpreted dynamically, according to the needs of the changing society. I am in complete agreement with him. At the same time, I would like to add that while the term "education" can be expanded to include digital or online education, such a format can only function as a supplemental mechanism to aid traditional classroom education, and not as a permanent stand-in setup.

In the present pandemic situation, the shift towards online education has taken place literally overnight, and without much deliberation. One could argue that the unprecedented situation warranted such a drastic switch over. Therefore, I do not find any fault with the approach of the schools that have adopted digital technology for imparting education. However, it is necessary to issue a note of caution here so that the modes and methods adapted during this extraordinary time are not seen as the quintessential purpose of the Act.

3. The RTE Act, 2009 is focused on formal school education. Clause 3 of the Statement of Objects and Reasons of the Act reveals the purpose and intent behind the Act to be: "*(a) that every child has a right to be provided full time elementary education of satisfactory and equitable quality* ***in a formal school which satisfies certain essential norms and standards****".* The scheme of the Act focuses on the obligation of the State to establish schools, and the facilitation of formal education for all children in a school building. This can be seen from the stress laid on the establishment of 'neighbourhood schools' in section 6 as well as sections 8(b), 9(b) and 10. The norms and standards prescribed in the Act for provision of education specifically provide for the infrastructure of, and for a safe and inclusive environment of a proper formal school - ideally in an all-weather building. The primary aim of the Act is to ensure that every child gets admission in a brick-and-mortar school with a classroom space shared with peers of a similar age-group, so as to foster a conducive environment for learning. It is therefore essential to keep in mind that digital education is not a replacement for formal classroom schooling, which is the primary goal of the Right to Education Act, 2009.

4. We must also realize that the use of digital media for teaching-learning processes is at a nascent and evolving stage. The dissemination of

education through video conferencing, in my opinion, is not a mere extension of the physical classroom into a virtually-created space. Online learning requires active engagement strategies and is not just limited to uploading and delivering content over digital devices. It is a fundamentally different concept, and is still at an experimental stage. The traditional black-board approach is not adequate in a virtual classroom, as this format demands curating and designing of a different form of content that can be conveyed and assimilated on a digital platform. Without face-to-face interaction, gathering and retaining the attention of students for a prolonged time, and ensuring that the imparted education is understood effectively by each of the attendee in a virtual classroom becomes a demanding task. Blending and integration of ICT in elementary education requires strategic planning and building broad-based support amongst the stakeholders. This radically different form of education is bound to pose numerous and complex problems. Thus, in my view, the digitalization of elementary education, which targets children of ages between 6 to 14 years, by restricting the child to be a passive receiver without an interactive environment, needs deeper probe. However, this paradigm shift, in the current situation, has happened rapidly. This mode seems to have taken the front seat in the unprecedented emergency scenario we are placed in today. In fact, globally, skepticism is the underlying sentiment when it comes to digital education. Nations are grappling to find the correct answers to deal with the present situation. I would therefore say that we should approach the subject on a cautionary note.

5. I will also like to note that the New Education Policy, 2020 devotes considerable emphasis on the importance of traditional school education. The MHRD's *Pragyata- Guidelines for Digital education*, while listing out the advantages of digital/online education, recognizes that this format

cannot replace classroom learning. The *Students' Learning Enhancement Guidelines* prepared by the National Council of Educational Research and Training (NCERT) also note that alternative modes of education have limitations and do not ensure equitable learning. Though the Government of NCT has adopted the *Pragyata Guidelines*, but the matter should not rest there. *Pragyata Guidelines* come with a disclaimer that it is advisory in nature. States/UTs are required to come up with their own guidelines by adopting/adapting/modifying the guidelines in accordance with their requirements and assessment of the local situation. The localization of the content and its delivery within the State should be decided based upon a thorough assessment of several critical factors, such as the accessibility, geographical and socio-economic conditions of the target segment, linguistic diversity, etc. Better and more efficient modes and methods must be explored from the point of view of experts and researchers in the field, by establishment of specialized committees and task forces. As of now, we have no insights about when the pandemic is going to end and whether the next pandemic or a similar unprecedented situation is lurking round the corner. It is thus the need of the hour that the government invests its resources into understanding the current alternative modes available - their efficacy, methods of implementation, and then work towards an inclusive, uniform system of administering digital education. Government should involve educational and technological experts in the fields to review this emerging mode of education, having regard to the ground realities so that a robust online/digital education system is developed.

Digital divide, right to education and non-discrimination in the present pandemic scenario

6. On this aspect, I would only emphasize: The preamble of our Constitution reminds us of the solemn resolve to secure to all its citizens,

social and economic justice and equality of status and opportunity. To transform this vision into reality, Article 21A has been introduced in the Constitution of India, followed by the promulgation of the RTE Act, 2009. The scheme of Article 21A and the RTE Act rests on a twofold premise: to prevent financial and psychological barriers from hindering access to primary education of children, and, non-discrimination in the imparting of education. We live in a stratified society which has several economic layers. The school system reflects what exists in the society. Children of the socially and economically weaker sections are normally unable to secure an admission in private schools due to their unaffordable fees. The RTE Act seeks to address this gap *via* section 12(1)(c) which mandates all private schools to reserve 25 per cent of their seats for children belonging to economically weaker sections and disadvantaged group. The Act has thus paved the way for the weaker sections to seek admission in private schools which would otherwise remain completely out of the reach of such children due to financial constraints. This provision is aimed to reduce disparity, foster equality and to encourage an inclusive education for all. The Act now empowers EWS students to seek admission in private schools as a matter of right. Resultantly, children from the weaker sections and disadvantaged groups can now study side-by-side with other children. It is envisaged that this integrated early childhood education and mentoring in the schools would lay down the foundation of making behavioral changes that would lead to reducing discrimination in our society.

7. Now, private schools have opted to hold virtual classrooms. The children from economically weaker sections may not have the means to join such classes. Digital divide in our country is a known fact, and is indeed inter-connected with economic disparity. The inequality in access to technology widens such divide. In this scenario, conducting classes

exclusively through video conferencing mode inevitably leads to the creation of a huge gap in the education provided to the haves, versus the have-nots. This imbalance in the imparting of education due to the non-availability of gadgets, internet connectivity and modes of access, has the potential of pushing the less-fortunate children outside the education system altogether. The digital enablement of EWS students, is thus, in my opinion, absolutely necessary.

8. We must also acknowledge that because of the economic impact of the Covid-19 pandemic, there could be a tendency amongst the underprivileged children to abandon education for work. This likely fallout needs to be immediately addressed. Otherwise, the gap, between the learning experiences of children from economically weaker sections as against the relatively privileged children, will widen. The fact that EWS students are today offered education through a mode that is based on this divide would further push them back. One of the many steps needed, involves equipping such students with means to have a meaningful education. They need to have access to a reliable internet connection to join virtual classrooms along with technological devices. The precious right guaranteed by the Constitution of India and the RTE Act has to be replicated in the online environment. The private unaided schools have a responsibility of removing all barriers for EWS students that would hinder their access to education. The RTE Act also puts the onus on private schools to promote inclusion and equality.

9. Non-discrimination is a significant aspect of the scheme of the RTE Act. Section 12(1)(c), as we have seen, creates a special quota to the extent of 25 per cent seats being reserved for students from EWS/DG categories. Section 8(c) of the RTE Act, 2009 places an obligation on the appropriate government to ensure non-discrimination against a student belonging to a

weaker section or disadvantaged group. Further, Rule 11 of the Right of Children to Free and Compulsory Education Rules, 2010 places an obligation upon the schools (referred to in Sub-Clauses (iii) and (iv) of Clause (n) of Section 2 of the RTE Act) to ensure that children admitted in accordance with Clause (c) of Sub-Section (1) of section 12 of the Act "*shall not be segregated from the other children in the classrooms nor shall their classes be held at places and timings different from the classes held for the other children*" and further, they "*shall not be discriminated from the rest of the children in any manner pertaining to entitlements and facilities such as textbooks, uniforms, library and Information, Communications and Technology (ICT) facilities, extra-curricular and sports*". Therefore, both the Act as well as the Rules, read together place obligation upon the State as well as the schools to ensure that there is no discrimination faced by any student in a classroom on any ground whatsoever. Section 12 (1)(c) is well designed and cannot be restricted in its application, to not apply to a situation when the schools have adopted technology as a medium to impart education.

10. The RTE Act lays down the material foundation for creating equal opportunities for everyone in order to reach the ultimate goal of socio-economic justice. Good quality education translates into better employment avenues. By ensuring that EWS students are admitted in private schools we can strive to achieve socio-economic equality. The obligation cast upon the schools and the State, by law, as provided under RTE Act, has to be appreciated in the right spirit. It is the responsibility of the schools and obligation of the State to assist EWS students to overcome all constraints that deprive them of meaningful education. I, therefore, concur with the judgment proposed by my brother Manmohan, J.

11. That said, I sincerely hope that students are able to experience the joy of schooling with friends and classmates in physical classrooms, very soon.

SANJEEV NARULA, J

SEPTEMBER 18, 2020
rn/js/KA/sd

HIGH COURT OF DELHI
सत्यमेव जयते