

**THE
ANDHRA PRADESH
EDUCATION ACT, 1982¹**

[Act No. 1 of 1982]

[27th January, 1982]

Reserved by the Governor on 3rd June, 1981 for the consideration and assent of the President. Received the assent of the President on the 27th January, 1982.

An Act to consolidate and amend the laws relating to the educational system in the State of Andhra Pradesh for promoting, organising and developing the said educational system and to provide for matters connected therewith or incidental, thereto :

Whereas it is expedient that the educational system obtaining in the State of Andhra Pradesh should be so developed as to—

- (i) be an instrument, for establishing and strengthening, consistent with the National Policy, a Socialist, Secular and Democratic Society and also for promoting National Integration ;
- (ii) firmly link it at all levels with science and technology ;
- (iii) inculcate moral, social and human values and promote respect for manual labour and a sense of patriotism and discipline in the children ; and
- (iv) achieve an integrated development of the pupil's personality.

Be it enacted by the Legislature of the State of Andhra Pradesh in the Thirty-third Year of the Republic of India as follows:—

**Chapter I
PRELIMINARY**

1. Short title, extent, application and commencement:— (1) This Act may be called the Andhra Pradesh Education Act, 1982.

(2) It extends to the whole of the State of Andhra Pradesh.

(3) It applies to all educational institutions and tutorial institutions in the State except,—

- (i) institutions for scientific or technical education financed by the Central Government and declared by Parliament by law to be institutions of National importance ;
- (ii) institutions established or maintained and administered by or affiliated to, or recognised by the Andhra Pradesh Agricultural University and the Jawaharlal Nehru Technological University;
- (iii) colleges and institutions in so far as the matters pertaining to them are dealt with in the enactments, relating to the establishment of Universities in force in the State, including the University of Hyderabad Act, 1974 ;
- (iv) educational institutions imparting intermediate education in so far as the matters pertaining to them are dealt with in the Andhra Pradesh Intermediate Education Act, 1971.

(4) It shall come into force¹ on such date as the Government may, by notification, appoint.

CASELAW

Appointment of lecturers:— It is not open to the unofficial respondents to fill-up the post of Junior Lecturer by direct recruitment when suitable candidates are available for promotion. Appointments which are not made in terms of the statutory rules and which violate Art. 16 of the Constitution of India are not valid. *B.S.B.G. Tilak v. G.R.V. Prasada Rao and others*, 2001 (3) ALD 754 (DB).

2. Definitions:— In this Act, unless the context otherwise requires,—

- (1) "*Abhyudaya Pradhamika Pathasala*" means a primary school under the management of the Abhyudaya Pradhamika Vidya Samstha;
- (2) "*Abhyudaya Pradhamika Vidya Samstha*" means the registered society referred to in sub-section (1) of Section 33 ;
- (3) "*academic year*" means a period of twelve months commencing on the first day of June of the year or such other period of twelve months beginning on such date as the Government may, by notification specify with respect to any educational institution or class of educational institutions ;

1. The Act came into force from 18-7-1982, Vide G.O.Ms.No. 560 (Edn.) (R), dt. 26-6-1982, A.P. Gazette, Pt. I, (Ext.), dt. 13-7-1982.

- (4) "*adult education (including non-formal)*" means the education or further education of a person of more than nine years of age who has not attended any educational institution at any time before, or as the case may be, who is a drop-out from an educational institution at any level of his studies therein ;
- (5) "*Andhra Pradesh Residential Educational Institutions Society*" means the registered society referred to in sub-section (2) of Section 33 ;
- (6) "*approved school*" means any school in any specified area within the jurisdiction of a local authority imparting '[pre-primary or primary education] which—
- (i) is under the management of the Government or a local authority;
 - (ii) being under any other management, is recognised as such under this Act ;
- (7) "*attendance*" means the presence for instruction at an approved school on such days in the academic year and at such time and for such period or periods on each day of attendance as may be prescribed ;
- (8) "*attendance authority*" means any person appointed to be an attendance authority under sub-section (1) of Section 10 ;
- (9) "*child*" means a boy or a girl within such age group, not being less than six or more than fourteen years, as the Government may, in each case, specify for the purposes of this Act, either generally or with respect to any specified area ;
- (10) "*Collector*" means any officer in charge of a revenue district and includes a Joint Collector, Deputy Collector, Sub-Collector and Assistant Collector ;
- (11) "*College*" means a '[college including a Medical College established or maintained] and administered by, or affiliated to or associated with or recognised by, any University in the State and includes a junior college recognised by or affiliated to the Andhra Pradesh Board of Intermediate Education ;
- (12) "*competent authority*" means any person, officer or authority authorised by the Government by notification to perform the functions

of the competent authority under this Act for such area or for such purposes as may be specified in the notification;

(13) "*Director*" means—

- (i) in relation to general education or any part thereof, the Director in charge of primary education (including pre-primary), secondary education, adult education (including non-formal), special education, intermediate education or higher education, as the case may be ;
- (ii) in relation to technical education, the Director of Technical Education ;

(14) "*district*" means a revenue district ;

(15) "*District Educational Officer*" means the officer appointed under sub-section (1) of Section 4 and includes a Joint Director, a Deputy Director or any other officer authorised by the Government to exercise the powers and perform the functions of a District Educational Officer ;

(16) "*education*" means '[general education, medical education], technical education, physical education, teacher education, special education, oriental education, adult education (including non-formal) and any other branch of education which the Government may, by செயல்படுத்தும், அரசாங்கத்தால் ;

(17) "*educational agency*" means in relation to-

- (a) any minority educational institution, '[any body of persons] which has established and is administering or proposes to establish and administer such minority educational institution, and
- (b) any other private educational institution, '[any body of persons] entrusted with the establishment, management and maintenance of such private educational institution ;

(18) "*educational institution*" means a recognised school, '[colleges including Medical Colleges], special institution or other institution (including an orphanage or boarding home or hostel attached to it) by whatever name called, the management of which carries on

(either exclusively or among other activities) the activity of imparting education therein, and includes every premises attached thereto ; but does not include a tutorial institution ;

- 1[(19) "*general education*" means every branch of education including special education, but does not include medical education or technical education ;]
- (20) "*Government*" means the State Government of Andhra Pradesh;
- (21) "*Gram Panchayat*" means the body constituted for the local administration of a village under the Andhra Pradesh Gram Panchayats Act, 1964 ;
- (22) "*grant*" or "*grant-in-aid*" means any sum of money paid as aid out of State funds to any educational institution ;
- (23) "*guardian*" means any person to whom the care nurture or custody of any child falls by law or by natural right or recognised usage or who has accepted or assumed the care, nurture or custody of any child or to whom the care, nurture or custody of any child has been entrusted by lawful authority ;
- (24) "*inspection*" means the scrutiny of records, registers and checking of physical specifications as determined by the competent authority in regard to buildings, libraries, laboratories, play grounds and other allied matters and the overall appraisal of the educational institution and its functionaries in the development of the institution ;
- (25) "*listed backward classes*" means the backward classes declared as listed by the Government ;
- (26) "*local authority*" means in relation to the local area comprised within the jurisdiction of a municipal corporation, the concerned municipal corporation and in relation to any other local area in the State, the concerned Municipal Council, 1[Zilla Parishad, Mandal Praja Parishad] Gram Panchayat or township having jurisdiction over such local area ;
- (27) "*management*" means the managing committee or the governing body, by whatever name called, of a private institution to which the affairs of the said institution are entrusted, but does not include a manager ;

- (28) "*manager*" means—
- (i) in relation to a Government educational or special institution, the officer or authority to whom the power of immediate control over the administration of the institution has been entrusted ;
 - (ii) in relation to a local authority educational or special institution, the authority or officer of the local authority educational or special institution concerned in charge of education ;
 - (iii) in relation to a private educational or special institution, the person nominated to manage the affairs of the institution under sub-section (2) of Section 24 ;
- (29) "*minority educational institution*" means a private educational institution of its choice established and administered by a minority, whether based on religion or language, having the right to do so under Clause (1) of Article 30 of the Constitution of India ;
- (30) "*municipal corporation*" or "*municipal council*" means a municipal corporation constituted or deemed to have been constituted under any law relating to municipal corporation for the time being in force, or as the case may be, a municipal council constituted under the Andhra Pradesh Municipalities Act, 1965 ;
- (31) "*notification*" means a notification published in the Andhra Pradesh Gazette and the word 'notified' shall be construed accordingly ;
- (32) "*panchayat samithi*" means a panchayat samithi constituted or reconstituted under the Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, 1959 ;
- [(32a) "*pre-primary education*" means any education imparted prior to primary education and includes education imparted in nursery, kindergarten, montessory, anganwadi, balwadi and the like ;]
- (33) "*prescribed*" means prescribed by rules made by the Government under this Act ;
- (34) "*primary education*" means education from Class I to Class VII ;

- (35) "*private institution*" means an institution imparting education or training, established and administered or maintained by any ¹[xxx] body of persons, and recognised as educational institution by the Government, and includes a college, a special institution and a minority educational institution, but does not include an educational institution —
- (a) established and administered or maintained by the Central Government or the State Government or any local authority;
 - (b) established and administered by any University established by law ; or
 - (c) ~~established and administered or maintained~~ only religious instruction, but not any other instruction ;
- (36) "*residential institution*" means an educational institution where pupils are resident on the premises of the institution and is affiliated to the Andhra Pradesh Residential Educational Institutions Society;
- ²[(37) "*secondary education*" means education from Class VIII to Class X ;]
- (38) "*special education*" means education imparted in a special institution;
- (39) "*special institution*" means reformatory school, school for physically handicapped or mentally retarded or other defective pupils and includes any other type of special institution which may be notified as such by the Government ;
- (40) "*specified area*" means any area within the jurisdiction of a local authority in which primary education is declared by it to be compulsory under sub-section (6) of Section 9 ;
- (41) "*student*" means a person who is admitted to a recognised educational institution and whose name is lawfully borne on the attendance register thereof ;
- (42) "*supervision*" means the professional assessment of a teacher, the guidance given to him, and the level of pupils' achievement as determined by an educational officer appointed for the purpose, and includes overall academic appraisal of an educational institution;

1. The words "person or" omitted Act No. 27 of 1987, w.e.f. 1-6-1987.

2. Subs. by *Ibid.*

- (43) "*Teacher*" means any member of the teaching staff in an educational institution appointed to give instruction in that institution ;
- (44) "*Technical education*" means any course of study in engineering, technology, architecture, ceramics, industrial training, mining, fine arts or in any other subject which may be notified by the Government in this behalf ;
- (45) "*to attend an approved school*" means to be present for instruction at an approved school in a year for such period or periods and at such time on each day as may be fixed by the prescribed authority ;
- (46) "*township*" means any area declared as township under the Andhra Pradesh Gram Panchayats Act, 1964 ;
- (47) "*tutorial institution*" means any institution started by a person or body of persons for giving coaching or instruction to fifty or more candidates or employing five or more teachers, to prepare them to appear for an examination in any branch of education conducted by any body or authority or the Universities in the State under this Act or any other law ; and includes an institution where instruction in typewriting or other commercial subjects is given :

Provided that in the case of any institution where instruction in typewriting or other commercial subjects is given, the minimum number specified above in regard to candidates or teachers shall not apply ;

- (48) "*Zilla Praja Parishad*" means a Zilla Parishad constituted or reconstituted under the Andhra Pradesh and Zilla Parishads Act, 1959¹.

CASELAW

Ss. 2(17), 28, 51—A.P. Educational Institutions (Establishment, Recognition, Administration and Control) Rules - R. 10(17), (22), (23), (24)—When a Private Educational Institution closes down after issuing of notice it is under an obligation to handover the school with the property to the competent authority. The provisions of law do not permit the authority to approve the transfer of management of a closed school to another management of a different educational agency. *M. Radhakrishna Moorthy and others v. District Educational Officer, East Godavari and Others, 2000 (2) ALJ 64.*

1. Now A.P. Mandal Praja Parishads and Zilla Praja Parishads Act, 1986.

Chapter II

ADMINISTRATIVE MACHINERY, BOARD OF SECONDARY
EDUCATION AND STATE BOARD OF TECHNICAL
EDUCATION AND TRAINING

3. Director and other officers:—(1) The Government may appoint for the State one or more Directors for general education and a Director of Technical Education, for the purposes respectively of the functions conferred on and performing the functions entrusted to each of them by or under this Act.

(2) The Government may also appoint such number of Additional Directors, Joint Directors, Deputy Directors, Assistant Directors and such other officers as they think fit to assist each such Director in the exercise of the powers conferred on and the performance of the functions entrusted to him by or under this Act.

(3) Subject to the provisions of this Act, and the general or special orders of the Government made in this behalf,—

- (a) the Director shall be the chief controlling authority in all matters connected with the administration of such part of general education in the State as may be allotted to him by the Government by an order made in this behalf ;
- (b) the Director of Technical Education shall be the chief controlling authority in all matters connected with the administration of technical education in the State.

4. District Educational Officers and other subordinate officers and staff at the district level:—(1) The Government may appoint for each district one or more District Educational Officers, and every such District Educational Officer shall exercise such powers and perform such functions as may be entrusted to him by or under this Act.

(2) The Government may sanction the appointment of such number of officers and staff as may be necessary to assist the District Educational Officer.

(3) The appointment to the posts sanctioned under sub-section (2) shall be made by such authority and in such manner as may be prescribed.

(4) The powers and functions of the officers and staff appointed under this section shall be such as may be prescribed.

5. Constitution of Boards:—(1) The Government may, by notification, establish a board of secondary education to be called "the Board of Secondary Education, Andhra Pradesh", the composition and powers of which shall be such as may be prescribed. The functions of the Board shall be to advise the Government on the co-ordinated development of secondary education in the State, including the conduct of examinations, conforming to the minimum standards as may be prescribed and the award of certificates.

(2) The Government may, by notification, establish a board of teachers' education to be called "the Board of Teachers' Education, Andhra Pradesh" the composition and powers of which shall be such as may be prescribed. The functions of the Board shall be to advise the Government on the courses of study, pre-service and in service training of teachers and other matters relating to teachers' education.

6. State Board of Technical Education and Training:—(1) The Government may, by notification, establish a board of technical education to be called "the State Board of Technical Education and Training, Andhra Pradesh", the composition and powers of which shall be such as may be prescribed.

(2) The functions of the Board shall be,—

- (a) to advise the Government on the co-ordinated development of technical education in the State at all levels below under-graduate level ;
- (b) to work in liason with the Southern Regional Committee of the All India Council for Technical Education in the formulation of schemes in the State ;
- (c) to affiliate or recognise institutions conducting courses below under-graduate level and prescribe courses of study for them;
- (d) to inspect institutions periodically and ensure that the standards of the courses and the instructional facilities provided are satisfactory;
- (e) to conduct examinations and award diplomas and certificates conforming to the minimum standards prescribed by the All India Council for Technical Education ;
- (f) to establish and develop co-operative relationship with Industry and Commerce.

CHAPTER III SCHOOL EDUCATION

7. School Education:— (1)(a) The Government shall endeavour to provide free and compulsory education for all children until they complete the age of fourteen years and to promote school education in the State by securing and maintaining the universal enrolment therefor of such children. The Government may also progressively provide for medical inspection and care of children in the pre-primary and primary schools.

(b) The Government may, for reviewing the progress made in that direction and for suggesting measures for the effective implementation thereof, appoint a committee immediately after the expiry of five years from the commencement of this Act and thereafter at the expiry of every fifth year.

(2)(a) At the stage of pre-primary education, children completing the age of '[three years] but not completing the age of six years may be imparted education by the main method of informal learning effectively linking it with the health and nutrition programmes.

(b) The Government may, as part of pre-primary education, provide for the attachment of pre-school centres to the existing primary schools in the State.

(3) At the stage of primary education, the children completing the age of six years but not completing the age of fourteen years shall be imparted education and the curriculum and instruction of education shall be such as may be specified by the competent authority so as to achieve among others, the following specified objectives, namely :

- (a) ~~irreversible literacy in the mother tongue including skills of reading~~
- (b) basic numeracy skills and necessary knowledge of child's physical and social environment;
- (c) proficiency in socially useful productive work :

Provided that a child who has completed the age of five years shall not be denied admission in the schools.

(4)(a) The main objective of secondary education shall be to impart such general education as may be prescribed to each pupil so as to make

him fit either for higher academic studies or for job-oriented vocational courses, by the time he completes his secondary education.

- (b) The general education so imparted shall among others, include—
- (i) the development of linguistic skills and literary appreciation in the mother tongue or regional language, as the case may be;
 - (ii) the attainment of prescribed standards of proficiency, in Hindi and English ;
 - (iii) the acquisition of requisite knowledge in mathematics and physical and biological sciences to pursue further courses of study ;
 - (iv) the study of social sciences with special reference to history, geography and civics so as to achieve the minimum necessary knowledge by the pupil in regard to his State, Country and the World ;
 - (v) the introduction of ¹[socially useful productive work] as an integral part of the curriculum ;
 - (vi) the training in sports, games and other physical exercises and other arts ;
 - (vii) the imparting of knowledge in basic agricultural science and irrigation methods ;
 - ²[(viii) the introduction of Intermediate courses ;
 - (ix) the teaching of morals ;]

(c) The Government may,—

- (i) accept and implement progressively at the secondary stage, the principle of subject specialisation by the teacher ;
- (ii) take all steps necessary to secure the qualitative strengthening ~~of secondary education and for that purpose, make every~~ effort to bring the physical standards of existing schools to optimum levels.

³[8. Establishment, maintenance, etc., of schools by local authorities:—(1) Every Municipal Corporation or Municipal Council

1. Subs. for the words "work experience" by Act No. 27 of 1987, w.e.f. 1-6-1987.
 2. Clauses (viii) and (ix) ins. by *Ibid*
 3. Subs. for Sec. 8, by *Ibid*

shall make a provision for education upto the end of the secondary education stage in the area within its jurisdiction for all children in the prescribed age group ordinarily resident therein and shall undertake the management of pre-primary, primary and secondary education schools taken over by the Government and entrusted to it.

(2) Every Zilla Parishad shall establish, maintain or expand secondary, vocational and industrial schools in the area within its jurisdiction and shall undertake the management of such schools taken over by the Government and entrusted to it and shall also be responsible to implement the objectives of secondary education.

(3) Every Mandal Praja Parishad shall be responsible to establish and maintain pre-primary and primary schools in the area within its jurisdiction and shall undertake the management of such Government and take over aided pre-primary and primary schools as deemed necessary.

(4) Every Municipal Corporation, Municipal Council, Zilla Praja Parishad or Mandal Praja Parishad shall undertake to make provision for, and improvement of, accommodation for schools with peoples' participation.]

Chapter IV

PRIMARY EDUCATION AND ITS IMPLEMENTATION

9. Schemes for primary education:— (1) Any local authority, if called upon by the Government so to do, shall within such time as may be specified by the Government submit to them a scheme for compulsory primary education in such area within its jurisdiction for children ordinarily resident therein, of such ages and upto such standard as the Government may specify.

(2) In the case of the Municipal Corporations and the Municipalities, the Government may call on them to submit a scheme for compulsory primary education in those areas for children ordinarily resident therein of such ages and upto such standard as the Government may specify.

(3) The scheme submitted under sub-section (1) or sub-section (2) shall be in such form as the Government may specify and shall contain the following particulars, namely,—

- (a) the area in which primary education will be compulsory ;
- (b) the approximate number of children to whom the scheme will apply classified according to age and mother-tongue ;

- (c) a list of existing approved schools and the schools, if any, proposed to be opened for the purpose, classified by languages in which instruction is given or is proposed to be given ;
- (d) the number of teachers already employed and the additional staff proposed to be recruited ;
- (e) the recurring and non-recurring cost of the scheme ; and
- (f) such other particulars as may be prescribed.

(4) The Government may, after such inquiry as they may consider necessary, sanction with or without modifications the scheme submitted by the local authority under sub-sections (1) and (2). The implementation of the scheme so sanctioned, shall be subject to the general control of and the directions issued from time to time by the Government.

(5) No sanction shall be accorded under sub-section (4), in respect of any scheme unless the Government are satisfied that such steps, as may be prescribed, have been taken to provide the necessary facilities for imparting compulsory primary education to all children to whom the scheme will apply.

(6) On receipt of sanction under sub-section (4), the local authority shall give effect to the scheme so sanctioned, by means of a declaration that, with effect from the first day of the next academic year, primary education for children of both sexes upto such class or standard and within such age-group as may be specified therein shall be compulsory in any area which may be so specified.

(7) Every declaration under sub-section (6) shall be published before the first day of April of each year immediately preceding the academic year, in the Andhra Pradesh Gazette and in such other manner as the local authority or the Director, as the case may be, may decide:

Provided that the Government may, for any good and sufficient cause, condone any delay in the publication of such declaration in any year.

(8) Where any local authority fails to submit a scheme when called upon to do so under sub-section (1) or to give effect to any sanctioned scheme under sub-section (6) to the satisfaction of the Government, the Government may cause the scheme to be submitted or the sanctioned scheme to be implemented, as the case may be, by such person or authority as they think fit. The Government may at any time entrust the administration of the sanctioned scheme to the local authority concerned.

10. Attendance authorities and their powers and functions:—(1)

The local authority in the cases mentioned in sub-section (1) of Section 9, may appoint as many persons as it thinks fit to be attendance authorities for the purpose of this Act, and may also appoint as many persons as it considers necessary to assist the attendance authorities in the discharge of their duties.

(2) It shall be the duty of the local authority to cause to be prepared as early as possible after the publication of a declaration under sub-section (6) of Section 9 and in such manner as may be prescribed, a list of children in any specified area. Such lists shall also be prepared annually in every specified area at such time and in such manner as may be prescribed.

(3) The attendance authority or any person appointed to assist the attendance authority may put such questions to any guardian or require any guardian to furnish such information about his child, as it or he considers necessary and every such guardian shall be bound to answer such questions or to furnish such information as the case may be, to the best of his knowledge or belief.

11. Responsibility of guardian to cause his child to attend school:— It shall be the duty of the guardian of every child to cause the child to attend an approved school unless there is a reasonable cause for his non-attendance within the meaning of Section 12.

[*Explanation:—* For purposes of this section and Section 14, the term "approved school" includes a non-formal education centre.]

12. Reasonable cause for non-attendance:— (1) For the purposes of this Act, any of the following circumstances shall be deemed to be a reasonable cause for the non-attendance of a child at an approved school,—

- (a) that there is no approved school within the prescribed distance from his residence ;
- (b) that the only approved school within the prescribed distance from the residence of the child to which the child can secure admission is one in which religious instruction of a nature not approved by his guardian is compulsory ;
- (c) that the child is receiving instruction in some other manner which is declared to be satisfactory by the Government or by an officer authorised by them in this behalf ;

- (d) that the child has already completed primary education upto the class or standard specified in the declaration under sub-section (6) of Section 9 ;
- (e) that the child suffers from a physical or mental defect which prevents him from attendance ;
- (f) that the child has been granted temporary leave of absence by the prescribed authority, local authority or by any other person authorised by any such authority in this behalf, for sickness or other prescribed reasons ;
- (g) that there is any other compelling circumstance which prevents the child from attending school, provided the same is certified as such by the attendance authority.

(2) Notwithstanding anything in Clause (e) of sub-section (1), the attendance authority may, if it is satisfied that, in relation to a child suffering from a physical or mental defect in any specified area, there is a special school within the prescribed distance from the residence of the child to which it could be sent, and that nothing in Clause (b) or Clause (c) applies in relation to such child, it may, by order, require the child to attend the special school, and sub-section (1) shall have effect in relation to such child as if Clauses (f) and (g) were the only provisions applicable.

13. Attendance orders:—(1) Whenever the attendance authority has reason to believe that the guardian of a child has failed to cause the child to attend an approved school and that there is no reasonable cause for the non-attendance of the child within the meaning of Section 12, it shall hold an inquiry in the prescribed manner.

(2) If, as a result of the inquiry the attendance authority is satisfied that the child is liable to attend an approved school under this Act and that there is no reasonable cause for his non attendance within the meaning of Section 12 it shall pass an attendance order in the prescribed form directing the guardian to cause the child to attend the approved school with effect from the date specified in the order.

(3) An attendance order passed against a guardian in respect of his child under this section shall, subject to the provisions of sub-section (6), remain in force for so long as this Act continues to apply to the child.

(4) If any guardian against whom an attendance order has been passed in respect of his child under sub-section (2) transfers the custody of the child

to another person during the period in which the attendance order is in force, such guardian shall be bound to immediately inform the attendance authority in writing of such transfer.

(5) Where an attendance order has been passed against a guardian in respect of his child under this section, such order shall have effect in relation to every other person to whom the custody of the child may be transferred during the period in which the attendance order is in force as it has effect in relation to the person against whom it was originally passed.

(6) A guardian may, at any time apply to the attendance authority for cancellation of an attendance order on the ground,—

- (i) that he is no longer the guardian in respect of the child, or
- (ii) that circumstances have arisen which provide a reasonable cause for non-attendance ; and thereupon the authority may, after holding an enquiry in the prescribed manner, cancel or modify the attendance order.

14. Children not to be employed so as to prevent them from attending to school:— No person shall employ a child in a manner which shall prevent the child from attending an approved school.

15. Primary education to be free:— (1) When a declaration under sub-section (6) of Section 9 has been made in respect of any area, no fee shall be levied in respect of any child for attending an approved school which is under the management of the Government or a local authority in that area.

(2) Fees may be levied from any such child at any other school situated within that area :

Provided that where within one kilometer of such school or such other distance therefrom as may be prescribed, there is no other approved school, such number of the free places as may be fixed by the local authority shall be reserved in such school or in any educational institution receiving aid out of State funds.

16. Age of child how to be computed:— (1) The age of a child, for the purpose of this Act shall be computed in terms of years completed by the child on or before the first day of the academic year.

(2) Where the birthday of a child falls on a day not later than the first day of the September each year, the birthday shall be deemed to fall on the first day of the academic year for the purposes of computing the age of the child under sub-section (1).

CHAPTER V EXAMINATIONS

17. Examinations:— (1) The examination system, whether by internal assessment, external assessment or partly internal and partly external assessment, shall be so regulated by the competent authority as to make it a reliable and effective method of student evaluation.

(2) The Government may make rules for all matters connected with the implementation of examination system and the conduct of examinations.

CHAPTER VI ESTABLISHMENT OF EDUCATIONAL INSTITUTIONS, THEIR ADMINISTRATION AND CONTROL

18. Government to provide facilities for imparting education:— The Government may, for the purpose of implementing the provisions of this Act, provide adequate facilities for imparting general education, technical education, special education and teacher education in the State by—

- (a) establishing and maintaining educational institutions ;
- (b) permitting any local authority or a private body of persons to establish educational institutions and maintain them according to such specifications as may be prescribed ; and
- (c) taking, from time to time, such other steps as they may consider necessary or expedient.

19. Classification of educational institutions:— The educational institutions shall be classified as follows :

- (a) State institutions, that is to say, educational institutions established or maintained and administered by the Government;
- (b) Local authority institutions, that is to say educational institutions established or maintained and administered by a local authority; and
- (c) Private institutions, that is to say, educational institutions established or maintained and administered by any '[xxx] body of persons registered in the manner prescribed.

[20. Permission for establishment of educational institutions:—
(1) The competent authority shall, from time to time, conduct a survey as

1. The words "person or" omitted by Act 27 of 1987, w.e.f. 1-6-1987.
2. Subs. by *Ibid.*

to identify the educational needs of the locality under its jurisdiction, and notify in the prescribed manner through the local newspapers calling for applications from the educational agencies desirous of establishing educational institutions.

(2) In pursuance of the notification under sub-section (1), any educational agency including local authority or registered body of persons intending to—

- (a) establish an institution imparting education ;
- (b) open higher classes in an institution imparting primary education;
- (c) upgrade any such institution into a high school ; or
- (d) open new courses (Certificate, Diploma, Degree, Post-Graduate Degree Courses, etc.)

may make an application, within such period in such manner and to such authority as may be notified for the grant of permission therefor.

~~(2) Any educational agency applying for permission under sub-section~~
(2) shall,—

- (a) before the permission is granted, satisfy the authority concerned,—
 - (i) that there is need for providing educational facilities to the people in the locality ;
 - (ii) that there is adequate financial provision for continued and efficient maintenance of the institution as prescribed by the competent authority ;
 - (iii) that the institution is proposed to be located in sanitary and healthy surroundings ;
- (b) enclose to the application,—
 - (i) title deeds relating to the site for building, playground and garden proposed to be provided ;
 - (ii) plans approved by the local authority concerned which shall conform to the rules prescribed therefor ; and
 - (iii) documents evidencing availability of the finances needed for constructing the proposed buildings ; and
- (c) within the period specified by the authority concerned in the order granting permission,—

- (i) appoint teaching staff qualified according to the rules made by the Government in this behalf ;
- (ii) satisfy the other requirements laid down by this Act and the rules and orders made thereunder failing which it shall be competent for the said authority to cancel the permission.

(4) On and from the commencement of the Andhra Pradesh Education (Amendment) Act, 1987, no educational institution shall be established except in accordance with the provisions of this Act and any person who contravenes the provisions of this section or who after the permission granted to him under this section having been cancelled continues to run such institution shall be punished with simple imprisonment which shall not be less than six months but which may extend to three years and with fine which shall not be less than three thousand rupees but which may extend to fifty thousand rupees :

Provided further that the Court ~~providing a permanent order~~ shall also order the closure of the institution with respect to which the offence is committed.]

CASELAW

For grant of permission to establish an educational institution requirements of sub-section (3) are not preconditions-Permission can be granted subject to those inadequacies being rectified within a prescribed time. *Andhra Kesari Educational Society, Ongole vs. State of A.P.*, AIR 1984, A.P. 251 ; 1984(1) ALT 25 NRC 1985 (2) APLJ 77.

Section 20 and S.V. University Act—Establishment of Educational Institutions-Law Colleges-Private Sector-~~Power of State Government to grant permission-Scope and ambit-Matters covered by provisions of Advocates Act and Bar Council of India Rules, Part 4-Power of State Government or University in the State excluded-Provisions of University Act and A.P. Education Act cannot impinge on the provisions of Advocates Act and Rules made thereunder-Where Bar Council of India granted permission and University agreed to grant affiliation, State Government or concerned authority has no power to reject permission for establishing a Law College for imparting instruction in law to enable students to enrol as Advocates, except on grounds relatable to matters covered by Clauses (b) and (c) of sub-section (3) of Section 20-Refusal of permission by Government to Petitioner-Society-Unreasonable.~~ *P. Basi Reddy Education Society vs. Government of A.P.*, 1990 (1) An.W.R. 6.

Under G.O.Ms.No.398 dated 4.12.1997 the National Council for Teacher Education (NCTE) alone is entitled to scrutinise as to whether an institution which intends to offer a course or training in teacher education has adequate financial resources, accommodation, library, qualified staff, laboratory and fulfils such

other conditions that are required for proper functioning of the institution as may be specified by the regulations framed under the NCTE Act, 1993. Any contrary view would offend the very object and scheme of the NCTE Act and the authority conferred by it on the NCTE. *Government of A.P. v. St. Mary's Educational Society, Giddaluru, Prakasam Dist. and another*, 2001 (4) ALD 268 (DB).

It would not be appropriate for the State Government to sit over the decision taken by the All India Council for Technical Education with regard to the facilities provided. Once an inspection is conducted by the Expert Committee and it was satisfied with the facilities provided, the question of second inspection by the State Government for the purpose of satisfaction once again does not arise. At the most, the State Government may bring that fact to the notice of the Council about the deficiencies. The Council has clothed with the power to take action either to revisit or to inspect the institution, and if it finds that there was an infringement, then the Council can withdraw the approval. *Lavu Educational Society, Guntur v. Government of Andhra Pradesh, Education Department, Hyderabad and others*, 1999(3) ALD 632.

No Objection Certificate is primarily concerned with the verification and satisfaction of the State Government for the establishment of B.Ed./Pandit Training Institutes. The Government is entitled to lay down conditions to serve as guidelines for the State Level Standing Committee. If such guidelines are contrary to the NCTE Act, then No Objection Certificate cannot be refused on the ground that the sale deed evidencing provision of 2 hectares of land is not enclosed. While rejecting an application for recognition the Regional Committee is under an obligation to record reasons for such rejection. *St. Mary's Educational Society, Giddalur, Prakasam Dist. v. Government of A.P. and another*, 1999 (5) ALD 355.

Ss. 20, 21A—NTR University of Health Sciences Act, 1986 - Sec. 6(1)—Where a Foreign University was admittedly not amenable to the Local Acts, it was held that there was no obligation to issue any press notification stating that it was not recognised by the Medical Council of India. *Vignan Educational Foundation and another v. Government of A.P. and others*, 2000 (4) ALD 606.

Section 20:—The employees of an institution whether or not receiving grant-in-aid are entitled for gratuity according to their eligibility but it may not be on par with Government teachers or aided teachers. *Sushila Thomas v. H.M.T. Welfare and Cultural Organisation, Hyd. and others*, 2003 (3) ALD 574 = 2003 (4) ALT 432.

Where it was found that the course of bio-technology in the college of the society stood on the same footing as the other courses at the commencement of the concerned academic year, it was held that the college establishment was entitled to admit candidates against management quota for the bio-technology course also for that academic year. Refusal on the part of the Government to allot candidates to the petitioner society even after it had secured approval from the AICTE while the counselling was in progress was held not appear to be

justifiable. *Mohammed Vaziruddin Educational Society, Prakash Nagar, Rajahmundry v. Convenor, EAMCET -2002 and others*, 2003 (6) ALD 100.

A reading of the relevant provisions of the Education Act in conjunction with the Higher Education Rules and Dravidian University Act would show that the Education Act has no application to Universities which are governed by special enactments. Clause (iii) of sub-section (3) of Section 1 of the Education Act makes it clear that the Education Act shall not apply to any college and/or institution governed by the enactment relating to establishment of Universities and courses in the State. In view of this, if any college or institution is established by reason of a Special University Act, Section 20 of the Education Act has no application. The submission that Section 20(1) mandates obtaining permission even by University ignores the effect of Clause (iii) of sub-section (3) of the Section 1 of the Education Act. Indeed, as rightly contended by the Counsel for Dravidian University, University is not an educational agency as defined in Section 2(17) and, therefore, *ex facie*, Section 20(1) has no application. For the same reason, the Higher Education Rules have no application, for, the Education Act itself is not made applicable to the Dravidian University. *Gnana Bharathi Educational Academy, Kuppam v. A.P. State Council of Higher Education, Hyderabad and others*, 2003 (5) ALD 432.

A reading of Rule 4 of A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules, 1984 in juxtaposition with section 20 of the Act would show that in substance both the provisions are same. Therefore, there is justification to infer that relaxation of Rule 4 of the said Rules would also amount to relaxation of conditions stipulated in Section 20 of the Act. When the Government exercises power under Rule 21 and relaxes Rule 4 in favour of the institution either for establishment of a new educational institution or upgrading the existing institution, the submission that Section 20 is not specifically relaxed or exempted, would be misconceived. Insofar as Section 20(3)(a)(i) of the Act and Rule 4(1)(a) are concerned, both of them deal with the educational needs of the locality. Therefore, when once Rule 4 is relaxed by the Government for upgradation of existing educational institution, the same would also have the effect of relaxation of Section 20(3)(a)(i) of the Act. *Srinivasa Convent Aided High School (Telugu Medium), Hirupattem, Kakinausa v. Government of Andhra Pradesh and others*, 2003 (5) ALD 471.

Sections 20 and 21:— The A.P. Private Educational Institutions Grant-in-Aid (Regulations) Act, 1988 – Rule 7(4) – Admission to Grant-in-Aid – Private un-aided educational institution – Government pay scales to lecturers working, is in public interest – Entitlement of grant in aid is on compliance of conditions prescribed in Grant in Aid Code – Statutory provisions cannot be waived by agreement – Hence argument that petitioners have agreed to work for Rs.1,800/p.m. have waived their statutory rights under Rule 7(4) held unsustainable. *M.D. Sowjanya v. S.V.V.P.V.M.C. Mahila Vidya Peeth, Visakhapatnam*, 2006 (3) ALT 394 = 2006 (2) ALD 251.

Sections 20 and 99:— The A.P. Unaided Private Medical and Dental Colleges (Establishment, Management and Admission) Rules, 1992 – Establishment of Medical College – Essentiality Certificate granted by State Government held is not conclusive to establish Medical College – It is merely a preliminary step towards making an application to Medical Council of India which is the ultimate authority to grant permission. *Integrated Rural Health Women and Child Education Development Society, Hyderabad. v. Government of Andhra Pradesh*, 2006 (3) ALD 479 (DB) = 2006 (2) ALT 432 (DB).

[20A. Prohibition of individual to establish institutions:— On and from the commencement of the Andhra Pradesh Education (Amendment) Act, 1987 no individual shall establish a private institution:

Provided that this section shall not have any effect on any private institution established by an individual and recognised by the competent authority prior to such commencement].

21. Grant or withdrawal of recognition of institutions imparting education:— (1) The competent authority may, by order in writing grant, recognition in respect of any institution imparting education or for a higher class in any such institution, permitted to be established under Section 20 subject to such conditions as may be prescribed in regard to accommodation equipment, appointment of teaching staff, syllabi, text books and other matters relating thereto :

Provided that in case of existing institutions under all managements the deficiencies, if any, in respect of the above conditions shall be made good within the time specified therefor in the order granting recognition.

(2) Where the manager of any local authority educational institution or private educational institution,—

- (a) fails to fulfil all or any of the conditions of recognition, or fails to comply with the orders of the competent authority in regard to accommodation, equipment, syllabi, text books, appointment, punishment and dismissal of teachers ;
- (b) denies admission to any citizen on grounds only of religion, race, caste, language or any of them ;
- (c) directly or indirectly, encourages in the educational institution any propaganda or practice wounding the religious feelings of any class of citizens of India or insulting the religion or the religious beliefs of that class ;
- (d) employs or continues to employ any teacher whose certificate has been cancelled or suspended by the competent authority after due enquiry or who has been considered, by the competent authority

after due enquiry to be unfit or undesirable to be a teacher ; or arbitrarily removes a teacher or fails to comply with the orders of the competent authority in this regard ;

- (e) fails to remedy the defects in the instructions or accommodation or the deficiencies in the management or discipline within such time as may be specified therefor by the competent authority;
- (f) contravenes any of the provisions of this Act and the rules and orders made thereunder ;

the competent authority may, for reasons to be recorded in writing withdraw the recognition of the institution or take such other action as is deemed necessary after giving to the manager an opportunity of making representation against such withdrawal or action.

(3) Where the Government are of opinion that the recognition granted to any local authority educational institution or private educational institution should, in the public interest, be withdrawn, they may, after giving one month's notice to the manager of such institution to make any representation, withdraw, by notification, the recognition granted to the said institution.

(4) Notwithstanding anything in any other law for the time being in force, no educational institution which has not been recognised or the recognition of which has been withdrawn under this Act shall be entitled,—

- (a) to receive any grant-in-aid from the State funds or other financial assistance from the Government ;
- (b) to send up candidates for examinations in courses of study conducted under this Act.

CASELAW

Where the State Government and the Director of School Education were aware that the petitioner/management admitted the students on its own in anticipation of affiliation and grant of minority status certificate which aspect appears to have been highlighted in the report of the Lokayukta, mere non-communication of the report of the Lokayukta and remarks of the Director of School Education would not be violative of the principles of natural justice. Unless it was further pleaded and established that such a non-communication had resulted some prejudice to the petitioner. It was held not a ground to set aside the impugned order. *In. Anil Kumar Khanna and Anr. vs. State, Mangalagiri v. Government of Andhra Pradesh and others*; 2001 (2) ALD 462.

The Government or competent authority cannot compel to close down a College though under sub-section (4) of Sec. 21 of the Act the grant-in-aid from the State funds can be ceased by the Government to flow to the erring Educational Institution the moment recognition of such institution is withdrawn under the

Act. In other words when once an order withdrawing affiliation/recognition is passed under Section 21(4) the grand-in-aid shall cease to be paid. *Jyothi Junior College, Vijayawada v. State of Andhra Pradesh and others*, 2000 (2) ALD 89.

¹[**21-A. Prohibition of affiliation with Universities outside the State:—**(1) No institution imparting education and located in this State shall affiliate itself to any University outside the State of Andhra Pradesh.

(2) Whoever contravenes the provisions of sub-section (1) shall be punished with simple imprisonment for a term which shall not be less than six months but which may extend to three years or with fine which shall not be less than three thousand rupees but which may extend to fifty thousand rupees or with both.]

22. Special provisions in respect of existing institutions:— (1) All the institutions imparting education which were established and recognised in accordance with rules in force immediately before the commencement of this Act and in existence at such commencement shall be deemed to be educational institutions, established and recognised under this Act, provided they comply with the provisions of this Act and the rules made thereunder within such period and in accordance with such procedure as may be prescribed.

(2) Any private institution imparting education which is in existence at the commencement of this Act but which has not been recognised in accordance with the rules in force immediately before such commencement, shall discontinue to impart education from such commencement unless within thirty days of such commencement, an application for recognition is made in accordance with the provisions of this Act and the rules made thereunder and every such application shall be disposed of within sixty days of its receipt by the competent authority. No person shall run any such institution after the application for recognition is rejected.

²(3) Any person who in contravention of sub-section (2) runs any such institution shall be punished with simple imprisonment for a term which shall not be less than six months but which may extend to three years or with fine which shall not be less than three thousand rupees but which may extend to fifty thousand rupees or with both].

1. Ins. by Act No. 27 of 1987, w.e.f. 1-6-1987.

2. Subs. by *Ibid*.

23. Duties of manager of local authority institution:— (1) It shall be the responsibility of the manager of a local authority institution to comply with all the provisions of this Act and the rules or orders made thereunder.

(2) Without prejudice to the generality of the foregoing provisions, it shall be the duty of the manager of the local authority institution,—

- (a) to ensure that all monies collected by or granted or allotted to the local authority by or under this Act are expended for educational purposes, and
- (b) to submit every year before such date and to such authority as may be prescribed an annual report relating to the administration of the local authority institution and an annual budget estimate relating thereto.

24. Appointment and removal of manager of private institution:—

(1) The management of every private institution shall be constituted in such manner and shall consist of such number of members as may be prescribed:

Provided that the Board of Trustees, or Governing Body or Wakf Board, by whatever name called, constituted or appointed under any other law for the time being in force relating to the charitable and religious institutions and endowments and wakfs, shall be deemed to be a management constituted under this sub-section.

[Provided further that the constitution of the management under this sub-section shall apply to a minority educational institution, in so far as it is not repugnant to Clause (1) of Article 30 of the Constitution of India].

(2) The management shall, for the purposes of this Act, nominate a person to manage the affairs of the institution, whether called by the name of secretary, correspondent or by any other name, and intimate such nomination within thirty days thereof to the competent authority.

- (3)(a) Where the competent authority is satisfied that the management is responsible for the lapses or irregularities of the institution, the competent authority may, after giving to such management an opportunity to make representation and for reasons to be recorded in writing suspend the management and appoint a special officer till the reconstitution of the management :

Provided that in relation to a private institution, under the management of a charitable or religious institution, charitable or religious endowment and a wakf, the competent authority shall be the Government or an authority or officer authorised by the Government in this behalf.

¹[Provided further that no management of minority educational institution shall be suspended under this sub-section save for mis-management].

- (b) Where the competent authority is satisfied that the manager alone is responsible for the lapses or irregularities of the institution, action shall be taken against him by the management, as recommended by the competent authority.

(4) The competent authority may, for reasons to be recorded in writing, declare a person to be unfit to be the manager of a private institution after giving to such person an opportunity of making his representation against such declaration and under intimation to the management and on such declaration, the person aforesaid shall cease to be the manager of the private institution and the management of such institution shall nominate another person as a manager in his place in accordance with the provisions of sub-section (2).

¹[Provided that no manager of a minority educational institution shall be declared to be an unfit under this sub-section save for mis-management].

(5) ²[x x x]

(6) For the removal of doubts it is hereby declared that any failure or wilful negligence on the part of a management to take action against the manager as required under Clause (b) of sub-section (3) or to nominate another person as manager under sub-section (4) shall constitute an act of mismanagement and action shall be taken against the private institution under this Act accordingly.

CASELAW

By reason of Sec. 24(2) the management is empowered to delegate its function to the Correspondent or to any other Officer by whatever name he is called. The post of Correspondent is equal to the post of Secretary and by reason of such delegation of power, essential statutory function has not been delegated to the Correspondent, nor could such function be delegated. *Tagore Home Junior College, Secunderabad v. P.P.A. Christian and others*, 2001 (3) ALD 742 (DB).

1. Added by Act No. 27 of 1987, w.e.f. 1-6-1987.

2. Omitted by *Ibid*.

Management of a private educational institution by a body of individuals/ by an individual is different from the management by a Manager to be appointed by it under Sec. 24(2) of the Act. In other words, the appointment of a Manager in relation to a private Educational Institution solely rests with the management of the institution. If for any reason the competent authority finds to that effect it can declare that person to be unfit to be the Manager of that Educational Institution. *S.L. Kameswari v. Govt. of A.P., Education Department, Hyderabad and others*, 1999 (1) ALD 84.

There is no provision for transfer of correspondentship, more so, under the hereditary principle. Managing Committee is empowered to nominate a person to manage the affairs of the institution under intimation to the competent authority. *S.P.T.R.M. High School v. Director of School Education and others*, 1999(5) ALD 425.

The competent Educational Authority whether it is DEO or RJD or Director has no competence to appoint management. In the event of a dispute the ~~Administrative Authority has to necessarily await the decision by a competent Civil Court as to the right of a claimant to manage an Educational Institution.~~ *K. Rama Sastry v. Government of Andhra Pradesh and others*, 2000 (5) ALD 601.

Ss. 24, 25—The bye-laws only provide for the post of President and it empowers only the Secretary to act as a correspondent and not the President. As per the bye-laws the hereditaryship is only restricted to the President and as such it cannot be extended to the post of correspondent also. The limited role of Sec. 24(2) of the Act is only to see that a person is nominated to manage the affairs of the institution for the discharge of the statutory duties under the Act. *Y. Krishnaiah v. Commissioner of Collegiate Education and others*, 1999 (3) ALD 565 (DB).

If the authority on whom the discretion is conferred under a statute divests himself of the power vested in him and acts under the dictation of some other authority or extraneous body, it would amount to failure to exercise the discretionary power conferred on him and the decision taken by him would be invalid. In the instant case, the impugned order was declared as invalid on the ground of failure to exercise discretionary power. *Sri Veerabrahmendra Junior College Committee and others v. Hon'ble Minister for Higher Education, Govt. of A.P., Hyd. and others*, 2002 (Supp. 2) ALD 120.

Where the presidentship of the person was recognised till 2002, it was held but natural that the elections should be held under the supervision or at least with his knowledge. Viewed from that person's angle, the elections said to have taken place between 28th and 30th January, 2002, were held not to be taken into account at least for the purpose of recognising the convenor. In the circumstances of the case the second petitioner was held to deserve recognition

as the convenor without prejudice to the right of the third respondent or others to approach any court seeking appropriate declaration and consequential relief. *Convention of Baptist Churches of Northern Circars and another v. State of A.P. and others*, 2002 (6) ALD 503.

It is the power of the management to appoint a Secretary, Correspondent or by any other name a person who manages the school. Under Section 24(2) the competent authority has only to be informed and intimated about his action. Power of appointment is not with the official respondents. Power of appointment is with the management. In the instant case, the petitioner's husband and the petitioner have also committed a mistake whereby the petitioner's husband has given a power of attorney to manage the affairs of the school to the petitioner, rather he was free as owner of the property to appoint her as Manager or Correspondent or Secretary of the school and intimate it to the concerned authorities. By virtue of being in Government service the petitioner's husband cannot be deprived of his rights as owner of the school. He certainly is deprived of taking over the management of the school. In terms of Section 24(2) read with Section 53 he is also not deprived of appointing a Manager/Correspondent/Secretary to the school. *S.L. Kameswari v. Government of A.P. and others*, 2003 (2) ALD 702 (DB) = 2003 (3) ALT 28 (DB).

It is within the jurisdiction, province and competence of the first respondent (Commissioner and Director of School Education) to determine the appropriate person to be appointed as a correspondent of Sri Victoria Aided Upper Primary School, Rajahmundry, but before effecting any change in the correspondentship the first respondent is obligated at least to provide a minimal opportunity to the writ petitioner. *P. Jagannadha Rao v. Commissioner and Director of School Education, State of A.P., Hyderabad and others*, 2004 (4) ALD 37.

25. Duties of manager of private institution:— (1) The manager nominated under Section 24 shall be responsible for managing and conducting the affairs of the private institution in accordance with the provisions of this Act and rules or orders made thereunder and for maintaining the properties thereof in proper and good condition.

(2) It shall be the duty of the manager to maintain such records and accounts of the institution and in such manner as may be prescribed.

(3) The manager shall afford all assistance and facilities as may be necessary or reasonably required for the inspection of the institution and its records and accounts by such officer as may be prescribed or authorised by the competent authority in this behalf.

(4) Before the end of April in each year, the manager of every private institution shall furnish to the competent authority a statement containing a

list of all movable and immovable properties of the institution with such other particulars as may be prescribed.

26. Private institution not to be closed down, etc., without sufficient notice:— (1) Save as otherwise provided in this Act, no private institution shall be closed down or discontinued, unless a notice of not less than one academic year expiring with the end of any academic year and indicating the intention to do so, has been given by the manager to the officer authorised by the competent authority in this behalf.

(2) If any manager fails to give notice as required under sub-section (1), he shall, on conviction, be punished with fine which may extend to '[five] thousand rupees or with simple imprisonment which may extend to '[one year] or with both and with a fine of '[rupees one hundred] for every day of further default.

CASELAW

T.P Act - Sec. 106—The notice contemplated by sub-section (1) of Section 26 manifests that it is only a notice which is required to be given by the Manager of an Educational Institution to the Competent Authority where the management proposes to close down or discontinue the Educational Institution. The said section nowhere lays down that the landlord in respect of the building where an Educational Institution is run should also issue a similar notice. *Aga Khan Social Welfare Society, Warangal v. Samudrala Srinivasa Rao*, 2000 (3) ALD 167.

So far as the role of the 1st respondent (Bar Council of India) is concerned, it needs to be observed that its role is confined only to ensure maintenance of proper standards as and when the Law Colleges are established and as long as such institutions exist. Just as they cannot compel an individual or agency, or for that matter, even a University to establish a Law College, they cannot compel any one to continue the same, contrary to their convenience. Therefore, it cannot be said that the 1st respondent has violated any provision of law or laws in according to permission to close the Law College: *Sir C.R. Reddy Law College Employees' Association, Eluru, West Godavari District and others v. Bar Council of India and others*, 2002 (5) ALD 592.

No employee of the college has a vested right to seek a writ of *mandamus*, insisting that when once a college is established, the said college should be continued and that under no circumstances it should be allowed to be closed. *B. Sreedevi and others v. Sri Venkateswara University, Tirupathi and others*, 2003 (2) ALD 648.

A bare reading of Section 26 of the Act suggests that no permission is required to closedown or discontinue any private educational institution. What is required is issuance of notice of not less than one academic year expiring with the end of any academic year expressing or indicating the intention to closedown the institution. *C.R. Reddy Law College Employees' Association, Eluru, W.G. District and others v. Bar Council of India, New Delhi and others*, 2004 (5) ALD 180.

Where management of the college is not entrusted with a public duty to impart legal education and failed to perform any such public duty, a writ of *mandamus* does not lie. *C.R. Reddy Law College Employees' Association, Eluru, W.G. District and others v. Bar Council of India, New Delhi and others*, 2004 (5) ALD 180.

27. Manager to hand over properties, records etc., to competent authority on closure, etc., of¹[private institution other than a registered school]:— (1) In the event of the ¹[private institution other than a registered school] being closed down or discontinued or its recognition being withdrawn, the manager shall hand over or cause to be handed over to the competent authority the custody of all the properties, records and accounts of the institution in his possession.

(2)(a) Where the competent authority is resisted in, or prevented from, obtaining the custody of properties, records or accounts of the institution by such manager, any judicial magistrate of the first class having jurisdiction shall, on an application made by the competent authority, by order, after notice to the manager, direct the handing over of the custody of such properties, records or accounts of the institution to the competent authority within the time specified in such order.

(b) ~~where the manager fails to hand over~~ the custody of the properties, records or accounts within the time specified in the order of the Magistrate under Clause (a), he shall be punished with imprisonment which may extend to ¹[one year] or with fine which may extend to ¹[five thousand rupees] or with both, and the Magistrate shall cause the custody of the properties, records or accounts to be handed over to the competent authority taking such police assistance as may be necessary.

1. Subs. by Act No. 27 of 1987, w.e.f. 1-6-1987.

(3) Nothing in this section shall apply to a minority educational institution and to a private institution under the management of a charitable or religious institution, charitable or religious endowment and a wakf.

28. Restriction on alienation of property of private institution:—

(1) Notwithstanding anything in any law for the time being in force, no sale, mortgage, lease, pledge, charge or transfer of possession in respect of any property of a [private institution other than a registered school] shall be made or created except with the previous permission in writing of the competent authority on an application made in this behalf.

(2)(a) No permission applied for under sub-section (1) shall be refused by the competent authority except where the grant of such permission will in its opinion, adversely affect the working of the institution.

(b) The competent authority shall pass an order, either granting or refusing permission applied for, within a period of sixty days from the date of receipt of the application.

(3) Any person aggrieved by an order refusing permission under sub-section (2) may, in such manner and within such time as may be prescribed, appeal to the prescribed authority.

(4) Any transaction made in contravention of sub-section (1) shall be null and void.

29. Liability of manager to repay debts incurred in certain cases:—

Where any manager incurs debts for the purpose of running an educational institution without proper authorisation by the management of such institution and where it is found by the competent authority after making an enquiry ~~that the moneys received through such debts have not been utilised for running~~ the institution it shall be the personal liability of such manager to discharge the said debts.

30. Parent-teacher association:—(1) There shall be parent-teacher association for every educational institution other than an adult educational centre.

(2) The composition and functions of the parent-teacher association shall be in accordance with such rules as may be prescribed.

31. Inspection of educational institutions:— (1) The Government or the competent authority may authorise any officer not below such rank as may be prescribed to inspect any educational institution in the State.

(2) The officer authorised under sub-section (1) shall exercise general powers of inspection over the working of the educational institution.

(3) The manager and the employees of the educational institution shall at all reasonable times be bound to afford to the aforesaid officer all such assistance and facilities as may be required for the purpose of such inspection.

(4) The manager shall comply with such directions or suggestions as may be given by the competent authority on the report of the aforesaid officer.

Provided that the manager aggrieved by any such direction or suggestion may appeal, within thirty days from the date of receipt of such direction or suggestion to the prescribed authority whose decision on such appeal shall be final.

32. Registration of tutorial institutions:— (1)(a) On or after the commencement of this Act, no tutorial institution shall be started without prior registration ; and an application for such registration shall be made in the prescribed manner and to the prescribed officer.

(b) In the case of a tutorial institution in existence at the commencement of this Act, any person or body of persons managing such institution shall, within ninety days from such commencement, make an application for registration to the prescribed officer and if no such application is so made or if the prescribed officer communicates to him an order refusing to register the institution under sub-section (1), the person or body of persons managing such institution shall not run the institution from the date of expiration of the ninety days aforesaid or the date of communication of such order of refusal, as the case may be.

(2) On receipt of an application under sub-section (1), the prescribed officer may, after satisfying himself whether or not the application contains all the prescribed particulars and that the tutorial institution complies with the minimum requirements prescribed in regard to the sanitary conditions of the premises and the qualifications of the teaching staff, either register the tutorial institution in a register to be maintained for the purpose or refuse to register, and shall, where he so registers the institution, issue in the prescribed form a registration certificate in the name of the tutorial institution.

(3) The person or body of persons managing every tutorial institution so registered shall submit to the prescribed officer within ~~two~~ months after the end of every academic year, an annual report regarding the coaching facilities provided by it during the academic year.

(4) The person or body of persons managing every tutorial institution so registered shall give intimation to the prescribed officer and the District Educational Officer, of any change in any of the particulars furnished under sub-section (1), or of closure of the institution, in such form, in such manner and within such time as may be prescribed, and the prescribed officer shall on receipt of such intimation, amend the register referred to in sub-section (2) and the registration certificate wherever necessary, or as the case may be, cancel the certificate, and notify the same.

(5) Where the person or body of persons managing any tutorial institution has, in the opinion of the prescribed officer, contravened any of the conditions subject to which the registration certificate is issued to such person or body of persons managing such institution, the prescribed officer may, after giving the person or body of persons an opportunity of making his representation, cancel the registration certificate and remove the name of the institution from the register referred to in sub-section (2) and notify the same.

(6) Any person who runs a tutorial institution in contravention of Clause (b) of sub-section (1) or who establishes and manages a tutorial institution without obtaining a registration certificate under sub-section (2) or who after the registration certificate issued to him, under that sub-section having been cancelled continues to run such institution, shall be punished ¹[with imprisonment for a term which shall not be less than six months but which may extend to one year or with fine which may extend to one thousand rupees or with both] :

Provided that for a second or any subsequent offence under this section, he shall be punished with imprisonment for a term ¹[which shall not be less than one year but which may extend to two years or with fine which may extend to five thousand rupees or with both] ;

²[Provided further that the Court convicting a person under this section shall also order the closure of the tutorial institution with respect to which the offence is committed].

1. Subs. by Act No. 27 of 1987, w.e.f. 1-6-1987.

2. Added by *Ibid*.

33. Abhyudaya Pradhamika Vidya Samstha and Residential Educational Institutions Society:— (1) There shall be a registered society to establish and maintain Abhyudaya Pradhamika Pathasalas in the State for effecting qualitative improvement in primary education to be called the Abhyudaya Pradhamika Vidya Samstha.

(2) There shall be a registered society to establish and maintain residential educational institutions in the State to be called the Andhra Pradesh Residential Educational Institutions Society.

(3) The compositions of the governing body of each of the said societies and its powers and functions shall, notwithstanding in any law for the time being in force, be such as may be prescribed.

(4) Where the Government are of opinion that all or any of the educational institutions established and maintained by the said society be taken over, they may, after giving one month's notice to the society to make any representation; direct by notification that the management of the said educational institution shall, with effect on and from the date specified therein, vest in the Government without detriment to the interests of the employees of the said institution.

[Chapter VI-A

REGISTERED SCHOOLS

33A. Definition:— For the purposes of this Chapter, the expression "registered school", shall mean a school recognised under Section 21 but not receiving aid from the Government.

33B. Permission for establishment of registered schools:— (1) The competent authority shall, from time to time, conduct a survey as to identify the need for establishing registered schools under its jurisdiction and then notify in the prescribed manner through the local news papers calling for applications from the educational agencies desirous of establishing the school to be registered in the manner hereinafter provided.

(2) In pursuance of the notification under sub-section (1), any registered body of persons intending to,—

- (a) establish a registered school ;
- (b) open higher classes in a registered school imparting pre-primary or primary education ; or
- (c) upgrade any such school into a high school,

may make an application, within such period, in such manner and to such authority as may be notified for the grant of permission therefor.

(3) The authority empowered to grant permission under sub-section (2) may, after satisfying that the conditions prescribed for the grant of permission are fulfilled, grant the permission and register the school in such manner as may be prescribed or refuse such permission after giving reasons therefor and where the school is so registered, a certificate of registration may be issued in the name of the school.

33C. Special provision in respect of existing schools:— (1) The management of every private institution existing on the date of commencement of the Andhra Pradesh Educational (Amendment) Act, 1987 desirous of registering the school in accordance with the provisions of this Chapter may make an application for registration in accordance with the provisions of Section 33B to the competent authority within sixty days from such commencement and if no application is made within the said period or where the application is rejected, the institution shall continue to be a private institution.

33D. Cancellation of registration of the registered schools:— Where the competent authority is of the opinion that the management of a registered school has failed to fulfill all or any of the conditions of registration under Section 33-B or the rules made thereunder, it may after giving a notice not less than thirty days to the manager of such school cancel the registration of the school and the certificate granted under Section 33B.

33E. Conditions of service of staff:— The teaching and non-teaching staff of the registered schools shall be entitled to receive such salaries and allowances and shall be subject to such conditions of service as may be prescribed.

33F. Maintenance of registers and following of syllabus, etc.:— The registered school shall follow the same syllabi, text books and hand books and maintain the same records and registers as may be followed and maintained by the recognised schools.

33G. Advisory Body:— The management of every registered school shall constitute an advisory body for the pre-primary, primary and upper primary classes and for secondary school classes separately and the composition and the constitution of such advisory body shall be such as may be prescribed.

33H. Functions of the advisory body:— The advisory body shall perform the following functions, namely:—

- (i) to advise the management in evolving the fee structure ;
- (ii) to evolve the procedure for the admission of the students ;
- (iii) to evolve the procedure for accounting and auditing the accounts of the registered school ;
- (iv) to suggest guidelines for the administration of the school without interfering with the minority character of the minority institutions;
- (v) to approve the annual report ;
- (vi) to evolve, subject to the provisions of Section 33E, the procedure for the recruitment and conditions of service of the teaching and non-teaching staff of the registered school.

33I. Grants:— No registered school shall be entitled to receive grant-in-aid or any other financial assistance from the Government for its ~~management. the existing recognised schools which are receiving~~ the grant-in-aid shall continue to receive such aid only until they are registered under Section 33B.

33J. Properties of registered schools:— The properties of any private institution registered as registered school, like building, furniture, library, laboratory, equipment, playground, aids, endowments and bank balances, shall continue to be the properties of such institution even after it is registered under Section 33B.

33K. Transfer certificate to be counter-signed:— (1) The transfer certificate in respect of any student of a registered school shall be in such form and issued in such manner as may be prescribed.

(2) Students of any recognised school may seek admission in or transfer from any such school to any registered school and *vice-versa*. The transfer certificate issued by the registered school shall be countersigned by the competent authority in such manner as may be prescribed:

33L. Examination for the students of registered school:— Where the Government have prescribed any common examination or any public examination for student evaluation, the students studying in the registered schools shall appear for those examinations subject to satisfying the rules made in this behalf and the conditions prescribed by the Commissioner for Government Examinations.

33M. Registered schools to make arrangements for conducting of examination:— Where the competent authority selects any registered school as a centre for the conduct of the VII Class, District Common Examination or the X Class Public Examination, the management of the school shall extend all the facilities for the smooth conduct of the examination.

33N. Duties of the Management of the registered school:— It shall be the responsibility of the management of a registered school to submit every year before such date and to such authority as may be prescribed an annual report relating to the administration of the school and such other information and statistical data as may be prescribed.

33O. Inspection:— The Government shall have the right to visit or cause an inspection to be made by such person or persons as they may direct for a specified purpose of the registered school and also to cause an enquiry to be made into the matters connected therewith].

Chapter VII

EDUCATION FUNDS OF LOCAL AUTHORITIES

34. Definitions:— In this Chapter, the expression “local authority” does not include a Gram Panchayat.

35. Education Fund of Local Authority:— (1) There shall be constituted for each local authority an education fund, to which shall be credited,—

- (a) an annual contribution from the general funds of such local authority not being less than a minimum fixed by the Government in that behalf;
- (b) all sums granted to such local authority by the Government for the purpose of providing educational facilities within its jurisdiction;
- (c) all fines and penalties levied within the jurisdiction of such local authority under the provisions of this Act;
- (d) all income derived from any endowment or other property owned or managed by such local authority for the benefit of education;
- (e) all tuition fees, if any, collected in educational institutions managed by, such local authority;
- (f) all other sums of money which may be contributed to or received by, such local authority for the purposes of this Act.

(2) Notwithstanding anything in any other law for the time being in force, the education fund constituted under this section shall be kept separately and shall not be merged with the general revenues of the local authority concerned and it shall be used exclusively for purposes of education.

36. Education fund where to be deposited and how to be drawn upon:— (1) The education fund constituted under Section 35 shall be deposited in Government treasury.

(2) All expenses incurred on education by the local authority concerned shall be paid out of the said fund.

(3) All orders or cheques to be drawn upon the fund shall be signed by the chief executive officer of the local authority or by such person as he may authorise in writing to sign on his behalf.

(4) So far as the funds to the credit of the local authority concerned permit, the treasury shall pay—

- (a) all orders or cheques signed in accordance with sub-section (3);
- (b) all payments made or expenses incurred by the Government on behalf of the local authority by or under the provisions of this Act, provided that the local authority has given previous permission in writing to the treasury to debit such expenses to the fund without the issue of any order or cheque.

37. Levy of taxes:— (1) Any Municipal Council may, with the previous sanction of the Government and shall, if so directed by them, levy within its jurisdiction, taxes for the purposes of this Act, at such rates as may be considered necessary, as an addition to the taxation levied in the municipality under the Andhra Pradesh Municipalities Act, 1965 under the head of property tax or profession tax or under both these heads.

Explanation:— In construing the expression “taxation levied” occurring in this sub-section, exemptions granted under sub-section (2), sub-section (3), sub-section (4) or sub-section (5) of Section 88 of the Andhra Pradesh Municipalities Act, 1965, shall not be taken into account.

(2) Any Gram Panchayat may, with the previous sanction of the Government and shall, if so directed by them, levy within the area under its jurisdiction or part thereof, taxes for the purposes of this Act, at such rates as may be considered necessary, as an addition to the taxation levied in such area or part under law for the time being in force governing Gram Panchayats

Further more an institution admitted to Grant-in-Aid cannot seek financial assistance on permanent basis. *Y. Sidda Reddy v. Government of Andhra Pradesh*, 2006 (1) ALT 354 (DB) = 2006 (3) ALD 546 (DB).

43. Authorities which may sanction grant:— (1) The Government may in such cases as they think fit, by order, sanction grant to any recognised local authority educational institution or private educational institution subject to such conditions as they may impose in the order relating to such grant.

(2) Every grant sanctioned under sub-section (1) shall be disbursed by the Director or such other officer subordinate to the Director as the Government may, by a general or special order, authorise in this behalf, in such manner and subject to such conditions as may be prescribed.

(3) The manager of every recognised institution which is receiving any grant out of State Funds shall be responsible for the fulfilment of all the conditions subject to which such grant has been given.

44. '[x x x]

45. Application for sanction of grant and the conditions to be fulfilled on such sanction:— (1) Every application for the sanction of grant shall be made to the Government, in such form as may be prescribed and contain a declaration signed by the manager of the recognised institution to the effect that the conditions of recognition and of grant are being and shall continue to be fully observed, that all facilities for inspection of that institution, its accounts, registers and other records relating to the grant shall be afforded to the inspecting staff deputed for the purpose and that all the returns and reports prescribed in this behalf shall be submitted to the competent authority within the time specified by it.

(2) The Government may sanction such grant or for good and sufficient reasons may refuse to sanction such grant.

(3) Subject to the other provisions of this Act, any order passed by the Government refusing to sanction the grant shall be final and shall not be questioned in any Court of law.

46. Power of Government to withhold, reduce or withdraw grant:— (1) Notwithstanding anything in this Chapter, the Government may, after such enquiry as they may deem fit, withhold, reduce or withdraw any grant payable to an educational institution having regard to the funds at the disposal of the Government or the conduct and efficiency and the financial condition of such institution, after giving an opportunity to the manager of the institution concerned of making a representation against such withholding, reduction or withdrawal.

(2) Without prejudice to the generality of the provisions of sub-section (1) or any other provision of this Act, the Government may, after such enquiry as they may deem fit, withhold, reduce or withdraw any grant payable to any educational institution if the manager of the institution concerned,—

- (i) fails to fulfil all or any of the conditions of grant ;
- (ii) denies admission to any citizen on grounds only of religion, race, caste, language or any of them ;
- (iii) allows any employee of the institution to take part in any agitation intended to bring or attempt to bring into hatred or contempt, or intended to excite or attempt to excite disaffection towards, the Government established by law in India ;
- (iv) directly or indirectly encourages any propoganda or practice of wounding the religious feelings of any class of citizens of India or insulting the religion or the religious beliefs of that class ;
- (v) is guilty of falsification of registers, of misuse of funds for purposes other than those for which they are collected ;
- (vi) fails to remedy within such reasonable time as may be specified by the competent authority, the defects in the maintenance of accounts pointed out by the auditors ; or
- (vii) fails to restore, within the time specified by the competent authority, an employee whose services have been wrongfully dispensed with ~~or fails to pay him any arrears of salary or other benefits which~~ directed to do so by the competent authority.

(3) Subject to the other provisions of this Act, every order passed under this section shall be final and shall not be questioned in any Court of law.

47. Utilisation of funds and movable property of private institution:—(1) All the monies collected, grants received and other movable property held by or on behalf of a private insitution shall be utilised for the purpose for which they are intended and shall be accounted for by the manager in such manner as may be prescribed.

(2) All the monies received or held by or on behalf of every private institution shall be deposited in a bank.

(3) The surplus fund of every such institution shall be invested in such manner as may be prescribed and shall be utilised towards educational development only.

Explanation:— For the purpose of this section “surplus fund” means all the monies that remain unused with the institution at the beginning of each academic year, after providing for all the objects, needs, requirements or improvements of the institution during the previous three academic years.

Chapter IX

ACCOUNTS, AUDIT, INSPECTION AND RETURNS

48. Accounts:— Every educational institution receiving grants out of State Funds and other sources shall maintain accounts in such manner and containing such particulars as may be prescribed.

49. Annual audit of accounts:— (1) The accounts of every educational institution receiving grants out of the State Funds shall be audited at the end of every academic year in such manner, after following such procedure and by such authority, officer or person as may be prescribed and different authorities, officers or persons may be prescribed for different classes of educational institutions.

(2)(a) The prescribed authority, officer or person shall have full access to the account books and other documents required to be maintained by the educational institution in respect of grants received by it out of State Funds and shall send a copy of the report on the audit of the accounts under sub-section (1) to the competent authority which shall forward the report to the educational agency.

(b) The educational agency shall, within such time as may be prescribed, submit that report together with the comments of that agency to the competent authority.

50. Inspection or Inquiry:— (1) The competent authority shall have the right to cause an inspection of, or inquiry in respect of, any educational institution, its accounts, its buildings, laboratories, libraries, workshops and equipment and also of the examinations, teaching and other work conducted or done by the institution to be made by such person or persons as it may direct and to cause an enquiry to be made in respect of any other matter connected with the institution and the educational agency shall be entitled to be represented thereat.

(2) The competent authority shall communicate to the educational agency the views of that authority with reference to the result of such inspection or inquiry and may after ascertaining the opinion of the educational agency thereon, advise that agency upon the action to be taken.

(3) The educational agency shall report to the competent authority the action, if any, which is proposed to be taken or has been taken upon the results of such inspection or inquiry. Such report shall be furnished within such time as the competent authority may direct.

(4) Where the educational agency does not, within a reasonable time, take action to the satisfaction of the competent authority, that authority may, after considering any explanation furnished or representation made by the educational agency, issue such directions as that authority deems fit ; and the educational agency shall be responsible for the implementation of every such direction.

51. Furnishing of returns, etc.:— Every educational agency shall, within such time or within such extended time as may be fixed by the competent authority in this behalf, furnish to the competent authority such returns, statistics and other information as the competent authority may, from time to time, require.

Chapter X

PROHIBITION OF TRANSFER OF PROPERTIES BY AIDED EDUCATIONAL INSTITUTIONS

52. Definitions:— In this Chapter,—

- (a) "*manager*" means the owner, trustee or other person who has power to transfer any land or building belonging to an educational institution and includes a local authority ;
- (b) "*transfer*" includes sale, exchange, mortgage, charge, lease or gift.

53. Prohibition of transfer of lands and buildings by educational institutions without the permission from Government in certain cases:—

(1) Where before or after the commencement of this Act,—

- (a) any land or building has been acquired, constructed, improved or altered for the purpose of any educational institution, with the aid of any grant made from the State funds ; or

- (b) any land or building has been transferred by the Government for use for the purpose of any educational institution, then, notwithstanding anything to the contrary in any other law for the time being in force or in any deed of transfer or other document relating to the land or building, it shall not be transferred without permission of the Government under sub-section (2) ; nor shall the land or building be used for any purpose other than the purposes of the educational institution or purposes ancillary thereto, without the permission of the Government.

(2) The Government may, by order in writing, permit the transfer of any such land or building subject to such conditions as they may impose, if—

- (i) the transfer is made in furtherance of the purposes of the educational institution or of ancillary purposes approved by the Government, and the proceeds of such transfer are to be wholly utilised in furtherance of the said purposes ;
- (ii) the transfer is made only in part in furtherance of the purpose aforesaid, provided repayment is made to the Government of such portion as the Government may direct in the circumstances of the case, of the grant referred to in Clause (a) of sub-section (1) or of the current market value of the land or building referred to in Clause (b) of sub-section (1) or of both, as the case may be ;
- (iii) the transfer is made for any other valid reason, provided repayment is made to the Government in full of the grant referred to in Clause (a) of sub-section (1) or of the current market value of the land or building referred to in Clause (b) of sub-section (1) or of both, as the case may be.

(3) Any transfer of land or building made without obtaining the permission of the Government under sub-section (2) shall be null and void.

54. Consequence of breach of provisions of Section 53:— Where, in any case, the Government, after giving the manager of the educational institution concerned an opportunity to make his representation in regard to the matter, are satisfied that the provisions of sub-section (1) of Section 53 have been contravened in respect of any land or building they may, by order,—

- (a) if the land or the land together with the building standing thereon belonged to the Government and was transferred by them for the purposes of the educational institution, direct the Collectors to take possession of the land or land together with the building standing thereon, as the case may be, or at their option, direct the manager to pay to them in full, the current market value of the land or of the land together with that of the building where it was also transferred by them and also the amount of the grant, if any, made by the Government for improving the land or altering or constructing the building ;
- (b) if the land or the building, if any, standing thereon does not belong to the Government, direct the manager to repay in full the grant made by the Government.

55. Effect of orders under Sections 53(2) and 54:— (1) Every order passed by the Government under sub-section (2) of Section 53 or ~~Section 54 and~~ subject to the provisions of sub-section (2) and (3), be final.

(2) The manager of the institution in respect of which such an order is passed, not being a local authority, may on the ground that the amount repayable or payable by or to him has been wrongly fixed in the order, apply within sixty days from the date on which the order is received by him to the District Judge having jurisdiction over the area in which the property in question is situated for fixing such amount correctly in accordance with the provisions of sub-section (2) of Section 53 or Section 54, as the case may be.

~~(3) The District Judge shall determine the amount which is properly~~ (3) The District Judge shall determine the amount which is properly repayable or payable by or to the manager in accordance with the provisions of sub-section (2) of Section 53 or Section 54, as the case may be, and such determination shall be final.

56. Land or building to vest in Government absolutely on possession being taken:— (1) When, in pursuance of an order under Section 54, the Collector takes possession of any land or building by himself or through another, it shall vest absolutely in the Government free from all encumbrances.

(2) If the Collector or any person authorised by him in this behalf is opposed or impeded in taking possession of any land or building under this Chapter he shall, if he is a Magistrate, enforce the surrender of such land

body or local authority and is recognised by the Government, but does not include a minority educational institution ;

- (b) "*person interested*" includes all persons claiming or entitled to claim, an interest in the amount payable on account of the taking over of the management of the educational institution or requisitioning or acquisition of the property used for the purposes of an educational institution or of any other institution connected therewith under this Act.

60. Taking over of management of educational institutions in public interest:— (1) Where the Government are of opinion that the management of any educational institution should either in the public interest or in order to secure the proper management of the said educational institution be taken over, they may, after giving one month's notice to the management of such educational institution to make any representation, direct by notification, that the management of the said educational institution, shall with effect on and from the date specified therein vest in the Government until the said educational institution is acquired :

Provided that no private institution under the management of a religious institution, endowment or a wakf shall be taken over without the prior consent of such management.

(2) The educational institution referred to in sub-section (1) shall be deemed to include all assets, rights and leaseholds, powers, authorities and privileges and all property, movable and immovable including lands, buildings, stores, instruments and vehicles, cash balances, reserve fund, investments and book debts and all other rights and interest arising out of such property as were, immediately before the date of taking over of the management under sub-section (1) (hereinafter in this Chapter referred to as the date aforesaid) in the ownership, possession, power or control of the management of such educational institution and all books of account, registers and all other documents of whatever nature relating thereto.

(3) Any contract, whether express or implied, or other arrangement (not being a contract, or agreement specified in Section 62) in so far as it relates to the management of the educational institution, and in force immediately before the taking over, shall be deemed to have terminated on the date aforesaid.

(4) All persons, in whom the management of the educational institution vested immediately before the taking over shall, as from the date aforesaid, cease to be so vested and shall be deemed to have vacated their offices as such on the date aforesaid.

(5) Notwithstanding anything in any other law for the time being in force, no person in respect of whom any contract of management or other arrangement is terminated by reason of the provisions contained in sub-section (3) or who ceases to hold any office by reason of the provisions contained in sub-section (4) shall be entitled to claim any compensation for the premature termination of the contract of management or other arrangement or for the cessation of management or for the loss of office, as the case may be.

(6) Notwithstanding any judgment, decree or order of any Court, tribunal or other authority or anything contained in any other law for the time being in force, every person in whose possession or custody or under whose control the educational institution or any part thereof, or any properties attached thereto, may be immediately before the taking over, shall on the date aforesaid, deliver possession of the educational institution or part thereof or any properties attached thereto, as the case may be, to the special officer appointed by the Government for the purpose of carrying on the management of such educational institution for and on behalf of the Government, or where no special officer is appointed, to such other person as the Government may direct.

(7) For the removal of any doubt, it is hereby declared that any liability incurred by the private management in relation to the educational institution before the taking over shall be enforceable against the said management and not against the Government or the Special Officer.

(8) The amount payable in respect of the vesting in the Government of the management of an educational institution under sub-section (1) shall be an amount equal to the average net annual surplus income of such educational institution during the period of its existence, or the period of five consecutive accounting years immediately preceding the date of such vesting, whichever is less :

Provided that no such amount shall be payable if the trust or management under which the educational institution is founded makes provision for the running of such institution.

Explanation:— In this sub-section, the expression “accounting year” means the period beginning on the 1st day of July of any year and ending on the 30th day of June of the year next following.

(9) The amount payable under sub-section (8) shall, subject to rules made under this Act, be paid by the competent authority to the person interested in the educational institution in such manner and within such time as may be prescribed.

61. Power to terminate contracts of employment:— If the Government or the special officer appointed under Section 60, is of opinion that any contract of employment entered into by the management in relation to the educational institution at any time before taking over is unduly onerous, they or he may, by giving to the employee one month's notice in writing or salary or wages for one month in lieu thereof, terminate such contract of employment.

62. Contracts etc., made in bad faith may be cancelled or varied:—
(1) If the Government are satisfied, after such enquiry as they may think proper, that any contract or agreement entered into at any time within a period of two years immediately preceding the date aforesaid between the management in relation to the educational institution and any other person, in relation to any service, sale or supply to, or by the educational institution and in force immediately before the taking over, has been entered into in bad faith, or is found detrimental to the interests of the educational institution, they may make, within one hundred and eighty days from the date aforesaid an order cancelling or varying (either unconditionally or subject to such conditions as they may think fit to impose) such contract or agreement and thereafter the contract or agreement shall have effect accordingly :

Provided that no contract or agreement shall be cancelled or varied except after giving to the parties to the contract or agreement one month's notice to make a representation in this regard.

(2) Any person aggrieved by an order made under sub-section (1) may, within thirty days from the date of communication of the order, make an application to the Principal Civil Court of original jurisdiction within the local limits of whose jurisdiction the educational institution is situated, for the variation or reversal of such order and thereupon such Court may confirm, modify or reverse such order.

63. Avoidance of voluntary transfers:— Any transfer of property, movable or immovable, or any delivery of goods made by or on behalf of the educational institution (not being a transfer or delivery made in the ordinary course of transaction or in favour of a purchaser for valuable consideration and in good faith), if made within a period of one year immediately preceding the date aforesaid, shall be void as against the Government or the special officer, as the case may be.

64. Requisitioning of an educational institution:—(1) Where recognition or permission granted to an educational institution is withdrawn by the Government under sub-section (3) of Section 21 or otherwise, or where an educational institution is closed before the last working day of an

academic year and if the Government consider it necessary to requisition any property movable or immovable, which before the withdrawal of the recognition or permission or the closing of the institution was being used for the purposes of the institution or of any other institution connected therewith, such as a hostel for students, quarters for the residence of employees or a playground, then notwithstanding anything to the contrary in any other law for the time being in force, the Government may, within three months from the withdrawal of the recognition or permission or the closing of the educational institution, as the case may be, requisition such property and make such further orders as appear to them to be necessary or expedient in connection with the requisition.

~~(2) Before requisitioning any property under sub-section (1) the Government,—~~

- (a) shall call upon the manager or any other person who is in possession of the property by notice in writing to show cause, within fifteen days of the date of the service of such notice to him why the property should not be requisitioned and shall consider the objections, if any, shown by the manager or other person ; and
- (b) may, by order, direct that the manager or any person shall not, without permission of the competent authority, dispose of, structurally alter, lease or in any manner deal with, the property until the expiry of such period, not exceeding three months, as may be specified in the order.

~~(2) Where any property is requisitioned under sub-section (1) the Government may,—~~

- (a) use or deal with such property for any educational purpose; or
- (b) by order, permit any person or body or local authority to use or deal with such property for any such purpose, subject to the payment of such rent and other sums to the Government and the observance of such conditions as may be specified in the order.

65. Summary power for taking possession of property:— (1) Any person remaining in possession of any property in contravention of an order issued under Section 64 may be summarily dispossessed of such property by an officer empowered by the Government in this behalf, and in the case of building, if free access to it is not afforded to such officer, he may after giving reasonable warning and facility of withdrawing to any woman not appearing in public according to the customs of the country, remove or open any lock or bolt or break open any door or do any other act necessary for effecting such dispossession.

(2) If any such officer is resisted in the exercise of such power or discharge of such duty, the Magistrate having jurisdiction shall, on a written requisition from such officer, direct any police officer not below the rank of sub-inspector to render such help as may be necessary to enable the officer to exercise such power or discharge such duty.

66. Release from requisitioning and discharge of liability of the Government:— (1) The Government may at any time, release any property requisitioned under this Chapter and in such case, the possession of the property released from requisition shall be delivered to the manager or other person from whom possession was taken at the time when the property was ~~requisitioned, or if there was no such manager or person, the person~~ deemed by the Government to be the manager or owner of such property, and such delivery of possession shall be full discharge of the Government from all liabilities in respect of that property which any other person may be entitled by the due process of law to enforce against the person to whom possession of the property is so delivered.

(2) Where the person to whom possession of any such property is to be delivered cannot be found or has no agent or other person empowered to accept delivery on his behalf, the Government shall cause to be published in the Andhra Pradesh Gazette a notice declaring that the property is released from requisition ; and in the case of any immovable property, the Government shall also cause a copy thereof to be affixed, on some conspicuous part of such property.

(3) When the notice referred to in sub-section (2) is published in the Andhra Pradesh Gazette, the property specified in such notice shall cease to be subject to requisition on and from the date of such publication and shall be deemed to have been delivered to the person entitled to possession thereof ; and the Government shall not be liable for any amount, rent or other claim in respect of such property for any period after the said date.

67. Acquisition of property:— (1) Where any property is vested under sub-section (1) of Section 60 in connection with the management of an educational institution or is subject to requisition under sub-section (1) of Section 64, the Government may, if they consider it necessary to acquire the property for any public purpose connected with education, acquire at any time such property for the said public purpose by publishing in the Andhra Pradesh Gazette a notice to the effect that the Government have decided to acquire the property in pursuance of this section :

Provided that before issuing such notice, the Government shall call upon the manager of, or any other person who in the opinion of the Government.

is the person interested in, such property to show cause why the property should not be acquired ; and after considering the objections if any, shown by the manager or other person interested in the property the Government may pass such order as they deem fit.

(2) When notice as aforesaid is published in the Andhra Pradesh Gazette, the requisitioned property shall on and from the day on which the notice is so published, cease to be subject to requisition and ~~vest absolutely~~ in the Government free from all encumbrances.

68. Principles and methods of determining amount for property requisitioned or acquired:— (1) Where any property is requisitioned or acquired under this Act, the amount payable therefor shall be determined and paid in the manner and in accordance with the principles hereinafter set out, that is to say,—

- (a) where the amount is settled and fixed by agreement, it shall be paid accordingly ;
- (b) where there is no such agreement, the Government shall appoint as arbitrator a person who is holding or has held a judicial office, not below the rank of a District Judge, for determining the amount;
- (c) at the commencement of the proceedings before the arbitrator the Government and the person to whom the amount is payable shall state what according to them is the fair amount ;
- (d) ~~the arbitrator shall~~ after due enquiry determine the amount which appears to him to be just and specify the person or persons to whom such amount shall be paid ; and in making the award determining the amount, he shall have regard to the circumstances of each case and the provisions of sub-sections (2), (3), (4) and (5) so far as they are applicable ;
- (e) where there is any dispute as to the person or persons who are entitled to the amount, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to the amount, he shall apportion the amount amongst such persons according to their rights ; and
- (f) nothing in the Arbitration Act, 1940, shall apply to arbitrations under this section.

(2) The amount payable for the requisitioning of any property, movable or immovable, shall, in respect of the period of requisition, be a sum equal to the rent which would have been payable for the use and occupation of the immovable property or for the use of the movable property, if it had been taken on lease for that period.

Sec.71] Taking over of Management, Requisitioning and Acquisition 61

(3) The amount payable for the acquisition of any immovable property under Section 67 shall be—

- (a) the price which the requisitioned property would have fetched in the open market if it had remained in the same conditions as it was at the time of requisitioning and been sold on the date of acquisition; or
- (b) ~~twice the price which the requisitioned property would have fetched~~ in the open market if it had been sold on the date of requisition, whichever is less.

(4) The amount payable for the acquisition of any movable property shall be the price which such property would have fetched in the open market if it had been sold on the date of acquisition.

(5) Where any property requisitioned or acquired under this Act was acquired with the grant from the State funds, the amount of such grant shall be taken into account in the prescribed manner in determining the amount payable.

Explanation:— For purposes of this sub-section, all the property acquired by the educational institution shall be deemed to have been acquired with the aid of such grant, contribution, donation or collection unless the manager of the Educational Institution proves to the satisfaction of the arbitrator that the property has been acquired otherwise.

69. Payment of amount for property requisitioned or acquired:— The amount payable under the award of arbitrator shall, subject to any rules made under this Act, be paid by the competent authority to the person interested, in such manner and within such time as may be specified in the award.

70. Appeal from the award of the Arbitrator under Section 68 in respect of amount:— Any person aggrieved by the award of the arbitrator under Section 68 may, within sixty days from the date of such award, prefer an appeal to the High Court :

Provided that the High Court may entertain an appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

71. Arbitrator to have certain powers of Civil Court:— The arbitrator appointed under this Chapter, while holding arbitration proceedings under this Act, shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely,—

- (a) summoning and enforcing the attendance of any person and examining him on oath ;
- (b) requiring the discovery and production of any document ;
- (c) reception of evidence or affidavits ;
- (d) requisitioning any public record from any Court or office ;
- (e) issuing commissions for examination of witnesses.

72. Powers of entry and inspection and calling for information:—

The competent authority may, for the purpose of requisitioning or acquiring any property under this Chapter, by order,—

- (a) empower any authority to enter and inspect any property specified in the order liable to be requisitioned or acquired under this act;
- (b) require any person to furnish to such authority such information in his possession relating to the property as may be specified in the order.

73. Provisions for existing staff of Educational Institutions:—

Notwithstanding anything to the contrary in any contract or agreement or any law for the time being in force, the following provisions shall apply in regard to the persons on the staff of the Educational Institution immediately before the date on which the management of the Educational Institution is vested in the Government, namely,—

- (a) the Government shall have power to terminate the services of any such person after giving him three calendar months' notice in writing or paying him three months' pay in lieu of such notice ;
- (b) a person whose services have been retained shall be governed at his option either by the conditions of service as may from time to time be prescribed or by the conditions of service applicable to him immediately before such vesting.

74. Posts of employees of educational institutions vested under this Chapter to be treated as a unit for certain purposes:— The posts in each category of employees of the educational institutions in a district which have vested in the Government under this Chapter shall be a unit for purposes of seniority, discharge, revision for want of vacancies, re-appointment of probationers and approved probationers and appointment of full members.

Chapter XII

TRANSFER OF CONTROL AND MANAGEMENT
OF CERTAIN SCHOOLS

75. Powers of Government to take over control and management of schools, belonging to local authority:— (1) The Government may, by notification, and with the prior consent of a local authority, take over the control and management of any or all primary schools or secondary schools established or maintained and administered by the said local authority from such date as may be specified in the notification; and from the date so notified it shall be open to the Government to control and manage the said schools and all the properties and assets of the local authority pertaining to or intended to be used for, every such school shall stand transferred to, and vest in the Government free from all encumbrances.

(2) Notwithstanding any contract or agreement or any law for the time being in force, every teacher or other person employed in any of the said schools immediately before the date on which the control and management thereof is taken over by the Government shall, as from the said date, be deemed to be an employee of the Government and shall hold office on the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, gratuity and other matters as he would have held under local authority until his remuneration, terms and conditions of service are duly altered by the Government :

Provided that every such employee shall, within a period of three months or such other period beyond three months as may be specified by the Government by a notification, from the date of taking over of the control and management of the school, exercise his option either to be retrenched from the service on receipt of such retrenchment benefits as may be prescribed or to be absorbed in the service of the Government with effect from the said date and shall be governed by the terms and conditions governing the said service which shall not be less favourable than those applicable to such employee prior to the said date.

76. Transfer of control and management of schools to Zilla Parishads:— (1) Notwithstanding anything in the Andhra District Dastak Samithis and Zilla Parishads Act, 1959 or the rules made thereunder, or any other law for the time being in force relating to control and management of schools, the Government may, with effect on and from such date as may be notified, transfer, with the prior consent of a Zilla Parishad, the control

and management of all primary schools or secondary schools in a district, established or maintained and administered by the Government or any Panchayat Samithi to the Zilla Parishad concerned ; and from the date so notified, it shall be open to the Zilla Parishad to control and manage the said schools in the district, and all the properties and assets of the Government or the Panchayat Samithi as the case may be, pertaining to or intended to be used for, every such school shall stand transferred to and vest in, the Zilla Parishad free from all encumbrances.

(2) Notwithstanding any contract or agreement or any law for the time being in force, every teacher or other person employed in any of the said schools immediately before the date on which the control and management thereof is transferred to the Zilla Parishad shall, as from the said date, be deemed to be an employee of the Zilla Parishad and shall hold office on the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, gratuity and other matters as he would have held under the Government, or Panchayat Samithi, as the case may be, until his remuneration and terms and conditions of service are duly altered by the Zilla Parishad:

Provided that every such employee shall, within a period of three months or such other period beyond three months as may be specified by the Zilla Parishad, from the date of transfer of the control and management of the school, exercise his option either to be retrenched from the service on receipt of such retrenchment benefits as may be prescribed or to be absorbed in the service of the Zilla Parishad with effect from the said date and shall be governed by the said terms and conditions governing the said service which shall not be less favourable than those applicable to such employee prior to the said date.

77. Transfer of control and management of schools to Abhyudaya Pradhamika Vidya Samstha:— (1) Notwithstanding anything in the Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, 1959, the Andhra Pradesh Municipalities Act, 1965 or the rules made thereunder or any other law for the time being in force relating to control and management of schools, the Government may, with effect on and from such date as may be notified, transfer, with the prior consent of the local authority concerned, the control and management of any primary school, established or maintained and administered by the Government or any Panchayat Samithi or the Municipality, to the Abhyudaya Pradhamika Vidya Samstha ; and from the date so

notified, it shall be open to the Abhyudaya Pradhamika Vidya Samstha to control and manage the said schools ; and all the properties and assets of the local authority pertaining to and intended to be used for such school shall stand transferred to, and vest in, the Abhyudaya Pradhamika Vidya Samstha free from all encumbrances.

(2) Notwithstanding any contract or agreement or any law for the time being in force, every teacher or other person employed in the said school immediately before the date on which the control and management thereof is transferred to the Abhyudaya Pradhamika Vidya Samstha shall, as from the said date, be deemed to be an employee of the said Samstha and shall hold office on the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, gratuity and other matters as he would have held under the said local authority until his remuneration and terms and conditions of service are duly altered by the said Samstha :

Provided that every such employee shall, within a period of three months or such period beyond three months as may be specified by the said Samstha, from the date of transfer of the control and management of the said school, exercise his option either to be retrenched from the service on receipt of such retrenchment benefits as may be prescribed or to be absorbed in the service of the said Samstha with effect from the said date and shall be governed by the terms and conditions governing the said service which shall not be less favourable than those applicable to such employee to the said date.

Chapter XIII

CONSTITUTION OF EDUCATIONAL SERVICE

78. Constitution of Educational Service:— (1) Notwithstanding anything in this Act or the rules made thereunder, the Government may, by notification, constitute any officer or class of officers or any teacher or class of teachers appointed or deemed to be appointed under this Act into an educational service for the State.

(2) Upon issue of a notification under sub-section (1), the Government shall have power to make rules to regulate the classification, methods of recruitment, conditions of service, pay and allowances and discipline and conduct of the members of the educational service thereby constituted and such rules may vest jurisdiction in relation to such service in the Government or in such authority or authorities, as may be prescribed.

[78A. Age of superannuation of the staff in aided private educational institutions:— (1) Every teacher or member of the non-teaching staff employed in any aided, private educational institution, not belonging to last grade service, shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty eight years :

Provided that a teacher or a member of the non-teaching staff aforesaid, who has already attained the age of fifty-eight years and continuing in service on the date of commencement of the Andhra Pradesh Education (Amendment) Act, 1993, shall retire on the afternoon of the last day of the month of the commencement of the said Act.

(2) Every member belonging to the last grade service shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years.

Explanation:— For the removal of doubts, it is hereby declared that an employee whose date of birth is the first day of a month shall retire from service on the afternoon of the last day of the preceeding month on attaining the age of fifty-eight or sixty years, as the case may be.

78B. Pension to the employees of aided private, Junior and Degree Colleges:— (1) Notwithstanding anything contained in any orders issued by the Government for the payment of pension to the employees of the aided, private, Junior and Degree Colleges before the commencement of the Andhra Pradesh Education (Amendment) Act, 1993, such employees including those in the last grade service who attained the age of superannuation as specified in Section 78A shall be entitled to pension with effect from 1st November, 1992, in accordance with such separate rules as may be made in that behalf.

(2) A teacher or a member in any aided, private, Junior and Degree Colleges who continues in service beyond the age of fifty eight years for any reason shall be entitled to pension with effect from 1st November, 1992, in accordance with such separate rules as may be made in that behalf.]

Chapter XIV

PAYMENT OF SALARIES AND ALLOWANCES TO AND DISCIPLINARY ACTION AGAINST EMPLOYEES OF PRIVATE INSTITUTIONS

79. Dismissal, removal or reduction in rank or suspension, etc. of employees of private institutions:— (1) No teacher or member o

the non-teaching staff employed in any private institution (hereinafter in this Chapter referred to as 'the employee') shall be dismissed, removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges :

¹[Provided that no order of dismissal, removal or reduction in rank shall be passed under this sub-section against an employee other than an employee of a minority educational institution without the prior approval of such authority or Officer as may be prescribed for different classes of private institutions ;

Provided further that the management may prefer an appeal against any order of the Officer or authority refusing approval under this sub-section to such authority or officer and within such period as may be prescribed].

(2) An inquiry under sub-section (1) shall be completed within a period of two months from the date of communication of charges against the employee.

(3)(a) No employee shall be placed under suspension except when an inquiry into the gross misconduct of such employee is contemplated.

(b) No such suspension shall remain in force for more than a period of two months from the date of suspension and if such inquiry is not started and completed within that period, such employee shall, without prejudice to the inquiry, be deemed to have been restored as employee :

Provided that the competent authority may, for reasons to be recorded in writing, extend the said period of two months for a further period not exceeding two months, if in the opinion of such competent authority the inquiry could not be completed within the said period of two months for reasons directly attributable to such employee.

(4) Every such employee as is placed under suspension under sub-section (3) shall be paid subsistence allowance at such rates as may be prescribed during the period of his suspension.

(5) Before imposing any penalty, other than the penalties specified in sub-section (1), an employee shall be informed in writing of the allegations on which action is proposed to be taken and be given an opportunity of making a representation, but it shall not be necessary to hold an oral inquiry into such allegations.

CASELAW

In appeal the Government without applying its mind disposed of the matter by way of a one line cryptic order saying that the Government do not see any

reason to interfere with the orders of the second respondent. While holding that the order of the Government suffers from non-application of mind upholding of the order of the second respondent was rejected in the light of G.O.Ms.No. 377/17.11.1997 to the extent of going into the merits of the dismissal order. The matter was therefore remanded to the competent authority nominated under Sec. 79 proviso of the Act. *Keshav Memorial Educational Society, Hyderabad v. Government of A.P., Education Department, Hyderabad and others*, 1999 (4) ALD 338.

Termination simplicitor during the period of probation does not amount to stigma or to removal or dismissal. This view is also supported by sub-section (5) of Section 79 of the Act. *C.S.H.N. Murthy v. Government of Andhra Pradesh and others*, 2000 (1) ALD 338.

Section 79(1)—The requirement to take prior approval before a punishment could be imposed cannot be said to be an empty formality. It can be dispensed with only in a case where the proviso is attracted. The contextual interpretation of the Act and the Rules would clearly suggest that the same are made for protecting the services of the employees and not for granting arbitrary power upon the authorities. *Tagore Home Junior College, Secunderabad v. P.P.A. Christian and others*, 2001 (3) ALD 742 (DB).

Section 79(3)—Sub-section (3) of Section 79 confers a right or benefit on the delinquent employee which is not otherwise available to him in common law. Where Legislation confers some right or benefit on a person, which he would not have in common law, the conditions laid down to avail that right or benefit are mandatory unless they are purely formal as pointed out in Statutory Interpretation by Francis Bennion (1984 Edn.). *B. Sanjiva Rao v. Regional Joint Director of School Education, Guntur and others*, 2000 (5) ALD 521 (DB).

Section 79 - Proviso—The appellate authority would take decision whether to grant reinstatement or to reduce or change the punishment and whether any backwages would be payable to the 5th respondent in the instant case. *Sri Vani Upper Primary School v. Secretary to Govt., Education Department, Hyd. and others*, 1999 (1) ALD 260 (DB).

A writ petition is maintainable against a recognized school governed by the statutory provisions and also in view of the fact that imparting education is a public function. *Dr. Ken R. Gnanakan and others v. Anita Aidinyants and others*, 2003 (6) ALD 34 = 2003 (5) ALT 469 (DB).

Section 79(3), Proviso – Suspension of employees – Enquiry – Limitation – Employer must complete enquiry within the stipulated period of two months – Enquiry not concluded in prescribed time limit results in automatic reinstatement of employees – Extension of period of suspension of another two months by invoking provision of Section 79(3) to complete the enquiry sought on the ground that the delinquent employees did not Co-operate with the enquiry – Delay caused on account of non-cooperation of employees cannot be taken as an advantage to seek extension – However held if the competent authority accords permission for the extension, the enquiry can be proceeded with, otherwise the employees are entitled to be reinstated forthwith. *C.H. Suryanarayana Raju v. Government of Andhra Pradesh*, 2006 (2) ALD 195 = 2006 (1) APLJ 331 (HC) = 2006 (2) ALT 264.

80. Appeal against orders of punishment imposed on employees of private institutions:— (1) Any employee who is dismissed, removed or reduced in rank may prefer an appeal against the order to the competent authority within thirty days of the receipt of order by him.

(2) The competent authority shall not interfere with the order appealed against unless the order is vitiated on any one or more of the following grounds namely,—

- (a) that there is no material to substantiate the charge or charges framed against the employee ; or
- (b) that the authority who passed the order acted with bias or mala fides ; or
- (c) that the order is perverse or arbitrary ; or
- (d) that no reasonable opportunity has been afforded to the employee to prove his innocence :

Provided that the competent authority shall not pass any order prejudicial to the management unless an opportunity of making a representation is given.

(3) The competent authority may, after giving notice to the management of the private institution, pass such interim orders as it deems fit, pending disposal of the appeal under sub-section (2), if it is satisfied that the employee has made out a *prima facie* case for interference.

(4) In respect of an order imposing any penalty as laid down in sub-section (5) of Section 79 an appeal shall lie to the District Educational Officer having jurisdiction and in respect of such appeals the order appealed against shall not be set aside except on the grounds specified in sub-section (2).

Explanation:— For the removal of doubts, it is hereby declared that the provisions of this section shall apply to any order imposing any penalty made on or after the date of the commencement of this Act in any disciplinary proceeding which was pending on that date.

81. Appeal to Government:— (1) Any employee or the management aggrieved by an order of the competent authority under sub-section (2) of Section 80, may appeal to the Government within a period of thirty days from the date of receipt of the order.

(2) Where an appeal preferred under sub-section (1) of Section 80 has not been disposed of by the competent authority within ninety days from the date the appeal was preferred, it shall be competent for the Government

either *suo motu* or on application, to withdraw the appeal from the competent authority and dispose of the same.

(3) The powers exercisable and the procedure to be followed by the Government acting under this section shall be the same as that of the competent authority under Section 80.

82. Special provisions regarding appeal in certain past disciplinary cases:— (1) If, before the date of the commencement of this Act, any employee has been dismissed or removed or reduced in rank of his appointment has been otherwise terminated and any appeal preferred before that date—

- (a) by him against such dismissal or removal or reduction in rank or termination, or
- (b) by him or by the educational agency against any order made before that date in the appeal referred to in Clause (a) ;

is pending on that date, such appeal shall stand transferred to the competent authority under Section 80.

(2) If any such appeal as is referred to in sub-section (1) has been disposed of before the date of the commencement of this Act, the order made in any such appeal shall be deemed to be an order made under this Act, and shall have effect accordingly.

83. Retrenchment of employees:— Where retrenchment of any employee is rendered necessary by the management or competent authority consequent on any change relating to education or course of instruction or to any other matter, such retrenchment may be, effected with the prior approval of the competent authority or the next higher authority, as the case may be.

CASELAW

A plain reading of Section 83 of the Act does not permit termination of any probationer either to be equated with retrenchment or with change relating to education or course of instruction or any other matter relating to education. *C.S.H.N. Murthy v. Government of Andhra Pradesh and others*, 2000 (1) ALD 434.

Where the termination was effected contrary to Section 83 of the Act and the petitioners were entitled for salary as per the pay fixed by the management, the management was directed to pay the same in case if the Regional Joint Director had not already passed the orders. *Mohammed and another v. Correspondent, Asafia High School, Malakpet, Hyderabad and others*, 2002 (5) ALD 609.

84. Pay and allowances of employees of private institutions to be paid in the prescribed manner:— (1) The pay and allowances of any employee in a private institution shall be paid on or before such day of every month in such manner and by or through such authority, officer or person as may be prescribed.

(2) The Government shall have power to direct the payment of salaries of all teachers and members of the non-teaching staff in any private aided institution or class of private aided institutions in such manner and through such agency as the Government may, by order, specify.

¹[**84A. Penalties for contravention of this Chapter:—** If the management or manager contravenes, or attempts to contravene, any of the provisions of this Chapter or any rule or order made thereunder, it or he shall be punished with imprisonment for a term which may extend to one year and with fine which may extend to five thousand rupees and in the case of continuing contravention, with imprisonment for a term which may extend to two years and with fine which may extend to ten thousand rupees, in addition to withdrawal of recognition of the institution].

Chapter XV

WELFARE AND CODE OF CONDUCT AND RULES OF CONDUCT OF THE EMPLOYEES OF EDUCATIONAL INSTITUTIONS

85. Welfare of employees and their code of conduct:— (1) The Government may appoint a joint consultative committee, consisting of the representatives of the Government, managements and employees of educational institutions to deal with matters pertaining to welfare of those employees.

(2) The Government may ²[x x x] prescribe the code of conduct and duties of those employees.

86. Conduct rules:— The rules of conduct applicable to the employees of educational institutions, other than the employees of a private institution under the management of a charitable or religious institution, charitable or religious endowment or a wakf, shall be such as may be prescribed.

Chapter XVI

PENALTIES AND PROCEDURE

87. Penalties for contravention:— (1) If any person contravenes, or attempts to contravene, or abets the contravention of, any of the provisions of this Act or any rule made thereunder, he shall be punished with fine, which

1. Ins. by Act No. 27 of 1987, w.e.f. 1-6-1987.

2. Omitted by *Ibid.*

may extend to ¹[one thousand] rupees and in the case of continuing contravention, with an additional fine which may extend to ¹[two hundred] rupees for every day during which such contravention continues after conviction for the first such contravention.

(2) If any person obstructs any authority, officer or person from entering any private educational institution in the exercise of any power conferred on it or him by or under this Act, he shall be punished with fine which may extend to ¹[two thousand rupees].

88. Offence by companies:— (1) Where an offence against any of the provisions of this Act or any rule made thereunder has been committed by a company, every person who at the time the offence was committed, was incharge of and was responsible to the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything in sub-section (1), where any such offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect ~~on the part of any director, manager, secretary or other officer of the~~ company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation:— For the purpose of this section,—

- (a) "*company*" means any body corporate and includes a firm, a society or other association of individuals, and
- (b) "*director*" in relation to—
 - (i) '*a firm*' means a partner in the firm,
 - (ii) '*a society or other association of individuals*' means the person who is entrusted, under the rules of the society or other association, with management of the affairs of the society or other association, as the case may be.

Chapter XVII
MISCELLANEOUS

89. Appeals:— Save as otherwise provided in this Act,—

- (a) any person aggrieved by an order passed by an officer or authority other than the Director under this Act may, within thirty days from the date of communication of such order, appeal to the Director;
- (b) any person aggrieved by an order passed by the Director under this Act other than an order passed by him under Clause (a) may, within sixty days from the date of the communication of such order, appeal to the Government.

Explanation:— For purposes of this section and Section 92, the expression “Director” includes the Additional Director or Joint Director when he exercises the powers of the Director under this Act.

CASELAW

Where against the order of the 3rd respondent, the second respondent, who had earlier ordered the 3rd respondent to pass orders, himself passed the appellate order, that is to say, virtually, the 2nd respondent became the appellate authority against his own order, it was held to be gross violation of principles of natural justice, both at the stage of original authority as well as appellate authority. *M. Bucha Reddy v. V. Bhagyamma and others*, 1999 (6) ALD 581 (DB).

90. Power of revision by the Government:— (1) The Government may, either *suo motu* or on an application from any person interested, call for and examine the record of an educational institution or of any authority, officer or person in respect of any administrative or quasi-judicial decision or order, not being a proceeding in respect of which a reference to an arbitrator or an appeal to the High Court is provided, to satisfy themselves as to the regularity, correctness, legality or propriety of any decision or order passed therein; and if, in any case it appears to the Government that any such decision or order should be modified, annulled or reversed or remitted for reconsideration, they may pass order accordingly:

Provided that the Government shall not pass any order adversely affecting any party unless such party has had an opportunity of making a representation.

(2) The Government may stay the execution of any such decision or order pending the exercise of powers under sub-section (1) in respect thereof.

(3) Every application preferred under sub-section (1) shall be made within such time, and in such manner and accompanied by such fees as may be prescribed.

CASELAW

Automatic cessation from service without issuance of a show cause notice or in the absence of any material on record showing the absence of the appellant from duty after expiry of the leave under the Leave Rules, was held not valid; *Convention of Baptist Churches of Northern Circars (CBCNC) and another v. State of A.P. and others*, 2001 (2) ALD 215.

Ss. 90, 91—Where the Government was aware of the marks obtained by the petitioner and that the petitioner had resigned the job in the earlier College having realised that the Government has no power under the Rules or to relax such a condition, and the Government had issued the Memo, the Government was held estopped from either cancelling or modifying the said order on the pretext that the same was passed under a mistaken impression. *Vasumathi Raje v. Government of A.P., Education Department and others*, 1999 (3) ALD 680.

91. Review:—(1) The Government or the Director may *suo motu* at any time or on an application received from any person interested within ninety days of the passing of any order under the provisions of this Act, review any such order, if it was passed by them or him under any mistake, whether of fact or of law, or in ignorance of any material fact.

(2) The provisions contained in the proviso to sub-section (1) and in sub-sections (2) and (3) of Section 90 shall, so far as may be, apply in respect of any proceeding under this section as they apply to a proceeding under sub-section (1) of that section.

92. Powers of Government to give directions:—(1) The Government may, subject to other provisions of this Act, by order, direct the Director or any other officer not below the rank of a District Educational Officer, to make an enquiry or to take appropriate proceeding under this Act in respect of any matter specified in the said order; and the Director or the other officer, as the case may be, shall report to the Government in due course the result of the enquiry made or the proceeding taken by him.

(2) The Government may give directions to any educational institution or tutorial institution as to the giving effect to any of the provisions contained in this Act or of any rules or orders made thereunder and the manager or owner, as the case may be, of such institution shall comply with every such direction.

93. Delegation of powers of Government:— The Government may, by notification, delegate all or any of their powers under this Act, except those conferred upon them by this section and Sections 90, 91, 99 and 102 to any person or authority subordinate to them subject to such conditions and to such control and revision by such authority as may be specified in the notification ; and they may in the like manner withdraw any powers so delegated.

94. Emergency powers of Director:— (1) Where, at any time, it appears to the Director that the manager of a private institution or a local authority institution has made default in performing any functions entrusted to him by or under this Act relating to the maintenance and administration of the institution, he may, by order in writing, fix a period for the performance of such function.

(2) If the manager of a local authority institution or of a private institution other than a minority educational institution fails to perform the function within the period so fixed the Director may appoint any officer subordinate to him to perform such function on behalf of the manager for the purpose of securing ~~the proper maintenance and administration of the institution for the purpose~~ of avoiding hardship to the employees of the institution and may direct that the expenses of performing such function shall be paid within such time as he may fix, to the Government by the manager out of the funds of the institution and without prejudice to any other method of recovery, the whole or any part of such expenses may be deducted from any sum payable to the institution by way of grant-in-aid.

95. Power to enter and inspect:— Every officer not below the rank of a deputy inspector in respect of an educational institution imparting primary education and in respect of other institutions, any other officer not below such rank as may be prescribed, shall, subject to such conditions as may be prescribed, be competent to enter at any time during the normal working hours of an educational or tutorial institution, any premises of any such institution, within his jurisdiction and to inspect any record, register or other documents or any movable or immovable property relating to such institution for the purpose of exercising his powers and performing his functions under this Act.

96. Penalty for obstructing officer or other person exercising powers under this Act:— Any person who obstructs an officer of the Government in the exercise of any power conferred on him, or in the

performance of any function entrusted to him, by or under this Act or any other person lawfully assisting such officer in the exercise of such power or in the performance of such function or who fails to comply with any lawful direction made by such officer or person shall be punished with fine which may extend to [one thousand rupees].

97. Protection of acts done in good faith:— No suit, prosecution or other legal proceeding shall be instituted against the Government or any officer, authority or person empowered to exercise the powers or perform the functions by or under this Act for anything which is in good faith done or intended to be done under this Act or under the rules or orders made thereunder.

98. Managers, employees etc., to be public servants:— Every manager of any educational institution and every employee of such institution shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code when on duty in connection with any examination conducted by the competent authority under this Act.

99. Power of Government to make rules:— (1)(a) The Government may by notification ²[x x x] make rules to carry out all or any of the purposes of this Act.

(b) In particular and without prejudice to the generality of the foregoing power, such rules may provide for,—

- (i) ³[x x x]
- (ii) the steps to be taken for providing necessary facilities for imparting compulsory primary education before notifying any area to be specified area ;
- (iii) the manner in which lists of children shall be prepared by the attendance authority in any specified area ;
- (iv) the distance beyond which a child cannot be compelled to attend an approved school ;

1. Subs. for the words "two hundred and fifty rupees" by Act No. 27 of 1987, w.e.f. 1-6-1987.

2. The words "and after previous publication" omitted by Act No. 27 of 1987, w.e.f. 1-6-1987.

3. Omitted by *Ibid.*

- (v) the manner in which in any enquiry under this Act shall be held;
- (vi) the form in which an attendance order under this Act shall be passed ;
- (vii) the registers, statements, reports, returns, budgets and other information to be maintained or furnished by approved schools for the purposes of this Act ;
- (viii) the declaration as to what constitutes secondary or higher secondary education, professional education, technical education, special education, school places, school-age and attendance, ~~in schools or other institutions ;~~
- (ix) the registers, statements, reports, returns, accounts and budgets and other information to be maintained or furnished by the local authorities in respect of education funds ;
- (x) the procedure for the assessment and realisation of the taxes leviable under this Act ;
- (xi) the establishment or maintenance and administration of educational institutions ;
- (xii) the grant of recognition to educational institutions and the conditions therefor ;
- (xiii) regulating the rates of fees, the levy and collection of fees in educational institutions ;
- (xiv) the manner in which accounts, registers, records and other documents shall be maintained in the educational institutions and the authority responsible for such maintenance ;
- (xv) the submission of returns, statements, reports and accounts by managers or owners of properties of educational or tutorial institutions ;
- (xvi) the inspection of educational and tutorial institutions and the officers by whom inspection shall be made ;
- (xvii) the mode of keeping and the auditing of accounts of such institutions ;
- (xviii) the standards of education and courses of study in educational institutions ;

- (xix) the grant of sums by the Government to educational institutions towards providing scholarships, bursaries, fee concessions and the like ;
- (xx) the preparation and submission of development plans for educational institutions in general and for technical education and the contents of such plans ;
- (xxi) the powers and the functions of the officers and other subordinate staff of the Education Department ;
- (xxii) the preparation and sanction of building plans and estimates of the educational institutions and the requirements to be fulfilled by the buildings for the educational institutions maintained by the local authorities and private institutions;
- (xxiii) the purposes for which the premises of the educational institutions may be used and the restrictions and conditions subject to which such premises may be used for any other purpose ;
- (xxiv) the regulation of the use of text books, maps, plans, instruments and other laboratory and sports equipment in the institutions;
- (xxv) the regulation for admission into educational institutions of pupils for the academic course, private study and other special courses and the attendance thereat ;
- (xxvi) the qualifications necessary and other conditions to be fulfilled for appearing at the examinations conducted by the authorities under this Act and the method of valuation or revaluation of answer scripts ;
- (xxvii) the opening of special night schools and the conditions for their working and of parallel sections or classes in the institutions for linguistic minorities ;
- (xxviii) the manner of conducting the class and terminal examinations and promotion of pupils to higher classes ;
- (xxix) the conditions subject to which donations or contributions from the public may be accepted by the educational institutions and the naming of institutions ;
- (xxx) the conditions for co-education in the educational institutions and the regulation of the conduct and discipline of the pupils and the penalty for misconduct or indiscipline ;

- (xxxi) the manner of service of notices, orders and other proceedings, of presenting appeals or applications for revision or review and the procedure for dealing with them and the fee in respect thereof ;
- (xxxii) the scale of fees or charges or the manner of fixing fees or charges payable in respect of any certificate, permission, marks list or other document for which such fees may be collected;
- (xxxiii) the constitution of educational councils at the Panchayat Samithi and Zilla Parishad and the State level ; their composition and function ;
- (xxxiv) all matters expressly required or allowed by this Act to be prescribed or in respect of which this Act makes no provision or makes insufficient provision and a provision is, in the opinion of the Government, necessary for the proper implementation of this Act.

(2) Any rule may be made under this Act with retrospective effect and when such a rule is made the reasons for making the rule shall be specified in a statement to be laid before both Houses of the State Legislature.

(3) Every notification issued and every rule made under this Act, shall immediately after it is issued or made, be laid before each House of the State Legislature if it is in session and if it is not in session in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiration of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the notification or in the rule, or in the annulment of the notification or the rule, the notification or the rule shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled, as the case may be ; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.

CASELAW

G.O.Ms.No.1 dt. 1.1.1994 - Rule 12(6) - There is no provision in the Education Act, 1982 enabling the State Law to frame rules providing for appointment on communal rotation roster. In the absence of such enabling provisions sub-rule (6) of Rule 12 was held to be *ultra vires* to the provisions

of the Act. *P. Thurumala Devi v. Government of A.P., Education Dept., Hyderabad and others*, 1999 (3) ALD 313.

100. Exemption:— The Government may, by notification and for reasons to be specified therein, exempt any educational institution from the operation of all or any of the provisions of this Act or the rules made thereunder, subject to such conditions as they may deem fit to impose and may likewise vary or cancel such exemption.

101. Repeals:— (1) The following Acts are hereby repealed :

- (a) The Andhra Pradesh (Andhra Area) Elementary Education Act, 1920 ;
- (b) The Andhra Pradesh (Andhra Area) Aided Institutions (Prohibition of Transfer of Property) Act, 1948 in so far as it relates to the institutions which are intended for an educational purpose ;
- (c) The Andhra Pradesh Educational Institutions (Requisitioning and Acquisition) Act, 1956 ;
- (d) The Andhra Pradesh Primary Education Act, 1961 ;
- (e) The Andhra Pradesh Recognised Private Educational Institutions (Control) Act, 1975.

(2) Upon such repeal, the provisions of Sections 8 and 18 of the Andhra Pradesh General Clauses Act, 1891, shall apply.

102. Power to remove difficulties:— If any difficulty arises in giving effect to the provisions of this Act, the Government may by order make such provisions not inconsistent with the purposes of this Act, as appears to them to be necessary or expedient for removing the difficulty.
