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Court No. - 7

Case :- WRIT - C No. - 6290 of 2025

Petitioner :- Krishna Kumari Thru. Her Natural Guardian Smt. Reeta And 50 Others
Respondent :- State of U.P. Thru. Addl. Chief Secy. Deptt. Of Basic Edu. Lko. And 3 Others
Counsel for Petitioner :- Lalta Prasad Misra,Prafulla Tiwari, Ramesh Kumar Dwivedi
Counsel for Respondent :- C.S.C., Rishabh Tripathi

AND

Case :- WRIT - C No. - 6292 of 2025

Petitioner :- Master Nitesh Kumar Thru. His Mother Smt. Lalli Devi And Another
Respondent :- State Of U.P. Thru. Addl. Chief Secy. Prin. Secy. Deptt. Of Basic Edu. Lko. And 4 Others
Counsel for Petitioner :- Utsav Mishra,Gaurav Mehrotra
Counsel for Respondent :- C.S.C.,Rishabh Tripathi

Hon'ble Pankaj Bhatia,J.

1. Heard Dr. L. P. Mishra assisted by Sri Prafulla Tiwari, the counsel for the petitioner of Writ C No. - 6290 of 2025 and Sri Gaurav Mehrotra along with Sri Utsav Misra and Ms. Manjari, learned Counsel appearing on behalf of the petitioners in Writ C No. 6292 of 2025 as well as Sri Anuj Kudesia, learned Additional Advocate General assisted by Sri Sailendra Kumar Singh, learned Chief Standing Counsel and Sri Ran Vijay Singh, learned Additional Chief Standing Counsel appearing on behalf of the State, and Sri Sandeep Dixit, learned Senior Advocate assisted by Sri Rishabh Tripathi and Arun Kumar Singh, learned Counsel appearing on behalf of the respondent no.4.

2. Both the above writ petitions, raises a common question, as such, are being decided by means of this common judgment.

3. Both the said writ petitions, challenge the Government Order dated 16.06.2025 (Annexure no.1) wherein directions have been issued by the Additional Chief Secretary, Basic Shiksha Department, for taking steps for pairing of the schools managed under the supervision and control of the BSA and owned by the State Government. The petitions also challenge the consequential action dated 24.06.2025 wherein the actual list of the schools, which are being paired being 105 in number has been issued.

4. Before adverting to the arguments raised by the petitioner and the respondents, I deem it appropriate to record the backdrop leading to issuance of the orders, which are impugned in the present writ petition. Right to Education, was held to be a part of Article 21 of the Constitution of India and in pursuance to the said right being declared as part of Article 21, in the 86th amendment to the Constitution, Article 21-A was inserted, which is as under:

> *"**21-A. 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."*

5. To give effect to the mandate of Article 21-A, the Central Government framed the 'Act' known as 'Right of Children to Free and Compulsory Education Act, 2009', hereinafter referred to as the 'RTE Act, 2009'. The statement of object and reason for enacting the said Act was that universal elementary education is essential for strengthening the social fabric of the democracy through the role of universal elementary education and to give effect to the directive principles of State Policy enumerated in the Constitution prescribing that the State shall endeavour to provide free and compulsory education to all the children up to the age of fourteen years and to further give effect to the mandate of Article 21-A of the Constitution,

the 'Act' in question was enacted. The Act in question is a child centric and is aimed at achieving the goals as laid down by Article 21-A. Section 2-A of the RTE Act, 2009 defines 'appropriate Government' as used in the Act and is as under :

> ***"2. Definitions -*** *In this Act, unless the context otherwise requires -*
>
> *(a) "appropriate Government" means—*
>
> *(i) in relation to a school established, owned or controlled by the Central Government, or the administrator of the Union territory, having no legislature, the Central Government;*
>
> *(ii) in relation to a school, other than the school referred to in sub-clause (i), established within the territory of—*
>
> *(A) a State, the State Government;*
>
> *(B) a Union territory having legislature, the Government of that Union territory;"*

Section 2(c) defines 'child' which means male and female child of the age of six to fourteen years.

Section 2(f) defines 'elementary education', which means the education from first class to eighth class;

Section 2(h) defines 'local authority', which is as under :

> *"2(h) local authority" means a Municipal Corporation or Municipal Council or Zila Parishad or Nagar Panchayat or Panchayat, by whatever name called, and includes such other authority or body having administrative control over the school or empowered by or under any law for the time being in force to function as a local authority in any city, town or village;*

Section 2(n) defines 'school', which is as under :

> *"2(n) "school" means any recognised school imparting elementary education and includes—*
>
> *(i) a school established, owned or controlled by the appropriate Government or a local authority;*
>
> *(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;*
>
> *(iii) a school belonging to specified category; and*
>
> *(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;"*

Section 3 of the said Act declares the intent and establishes a right in

favour of every child in between the age of six to fourteen years. Section 3 is quoted herein below:

> *"**3. Right of child to free and compulsory education.** - (1) Every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of Section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education.*
>
> *(2) For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education:*
>
> *…..*
>
> *(3) A child with disability referred to in sub-clause (A) of clause (ee) of Section 2 shall, without prejudice to the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), and a child referred to in sub-clauses (B) and (C) of clause (ee) of Section 2, have the same rights to pursue free and compulsory elementary education which children with disabilities have under the provisions of Chapter V of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995:*
>
> *Provided that a child with "multiple disabilities" referred to in clause (h) and a child with "severe disability" referred to in clause (o) of Section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999) may also have the right to opt for home-based education."*

It is also essential to note the mandate of Section 5 of the said Act, which is as under:

> *"**5. Right of transfer to other school.** - (1) Where in a school, there is no provision for completion of elementary education, a child shall have a right to seek transfer to any other school, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of Section 2, for completing his or her elementary education.*
>
> *(2) Where a child is required to move from one school to another, either within a State or outside, for any reason whatsoever, such child shall have a right to seek transfer to any other school, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of Section 2, for completing his or her elementary education.*
>
> *(3) For seeking admission in such other school, the Head-teacher or in-charge of the school where such child was last admitted, shall immediately issue the transfer certificate:*
>
> *Provided that delay in producing transfer certificate shall not be a ground for either delaying or denying admission in such other school:*
>
> *Provided further that the Head-teacher or in-charge of the school delaying issuance of transfer certificate shall be liable for disciplinary action the service rules applicable to him or her."*

Section 6 of the said Act confers the duty of appropriate government

and local authority to establish school. Section 6 is as under:

> ***"6. Duty of appropriate Government and local authority to establish school. -*** *For carrying out the provisions of this Act, the appropriate Government and the local authority shall establish, within such area or limits of neighbourhood, as may be prescribed, a school, where it is not so established, within a period of three years from the commencement of this Act.*

The share of financial and other responsibilities have been prescribed under Section 7, which is as under:

> ***"7. Sharing of financial of other responsibilities. -*** *(1) The Central Government and the State Governments shall have concurrent responsibility for providing funds for carrying out the provisions of this Act.*
>
> *(2) The Central Government shall prepare the estimates of capital and recurring expenditure for the implementation of the provisions of the Act.*
>
> *(3) The Central Government shall provide to the State Governments, as grants-in-aid of revenues, such percentage of expenditure referred to in sub-section (2) as it may determine, from time to time, in consultation with the State Governments.*
>
> *(4) The Central Government may make a request to the President to make a reference to the Finance Commission under sub-clause (d) of Clause (3) of Article 280 to examine the need for additional resources to be provided to any State Government so that the said State Government may provide its share of funds for carrying out the provisions of the Act.*
>
> *(5) Notwithstanding anything contained in sub-section (4), the State Government shall, taking into consideration the sums provided by the Central Government to a State Government under sub-section (3), and its other resources, be responsible to provide funds for implementation of the provisions of the Act.*
>
> *(6) The Central Government shall—*
>
> *(a) develop a framework of national curriculum with the help of academic authority specified under Section 29;*
>
> *(b) develop and enforce standards for training of teachers;*
>
> *(c) provide technical support and resources to the State Government for promoting innovations, researches, planning and capacity building."*

The duties of appropriate government have been prescribed under Section 8 of the Act, which are as under:

> ***8. Duties of appropriate Government.-*** *The appropriate Government shall—*
>
> *(a) provide free and compulsory elementary education to every child:*
>
> *Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds*

provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school.

Explanation.—The term "compulsory education" means obligation of the appropriate Government to—

(i) provide free elementary education to every child of the age of six to fourteen years; and

(ii) ensure compulsory admission, attendance and completion of elementary education by every child of the age of six to fourteen years;

(b) ensure availability of a neighbourhood school as specified in Section 6;

(c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;

(d) provide infrastructure including school building, teaching staff and learning equipment;

(e) provide special training facility specified in Section 4;

(f) ensure and monitor admission, attendance and completion of elementary education by every child;

(g) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;

(h) ensure timely prescribing of curriculum and courses of study for elementary education; and

(i) provide training facility for teachers."

The duties of local authorities, parents and guardians are defined under Section 9 & 10 of the said Act.

It is also essential to notice the mandate of Section 12 which prescribes for extent of school's responsibility for carrying out the intent of Article 21-A and the purpose for which the Act was enacted. Section 12(1) reads as under:

"12. Extent of school's responsibility for free and compulsory education. - *(1) For the purposes of this Act, a school,—*

(a) specified in sub-clause (i) of clause (n) of Section 2 shall provide free and compulsory elementary education to all children admitted therein;

(b) specified in sub-clause (ii) of clause (n) of Section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent;

> *(c) specified in sub-clauses (iii) and (iv) of clause (n) of Section 2 shall admit in Class I, to the extent of at least twenty-five per cent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion:"*

6. Other restrictions are prescribed from Section 13 till Section 28 of the Act and are basically related to the duties prescribed in school, the teachers etc., which are not much relevant for the purpose of the *lis* being decided by means of the present writ petition.

7. It is also essential to notice the mandate of Section 35 and 38 of the Act, which conferred the power on the Central Government to issue guidelines to the appropriate government as well as the rule making power conferred upon the governments to make the rules. Section 39 of the Act empowers the Central Government to remove difficulties that arise during the course of implementation of the provisions of the Act.

8. It is also essential to notice the schedule amended to the Act which has been heavily relied upon during the course of the argument. Section 35, 38, 39 & schedule to the Act are quoted herein below:

> *"**35. Power to issue directions:** (1) The Central Government may issue such guidelines to the appropriate Government or, as the case may be, the local authority, as it deems fit for the purpose of implementation of the provisions of this Act.*
>
> *(2) The appropriate Government may issue guidelines and give such directions, as it deems fit, to the local authority or the School Management Committee regarding implementation of the provisions of this Act.*
>
> *(3) The local authority may issue guidelines and give such directions, as it deems fit, to the School Management Committee regarding implementation of the provisions of this Act.*
>
> ***38. Power of appropriate government to make rules.** -(1) The appropriate Government may, by notification, make rules, for carrying out the provisions of this Act.*
>
> *(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—*
>
> *(a) the manner of giving special training and the time-limit thereof, under first proviso to Section 4;*
>
> *(b) the area or limits for establishment of a neighbourhood school, under Section 6;*

(c) the manner of maintenance of records of children up to the age of fourteen years, under clause (d) of Section 9;

(d) the manner and extent of reimbursement of expenditure, under sub-section (2) of Section 12;

(e) any other document for determining the age of child under sub-section (1) of Section 14;

(f) the extended period for admission and the manner of completing study if admitted after the extended period, under Section 15;

(fa) the manner and the conditions subject to which a child may be held back under sub-section (3) of Section 16;]

(g) the authority, the form and manner of making application for certificate of recognition, under sub-section (1) of Section 18;

(h) the form, the period, the manner and the conditions for issuing certificate of recognition, under sub-section (2) of Section 18;

(i) the manner of giving opportunity of hearing under second proviso to sub-section (3) of Section 18;

(j) the other functions to be performed by School Management Committee under clause (d) of sub-section (2) of Section 21;

(k) the manner of preparing School Development Plan under sub-section (1) of Section 22;

(l) the salary and allowances payable to, and the terms and conditions of service of, teacher, under sub-section (3) of Section 23;

(m) the duties to be performed by the teacher under clause (f) of sub-section (1) of Section 24;

(n) the manner of redressing grievances of teachers under sub-section (3) of Section 24.

(o) the form and manner of awarding certificate for completion of elementary education under sub-section (2) of Section 30;

(p) the authority, the manner of its constitution and the terms and conditions therefor, under sub-section (3) of Section 31;

(q) the allowances and other terms and conditions of appointment of Members of the National Advisory Council under sub-section (3) of Section 33;

(r) the allowances and other terms and conditions of appointment of Members of the State Advisory Council under sub-section (3) of Section 34.

(3) Every rule made under this Act and every notification issued under Sections 20 and 23 by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

(4) Every rule or notification made by the State Government under this Act shall be laid, as soon as may be after it is made; before the State Legislatures.

39. Power of Central Government to remove difficulties *(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:Provided that no order shall be made under this section after the expiry of three years from the commencement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2012.(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament."*

THE SCHEDULE

[See Section 19 and 25]

Norms and Standards for a School

Sl. No.	Item	Norms and Standards	
1.	Number of teachers:		
	(*a*) For first class to fifth class	Admitted children	Number of teachers
		Up to sixty	Two
		Between sixty-one to ninety	Three
		Between ninety-one to one hundred and twenty	Four
		Between one hundred and twenty-one to two hundred	Five
		Above one hundred and fifty children	Five plus one Head-teacher
		Above two hundred children	Pupil-Teacher Ratio (excluding Head-teacher) shall not exceed forty.
	(*b*) For sixth class to eighth class	(1) At least one teacher per class so that there shall be at least one teacher each for—	
		(*i*)	Science and Mathematics;
		(*ii*)	Social Studies;

Sl. No.	Item	Norms and Standards
		(*iii*) Languages.
		(2) At least one teacher for every thirty-five children
		(3) Where admission of children is above one hundred—
		(*i*) a full time head-teacher;
		(*ii*) part time instructors for—
		(A) Art Education;
		(B) Health and Physical Education;
		(C) Work Education.
1A.	Number of Special Education Teachers for children with special needs	
	(*a*) For first class to fifth class	One Special Education Teacher for every ten pupils with disabilities enrolled
	(*b*) For sixth class to eighth class	One Special Education Teacher for every fifteen pupils with disabilities enrolled Note 1 : One school and one (minimum) special education teacher norms remains intact. Note 2 : Adhoc or special provision of Itinerant Special Education Teacher under special circumstances as per the Pupil Teacher Ratio specified above may be done in cluster of schools in case of— (*i*) adequate number of special education teachers are not available, (*ii*) school is a single teacher school having only one general education teacher. This may be done with the conditions that the allotment of,— (*i*) not more than four schools; and (*ii*) distance between any two allotted schools should not be more than five kilometers so that Special Education Teacher gets the required time to provide

Sl. No.	Item	Norms and Standards
		necessary interventions at each school level. Note 3 : The condition of number of schools and distance covered under Note 2 shall remain intact till minimum of fifty per cent of the Pupil Teacher Ratio is maintained and, the Special Education Teacher and schools make effort to bring more students with disabilities to classrooms to maintain required Pupil Teacher Ratio. In case the minimum fifty per cent of Pupil Teacher Ratio is not achieved, one by one nearby schools shall be added.]
2.	Building	All-weather building consisting of— (*i*) at least one class-room for every teacher and an officer-cum-store-cum Head teacher's room; (*ii*) barrier-free access; (*iii*) separate toilets for boys and girls; (*iv*) safe and adequate drinking water facility to all children; (*v*) a kitchen where mid-day meal is cooked in the school; (*vi*) playground; (*vii*) arrangements for securing the school building by boundary wall or fencing.
3.	Minimum number of working days/instructional hours in an academic year	(*i*) two hundred working days for first class to fifth class; (*ii*) two hundred and twenty working days for sixth class to eighth class; (*iii*) eight hundred instructional hours per academic year for first class to fifth class; (*iv*) one thousand instructional hours per academic year for sixth class to eighth class.
4.	Minimum number of working hours per week for the teacher	Forty-five teaching including preparation hours.
5.	Teaching learning	Shall be provided to each class as required.

Sl. No.	Item	Norms and Standards
	equipment	
6.	Library	There shall be a library in each school providing newspaper, magazines and books on all subjects, including story-books..
7.	Play material, games and sports equipment	Shall be provided to each class as required.

9. It is also essential to notice that in the backdrop of the statutory provisions under the RTE Act, Rules have been framed by the Central Government known as 'Right of Children to Free and Compulsory Education Rules, 2010. Similarly, in exercise of power conferred by virtue of Section 38 of the RTE Act, 2009 the State Government has also framed Rules, known as 'The Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011, hereinafter referred to as 'U.P. Rules, 2011'. Rule 4(1), Rule 4(2) & Rule 4(3) are quoted herein below:

> *"**4. Areas or limits of neighbourhood (section-6) -** (1) The area or limit of neighbourhood within which a school has to be established by the Committee authorized by the State Government, shall be as under -*
>
> > *(a) in respect of children in classes I-V, a school shall be established in habitation which has no school within a distance of 1.0 Km. and has population of at least 300;*
> >
> > *(b) in respect of children in classes VI-VIII, a school shall be established in habitation which has no school within a distance of 3.0 km. and has population of at least 800.*
> >
> > ***Explanation:** For the purposes of this rule the expression "Committee authorized by the State Government" shall mean the Committee established under section-10 or section-10 A, as the case may be, of the Uttar Pradesh Basic Education Act, 1972.*
>
> *(2) For children from such areas where it is not possible to provide school within the radius of neighbourhood specified under sub-rule (1), the State Government shall make adequate arrangements, such as free transportation, residential facilities etc. in relaxation of the provisions specified under sub-rule (1).*
>
> *(3) The local authority i.e. Gram Panchayat/Nagar Nigam/Nagar Palika/ Nagar Panchayat as the case may be shall identify a neighbourhood*

school where children can be admitted and make such information public for each habitation within its jurisdiction."

10. It is also essential to notice that in exercise of power under section 35, the Central Government has issued a National Education Policy 2020, hereinafter referred to as 'NEP 2020' prescribing for various measures to be taken in the interest of the children and for improving the infrastructure etc. of the basic schools, to give effect to the mandate of the Act as well as the constitutional mandate cast upon the government. It is also essential to notice that after the issuance of the National Education Policy, various Government Orders have been issued, forming committees for implementation of the guidelines issued in the NEP 2020.

11. The learned Additional Advocate General Sri Anuj Kudesia has also placed before this Court the minutes of conference of Chief Secretaries held on various occasions, wherein, the intent to implement the NEP 2020 was reiterated with further directions to take adequate steps. He also places on record material to demonstrate that in furtherance of the said steps, pilot project has been undertaken by the State of U.P. in the district of Gautam Buddh Nagar. It is also brought on record that the guidelines with regard to the consolidation of schools have been undertaken.

12. In the light of the said, statutory provisions quoted herein above, I proceed to record the respective arguments raised by the parties, in support of their challenge and in support of the defense by the State.

13. Dr. L. P. Misra appearing on behalf of the petitioner, argues that in terms of the mandate of Section 6 of the Act, the duty is cast upon the appropriate government/local authority to establish within such area or limits of neighbourhood, as may be prescribed, a school, within a period of three years from the commencement of the Act. He argues that the Kerala High Court, while dealing with the mandate of

Section 6 of the Act, had held that for the purposes of classification, the respective class in which the students is to study, is to be taken as a criteria and not the school as a whole, as has been done by means of the Government Order. Extensive reliance is placed by him on the judgment of the Kerala High Court, in the case of the ***Kerala Aided L.P and U.P. School, Managers Association vs. State of Kerala; W.P. (C) No.19008 of 2013 (A) decided on 17.12.2015.*** He further draws my attention to the word 'neighbourhood' as used in Rule 4(a) of the U.P. Rules to argue that in terms of the prescription which is in the form of Rules made by the State Government, it is a duty to establish a school in habitation which has no school within a distance of one kilometre and has a population of at least 300. Similar duty is cast upon the State Government in respect of children who are studying in class sixth to eight to establish a school within a distance of three kilometres and has a population of 800. He, thus, argues that in terms of Article 21-A, which itself includes the phrase *as may be prescribed* 'which are in the form of Act enacted by the Central Government and the Rules framed by the Central Government as well as the State Government', it is incumbent to establish a school within a distance of one kilometre, where the population of habitation is 300. He further argues that on one hand, the State Government is yet to take steps to fulfil the mandate cast upon it by virtue of Article 21-A, the RTE Act as well as the State Rules, on the other hand, the impugned Policy decision, wipes away the schools which are already established and are existing leading to a lot of inconvenience to the children, who would now have to attend the paired school which is at a distance of more than one kilometre, which according to him, is bad in law. It is specifically emphasised by Dr. L. P. Misra that Article 21-A, on its plain reading would include, *the manner* as laid down under Article 21-A which has to be read as a whole.

14. Sri Gaurav Mehrotra, Advocate, appearing on behalf of the petitioner in Writ-C No. 6292 of 2025 also draws my attention to the mandate of Article 21-A, which he argues, is in furtherance of the directive principles of State Policy. He also draws my attention to Article 51-A of the Constitution, which prescribes for the fundamental duties. Article 51-A (k) is quoted herein below:

> ***"51-A. Fundamental duties -*** *It shall be the duty of every citizen of India—*
>
> *(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.*

15. He further argues that the executive instructions, impugned in the present writ petition, particularly Annexure no.1, is neither a Government Order, nor comes within the definition of *law* as prescribed under Article 13, particularly as, it seeks to take away the rights which are guaranteed under Article 21-A, the same being a part of Chapter III. He argues that it is clearly well settled that, the fundamental rights, in the present case guaranteed by Article 21-A, cannot be amended except in accordance with law and certainly not through the executive instructions as is being done.

16. To buttress his submission that Article 21-A, is being violated, he argues that in view of the paring of the school, the same would result in closure of the schools in which, the students are studying at present and, thus they would have to attend the schools which are at a distance of more than one kilometre, which according to him, is contrary to the rights conferred upon the children under Article 21-A, read in conjunction with the Rules framed by the State particularly Rule 4(1)(a) of the U.P. Rules. The judgments relied upon by the parties shall be dealt subsequently.

17. Controverting the arguments of the petitioner, as recorded above, Sri Anuj Kudesia, the learned Additional Advocate General

argues that the entire case, in challenging the executive instructions, which according to him is a Government Order is misplaced as no such action is being taken so as to deny the rights as are guaranteed under Article 21-A, read with the mandate of RTE Act. He argues that in terms of the intent of the Central Government as expressed in the NEP 2020, which included, action for paring in consolidation of the schools to optimise the use of human resources and other resources, the present government order has been issued. He further argues that even in terms of the prayers made, the only challenge to the Government Order is to that part of the order, which prescribes for paring of the schools. He argues that even after the paring, the State Government is bound to ensure that free and compulsory education is provided to all children including the petitioners herein for which requisite directions have been issued. He further argues that although the RTE Act is confined to children aged between six to fourteen, considering the necessity that is arising, steps are being taken by the State Government for providing educational and infrastructural requirements for pre-school education and the schools, which become vacant on account of paring will be used for the said purpose, which is also in furtherance of the aim of the State Government to promote education across all age groups.

18. He draws my attention to a chart filed to argue that as many as fifty eight schools have zero students and thus, the infrastructure is not being used adequately. He also draws my attention to the chart, to argue that the student strength in various school is skewed and to rectify the said, the present government order has been issued. He also argues that on the strength of the Rules of business to argue that the Additional Chief Secretary is well empowered under the Rules to issue the Government Order and thus, the argument of the petitioner that Annexure no.1 is a mere executive instructions and not a

Government Order, is liable to be rejected according to him.

19. In short, he submits that the argument of the petitioner are ill founded inasmuch as even after the issuance of Annexure no.1 & 2, the rights conferred by the virtue of Article 21-A and the RTE Act, are not adversely effected. He also argues that in fact, the executive instructions are nothing but steps in furtherance of the NEP 2020 which itself has been issued in exercise of the power conferred upon the Central Government by virtue of Section 35 of RTE Act. He thus, argues that the State Government has taken a policy decision for optimizing its resources and for taking steps for better education and modern facilities is to be provided for the children to ensure that the State Government is able to take steps for enforcement of its duties as are prescribed under the Act and the Rules framed thereunder. He argues that in terms of the Constitution and the Act, although a duty is cast upon the Government and the local authority to ensure and provide free and compulsory education, the said objective would not be met properly if, the education provided is not of utmost quality, which is being aimed by the State Government. He draws my attention to the various provisions of the Government Order which are in the nature of providing better and modern facilities to the students. In paring the schools, which are according to him, are steps in furtherance of improving the quality of education apart from fulfilling the mandate cast upon the Government.

20. He lastly argues that the petitioners could not demonstrate by any verified data that the implementation of the policy of pairing would in effect result in negating the right which are vested by virtue of Article 21-A of the Constitution. He also argues that it is well and truly established that a policy decision, cannot be set aside unless it is alleged and established that there is a malafide or arbitrariness on the part of the State Government, which according to him are utterly

missing in the pleadings or even in the argument raised by the petitioners. He thus, submits that the petitions are liable to be dismissed.

21. Shri Sandeep Dixit, learned Senior Advocate who appears for respondent no.2 argues and draws my attention to the provisions of Section 2(n) of RTE Act to argue that the definition of "School" referred to the RTE Act includes private schools also apart from the government schools which are affected by the policy in question and thus, in terms of the mandate of Section 12, the rights as vested in the children are not going to be adversely affected.

22. He also draws my attention to the mandate of Rule 4(2) of U.P. Rules to argue that the Rules itself carve out an exception to Rule 4(1) keeping in view the requirements that may be felt in the future and a further duty is cast upon the State Government to make adequate free transportation, etc., for the furtherance of the object of the Act and in the present petition, either in the petition or in the arguments, nothing has been argued or established to suggest that the State Government is shirking from its responsibilities.

23. He argues that in the light of the mandate of Rule 4(2) of the U.P. Rules, it cannot be argued that Rule 4(1)(a) is so sacrosanct that not following the same literally would lead to a conclusion that the State Government is shying away from its responsibilities to comply with the obligations cast upon the Government under the Act and the Rules framed thereunder.

24. He argues that out of the total 3521 schools, only 246 schools are sought to be paired and in fact, orders have been passed only in respect of 210 schools which is a minuscule percentage. He argues that the argument with regard to the distance of 1 km in the light of mandate of Rule 4(1)(a) is flawed and liable to be outrightly rejected keeping in view the geographical constraints as well as the other

administrative and financial constraints that may be faced by the State Government/Local Authorities in implementation of the mandate cast upon them for which Rule 4(2) provides for adequate safeguards and measures.

25. In the light of the said, it is argued that the writ petition, based upon the pleadings, is liable to be dismissed.

26. Coming to the judgments cited by both the parties:

27. Learned counsel for the petitioners have relied upon a judgment of the Rajasthan High Court passed in ***S.B. Civil Writ Petition No.8990 of 2016 (Jule Khan Bai & Anr. v. The State of Rajasthan and Ors.)*** decided on ***20.07.2019*** to argue that a similar point with regard to the distance as specified in Rule 4(1) of the U.P. Rules was also under consideration. It is argued that the High Court after considering the mandate of Article 21A of the Constitution, the RTE Act and the Rules framed thereunder had set aside an order of merger passed by the Government of Rajasthan. Reliance is also placed upon Para 7 and Para 12 of the said judgment, which read as under:

> *"7. Indisputably, the right to education is basic human right, essential for empowerment and development of an individual and the society as a whole. In the first instance, by way of Article 45, a duty was casted upon the States to make endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory d compulsory education for all children until they complete the age of 14 years. Later, by way of Constitution (Eighty-Sixth Amendment) Act, 2002 ("the Amendment Act, 2002"), the Article 45 was substituted in terms that the State shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years. But, at the same time, vide Amendment Act, 2002, the Right to Education was recognized as fundamental right by inserting Article 21A in the part III of the Constitution, which reads as under:*
>
> > *"21A. Right to education. The State shall provide free and compulsory education all children of the age of six to fourteen years in such manner as the State may, by law, determine."*
>
> *12. In the result, the writ petition is allowed. The order impugned issued by the Joint Secretary, Elementary Education, Government of Rajasthan, directing merger of the Government Primary School, Rikhiyani in Government Upper Primary School, Sagoroliya, is quashed. Needless to say that while restoring the Government Primary School, Rikhiyani, the respondents shall ensure that the children of the age 6 to 14 years of*

village Rikhiyani are imparted free education upto class VIII, as mandated by the provisions of RTE Act. No order as to costs."

28. A perusal of the said judgment reveals that in terms of the policy issued by the State of Rajasthan, it was alleged by the petitioners before the Rajasthan High Court that after the division of the revenue village, a new revenue village was created and thus, the order of merger of a primary school in the same revenue village was contrary to the policy decision. It was also stated that the school in which the institution in question was merged was situated at a distance of 8 km from the revenue village. The Court also considered the mandate of Article 21A of the Constitution as well as the mandate of Section 6 of RTE Act and finding that the distance of 8 km for the child aged about 6 to 14 years was *ex facie* violative of the provisions of Section 6 of the RTE Act, set aside the same. The pleadings in the present case as well as the grounds for challenge in the present case were neither pleaded nor adverted to, as such, the said judgment does not lay down any precedent in respect of arguments raised here.

29. The next judgment cited by learned counsel for the petitioners a judgment of the Rajasthan High Court in ***S.B. Civil Writ Petition No.353 of 2015 (Smt. Meera Jha v. The State of Raj. & Ors.)*** decided on ***18.02.2015*** wherein a similar issue was under consideration and the Court after considering the order of merger of schools, dismissed the writ petition, however, the said judgment admittedly was passed without taking into consideration the mandate of Article 21A of the Constitution, the provisions of the RTE Act and the arguments raised before this Court were neither raised before the Rajasthan High Court nor were considered, as such, has no precedential value.

30. Reliance is also placed upon an interim order passed by a Division of the High Court of Uttarakhand at Nainital in ***Writ Petition***

(PIL) No.39 of 2020 (Ganesh Chandra Upadhyay v. State of Uttarakhand and Ors.) dated ***18.03.2020*** wherein it was argued that school in question was temporarily attached to a nearby school which was as a distance of 4 km. The Court considering the mandate of the RTE Act and Rule 4 framed by the State Government entertained the writ petition and has stayed the order during the pendency of the petition.

31. The said being an interlocutory order does not lay down any ratio and as such, cannot be considered for deciding the issues as raised before this Court.

32. Learned counsel for the petitioners has also placed reliance on the judgment of the Supreme Court in the case of ***Union of India v. Naveen Jindal and Anr.; (2004) 2 SCC 510*** with emphasis on Paras 28 to 31, which are as under:

> *"28. Before we proceed further, it is necessary to deal with the question, whether Flag Code is "law"? Flag Code concededly contains the executive instructions of the Central Government. It is stated that the Ministry of Home Affairs, which is competent to issue the instructions contained in the Flag Code and all matters relating thereto are one of the items of business allocated to the said Ministry by the President under the Government of India (Allocation of Business) Rules, 1961 framed in terms of Article 77 of the Constitution of India. The question, however, is as to whether the said executive instruction is "law" within the meaning of Article 13 of the Constitution of India. Article 13(3)(a) of the Constitution of India reads thus:*
>
> > *"13.(3)(a) 'law' includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;*
>
> *29. A bare perusal of the said provision would clearly go to show that executive instructions would not fall within the aforementioned category. Such executive instructions may have the force of law for some other purposes; as for example those instructions which are issued as a supplement to the legislative power in terms of clause (1) of Article 77 of the Constitution of India. The necessity as regards determination of the said question has arisen as Parliament has not chosen to enact a statute which would confer at least a statutory right upon a citizen of India to fly the National Flag. An executive instruction issued by the appellant herein can any time be replaced by another set of executive instructions and thus deprive Indian citizens from flying National Flag. Furthermore, such a question will also arise in the event if it be held that right to fly the National Flag is a fundamental or a natural right within the meaning of Article 19 of the Constitution of India; as for the purpose of regulating the*

exercise of right of freedom guaranteed under Articles 19(1)(a) to (e) and (g) a law must be made.

30. In Kharak Singh v. State of U.P. [AIR 1963 SC 1295 : (1963) 2 Cri LJ 329] this Court held: (AIR p. 1299, para 5)

> *"Though learned counsel for the respondent started by attempting such a justification by invoking Section 12 of the Indian Police Act he gave this up and conceded that the regulations contained in Chapter XX had no such statutory basis but were merely executive or departmental instructions framed for the guidance of the police officers. They would not therefore be 'a law' which the State is entitled to make under the relevant clauses (2) to (6) of Article 19 in order to regulate or curtail fundamental rights guaranteed by the several sub-clauses of Article 19(1), nor would the same be 'a procedure established by law' within Article 21. The position therefore is that if the action of the police which is the arm of the executive of the State is found to infringe any of the freedoms guaranteed to the petitioner the petitioner would be entitled to the relief of mandamus which he seeks, to restrain the State from taking action under the regulations."*

31. To the same effect are the decisions of this Court in State of M.P. v. Thakur Bharat Singh [AIR 1967 SC 1170] and Bijoe Emmanuel v. State of Kerala [(1986) 3 SCC 615]."

33. In the light of the said observations, it is proposed to be argued that before the Supreme Court also it was argued and was upheld that 'Flag Code' neither being a 'Government Order' nor 'law' as prescribed under Article 13 of the Constitution, cannot supersede the constitutional provisions particularly Part III, which is also the case of the petitioners herein against the impugned orders.

34. Similar reliance is based upon the judgment of the Supreme Court in the case of ***Bijoe Emmanuel and Ors. v. State of Kerala and Ors.; (1986) 3 SCC 615*** with emphasis on Paras 9 & 16, which are quoted herein below:

> *"9. Article 19(1)(a) of the Constitution guarantees to all citizens freedom of speech and expression, but Article 19(2) provides that nothing in Article 19(1)(a) shall prevent a State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Article 25(1) guarantees to all persons freedom of conscience and the right freely to profess, practise and propagate religion, subject to order, morality and health and to the other provisions of Part III of the Constitution. Now, we have to examine*

whether the ban imposed by the Kerala education authorities against silence when the National Anthem is sung on pain of expulsion from the school is consistent with the rights guaranteed by Articles 19(1)(a) and 25 of the Constitution.

16. We have referred to Article 19(1)(a) which guarantees to all citizens freedom of speech and expression and to Article 19(2) which provides that nothing in Article 19(1)(a) shall prevent a State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by Article 19(1)(a) in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. The law is now well settled that any law which be made under clauses (2) to (6) of Article 19 to regulate the exercise of the right to the freedoms guaranteed by Article 19(1)(a) to (e) and (g) must be "a law" having statutory force and not a mere executive or departmental instruction. In Kharak Singh v. State of U.P. [AIR 1963 SC 1295, 1299 : (1964) 1 SCR 332] the question arose whether a police regulation which was a mere departmental instruction, having no statutory basis could be said to be a law for the purpose of Article 19(2) to (6). The Constitution Bench answered the question in the negative and said:

> *"Though learned counsel for the respondent started by attempting such a justification by invoking Section 12 of the Indian Police Act he gave this up and conceded that the regulations contained in Chapter XX had no such statutory basis but were merely executive or departmental instructions framed for the guidance of the police officers. They would not therefore be 'a law' which the State is entitled to make under the relevant clauses (2) to (6) of Article 19 in order to regulate or curtail fundamental rights guaranteed by the several sub-clauses of Article 19(1), nor would the same be 'a procedure established by law' within Article 21. The position therefore is that if the action of the police which is the arm of the executive of the State is found to infringe any of the freedoms guaranteed to the petitioner the petitioner would be entitled to the relief of mandamus which he seeks, to restrain the State from taking action under the regulations."*

35. The said paragraphs are cited again to buttress the submission that the executive instructions cannot override the Constitution/statutory provisions.

36. Shri Gaurav Mehrotra, learned counsel for the petitioners has also cited and argued that the State is under obligation to provide school to the children in the neighbourhood as per the mandate of Rule 4 & Rule 6 of the State Rules, which mandates the need for setting up school within the distance of 1 km. Reliance is also placed in that regard in the case of ***Jule Khan Bai (supra)*****.**

37. Reliance is also placed on the judgment of the Supreme Court in the case of ***B.N. Nagarajan and Ors. v. State of Mysore and Ors.; AIR 1966 SC 1942*** with emphasis on Para 5, which is quoted herein below:

> *"5. It would be convenient to deal with this argument at this stage. Mr Nambiar contends that the words "shall be as set forth in the rules of recruitment of such service specially made in that behalf" clearly show that till the rules are made in that behalf no recruitment can be made to any service. We are unable to accept this contention. First it is not obligatory under proviso to Article 309 to make rules of recruitment, etc., before a service can be constituted or a post created or filled. This is not to say that it is not desirable that ordinarily rules should be made on all matters which are susceptible of being embodied in rules. Secondly, the State Government has executive power, in relation to all matters with respect to which the Legislature of the State has power, to make laws. It follows from this that the State Government will have executive power in respect of List II, Entry 41, State Public Services. It was settled by this Court in Ram Jawava Kapur v. State of Punjab [(1955) 2 SCR 225] that it is not necessary that there must be a law already in existence before the executive is enabled to function and that the powers of the executive are limited merely to the carrying out of these laws. We see nothing in the terms of Article 309 of the Constitution which abridges the power of the executive to act under Article 162 of the Constitution without a law. It is hardly necessary to mention that if there is a statutory rule or an act on the matter, the executive must abide by that act or rule and it cannot in exercise of the executive power under Article 162 of the Constitution ignore or act contrary to that rule or act."*

38. Reliance is also placed upon the judgment of the Supreme Court in the case of ***Delhi Development Authority and Anr. v. Joint Action Committee, Allottee of SFS Flats and Ors.; (2008) 2 SCC 672*** to argue that executive order cannot bypass the fundamental rights and a policy decision is not beyond scope of judicial review.

39. Reliance is also placed upon the judgment of the Kerala High Court in the case of ***Kerala Aided L.P. & U.P. School (supra)*** to argue that the Kerala High Court had held that the prescriptions contained with regard to pupil teacher ratio have to be scrupulously followed and have to be interpreted to be *class* wise and not *school* wise, whereas the impugned policy is based upon considering the pairing of the institution on school wise basis and not class wise basis.

40. The said judgment would be of no avail as the issue before the

Kerala High Court was with regard to the appointment of teachers in consonance with the prescriptions contained in schedule appended to the RTE Act which was interpreted to mean that the said ratio has to be class wise and not school wise.

41. The State, on the other hand, places extensive reliance on the Division Bench judgment of the Odisha High Court in the case of ***State of Odisha & Ors. v. School Managing Committee of Amaramunda Government Primary School (W.A. No.417 of 2021)*** decided on ***29.10.2024*** wherein the Single Judge of the Odisha High Court had set aside the similar provision where the school was being established at a distance of more than 1 km, however, the appellate Court set aside the said order. Specific reliance is placed upon Paras 67, 68 & 73 of the said judgment.

42. In respect of the said judgment, learned counsel for the petitioners argue that the said judgment cannot be considered as a precedent in the facts of the present case as admittedly learned Single Judge had, on the basis of personal knowledge and placing reliance on Google Maps, recorded finding of fact that the distance in between the merged schools were more than 1 km, which was found to be incorrect and thus, the appellate Court had intervened.

43. The State has also placed reliance upon the judgment of the Supreme Court in the case of ***Shamsher Singh v. State of Punjab and Anr.; (1974) 2 SCC 831*** with emphasis on Paras 28, 29 & 48, which are quoted herein below, to argue that the decision in question is a Government Order:

> *"28. Under the Cabinet system of Government as embodied in our Constitution the Governor is the constitutional or formal head of the State and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion.*
>
> *29. The executive power is generally described as the residue which does not fall within the legislative or judicial power. But executive power may*

also partake of legislative or judicial actions. All powers and functions of the President except his legislative powers as for example in Article 123 viz. ordinance making power and all powers and functions of the Governor except his legislative power as for example in Article 213 being ordinance making powers are executive powers of the Union vested in the President under Article 53(1) in one case and are executive powers of the State vested in the Governor under Article 154(1) in the other case. Clause (2) or clause (3) of Article 77 is not limited in its operation to the executive action of the Government of India under clause (1) of Article 77. Similarly, clause (2) or clause (3) of Article 166 is not limited in its operation to the executive action of the Government of the State under clause (1) of Article 166. The expression "Business of the Government of India" in clause (3) of Article 77, and the expression "Business of the Government of the State" in clause (3) of Article 166 includes all executive business.

48. The President as well as the Governor is the constitutional or formal head. The President as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise by the President or the Governor of any power or function, the satisfaction required by the Constitution is not the personal satisfaction of the President or Governor but the satisfaction of the President or Governor in the constitutional sense in the Cabinet system of Government, that is, satisfaction of his Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. The decision of any Minister or officer under Rules of Business made under any of these two Articles 77(3) and 166(3) is the decision of the President or the Governor respectively. These articles did not provide for any delegation. Therefore, the decision of a Minister or officer under the Rules of Business is the decision of the President or the Governor."

44. In the backdrop of the arguments rendered in between the parties, Shri L.P. Mishra, learned counsel for the petitioners, during the course of the hearing argued that even if the order impugned contained in Annexure – 1 is held to be a Government Order, still the same needs to be struck down as admittedly a Government Order cannot supersede the fundamental rights and does not qualify to be a law as prescribed under Article 13 of the Constitution.

45. Considering the rival arguments and the pleadings as well as the judgments referred above, the points that emerge for determination are:

(1) whether the Annexure – 1 & Annexure – 2, the policy

decisions of the State for pairing and merging the school, offend Article 21A of the Constitution or any provisions of the RTE Act and the Rules framed by the State Government thereunder ?

(2) whether the decision of the State Government is manifestly arbitrary requiring the setting aside of the same on account of violation of the rights of the children guaranteed under Article 21A of the Constitution read with RTE Act and the Rules framed thereunder ?

(3) whether the impugned Government Orders, not being the law as prescribed under Article 13 of the Constitution, have to be struck down on that account, as argued ?

46. Considering the said points that primarily emerge for consideration by this Court, it is essential to keep in mind fairly well settled position that scope for judicial review of policy decisions is very limited and is available only if it is demonstrated that any fundamental rights are adversely affected or is manifestly arbitrary or tainted with malafides. Reference can be drawn from the judgment of the Supreme Court in the case of ***State of Maharashtra & Anr. v. Lok Shikshan Sanstha & Ors.; (1971) 2 SCC 410,*** Para 9, which is as under:

> *"9. Before we deal with the above contentions advanced before us on behalf of both sides, it is necessary to state that the High Court in the judgment under attack has made certain observations regarding what according to it should be the policy adopted by the educational authorities in the matter of permitting the starting of a new school or of an additional school in a particular locality or area. It is enough to state that the High Court has thoroughly misunderstood the nature of the jurisdiction that was exercised by it when dealing with the claims of the two writ petitioners that their applications had not been wrongly rejected by the educational authorities. So long as there is no violation of any fundamental rights and if the principles of natural justice are not offended, it was not for the High Court to lay down the policy that should be adopted by the educational authorities in the matter of granting permission for starting schools. The question of policy is essentially for the State and such policy will depend upon an overall assessment and summary of the requirements of residents of a particular locality and other categories of persons for whom it is essential to provide facilities for education. If the overall assessment is arrived at after a proper classification on a reasonable basis, it is not for the courts to interfere with the policy leading up to such assessment."*

47. Similarly, in the case of ***Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kumar Seth Etc.; (1984) 4 SCC 27,*** the Supreme Court has held as under:

> *"16. In our opinion, the aforesaid approach made by the High Court is wholly incorrect and fallacious. The Court cannot sit in judgment over the wisdom of the policy evolved by the Legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The Legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution. None of these vitiating factors are shown to exist in the present case and hence there was no scope at all for the High Court to invalidate the provision contained in clause (3) of Regulation 104 as ultra vires on the grounds of its being in excess of the regulation-making power conferred on the Board. Equally untenable, in our opinion, is the next and last ground by the High Court for striking down clause (3) of Regulation 104 as unreasonable, namely, that it is in the nature of a bye-law and is ultra vires on the ground of its being an unreasonable provision. It is clear from the scheme of the Act and more particularly. Sections 18, 19 and 34 that the Legislature has laid down in broad terms its policy to provide for the establishment of a State Board and Divisional Boards to regulate matters pertaining to secondary and higher secondary education in the State and it has authorised the State Government in the first instance and subsequently the Board to enunciate the details for carrying into effect the purposes of the Act by framing regulations. It is a common legislative practice that the Legislature may choose to lay down only the general policy and leave to its delegate to make detailed provisions for carrying into effect the said policy and effectuate the purposes of the statute by framing rules/regulations which are in the nature of subordinate legislation. Section 3(39) of the Bombay General clauses Act, 1904, which defines the expression "rule" states:"Rule shall mean a rule made in exercise of the power under any enactment and shall include any regulation made under a rule or under any enactment". It is important to notice that a distinct power of making bye-laws has been conferred by the Act on the State Board under Section 38. The Legislature has thus maintained in the statute in question a clear distinction between "bye-laws" and "regulations". The bye-laws to be framed under Section 38 are to relate only to procedural matters concerning the holding of meetings of the State Board, Divisional Boards and the Committee, the quorum required, etc. More important matters affecting the rights of parties and*

laying down the manner in which the provisions of the Act are to be carried into effect have been reserved to be provided for by regulations made under Section 36. The Legislature, while enacting Sections 36 and 38, must be assumed to have been fully aware of the niceties of the legal position governing the distinction between rules/regulations properly so called and bye-laws. When the statute contains a clear indication that the distinct regulation-making power conferred under Section 36 was not intended as a power merely to frame bye-laws, it is not open to the Court to ignore the same and treat the regulations made under Section 36 as mere bye-laws in order to bring them within the scope of justiciability by applying the test of reasonableness."

48. Similarly, the Supreme Court in the case of ***Narmada Bachao Andolan v. Union of India & Ors.; (2000) 10 SCC 664,*** has emphasized that the Court should not transgress into the field of policy decision, although it is the duty of the Court to see that the decision does not violate any law or any fundamental rights except to the extent permissible under the Constitution.

49. Similarly, the Supreme Court in the case of ***Delhi Development Authority (supra)***, broadly laid down the grounds on which a policy decision can be interfered through a judicial review only if it is unconstitutional.

"65. Broadly, a policy decision is subject to judicial review on the following grounds:

(a) if it is unconstitutional;
(b) if it is dehors the provisions of the Act and the regulations;
(c) if the delegatee has acted beyond its power of delegation;
(d) if the executive policy is contrary to the statutory or a larger policy."

50. Keeping in view the narrow scope of judicial review, the Court is to see whether the orders impugned violate any right guaranteed under 21A of the Constitution or not ?

51. With regard to the question whether Annexure – 1, the order impugned, is a Government Order or not will not be of much importance as the said order is in furtherance to the National Education Policy, 2020, which has been issued in exercise of powers under Section 35 and provides for efficient resourcing and effective governance through school complexes and clusters in Para 7, which is

quoted herein below:

> ***"7. Efficient Resourcing and Effective Governance through School Complexes/Clusters***
>
> *7.1. While the establishment of primary schools in every habitation across the country-driven by the Sarva Shiksha Abhiyan (SSA), now subsumed under the Samagra Shiksha Scheme and other important efforts across the States - has helped to ensure near-universal access to primary schools, it has also led to the development of numerous very small schools. According to U-DISE 2016-17 data, nearly 28% of India's public primary schools and 14.8% of India's upper primary schools have less than 30 students. The average number of students per grade in the elementary schooling system (primary and upper primary, i.e., Grades 1-8) is about 14, with a notable proportion having below 6; during the year 2016-17, there were 1,08,017 single-teacher schools, the majority of them (85743) being primary schools serving Grades 1-5.*
>
> *7.2. These small school sizes have rendered it economically suboptimal and operationally complex to run good schools, in terms of deployment of teachers as well as the provision of critical physical resources. Teachers often teach multiple grades at a time, and teach multiple subjects, including subjects in which they may have no prior background; key areas such as music, arts, and sports are too often simply not taught; and physical resources, such as lab and sports equipment and library books, are simply not available across schools.*
>
> *7.3. The isolation of small schools also has a negative effect on education and the teaching-learning process. Teachers function best in communities and teams, and so do students. Small schools also present a systemic challenge for governance and management. The geographical dispersion, challenging access conditions, and the very large numbers of schools make it difficult to reach all schools equally. Administrative structures have not been aligned with the increases in the number of school or with the unified structure of the Samagra Shiksha Scheme."*

52. In terms of the said policy decision, a decision has been taken through the impugned orders, Annexure – 1 which is nothing but an action in furtherance to the National Education Policy, 2020. Interestingly, there is no challenge to the National Education Policy, 2020 in the present case. The Annexure – 1 and Annexure – 2 only being an action in furtherance of National Education Policy, 2020 cannot be subjected to judicial review in the absence of there being any challenge to the foundation which is National Education Policy, 2020, which authorizes and prescribes for consolidation of small schools which have been rendered economically suboptimal and operationally complex to run and are posing a systematic challenge to

governance and management and thus, on that count itself, the writ petition is liable to be dismissed.

53. Considering the arguments it is to be seen, whether simply by pairing of schools it can be presumed that the same would result in violation of Article 21A of the Constitution, the same again merits rejection as on a plain reading of Section 21A, the mandate is to provide free and compulsory education to the children in between the age of six and fourteen years in such manner as the State may by law determine. The mandate of Article 21A of Constitution cannot be presumed to be decided to hold that the free and compulsory education to the children in between the age of six and fourteen years have to be provided by the State within a distance of 1 km, as is being argued. Even if, for the sake of argument, it is accepted that the manner as prescribed and written under Article 21A of the Constitution would include the rules merely because there is some infraction of the Rule as framed by the State, which can be termed *in the said manner* as used under Article 21A, the same *ipso facto* would not result in violation of Article 21A of the Constitution, thus, the argument that merely because the distance of the educational institutions after pairing is given effect to, would result in the school being established at a distance of more than 1 km and thus, would result in violation of rights conferred under Article 21A of the Constitution, merits rejection and is accordingly rejected.

54. Considering the mandate of the Rules framed in exercise of powers conferred upon the State by the RTE Act being rule 4(1), which have been framed in exercise of powers conferred under Section 38 of the RTE Act and are the foundation for the entire argument as raised by the petitioners, needs to be interpreted by this Court.

55. On the one hand, the petitioners have argued that in terms of the

mandate cast under Rule 4(1)(a), it is incumbent for the State Government to establish school in respect of children from Class 1 to 5 in the habitation where there is no school within a distance of 1 km and the habitation having a population of at least 300.

56. On the literal interpretation of the said Rule as proposed to be argued by the petitioners, what transpires is that in every habitation of 300, a school has to be established within 1 km of there being 300 inhabitants. In fact, it has also been argued by Dr. L.P. Mishra, learned counsel appearing for the petitioners, that the 300 inhabitants would mean 300 persons and would not necessarily mean 300 children, thus, even if there is one child, a school has to be established.

57. Whereas, on the other hand, as per the State, the duty to establish school within 1 km has to be interpreted in a manner that the same does not become absolutely unworkable and in the present case, the distances ranges from 1 km to approx. 2 – 2.5 km.

58. If the literal construction of the Rule is to be followed, the same would result in absolute absurdity as the Rules are applicable throughout the State of Uttar Pradesh from rural areas to semi urban areas and to urban areas where there are limitations of availability of the land and other resources; in fact the approximate population of the State is 24 crore and if the arguments of petitioner are to be accepted that for every 300 inhabitants one school should be available at a distance of 1 km, the State will have to provide for about 8 lakh schools; clearly a literal interpretation of Rule 4(1)(a) would render the entire rule to an absurdity, thus, the said Rule is to be interpreted adopting the principles of interpretation so as to make the Rule workable and not a dead letter. A *purposive interpretation* of the Rule is required which mandates that the same must be construed in a manner that advances the object and purpose for which it was enacted.

59. The adoption of literal interpretation, as sought to be canvassed

by the petitioner, is further liable to be rejected in view of the provisions contained in Rule 4(2) which in fact, cast a further obligation on the State for providing transportation, etc., where the schools cannot be established in the neighbourhood as specified in Rule 4(1). Thus, the State while framing the Rule itself had taken into consideration that it may not always be possible to establish within the neighbourhood as defined under Section 4(1).

60. Although not cited or argued by either of the parties, Rule 4(3) has some seminal importance as the local authority has been saddled with a responsibility of identifying a neighbourhood school where the children can be admitted and such information is to be made public; the school as referred would be a school as defined under Section 2(n) of the RTE Act, thus, on a conjoint reading of Rule 4(1), Rule 4(2) and Rule 4(3), what transpires is that it is the duty of the State Government to establish schools as far as practical at a distance which is closest to the habitation, and if the same is not possible, to ensure that the children are provided facilities such as transportation etc., and for identification of a school which may be available in the neighbourhood in case the State Government cannot establish school, which would also include school other than the school established by the Government as is the mandate of Section 2(n) read with Section 12 of the RTE Act. Any other interpretation of Rule 4(1) would do violation to the statutory rule keeping in view the considerations of a large State such as the State of Uttar Pradesh with regard to availability of land and other resources and keeping in view the fiscal health of the State concerned.

61. Thus, on a complete analysis of Rule 4(1), Rule 4(2) & Rule 4(3) read conjointly, it is clear that the State Government is bound to establish school on the nearest possible place from a habitation and in the absence thereof, it is obliged to ensure transportation facilities

etc., and in conjunction thereof identifying the neighbourhood schools, whether they are government schools or otherwise.

62. It is essential to add a word with regard to the National Education Policy, 2020 which includes various issues including the pairing of the schools. The policy in itself is laudible and prescriptions have been given with regard to the steps to be taken to ensure that education is imparted at the initial level to all the citizens and the children of the country. There being no material to the contrary in respect of guidelines of pairing in the policy of 2020, which can be said to be arbitrary or in violation of Article 21A of the Constitution and finding the impugned Government Orders to be in furtherance of the said objective, no interference is called for.

63. Present petitions lack merit and are accordingly ***dismissed.***

64. The obligation cast upon the State shall be scrupulously followed and the State is bound to ensure that no child is left out because of any action taken by the State.

65. It will be the duty of the Basic Shiksha Adhikari to ensure that no child is left out for being educated and all steps as are necessary shall be taken as and when required in accordance with law.

Order Date:-7th July, 2025 **[Pankaj Bhatia, J.]**
VNP/Nishant..