

Kerala High Court
Sumith vs State Of Kerala on 13 April, 2012

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE T.R. RAMACHANDRAN NAIR

FRIDAY, THE 13TH DAY OF APRIL 2012/24TH CHAITHRA 1934

WP(C).No. 34147 of 2011 (P)

PETITIONERS:

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1. SUMITH, AGED 11 YEARS, (MINOR),
(MENTALLY RETARDED), REPRESENTED BY HIS MOTHER
GUARDIAN AND NEXT FRIEND SUNANDA SHAJI,
MEPPALLY HOUSE, PALLURUTHY, KOCHI,
ERNAKULAM - 682 006.
 2. RINCY, AGED 27 YEARS,
(MENTALLY RETARDED), REPRESENTED BY HIS MOTHER
GUARDIAN AND NEXT FRIEND MARY EASY,
NIKARTHIL HOUSE, KANDOTH CHAMY PARAMBIL,
PALLURUTHY, KOCHI,
ERNAKULAM - 682 006.
 3. SHINAS K.S., AGED 20 YEARS,
(MENTALLY RETARDED), REPRESENTED BY HIS MOTHER
GUARDIAN AND NEXT FRIEND NAJMA SIDDIQUE,
PANDARAPARAMBIL, PANAYAPPILLY, KOCHI,
ERNAKULAM - 682 006.
 4. SABIN XAVIER, AGED 24 YEARS,
(MENTALLY RETARDED), REPRESENTED BY HIS MOTHER
GUARDIAN AND NEXT FRIEND BABY ZAVIER,
NADUVILAVEETTIL, PALLURUTHY NADA,
KOCHI, ERNAKULAM - 682 006.
 5. SUBIN.S, AGED 21 YEARS,
(MENTALLY RETARDED), REPRESENTED BY HIS MOTHER
GUARDIAN AND NEXT FRIEND MADHILIN SUDEVAN,
THEKKEVAZHAKKATT HOUSE, KUMBALANGI VAZHI,
KOCHI, ERNAKULAM - 682 006.

6. LEONA D'SILVA, AGED 19 YEARS,
(MENTALLY RETARDED), REPRESENTED BY HIS MOTHER
GUARDIAN AND NEXT FRIEND GLADIS D'SILVA,
W/O. LINAN D'SILVA,
PUNNAKATTUSSERY HOUSE,
PERUMBADAPPU, KOCHI,
ERNAKULAM - 682 006.

W.P.(C).NO.34147/2011-P:

7. KANNAN.S, AGED 15 YEARS (MINOR),
(MENTALLY RETARDED), REPRESENTED BY HIS MOTHER
GUARDIAN AND NEXT FRIEND MADHILIN SUDEVAN,
THEKKEVAZHAKKATT HOUSE,
KUMBALANGI VAZHI, KOCHI,
ERNAKULAM - 682 006.
8. SREEDEVI.E.M., AGED 34 YEARS,
(MENTALLY RETARDED), REPRESENTED BY HIS MOTHER
GUARDIAN AND NEXT FRIEND GEETHA MOHANAN,
ETTUKANDATHIL HOUSE,
SASTHA ROAD, PALLURUTHY,
KOCHI, ERNAKULAM - 682 006.
9. SAIFIDHEEN.S, AGED 23 YEARS,
(MENTALLY RETARDED), REPRESENTED BY HIS MOTHER
GUARDIAN AND NEXT FRIEND KAULATH
XV/1058B, POURNAMI,
NEAR SASTHA TEMPLE,
PALLURUTHY, KOCHI,
ERNAKULAM - 682 006.
10. AJITH.T.S, AGED 18 YEARS,
(MENTALLY RETARDED), REPRESENTED BY HIS MOTHER
GUARDIAN AND NEXT FRIEND GEETHA SUNIL,
THUNDIYIL HOUSE, PALLURUTHY, KOCHI,
ERNAKULAM - 682 006.

BY ADV. SRI.KALEESWARAM RAJ.

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, DEPARTMENT OF GENERAL
EDUCATION, SECRETARIAT, THIRUVANANTHAPURAM- 695 001.

2. DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM- 695 001.
3. DEPUTY DIRECTOR OF EDUCATION,
ERNAKULAM - 682 001.
4. DISTRICT COLLECTOR,
ERNAKULAM - 682 001.
5. REVENUE DIVISIONAL OFFICER,
FORT KOCHI..

W.P.(C).NO. 34147/2011-P:

6. SECRETARY,
SHILPA SOCIETY FOR THE MENTALLY HANDICAPPED,
PALLURUTHY, KOCHI - 6.
7. THE PRINCIPAL, SHILPA SPECIAL SCHOOL,
23/2350C, NSS SCHOOL ROAD, KUMBALANGI VAZHI,
PALLURUTHY, ERNAKULAM - 682 006.

*ADDL. R.8 IMPEADED:

- *8. PARENTS TEACHERS ASSOCIATION,
SILPA SPECIAL SCHOOL,
PALLURUTHY, REPRESENTED BY IT'S PRESIDENT,
BRIAN DURANDO, S/O. NELSON DURANDO,
AGED 42 YEARS,
RESIDING AT PALACKAL HOUSE,
MUNDAMVELI, KOCHI - 682 507,
ERNAKULAM DISTRICT.

*ADDL. R.8 IS IMPEADED AS PER ORDER DATED 13/04/2012 IN
I.A. NO.811/2012.

R1 TO R5 BY GOVT. PLEADER SMT. LOWSY.A,
R6 BY ADVS. SRI.S.M.PRASANATH,
SMT.SMITHA GEORGE,
SMT.SARITHA DAVID CHUNKATH,
R7 BY SRI.K.RAMAKUMAR, SENIOR ADVOCATE,
ADV.SRI.M.PREMCHAND,
ADDL.R8. BY ADV. SRI. B.N.SHIVSANKAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-03-2012, THE COURT ON 13/04/2012 DELIVERED THE
FOLLOWING:

W.P. (C) .NO.34147/2011-P:

APPENDIX

PETITIONERS' EXHIBITS:

- EXT.P-1: TRUE COPY OF THE REPRESENTATION DATED 28.6.2011.
- EXT.P-2: TRUE COPY OF THE APPLICATION FOR ADMISSION TO THE SCHOOL.
- EXT.P-3: TRUE COPY OF THE APPLICATION FORM TO BE FILLED UP FOR ADMISSION TO THE SCHOOL.
- EXT.P-4: TRUE COPY OF THE REPRESENTATION DATED 25.6.2011 SUBMITTED BEFORE THE HON'BLE MINISTRY FOR EDUCATION.
- EXT.P-5: TRUE COPY OF THE REPRESENTATION DATED 25.6.2011 SUBMITTED BEFORE THE DIRECTOR OF PUBLIC INSTRUCTION.
- EXT.P-6: TRUE COPY OF THE REPLY DATED 25.7.2011.
- EXT.P-7: TRUE COPY OF THE MINUTES OF THE MEETING HELD ON 24.8.2011.
- EXT.P-8: TRUE COPY OF THE REPRESENTATION DATED 10.9.2011.
- EXT.P-9: TRUE COPY OF THE LETTER DATED 14.9.2011.
- EXT.P-10: TRUE COPY OF LETTER DATED 13.10.2011.
- EXT.P-11: TRUE COPY OF THE LETTER DATED 25.11.2011.
- EXT.P-12: TRUE COPY OF THE LETTER DTD. 21/01/2012.
- EXT.P-13: TRUE COPY OF THE LETTER DTD. 30/01/2012.
- EXT.P-14: TRUE COPY OF THE REPRESENTATION DTD. 02/02/2012.

RESPONDENTS' EXHIBITS:

- EXT.R2.A: PHOTO COPY OF THE G.O.(P).NO.18/05/G. EDN. DTD. 18/01/2005.
- EXT.R2.B: PHOTO COPY OF THE G.O.(P).NO.74/99/G. EDN. DTD. 31/03/1999.
- EXT.R2.C: PHOTO COPY OF THE APPLICATION FOR CERTIFICATE OF REGISTRATION IN FORM -4.
- EXT.R2.D: PHOTO COPY OF THE APPLICATION FOR CERTIFICATE OF REGISTRATION IN FORM-5.

EXT.R6(A): TRUE COPY OF THE ORDER DTD. 04/03/2011 OF THE COCHIN CORPORATION.

W.P.(C).NO.34147/2011-P:

EXT.R6(B): TRUE COPY OF THE PARENTS' MEETING OF THE SHILPA SCHOOL HELD IN MARCH 2011.

EXT.R6(C): TRUE COPY OF THE NEWS PAPER REPORT APPEARED IN MALAYALA MANORAMA DAILY DTD. 29/06/2011.

EXT.R6(D): TRUE COPY OF THE NEWS PAPER REPORT APPEARED IN MATHRUBHUMI DAILY DTD. 30/06/2011.

EXT.R6(E): TRUE COPY OF THE NEWS PAPER REPORT APPEARED IN MATHRUBHUMI DAILY DTD. 23/06/2011.

EXT.R6(F): TRUE COPY OF THE NEWS PAPER REPORT APPEARED IN MATHRUBHUMI DAILY DTD. 28/07/2011.

EXT.R6(G): TRUE COPY OF THE LEAFLET.

EXT.R6(H): TRUE COPY OF THE POSTERS PASTED THROUGH OUT THE SCHOOL AND NEARBY AREAS.

EXT.R6(I): TRUE EXTRACT OF THE PUBLICATION MADE BY ONE PARIVAAR KERALA (RETD.).

EXT.R6(J): TRUE EXTRACT OF THE MINUTES OF THE GENERAL BODY MEETING OF THE SHILPA SOCIETY HELD ON 14/01/2012.

EXT.R6(K): TRUE COPY OF THE MINUTES OF THE GENERAL BODY MEETING OF THE SHILPA SOCIETY HELD ON 08/02/2012.

EXT.R6(L): TRUE COPY OF THE REVISED DDERS SCHEME EVOLVED BY THE GOVERNMENT OF INDIA IN 2009.

EXT.R6.(M): TRUE COPY OF THE CERTIFICATE OF REGISTRATION ISSUED BY THE GOVERNMENT OF KERALA, GENERAL EDUCATION DEPARTMENT.

EXT.R7.A: TRUE COPY OF THE LETTER DT.D 24/06/2011 ADDRESSED TO THE PRINCIPAL BY THE MEMBERS OF THE STAFF OF THE SCHOOL.

//TRUE COPY//

P.A. TO JUDGE.

Prv.

T.R. Ramachandran Nair, J.

W.P.(C) No. 34147 of 2011-P

Dated this the 13th day of April, 2012

JUDGMENT

This writ petition is at the instance of the petitioners who are mentally retarded children, represented by their guardians. The subject matter of dispute is the alleged denial of admission for them for the academic year 2011-2012 in the Shilpa Special School, Palluruthy, of which the seventh respondent is the Principal.

2. Elaborate arguments have been heard on both sides. The resolution of the dispute requires consideration of the facts in some detail and therefore initially I shall refer to the factual aspects.

3. According to the petitioners, the classes for the academic year 2011-2012 started on 15.6.2011. The school is managed by a Society called "Shilpa Society for the Mentally Handicapped" represented by the sixth respondent Secretary. They are getting grant from the Central Government. Even though it is alleged in the writ petition that they have been receiving grant from the State Government and the Cochin Corporation, the same was found not correct and the State Government is not giving any grant, and the Cochin Corporation is actually giving scholarship to the children admitted. It is pointed out that the petitioners were students undergoing their training WPC.34147/2011 2 in the school for the last 5 to 6 year and admission was denied, since the parents of the children could not comply with the direction for payment of donation of Rs.2000/-.

4. Ext.P1 produced is a complaint submitted by their parents before the Director of Public Instruction wherein the above aspect has been pointed out. Ext.P2 is the copy of the application form for admission for the year in question and it contains some conditions to be fulfilled. Condition No. A directs the payment of donation in three instalments. It is further provided that if the instalments are not paid even within the extended time along with fine, the children will not get the service of the school.

5. Ext.P3 is the report prepared by the Deputy Director of Education after conducting an enquiry into the matter pursuant to Ext.P1 complaint. According to the petitioners, Ext.P3 supports the plea of the petitioners that they have been denied admission purely, as they could not meet the demand for donation. They belong to very poor families also. Ext.P4 is another representation filed by one organization, viz. "Parivaar - Kerala" before the Minister for Education, Ext.P5 is another

representation before the Director of Public Instruction. Another representation was submitted before the Hon'ble Chief Minister of Kerala and Ext.P6 is the reply given to the President of Parivaar in which there was a direction to contact the District WPC.34147/2011 3 Collector.

6. It is stated that after they were directed to contact the District Collector as per Ext.P6, a meeting was called by the District Collector on 24.8.2011 of all concerned and Ext.P7 is the copy of the minutes. Eveybody concerned including respondents 6 and 7 participated in the said meeting. The decision in the said meeting was to consider fresh applications submitted by the petitioners, within 20.9.2011 and to admit them. It is their case that the school authorities did not take further steps in the matter and again they had to approach the District Collector by Ext.P8, pursuant to which the Revenue Divisional Officer issued a letter to the Society as per Ext.P9. Ext.P10 is a further letter issued by the District Collector instructing the Principal to admit the students. The list of students was also incorporated therein. The District Collector again directed as per Ext.P11, to take immediate necessary action to admit the students in the school. Thereafter, alleging non-compliance, the writ petition was filed.

7. The petitioners mainly seek a direction to implement the above directions, to quash the condition in Ext.P2 providing for removal of students for non payment of donation and also to grant a declaration that the petitioners are entitled to be admitted in the school. WPC.34147/2011 4

8. Respondents 6 and 7 have filed separate counter affidavits.

9. First I shall refer to the contentions raised by the sixth respondent who is the Secretary of the school. She is a Doctor by profession. It is averred that both respondent No.6 and her husband are medical practitioners. Their eldest daughter Shilpa was congenitally born with mental retardation and at the age of 11 years, she died. Thereafter, they decided to dedicate their life to the cause of such children and the school was founded in the residence of the sixth respondent on 1.12.1996, on the first death anniversary of late Shilpa. Thereafter, a Society was registered with a governing body consisting of prominent citizens including doctors, lawyers, social activists, etc. From 2001 onwards, the concerned Ministry of the Central Government, viz. the Ministry of Social Justice and Empowerment is making a grant to the institution under the Deen Dayal Disabled Rehabilitation Scheme. It is stated that though the school is receiving money by way of grant, they are hardly sufficient to meet the day today affairs for the running of the school and they are depending upon the donations by way of charity as the strength of the students was enhanced from the permitted 50 initially, to 110. It is further stated that there is no financial motivation for the institution. It averred that the Central scheme allows the institution to charge users fee depending upon the capacity of the WPC.34147/2011 5 parents. After the Corporation started granting scholarship, initially in a meeting of similar institutions, it was decided to collect contribution from out of the scholarship amount, at the rate of 70:30 from those who can afford to pay. Ext.R6(a) is produced in support of the above plea.

10. There was a meeting of the Shilpa Special School on 13.3.2011 wherein Ext.R6(b) decision was taken. In the meeting, the parents agreed that from the next academic year onwards contribution will be made in tune with the amount prescribed by the Management from out of the scholarship

amount. It is stated that eight of the parents did not agree with it and a hue and cry was raised and wide publicity was given to the protest through different ways and Exts.R6(c) to (f) paper reports have been produced. Ext.R6(g) is a leaflet and Ext.R6(h) is a poster. It is stated that the sixth respondent was upset by the adverse comments and publicity and all these aspects were explained to the District Collector. The sixth respondent further explains that after the Revenue Divisional Officer instructed the guardians to submit the applications in accordance with the rules of the Society, there was no question of refusing admission to any one of the students.

11. In para 4 of the counter affidavit filed by the sixth respondent, it is stated that the controversies actually affected the morale of various staff WPC.34147/2011 6 members and some of them wanted to part away with the school. Obstructions were being made by some of the interested parties to the smooth functioning of the school. It is stated that the admission had to be closed especially in the above background, especially since the main part of the academic year was over by that time.

12. The seventh respondent, in the detailed counter affidavit, has raised an objection regarding the maintainability of the writ petition by pointing out that the school is not an instrumentality of the State and it is not an aided institution and thus they are not amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India. In para 6, the manner in which admissions were made in June 2011 has been explained. It is stated that 123 application forms were issued to guardians and they received back 107 applications within the prescribed time, the last date being 14.6.2011. Out of the same, the students who have paid Rs.500/- as education fee and those who have paid Rs.250/- towards transportation charges (in case of students who require the facility of school bus), have been admitted. Even in respect of 107 applicants, the full payment of Rs.500/- was not insisted upon and they paid depending upon the capacity of the parents to pay the requisite fee. It is stated in para 7 that as far as the 10 students herein are concerned, even though they are receiving WPC.34147/2011 7 scholarship from the Corporation, they refused to pay any money. It is stated that the school is not charging anything than what is permitted and the plea that a donation of Rs.2,000/- was demanded, is totally false. Clause 4 of the scheme framed by the Central Government has been extracted in the counter affidavit. It is stated that even in Ext.P2 no specific amount is fixed and the payment is voluntary for meeting the expenses for running of the school. It is also stated that the students including the petitioners are getting Rs.9,500/- per year from the Corporation as scholarship, out of which a sum of Rs.500/- per month was requested as users fee. This was treated as a big issue and all the protests were made. It is stated that even in Ext.P9 communication of the Revenue Divisional Officer it was made clear that the rules framed by the Society can be implemented at the time of admission and in spite of the deadline provided, they did not approach them, but approached this Court. Hence there is no denial of admission. Various other details with regard to the deliberations in the matter, have been stated in para 9 of the counter affidavit. It is stated that none of the fundamental rights of the petitioners' children have been affected. The school is running strictly in terms of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'the Act'). The Scheme framed by WPC.34147/2011 8 the Central Government under Section 27 is strictly followed by the school. With regard to Ext.P3 report, it is stated that the same has not been communicated to the seventh respondent and that the Deputy Director of Education has no authority to examine the functioning of the school, except in relation to the time when the grants are made.

13. Accordingly, the stand taken is that the petitioners have breached the spirit of the decision taken in the conference of the District Collector.

14. The petitioners have filed a reply affidavit. In the reply affidavit mainly the stand taken is that the collection of reasonable fees have not been opposed by the petitioners and their parents. The various other aspects have also been explained. There is a counter affidavit filed by the second respondent also.

15. Heard learned counsel for the eptioners, Shri Kaleeswaram Raj, Shri K. Ramakumar, learned Senior Counsel appearing for respondents 6 and 7, Shri B.N. Sivasankar, learned counsel for the 8th respondent and learned Government Pleader, Smt. Lowsy A.

16. Shri Kaleeswaram Raj, learned counsel for the petitioners by relying upon various judgments of the Apex Court, submitted that respondents 6 and 7 are performing a statutory function and they are amenable to the writ jurisdiction of this Court. It is stated that Ext.P3 and WPC.34147/2011 9 the subsequent communications produced by the petitioners have not been challenged by respondents 6 and 7 and therefore they cannot now take an objection against the same. It is submitted that the plight of mentally retarded children for continuance of their education should have been given prime concern by the school authorities rather than insisting on payment of donations. It is also pointed out that the parents of the children are very poor and they are unable to muster so much amount as demanded. It is submitted that the requirements under the Central Act are being implemented by the Central Government and the State Government through the agencies like the sixth respondent and they are receiving grant from the Central Government. The school had received Rs.7,55,996/- as grant for the year 2009-10 and Rs.4,22,120/- for the year 2010-2011. My attention was invited to the details of Ext.P3 report prepared by the Deputy Direct of Education It is stated that the finding in the said report are also in favour of the petitioners and it is concluded therein in para 4 that the students who refused to part away with the scholarship amount, have been denied admission. It is stated that even after a decision was taken in the meeting of all concerned as evident from Ext.P7 minutes, the students, even though gave applications through their parents, were denied admission in spite of Exts.P9 to P11 communications. Learned counsel submitted that the WPC.34147/2011 10 Central Act actually implements the Constitutional scheme under the directive principles and my attention was invited to various clauses of the Act also. It is stated that the Act provides for various assistance by way of grant and the Society is an instrumentality of the State and therefore this Court can issue appropriate directions to see that the petitioners are admitted in the school.

17. Learned counsel further pointed out that the Kerala Education Act also envisages special schools for mentally retarded under Rule 4 of Chapter II K.E.R. They are having registration with the Education Department and the very idea of registration amounts to control of such schools by the authorities concerned and power is given even to withdraw the recognition/registration which also implies the authority to issue appropriate directions. It is stated that the stand of the respondents that they demanded only users fee is not correct and actually donation was demanded. As far as reasonable payment is concerned, the petitioners have no quarrel also. Whatever amount under law they are bound to pay, will be paid, learned counsel submits.

18. Shri K. Ramakumar, learned Senior Counsel appearing for respondents 6 and 7 submitted that by no stretch of imagination it can be termed that the school will be an instrumentality making it amenable to the WPC.34147/2011 11 writ jurisdiction of this Court. It is submitted that it is not an aided institution. Section 2 of the Kerala Education Act excludes from its operation the schools receiving grant from the Government. It is pointed out that except grant no other financial assistance is being made by the Government and the school being a private body, has full freedom to take appropriate decisions with regard to the admission of students. They are not doing any public duty or any statutory duty. The provisions of the Central Act therefore cannot be relied upon by the petitioners in support of their arguments. It is submitted that the decisions of the Apex Court in various circumstances have laid down that a private body will not be amenable to the jurisdiction of this Court. Learned Senior Counsel further submitted that Ext.P3 report has not been communicated to the school and the same is also not a properly issued copy and is an unsigned one also. It is further pointed out that the school authorities only charged users fee which is permitted by the scheme. There had not been any demand for donation. It is further submitted that unnecessary agitations and hue and cry have been made at the instance of the parents of the petitioners and some of the local organizations have tried to malign the institution before the public. It is submitted that yeomen service is being rendered in the school and the governing body consists of various prominent persons including doctors, WPC.34147/2011 12 lawyers, social activists, etc. It is without understanding the true object and the services rendered by the institution that such protesters have taken a stand against the school, which cannot be permitted. The management of mentally retarded children itself is difficult and trained teachers are being employed and now they are scared and many of them wanted to quit the school also. It is in these circumstances also, that the school authorities could not comply with the direction to give admission to the students during the current year. Finally, it is submitted by the learned Senior Counsel for respondents 6 and 7 that the petitioners' applications for admission can be considered next year in terms of the rules in the matter and even in Ext.P9 the Revenue Divisional Officer has made it clear that the admission can be only in terms of the rules of the institution.

19. In fact, after the respondents appeared pursuant to notice issued by this Court, as agreed to by both parties, this Court posted the matter before the Adalath on 10.1.2012. But it appears that nothing materialized and the matter was reposted back to Court. Thereafter, learned counsel appearing for the petitioners made a suggestion that the children should not suffer and at least they may be allowed to attend the school and mingle with the other children and as directed by this Court during the arguments, a representation was submitted. The respondents later expressed difficulty WPC.34147/2011 13 after a meeting of the general body of the Society. and the decision taken has been produced as Ext.R6(j), wherein it is stated that no further students could be admitted to the school during the current academic year. In fact, the additional 8th respondent who is the president of the P.T.A. has supported the pleas made by the school authorities. In the affidavit filed along with the impleading petition, the additional 8th respondent has stated that the decision to pay a portion of the scholarship amount to the institution was taken at the last academic year's last meeting of the P.T.A. Everyone except the petitioners agreed for the same. They have also highlighted the scare created among the teachers because of the hue and cry. Therefore, the stand substantially taken by the additional 8th respondent is that if the petitioners are admitted to the school, the functioning of the school will be affected. This is the factual setting in which this Court has to consider various

aspects.

20. Before considering the contested points, I will refer to the salient aspects of the complaint and the report Ext.P3, the directions issued by the District Collector, the decision taken in the joint meeting and the further communication in this regard.

21. In Ext.P1 complaint mainly it is stated that there was a demand to pay Rs.2,000/- as donation initially and even though instalement facility WPC.34147/2011 14 was sought, that was not granted. Ext.P2 is the form of application. In the reverse of the same, some conditions have been furnished. First one being that donations shall be remitted in three instalments in the following manner: 1. (June, July, August, September) before June, 15; 2. (October, November, December) before October, 15; and 3. (January, February, March) before January, 15. It is stated that if delay occurs in remitting the instalments, along with fine it can be remitted within ten days and if the amount is not paid within the ten days period, the student will not get the service of the school.

22. The copy of the report, Ext.P3 prepared by the Deputy Director of Education is an unsigned one. Learned Government Pleader made available the files relating the report which contains the original of Ext.P3. Therefore, even though learned Senior Counsel for respondents 6 and 7 objected to the veracity of Ext.P3, I am satisfied that the same has been properly prepared. The file No.B5-11514/11 show that it was initiated on the basis of the complaint Ext.P1 as well as other complaints by one organization, viz. Parivaar. Various details have been collected from the school authorities with regard to the functioning of the school, the details of the applicants and other aspects. Copies of the complaints, form of Application, Ext.P2 and the instructions on the reverse side are kept in the WPC.34147/2011 15 file. A written statement filed by the sixth respondent is also kept in the file, apart from other details of the school. Therefore, it is a properly maintained one and therefore Ext.P3 and its veracity cannot be doubted. The file also shows that a complaint is pending before the Kerala Human Rights Commission and a report has already been submitted by the Deputy Director of Education, before the Commission also.

23. Ext.P3 contains the following details: The enquiry was conducted on 25.7.2011 in the school. The institution is registered under the Charitable Societies Act and is having registration initially with the Social Welfare Department as per Certificate dated 16.2.2005. By proceedings dated 13.11.2008 the Director of Public Instruction has granted renewed registration. It was started from 1996. From the academic year 2011-2012 the school started to distribute applications and to admit students who agree with the conditions provided in the reverse of the application form. There are 11 teachers in the school. They have arranged to conduct the school in two shifts for want of sufficient space and one new building is being constructed and the shift system will be stopped when the construction is over.

24. The explanation of the school authorities have been recorded in the report. Going by the same, their submission was that users fee was WPC.34147/2011 16 decided to be collected and for ten months, a sum of Rs.5,000/- was fixed and that the direction was to remit the initial Rs.2,000/- for four months and they were prepared to give instalment facility for the parents who find it difficult to pay the same in a lump. Admissions were closed on 15.6.2011. They are receiving grant from the

Central Government and no financial assistance has been received from the State Government. An amount of Rs.8,17,000/- was received from the Cochin Corporation on 28.2.2011 as scholarship and the same was paid to 86 students at the rate of Rs.9,500/- per head.

25. The conclusions of the Deputy Director mainly are the following:

(a) The stand of the Management that every year the students will have to submit fresh applications, cannot be accepted and their action in not admitting the students is also not correct; (b) The students who were not given admission are from those categories who have refused to remit the scholarship amount received from the Corporation; (c) Noon meal scheme has been implemented in the school for which rice and other items are supplied by the Government; (d) Some of the conditions in the application form which led to the refusal to grant admission cannot be accepted; (e) In para 8 of the report, it is stated that the students who have been denied admission are from very poor families and therefore there should be a WPC.34147/2011 17 direction to admit them; and (f) In para 9 it is stated that in the other 32 special schools in the district no amounts are being collected by way of donation.

26. It is evident from the copy of the minutes produced as Ext.P7 that in the conference held in the office of the District Collector, various aspects have been discussed and finally for the smooth settlement of the issues, the District Collector announced that the parents should submit applications of the ten students before 20.9.2011 and it should be considered by the school authorities and in case any of the students are not admitted, their cases will be considered by the Revenue Divisional Officer and other officers to find out a solution. The District Collector also exhorted other parties not to create any difficulties for the school authorities. It is stated that the decision of the District Collector was unanimously agreed to by both parties. One of the important decision in the meeting is to have a monitoring committee to go through similar complaints, if any.

27. In Ext.P8 complaint the petitioners point out that even after submitting the applications, they were not considered.

28. Both sides are relying upon Ext.P9 which is a direction issued by the Revenue Divisional Officer to the school authorities to settle the complaints and that in respect of the students who are admitted, the general WPC.34147/2011 18 instructions of the schools will be applicable. By Ext.P10 and P11, the District Collector again directed the Principal to admit the students.

29. In fact, learned Senior Counsel for respondents 6 and 7 raised another objection that the Central Government is not made a party to the writ petition and the State Social Welfare Department is not also impleaded. It is also contended that the Director of Public Instruction has no role in the matter.

30. I shall now consider the scope of the Central Act enacted by the Parliament to give statutory recognition to certain international obligations as well as the directive principles of the State policy enshrined in the Constitution of India. Article 41 of the Constitution of India reads as follows:

Xxxxx Therefor, it envisages an effective provision for education of disabled children and other people. The preamble to Act 1 of 1996 refers to the proclamation adopted in the meeting convened by the Economic and Social Commission for Asia and Pacific held at Beijing on 1st to 5th December, 1992. The meeting was to launch the Asian and Pacific Decade of the Disabled Persons 1993-2002. Section 2 of the Act containing the definition clauses is important for the purpose of this case. Sections 2(m), 2(r) and 2 WPC.34147/2011 19 (w) define "Institution for persons with disabilities", "mental retardation" and "rehabilitation". They are extracted below:

"(m) "Institution for persons with disabilities" means an institution for the reception, care, protection, education, training, rehabilitation or any other service of persons with disabilities;

(r) "mental retardation" means a condition of arrested or incomplete development of mind of a person which is specially characterized by sub-normality of intelligence;

(w) "rehabilitation" refers to a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, psychiatric or social functional levels."

The important chapters as far as the Act is concerned, are: Chapter V (Education), Chapter VI (Employment), Chapter VII (Affirmative action), Chapter X (Recognition of Institutions for persons with disabilities) and Chapter XIII (Social Security), which alone are relevant for the purpose of this case. Chapter III is under the heading "The State Co-ordination Committee" and Section 13 provides for formation of the State Co- WPC.34147/2011 20 ordination Committee. Section 18(1) of the Act providing for the main functions of the State Co-ordination Committee states as follows:

"18 (1) Subject to the provisions of this Act, the function of the State Co-ordination Committee shall be to serve as the State local point on disability matters and facilitate the continuous evolution of a comprehensive policy towards solving the problems faced by persons with disabilities."

Section 18(2) provides for certain particular functions out of which sub clauses (a), (d) and (e) are important for the purpose of this case. They are extracted below:

"(a) review and Co-ordinate the activities of all the Departments of Government and other Governmental and non-Governmental Organisations which are dealing with matters relating to persons with disabilities;

(d) review, in consultation with the donor agencies, their funding policies from the perspective of their impact on persons with disabilities;

(e) take such other steps to ensure barrier free environment in public places, work places, public utilities, schools and other institutions." Therefore, the State Co-ordination Committee can review and co-ordinate WPC.34147/2011 21 the activities of Government departments and non Governmental organizations which are dealing with matters concerning persons with disability.

Under sub-clause (e) a barrier free environment will have to be provided in schools also by the State Co-ordination Committee by taking suitable steps.

31. Section 19 provides for the formation of State Executive Committee to perform the functions assigned to it and Section 20 provides for the functions of the State Executive Committee. It will act as an executive body of the State Co-ordination Committee. Section 23(b) provides that the State Co-ordination Committee shall be bound by the directions issued by the Central Co-ordination Committee or the State Government. Chapter V is under the heading "Education". Section 26 mandates that the appropriate Government and local authorities will have to provide children with disabilities, free education. Section 27 directs the appropriate Government and local authorities to make schemes and programmes and non formal education. Section 30 directs the appropriate Government to prepare a comprehensive education scheme which should contain the points covered by sub-clauses (a) to (h) which provides for transportation facilities, supply of books, uniforms and other materials, grant scholarship to students with disabilities and other connected matters. WPC.34147/2011 22 Sub-clause (e) is important which provides for setting up of appropriate fora for the redressal of grievances of parents regarding the placement of their children with disabilities. It is pointed out that in this State no such forum has been provided so far, which I think, will be a matter for urgent consideration by the State Government. Chapter X provides for recognition of institutions for persons with disabilities. Section 50 directs the State Government to appoint any authority as it deems fit to be a competent authority for the purpose of the Act. Section 51 is important which reads as follows:

"51. No person to establish or maintain an institution for persons with disabilities except in accordance with a certificate of registration.

Save as otherwise provided under this Act, no person shall establish or maintain any institution for persons with disabilities except under and in accordance with a certificate of registration issued in this behalf by the competent authority.

Provided that a person maintaining an institution for persons with disabilities immediately before the commencement of this Act may continue to maintain such institution for a period of six months from such commencement and if he has made an application for such certificate under this section within the said period of six months, till the disposal of such application."

Section 52 provides for certificate of registration. It deals with the manner WPC.34147/2011 23 of submitting applications, enquiries to be made thereafter by the competent authority and allied matters. Sub-section (4) provides for renewal of certificates. Section 53 provides for revocation of certificates in certain cases and Section 54 provides for appeal in such cases. Section 55 provides for "the Act not to apply to institutions established or maintained by the Central or State Government". Chapter XII provides for the appointment of Chief Commissioner and Commissioners for Persons with Disabilities. Section 66 contained in Chapter XIII provides for social securities and sub-section (2) which is important to understand the contentions of the parties, is extracted hereunder:

"(2) For purposes of sub-section (1) the appropriate Governments and local authorities shall grant financial assistance to non-governmental organizations."

32. Therefore, it can be seen that the provisions of the Act are so important and they are envisaged for giving maximum assistance for rehabilitation of minors and people with disability for which the non governmental organizations will have to obtain registration and they are entitled for assistance also. Section 27 of the Act is important that it provides for the making of the Schemes and herein we are having a scheme called "Deendayal Disabled Rehabilitation Scheme to promote voluntary WPC.34147/2011 24 action for persons with Disabilities" (for short DDRS Scheme) (Ext.R6(l). Learned counsel for the petitioners also referred to the scheme under the Juvenile Justice Act and Right to Free Education Act, etc.

33. The scheme, viz. Ext.R6(l) has also to be analysed to understand the scope of the scheme and its salient features. The same is framed by the Ministry of social Justice and Empowerment. There was a Central Scheme of the Ministry, viz. "Scheme to Promote Voluntary Action for Persons with Disabilities" which was revised with effect from 1.4.2003 and was named as "Deendayal Disabled Rehabilitation Scheme". Again it was revised with effect from 1.4.2009. The scheme refers to the provisions of the Central Act, viz. Persons with disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Para 1.3 of the Scheme refers to the initiative taken by the Central Government which include the enactment of the above Central Act as well as the adoption of National Policy for Persons with Disabilities in February 2006 to address various concerns regarding physical, educational and economic rehabilitation of persons with disabilities and a ratification of the UN Convention on the Rights of Persons with Disabilities which has come into force on 3.5.2008.

34. Para 1.6 reproduces Section 66 of the Central Act. Paragraphs WPC.34147/2011 25 1.9 and 1.10 refer to assistance given to NGOs which are extracted below:

"1.9. NGOs are being given assistance under DDRS for providing a wide range of services to children/persons with disability, e.g. i. Programmes for pre-school and early intervention ii. Special education, iii.vocational training and placement iv. community based rehabilitation v. manpower development vi. psycho-social rehabilitation of persons with mental illness vii. rehabilitation of leprosy-cured persons, etc. 1.10. Assistive aids and appliances to PwDs are provided under another Central Sector Scheme of the Ministry called "Scheme of Assistance to Disabled Persons for Purchase/Fitting of Aids/appliances (ADIP)".

Para 3.2 is under the heading "Approach and Strategy". It is stated that the approach of the Scheme is to provide financial assistance to voluntary organisations to make available the whole range of services necessary for rehabilitation of persons with disabilities including early intervention, development of daily living skills, education, skill-development oriented towards employability, training and awareness generation. Therefore, education is one of the major purpose of the scheme. Different items are provided to achieve the objectives, therein, as (i) to (xvi) and item (xvi) is WPC.34147/2011 26 important for the purpose of this case which reiterates the fulfilment of

obligation under the Central Act.

35. Para 3.3.1.5 provides for collection of users fee by the voluntary organisations which is extracted below:

"3.3.1.5. The voluntary organisations are at liberty to provide for any additional services for the welfare of the disabled, for which user charges maybe collected as a supplement to the assistance meted out by this Ministry. However, user charges should not be recovered from beneficiaries of BPL families. The basis of user charge in the case of non-BPL beneficiaries should be the capacity to pay."

Para 3.3.2 contains the different model projects which get support and item II is in respect of Special Schools for the mentally challenged, the hearing and speech impaired and the visually challenged and therefore such projects are supported by the scheme. The components of the scheme which are supported and are entitled for assistance, are provided under para 3.3.3 which includes recurring expenditure and non recurring expenditure nunder various heads. Eligible organisations are provided in para 3.4 which include organisations registered under the Societies Registration Act or any relevant Act of the State/Union Territory. Going by para 3.5 which is under the heading "Norms of Financial Assistance" financial assistance could be WPC.34147/2011 27 upto 90% of the budgeted amount for a project. Para 3.6 provides for "Application and Sanction". The conditions for assistance are provided under para 3.8. Under para 3.8.1 an aided organisation/institution/establishment shall be open to inspection by an officer of the Central Government and the State Government or a nominee of their authorities or any other agency so designated by the Ministry. Para 3.9 provides for "Inspection and Monitoring". The form of application and Utilisation Certificate, etc. are provided in Ext.R6(l) itself.

36. Part B contains Model Project Profiles and Item II is Special Schools for Persons with Disabilities. Item II(A) is Special School for the Mentally Challenged.

37. A reading of the scheme will show that the provisions of the scheme are so elaborate and it contains many elaborate particulars. The general objects have been produced by the sixth respondent along with a memo dated 14.3.2012 which is relied upon to show that the respondents are entitled to collect users fee, which I have already mentioned.

38. The certificate of registration issued by the Director of Public Instruction under Rule 40 has been produced by the sixth respondent as Ext.R6(m). It is issued by the General Administration Department of the Government of Kerala and the same is a renewed one which is effective WPC.34147/2011 28 from 13.11.2011. The nature of institution is noted as "For Mentally Challenged Persons." The validity period of the certificate is for three years.

39. In view of the contest made by respondents 6 and 7 this Court directed the second respondent to file an affidavit showing the various aspects with regard to the conduct of special schools. It is mentioned in para 4 that in the State two types of education system are followed: (a) integrated system of education for normal students and other children with minor disabilities; and (b) other

special schools for children with serious and severe disabilities as well as mentally challenged children.

40. By Ext.R2(a) the Government decided to bring the control of the institution under the General Education Department from the Social Welfare Department and the administrative control is with the Director of Public Instruction and the General Education Department. The rules and guidelines for recognition have been produced as Ext.R2(b). It shows that the application for recognition shall be submitted in the prescribed form to the Deputy Director of Education having jurisdiction in the area where the institution is functioning. There will be an expert committee with the Deputy Director of Education concerned, the District Social Welfare Officer concerned and expert in the field of Social Welfare to be nominated by the WPC.34147/2011 29 Director of Public Instruction to scrutinize the application, to conduct inspection and to make recommendation to the Director of Public Instruction. It also provides that the Director of Public Instruction is having power to withdraw the recognition granted, at any time. Therefore, the registration is mandatory. Ext.R2(c) is the form for application for certificate of registration and Ext.R2(d) is the photo copy of the form for certificate of registration. Mention is made in para 9 about the grant received from the Central Government in different years by the sixth respondent.

41. It is clear from the affidavits of respondents 6 and 7 that the school is not having any special curriculum or examination system. As rightly pointed out by the learned counsel for the petitioners, mentally challenged children will have to be given continued assistance every year and what is important is their rehabilitation.

42. The question of jurisdiction of this Court is therefore to be understood in the light of the various aspects pointed out above.

43. Shri Kaleeswaram Raj, learned counsel for the petitioners relied upon the principles stated by the Apex Court in various decisions in support of the plea that this Court will have the jurisdiction to issue directions to admit the students, since there is a total refusal by the school authorities to WPC.34147/2011 30 consider them for admission. Elaborating the power of this Court under Article 226 of the Constitution of India to issue such directions, learned counsel relied upon the decisions of the Apex Court in T.C. Basappa v. T. Nagappa and another (AIR 1954 SC 440), Dwarka Nath v. Income-tax Officer, Special Circle, D. Ward, Kanpur and another (AIR 1966 SC

81), Prabodh Verma and others etc. v. State of Uttar Pradesh and others (AIR 1985 SC 167), The Comptroller and Auditor General of India, Gian Prakash, New Delhi and another v. K.S. Jagannathan and another (AIR 1987 SC 537), Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others v. V.R. Rudani and others {(1989) 2 SCC 691}, U.P. State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey and others (AIR 1999 SC 753) and Binny Ltd. and another v. V. Sadasivan and others {(2005) 6 SCC 657}.

44. Shri K. Ramakumar, learned Senior Counsel for respondents 6 and 7 relied upon various decisions of the Apex Court and those of English Courts in support of his arguments. The following are the decisions cited by him in support of his pleas: Executive Committee of Vaish Degree College,

Shamli and others v. Lakshmi Narain and others (AIR 1976 SC WPC.34147/2011 31

888), Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and others {(2002) 5 SCC 111}, Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and others {(2002) 5 SCC 211}, Federal Bank Ltd. v. Sagar Thomas and others {(2003) 10 SCC 733}, Zee Telefilms Ltd. and another v. Union of India and others {(2005) 4 SCC

649), Cameron and others v. Network Rail Infrastructure Ltd.(2007 (3) All. E.R. 241), YL v. Birmingham City Council and others (2007 (3) All E.R. 957) and Satimbla Sharma v. St. Paul's Senior Secondary School (2011 (3) KLT 674 SC).

45. First I shall refer to the decisions relied upon by the learned counsel for the petitioner to contend for the position that this Court has jurisdiction to consider a matter like this.

46. The decision in T.C. Basappa's case (AIR 1954 SC 440) is by a Constitution Bench of the Apex Court wherein, while considering the width of the power and jurisdiction under Article 226 of the Constitution of India, it was held in para 5 that "the language used in Articles 32 and 226 of the Constitution is very wide and the powers of the Supreme Court as well as of all the High Courts in India extend to issuing of orders, writs or directions including writs in the nature of habeas corpus, mandamus, quo warranto, WPC.34147/2011 32 prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well." It was held that "in view of the express provisions in our Constitution, the Court need not now look back to the early history or the procedural technicalities of these writs in English law nor feel oppressed by any difference or change of opinion expressed by particular cases by English Judges."

47. Dwarka Nath's case (AIR 1966 SC 81) is an important decision by a three Judge Bench. Their Lordships while analysing the scope of jurisdiction under Article 226 of the Constitution, laid down the important principles thus:

""Article 226 is couched in comprehensive phraseology and it ex facie confers a wide power on the High Court to reach injustice wherever it is found. A wide language in describing the nature of the power, the purposes for which and the person or authority against whom it can be exercised was designedly used by the Constitution. The High Court can issue writs in the nature of prerogative writs as understood in England, but the scope of those writs also is widened by the use of the expression "nature", which expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other WPC.34147/2011 33 than the prerogative writs. The High Courts are enabled to mould the reliefs to meet the peculiar and complicated requirements of this country. To equate the scope of the power of the High Court under Art. 226 with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a

vast country like India functioning under a federal structure. Such a construction would defeat the purpose of the article itself. But this does not mean that the High Court can function arbitrarily under this article. There are some limitations implicit in the article and others may be evolved to direct the article through defined channels."

It is important to notice the following sentence therein, to understand the power of this Court to issue directions: "The High Courts are enabled to to mould the reliefs to meet the peculiar and complicated requirements of this country."

48. In Praboth Verma's case (AIR 1985 SC 167), the same position was reiterated by analysing the decisions of English Courts as well as of our country. In K.S. Jagannathan's case (AIR 1987 SC 537), in para 18 the principles stated in Dwarkanath's case (AIR 1966 SC 81) were relied upon while considering the scope of the jurisdiction under Article 226. It was held thus in para 18:

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"18. The first contention urged by learned Counsel for the Appellants was that the Division Bench of the High Court could not issue a writ of mandamus to direct a public authority to exercise its discretion in a particular manner. There is a basic fallacy underlying this submission - both with respect to the order of the Division Bench and the purpose and scope of the writ of mandamus. The High Court had not issued a writ of mandamus. A writ of mandamus was the relief prayed for by the Respondents in their writ petition. What the Division Bench did was to issue directions to the Appellants in the exercise of its jurisdictions under Article 226 of the Constitution. Under Article 226 of the Constitution, every High Court has the power to issue to any person or authority, including in appropriate cases, any Government, throughout the territories in relation to which it exercises jurisdiction, directions, orders, or writs including writs in the nature of habeas corpus, mandamus, quo warranto and certiorari, or any of them, for the enforcement of the Fundamental Rights conferred by Part III of the Constitution or for any other purpose. In Dwarkanath v. Income-Tax Officer, Special Circle, Kanpur, (1965) 3 SCR 536, 540 : (AIR 1966 SC 81 at P. 84) this Court pointed out that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs as understood in England, such wide language being used to enable the High Courts "to reach injustice wherever it is found" and "to mould the reliefs to meet the peculiar and complicated requirements of this country." In WPC.34147/2011 35 Hochtief Gammon v. State of Orissa, (1976) 1 SCR 667,676: (AIR 1975 SC 2226 at p. 2232) this Court held that the powers of the courts in England as regards the control which the Judiciary has over the Executive indicate the minimum limit to which the courts in this country would be prepared to go in considering the validity of orders passed by the Government or its officers."

Therefore, power is conferred to issue to any person or authority directions for the enforcement of fundamental rights or for any other purpose.

49. In Chandra Bhan Dubey's case (AIR 1999 SC 753), the amenability to writ jurisdiction U.P. Co-operative Land Development Bank under U.P. Co-operative Societies Act was examined and in para 22 it was held as follows:

"22. The language of Article 226 does not admit of any limitation on the powers of High Court for the exercise of jurisdiction thereunder though by various decisions of this Court with varying and divergent views it has been held that jurisdiction under Article 226 can be exercised only when body or authority, decision of which is complained, was exercising its power in the discharge of public duty and that writ is a public law remedy."

In para 26 it was laid down thus:

".....When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a co-operative society or WPC.34147/2011 36 association or body of individuals whether incorporated or not, or even an individual."

50. Strong reliance is placed on the decision of the Apex Court in *Andi Mukta S.S.M.V.S.S.J.M. Smarak Trust's case* {(1989) 2 SCC 691} wherein the scope of writ of mandamus was considered. An objection was raised stating that the Management of the College being a Trust registered under the Bombay Public Trust Act, is not amenable to the writ jurisdiction of the High Court. The Apex Court in para 15, examined the position and held that "the exceptions to mandamus will be applicable in a case where "the rights are purely of a private character and the institution is purely a private body with no public duty." Importantly, it was held that aided institutions like governmental institutions discharge public functions by way of imparting education to students. After analysing the position under English law, again it was reiterated as follows in paragraphs 17 and 20:

17. There, however. the prerogative writ of mandamus confined only to public authorities to compel performance of public duty. The 'public authority' for them means every body which is created by statute - and whose powers and duties are defined by statute. So Government departments, local authorities, police authorities, and statutory undertakings and corporations, are all 'public authorities'. But there is no such limitation for our High Courts to issue the writ 'in the nature of mandamus'. Article 226 confers wide powers on the WPC.34147/2011 37 High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to any person or authority'. It can be issued "for the enforcement of any of the fundamental rights and for any other purpose.

20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Art. 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "Any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied."

51. Therefore, we will have to consider whether imparting education will be one discharging public function. This aspect was again examined in Binny Ltd.'s case {(2005) 6 SCC 657} and in para 11 it was held that "a writ of mandamus could be issued even to a private authority which discharges a public function." One of the tests laid down by the Apex WPC.34147/2011 38 Court to find out whether a body is performing a "public function", is when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. The relevant principles have been stated in para 11 thus:

"A body is performing a "public function", when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest."

Finally, in para 29 the scope of mandamus was examined and the principles have been reiterated in the following words:

"If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but nevertheless there must be the public law element in such action."

In para 11, the Apex Court quotes from the book on Judicial Review of Administrative Action (5th Edn.) by de Smith, Woolf & Jowell in Chapter 3, para 0.24, wherein an instance pointed out with regard to the body WPC.34147/2011 39 performing public function is when it "provides public goods or other collective services, such as health care, education and personal social services from funds raised by taxation".

52. Herein, the same is important to understand the functions rendered by respondents 6 and 7 to a section of the public, viz. mentally challenged children.

53. Now I shall refer to the decisions cited by Shri K. Ramakumar, learned Senior Counsel for respondents 6 and 7.

54. In Satimbla Sharma's case (2011 (3) KLT 674), the question considered was whether a private unaided school will be amenable to writ jurisdiction. Therein, the teachers of the school claimed salary equal to that of their counterparts working in Government schools and Government aided schools. The view taken is that the payment of salary is under a contract and it cannot be within the domain of public law and the position was laid down in paragraphs 11 and 13 thus:

"We also do not think that the Court could issue a mandamus to a private unaided school to pay the salary and allowances equal to the salary and allowances payable to teachers of Government schools or Government aided schools. This is because the salary and allowances of teachers of a private unaided school is a matter of contract between the school and the teacher and is not within WPC.34147/2011 40 the domain of public law. Where a statutory provision casts a duty on a private unaided school to pay the same salary and allowances to its teachers as are being paid teachers of Government aided schools, then a writ of mandamus to the school could be issued to enforce such statutory duty. But in the present case, there was no statutory provision requiring a private unaided school to pay to its teachers the same salary and allowances as were payable to teachers of Government schools and therefore a mandamus could not be issued to pay to the teachers of private recognised unaided schools the same salary and allowances as were payable to Government institutions. We cannot also issue a mandamus to respondent Nos.1 and 2 on the ground that the conditions of provisional affiliation of schools prescribed by the Council for the Indian School Certificate Examinations stipulate in clause (5)(b) that the salary and allowances and other benefits of the staff of the affiliated school must be comparable to that prescribed by the State Department of Education because such conditions for provisional affiliation are not statutory provisions or executive instructions, which are enforceable in law. Similarly, we cannot issue a mandamus to give effect to the recommendations of the report of Education Commission 1964-66 that the scales of pay of school teachers belonging to the same category but working under different managements such as Government, local bodies or private managements should be the same, unless the recommendations are incorporated in an executive instruction or a statutory provision. We, therefore, WPC.34147/2011 41 affirm the impugned judgment of the Division Bench of the High Court."

The above principles are laid down in the particular facts of that case.

55. The next decision is Pradeep Kumar Biswas's case {(2002) 5 SCC 111} wherein the scope of Article 12 of the Constitution of India was examined. The question was considered whether CSIR will come within the meaning of Article 12 of the Constitution. It was held that if the body is financially, functionally and administratively dominated by, or under the control of the Government and if it is pervasive, that body is a State.

56. In Zee Telefilms Ltd.'s case {(2005) 4 SCC 649) the Apex Court considered the question whether the Board of Control for Cricket in India will be a State and the various tests were applied therein also. In fact, a reading of the majority judgment in para 2 will show that the preliminary issue raised was with regard to the maintainability of the writ petition under Article 32 of the Constitution of India. Shri K. Ramakumar, learned Senior Counsel for respondents 6 and 7 relied upon paragraphs 22 and 23 of the judgment and other relevant findings. In para 29 the argument whether the Board discharges public duties which are in the nature of State function, was considered and the argument was found against. But finally, in para 31 it was laid down thus: "Though the remedy under Article 32 is not available, WPC.34147/2011 42 an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32." This is quite important.

57. Learned Senior Counsel for respondents 6 and 7 referred to paragraphs 5 to 8 of the decision in YL v. Birmingham City Council (2007 (3) All E.R. 957) wherein reference has been made to the scope of the expression "public function". The view taken therein is that "a number of factors may be relevant, but none is likely to be determinative on its own and the weight of different factors will vary from case to case." In paragraphs 7 and 8 it was further held as follows:

"7. It is also relevant to consider the role and responsibility of the state in relation to the subject matter in question. In some fields the involvement of the state is long standing and governmental in a strict sense: one might instance defence or the running of prisons. In other fields, such as sport or the arts, the involvement of the state is more recent and more remote. It is relevant to consider the nature and extent of the public interest in the function in question.

8. It will be relevant to consider the nature and extent of any statutory power or duty in relation to the function in question. This will throw light on the nature and extent of the state's concern and of the responsibility (if any) undertaken. Conversely, the absence of any statutory intervention will tend to WPC.34147/2011 43 indicate parliamentary recognition that the function in question is private and so an inappropriate subject for public regulation."

The next decision relied upon by the learned Senior Counsel is Cameron's case (2007 (3) All.E.R.241) wherein the question was considered whether owner of Railway infrastructure public authority is exercising functions of a public nature. The Head Note reads thus:

"The defendant was not and had not been acting as, a public authority for the purposes of S.6 of the 1998 Act. Although in the United Kingdom as in other countries governments had taken control, by nationalisation, of railways, the business of running a railway was not intrinsically an activity of government. There was a clear commercial objective in the defendant's performance, it was concerned to make profits for its shareholders from its operations. It had no obligation to conduct its operations in a manner subservient to the public interest. it was free to conduct its business, albeit in compliance with its licence terms and conditions, in the manner in

which it saw fit. It was not democratically accountable to central or local government, its board of directors was appointed by the company. It possessed no special powers and did not enjoy any immunities. It was not publicly funded. At the material time, it had been relieved of its regulatory function in regard to safety, and although safety was an aspect of the manner in which the business was carried out, it was not a function of the business as such. Having particular WPC.34147/2011 44 regard to the allegation in the instant case that the cause of the railway accident had been a failure to maintain points which had been defective, it was hard to define such a function as one which was public for the purpose of S.6. Accordingly, the application would be allowed."

But in these two cases, it can be seen that the question was examined under the relevant provisions of the Human Rights Act, 1998. It is in that context alone the above views have been taken. As rightly pointed out by the learned counsel for the petitioners, that the particular statutory setting and the facts of the case is reflected in the views taken. Therefore, it is not strictly possible to analyse the situation herein, in the light of the said principles.

58. Now I will come to the rest of the decisions relied upon by the learned Senior Counsel for respondents 6 and 7. Going by the functions which are being performed by respondents 6 and 7, it can be seen that they are executing the scheme framed by the Central Government, viz. Deendayal Disabled Rehabilitation Scheme which is framed with the avowed object of implementing the provisions of the Central Act of 1995 and the Act in turn refers to the obligations under the international conventions and those under Article 41 of the Constitution of India. The non governmental organisations are given assistance by the Central WPC.34147/2011 45 Government by way of grant and they are imparting education to the mentally challenged. The important function is one of rehabilitation which is covered the definition clause in Section 2(w) of the Act. The same cannot be lost sight of while examining the obligations and the functions undertaken by respondents 6 and 7. Chapter V of the Act, as already noticed, is under the heading "Education". The scheme is one framed by the Central Government under Section 27 of the Act. Section 66(2) enables the appropriate Government and local authorities to grant financial assistance to non governmental organisations. This is an important feature of the the statutory setting and the general object of the Statute. Therefore, non governmental organisations like respondents 6 and 7, have a larger role to play to promote and fulfil the purposes provided under the Central act. It enabled them to get registration from the Education Department. Even though it was argued by Shri K. Ramakumar, learned Senior Counsel that the mere registration will not cloth with any power or jurisdiction with the authorities or confer any supervisory power on them, the fact remains that the registration can also be withdrawn if circumstances exist. It is submitted that even hospitals get registrations under the various enactments and nobody can direct the hospital authorities to admit a person. According to me, the comparison is not the same when we come to the implementation of WPC.34147/2011 46 the provisions of the Central Act, 1995. Rehabilitation of mentally challenged pupil is the important responsibility that is taken over by respondents 6 and 7. It is a public function, definitely, since rehabilitation and education of such children and people are part of the responsibility of the State and the same is being implemented through the provisions of the Act by the non governmental organisations with financial assistance by the Central Government. The schemes have thus a public

purpose and the duty cast is evident, since the beneficiaries are a section of the people, viz. mentally challenged people. If that be so, the test laid down in Pradeep Kumar Biswas's case {(2002) 5 SCC 111} in para 11 quoted above, will apply to the facts of the case, apart from the law laid down in Andi Mukta S.S.M.V.S.S.J.M. Smarak Trust's case {(1989) 2 SCC 691}. In such cases, a mandamus can be issued by this Court.

59. Therefore, I reject the contention that this Court has no jurisdiction in the matter. Apart from the above, herein, as we have already seen, the Deputy Director of Education had important role to play in the matter of registration of the institution. He will have to conduct enquiry in the matter. The Director of Public Instruction cannot be said to be a total stranger to the situation, going by the notification issued by the Government WPC.34147/2011 47 as per Ext.R2(a). The Director of Public Instruction is constituted as the authority having administrative control of the schools for the mentally retarded. Therefore, the General Education Department of the State is having such powers including the grant of registration and withdrawal also. Therefore, the ancillary powers to conduct enquiries into various aspects and to issue suitable directions, cannot be denied. The doctrine of *parens patriae* will also come to the help of persons who are mentally incapable of making decisions for themselves. The doctrine had been applied in the case of minors and mentally challenged people. Therefore, the protection of interest of such mentally challenged people and to make decisions in such cases are the functions of the State and this Court is also clothed with adequate jurisdiction in appropriate cases.

60. On an assessment of various aspects, it can be seen that the dispute herein arose when various complaints were raised. That was taken care of by the District Collector by convening a meeting of the various parties including respondents 6 and 7 and as on today the problems have been solved, by such authorities, by taking various decisions. It cannot be said that the submission of report as per Ext.P3, the convening of the conference by the District Collector and involvement of other authorities, are bad for want of jurisdiction. The disputes have now been narrowed WPC.34147/2011 48 down to a greater extent which is clear when we read through the affidavits of the respective parties.

61. Shri K. Ramakumar, learned Senior Counsel maintains that the school never wanted the children to give donation. What was charged is only users fee as permitted by the guidelines. In fact, the said attitude will solve the problem to a greater extent since Shri Kaleeswaram Raj submits that the petitioners are prepared to pay what is legally permissible. The reply affidavit of the petitioners reiterates the same. Therein in para 3 they have stated as follows: "Collection of small and reasonable fees from the parents is not opposed by the petitioners or their parents at all." It is further averred in para 7 that "the petitioners were never unwilling to pay the amount. Only when exorbitant donation was demanded, some protests are raised..... Petitioners were ready to meet the reasonable demands for fees etc. They objected to only illegal and unreasonable demands. It is incorrect to say that the petitioners refused to pay Rs.500/- per month to the school." In para 9 it is stated as follows: "The guardians of the petitioners have not objected to the process of evolving and implementing the legally permissible rules." In para 10 it is repeated that "it is incorrect to say that none of the petitioners were prepared to comply with the directions of the Revenue Divisional Officer or to remit the users fee.....Rs.2,000/- was WPC.34147/2011 49 demanded as first

instalment of fees on 14.6.2011. Some of the petitioners did not have that much money. Therefore, they sought instalment facility". There is thus agreement on the part of the petitioners also to pay users fee at the rate of Rs.500/- per month. I think the same will solve the issue. Learned Senior Counsel for respondents 6 and 7 also submitted that for the next year applications of the petitioners will be considered for admission in terms of the rules of the institution. It was also submitted that those who are unable to pay can file appropriate applications and those who require the facility of school bus, will have to pay the required amount to the institution. I find force in the said submission also. One of the points raised by the learned Senior Counsel is that one of the petitioners herein will be often turning violent and therefore it is difficult to manage the said student. Now, as the attitudes have softened on both sides, I think, keeping in mind the welfare of the affected children, parties can proceed to solve, if any other issues are there. The students could not get the assistance of the school for the last year for whatever reasons that may be. The directions in Exts.P9 and P11 are still applicable as far as the admission for the next year is concerned.

62. As rightly pointed out by the learned Senior Counsel for respondents 6 and 7, the school is rendering yeomen service to the mentally WPC.34147/2011 50 challenged people. It was established by the sixth respondent and her husband with a social object of rehabilitating them which has to be well appreciated. The Governing body consists of various important personalities also in different walks of life and they are rendering great social service to the mentally challenged children and the parents alike. This aspect cannot be lost sight of. Even though various aspects have been pointed out as to how the present situation developed, I need not consider those since now the matter has reached this Court for consideration. Therefore, both parties can sink their differences as what is involved is the rehabilitation of the mentally challenged poor children. In that view of the matter, I dispose of the writ petition with the following directions:

- (i) The petitioners will be admitted for the next academic year on usual terms and conditions. As it is submitted that no donations have been demanded and users fee alone is demanded at the rate of Rs.500/- per month and the petitioners are prepared to pay the same, they will be allowed to remit the said fee.
- (ii) Those who are not able to pay in advance , e.g. advance for three or four months in a lump, respondents 6 and 7 will extend instalment facility to them.
- (iii) The Director of Public Instruction will supervise the WPC.34147/2011 51 admission process of the petitioners and will give directions in case of any further disputes between the parties, if necessary, after hearing them or by directing the Deputy Director of Education , Ernakulam to do the needful.
- (iv) The District Collector will also facilitate the smooth implementation of these directions, and if necessity arises, will issue appropriate directions.
- (v) If respondents 6 and 7 maintain that any of the children are showing violent character, the District Collector and the Deputy Director of Education will address the same and will render all help especially medical help, so as to effectively

rehabilitate such a student.

(vi) There will be a direction to the State Government to provide a forum for redressal of grievances of the parents regarding the placement of their children with disabilities, as provided in Section 30(e) of the Act if the same has not been provided so far.

(vii) To avoid any controversies in such matters in future, the Director of Public Instruction or the Government as the case may be can frame guidelines for enabling the non governmental WPC.34147/2011 52 organizations to streamline their affairs for mentally challenged rendering their valuable service to the children. No costs.

(T.R. Ramachandran Nair, Judge.) kav/