IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.73 OF 2002

1.Laxmi Education Society,
9, Wallace Street, Fort,
Mumbai – 400 001.

2. The Principal,
Sir.M.V.College of Science & Commerce,
Seth L.U.Jhaveri College of Arts,
Dr.S.Radhakrishna Marg,
Andheri (E), Mumbai – 400 069.

3. The Principal,
Shri Chinai College of Commerce & Economics,
Dr.S.Radhakrishnan Marg, Andheri (E),
Mumbai – 400 069. ...Petitioners

Versus

1.The State of Maharashtra,
through the Government Pleader,
Original Side, Mumbai.

2.The Joint Director,
Department of Higher Education,
Mumbai Divisional Officer,
Elphinstone Technical School Campus,
3, Mahapalika Marg,
Mumbai – 400 001.

3.The Deputy Director of Education,
Greater Mumbai, Jawahar Bal Bhavan,
Charni Road, Mumbai – 400 004.

4.The Director of Education,
Higher Education, Pune.

5.The University of Bombay,
M.G.Road, Fort,
Mumbai – 400 023. ...Respondents

.....

WITH

APPEAL NO. 299 OF 2008
IN
WRIT PETITION (L) NO. 1246 OF 2008

The Chairman/Secretary,
Laxmi Education Society,
9, Wallace Street, Fort,
Mumbai 400 001. ....Appellant
(Ori.Respdt. No.2)

Versus

1. State of Maharashtra, through the
Secretary, School Education and
Sports Department, Mantralaya,
Mumbai 400 032.

2. The Director of Education,
Maharashtra State (Higher
Secondary Central Building,
Opp. Collector's Office,
Pune 411 001.

3. The Deputy Director of Education,
Greater Mumbai, Jawahar Bal Bhavan,
Netaji Subhash Road, Charni Road,
Mumbai 400 004.

4. Shri Gopalkrishna N. Gaggar,
134/3567, Pant Nagar, Ghatkopar,
Mumbai 400 075.

5. The Principal,
Sheth M.V.L.U. Junior College and
Chinoy College of Arts, Science
And Commerce,
Dr. S. Radhakrishnan Marg, Andheri(East)
Mumbai 400 069. ...Respondents
(Nos. 1to 3 – Or.Petitioners
Nos.4 & 5-Ori.Respdt.Nos.1 & 3)

WITH

NOTICE OF MOTION NO. 2497 OF 2008
IN
APPEAL NO. 299 OF 2008
IN
WRIT PETITION (L) NO. 1246 OF 2008

The Chairman/Secretary,
Laxmi Education Society,
9, Wallace Street, Fort,
Mumbai 400 001. ....Appellant
(Ori.Respondent No.2)

Versus

1. State of Maharashtra, through the
   Secretary, School Education and
   Sports Department, Mantralaya,
   Mumbai 400 032.

2. The Director of Education,
   Maharashtra State (Higher
   Secondary Central Building,
   Opp. Collector's Office,
   Pune 411 001.

3. The Deputy Director of Education,
   Greater Mumbai, Jawahar Bal Bhavan,
   Netaji Subhash Road, Charni Road,
   Mumbai 400 004.

4. Shri Gopalkrishna N. Gaggar,
   134/3567, Pant Nagar, Ghatkopar,
   Mumbai 400 075.

5. The Principal,
   Sheth M.V.L.U. Junior College and
   Chinoy College of Arts, Science
   And Commerce,
   Dr. S. Radhakrishnan Marg, Andheri(East)
   Mumbai 400 069. ...Respondents
   (Nos. 1to 3 –
   Ori.Petrs.Nos. 4 & 5-
   Ori.Respdt.Nos.1 & 3)

.....

WITH

WRIT PETITION NO. 2327 OF 2008

Laxmi Education Society,
Registered Trust through its
Trustees, having office at 9,
Wallace Street,
Fort, Mumbai. .....Petitioner

Versus

1. The Director of Education,
Central Bldg.,
Pune 400 101.

2. The State of Maharashtra,
Through the Secretary School
Education, Mantralaya,
Mumbai 400 032.

3. Laxmi Charitable Trust,
Registered Trust through its
Trustees, having office at
9, Wallace Street,
Fort, Mumbai .....Respondents

WITH

CHAMBER SUMMONS NO. 246 OF 2008
IN
WRIT PETITION NO. 2327 OF 2008

1. Laxmi Education Society,
a registered Trust through
its Trustees, having office
at 9, Wallace Street, Fort,
Mumbai 400 001.

2. Hemant Vissanji, of Mumbai
Indian Inhabitant, Trustee and
Honorary Secretary of
Laxmi Education Society,
a Regd. Trust having office at
9, Wallace Street, Fort,
Mumbai 400 001. .....Petitioners

Versus

1. State of Maharashtra,

2. Secretary, State of Mah.
(Respondent No. 1 & 2 to
be served on the Government
Pleader, High Court (O.S.)
Mumbai.

3. M.R. Kadam,
The Director of Education,
Central Building,
Pune 400 101

4. Smt. Sheela Tiwari,
Dy. Director of Education,
Mumbai (School Education
Department), Jawahar Bal Bhavan,
Netaji Subhash Marg,
Charni Road (West)
Mumbai 400 004.

5. Shri V.S.Mhatre,
Asst. Director of Education,
Mumbai (School Education
Department), Jawahar Bal
Bhavan, Netaji Subhash Marg,
Charni Road (West),
Mumbai 400 004. ....Respondents

6. Gopalkrishna N. Gaggar,
residing at C/o 134/3567,
Pant Nagar, Ghatkopar,
Mumbai 400 075. .....Applicant/Intervenor
(Prop.Respdt.No. 6)

WITH

CHAMBER SUMMONS NO. 248 OF 2008
IN
WRIT PETITION NO. 2327 OF 2008

1. Laxmi Education Society,
a registered Trust through
its Trustees, having office

at 9, Wallace Street, Fort,
Mumbai 400 001.

2. Hemant Vissanji, of Mumbai
Indian Inhabitant, Trustee and
Honorary Secretary of
Laxmi Education Society,
a Regd. Trust having office at
9, Wallace Street, Fort,
Mumbai 400 001. .....Petitioners

Versus

1. State of Maharashtra,

2. Secretary, State of Mah.
(Respondent No. 1 & 2 to
be served on the Government
Pleader, High Court (O.S.)
Mumbai.

3. M.R. Kadam,
The Director of Education,
Central Building,
Pune 400 101

4. Smt. Sheela Tiwari,
Dy. Director of Education,
Mumbai (School Education
Department), Jawahar Bal Bhavan,
Netaji Subhash Marg,
Charni Road (West)
Mumbai 400 004.

5. Shri V.S.Mhatre,
Asst. Director of Education,
Mumbai (School Education
Department), Jawahar Bal
Bhavan, Netaji Subhash Marg,
Charni Road (West),
Mumbai 400 004. ....Respondents

And

1. Shailendra Eknath Kamble
Co-Convener of LUMV Chinai
College Bachhav Samiti residing at

B/232 Apli Ekta SRA CHS
Navpada, Marol Naka
Andheri-Kurla Road
Mumbai 400059. .....Applicant

WITH

NOTICE OF MOTION NO. 304 OF 2009
IN
WRIT PETITION NO. 2327 OF 2008

1. Laxmi Education Society,
registered under the Societies
Registration Act, 1860,
having its office at
9, Wallace Street, Fort,
Mumbai 400 001.

2. Hemant Vissanji of Mumbai
Indian Inhabitant, Trustee and
Honorary Secretary of
Laxmi Education Society,
a registered trust having office at
9, Wallace Street, Fort,
Mumbai 400 001. .....Petitioners

Versus

1. State of Maharashtra,

2. Secretary, State of Maharashtra,
(Respondent No. 1 & 2 to
be served on the Government
Pleader, High Court (O.S.)
Mumbai.

3. M.R. Kadam,
The Director of Education,
Central Building,
Pune 400 101

4. Smt. Sheela Tiwari,
Deputy Director of Education,
Mumbai (School Education
Department), Jawahar Balbhuvan,
Netaji Subhash Marg,

Charni Road (W)
Mumbai 400 004.

5. Shri V.S.Mhatre,
Asstistant Director of Education,
Mumbai (School Education
Department), Jawahar Balbhuvan,
Netaji Subhash Marg,
Charni Road (W),
Mumbai 400 004. ....Respondents

WITH

NOTICE OF MOTION NO. 338 OF 2009
IN
WRIT PETITION No. 2327 OF 2008

The Chairman/Secretary,
Laxmi Education Society,
9, Wallace Street, Fort,
Mumbai 400 001. .....Petitioner

Versus

1. The Director of Education,
Maharashtra State (Higher Secondary)
Central Building,
Opp. Collector's Office,
Pune-411001.

2. State of Maharashtra, through the
Secretary, School Education and
Sports Department, Mantralaya,
Mumbai 400 032.

3. Laxmi Charitable Trust, a registered
Trust, through its Trutees, having office at
9, Wallace Street, Fort, Mumbai. ....Respondents

.....

WITH

WRIT PETITION NO.2521 OF 2008

Laxmi Charitable Trust, a educational Trust,
registered under the Bombay Public Trusts Act,
having its office at 9, Wallace Street,
Fort, Mumbai. ...Petitioner

Versus

1.State of Maharashtra,
through Secretary Education,
with service to be done on Government
Pleader, Bombay High Court.

2.The Director of Education,
Secondary & Higher Secondary Education,
Department of Education, Maharashtra State,
Central Building, Pune-400 101 AND at
Jawahar Bal Bhavan, Netaji Subhash Marg,
Charni Road-West, Mumbai – 400 001. ...Respondents

WITH

CHAMBER SUMMONS NO.330 OF 2009
IN
WRIT PETITION NO.2521 OF 2008

Laxmi Charitable Trust, a educational Trust,
registered under the Bombay Public Trusts Act,
having its office at 9, Wallace Street,
Fort, Mumbai. ...Petitioner

Versus

1.State of Maharashtra,
through Secretary Education,
with service to be done on Government
Pleader, Bombay High Court.

2.The Director of Education,
Secondary & Higher Secondary Education,
Department of Education, Maharashtra State,
Central Building, Pune-400 101 AND at

Jawahar Bal Bhavan, Netaji Subhash Marg,
Charni Road-West, Mumbai – 400 001. ...Respondents

.....

WITH

WRIT PETITION NO.1640 OF 2009

1.Madhu Rambal Subramaniam, age 45 years,
A-2/3, Shriram Nagar,
S.V.Road, Andheri (West),
Mumbai – 400 058.

2.Pundalik Vishnu Ghadigaonkar, age 45 years,
Saisharan Co-op. Hsg. Society,
Room No.407, 4th floor, Pump House,
Jijamata Road, Andheri (East),
Mumbai – 400 093.

3.Sudhakar B. Tiwari, age 41 years,
Room No.3, Hari Tiwari Chawl,
Gundavali, Old Nagardas Road,
Andheri (East), Mumbai-400 069. ....Petitioners

Versus

1.State of Maharashtra,
through Secretary, Education,
Mantralaya, Mumbai.

2.The Director of Education,
Secondary & Higher Secondary Education,
Department of Education, Maharashtra State,
School Building, Pune-411 101 AND at
Jawahar Bal Bhavan, Netaji Subhash Marg,
Charni Road (W), Mumbai – 400 001.

3.Laxmi Charitable Trust,
Registered under the Bombay Public Trust Act,
having its office at 9, Wallace Street,
Fort, Mumbai – 400 001.

4.Laxmi Education Society,
Registered Public Trust having its
Office at a Wallace Street, Fort,
Mumbai – 400 001. ...Respondents

WITH

NOTICE OF MOTION NO.307 OF 2009
IN
WRIT PETITION NO.1640 OF 2009

1.Madhu Rambal Subramaniam, age 45 years,
A-2/3, Shriram Nagar,
S.V.Road, Andheri (West),
Mumbai – 400 058.

2.Pundalik Vishnu Ghadigaonkar, age 45 years,
Saisharan Co-op. Hsg. Society,
Room No.407, 4th floor, Pump House,
Jijamata Road, Andheri (East),
Mumbai – 400 093.

3.Sudhakar B. Tiwari, age 41 years,
Room No.3, Hari Tiwari Chawl,
Gundavali, Old Nagardas Road,
Andheri (East), Mumbai-400 069. ....Petitioners

Versus

1.State of Maharashtra,
through Secretary, Education,
Mantralaya, Mumbai.

2.The Director of Education,
Secondary & Higher Secondary Education,
Department of Education, Maharashtra State,
School Building, Pune-411 101 AND at
Jawahar Bal Bhavan, Netaji Subhash Marg,
Charni Road (W), Mumbai – 400 001.

3.Laxmi Charitable Trust,
Registered under the Bombay Public Trust Act,
having its office at 9, Wallace Street,
Fort, Mumbai – 400 001.

4.Laxmi Education Society,
Registered Public Trust having its
Office at a Wallace Street, Fort,
Mumbai – 400 001. ...Respondents

WITH

NOTICE OF MOTION NO.385 OF 2009
IN
WRIT PETITON NO.1640 OF 2009

1.Madhu Rambal Subramaniam, age 45 years,
A-2/3, Shriram Nagar,
S.V.Road, Andheri (West),
Mumbai – 400 058.

2.Pundalik Vishnu Ghadigaonkar, age 45 years,
Saisharan Co-op. Hsg. Society,
Room No.407, 4th floor, Pump House,
Jijamata Road, Andheri (East),
Mumbai – 400 093.

3.Sudhakar B. Tiwari, age 41 years,
Room No.3, Hari Tiwari Chawl,
Gundavali, Old Nagardas Road,
Andheri (East), Mumbai-400 069. ....Petitioners

Versus

1.State of Maharashtra,
through Secretary, Education,
Mantralaya, Mumbai.

2.The Director of Education,
Secondary & Higher Secondary Education,
Department of Education, Maharashtra State,
School Building, Pune-411 101 AND at
Jawahar Bal Bhavan, Netaji Subhash Marg,
Charni Road (W), Mumbai – 400 001.

3.Laxmi Charitable Trust,
Registered under the Bombay Public Trust Act,
having its office at 9, Wallace Street,
Fort, Mumbai – 400 001.

4.Laxmi Education Society,
Registered Public Trust having its
Office at a Wallace Street, Fort,
Mumbai – 400 001. ...Respondents

WITH

WRIT PETITION NO.1638 OF 2009

Prof.Mohan Pillai,
Part time Teacher in Business law at
Laxmi Charitable Trust M.V. & L.U.
College of Arts, Science & Commerce,
Mumbai, residing at 304, `Anant Ravi'
Plot No.230, Sector-5, Charkop,
Kandivali (W), Mumbai – 400 067. ...Petitioner

Versus

1.Mr.Hemant Visanji,
The President & Secretary,
Laxmi Charitable Trust,
9, Wallace Street, Fort,
Mumbai – 400 001.

2.The Principal,
M.V. & L.U. College of Arts,
Science & Commerce,
Dr.S.Radhakrishna Marg,
Andheri (E), Mumbai – 400 069.

3. The Principal,
Shri Chinai College of Commerce & Economics,
Dr.S.Radhakrishnan Marg, Andheri (E),
Mumbai – 400 069.

4. Deputy Director,
Education Department,
State of Maharashtra,
Mumbai.

5. State of Maharashtra,
Thru Government Pleader,
High Court, Bombay. ...Petitioners

.....

Mr.S.H.Mehta i/b. Madekar & Co. for Petitioner in WP Nos.73/2002 and WP No. 2521/08 and for Respondent No.3 in WP No.1640/09.

Mr.M.P.Rao,Sr.Counsel a/w Mr.Girish Kulkarni i/b. Prakash Mahadik & Co. for Appellant in Appeal No.299/08.

Mr.M.P.Rao, Sr.Counsel a/w Mr.Girish Kulkarni i/b. A.G.Kothari for Petitioner in WP No.2327/08 and for Respondent No.4 in WP No.1640/09.

Ms.Gayatri Singh i/b. Bhavana Mhatre for Petitioners in WP No.1640/09.

Mr.Mohan Pillai, Petitioner present in person in WP No.1638/09.

Mr.Nilesh Pawaskar, Sp. Counsel a/w Mr.B.H.Mehta, AGP for State in all matters.

.....

CORAM:- SWATANTER KUMAR,CJ. AND
A.M.KHANWILKAR, J.

RESERVED ON :- NOVEMBER 24, 2009.
PRONOUNCED ON :- DECEMBER 10, 2009.

JUDGMENT: (Per A.M.Khanwilkar,J.)

1. We propose to dispose of all the six main matters and the derivative proceedings therein together by this Judgment. For, all these matters pertain to the same educational institution, which had started and administering two junior colleges in question on grant in aid basis and also because the issues raised are overlapping.

2. The main proceedings(Writ Petitions) are filed by the Management on one hand and by the Public spirited persons espousing the cause of the students on the other. Besides, the above numbered appeal being Appeal

No.299 of 2008 arises out the decision of the School Tribunal. This Appeal is filed by the Management against the decision of the School Tribunal on the appeal instituted by the permanent employees of the junior colleges, who in turn challenged their termination on account of closure of junior colleges.

3. The first main Petition being W.P.No.73 of 2002 which is in earlier point of time, has been filed by three Petitioners-the Management(Laxmi Education Society), the Principal of Sir. M.V.College of Science and Commerce, Seth L.U.Jhaveri College of Arts and the Principal of Shri Chinai College of Commerce & Economics respectively. According to the Management, they were running two colleges for Arts and Commerce and Science and Economics and Commerce faculties which were affiliated to the University of Mumbai. All the three Colleges were receiving 100% grants from the State of Maharashtra. However, in due course the State stopped disbursing non-grant salaries payable to the concerned colleges, as also failed to carry out requisite assessment of accounts within a reasonable time and did not revise their fees structure. As the Colleges were aided colleges, there was restriction on amount of fees to be collected from the students. As a result, the Colleges were facing severe financial hardship

and led to a situation where it was practically impossible to run and manage the Colleges and conduct classes. It is in this backdrop the Management filed the said Petition for the following reliefs.

> "a) issue a writ of mandamus or a writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction, conduct and complete the assessment for the Junior Colleges run by the petitioner No.2 from the year 1991-92 and furnish the Assessment Reports and be further directed to assign, reasons in the event certain expenditure were to be disallowed;
>
> b) issue a writ of mandamus or a writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction, conduct and complete the assessment for the Junior Colleges run by the Petitioner No.3 from the year 1995-96 and furnish the Assessment Reports and be further directed to assign, reasons in the event certain expenditure were to be disallowed;
>
> c) issue a writ of mandamus or a writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction, effect payments of the non-salary expenditure incurred by the Junior Colleges run by the Petitioner No.1 as per Exhibit C;
>
> d) issue a writ of mandamus or a writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction, conduct and complete the assessment for the Degree Colleges run by the Petitioner No.2 from the year 1997-98 and furnish the Assessment Reports and be further directed to assign, reasons in the event certain expenditure were to be disallowed;
>
> e) issue a writ of mandamus or a writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction, conduct and complete the assessment for the Degree Colleges run by the Petitioner No.3 from the year 1998-99 and furnish the Assessment Reports and be further directed to assign, reasons in the event certain expenditure were to be disallowed;

f) issue a writ of mandamus or a writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction, effect payments of the non-salary expenditure incurred by the Degree Colleges run by the Petitioner No.1 as per Exhibits G-1 & G-2;

(f1) to issue a writ of mandamus or a writ, order or direction, directing the Respondent Nos.1 to 4 to evolve a proper fee structure keeping in mind the financial crisis faced by the Petitioners Institution and revise the fee structure accordingly in respect of the Junior Colleges;

(f2) to issue a writ of mandamus or a writ, order or direction, directing the Respondents to evolve a proper fee structure keeping in mind the financial crisis faced by the Petitioners Institution and revise the fees structure accordingly in respect of the Degree Colleges;

g) pending the hearing and final disposal of the present Writ Petition ad-hoc payments in respect of the non-salary expenditure on the basis of the audited accounts furnished by the Petitioners as well as the guidelines detailed in the Government Resolution and Circular for effecting payments as per number of Divisions/percentage of salary formula for both the Junior as well as Degree Colleges;

h) ad-interim and interim reliefs in terms of prayer clause (g) above;

i) such other and further orders as this Honourable Court may deem fit and proper in the facts and circumstances of the case.

j) costs of this Writ Petition be provided for."

4. The second main matter is Appeal No.299 of 2008, which is again filed by the Management. In this Appeal, the Management has challenged the Judgment of the Learned Single Judge of our High Court dated 30th June, 2008 passed on WP No.1246 of 2008 and other 8 connected Petitions, which in turn were filed by the State of Maharashtra challenging the

decision of the School Tribunal dated 3rd November, 2007. The proceedings before the School Tribunal were instituted by respective permanent employees questioning the action of termination of their services by the concerned colleges.

5. Here it may be relevant to advert to the background in which the said appeals were filed by the permanent employees before the School Tribunal. As a matter of fact, the learned Single Judge has meticulously reproduced the relevant facts in the impugned Judgment, which is reported in 2008(6) Bombay C.R. 451. To obviate repetition and prolixity, we would conveniently refer to the facts so reproduced. We would only highlight the broad facts, that would be relevant to decide the controversy on hand. The Management passed resolution on 14th February, 2007, whereby it was decided that the two junior Colleges run by the Educational Institution should be closed. This decision, according to the Management, was necessitated on account of non-receipt of non-salary grants for considerable long time, which was quite substantial amount. It had become impossible for the Management to continue to run the two Junior Colleges any more, due to severe financial burden. Besides, there was no sufficient response and the students ratio was depleting, which was making it unviable to run

the two junior colleges, which were started sometime in 1975 after introduction of 10+2+3 course. Moreover, the two junior colleges were started in the same building where the degree college run by the Management was already functional. According to the Management, it was felt that the space occupied by the Junior Colleges can be effectively utilised for introducing new courses in the degree college. For all these reasons, the Management decided to close down the two junior colleges. As a consequence of the said decision, the Management issued notice to its permanent employees in two junior colleges, purported to be under Rules 25A/26 of The Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981 (hereinafter referred to as "the Rules"), informing the concerned permanent employees that his/her services were terminated and would be no longer required as the Management (Laxmi Education Society) has decided to close the Junior Colleges run by it. In that, 11th Standard of Colleges would be closed down at the end of the first term of the academic year 2007-2008. The 12th Standard of the colleges would be closed down at the end of the second term of the academic year 2007-2008 and the Junior Colleges would be completely closed down by the end of the Second term of 2007-2008. For that reason, the services of the concerned permanent employees to whom such notices were issued were no longer

required beyond the end of the academic year 2007-2008. The permanent employees of the junior colleges on receipt of such notices rushed to the School Tribunal and filed appeals under section 9 of the Maharashtra Employees of Private Employees of Private Schools (Conditions of Service) Regulation Act, 1977(hereinafter referred to as “the Act”).

6. During the pendency of the said appeals before the School Tribunal, three Writ Petitions were filed before this Court being Writ Petition(L) No. 1379 of 2007, Writ Petition (L) No.1569 of 2007 and PIL Writ Petition No. 55 of 2007. The first amongst these Writ Petitions, (first two Writ Petitions), were filed by the Management(Laxmi Education Society Trust), which was running two junior colleges, seeking declaration that the closure notice issued by the Management was legal and proper and further the show cause notice issued by the Director of Education proposing to appoint an administrator to run the two junior colleges was illegal and unjustified and to quash the same and pass consequential directions. The third Writ Petition was filed by one Sarvanand Shukla for direction against the colleges to hold educational activities and to give admissions to the students for full academic course and to withdraw all notices. The said three Writ Petitions came to be disposed of by common Judgment on 20th September, 2007 by

the Bench to which one of us was party(Swantanter Kumar, C.J.). That decision is reported in 2008(1) All MR 270[Bhagwant Kaur Sandhu & ors v/s. Laxmi Education Society & Ors.]. This Court kept all the contentions open and disposed of all the three Petitions on the following terms.

> "10. In the peculiar facts and circumstances aforestated, we would dispose of these petitions with the following directions:
>
> a) The Government would expeditiously take decision in accordance with law, upon the notice for closure submitted by the management of the colleges.
>
> b) The teachers who have approached this court are entitled to pursue their applications before the College Tribunal and the Tribunal is free to decide their applications in accordance with law, without being influenced by any of the observations made in this order.
>
> c) The parties to the proceedings before the Tribunal are free to put forward their points of view for the consideration of the Tribunal and as permissible in law.
>
> d) The students who have already been granted admission by the college by its own or under the orders of this court in the presence of the Education Officer shall be permitted to complete their academic course for two years i.e. 11th and 12th standards. The college will not in any way hamper the educational career or curtail the said period under any circumstances.
>
> e) Out of 23 applications of the students filed before us, since seven students are already studying in other colleges, their request for admission to the colleges is declined and it will not be proper to transfer them from one college to another at this juncture particularly when first term has practically concluded. However, as regards the remaining sixteen students, who have not taken admission anywhere, the college is directed to grant them admission forthwith and admit them to the current academic year of 11th standard. In the event the above students do not take admission by

5.P.M., on 21st September, 2007, they shall be deemed to have waived the benefit of this order.

f) The above directions are obviously without prejudice to the rights and contentions of the parties, which are available to them before the respective authorities/tribunal and they are also free to take all the pleas that have been taken by them in the present petitions.

g) These writ petitions are disposed of with the above directions. However, we leave the parties to bear their own costs.

Ordered accordingly."

7. As a consequence of the directions issued by this Court the proceedings instituted by the permanent employees before the School Tribunal proceeded further. The School Tribunal allowed the appeals filed by the respective permanent employees on the following terms.

"**O R D E R**"

1. The Appeal is allowed in the following terms:

a) The Respondent No.1 and 2 to forward the name of appellant as surplus teacher due to reduction in workload to the Respondent No.3 within a period of Respondent No.3 within a period of thirty days from the date of this order.

b) The Respondent No.3 is directed to absorb the appellant as surplus teacher in another aided Junior College in the city of Mumbai. Till then the Department shall pay the salary to the appellant.

c) Parties to bear their own cost.

d) The appeal as well as the application for interim relief stand disposed of accordingly."

8. Against the said decision of the Tribunal, the State Government filed 9(nine) separate Writ Petitions on the original side of this Hon'ble Court under Article 226 of the Constitution of India, questioning the jurisdiction of the Tribunal to opine on the issue of bonafides of the decision of closure of the two junior colleges taken by the Management and moreso treating the concerned permanent employees as surplus teachers and of directing their absorption in other aided junior colleges in the city of Mumbai and to pay their salary till their absorption. The Learned Single Judge allowed the said Writ Petitions, but relegated the parties before the Tribunal for reconsideration of all aspects of the matter afresh. While doing so, the learned Single Judge also issued direction to the competent Authority of Education Department of the State to decide the issue of closure of Colleges pending before it expeditiously as possible and within four weeks from the date of receipt of the copy of the order. The Management has filed the present appeal to challenge the remand order passed by the learned Single Judge whereby the parties have been relegated before the School Tribunal for consideration of the entire matter afresh.

9. During the pendency of the present Appeal, the Appellant took out Notice of Motion No.2497 of 2008 praying that the implementation and

effect of the impugned order dated 30th June, 2008 passed in WP(St.) No. 1246 of 2008 be stayed and further the concerned authorities of the State be restrained by an order of injunction of giving any admissions to the 11th and 12th Standard of the Junior Colleges in the MVLU and Chinai College.

10. The third main matter is also filed by the Management (Laxmi Education Society), being Writ Petition No.2327 of 2008. This Petition essentially challenges the decision of the Director of Education as recorded in the Minutes of the Meeting dated 21st July, 2008 and the consequential order dated 25th July, 2008. The Director of Education pursuant to the direction given by the learned Single Judge of this Court in its decision dated 30th June, 2008 **(2008 (6) Bom.C.R. 451)**, gave opportunity of hearing to all concerned and held that the closure request or permission to close down the two junior colleges as made by the Management cannot be granted in public interest. The reasons which weighed with the Director of Education to reach at that conclusion can be discerned from the Minutes dated 21st July, 2008, which has been challenged by the Management. The relevant extract of the said minutes reads thus:

> "After that Director of Education explained the following points.

1. Hearing is organized as per High Court order. Accordingly Director of Education has to conduct the hearing. Director of education is for the entire State. There are so many Schools in the State, therefore it is not true that there will be pre decided decision.

2. According to provision of rule 7.5 of S.S.Code there is a provision made for appeal to the Director of Education against the decision given by Dy.Director of Education. Considering the appeal provision it is necessary to obtain the permission of the authorized officer.

3. Non Salary matter of Junior College is already in the court and necessary action will be done as per the High Court Order. Pending shown by the Colleges is not according to the present procedure. Action will be taken as per the High court orders.

4. Points raised by the Management regarding the fees of Junior Colleges, fee collected by the Junior Colleges is to be deposited to Govt. and therefore there is no loss to Management even the fees is charges is less.

5. Action of starting the new courses by closing XIth and XIIth classes is not proper. By closing down the necessary courses to start the new courses is not proper also. School is not an institution to look after the benefits but it is a institute to look after the public interest.

6. To close down the aided Junior College and to start the permanent unaided courses in higher education is not proper.

7. Considering efforts made by the Management to reduce the students strength, it is concluded that Management is intentionally trying to reduce the students strength e.g. Admissions made for one terms only, even after having the intake capacity of 120 to ask the permission to admit 80 students only, by displaying the notice of 25/06/2007 to create a insecurity in the minds of parents and students. These clearly indicate that Management is trying to reduce the students strength intentionally.

8. Absorption order of some teachers might have been issued but these happen every year due to the students' strength. In the year in which the result is low percentage there is an increase in surplus teachers. Such type of surplus

teachers is to be absorbed. In future if there is increase in students' strength, the teacher is to be absorbed in the original School. This process is continued in some Junior Colleges. It is not proper to close down the Junior College because the teachers are surplus.

9. To close the Junior College, to terminate the teacher is not according to rule.

10. Admissions to Std. XIth are based on merit and therefore in aided Colleges there is no fee in huge amount. If aided Junior College is closed, there will be a financial burden to parents and therefore, there will be damage to public interest if admissions are not given.

11. A building utilized for Junior College for quite a long time, to use for something else by the Management is not proper. Terminated teachers have approached the Court and the decision is pending. Work related to the Non teaching staff required for Junior Colleges, is to be done by the non teaching staff of the senior College, as per the provision of rule. This non teaching staff was also terminated and they are in service as per the High Court orders, Managements this statement is not proper.

12. During the year 1975-1976, at the time of obtaining permission for Junior College, Management have assured that all facilities will be made available, and all the Govt. rules will be followed. Accordingly Management have made all the facility available. Now to refuse the facility for Junior College is not according the rules. No any authorized document is produced indicating the linguistic minority and therefore it is not proper to say that Junior College is linguistic minority.

13. It is stated that L.U.M.V. Degree College and Chinai Degree College is handed over to trust in May 2007. Management action to hand over the Degree only excluding Junior College is indicating to keep away all the facility.

14. It was necessary to provide the new building for the new courses but still Management's action to close down the Junior College and to keep away the poor students from education is not according to natural justice.

15. I agree to the point raised by Advocate Shri Dighe, as per provision 25A & 26 of MEPS Rules 1981 and Rule 7.5

of S.S.Code it is necessary to obtain the Dy.Director's permission for closing down the Junior College.

16. I agree and conclude that Management has taken their own decision to close down the Junior College. Considering the result of 14/02/2007 it is clear that the resolution of closing down the Junior College is passed without the permission of competent authority. According to this resolution it is seen that efforts are made to close down the Junior College since 17/11/1997. It was known to the Management that Dy.Director's permission is necessary to close down the Junior College. According to resolution the decision taken to close down the Junior College is not with good intention and not according to rules. I agree with this opinion. It clearly shows that, this not a bonafide closure but this is a fabricated closure.

17. Agreed to opinion, that it is necessary for any student, staying in Mumbai to get admission, according to merit.

18. Junior Colleges have no status of linguistic minority and hence all Govt. rules are applicable are also agreed.

19. After that, it is noticed, that there is substance in the points raised by the teacher representative.

20. On 11/07/2008 the Director of Education, Dy.Director of Education and other officer from department has visited with the police personal, the Principal have refused the permission to remain present in the office, closed the office. Management has informed in writing that the case will be file against the officers. Letters were refused. This stand is not correct.

21. Provision in MEPS (Service Condition) Rules 1981 are related to the service condition. There is no provision to close down the School. It is improper to take the support of these rules to close down the Schools.

22. Management has not produced any evidence that they have served the notice officially to close the Junior College.

23. Management has not produced any evidence, that there is contract, between the owner of land and Management, about the use of land and the Junior College

building.

24. Action of the management, at the time of hearing to appoint the administrator, to remain absent even after sending letters, to make the time pass, to refuse the letters of hearing, to return the letters as well as to file the legal litigation is not correct. There is a strong opposition of local people. To give the admission for one term only even after having with a good record for quite a long time is not proper. According to the Management Registration Act 1860 and 1950 the provision of Charity Commissioners Office, building of the Junior College cannot be closed as personal property. The same Management runs the Degree College and closing down the Junior College is not according to rules. During the hearing Management has not produced any sub rule in the matter. Throughout the state the numbers of School are increasing but the international city like Mumbai is closing down the Junior College is not proper.

25. According to the present provision of S.S. Code, Rule 7.5 amended provision it is clear that, to close down the Junior College by Management on own side needs one term advance notice to the Dy. Director of Education is indispensable. After issuing the notice for closing down the Junior College Dy. Director will take the decision according to merit and either to accept the request or to reject the request. This means that to issue the notice is not enough to close down the College. After issuing the notice Dy.Director decision is finally important. To issue the notice for closing the Junior College is not enough for one more reason and i.e. the provisions of the words in Rules no 7.5 of S.S. Code is made “to act according to his decision”. This means Dy. Director has the right to take the decision on the application of closing down the Junior College. The decision might be to allow closing down the Junior College or to refuse the permission to close down the Junior College. If notice is the only required condition in law, the word “decision” would have not been use for the Dy.Director. In addition to this there is a provision to make the appeal against the Dy.Director’s decision. This clearly proves that Dy. Director can take the decision on merit to close down the Junior College. And Director of Education can check the correctness in appeal. If the provision of notice to close down the Junior College with own wish is enough, then the arrangement of the word / provisions have no meaning. If we consider the notice is enough then various Junior College/School can close down by giving the notice in large

number and there will be a problem for student education and teacher services. Students' basic right of education will be snatched away and there will be lot of problem of the employees who is in service for quite a long time.

26. It is seen from the Laxmi Education Society's letter no.LES/207/07-08, dated 11th June, 2007, issued to the Dy.Director of Education, regarding the closing down the Junior College, para1 permission was asked to close down both the Junior Colleges. Whereas para 2 states that permission of Dy.Director to close down the Junior Colleges is not necessary this is a contradictory stand. Considering the content of the letter Management have tried to ask the permission to close down the Junior Colleges. By assuming the permission is granted action to close down the Junior colleges is improper.

Decision

Considering all the factors mentioned above I, in the capacity of the Director of Education, in the public interest, the Regional Dy.Director Greater Mumbai's decision of 21st June, 2007 refusing permission to close down the Junior Colleges, namely Sheth L.U.M.V. Junior College Andheri (E), Mumbai and Chinai Junior College is here by conformed.

Sd/-
(M.R.Kadam)
Director of Education
Secondary & Higher
Secondary M.S. Pune-1."

11. We thought it appropriate to reproduce the relevant portion of the Minutes as correctness whereof will have to be tested by this Court in the present proceedings. On the basis of the above view taken by the Director of Education, the Management was informed by communication dated 25th July, 2008, which also is a subject matter of the challenge in this Writ Petition. The same reads thus:

"NO.HSC/152007/12 HS
Secondary & Higher Secondary
Education Director,
Maharashtra State,
Pune-1.

25/07/2008
Mumbai Camp.

To
Chairman/Secretary
Laxmi Education Society,
9 Wallace Street, Fort,
Mumbai – 400 001.

Subject : Sheth L.U. & M.V. Junior College, Andheri (E), Mumbai & Chinai Junior College, Andheri (E), Mumbai : Closure of these Junior Colleges.

The W.P.No.1753/2008 and 1730/2008 were heard on 18th July 2008 by Hon'ble High Court. Accordingly the application for closure of L.U. & M.V. And Chinai Junior Colleges were heard by Director of Education, on 21st July 2008 at 3 p.m. the same was held at the Regional Dy. Director, Mumbai's Office. At this hearing owner of the Junior College land, concerned Colleges and teacher representatives were present. A speaking order was delivered as an outcome of the hearing if this order is against the appellant it will not be implemented for 3 days as per the direction of Hon'ble High Court Order on 18th July 2008. In this regard hearing was held at Divisional Dy. Director of Education Office, Mumbai.

The details of this speaking order are enclosed. Accordingly, in public interest, the order Dy.Director of not permitting the closure of two Junior Colleges of L.U. & M.V. And Chinai College are upheld.

This decision will not be implemented until 3 days of the receipt of this order signed.

M.R.Kadam
Director Eduction
Secondary & Higher Secondary."

12. During the pendency of the Writ Petition No.2327 of 2008, two third parties filed Chamber Summons for being impleaded. The first was filed by one Gopalkrishna N. Gaggar being Chamber Summons No.246 of 2008 and the Second has been filed by Shri Shailendra E. Kamble being Chamber Summons No.248 of 2008. Besides the two Chamber Summons, the State Government filed Notice of Motion No.304 of 2009 praying for setting aside the order dated 7th August, 2008 passed in Writ Petition (L) No.1825 of 2008 and to confirm appointment of administrator dated 25th July, 2008 passed by the Director of Education, Secondary and Higher Secondary, Maharashtra State, Pune.

13. Here it may be relevant to note that the order of appointing administrator came to be been passed by the Competent Authority in exercise of powers under section 3(1) of Maharashtra Educational Institution (Management) Act,1976 with a view to take over the management of the two junior colleges for a period of one year.We are not concerned with the correctness of the said action as the management has been relegated to file statutory appeal available against that decision. In that, we have relegated the Management to take recourse to statutory remedy available under the said Act of 1976 while disposing of the Writ

Petition filed by the Management challenging the said decision, vide order dated 18th November 2009 in Writ Petition No.1639 of 2009. The said order reads thus:

> "This writ petition is directed against the order dated 25th July, 2008 passed by the Director of Education, State of Maharashtra exercising his powers under the Maharashtra Education Institutions (Management) Act, 1976. Vide his order, Administrator came to be appointed. The operative part of the order reads as under:-
>
> ORDER
>
> "As per order of Directorate No.HSC/132007/Pr.Ni./ Mumbai/12HS dated 25.07.2008 of Maharashtra Education Dept.Transfer of Management Act, 1976 section 3(1), LES, Mumbai's LUMV Junior College and Chinai Junior College Andheri (E) will be under administrator for a period of one year from the date he assumes office. I as Director of Secondary & Higher Secondary Education Dept., Maharashtra State, Pune I pass this order.
>
> In order to regularize the Junior College education/teaching and in the interest of the Junior College students it has become necessary to appoint an Administrator.
>
> As per Transfer of Management Act, 1976 section 3(1) I, Director of Education, Secondary & Higher Secondary, Education Dept., Maharashtra State, Pune I appoint Shri V.S.Mhatre, Asst.Director of Education as Administrator to look after the management of the Junior Colleges for a period of 1 year from the date he assumes office."

2. It is contended that the order is violative of principles of natural justice, the findings recorded are perverse at the face of it in asmuch as the Management of Junior Colleges are found to be unsatisfactory but the whole institution has been placed under the Administrator. It is also argued that the petitioner No.1 is a minority institution, thus, in terms of section 12 of the said Act, the provisions of the Act would not be applicable.

3. We may notice that under sub-section (4) of section 3 the order passed by the Director of Education while exercising powers

under sub-section (3) of section 3 is appealable to the State Government which has been termed as Appellate Authority. In our view, all these contentions can safely be considered by the Appellate Authority viz. The State Government and therefore, it is not necessary for us to entertain this writ petition.

4. The ad-interim order dated 29th July, 2008, passed by the court is in force till today. It shall remain in force for a period of four weeks subject to such orders as may be passed by the competent authority henceforth.

5. The appeal in terms of sub-section (4) of section 3 is to be filed within 15 days but as the applicant was pursuing the present writ petition before this court bonafiedly which at that stage had been entertained as other matters filed by same Management in regard to the closure of school were pending. In view of the above, we are of the considered view that the petitioners should file appeal before the Appellate Authority and if filed within 15 days from today, the same shall be entertained by the Appellate Authority.

6. With the above directions, writ petition stands disposed of."

14. Be that as it may, the Petitioners filed Notice of Motion No.338 of 2008 in Writ Petition No.2327 of 2008 for issuance of directions to Respondent No.1 to file on record entire factual details as listed in Schedule-I to the Motion. Besides, the Writ Petitioners have filed Chamber Summons No.261 of 2009 praying for permission to amend the Writ Petition so as to incorporate the facts referred to in the schedule to the Chamber Summons. The same was allowed by us on 31st August, 2009. However, the Petitioners have failed to carry out amendment of the Petition till the hearing was concluded.

15. The fourth main Petition being Writ Petition No.2521 of 2008 is filed by Laxmi Charitable Trust to challenge the Minutes dated 21st July, 2008 and the order dated 25th July, 2008 passed by the Director of Education and for further relief of direction against the Authorities to cease and desist from in any manner interfering with or disturbing the conduct of educational activities of the Degree College of the Petitioner-Trust at its campus situated at Dr.Radhkrishnan Marg, Andheri-East, Mumbai-69 on the basis of decision dated 25th July, 2008. This Petition has been filed on the apprehension that taking advantage of the proposed action against the two junior colleges on account of the decision to voluntary close those colleges, the Authorities may interfere with the affairs of the Degree College which is run by the Trust in the same building (complex). According to the Petitioners therein, the transfer of the Degree College has been approved by the Mumbai University with effect from 18th May, 2007 and the Trust was in seisin of the affairs and activities of Degree College. Incidentally, activities of the two Junior Colleges were also being carried out from the same complex in which the Degree College was run. Essentially, this petition is intended to thwart any action of the Authorities directly or indirectly against the Degree College or the affairs of the Degree

College under the garb of taking action against the two Junior colleges and of the Management of the Trust itself.

16. The fifth main Petition being Writ Petition No.1640 of 2009 is filed by one Madhu Rambal Subramaniam and 2 others, who claim that they have children, who after passing out 10th Standard will have to seek admission in a junior college in the vicinity. According to them, the two junior Colleges located in Andheri are the only aided colleges in that area and catering to the needs of the lower middle income group and the persons who are not in a position to pay hefty admission fees and donation for admission as in the case of unaided colleges. According to them, the decision of the Management to close down the two Junior Colleges is not a bonafide decision. The substance of their grievance is that the Management should not be permitted to close down the two junior colleges as it would be against the public interest. They have prayed for the following reliefs:

> "a) That this Hon'ble Court be pleased to issue a writ of mandamus or any such other appropriate writ, order or directions, directing the Respondent Nos.3 and 4 to furnish the required details according to form at **EXHIBIT "**L" to the Dy.Director of Education regarding the availability of courses and divisions of the Junior Colleges so as to enable the students to seek admission in the college and to enable Deputy Director of Education to take the necessary steps in processing the admissions of the students for the academic year 2009-2010.

b) That this Hon'ble Court be pleased to issue a writ of mandamus or any such other appropriate writ, order or direction directing Respondent Nos.1 and 2 to ensure that the two Junior Colleges are not closed and that the students who have sought admission are admitted.

c) That this Hon'ble Court be pleased to restrain the Respondent Nos.3 and 4 from closing down the Junior Colleges.

d) That this Hon'ble Court be pleased to form a committee of citizens including teaching staff and parents to ensure that the procedure for completing the admission process to the Junior Colleges is complied with expeditiously and in a transparent manner.

e) that pending hearing and final disposal of the Petition the Respondents Nos. 3 & 4 be directed to furnish the required details according to form at **EXHIBIT "**L" to the Dy.Director of Education regarding the availability of courses and divisions of the Junior Colleges so as to enable the students to seek admission in the college and to enable Deputy Director of Education to take the necessary steps in processing the admissions of the students for the academic year 2009-2010.

f) That pending hearing and final disposal of the Petition the Respondents Nos.1 & 2 be directed to ensure that the two Junior Colleges are not closed and that the students who have sought admission are admitted.

g) that pending hearing and final disposal of the Petition the Respondent Nos.3 and 4 be restrained directed to restrain from closing down the Junior Colleges.

h) that pending hearing and final disposal of the Petition to form a committee of citizens including teaching staff and parents to ensure that the procedure for completing the admission process in the Junior Colleges is complied with expeditiously and in a transparent manner.

i) Ad interim Relief/interim relief in terms of prayers e to h above be granted.

j) For costs of the petition.

k) For such further and other reliefs or direction as the nature and circumstances of the case may require."

17. During the pendency of this Writ Petition No.1640 of 2009, the Management (Laxmi Education Society-Respondent No.4) took out Notice of Motion praying for direction against the Respondent- State of Maharashtra and its Officials, from in any manner whatsoever treating and/or representing and/or publicizing that the information to be supplied by the Respondent No.4 management, as per order dated 29th May, 2009 of this Court , would tantamount to the Management having provided the said information for the purpose of registration for online admissions of the XIth Standard and/or that it is in any way committed to the registration of online admissions of the XIth Standard. This Motion was taken out on the assertion that the two junior colleges were already closed down and should not be compelled to participate in the on-going online admission process, which in turn would result in giving admission to prospective students to first year junior college. Besides the above said Notice of Motion, the Management (Laxmi Education Society) filed another Notice of Motion in the said Writ Petition being Notice of Motion No.385 of 2009 praying for direction against the Writ Petitioners to file on record the factual details and documents as listed in Schedule-I to the Motion.

18. The sixth main Petition being Writ Petition No.1638 of 2009 is filed by one Prof. Mohan Pillai, claiming to be public spirited citizen. Incidentally, he is also a practicing advocate in this Court. He was associated as part time professor with MVLU College of Arts, Science & Commerce - one amongst the two junior colleges. The substance of his grievance is that the Management adopted modus operandi to dissuade the students/parents in taking admission to the two Junior Colleges by resorting to different methods. According to him, the decision of the Management to close down the two junior colleges is not bonafide. It is his case that the justification put forth by the Management for closing the two junior colleges is false and cannot be countenanced. According to this Petitioner, the Management is under solemn obligation to run the two junior colleges and participate in the admission process of the junior colleges. He has highlighted the fact that the Management has not only defied the decision of the Competent Authority of refusal of permission to close the two junior colleges but have also successfully rendered the direction of the Competent Authority to participate in the admission process of the junior colleges for the academic year 2009-2010 nugatory. Moreover, the Management has had the audacity to overreach the order passed by this Court on 29th May, 2009 in Notice of Motion No.304 of 2009 in Writ

Petition No.2327 of 2008 and connected matter, which obliged the Management to participate in the on-going online admission process for standard 11th for the academic year 2009-10. The said order passed by the Division Bench of this Court on 29th May, 2009 reads thus:

> "1. Heard learned Counsel for the parties.
>
> 2. Laxmi Education Society, the petitioner in Writ Petition 2327 of 2008 has, from time to time, intimated the authorities about its intention to close down the two colleges run by the Society, but the authorities have refused them permission to close down the colleges and against the order of the Director, refusing such permission, it has filed Writ Petition No.2327 of 2008. That Writ Petition has been admitted. However, no interim relief for closure of the colleges has been granted.
>
> 3. It may be noted that the Government had appointed administrator to run the management of the said colleges. By an order dated 7th August, 2008, in bunch of Writ Petitions, the Division Bench of this Court has stayed the appointment of administrator subject to continuation of the undertaking (direction) given in Writ Petition Nos.1329/07, 1569/07 and 55 of 2007 on 18th September, 2007. The Government has taken a Notice of Motion No.304 of 2009 to vacate the stay to the appointment of Administrator mainly on the ground that the management of the colleges is no co-operating with the authorities by not supplying necessary data which is required to the Government for Online process of admission.
>
> 4. A Public Interest Litigation i.e. Writ Petition No.971 of 2009 is also filed by parents of the some students, who propose to take admission in college in the ensuing academic session and in that petition, they have sought direction that the management should supply the data for the Online admission process of standard XI for the academic year 2009-10 as prescribed by the Government.
>
> 5. The learned Counsel appearing for the management makes a statement that they had complied with the direction given by the Division Bench in the order dated 18th

September, 2007 in respect of the students who were admitted and according to them, all those students have completed their course and during last two years the said two colleges have not given admission to any students. On the other hand, the Special Counsel Mr.Pawaskar for the Government makes a statement that last year, admission to some 500 students was given by the Government in the said colleges but they were required to be accommodated elsewhere because the management had removed all the teaching faculty. He contends that this year, the teaching faculty and the Government can take care that the students are not required to be removed for accommodation elsewhere. The learned Counsel also makes the statement that data/information is required at this stage only for the purpose of making preparations before the actual admission process starts because the admission process will actually begin only after the results of SSC are declare which are expected some time after 8th June, 2009.

6. In view of the facts and circumstances, for the present, the following directions will meet the ends of justice.

i) The Management shall provide and information to starting online admission process for Standard XI (2009-10) in the prescribed proforma which is already supplied to the management on or before 1st June without fail, without prejudice to their contentions which they have taken in their Writ Petition.

ii) Both the petitions and the Notice of Motion be placed together before the Regular Court on 10th June, 2009."

It is in this backdrop, said Mr.Mohan Pillai has prayed for following reliefs:

a) A Writ of mandamus or any other appropriate Writ, order and/or direction to the Respondent No.1, 2 & 3 to participate in the 11th & 12th Std. admission process including online admission to both the Education Institution run by the First Respondent Trust and enroll the student for the said 11th & 12th Standard.

b) A Writ of mandamus or any other appropriate Writ, order and/or direction to the Respondent No.4 & 5 to ensure that 11th & 12th Standard's admission to both the Educational Institutions i.e. M.V. & L.U. College of Arts, Science & Commerce and Shri Chinai College of Commerce & Economics, is carried out by the Respondent No.1, 2 & 3.

c) Pending the hearing and final disposal of the Writ Petition this Hon'ble Court be pleased to appoint Administrator with all powers to run the College in order to comply with the orders, directions and guidelines issued by this Hon'ble Court as well as the State from time to time in respect of the Educational Institution managed and run by the Respondent No.1, 2 & 3.

d) Pending the hearing and final disposal of the Writ Petition this Hon'ble Court be pleased to direct the Respondents No.1, 2 & 3 to commence the admission process in respect of 11th & 12th Std.in due compliance of the order of this Hon'ble Court from time to time and more particularly the orders of 29/5/09 which is at Ext."A".

e) Ad-interim/Interim Reliefs in terms of prayer clause (c) and (d) hereinabove;

f) Such other and further reliefs as deemed fit and proper by this Hon'ble court on the facts and circumstances of the case;

AND

g) Award the cost of this Petition."

19. We had the benefit of erudite submissions made by the Counsel appearing for the respective parties. Mr. Rafiq Dada, Mr. M.P.S. Rao, Mr. B.H.Mehta and Mr. Kulkarni addressed us in support of the decision of the Management to close down the two junior colleges. Mr.Dighe espoused the cause of the permanent employees of the two junior colleges who were

directly affected by the decision of closure of the two junior colleges. Ms. Gayatri Singh and Mr.Mohan Pillai represented the cause of students. Mr. Pawaskar appeared for the State and supported the decision of the Director of Education.

20. The submissions revolved around the question as to whether the decision of Management to close down the two junior colleges can be sustained. Further, if the said decision of Management was to be maintained what would be the cascading effect on the rights and privileges of the permanent employees engaged by the two junior colleges, as also on the existing students of the colleges, if any, and on the prospective students who were keen to get admission in the two junior colleges which were the only aided colleges in the vicinity. Incidental issues have also been raised as to whether the School Tribunal would have jurisdiction to examine the bonafides of the closure by undertaking a parallel enquiry and more particularly when the authority if at all to examine that question vested in the Competent Authority of the Education Department of the State. Besides, whether the permanent employees who have been terminated on account of closure of Junior Colleges are entitled to be absorbed in another Junior Colleges in the vicinity. Counsel appearing for the parties have

placed reliance on several decisions to buttress their respective pleas to which we shall refer to at the appropriate place.

21. Before we proceed to examine the matter any further, it would be apposite to analyse the decision of the learned Single Judge, dated 30th June, 2008 (reported in **2008 (6) BCR 451**), impugned in the appeal filed by the Management before us. The reasons which weighed with the learned Single Judge to allow the Writ Petitions filed by the State of Maharashtra can be discerned from paragraph-31 onwards. According to the learned Single Judge, in view of the Division Bench decision dated 20th September, 2007 (reported in **2008(1) All MR 270**), the Tribunal could not have examined the question of bonafides of closure and answered the same in favour of the Management. It is further held that under the garb of going into the reasons of termination of teacher, the Tribunal could not have undertaken an enquiry into the issue of closure being bonafide or not in the facts of the case on hand. It is held that the Tribunal should have first considered as to whether it had jurisdiction to make enquiry on the issue of closure being bonafide or not, which inevitably would result in parallel enquiry and thwart the enquiry before the Competent Authority of the Education Department pending on the application of the Management for

permission to close the two junior colleges. The learned Single Judge has then observed that since he was inclined to remand the matter to the Tribunal, the Tribunal will have to consider the legality and validity of the termination order afresh on all other grounds, which means grounds other than the bonafides of closure. The learned Single Judge also opined that the Tribunal will have to consider whether it had the jurisdiction to direct absorption on the assumption that the concerned permanent employees were rendered surplus on account of closure of the Junior Colleges, in the context of applicability of Rule 25A and Rule 26 of the Rules. The learned Single Judge also observed that the Tribunal did not examine the allegations contained in paragraph-7 and 8 in the memo of appeal at all; and that it failed to apply its mind to alternative plea of absorption in proper perspective and to consider the same from all angles. The contention of the Management has been noted to the effect that the issue of termination and the reasons for the same are interlinked and therefore, the Tribunal must have jurisdiction to examine all pleas including the aspect of his own jurisdiction. The learned Single Judge has further opined that the Tribunal can go into the aspect of termination of employees and whether the termination of the permanent employee by notice, without any enquiry preceding it, is fair, just and proper. Similarly, the Tribunal must apply its

mind by considering the applicability of Rule 25A and 26 afresh, if it concludes that the termination cannot be quashed and set aside, while keeping in mind financial impact of its direction. For all these reasons, the learned Single Judge allowed the Writ Petition preferred by the State of Maharashtra and relegated the parties before the School Tribunal.

22. The principal question that needs to be considered is: whether the Management of an aided Junior College has absolute and unquestionable right to close down the college as and when it decides to do so. This question will have to be tested from two angles. Firstly, whether it would make any difference if the Junior College is an aided college and secondly, as to what would be the scope of enquiry before the Appropriate Authority while considering the closure proposal of the Management. The extreme argument of the Management is that - as much as right to start a School or Junior College is a fundamental right, it also posits with it right to run and close the School or College at the discretion of the Management. By now, however, it is well established that even if right to start an education institution is a fundamental right guaranteed in Article 19(1)(g) of the Constitution of India, it can be controlled by restrictions which are in the interests of general public and are reasonable restrictions on the exercise of

such right. In that sense, it is not an absolute right as such. It is open to the State to regulate the fundamental rights under Article 19(1)(g) of the Constitution by imposing restrictions which are in the interests of general public and are reasonable restrictions. The Apex Court while considering the constitutional validity of Section 25FFF of the Industrial Disputes Act in the case of **M/s. Hatisingh Mfg. Co. Ltd. Vs. Union of India [(1960) 3 SCR 528**] opined that by Article 19(1)(g) of the Constitution, freedom to carry on any trade or business is guaranteed to every citizen but this freedom is not absolute. It has further opined that in the interests of general public law may impose the restrictions on the freedom of the citizen to start, carry on or close their undertakings. In the case of **Excel Wear V/s. Union of India & ors. [AIR 1979 SC 25]**, while referring to the above decision, the Apex Court held that it is clear that the whole ratio of the case is based upon the footing that the right to carry on any business includes a right to start, carry on or close down any undertaking . In para-20 of this decision, the Apex Court dealt with the two extreme contentions put forward on either side as to the nature of the alleged right to close down a business. The Court held thus:

> **"20**. We propose first to briefly dispose of the two extreme contentions put forward on either side as to the nature of the alleged right to close down a business. If one does not start a business at all, then, perhaps, under no circumstances he can be compelled to start

one. Such a negative aspect of a right to carry on a business may be equated with the negative aspects of the right embedded in the concept of the right to freedom of speech, to form an association or to acquire or hold property. Perhaps under no circumstances a person can be compelled to speak; to form an association or to acquire or hold a property. But by imposing reasonable restrictions he can be compelled not to speak; not to form an association or not to acquire or hold property. Similarly, as held by this Court in Cooverjee Bharucha v. The Excise Commissioner and the Chief Commissioner, Ajmer, and Ors. MANU/SC/0010/1954 : [1954]1SCR873 ; Narendra Kumar and Ors. v. The Union of India and Ors. MANU/SC/0013/1959 : [1960]2SCR375 total prohibition of business is possible by putting reasonable restrictions within the meaning of Article 19(6) on the right to carry on the business. But as pointed out at page 387 in the case of Narendra Kumar (supra):

"The greater the restriction, the more the need for strict scrutiny by the Court" and then it is said further :

“In applying the test of reasonableness, the Court has to consider the question in the background of the facts and circumstances under which the order was made, taking into account the nature of the evil that was sought to be remedied by such law, the ratio of the harm caused to individual citizens by the proposed remedy, to the beneficial effect reasonably expected to result to the general public. It will also be necessary to consider in that connection whether the restraint caused by the law is more than was necessary in the interests of the general public.”

But then, as pointed out by this Court in Hatisingh's case (supra) the right to close down a business is an integral part of the right to carry it on. It is not quite correct to say that a right to close down a business can be equated or placed at par as high as the right not to start and carry on a business at all. The extreme proposition urged on behalf of the employers by equating the two rights and then placing them at par is not quite apposite and sound. Equally so, or rather, more emphatically we do reject the extreme contention put forward on behalf of the Labour Unions that right to close down a business is not an integral part of the right to carry on a business, but it is a right appurtenant to the ownership of the property or that it is not a fundamental right at all. It is wrong to say that an employer has no right to close down a business once he starts it. If he has such a right, as obviously he has, it cannot but be a fundamental right embedded in the right to carry on any business guaranteed under Article 19(1)(g) of the Constitution. In one sense the right does appertain to property. But such a faint overlapping of the right to property engrafted in Article

> 19(1)(f) or Article 31 must not be allowed to cast any shade or eclipse on the simple nature of the right as noticed above."

23. The Apex Court in paragraph-34 while considering the argument that a right to close down business is a right appurtenant to the ownership of the property and not an integral part of right to carry on business opined that, not to permit the employer to close down is essentially an interference with his fundamental right to carry on the business. In the case of **TMA Pai Foundation & Ors. vs. State of Karnataka & Ors. reported in (2002) 8 SCC 481**, the Apex Court considered the question regarding the right to establish and administer an educational institution under Article 19(1)(g) of the Constitution. In Paragraph 26 of the said decision, the Apex Court has noted that the said right may also be sourced to Article 26(a), which grants in positive terms, the right to every religious denomination and every section thereof to establish and maintain institutions for religious and charitable purposes, subject to public order, morality and health. In the present case, the Management claims that the institution has been recognised as linguistic minority institution by the Authorities. The Certificate relied to buttress this fact, however, is issued only on 9th February 2009. In any case, the question to be addressed is: whether the Management has absolute right to abruptly close down its School/Junior

College whenever it decides to do so. In Paragraphs 71 to 72 of the same decision, the Apex Court considered the question as to rights of private aided institutions (non minority). It has noted that while giving aid to professional institutions, it would be permissible to Authority giving aid by prescribing Rules or Regulations, the conditions on the basis of which admission will be granted to different aided Colleges by virtue of merit, coupled with the reservation policy of the State. It has further expounded that once aid is granted to a private professional institution, the Government or the State Agency as a condition of the grant of aid, can put fetters on the freedom in the matter of administration and Management of the Institution. It further observed that the State which gives aid to an educational institution, can impose such conditions as are necessary for the proper maintenance of the high standards of the education, as the financial burden is shared by the State. The State is also under an obligation to protect the interest of the teaching and non-teaching staff, whose working conditions should be governed by proper service conditions.

24. A priori, there is no difficulty in accepting the stand of the Management that the right to start a school/junior college would also include a right to close down the same. However, that right has to be

subservient to the reasonable restrictions which can be imposed or would apply in the interests of general public. Indubitably, the functions and activities of a junior school are in public domain. Besides the employees employed by the Colleges, there are other stake holders in the existence and running of a school or college. The students on the roll of the school or college are equally concerned with the existence and running of a college as much as the prospective students in the vicinity, who are likely to be denied of such facility upon closure thereof. In the event of closure of a School or College, prospective students residing in the vicinity who have a right to pursue education would be affected by the abrupt decision of closure thereof. Besides, even the general public has interest in the existence of a school or college which receives grant in aid from the Government, which is paid out of public exchequer. The Apex Court in the case of **Francis John V/s. The Director of Education [AIR 1990 SC 423]** has expounded that in private school which receives aid from the Government under the grant in aid scheme, which is promulgated not merely for the benefit of the Management but also for the benefit of the employees in the school for whose salary and allowance, the Government was contributing from the public funds under the Grant-in-aid scheme. They cannot be escaped from the consequences flowing from the breach of the scheme and particularly

where the Director of Education who is an instrumentality of the State, which has participated in the decision making process. In the case of **Nelson & Anr. Vs. Kallayam Pastorate & ors. reported in 2006 (11) SCC 624**, the Apex Court has expounded that keeping in view interest of the general public, even if it were to be a minority organisation, the Court can oversee its function in case of mis-management. While referring to its earlier decision in the case of **Guruvayoor Devaswom Managing Committee** has observed that even otherwise rights under Article 25 and 26 of the Constitution are not absolute and unfettered. Even in the case of **Rt.Rev. Msgr Mark Netto vs. State of Kerala & ors.[AIR 1979 SC 83]** the Court has noted that the right of the State to regulate education, educational standards and allied matters cannot be denied. In that case the Court considered the argument in the context of rights of minority institution. Our attention has been invited to several other decisions, but it is not necessary to multiply the authorities as by now it is well established position that the right to start a school or college would no doubt include the right to close the same. Such right, however, will be controlled by the reasonable restrictions imposed in the interests of the general public.

25. The question is: whether the existing law provides for any

restrictions. Reliance has been placed on the provisions of Rules 25A and 26 of the said Rules, as also on Rule 7.5 of the Secondary School Code. In so far as the Secondary School Code is concerned, it is well established position that it is only a compendium of administrative instructions and do not have force of law. It is in the nature of administrative instructions without statutory force of law. The Full Bench of our High Court in the case of **Shikshan Prasarak Mandal V/s. State of Maharashtra & ors. [2009(5) Mh.L.J. 969]** had occasion to make the above observations considering the exposition of the Apex Court in the case of **State of Assam V/s. Ajit Kumar [AIR 1965 SC 1196] and State of Maharashtra V/s. Lok Shikshan Sanstha [1973 Mh. L.J. (SC) 712=AIR 1973 SC 588]**. The Full Bench has also referred to later decision of the Apex Court in the case of **Tikaram V/s. Mundikota Shikshan Prasarak Mandal[1984 Mh.L.J. (SC) 861=AIR 1984 SC 1621] and Francis John(Supra)** and also Division Bench of our High Court in **Kobad Jahangir vs. Farukh Sidheva [1990 Mh.L.J. 883]** that the contravention of the Rule of the Code can be challenged before the High Court. Nevertheless, the provision of the Code are merely executive and administrative instructions, which are not statutory in character. Even in the case of **M.G. Pandke & ors. v/s. Municipal Council Hinganghat reported in 1993 (3) Bom.C.R. 162**, the

Apex Court has opined that the Code by itself is not statutory and is in the nature of executive instructions but once framed, it will be obligatory for the authority to follow it. The Code has been framed with the purpose of bringing security of service, uniformity, efficiency and discipline in working of non-Government Schools. It has to be applied uniformly to the schools run by the Municipal Councils in the State. To consider the efficacy of the provision of Rule 7.5. of the Code, even though the said Rules are administrative instructions, the question is : can the provisions of the Code be pressed into service for considering the claim of the Management of closure of the junior colleges. In the case of **Bishambher Dayal Chandra Mohan & ors Vs. State of UP [1982 Vol.I SCC 39],** the Court had occasion to answer some what similar question. In that case, a teleprinter message which mirrored the policy decision of the Government was pressed into service to answer the contention of infringement of fundamental rights guaranteed under Article 19(1)(g) r/w 301 of the Constitution of India. The Apex Court in the first place found that the teleprinter message was in the nature of executive instructions to the Regional Food Controllers of the various regions to secure compliance with the orders. It further held that there was nothing unusual in the State Government issuing such executive instructions. In paragraphs-20 to 22

and 27 of the decision, the Court answered the issue in favour of the State. While relying on its earlier decisions, it held that the State Government could act in exercise of the executive power of the State under Article 162 in relation to any matter with reference to which the State Legislature has power to make laws even if there was no legislation to support such executive action. The Court observed thus:

> **"20]** Even assuming that the impugned teleprinter message is not relatable to the two Control Orders, the State Government undoubtedly could, in exercise of the executive power of the State, introduce a system of verification on movement of wheat from the State of Uttar Pradesh to various other States at the check-posts on the border and place restrictions; on inter-district movement of wheat by traders on private account within the State. The executive power of a modern State is not capable of any precise definition. In Ram Jawaya Kapur v. State of Punjab (1955) 2 SCR 225: (AIR 1955 SC 549), Mukherjea, C. J., dealt with the scope of Arts, 73 and 162 of the Constitution. The learned Chief Justice observed that neither of the two Articles contains any definition as to what the executive function is or gives an exhaustive enumeration of the activities which would legitimately come within its scope. It was observed : "Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away." It is neither necessary nor possible to give an exhaustive enumeration of the kinds and categories of executive functions which may comprise both the formulation of the policy as well as its execution. In other words, the State in exercise of its executive power is charged with the duty and the responsibility of carrying on the general administration of the State. So long as the State Government does not go against the provisions of the Constitution or any law, the width and amplitude of its executive power cannot be circumscribed. If there is no enactment covering a particular aspect, certainly the Government can carry on the administration by issuing administrative directions or instructions, until the legislature makes a law in that behalf. Otherwise, the administration would come to a standstill.
>
> **[21]** In Ram Jawaya Kapur's case (1955) 2 SCR 225 at p. 236 : (AIR 1955 SC 549 at p. 556) (supra) it was contended that the executive power of the

State did not extend to the carrying on of trade of printing, publishing and selling of text-books for schools unless such trade was authorised by law. In repelling the contention, Mukherjea, C. J. speaking for the Court, observed :

> Our Constitution, though federal in its structure, is modeled on the British Parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State. The executive function, comprises both of the determination of the policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact the carrying on or supervision of the general administration of the State.

The learned Chief Justice then went on to observe : Ibid at 239 (of SCR) : (at P. 557 of AIR)

> The Indian Constitution is a written Constitution and even the legislature cannot override the fundamental rights guaranteed by it to the citizens. Consequently, even if the acts of the executive are deemed to be sanctioned by the legislature, yet they can be declared to be void and inoperative if they infringe any of the fundamental rights of the petitioners guaranteed under Part III of the Constitution. On the other hand, even if the acts of the executive are illegal in the sense that they are not warranted by law, but no fundamental rights of the petitioners have been infringed thereby, the latter would obviously have no right to complain under Article 32 of the Constitution though they may have remedies elsewhere if other heads of rights are infringed.

In Naraindas Indurkhya v. State of Madhya Pradesh, (1974) 3 SCR 624: (AIR 1974 SC 1232), Bhagwati, J., speaking for the Court, reiterated the principles laid down by Mukherjea, C. J. in Ram Jawaya Kapur's, case, (supra) and held that the State Government could not in exercise of the executive power of the State under Art. 162 of the Constitution in relation to any matter with respect to which the State Legislature has power to make laws even if there was no legislation to support such executive action. There is no denying the fact that the State Legislature is competent to enact a law on the subject covered by Entry 33, List III, which reads :

> 33. Trade and commerce in, and the production, supply and distribution of,-

(b) foodstuffs, including edible oilseeds and oils."

In the same Judgment, the Court then noticed that the instructions issued in the teleprinter message were to achieve three main objectives, which were obviously intended to subserve the objective of the legislation and were in public interest. In paras- 27 and 32 of the same decision, the Court observed thus:

> **"27.** The quintessence of our Constitution is the rule of law. The State or its executive officers cannot interfere with the rights of others unless they can point to some specific rule of law which authorises their acts. In *State of M.P.v.Thakur Bharat Singh*, the Court repelled the contention that by virtue of Article 162, the State or its officers may, in the exercise of executive authority, without any legislation in support thereof, infringe the rights of citizens merely because the legislature of the State has power to legislate in regard to the subject on which the executive order is issued. It was observed:
>
> > Every act done by the Government or by its officers must, if it is to operate to the prejudice of any person, be supported by some legislative authority.
>
> The same principle was reiterated by the Court in *Satwant Singh Sawhney v. Dr.Ramarathnam, Assistant Passport Officer, Government of India, New Delhi and Smt.Indira Nehru Gandhi v. Raj Narain."*
>
> **"32.** The real, question at issue is whether or not the seizure of wheat was with the authority of law. The fundamental right to carry on trade or business guaranteed under Art. 19 (1) (g) or the freedom of inter-State trade, commerce and intercourse under Art. 301 of the Constitution, has its own limitations. The liberty of an individual to do as he pleases is not absolute. It must yield to the common good. Absolute or unrestricted individual rights do not and cannot exist in any modern State. There is no protection of the rights themselves unless there is a measure of control and regulation of the rights of each individual in the interests of all. Whenever such a conflict comes before the Court, it is its duty to harmonise the exercise of the competing rights. The Court must balance the individual's rights of

> freedom of trade under Art. 19 (1) (g) and the freedom, of inter-State trade and commerce under Art. 301 as against the national interest. Such a limitation is inherent in the exercise of those rights."

26. For the time being, we shall revert to the provisions of the Rules of 1981. It may be relevant to note that the Rule as originally introduced under the 1981 Rules i.e., Rule 26 governed both the situations, now separately dealt with by Rule 25A and Rule 26. The said Rule reads thus:

> "26. *Retrenchment on account of abolition of posts*.-(1) The services of a permanent employee may be terminated by the Management after giving him 3 months' notice or 3 months' pay (together with allowances) in lieu of notice, on the following grounds namely:-
>
> (i) Reduction of establishment owing to reduction in the number of Classes or Divisions.
> (ii) Fall in the number of pupils resulting in reduction of establishment.
> (iii) Change in the curriculum affecting the number of certain category of teachers.
> (iv) Closure of a course of studies or of the school itself.
> (v) Any other bonafide reason of similar nature.
>
> (2) Termination of services under sub-rule (1) above shall be subject to the following conditions, namely:-
>
> (i) The principle of seniority shall ordinarily be observed.
>
> (ii) Prior approval of the Education Officer, or in the case of the Junior College of Education the Deputy Director shall be obtained by the Management in each and every case of retrenchment including cases in which the principle of seniority is proposed to be departed from and a senior member of the staff is proposed to be retrenched when a junior member should have been retrenched.
>
> (iii) The employees whose services are proposed to be terminated shall be absorbed by the Education Officer or as the case may be, the Deputy Director, in other Schools. Till

the employees are so absorbed the Management shall not be permitted to close down the Classes or Divisions or to effect retrenchment on account of any other reason mentioned in sub-rule (1) above.

(3) If posts retrenched are revived or additional posts for the same subjects are created, the Management shall, by a letter registered post acknowledgment due addressed to the employee who is retrenched and absorbed in other School, give him the first opportunity of re-joining services in the school. For this purpose the employee shall communicate to the Management his address and availability for the job every year before April by a letter sent by registered post acknowledgment due.

(4) The retrenched person who may have been absorbed in other School shall have an option either to get repatriated to his original School or to continue in the School in which he has been absorbed.

(5) If the employee opts to continue in the School in which he has been absorbed or if no written reply is received from the employee within a fortnight from the date of receipt of the letter addressed to him by the Management regarding the offer for re-appointment or repatriation to the School or on refusal by him to receive the letter containing such an offer, the Management shall be free to fill the post or posts by appointing some other qualified person or persons.

(6) In the3 event of the employee opting to get repatriated to the original School he shall be restored to his original position in pay, seniority etc."

As per the old Rule, it is noticed that closure of a course of study or a school itself, was covered by sub-clause (iv) of Sub-Rule (1). Sub-clause(ii) of Sub-Rule (2) stipulated that prior approval of the Education Officer should be obtained by the Management in each and every case of retrenchment. Sub-clause (iii) of Sub-Rule-2 further provided

that the employees whose services are proposed to be terminated shall be absorbed by the Education Officer or as the case may be, the Deputy Director. Further, till the employees are so absorbed the Management shall not be permitted to close down the Classes or Divisions or to effect retrenchment on account of any other reason mentioned in sub-rule(1). The Scheme of old Rule 26 plainly provided for "prior approval" of the Competent Authority before closure of the school. With passage of time and the contemporaneous developments, the Legislature thought it necessary to amend the old Rule 26. The same was substituted by introducing Rule 25A and Rule 26 by amendment, which was notified on 20th October, 1987. The existing rule 25A and 26 which are statutory rules read thus:

> **"25A. Termination of Service on account of abolition of posts** :-
>
> (1) The services of permanent employee may be terminated by the Management on account of abolition of posts due to closure of the school after giving him advance intimation of three months to the effect that in the event of closure of the school, his services shall automatically stand terminated. In the case of closure of school due to de-recognition, such advance intimation of three months shall be given by the Management to the permanent employees after receipt of a show cause notice from the Deputy Director.
>
> Explanation:- For the purposes of this sub-rule, the expression "closure of the school" shall include, -
>
> (i) voluntary closure by the Management of the entire school if it is imparting instruction through one medium or a part of the school comprising one or more media of instruction if it is imparting instruction through more than one medium; and

(ii) closure of the school due to de-recognition by the Department.

(2) The names of the employees in aided schools, whose services stand terminated in accordance with sub-rule (1) on account of de-recognition and who are not directly responsible for such de-recognition, shall be taken on a waiting list by the Education Officer in the case of Primary and Secondary schools or by the Deputy Director in the case of Higher Secondary Schools or Junior Colleges of Education, and the same shall be recommended by him to the Managements of newly opened aided schools or of the existing aided schools which are allowed to open additional divisions or classes, for consideration".]

26. Retrenchment on account of abolition of posts :-

(1) A permanent employee may be retrenched form service by the Management after giving him 3 months notice, on any of the following grounds, namely:-

(i) reduction of establishment owing to reduction in the number of classes or divisions;

(ii) fall in the number of pupils resulting in reduction of establishment;

(iii) change in the curriculum affecting the number of certain category of employees.

(iv) Closure of a course of studies;

(v) any other bonafide reason of similar nature.

(2) The retrenchment from services under sub-rule (1) shall be subject to the following conditions, namely:-

(i) The principle of seniority shall ordinarily be observed;

(ii) Prior approval of the Education Officer in the case of Primary and Secondary Schools or of the Deputy Director in case of Higher Secondary Schools and Junior Colleges of Education shall be obtained by the Management in each case of retrenchment including such cases in which the principle of seniority is proposed to be departed from and a senior member, of the staff is proposed to be retrenched when a junior member should have been retrenched, stating the special reasons therefor;

(iii) The employees form aided schools, whose services are proposed to be retrenched, shall be absorbed by the Education Officer in the case of primary and Secondary Schools or by the Deputy Director in the case of Higher Secondary Schools and Junior Colleges of Education. The order or absorption or such employees shall be issued by registered post acknowledgment due letter, and till they are absorbed, the Management shall not be permitted to effect retrenchment on account of any reasons mentioned in sub-rule (1)

(3) In case any employee refuses to accept the alternative employment offered to him under clause (iii) of sub-rule (2), he shall lose his claim for absorption, and the Management of the school shall be allowed to retrench such employee from the services after completion of 3 months notice period.

(4) If the posts retrenched are revived or additional posts for the same subject are created, the Management shall, by a registered post acknowledgment due letter addressed to the employee who is retrenched and absorbed in other school, give him the first opportunity of re-joining services in the school. For this purpose, the employees shall communicate to the Management, his address and availability for the job ever year before April by a letter sent by registered post acknowledgment due .

(5) The retrenched person who may have been absorbed in other school, shall have an option either to get repatriated to his original school or to continue in school in which he has been absorbed.

(6) If the employee opts to continue in the school in which he has been absorbed, or if no written reply is received from the employee within a fortnight from the date of receipt of letter addressed to him by the Management regarding the offer for re-appointment or repatriation to the school or on refusal by him to receive the letter containing such offer, the Management shall be free to fill the post or posts by appointing some other qualified person or persons.

(7) In the event of the employee opting to get repatriated to the original school, he shall be restored to his original position in pay, seniority etc.

(8) In the event of the employee opting to continue in the school in which he has been absorbed, and even during the intervening period when he has not been given an opportunity to rejoin his previous school, his services shall not be terminated by the Management under sub-rule (1) of Rule 28 by treating him as temporary. If the

> services of such an absorbed employee are required to be terminated under Rule 25A or he is to be retrenched under the rule, the procedure prescribed under Rule 25A, as the case may be, in this rule, shall apply. However his seniority for the purpose of promotion in the school in which he is absorbed shall be fixed in the respective category form the date of his absorption.
>
> (9) In case, the fall in the number of pupils, classes or divisions affects the scale of the employee or his status, the facility of absorption admissible as per provisions of clause (iii) of sub-rule (2) shall not be admissible to him and he shall have to work on the lower scale or lower post or part-time post, as the case may be. in the event of such an employee showing unwillingness to work on such a post, the authorities mentioned in clause (iii) of sub-rule (2) shall permit the Management to retrench him after giving him three months' notice or, as the case may be, after completion of the notice period if already given."]

The distinction between the two Rules has already been expounded by the Division Bench of this Court (see **Dattaraj Janraoji Nimkar & ors. vs. Swargiya Sakharamji Shikshan Sansthan 2004 (1) Mah. L.J. 516** – paras 6-8 thereof). The two Rules now operate in different fields. Rule 25A is specific to closure of the School as a whole, whether on account of voluntary closure or on account of de-recognition. Consequences in either case is of abolition of posts in which the permanent employees were engaged by the concerned school. As a result, the permanent employees are required to be terminated by the Management. The expression “closure of School” has been amplified in the explanation below Rule 25A(1). Significantly, Rule 25A does not even remotely require the Management to take prior approval or permission of any Authority

before issuance of notice of termination to its permanent employees. In other words, condition of prior approval in the case of closure of a school either be a case of voluntary closure or on account of de-recognition of the school, which obtained under the old Rule 26 has been done away with after the amendment of 1987.

27. We have no doubt in our mind that the case of voluntary closure of the junior colleges would be governed only by the regime provided in Rule 25A. The Management however, issued notice of termination to its permanent employees mentioning Rule 25A as well as Rule 26. Merely because the notice refers to Rule 26, that does not mean that the rigours of Rule 26 would be attracted to the case on hand. Nor it is possible to read the rigours provided in Rule 26 into the requirements of Rule 25A. That interpretation would defeat the very object for which the amendment was effected in 1987 and will be in the teeth of the legislative intent. For, the existing Rule 26 deals with retrenchment of the permanent employees from service by the Management on account of situations specified in sub-rule (1), which are other than closure of the school as a whole. The situations specified under sub-rule (1) of Rule 26 are on account of reduction of establishment. By its very nature, temporary reduction of establishment is

attributable to the closure of a course of studies, reduction of the number of classes or division or fall in the number of pupils or change in the curriculum effecting number of certain category of employees. It is certainly not comparable with the closure of a school as a whole. The fact that one of the situation specified in sub-rule (1) of Rule 26 as to any other bonafide reasons of similar nature cannot be amplified to mean that even a closure of a school as a whole would be governed by the regime provided in sub-rule (2) of Rule 26. Whereas, the said sub-clause(v) will have to be read *Ejusdem generis* keeping in mind the preceding sub-clauses in the same Rule.

28. Suffice it to observe that both Rule 25A and Rule 26 operate in different fields and are mutually exclusive. Both the Rules were introduced simultaneously by the same amendment but it is only in the latter Rule i.e. Rule 26, the Legislature has provided that “prior approval” of the Education Officer or the Deputy Director as the case case may be shall be obtained by the Management in each case of retrenchment justifying the situations provided therein. Since Rule 26 has no application at all to the situation arising out of voluntary closure of the school, which situation is governed by Rule 25A of the Rules, the question of taking any “prior

approval" of the Competent Authority is not contemplated by Rule 25A- as in the case of situations specified in Rule 26. To that extent, the Management is right that atleast the Rules of 1981 will be of no avail, as it do not provide for taking "prior approval" of the Competent Authority before implementing the decision of voluntary closure of a School/Junior College. That however, does not mean that the Management has absolute right to close the Junior Colleges unilaterally. Inasmuch as, Rule 7.5 of the Secondary School Code as amended on 17th December, 1990 will have to be kept in mind while examining this aspect. Rule 7.5 reads thus:

> **"7.5** The management of the school, the partial or the total recognition to which has been withdrawn by Deputy Director, may submit an appeal to the Director within thirty days from the date of the said order. The appeal shall be sent by registered post. Appeals received after the prescribed time-limit will not be entertained. [The Director or his representative not below the rank of the joint Director of Education, may decide the appeal after giving hearing to the representatives of the Management and his decision shall be final and binding on the Management.]
>
> [No Management shall close school or any of the recognised classes or make voluntary change in approved school subjects, which may result in any of its permanent staff being rendered surplus, without due notice to the Regional Deputy Director of Education, at least one academic term in advance, and act as per his decision. An appeal on the decision of the Deputy Director of Education in this case shall lie with the Director of the Education.]"
>
> (emphasis supplied)

It will have to be borne in mind that Rule 7.5 of the Code appears in Section I of Chapter II of the Code. Chapter II of the Code deals with recognition, organisation and management of the schools. Section I thereof deals with conditions, grants, refusal and withdrawal of recognition. Rule 7.1 to Rule 7.6 are grouped under the heading withdrawal of recognition. The code provides for elaborate procedure for recognition of a school. Once the recognition is granted, the school has to abide by the specified norms, failing which it would entail in withdrawal of recognition. The withdrawal of recognition can be either partial or total recognition. The first part of the Rule 7.5 is of no relevance to the controversy on hand. It merely provides remedy of appeal against the decision of partial or total withdrawal of recognition. The remedy of appeal is before Director to be availed before 30 days from the date of the order passed by the Deputy Director. Amended second part of Rule 7.5(as amended on 17th December, 1990), has some bearing on the present matter. It provides that no Management shall close school, without due notice to the Regional Deputy Director of Education atleast one academic term in advance. It further provides that the Management shall have to act as per the decision of the said Authority. It further provides that it is open to the Management to

question the decision of the said Authority before the Director of Education. In the case of closure of a school, there would be no question of permanent staff being rendered surplus. That is relevant to the other situation spelt out in Rule 7.5, to wit, closure of recognised classes or make voluntary change in approved school subjects. That is ascribable to situations specified in Rule 26 as amended in 1987. In the latter situation the school continues to function but the permanent staff is rendered surplus due to closure of recognized classes or of making voluntary change in the approved school subjects. Whereas, when the whole school is to be closed, it presupposes that the permanent staff of the school at the relevant point of time will inevitably have to be terminated. The provision is obviously intended primarily to supplement the legislative intent under the statutory Rules of extending benefits to the permanent employees engaged by such institution. The statutory Rules is a welfare legislation. Besides safeguarding the interests of the permanent employees, this provision-Rule 7.5 of the Code also attempts to safeguard the interests of other stakeholder in the school such as students and general public who are also likely to be affected by the abrupt closure of a school. Thus understood, the requirement under this provision of giving “due notice” to the Regional Deputy Director of Education has been made essential. This provision makes no distinction

between aided and unaided schools. Considering the decision of the Apex Court in the case of **Bishambher Dayal(Supra),** it would necessarily follow that Rule 7.5 of the Code, which is in the nature of executive instructions issued in exercise of powers under Article 162 of the Constitution by the State Government, being a reasonable restriction, the Management would be obliged to comply with the stipulation specified therein.

29. The question is: whether Rule 7.5 of the Code obliges Management to take "prior approval" or "prior permission" of the Competent Authority before translating its decision of closing down the school. The Language employed in Rule 7.5 is only one of the giving "due notice" to the Regional Deputy Director of Education and not of taking "prior approval" or "prior permission" as such. "Due notice" would mean giving adequate or legally prescribed notice, which is atleast one academic term in advance. The term "notice" has originated from the Latin word "notifia" which means "a being known or a knowing and is wide enough in the legal circle to include a plaint filed in a suit". The term "notice" has been defined in various dictionaries. It denotes merely giving information or intimation to the party concerned of a particular fact. [See **CST vs. Subhash & Co.**

[(2003) 3 SCC 454 and Parasramka Commercial Co. vs. Union of India[(1969) 2 SCC 694]]. In that sense, what is provided by Rule 7.5 of the Code is only giving intimation about the decision to close the school, which has to be atleast one academic term in advance. The said provision per se does not speak of "prior approval" or "prior permission" at all. The term "approval" does not mean anything more than either confirming, ratifying, assenting, sanctioning or consenting. It is an administrative power which limits the jurisdiction of the authority to apply its mind to see whether the proposal is acceptable. Distinction between the term "approval" and "permission" is also well established. In the case of **U.P.Avas Evam Vikas Parishad vs. Friends Coop. Housing Society Ltd. [1995 Supp(3) SCC 456],** the Apex Court has expounded that ordinarily, the difference between approval and permission is that in the first case the action holds good until it is disapproved, while in the other case it does not become effective until permission is obtained. Suffice it to observe that Rule 7.5 makes no reference to requirement of prior "approval" or "permission", but speaks only of giving due notice. Expression "due notice" would, therefore, ordinarily mean that the Management is obliged only to send intimation to the Appropriate Authority of the fact that it intends to close the school.

30. The argument of the State and the employees, however, is that, Rule 7.5 plainly requires the Management to abide by the decision of the Regional Deputy Director unless the same is to be appealed and reversed. Relying on the expression "and act as per his decision", it was argued that even though earlier part of the same provision merely provides giving of due notice to the Authority it would necessarily follow that after giving such notice, the Management is obliged to abide by the decision of the Appropriate Authority. Thus understood, it would nevertheless be a case of a prior approval, if not a case of prior permission. This aspect has already been dealt with in the decisions of learned Single Judges of our Court in the case **Pujya Sane Guruji Vidya Prasarak Mandal & Ors. Vs. Prakash M. Patil & Anr.[2002(1) All MR 766] and Mahatma Gandhi Taluka Shikshan Mandal, Chopda & Anr. Vs. Sambhaji A. Patil & Anr. etc.etc. [2004(2) M.L.R.854]=Maharashtra Education Cases 132.** In the case of **Pujya Saneguruji VPM(supra)**, it is held that prior permission of any authority under the Code is not necessary for voluntary closure of the School. The Court however, held that that the closure of the School under Rule 25A has also to be for any bonafide reason of similar nature, as specified under Clause (v) of Rule 26(1). In compelling circumstances, the Management would decide to close down the School for bonafide reason,

which would include fall in number of pupils or financial constraint and the like. In the case of **Mahatma Gandhi TSM(supra),** the view taken in the earlier decision in **Pujya Sane Guruji VPM(supra)** has been restated to the effect that no prior permission is required before enforcing the decision of the Management to voluntarily close the School, except to issue notice to the employees and of giving due notice of closure to the Deputy Director one academic term in advance.

31. In our opinion, however, the amended second part of Rule 7.5 if read as a whole and particularly keeping in mind the avowed purpose of giving notice of one academic term in advance coupled with the obligation of the Management to abide by the directions of the Appropriate Authority to be passed on such intimation, it would mean that the intimation to be given by the Management to the Appropriate authority is "analogous to" application for grant of approval of the Authority. We would bend forwards to take this view keeping in mind the purpose of giving advance notice of atleast one academic year - so as to obviate the insurmountable cascading effect to be caused due to the abrupt closure of any School/Junior College by the Management unilaterally. Any other view would be frought with serious civil consequences to the stakeholders in the school, who may not

only be the employees of the school but also the students community and the interests of public in general. Indubitably, the intent behind the amendment to Rule 7.5 of the Code, introduced posterior to the amendment of Rules of 1981 in 1987 and coming into force of amended Rules 25A and 26, was to address the abovestated mischief by requiring the Management not only to give notice of its intent to close the School/Junior College atleast one academic year in advance but also to act as per the decision of the Appropriate Authority. The State has administrative and executive power to impose reasonable restrictions on the school before enforcing the decision of closing the school as a whole. In other words, the existing provision in Rule 7.5 of the Code deserves to be construed as "analogous to" approval of the Appropriate Authority. That would subserve the larger public interest and the same time will be a reasonable restriction. However, the power to be exercised by the Appropriate Authority can be only of confirming, assenting or consenting to the proposal of closure of the school by imposing such conditions which would be necessary to safeguard the interests of the permanent employees and also of the students community. While doing so, however, it cannot sit over the decision of the Management to close the school as an Appellate Authority or assume the power to refuse permission and outright reject the proposal of the

Management. That approach would obviously interfere with the fundamental rights of the Management to close down the School when it so desires and especially when it was unwilling to continue to run the same. In exercise of powers under Rule 7.5 of the Code to issue directions to the Management, the Appropriate Authority can provide for suitable and reasonable time frame so as to accommodate the existing students in other neighbouring schools/junior colleges and also to secure the interests of the prospective students in the vicinity. Besides, the Appropriate Authority has to consider the issues relating to permanent employees of the school who are likely to be dislocated or terminated from service. The directions to be issued in this behalf would obviously be reasonable restrictions. It is not possible to spell out diverse situations which the Appropriate Authority may have to address while considering the proposal of the Management to close the school. As aforesaid, the Appropriate Authority cannot be unmindful of the fact that the directions to be issued by it should be germane to the cause for which the same are issued and in any case, the directions should be just and reasonable restrictions. What direction would be just and reasonable is a matter which would depend on facts of each case. Suffice it to observe that the Appropriate Authority cannot outright reject the proposal of the Management of closure of the school. If the situation so demands, there is

ample power with the Appropriate Authority, bestowed in terms of provisions of Maharashtra Educational Institution (Management) Act, 1976, even to take over the management of the concerned school for a limited period in the public interest. Those are options, which will have to be generated and considered by the Appropriate Authority. The validity of provisions similar to one under 1976 Act have been considered by the Apex Court while examining the provisions of Gujarat Secondary Education Act, 1972 in the case of **Bharat Sevashram Sangh vs. State of Gujarat[(1986) 4 SCC 51].**

32. Be that as it may, in our opinion, the substance of the requirement of Rule 7.5 is that the Management has to give intimation to the Appropriate Authority well in advance, who in turn has authority coupled with the duty to issue directions as he may deem fit which ought to be just and reasonable and the Management is bound to act upon such directions. This restriction is for the limited purpose of giving sufficient time to the Appropriate Authority to make suitable remedial arrangement so that the interest of stakeholders in the school - of permanent employees and students community - is not jeopardized. The Appropriate Authority is expected to attended to the said intimation with immediate despatch to avoid any

prejudice to the stakeholders in the school. The necessity of giving one academic year notice will have to be held as mandatory having regard to the consequences that would follow on account of abrupt closure of a School. At the same time, period of one academic year intimation is sufficiently long enough to enable the Authority to make suitable alternate arrangement for the students and employees concerned. It is not possible for us to accept the extreme argument of the State and the employees as well as the Petitioners espousing the cause of students that "prior permission" of the Appropriate Authority is the quintessence for allowing the Management to close down the school. The language of Rule 7.5 does not support that position. Indeed, it is always open to the Legislature to introduce such requirement expressly in the Act governing the subject or the statutory Rules. The validity of such a provision however, can be tested when occasion arises. For the present, we would proceed on the basis that the Management of the school has a right to close the school but it is subject to complying the obligation of giving advance notice of one academic year and the restrictions which are likely to be imposed by the Appropriate Authority, which ought to be just and reasonable restrictions and in the interests of general public. We are conscious of the fact that Rules of 1981 are essentially in relation to the conditions of service of employees of

private schools. However, at the same time, the Secondary School Code, which is compendium of executive and administrative instructions, is ascribable to the executive power of the State under Article 162 of Constitution and the provision such as Rule 7.5 of the Code is primarily intended to further the interests of the general public and not limited to the service conditions of employees. Thus understood, right to close a School/Junior College of Management is not an absolute right and moreso, when the School is a government aided school. The extreme argument of the State that Rule 7.5 of the Code empowers the competent Authority even to refuse permission and force the Management to continue to run the School for all times to come, if accepted would render the said provision unconstitutional as it would interfere with the fundamental rights guaranteed under Article 19(1)(g) of the Constitution-to start a school which includes right to close the school when the Management decides to do so.

33. The next question is what are the consequences of closure of the school qua permanent employees. That question in our opinion, will have to be addressed by the School Tribunal in the first instance, keeping in mind the provisions of Rule 25A of the Rules. We have already observed that the closure of the school would be governed only by the regime of Rule 25A of

the Rules. We do not propose to elaborate on this issue any further. Lest, it may affect the merits of the pleas available to the Management as well as the concerned permanent employees. All questions in this behalf will have to be addressed by the Tribunal. Even the question as to whether the Tribunal can direct absorption of the affected permanent employees in the school on the assumption that they have been rendered surplus due to voluntarily closure of the School/Junior College by the Management, will have to be considered by the Tribunal in accordance with law. We do not wish to detain ourselves on those aspects.

34. The next question is: whether the School Tribunal can examine the question of bonafides of closure. In this context, we will also consider the correctness of the opinion recorded by the learned Single Judge in the impugned decision that the Tribunal has misdirected itself in considering the said question inspite of the observations of the Division Bench in the case of Bhagwant Kumar Sandhu[2008(1) All MR 270. In the first place, jurisdiction of the School Tribunal flows from Section 9 of the Act, which read thus:

> **9. Right of appeal to Tribunal to employees of private schools.** :-
>
> (1) Notwithstanding anything contained in any law or contract for the time being in force, [any employee in a private school-

(a) who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the Management or

(b) who is superseded by the Management while making an appointment to any post by promotion, and who is aggrieved, shall have right of appeal and may appeal against any such order or suppression to the Tribunal constituted under section 8 ;.]

Provided that , no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court of competent jurisdiction or is pending before such Court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the Management at any time before the 1st July 1976.

(2) Such appeal shall be made by the employee to the Tribunal, within thirty thirty days from the date of receipt by him of the order of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be:

Provided that, where such order was made before the appointed date, such appeal may be made within sixty days from the said date.

(3) Notwithstanding anything contained in sub-section (2), the Tribunal may entertain an appeal made to it after the expiry of the said period of thirty or sixty days, as the case may be, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.

(4) Every appeal shall be accompanied by a fee of [five hundred] rupees, which shall not be refunded and shall be credited to the Consolidated Fund of the State.

It is a remedy provided to the employee of a private school, who is dismissed or removed or whose services are terminated or who is reduced by rank by order passed by the Management. All questions arising in

respect of the said grievance will have to be considered by the Tribunal. However, at the same time, that does not mean that the Tribunal can undertake parallel enquiry on matters which the Education Department is expected to examine upon receipt of intimation from the Management about its proposal to close the School. Indeed, the Tribunal can incidentally go into the question of whether there is closure effected, but it does not empower the Tribunal to render conclusive finding with regard to the bonafides of closure. As we have observed in earlier part of this Judgment, even the Appropriate Authority of the Education Department cannot sit over the decision of the Management to close down the School as an Appellate Authority. The scope of enquiry even before the Appropriate Authority of the Education Department is only to consider as to what suitable directions are warranted in the fact situation of the case, so as to minimise the loss and hardship to be caused to the stakeholders, in particular, the students community and the permanent employees of the school. In our view, therefore, the School Tribunal cannot render conclusive finding with regard to the bonafides of the decision of the Management to close the school. Moreover, an enquiry with regard to the bonafides of voluntary closure will be an exercise in futility as the right of the Management to close the school can only be regulated by imposing reasonable restrictions in the interests of

general public. For, it would not be open even to the Appropriate Authority to outright reject the proposal of voluntary closure of the school, as that would impinge upon the rights guaranteed under Article 19(1)(g) of the Constitution.

35. The next question is: is it open to the School Tribunal to consider the issue of closure resulting in causing prejudice to the existing students of the school or prospective students and that of the Society as a whole. We are afraid, it is not open to the School Tribunal to reopen the issue of closure of the school, which would attain finality with the directions to be issued by the Appropriate Authority of the Education Department. The School Tribunal in any case would be competent only to address the matters in the context of privileges or benefits available and accrued to the permanent employees if any, on account of the closure of the school. The School Tribunal has no concern with any other issue, since it has been constituted only to examine the limited grievance brought before it under section 9 of the Act.

36. The next issue that needs to be addressed is regarding appointment of Administrator by the Appropriate Authority in exercise of powers under the

provisions of Maharashtra Educational Institution (Management) Act, 1976 to take over the Management of the junior colleges for a limited period in public interest. Here we may notice that after the hearing of the present batch of matters was concluded and the same were adjourned for pronouncement of judgment, in the interregnum, the Petitioners in Writ Petition No. 1639 of 2009 have filed Review Petition for recalling the order dated 18th November, 2009. The principal grievance in the said Review Petition is that the statutory remedy of appeal is not an efficacious remedy in the fact situation of the present case. In that, the circumstances on record would indicate that the exercise of that power by the Authority is for extraneous consideration and malafide. Moreover, there is no provision of appeal against the order passed under section 4 of the Act of 1976. In the present case, the order passed by the Appropriate Authority is a composite order under section 3 as well as section 4 of the Act. Insofar as the order under Section 4 of the Act is concerned, the same is made on the basis of approval given by the State Government in that behalf. Taking any view of the matter remedy of appeal is not an efficacious remedy. The argument though attractive, in our opinion, need not detain us. Even if the Management were to succeed in the Review Petition the question regarding appropriateness of the order of appointing Administrator and taking over

of the Management will have to be examined on its own merits. That can be considered at the appropriate stage. We express no opinion on the said aspect, except to clarify that all questions in that behalf are left open to be decided on its own merits in accordance with the law. Indeed, depending on the outcome of the decision in the said matter, the question as to whether the school can be continued and managed for the limited period as provided under the said Act or otherwise will become relevant. We are of the view that even if the Management were to succeed in their stand that the Appropriate Authority could not have outright rejected their proposal of closing the School, even so, the Management would be bound by the suitable directions to be issued by the Appropriate Authority and moreso, subject to the final decision in the action initiated by invoking the provisions of the Act, 1976 of taking over the Management of the Junior Colleges to minimise the hardship to be caused to the students community and the employees thereof. .

37. The next question is whether the effect of appointment of administrator can be in relation to the entire management of the Trust or only limited to the management and running of the two junior colleges. Inasmuch as, if it were to be a case of taking over the Management of the

trust, it would not only result in taking over the Management of the Degree college but also other activities of the Public Trust which can be regulated only by the Charity Commissioner under the provisions of the Bombay Public Trusts Act. Once again this question will have to be considered in the context of powers under the Act of 1976. We may however, observe that going by the order of appointing administrator and taking over the management, the same merely refers to taking over the management of the two junior colleges. Be that as it may, all aspects in this behalf can be considered and addressed at the appropriate stage – be it by the Appellate Authority or this Court, as the case may be. We keep all questions in that behalf open to be considered in the said proceedings.

38. The next question is whether the decision of the Appropriate Authority, which has culminated in the Order dated 25th July, 2008 can be sustained. We have already reproduced the relevant extract of the said decision. The basis on which the Appropriate Authority considered the intimation given by the Management, in our opinion, was plainly extraneous. In the first place, the Appropriate Authority could not have outright rejected the proposal submitted by the Management of closing down the junior colleges. In any case, the reasons recorded by the

Appropriate Authority do not commend to us. The Appropriate Authority at the outset has observed that prior permission was necessary. This aspect is already answered by us. The provisions pressed into service do not require permission of the Authority much less prior permission, but the decision of the Authority is only in the nature of approval for the limited purpose of issuing directions to provide for suitable remedial arrangement to safeguard the interests of the employees and more particularly of the students community. The Authority cannot sit over the decision of the Management of closing the junior colleges as an Appellate Authority. The next reason recorded by the Appropriate Authority is that, the Management passed resolution on 14th February, 2007 to close down the school without taking prior permission. That view is the outcome of clear misunderstanding. The resolution passed by the Management on 14th February, 2007 was the basis on which the proposal has been submitted to the Authority, as required under Rule 7.5 of the Code within the specified time, which was in accord with the time specified under the said Rule. Rule 7.5 requires submission of such proposal atleast one academic term in advance. The Appropriate Authority has then opined that the decision of the Management was not bonafide and the Management was making concerted efforts to close down the school since November, 1997. Even this reason is of no consequence,

once it is found that the Appropriate Authority cannot sit over the decision of the Management to close down the School or Junior College as an Appellate Authority. Even the other reasons recorded by the Appropriate Authority that the Management was not cooperative and that there was strong opposition from the local people or of students basic right to education will be affected does not take the matter any further. The Appropriate Authority has gone to the extent of observing that there is no provision in MEPS Act to close down the school, clearly overlooking the fact that the provisions of MEPS Act are invoked by the Management only for issuance of notice to its permanent employees. Giving notice to the permanent employees as per Rule 25A, does not mean that the Management has no right to close the junior colleges, if it intends to do so. Suffice it to observe that the decision of the Director of Education of outright rejection of the proposal to close the junior college, is unsustainable. The Appropriate Authority including the Director of Education at best were empowered to examine the issues which would emanate as a consequence of closure of the junior college and could have issued directions only in that regard. Accordingly, the decision of the Director as recorded in the Minutes dated 21st July, 2008 as well as communication dated 25th July, 2008 cannot be sustained and the same will

have to be quashed and set aside.

39. The next question that will have to be considered is: whether the grievance brought before this Court by way of Writ Petition No.73 of 2002 survives for consideration. As aforesaid, the limited grievance in this Writ Petition is about failure to conduct assessment for junior colleges from the academic year 1991-92 and furnish the assessment report to the Management in respect of junior colleges as well as in respect of Degree college. The Management has prayed for issuance of direction to the Appropriate Authority to complete the assessment, both in relation to the junior colleges as well as Degree College and thereafter, release the payment of non-salary grants to the concerned colleges. The Management has also asked for direction to evolve proper fee structure of the junior colleges as well as Degree College.

40. In the first place, since the Management decided to close down junior colleges during the pendency of the Writ Petition, all reliefs claimed in respect of two junior colleges would not survive for consideration. In any case, the Petition is resisted by the State by filing affidavit of Chandrakant Dagdu Kotwal, Deputy Educational Inspector sworn on 11th February, 2002;

as also by the affidavit of Appaji Chandrakant Sawant, Administrative Office in the office of Joint Director, Higher Education sworn on 12nd February, 2002. It is stated that as per the Annexure (70) (xx) of the Secondary School Code an amount not exceeding 80% of the actual expenditure incurred other salary allowances or Rs.2400/- per division of science stream and Rs.2000/- per division of Arts/Commerce stream whichever is less is payable as non-salary grant. It is stated that as per the said policy, colleges run by the Petitioner Trust have been compensated as is mentioned in the statement in respect of non-salary grant during the academic years 1995-1996 to 2000-2001. Further, it was noticed that amount of Rs.99,952/- is payable in respect of Chinai Junior College whereas, nothing was due and payable to the L.U.& M.V.Junior College. In fact, an amount of Rs.3,71,770/- was recoverable from junior college. Affidavit also records that the junior colleges were 100% aided colleges and all salary grants are paid by the government apart from the said non-salary grant. It is stated that it has been noticed that the colleges were deliberately refusing admission to the deserving students for reasons best known to them. More or less on the same lines in the other affidavit filed, the amount disbursed to the junior colleges has been mentioned. It is further stated that due to financial constraints Government is not in a position to disburse the

entire amount of Non-salary grants to any institutions. It is stated that non-salary grants of 167 colleges in Mumbai Region have not been disbursed. That Petitioners were not discriminated or singled out. It is also stated that the Institution can raise funds by way of other fees and receipts on account of Gymkhana fee, extra curricular activity fees, Library fees, Laboratory fees, Admission fees and Laboratory breakages, fines, receipts on account of sale of Prospectus, forms etc. Income from such other receipts is considerably high for the colleges in Urban Areas and cannot be treated as negligible amount. It is further stated that it has been noticed that the Management has spent substantial amount which was avoidable and cannot therefore, make grievance about financial crisis.

41. Having regard to the nature of reliefs claimed in this Writ Petition, we would think it proper to direct the concerned Respondents to examine the claim of the Petitioners stated in this Petition, if already not done so far. The Respondents would treat the present Petition as further representation of the Petitioners, both in respect of junior colleges as well as Degree College and issue appropriate orders, as may be advised in accordance with law. This Petition, therefore, is being disposed of leaving all questions open. The concerned Authorities would consider the claim of the

Petitioners by giving fair opportunity to the Petitioners/Management to put across their point of view and to allow them to produce such other documents, as may be advised. The Authorities would however, dispose of the representation as expeditiously as possible.

42. The next question is whether on account of unilateral action of the school Management to close down the junior colleges inspite of refusal of closure permission and no interim relief granted by the Court of competent jurisdiction and more particularly, disregarding the positive order passed by the Court to participate in the admission process, what is the consequence of such conduct. The fact that the appropriate authority failed to take a final decision on the proposal submitted in terms of Rule 7.5 of the Code by the Management regarding closure of the School does not mean that the Management could unilaterally close its Junior Colleges. There is no dispute that the issue regarding closure of the two Junior Colleges got embroiled in litigation between Management of the Junior Colleges on one hand and the permanent employees as well as the public spirited persons espousing the cause of the students on the other. So long as the Appropriate Authority had not recorded its final view on the proposal of the Management, the Management could not have unilaterally given effect to its

decision of closing down the Junior Colleges. Admittedly, the final order was passed by the Director of Education on the proposal for closure of the two Junior Colleges only on 21st July, 2008, pursuant to the directions issued by the Court in that behalf. On account of rejection of the proposal, even if were to be a wrongful rejection, the Management was obliged either to challenge the said decision before the Appellate Authority and till the Appellate Authority were to accept their claim were duty bound to operate and run the Junior Colleges.

43. In the present case, because of the grievance made even this Court had to intervene as it prima facie found that the Management was adopting modus operandi so as to dissuade the fresh students from taking admission in the Junior Colleges and then using it as a ground of depletion of the students strength so as to justify the closure of the two Junior Colleges. This Court by order dated 29th May, 2009 directed the Management to cooperate in the admission process. Inspite of the directions issued by this Court, the Management successfully ensured that no admission was given to any fresh students in the two Junior Colleges. This attitude of the Management cannot be countenanced at all. The fact that the Management has right to close the Junior Colleges does not mean that it would disregard

the directions of the Competent Authority and moreso of the Court of competent jurisdiction.

44. In our opinion, the decision of the Appropriate Authority of rejection of the proposal submitted by the Management for closue of two Junior Colleges would bind the Management until it was to be reversed. In that situation, the Management was obliged to conduct the two Junior Colleges so as to comply with the directions of the Competent Authority and more so, the expectations of the local students and other stakeholders in the Junior Colleges. In any case, after categoric directions issued by this Court, the Management had no choice but continue to run the two Junior Colleges. The directions issued by this Court remained on paper because of the recalcitrant attitude of the Management. In law, till final decision of the Competent Authority on the proposal of closure submitted by the Management was to attain finality, it would follow that the Management was obliged to run the Junior Colleges and the same were deemed to be operated irrespective of the fact that no students could take admission in the two Junior Colleges for the relevant academic years. The fact that no fresh students were admitted in the Junior Colleges was the making of the management.

45. We are of the considered view that the Management in the present case cannot be allowed to take advantage of its own wrong. For, it has come on record that the Management did not cooperate with the online admission process. Besides, although no new admissions were given in the two Junior Colleges, the Management continued to receive salary grants in respect of permanent employees in the two Junior Colleges and the said employees had virtually no work and were made to sit idle. Ordinarily, the Petitions filed by the Management ought to be thrown out at the threshold on this count alone. Be that as it may, in our opinion, the Competent Authority may consider of recovering the amount so paid to the Junior Colleges towards salary grants for the relevant period, which is from the public exchequer. It would be open to the Competent Authority to take recourse to such measures, as may be permissible in law in that behalf. It is for the Authorities to take appropriate action against the Management for their act of commission and omission, if they so desire. Besides, it would be open to the other private parties to take recourse to such remedy, as may be permissible against the Management for the breach of direction issued by the Competent Authority as well as that of the order of the Court. All aspects will have to be dealt with on its own merit in such proceedings. In

addition, the Management would be obliged to abide by the directions that would be issued by the Competent Authority on the proposal for closure of the two Junior Colleges. Although we have set aside the order dated 21st July, 2008 and the communication dated 25th July, 2008, we would however, relegate the Management before the Competent Authority for reconsideration of the proposal regarding closure of the two Junior Colleges afresh in the light of the observations made by us in this Judgment.

46. Taking overall view of the matter, therefore, we proceed to pass following order.

ORDER

(i) Insofar as Writ Petition No.73 of 2002 is concerned, the same is disposed of with direction to the concerned Respondent to consider the Petition as representation in respect of reliefs claimed by the Petitioners and to take final decision in the matter in accordance with law by giving opportunity to the Petitioners and upon recording reasons for its decision. That be done as expeditiously as possible. No order as to costs.

(ii) Insofar as Appeal No.299 of 2008 is concerned, the same is partly allowed with no order as to costs. The operative order passed by the learned Single Judge in para-43 of the Judgment under Appeal is maintained, but for the reasons recorded by us in this Judgment. All questions involved in the remanded proceedings to be decided by the Tribunal on its own merits in accordance with law. The School Tribunal shall proceed with the hearing of the appeal filed by the employees expeditiously.

In view of the Judgment in Appeal No.299/2008, nothing survives for consideration in Notice of Motion No.2497 of 2008. The same is disposed of.

(iii) Insofar as Writ Petition No.2327 of 2008, this Writ Petition partly succeeds with no order as to costs. The same is made absolute in terms of prayer clause (a), subject to the observations made in this Judgment. The order dated 21st July, 2008 and the communication dated 25th July, 2008 impugned in this Petition are set aside and instead the proposal submitted by the Petitioners for

closure of the two Junior Colleges stands restored before the Competent Authority for reconsideration on its own merits in accordance with law. Further, the order in this Writ Petition shall not influence or affect the pending action against the Management for appointment of Administrator to take over running of the two junior colleges in exercise of powers under the provisions of 1976 Act.

In view of the decision in Writ Petition No.2327 of 2008, nothing survives for consideration in Chamber Summons Nos.246/2008 and 248/2008 and Notice of Motion Nos. 304/2009 and 338/2009. The same are disposed of accordingly.

(iv) Insofar as Writ Petition No.2521 of 2008, this Writ Petition partly succeeds with no order as to costs. The same is made absolute in terms of prayer clause (a), subject to the observations made in this Judgment. The order dated 21st July, 2008 and the communication dated 25th July, 2008 impugned in this Petition are set aside

and instead the proposal submitted for closure of the two Junior Colleges stands restored before the competent Authority for reconsideration on its own merits in accordance with law. Further, the order in this Writ Petition shall not influence or affect the pending action against the Management for appointment of Administrator to take over running of the two junior colleges in exercise of powers under provisions of 1976 Act.

In view of the decision in Writ Petition No.2521 of 2008, nothing survives for consideration in Chamber Summons No. 330/2009 The same is disposed of accordingly.

(v) Insofar as Writ Petition No.1640 of 2009 is concerned, the same is disposed off with the above observations with no order as to costs.

In view of the dismissal of the Writ Petition, nothing survives for consideration in Notice of Motion Nos.307/2009 and 385/2009. The same are disposed of accordingly.

(vi)Insofar as Writ Petition No.1638 of 2009 is concerned, the same is disposed off with the above observations with no order as to costs.

CHIEF JUSTICE

A.M.KHANWILKAR, J.