

HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY
WRIT PETITION Nos. 11747, 11749, 11893, 11900,
11902, 11903 AND 11270 OF 2006

W.P.No. 11747 OF 2006

BETWEEN:

Srinivasa High School,
Hyderabad

.....**Petitioner**

And

The Government of Andhra Pradesh,
Rep. by its Secretary, Education Department,
Hyderabad & others

.....**Respondents**

W.P.No. 11749 OF 2006

BETWEEN:

Viswa Bharathi School, Hyderabad

.....**Petitioner**

And

The Government of Andhra Pradesh,
Rep. by its Secretary, Education Department,
Hyderabad & others

.....**Respondents**

W.P.No. 11893 OF 2006

BETWEEN:

Sanghamithra Grammer School,
Chatrinaka, Hyderabad

.....**Petitioner**

And

The Government of Andhra Pradesh,
Rep. by its Secretary, Education Department,
Hyderabad & others

.....**Respondents**

W.P.No. 11900 OF 2006

BETWEEN:

Nalanda Public School, Hyderabad

.....**Petitioner**

And

The Government of Andhra Pradesh,
Rep. by its Secretary, Education Department,
Hyderabad & others

.....**Respondents**

W.P.No. 11902 OF 2006

BETWEEN:

Sri Chaitanya Model School,
Hyderabad

.....**Petitioner**

And

The Government of Andhra Pradesh,
Rep. by its Secretary, Education Department,
Hyderabad & others

.....**Respondents**

W.P.No. 11903 OF 2006

BETWEEN:

Vignan Model High School,
Hyderabad

.....**Petitioner**

And

The Government of Andhra Pradesh,
Rep. by its Secretary, Education Department,
Hyderabad & others

.....**Respondents**

W.P.No. 11270 OF 2006

BETWEEN:

Federation of Minorities Private Institution,
Dabirpura, Hyderabad

.....**Petitioner**

And

The Government of Andhra Pradesh,
Rep. by its Secretary, Education Department,
Hyderabad & others

.....**Respondents**

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:: C O M M O N O R D E R ::

Counsel for the petitioners in
W.P.Nos.11747, 11749, 11893,
11900, 11902 and 11903 of 2006: Shri S. Ramachandra Rao,
Senior Advocate assisted
by Shri Srinivas

Counsel for the petitioners in Shri Mohd. Abid Ali with
W.P.No.1270 of 2006: Shri V. Rajagopal Reddy

Counsel for the respondents: Shri C.V. Mohan Reddy,
Advocate General with
Shri A. Satya Prasad,
Special Government
Pleader

Dated: .01.2007

Per G.S. SINGHVI, CJ

In these petitions (except Writ Petition No.11270 of 2006), the petitioners have prayed for issue of mandamus to the respondents to dispose of the applications filed by them for grant of permission in terms of the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Management) Rules, 1993 (for short 'the 1993 Rules) and to allow them to continue to function till the disposal of their applications. In Writ Petition No.11270 of 2006, the petitioners have prayed for issue of a direction to the respondents to relax the norms and simplify the procedure for recognizing the schools with a further direction not to close down the petitioner schools.

The Facts:

W.P.No.11747 OF 2006 - Srinivasa High School v. Government of Andhra Pradesh and others

The petitioner school was established in the year 2003 in Jiyaguda, Hyderabad. Later on, it was renamed as Srinivasa Education Society and got registered under the Andhra Pradesh Societies Registration Act, 2001 (for short, 'the 2001 Act'). After three years, the management of the petitioner school filed application dated 15.05.2006 for grant of permission/recognition by relaxing the conditions specified in the 1993 Rules, but the same was not entertained apparently

because of the restriction imposed by the High Court vide order dated 26.04.2006 passed in Taken Up Writ Petition No. 2058 of 2006 - **D. Swapna Rao v. Municipal Corporation of Hyderabad and others.**

In the affidavit filed by Shri D. Venkata Reddy, Correspondent of the school, it has been averred that the petitioner has complied with all the conditions and has sought relaxation in the matter of providing playground because vacant space is not available in the city of Hyderabad and peripheral areas, which could be used as playground for the students. Shri Venkat Reddy has further averred that majority of government and private recognized schools do not have playgrounds, but the competent authority arbitrarily refused permission/recognition to the petitioner only on the ground of non-availability of playground. He has alleged that in the garb of implementing the 1993 Rules and the order of the High Court, the respondents are depriving the rural, poor and needy children of their right to education, which is guaranteed under Article 21-A of the Constitution.

In the counter-affidavit filed by Shri Ch. Pullaiah, Regional Joint Director of School Education, Hyderabad, reference has been made to the conditions specified in the 1993 Rules (as amended vide G.O.Ms.No.41, dated 11.05.2006), which are required to be fulfilled by the management of the school as a condition for grant of permission/recognition and it has been averred that the petitioner's application was not entertained because it has failed to comply with some of the conditions including the one relating to playground. Along with his affidavit, Shri Ch. Pullaiah has annexed copy of inspection report submitted by Deputy Educational Officer, Golconda Zone, Hyderabad to District Educational Officer, Hyderabad District vide letter No. 951/388/GCZ/PTO/2006 dated 01.08.2006.

W.P.No.11749 of 2006 - Viswa Bharathi School, Lal Darwaja, Hyderabad

The petitioner school was established in 2005 at Lal Darwaja, Hyderabad. It has been registered under the 2001 Act as Viswa Bharathi Educational and Welfare Society. Soon after its establishment, the management of the school filed an application for grant of recognition/permission under the 1993 Rules, but its application was not entertained apparently because of non-fulfillment of the conditions specified in the 1993 Rules, as amended by G.O.Ms.No.41 Edn., dated 11.05.2006.

In the affidavit filed by Shri K. Rajender, Correspondent of the school, it has been averred that due to lack of availability of vacant land, it is highly difficult for the management to provide playground. The deponent has then pleaded that the condition of having playground by the private schools should be declared as arbitrary and discriminatory because large numbers of private schools have been recognized without insisting on this facility. The remaining averments contained in the affidavit of Shri K. Rajender are similar to those contained in the affidavit of

Shri D. Venkat Reddy, Correspondent of Srinivasa High School.

In the counter-affidavit filed by Shri S. Jagannath Reddy, District Educational Officer, Hyderabad, reliance has been placed on inspection report dated 19.07.2006 submitted by Deputy Educational Officer, Bandlaguda, Hyderabad and it has been averred that recognition was not granted to the petitioner school because it does not satisfy the parameters laid down under the 1993 Rules.

W.P.No.11893 of 2006 - Sanghamithra Grammer School, Chatrinaka, Hyderabad

The petitioner school was established in 2003. It has been registered under the 2001 Act as Sri Lakshmi Devi Memorial Sanghamithra Educational Society. The application for recognition/permission made by the management of the school was not entertained by the competent authority apparently because of the restriction imposed by the High

Court vide order dated 26.04.2006 passed in Taken Up Writ Petition No.2058 of 2006.

The averments contained in the affidavit filed by Shri P. Devender Reddy, Correspondent of the school and counter-affidavit filed by Shri Ch. Pullaiah, Regional Joint Director of school Education, Hyderabad, are similar to those contained in Writ Petition No.11747 of 2006. Shri Pullaiah has relied on inspection report dated 12.07.2006 submitted by Deputy Educational Officer, Bandlaguda, Hyderabad and averred that recognition cannot be granted to the petitioner because it does not fulfill the norms prescribed under the 1993 Rules.

W.P.No.11900 of 2006 - Nalanda Public School v. Government of Andhra Pradesh

The petitioner school was established in 1998. It has been registered under the 2001 Act as Nalanda Educational Society. The management of the school made an application in 2005 for grant of recognition, but the competent authority did not entertain the same in view of order dated 26.04.2006 passed by the High Court in Taken Up Writ Petition No.2058 of 2006.

The averments contained in the affidavit filed by Shri G. Panchajanyam, Correspondent of the school and counter-affidavit filed by Shri S. Jagannath Reddy, District Educational Officer, Hyderabad, are similar to those contained in Writ Petition No.11747 of 2006. Shri Reddy has relied on inspection report dated 14.07.2006 submitted by Deputy Educational Officer, Bandlaguda, Hyderabad and averred that recognition cannot be granted to the petitioner because it does not fulfill the conditions prescribed by the 1993 Rules.

W.P.No.11902 of 2006 - Sri Chaitanya Model School, Saibaba Nagar, Uppuguda, v. Government of Andhra Pradesh

The petitioner school was established in 2002. It has been registered as Chaitanya Educational Society. The management of the school filed an application in 2005 for grant of recognition, but the competent authority refused to

entertain the same by citing the restrictions imposed by the High Court.

The averments contained in the affidavit filed by Shri K. Rajasehkar, Correspondent of the school and counter-affidavit filed by Shri S. Jagannath Reddy, District Educational Officer, Hyderabad, are similar to those contained in Writ Petition No.11747 of 2006. Shri Reddy has relied on inspection report dated 19.07.2006 submitted by Deputy Educational Officer, Bandlaguda, Hyderabad and averred that recognition cannot be granted to the petitioner because it does not fulfill the conditions prescribed by the 1993 Rules.

W.P.No.11903 of 2006 - Vignan Model High School, Uppuguda, v. Government of Andhra Pradesh

The petitioner school was established in 1998. It has been registered as Vignan Educational Society. The management of the school filed an application in 2005 for grant of recognition, but the competent authority did not accept the same.

The averments contained in the affidavit filed by Shri A. Pulla Reddy, Correspondent of the school and counter-affidavit filed by Shri S. Jagannath Reddy, District Educational Officer, Hyderabad are similar to those contained in Writ Petition No.11747 of 2006. Shri Reddy has relied on inspection report dated 14.07.2006 submitted by Deputy Educational Officer, Bandlaguda, Hyderabad and averred that recognition cannot be granted to the petitioner because it does not fulfill the conditions laid down under the 1993 Rules.

W.P.No.11270 of 2006 - Federation of Minorities Private Institutions, Dabirpura and 32 others, v. Government of Andhra Pradesh

Petitioner No.1 is the Federation of Minorities Private Institutions. Petitioner Nos.2 to 33 are private unaided schools established in different parts of the city of Hyderabad. In the affidavit filed by Shri Mohd. Abid Ali, Advocate and General Secretary of petitioner No.1 Federation, reference has been

made to the provisions of the Andhra Pradesh Education Act, 1982 (for short 'the 1982 Act') and amendments made therein by Act No.27 of 1987 and it has been averred that Section 20A of the Act is violative of the right guaranteed to the minority educational institutions under Article 30(1) of the Constitution. The deponent has also referred to press notes dated 10.05.2006, 19.05.2006 and 26.05.2006 issued by respondent Nos. 4 to 6 to the effect that the management of the private schools, which are being run without obtaining permission from the competent authority under Section 20 of the 1982 Act, are liable to be punished and averred that if the provisions of the Act and the Rules framed thereunder are strictly enforced, hundreds of unaided schools will have to be closed down and this will adversely affect the right to education guaranteed to the children belonging to minority community. Shri Mohd. Abid Ali has then referred to representation made to National Commission for Minority Educational Institutions, which was forwarded by Secretary of the Commission to Principal Secretary, Higher Education, Government of Andhra Pradesh for taking necessary action in the matter on the basis of order passed by the Commission.

In the counter affidavit filed by him, Shri S. Jagannath Reddy, District Educational Officer, Hyderabad has relied on order dated 26.04.2006 passed by the High Court in Writ Petition No.2058 of 2006 and averred that sufficient number of seats are available in various primary, upper primary and high schools in Hyderabad, Ranga Reddy and Nizamabad Districts. In paragraphs 10 to 24 of his affidavit, Shri Reddy has given the teacher - pupil ratio in various primary, upper primary and high schools in the districts of Hyderabad, Ranga Reddy and Nizamabad and averred that sufficient number of vacant seats are available in these schools. This is evinced from the following extracts of the affidavit of Shri Jagannath Reddy:

"I submit that, as per the Andhra Pradesh Educational Institutions (Establishment, Recognition,

Administration and Control of Schools under Private Managements) Rules, 1993, the teacher-pupil ratio should not exceed 1: 40. An analysis of the teacher-pupil ratio shows that in respect of High Schools the teacher-pupil ratio in Hyderabad is 1: 27, while in Nizamabad 1:36 and in Ranga Reddy District 1:30. Thus, there are good number of seats which can be filled in High Schools in Hyderabad, Ranga Reddy Districts and Nizamabad. Similarly, in respect of Upper Primary Schools the teacher-pupil ratio in Hyderabad is 1:28, while Nizamabad is 1:35, and in Ranga Reddy District 1:29. Thus a good number of seats can be filled up in the Upper Primary Schools also. The teacher ratio in respect of Primary Schools in Hyderabad is 1:40, in Nizamabad is 1:36 and in Ranga Reddy District is 1:42.

I submit that, the Hyderabad District consists of 16 Mandals, I am herewith furnishing statements showing the strength particulars of the Government run schools. I submit that as per the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules, 1993, the teacher pupil ratio should not exceed 1:40. In situations where the strength of a class exceeds 55, normally an additional section will be opened.

I submit that, there are 159 Government run High Schools in Hyderabad District. A High School consists of classes 6th to 10th, i.e. five classes. The strength of every section should not exceed normally 40 students. Thus, there should be at least 200 students in a High School. However, I submit that, there are 88 Government High Schools, where the strength of the students is less than 200. In these High Schools there are 12,128 seats which can be filled up.

I submit that, there are 94 Government run Upper Primary Schools in Hyderabad District. A Upper Primary School consists of classes 1st to 7th i.e. seven classes. The strength of every section should not exceed 40 students. Thus, there should be at least 280 students in Upper Primary School. However, I submit that, there are 66 Government Upper Primary Schools, where the strength of the students is less than 280. In these Upper Primary Schools, there are 11,184 seats which can be filled up.

I submit that, there are 569 Government run Primary Schools in Hyderabad District. A Primary School consists of classes 1st to 5th i.e. five classes. The strength of every section should not exceed 40 students. Thus, there should

be at least 200 students in a Primary School. However, I submit that, there are 471 Government Primary Schools, where the strength of the students is less than 200. In these Primary Schools, there are 54,921 seats which can be filled up.

Thus, the total number vacant seats are as follows:

- (a) Government High School 12,128
- (b) Government Upper Primary School 11,184
- (c) Government Primary School 54,921

78,233

In the rejoinder affidavit filed by him, Shri Mohd. Abid Ali has relied on Rule 21 of the 1993 Rules under which the government is empowered to relax the Rules involving any undue hardship to any educational agency or in public interest and averred that there is no justification to insist on providing playground and other facilities in the private schools because as many as 54,924 government schools and 7,927 private recognized schools in the State do not have any playground and they do not fulfill some other norms prescribed under the 1993 Rules. In paragraph 13 of his rejoinder-affidavit, Shri Mohd. Abid Ali has averred as under:

“It is respectfully submitted that the respondent in para 10 to 25 of the counter affidavit has given mathematical figures to show that there exist 12,128 vacant seats in Government High Schools, 11,184 vacant seats in Government Upper Primary Schools and 54,921 vacant seats in Government Primary Schools and thus a total of 78,233 vacant seats are available in Government Schools. While giving the mathematical figures to show the availability of 78,233 vacant seats in the Government schools, the respondent has suppressed the following essential information with regard to these Government and Recognized schools.

NO.OF SCHOOLS WITH	GOVT.	/ RECOGNIZED
No accommodation to students	24,405	3,998 schools
No accommodation to H.M.	59,812	3,605 schools
No accommodation to staff	64,980	5,038 schools
No accommodation to N.T. staff	70,299	8,066 schools
No library	70,661	7,128 schools
No laboratory	70,811	10,519 schools

No Play Ground	54,924	7,927 schools
No Fire-extinguisher	72,606	12,970 schools
No children escort	71,739	10,883 schools
No Zebra Crossing	73,323	13,366 schools

And above all

No water facility	23,853	2,660 schools
No urinals/lavatories	23,198	4,294 schools

(the above figures have been extracted from the Status Report on fulfillment of norms by schools in Andhra Pradesh which has been filed by the Director, School Education in Taken Up W.P.No.2058/06.)

It is respectfully submitted that the acts of respondent in allowing thousands of school without fulfilling the norms as contemplated in Rules 1993 and rejecting the applications of the petitioners school only for not having playground annexed to their school is an act of discrimination under Art.14 of the Constitution of India.”

Orders of the Court:

Before proceeding further, we deem it proper to take notice of the restriction contained in order dated 26-4-2006 passed in Taken Up Writ Petition No.2058 of 2006, which has been projected by the petitioners as the basis for non-consideration of the applications made by them for grant of permission/recognition and some of the orders and pleadings filed in these petitions.

- 1) The relevant extracts of order dated 26-4-2006 passed in Writ Petition No.2058 of 2006 read as under:

“We have gone through three volumes of reports submitted by the department of school education, Andhra Pradesh. These reports relate to the schools situated in Hyderabad and Secunderabad. The learned Government Pleader is directed to ensure that the reports in respect of the schools in all other districts of Andhra Pradesh are filed in the Court within a period of five weeks from today.

The learned Amicus has given valuable suggestions, which if implemented, would go a long way to curb the menace of unauthorised schools and the schools, which are being run in residential buildings, majority of which do not comply with the provisions of the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of schools under Private

Managements) Rules, 1993 (for short, 'the Rules').

Learned Advocate General says that the department will prepare a concrete action plan to deal with the situation created due to running of schools in residential areas and that too without adequate infrastructure and in some cases with virtually no infrastructure.

We appreciate the exercise undertaken by the department and the stand taken by the learned Advocate General and deem it proper to adjourn the case to 29-06-2006 with the following directions:

1. In future no Government school shall be established in any part of the State of Andhra Pradesh without ensuring that the same has infrastructure and facilities as per the requirement of 1993 rules.

2. No private school shall be granted permission (provisional or otherwise) in the entire State of Andhra Pradesh unless the management of the school or the society running the school fulfils the conditions enumerated in the 1993 Rules and the policy instructions issued by the State Government from time to time.

3. The Director of School Education shall get a list of all unrecognised schools published in the newspapers so that the parents can be forewarned of the consequences of getting their pupils admitted in such unrecognised schools. Such list should be got published in two newspapers one English and one vernacular having wide circulation in the State of Andhra Pradesh. The needful be done on or before

16-06-2006."

- 2) When the writ petitions were listed for admission hearing, the learned Single Judge, after taking cognizance of the order passed by the Division Bench in Writ Petition No.2058 of 2006, directed that the cases be listed before the Division Bench. On 29.06.2006, the Division Bench issued notice in all the writ petitions (except Writ Petition No.11270 of 2006) to the respondents and directed them to file counter-affidavit along with the report prepared by the competent authority after examining the compliance of the norms and parameters by the petitioners. In compliance of that order, inspection reports were produced on behalf of the respondents. After going through the reports, the Court expressed strong disapproval of the casual manner in which

the inspection of the schools was carried out and passed order dated 30.08.2006. For the sake of convenient reference, the order recorded in Writ Petition No.11747 of 2006 is reproduced below:

“This and connected five matters have been listed for consideration of the petitioners prayer for issue of a direction to the respondents to grant permission in terms of Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools) under the Private Management Rules, 1993 (for short ‘the 1993 Rules’).

Sri S.Ramchander Rao, Senior Advocate appearing for the petitioners in this and connected petitions invited our attention to the reports submitted by the concerned authorities of the Education Department in furtherance of order dated 29.6.2006 and submitted that the officer concerned has deliberately avoided giving of a comprehensive report with reference to the various parameters enumerated in the 1993 Rules.

Learned counsel also lamented that while the petitioners are not being given permission to run the schools despite the fact that they have substantial facilities, more than 150 government schools are being run in poultry farms and buildings meant for cinema halls. He referred to some news paper reports and photographs published to show that government schools are being run in poultry farms and cinema theatres.

In the context of the submission made by Sri Ramchander Rao, we asked the learned Government Pleader to elucidate whether or not the petitioners comply with the relevant parameters laid down in the rules and whether government schools fulfil those parameters or at least a part of them. We also asked the learned Government Pleader to clarify as to why a self explanatory report has not been prepared with reference to the requirements specified in Rule 5 of the 1993 Rules.

Learned Government Pleader for Education fairly concedes that the report of the officers are laconic.

We strongly disapprove the casual manner in which the officers concerned have carried out inspection of the schools established by the petitioners. This remissness on the part of the officer has compelled us to adjourn the case for today.

Adjourned to 18.9.2006.

In the meanwhile, the Director of School Education must depute a well trained officer to again inspect the

buildings and sites where the petitioners have established schools and submit a comprehensive report to this Court within a period of ten days from today after supplying advance copy to the counsel for the petitioners.

By way of abundant caution, we make it clear that any laxity on the part of the officers concerned may result in an order by the Court for initiation of disciplinary action against the erring officers.”

Similar orders were passed in other petitions except Writ Petition No.11270 of 2006.

- 3) In compliance of the aforementioned order, fresh inspection of all the schools was carried out and reports prepared on the basis of such inspection were filed in the Court. In the case of Srinivasa High School, inspection was carried out by Deputy Educational Officer, Golconda Zone on 04.09.2006 and report prepared by him was filed along with additional affidavit of Shri S. Jagannath Reddy, District Educational Officer, Hyderabad. The same was taken on record.
- 4) Additional counter-affidavit filed by Shri S. Jagannath Reddy was also taken on record. In Writ Petition No.11270 of 2006, the petitioners filed large number of photographs and documents to show the status of the buildings of government and recognized private schools as also the strength of students in such schools.

The Arguments:

Shri S. Ramachandra Rao, learned Senior Counsel appearing for the petitioners in Writ Petition Nos. 11747, 11749, 11893, 11900, 11902 and 11903 and Shri Mohd. Abid Ali, counsel appearing for the petitioners in Writ Petition No.11270 of 2006 argued that the condition specified in Rule 5 (7) of the 1993 Rules viz. that the school must have playground of the specified size is not only onerous, but is virtually impossible to be fulfilled because vacant spaces of that size are not available in the city of Hyderabad and one has to pay crores of rupees for securing such land, which is beyond the means of the management of the schools and, therefore, the

government should be directed to exercise power under Rule 21 of the 1993 Rules so as to facilitate permission/recognition to the petitioner schools. Learned counsel extensively referred to letter dated 12.06.2006 sent by Shri S. Balasubramanyam, Director of School Education, Andhra Pradesh to Secretary to Government, School Education Department, Government of Andhra Pradesh to show that the facility of playground is not available in more than 60,000 government as well as private schools in the State and argued that there is no justification to insist on the fulfillment of this condition by the petitioner schools.

Shri Ramachandra Rao submitted that the condition of the buildings in which the petitioner schools are being run is far better than the majority of the government schools in the State and the concerned authorities should be directed not to adopt discriminatory approach while considering their applications for grant of permission/recognition. Shri Abid Ali lamented that while examining the issue of recognition/ permission, the departmental authorities have altogether ignored the constitutional right guaranteed to the minority educational institutions under Rule 30 (1) of the Constitution to establish and administer their schools.

Shri C.V. Mohan Reddy, learned Advocate General fairly admitted that there is lack of adequate infrastructure including playgrounds, libraries and lavatories in large number of government and private recognized schools, but argued that this should not be made a ground for issue of a mandamus to the respondents to grant permission/ recognition to the petitioner schools despite the fact that they do not satisfy the conditions specified in Rule 5 of the 1993 Rules, as amended vide notification dated 11.05.2006. The learned Advocate General further argued that Article 14 cannot be invoked for compelling the public authorities to violate the mandate of law. He, however, conceded that it is quite difficult for the private schools established in the city of Hyderabad to arrange

for playgrounds of the measurement specified in Rule 5 (7) of the 1993 Rules.

We have thoughtfully considered the entire matter. Rules 2 (1) (b), 4(1) (a), (b), (c), 5, 9 and 21 of the 1993 Rules, as amended vide G.O.Ms.No.41 dated 11.05.2006, read as under:

“2. Definitions:

1) In these rules, unless the context otherwise requires:

...

(b) “Educational agency” means, the society/Trust/ Association including Endowment Board/Wakf Board/ and Christian Mission (Church/Diocese or congregation) and the like, sponsoring/managing/ running the schools:

4. Criteria for Establishment of Schools:

- (1) The following shall be the broad guidelines to be considered for grant of permission for the establishment of new schools or upgradation of existing schools.
- (a) Educational needs of the localities taking into consideration the population of the school going children in the locality and their coverage by the existing schools;
- (b) Need to avoid unhealthy competition among the schools in the locality;
- (c) The viability of the proposed school after taking into consideration of the facts resolved to the clauses (a) and (b) above.

5. Requirements for Establishment of a New Schools or Up-gradation of the Existing School:-

Every educational agency desirous of opening a school or upgrading the existing school shall.

- (1) Deposit by way of national saving certificate or Kisan Vikas Patra and pledge with the District Educational Officer concerned towards endowment fund as follows:
 - (i) Pre-Primary School, Primary School,
Upper Primary School, Oriental
School, Hindi Patasalas, Sanskrit
Patasalas, Hindi Patasalas,
Sanskrit Patasalas, Hindi
Vidyalayas, Special Schools Rs.25,000/-
 - (ii) Secondary Schools Rs.50,000/-

This Endowment Fund may be utilized after obtaining prior permission of the competent authority for the purpose of purchase of furniture, material and equipment required for the school.

- (2) Have a provision of adequate accommodation for the smooth conduct of classes. This shall be approximately 6-8 Sq. ft. per pupil, and the area shall be calculated section wise.
- (3) Have adequate accommodation for staff in respect of upper primary schools and high schools.
- (4) Have adequate accommodation for laboratory, library and computer room in respect of High Schools.
- (5) Have separate and adequate sanitary facilities, for students and staff and for men and women.
- (6) Provide adequate safe drinking water facilities to the students and staff.
- (7) Have playground facilities annexed to the school. This shall be a minimum of 1000 sq. m. in respect of the Municipal Corporation limits and Municipality limits, 2000 sq. m. in Non-Municipal and Non-Municipal Corporation Areas.
- (8) Provide grills to the balconies in case of high rise buildings.
- (9) Provide suggestion boxes in prominent places in the school premises.
- (10) Compulsorily provide fire extinguishers and fire fighting equipment as prescribed in the National Building Code of India part IV fire protection, 1997 and approved by Fire Service Department of the State.
- (11) Maintain first aid kits in sufficient numbers in the school premises.
- (12) Follow the rules and regulations prescribed in Cir.Memo.No.21748/D1/97, dt:16.2.1998 and other orders of/Transport Authority regarding parking of school vehicles/maintenance of vehicles and ensure safety of children, and shall obtain fitness of the school vehicles from the Transport Authority as prescribed by the Government from time to time.
- (13) The cost of providing zebra crossings at the roads crossing near the schools, which are located in Municipal Corporation/Town, shall be met by the school Managements.
- (14) Have adequate personnel to guide the movement of the children to ensure road safety and transportation.
- (15) Produce sanitary certificate from authority concerned.
- (16) Produce structural soundness certificate of the school building/premises and produce occupancy certificate from the authority concerned.
- (17) Any Educational agency intending to seek permission for opening of new school or upgradation of existing

school shall produce No Objection Certificate from the Police Department (traffic) and as well as concerned Municipal Corporation Areas. In respect of villages, the no objection certificate shall be obtained from the local Gram Panchayat and no objection certificate from police is not necessary.

9. Recognition:

(1) Application for recognition in Form III shall be submitted by the educational agency to the competent authority before the 31st July of the year in which the permission has been granted or deemed to have been granted under rule 7.

(2) The application among other things shall be accompanied by-

(a) Documentary evidence regarding the purchase of library books, laboratory equipment, sports material, furniture etc.

(b) Evidence of appointment of qualified staff as per staff pattern prescribed by competent authority from time to time.

(c) Evidence of providing sufficient accommodation as prescribed in rule 6.

(3) On receipt of application the competent authority shall make or cause such verification as is necessary and shall communicate a decision within three months. In case of refusal the order shall indicate the reasons.

(4) Grant of recognition shall be in Form-IV.

(5) Recognition shall be valid for period of five academic years. The educational agency shall, before expiry of recognition seek renewal of recognition.

(6) The renewal of recognition shall be guided by the same principles as are applicable to grant of original recognition. The fee for the renewal shall be Rs.2,000/- in respect of Secondary Schools and Rs.1,000/- in respect of all other schools.

21. Power to relax Rules:

The Government may relax any of the provisions in these rules involving any undue hardship to any educational agency or in public interest."

A reading of the above reproduced rules show that all the conditions specified in Rules 5 and 9 for grant of permission or recognition to the schools are in larger public interest. The requirement of adequate space for the smooth running of

classes, accommodation for staff, laboratory and library in respect of high schools, sanitary facilities, adequate water facilities, playground are meant for the benefit of the children, who seek admission in the schools. These are the basic parameters, which must be satisfied by an educational agency for grant of permission to establish a school or recognition of the school. To put it differently, an educational agency, which does not satisfy the parameters or fulfill the conditions enumerated in Rules 5 and 9, is not entitled to permission/recognition.

In the light of the above, we shall now consider whether the managements of the petitioner schools fulfill the conditions specified in Rules 5 (7) and whether refusal of the competent authorities to entertain their applications only on the ground of non-availability of playground is legally correct and justified.

The deficiencies in the applications made by the managements of the petitioner schools are enlisted in the inspection reports produced by the respondents. For convenience sake, we may now refer to inspection report dated 04.09.2006 prepared by Deputy Educational Officer, Golconda, Hyderabad in respect of Srinivasa High School, which has been placed on record along with affidavit dated 08.09.2006 of Shri S. Jagannath Reddy, District Educational Officer, Hyderabad. A perusal of the report shows that the school by and large satisfied the conditions specified in various sub-rules of Rule 5 except the one relating to Rule 5 (7), which relates to playground, and the condition relating to no objection from traffic authority. According to Shri S. Ramachandra Rao, learned Senior Counsel appearing for the petitioner, other minor deficiencies pointed out in the report of the Deputy Educational Officer can be fulfilled by the petitioner, but it is impossible to provide playground of the size mentioned in Rule 5(7). Learned counsel reiterated that if the facility of playground is not available in more than 54,000 government schools and more than 7,000 private recognized

schools, then there can be no justification to insist on fulfillment of the said condition by the petitioner. He submitted that due to acute scarcity of land in the city of Hyderabad, none of the petitioners can afford to purchase area equivalent to playground as per the requirement of Rule 5 (7). He further submitted that the government should adopt a rational and realistic approach and either amend Rule 5 (7) or at least exercise power under Rule 21 and thereby facilitate the grant of permission/recognition to the educational agencies, which fulfill other conditions.

Shri Ramachandra Rao lamented that even though basic facilities like drinking water and lavatories are not available in the government schools and even in private recognized schools, the departmental authorities are insisting on rigorous compliance of extremely onerous conditions by the petitioner schools.

In our opinion, there is considerable merit in the argument of Shri S. Ramachandra Rao that the approach adopted by the respondents in dealing with the applications of the petitioners is discriminatory. The respondents have not controverted the fact that majority of the government schools and large number of private recognized schools in the State do not fulfill the norms/conditions specified in Rules 5 and 9 of the 1993 Rules. This is evinced from the contents of letter dated 26.02.2006 and statement furnished by the Director of School Education to Secretary to Government, School Education Department, Government of Andhra Pradesh in the backdrop of the directions given by this Court. For the sake of reference, the letter of the Director, Education and accompanying table are extracted below:

“GOVERNMENT OF ANDHRA PRADESH
EDUCATION DEPARTMENT

From
Shri S. Balasubramanyam,
AS,
Director of School
Education,
Andhra Pradesh,
Hyderabad.

To
The Secretary to Government,
School Education Department,
Government of Andhra Pradesh,
Hyderabad.

RC.No.396/B4-2/2006-1, Dt. 12-06-2006

Sir,

Sub: Secondary Education - W.P.No.2058/06 filed by D.
Swapna Rao, Architect, Hyderabad - Survey of the
existing schools as per rules -Constitution of
committee to prepare an action plan - proposals
submitted - Regarding.

Ref: 1 . Judgment dt.26-3-06 of the Hon'ble High
Court in W.P.No.2058/06.
2. Survey report submitted by all the D.E.Os. in
the State.

I wish to submit that W.P.No.2058/06 has been filed
in Public Interest litigation alleging that the management
of Pragathi Vidya Niketan High School at Door No.2-3-
528/C/15/B and 2-3-529/1/28, Bapu Nagar, at Amberpet,
Hyderabad has deviated building norms and that there
are structural defects in school building, exposing school
children to peril. The Hon'ble High Court in its orders 1st
cited has directed the respondents to ensure that survey
of schools in all the districts of Andhra Pradesh is
conducted and reports are filed in the Court and the list of
un-recognised schools are published in newspapers
forewarning the parents.

In pursuant to the directions of the Hon'ble High
Court, I have issued instructions to all the Regional Joint
Directors of School Education and the District
Educational Officers in proceedings Rc.No.396/B4-2/06
dt:9-05-06 to inspect all schools being run in their
respective districts and furnish the list of schools which
do not fulfill the norms laid down in Andhra Pradesh
Educational Institutions (Establishment, Recognition,
Administration and Control of Schools under Private
Managements) - Rules, 1993, G.O.Ms.No.1, Education
(P.S.2) dt. 1-1-1994.

The District Educational Officers have constituted
sufficient number of teams to visit the schools for the
purpose of ascertaining the status as regards to
fulfillment of norms prescribed in G.O.Ms.No.1, Education

(PS.2) Dt. 1-1-1994, in respect of schools under all managements. The teams constituted by the District Educational Officers have personally visited each and every school in their respective jurisdiction and collected the data in the proforma prescribed. The data collected by the field officers is analysed and appended herewith for perusal.

According to the analysis of the survey reports, it is observed that several schools under Government as well as private managements are scarce of infrastructure facilities and other basic facilities. In respect of private managements, all the District Educational Officers have been instructed to give notices to such private schools to rectify the deficiencies and see the managements provide all the facilities within the time stipulated.

In respect of Government schools, I request the Government to constitute a committee consisting of erudite personnel to chalk out an action plan for providing infrastructure facilities to all Government schools in the State in a phased manner keeping in view the basic requirements of the institution, financial and human resources and other aspects involved therein at an early date.

S. BALASUBRAMANYAM
DIRECTOR OF SCHOOL EDUCATION

//True copy Attested//

Sd/-
For Director of School Education

**CONSOLIDATED REPORT ON FULFILMENT OF
NORMS
IN ANDHRA PRADESH**

S.No.	FACILITIES IN THE SCHOOL	GOVERNMENT	PRIVATE	TOTAL
1)	AVAILABILITY OF ADEQUATE ACCOMMODATION TO STUDENTS	49214	10542	59756
	NON-AVAILABILITY OF ADEQUATE ACCOMMODATION TO STUDENTS	24405	3988	28393
2)	AVAILABILITY OF ACCOMMODATION TO H.M.	13807	10925	24732
	NON-AVAILABILITY OF ACCOMMODATION TO H.M.	59812	3605	63417

3)	AVAILABILITY OF ADEQUATE ACCOMMODATION TO STUDENTS	49214	10542	59756
	NON-AVAILABILITY OF ADEQUATE ACCOMMODATION TO STUDENTS	24405	3988	28393
4)	AVAILABILITY OF ACCOMMODATION TO H.M.	13807	10925	24732
	NON-AVAILABILITY OF ACCOMMODATION TO H.M.	59812	3605	63417
5)	AVAILABILITY OF ADEQUATE LIBRARY FACILITIES	2958	7402	10360
	NON-AVAILABILITY OF ADEQUATE LIBRARY FACILITIES	70661	7128	77789
6)	AVAILABILITY OF ADEQUATE LABORATORY FACILITIES	2808	4011	6819
	NON-AVAILABILITY OF LABORATORY FACILITIES	70811	10519	81330
7)	PLAY AREA PROVIDED	18695	6603	25298
	PLAY AREA NOT PROVIDED	54924	7927	62851
8)	FIRE EXTINGUISHER PROVIDED	1013	1560	2573
	FIRE EXTINGUISHER NOT PROVIDED	72606	12970	85576
9)	AVAILABILITY OF SUFFICIENT SCHOOL ESCORT	1880	3647	5527
	NON-AVAILABILITY OF SUFFICIENT SCHOOL ESCORT	71739	10883	82622
10)	AVAILABILITY OF ZEBRA CROSSING	296	1164	1460
	NON-AVAILABILITY OF ZEBRA CROSSING	73323	13366	86689
11)	AVAILABILITY OF WATER FACILITIES	49766	11870	61636
	NON-AVAILABILITY OF WATER FACILITIES	23853	2660	26513
12)	AVAILABILITY OF URINALS/ LABORATORIES	36421	10236	46657
	NON-AVAILABILITY OF URINALS/LABORATORIES	37198	4294	41492

In the light of the above-noted state of affairs prevailing in majority of the government schools in the State and large

number of private recognized schools, we have not found it possible to appreciate the rationale of the competent authorities to insist on fulfillment of the condition of playground by the petitioner schools which, as mentioned above, are operating in the city of Hyderabad. We can take judicial notice of the steep escalation in the land prices in all parts of the country and particularly the cities like Hyderabad in last five years. The prices of land are beyond the reach of common man and it is extremely difficult, if not impossible for the management of a private school to find enough space near the school and to pay for the same. It appears that while amending the rules vide notification dated 11-5-2006, the government did not bear in mind the sky rocketing prices of land in the cities like Hyderabad and retained Rule 5 (7) in its present form. Therefore, the submission of Shri S. Ramachandra Rao that the government should be directed to exercise the power vested in it under Rule 21 of the 1993 Rules and relax the requirement of playground appears to be quite reasonable and merits acceptance. It is true that the condition relating to availability of playground is couched in mandatory form, but the rule-making authority itself has provided for relaxation of the rules by the State Government. It is, therefore, apposite that the government takes a holistic view of the matter and considers the feasibility of exercising its power under Rule 21 of the 1993 Rules insofar as condition relating to playing area/playground is concerned.

The argument of Shri Mohd. Abid Ali that the conditions specified/enumerated in Rules 5 and 9 violate the fundamental right guaranteed to the minority educational institutions under Rule 30(1) of the Constitution of India is liable to be rejected because none of the conditions infringes the right of minorities to establish and administer the schools. The conditions laid down by the rule-making authority are meant for the benefit of the student community and the minority educational institutions cannot claim the privilege of establishing and

running schools without providing basic amenities like adequate space, laboratories, libraries, drinking water, sanitary facilities etc.

In the result, the writ petitions are allowed. The refusal of the competent authorities constituted under the 1982 Act and/or the 1993 Rules to entertain the applications made by the petitioner schools for grant of permission/recognition is declared illegal and the following directions are issued:

- (1) The State Government shall consider the desirability of exercising power under Rule 21 of the 1993 Rules for grant of relaxation in the matter of availability of playground facility insofar as the petitioner schools are concerned and take appropriate decision within three months from the date of receipt of copy of this order.
- (2) If the State Government comes to the conclusion that due to acute scarcity of land in the city of Hyderabad, the petitioners may not be able to provide playground of the measurement specified in clause (7) of Rule 5, then the said requirement may be relaxed. Thereafter, the competent authorities shall reconsider the applications of the petitioners for grant of permission/recognition and decide the same within next three months. For this purpose, order dated 26.04.2006 passed in Writ Petition No.2058 of 2006 shall not operate as an impediment.

While disposing of the writ petitions in the manner indicated above, we deem it proper to observe that the government will, keeping in view the status of the facilities available in majority of the government schools and large number of private recognized schools in the State, do better to constitute a committee of senior officers of the department and experts to re-examine the conditions incorporated in the 1993 Rules for grant of permission/recognition. If the committee, keeping in view the prevailing scenario regarding availability of land in the bigger cities of the State, recommends modification

of Rule 5 (7), then the government may suitably amend the relevant rules. This will go a long way to facilitate establishment of private schools which may cater the need of education in different parts of the State.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

January, 2007

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