The State of Maharashtra and Another

Vs

Lok Shikshan Sansatha and Others

And

Sakharkherda Education Society, Sakharkherda

Vs

The State of Maharashtra and Others

Civil Appeal Nos. 160 and 161 of 1968

(CJI Sikri, G. K. Mitter, C. A. Vaidialingam, P. Jagmohan Reddy, I.D. Dua, JJ)

26.07.1971

JUDGMENT

VAIDIALINGAM, J. -

1. All these three appeals, on certificate, are directed against the common judgment and order, dated December 2, 1966, of the Bombay High Court in Special Civil Applications Nos. 694 of 1965 and 420 and 421 of 1966. Civil Appeals Nos. 160 and 161 of 1968, are filed by the State of Maharashtra and the Deputy Director of Education, Nagpur against that part of the order of the High Court allowing Special Civil Applications Nos. 420 and 421 of 1966, after holding that clauses (1) and (2) of Section 5 of the Grant-in-aid Code (hereinafter to be referred as the Code) are invalid and directing the State of Maharashtra to grant the petitioners in the said Special Civil Applications permission to start schools in the areas concerned as desired by them. Civil Appeal No. 878 of 1968 is by the applicant in Special Civil Application No. 694 of 1965, against the order of the High Court dismissing his writ petition and declining to interfere with the order of the State and educational authorities granting permission to the third respondent in the appeal to open a new school at Sakharkherda with VIII and IX classes.

2. We will first deal with Civil Appeals Nos. 160 and 161 of 1968, and refer to the facts leading up to those appeals. Civil Appeal No. 160 of 1968, as mentioned above, arises out of the order in Special Civil Application No. 420 of 1966. The applicant in the said application Loka Shikshan Sanstha Anjansinghi made an application dated October 30, 1965, to the Deputy Director of Education. Nagpur for permission to open a school during the year 1966-67 at Anjansinghi in Amravati district. The application was sent in the prescribed form. Therein it was stated that the Management was not registered and that it will get itself registered by about the middle of January, 1966. Under the heading "Arrangements made for necessary furniture and apparatus" in Column 13, the applicant stated that they proposed to spend about Rs. 2,000/- in respect of furniture, science, apparatus, teaching aids, teachers library and pupil's library. The break up of the figures under these heads was also given. In Column 15 under the heading Funds at the disposal of the management in addition to those in Column 15 above", the applicant stated Rs. 5,000/- only. The applicant further

stated under Column 17 that it required only a token grant in the first year of recognition and a regular grant at the prescribed rate from the second year. The Ashok Education Society, Ashoknagar, the third respondent in the writ petition had also applied to the educational authorities to start a school during the same year at Anjansinghi. The writ petitioner filed an objection dated March 8, 1966, before the Deputy Director of Education, Nagpur objecting to the grant of permission asked for by the Ashok Education Society, Ashoknagar on the ground that the said Society is an outside agency. In the said petition the applicant requested for favorable consideration of his application, already submitted, to the authorities. The District Committee which scrutinized the applications of both the parties recommended that the application of the writ petitioner should be rejected as it had no funds. Another Society with good financial position and experience was recommended by the Committee. The District Committee recommended that Ashok Education Society should be granted permission as it was a good experienced and popular society and it was also financially sound. The Deputy Director of Education by his order, dated April 12, 1966, rejected the application of the writ petitioner on the ground that the need of the place has been fulfilled by permitting another society to open a school at the place. The petitioner was further informed that in case any school is started when permission has been refused, serious view will be taken by the educational authorities. The writ petitioner filed an appeal on April 21, 1966, to the State Government wherein he prayed for withdrawing permission granted to the Ashok Education Society, the third respondent and also requested that permission may be granted to the applicant society to open a school. This appeal was rejected by the Government by its order dated 10/16th May, 1966. The applicant society filed the writ petition and prayed for striking down Rule 3 of the Grant-in-aid Code framed by the State of Maharashtra as unconstitutional and violative of fundamental rights guaranteed under Article 19(1)(c) of the Constitution and to quash the orders of the Deputy Director of Education and the State Government refusing permission to the petitioner society to start a school at Anjansinghi. The applicant further prayed for a direction being issued to the educational authorities to grant permission to start the school as requested by it.

3. As common contentions had been raised by State of Maharashtra in this writ petition and also in Special Civil Application No. 421 of 1966, before the High Court, we will refer to those contentions after adverting to the facts in Special Civil Application No. 421 of 1966.

4. Civil Appeal No. 161 of 1968, arises out of Special Civil Application No. 421 of 1966. The applicant therein Sri Nana Guru Shikshan Sanstha, Shirkhed sought permission of the Deputy Director of Education to start a school at Shirkhed from June 1966. The request was made by a letter, dated October 29, 1965, and the application was not made in the prescribed form. The Parricide Education Officer, Zila Parishad, Amravati by his communication, dated November 15, 1965, forwarded the prescribed application form to the applicant with a request to have the particulars mentioned therein properly filled in and to submit the same immediately. The application in the prescribed form was sent by the applicant on November 3, 1965. In column No. 4 under the heading whether the management is registered" the answer given was "no". Under the same column to the further query "if not, whether it is intended to get it registered. If so when" the answer given was "within a month". In Column 13, the expenditure proposed to be incurred regarding furniture, etc., the applicant stated that about Rs. 800/- was intended to be spent. The break up in respect of the various items was also given. Under Column 15 regarding funds at the disposal of the management, it was stated that a sum of Rs. 5,000/- was available. The third respondent therein Swami Vivekanand Shikshan Sanstha, Lehgaon had also made an application for opening a school at Shirkhed. The applicant filed an objection on January 5, 1966, to the grant of any permission to the third respondent. The Deputy Director to Education by his order, dated April 11, 1966, rejected the application of the writ petitioner on two grounds, namely, (1) the application is after the

prescribed date and (2) the Society is not registered. The petitioner was also informed that if a school is started when permission has been refused, serious view will be taken by the educational authorities. The appeal filed by the writ petitioner to the State Government was rejected by the later by its order, dated May 10/16, 1966. The applicant filed Special Civil Application No. 421 of 1966, praying for striking down Rule 3 of the Grant-in-aid Code as unconstitutional and violative of Article 19(1)(c) of the Constitution. The orders refusing permission to the Society to start a school were also sought to be quashed. A further prayer was made for directions being issued to the authorities to grant permission to the Society to start a second school at Shirkhed as desired by it.

5. The State Government contested both the Special Civil Applications.

It was pointed out that the rules contained in the Grant-in-aid Code were all executive instructions given by the State to the educational authorities for proper guidance in the manner of considering applications for starting schools which required grants to be made by the Government. None of the rules continued therein violated any fundamental rights of the applicants. Even if Article 19 can be invoked, the restrictions regarding the starting of schools were all reasonable restrictions in the interest of general public. No restriction has been placed on the applicants forming associations or unions as contemplated under Article 19(1)(c) and that in any event the restriction were saved by clause (iv) of Article 19. The reason given by the Deputy Director of Education for rejecting the applications of the two petitioners were valid as the District Committee constituted for the purpose had considered all the relevant matters before rejecting their applications and grating permission to the respective third respondents therein.

6. The High Court by its common judgment has taken the view that clauses (1) and (2) of Rule 3 of the Grant-in-aid Code are invalid as they are too vague to afford any standard both as to the need of a school in the locality and also as to the unhealthy competition with an existing school. The said clauses are equally vague as there is no standard to find out the competency and reliability of the management incharge of the school. There is further no provision in these sub-clauses for hearing a party before the authorities concerned take a decision in the matter of grant or refusal of permission to start a school. The High Court is further of the view that by such executive instructions the State is able to prevent the two writ petitioners from carrying on their legitimate activities of running schools. The said clauses also so not satisfy the test of being reasonable restriction in public interest. On this reasoning the High Court has held that the two clauses, namely, (1) and (2) of Rule 3 are violative of the rights guaranteed to the writ petitioners under Article 19(1) of the Constitution. Though it was argued on behalf of the writ petitioners that clauses (1) and (2) of Rule 3 of the Code contravene the provisions of Article 19(1)(c), (g) and (f), there is no clear indication in the judgment of the High Court as to which clause of Article 19(1) is violated. It is the further view of the High Court that as the State has no power to issue instructions as those contained in clauses (1) and (2) of Rule 3, Article 358 will not save those provisions notwithstanding the fact that there was a Proclamation of Emergency during the relevant period. Though no attack based on Article 14 was made in either of the writ petitions, it is seen that during the course of arguments, this Article was relied on and it was contended that the said two clauses of Rule 3 are arbitrary as they enable the State to discriminate between one institution and another. The High Court in considering this contention has held that in the matter of distribution of grant, the State must comply with the fundamental requirements of constitutional law embodied in Article 14. According to the High Court the effect of clauses (1) and (2) of Rule 3 is that apart from the fact that such schools are not eligible for receiving the grants, the students studying in such schools cannot appear for examinations held by the Secondary School Boards as the latter will not recognise such institutions. As the students of such schools cannot take their university education, clauses (1) and (2) of Rule 3,

according to the High Court offend Article 14 and hence they are invalid. After holding that clauses (1) and (2) of Rule 3 of the Code are violative of Articles 14 and 19, the High Court struck down those provisions and directed the educational authorised to grant permission to the two writ petitioners to start schools as desired by them.

7. The learned Attorney-General, appearing on behalf of the State in Civil Appeals Nos. 160 and 161 of 1968, raised the following contention : (1) The High Court has committed a very serious mistake in invoking Article 19 in view of the mandatory provisions of Article 358 of the Constitution; (2) even assuming that Article 19 can be invoked, the provisions contained in clauses (1) and (2) of Rule 3 are reasonable restriction in the interest of general public and as such those clauses are valid; (3) the view of the High Court that the said clauses offered Article 14, is erroneous; (4) that the clauses struck down by the High Court are mere executive instructions given by the State for the guidance of the educational authorities when considering the applications received for permission to open schools in particular areas. Such executive instructions cannot be struck down on the ground that they are vague. Alternatively, under this head it was contended that the two clauses are not vague in any respect; and (5) the High Court has committed a serious mistake in striking down the orders of the educational authorities without considering the reasons given by such authorities for rejecting the applications of the two writ petitioners.

8. Dr. Barlingay, learned counsel for the contesting respondents has supported the view taken by the High Court for striking down clauses (1) and (2) of Rule 3 of the Code. The counsel relied on the reasons given by the High Court for striking down the two clauses as violative Article 14 and 19. The counsel further urged that though the two clauses of Rule 3 in question may on the fact of it appear to be innocuous, nevertheless the application of those principles by the educational authorities may lead to possible discrimination between the institutions concerned. According to him no standards have been laid down to assess the need of a school in a particular area. Further, there is no criteria laid down to enable the educational authorities to decide the circumstances under which the starting of a new school may result in an unhealthy competition with an existing school. The position is the same also in regard to judging the competency and reliability of a particular management who proposes to start a school. The more serious ground levelled against these clauses (1) and (2) of Rule 3 by Dr. Barlingay was that there was no right given to an applicant for being heard before his application is rejected by the educational authorities.

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

10. It should also be made clear that as accepted by the State in its counter-affidavit filed before the

High Court the provisions of the Code are executive instructions and are in the nature of administrative instructions without any constitutional force. It is on this basis that we have to consider the correctness of the decision of the High Court when it struck down clauses (1) and (2) of Rule 3 of the Code.

11. It is necessary to advert to the circumstances under which the Code came to be framed as also to certain instructions given by the State top the educational authorities when considering the applications for the grant of permission to open schools.

12. The Grant-in-aid system appears to have been first introduced in 1859 and its main object was to promote voluntary effort and reliance on local resources in the filed of education apart from such contributions as may be available from the funds of the State. After the States re-organisation took place, in order to bring uniformity in the matter, the State of Bombay appointed in 1958 an Integration Committee for Secondary Education to examine the different Education Codes and administrative practices in force at the secondary stage in the various regions which were added in the State of Bombay under the States organisation and to make proposals for a unified system of Secondary Education as well as the assistance to be given to non-government secondary schools. The Committee submitted its report in 1959. In December, 1960, the Government of Maharashtra appointed a Committee comprised of officials and non-officials to suggest a unified code for consideration of the Government. A revised Draft Code was submitted by the Committee to the Government in or about August, 1961. The Secondary Schools Code, with which we are now concerned was framed by the Government as a common code for the recognition of and grant-in-aid to non-government secondary schools throughout the State. The said Code came into force with effect from the year 1963-64. Chapter II related to recognition and grant-in-aid. Rule 1 dealing with recognition provided that secondary schools may be recognised by the Department provided they conform to the rules contained in the Code. Rule 2 dealt with the matters relating to the applications for starting and recognition of schools. Under Rule 2.1 an application for permission to start a secondary school has to be made in the form given in Appendix 1(1) of the Code to the authorities referred to therein and such applications have to reach those authorities by the end of October, in the year preceding the year in which the school is proposed to be started. The said clause further provided that no school should be started unless the written previous permission of the Department had been obtained and that the schools started without such permission shall not ordinarily be considered for recognition. Under Rule 2(2), the management which is permitted to open a school has to apply for recognition of the school in the form given in Appendix 1(2) of the Code within one month of the opening of the school.

13. Rule 3 which consists of 16 clauses deals with the conditions of recognition. The said rule provides that a school seeking recognition has to satisfy the Department as regards the conditions enumerated in Clauses 1 and 16 therein. Clauses (1) and (2) of Rule 3 which are attacked as invalid are as followes :

Rule 3. Conditions of Recognition. - A school seeking recognition shall satisfy the Department as regards the following conditions :

> (1) The school is actually needed in the locality and it does not involve any unhealthy competition with any existing institution of the same category in the neighbourhood.
>
> (2) The Management is competent and reliable and is in the hands of a properly constituted authority or managing Committee.

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14. We may at this stage point out that of the conditions which has to be satisfied under Rule 3 is regarding the financial stability of the proposed school as stated in clause (3) of Rule 3 therein. This aspect may have a bearing in considering the correctness of the High Court's decision in Civil Appeal No. 160 of 1968.

15. Rule 86 deals with "Kinds of Grants". Rule 86(1) enumerates the various types of grants which a recognised school is eligible to get from the Government.

Rule 86(2) provides as follows :

Proprietary schools i.e., schools not registered under either the Societies' Registration Act (XXI of 1860, or the Bombay Public Trust Act, 1950, or any other Act that may be specified by Government and communal schools will not be eligible for any kind of grant from public funds."

16. At this stage we may mention that the provisions contained in Rule 2(1) that an application for starting for starting a secondary school has to be in the form given in Appendix 1(1) of the Code and that the application should reach the educational authorities within the period referred to therein and further provision under Rule 86(2) that the which are not registered under the Societies Registration Act, will not be eligible for grant, will have a considerable bearing when considering Civil Appeal No. 161 of 1968.

17. On October 6, 1965 the State of Maharashtra issued a press note, copies of which were sent to all the educational authorities. The Director of Publicity was also directed to give wide publicity to the press note by publishing the same in all the Dailies in the cities and districts. By that press note the attention of all the managements intending to start new secondary schools was drawn to the provisions contained in Rule 2 of the Code regarding the applications being made in the prescribed form to the concerned office and to the applications being made sufficiently early so as to reach the authorities concerned at the latest by the end of October, in the year preceding the year in which the school is proposed to be started. It was further stated in the press note that the applications received for starting new schools will be considered by the District Committee comprising of the Chairman of the Education Committee, Zila Parishad, Parishad Education Officer and a member of the Secondary School Certificate Examination Board, Poona or Vidarbha Board of Secondary Education, Nagpur and that permission to start new schools will be communicated to the applicants concerned by the Deputy Director of Education of the region by the end of February, 1966. The proposed applicants were also informed that appeals to the Government against the orders of the Deputy Director of Education can be filed up to the end of March, 1966. This press note emphasised : (a) that the applications be made in the prescribed form and (b) that the applications should be received by the educational authorities as the latest by the end of October. No doubt some of the these aspects are already contained in Rule 2 of the Code. Another important point to be taken note of in this press note is that though the applications are made to the concerned educational authorities, those applications are scrutinised by the District Committee concerned, and whose members must be familiar with the conditions prevailing in particular localities or areas.

18. On the same date the Government sent a communication to the Chairman, Secondary School Certificate Examination Board, Poona and the Chairman Vidarbha Board of Secondary Education, Nagpur on the subject of appointment of District Committees to consider the applications received for opening new secondary schools. The composition of the District Committees was also

mentioned therein. The respective Chairman were requested by the State to move the Board to nominate one member for each of the District Committee in the areas with which the Board was concerned. The Chairman was also requested to communicate the names of such members to the Parishad Education Officer of the district concerned, the Deputy Director of Education of the region and the Director of Education, Poona under intimation to the Government.

19. The State also sent a circular, dated October 5, 1965, to the various educational authorities drawing their attention to Rule 2 of the Code. They were also informed that the Government had directed that the applications for opening new secondary schools should be considered by the District Committee comprised of the various persons mentioned therein. It was further stated that the District Committee should bear in mind when considering the applications, the various matters enumerated as item Nos. 1 to 14. Those various matters to be taken into account relate to the requirement of a school or an additional school in a particular area, its financial stability the nature and competency of the management and several allied matters. It was obligatory on the District Committee to record its reasons in writing for recommending or not recommending a particular application. In Paragraph 4 of the circular it was stated that permission to start a new school may be granted by the Deputy Director of Education of the concerned region after taking into consideration the recommendations of the District Committee and with the prior approval of the Government. The educator the period mentioned in the circular.

20. From the relevant provisions of the Code read with the press note and the circular referred to above, it is clear that though the applications are made to the educational authorities, they are not disposed of by those authorities or their own individual discretion. On the other hand, it is clear that the applications are dealt with by the District Committees, whose members are familiar with the conditions prevailing in particular areas or localities and who also are in the know of things regarding the requirement of a new or an additional school in the particular areas. It is really on the basis of the recommendations made by such Committees that the educational authorities take a decision one way or the other.

21. After having cleared the grounds, as stated above, we will now deal with the contentions of the learned Attorney-General. The learned Attorney-General is well founded in his contention that the High Court was not justified in invoking Article 19 in the circumstances of this case. We have already given the relevant dates when the applications were filed by the writ petitioners before the education authorities as well as the dates when they were rejected. The judgment of the High Court is, dated December 2, 1966. There is no controversy that the Proclamation of Emergency was issued on October 26, 1962 and it was revoked only on January 10, 1968. The relevant part of Article 358 is as follows :

> 358. While a Proclamation of Emergency is in operation, nothing in Article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action when the State would but for the provisions contained in that Part be competent to make or to take ...."
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> Therefore, it will be seen that during the period when a Proclamation of Emergency is in operation, Article 19 will operate as a bar in respect of any law or any executive action coming within the terms of Article 358. We will be showing in the latter part of the judgment that clauses (1) and (2) of Rule 3, read with the various instructions issued by the State cannot be considered to be vague or ambiguous as erroneously held by the High Court. Those instructions, in so far as they go, are perfectly valid

and the State Government was competent to issue these executive instruction for the guidance of the educational authorities dealing with applications for grant of permission to start schools. If so, it follows that the view of the High Court that Article 358 does not save clause (1) and (2) of Rule 3 is erroneous. In this view Article 19 could not have been invoked by the writ petitioners during the period when the Proclamation of Emergency was admittedly in operation. As Article 19 is thus not of the picture, the question whether clauses (1) and (2) of Rule 3 impose reasonable restrictions and are thus saved, does not arise for consideration. We may state that Dr. Barlingay found considerable difficulty in supporting the judgment of the High Court on this aspect in the face of Article 358 of the Constitution. This disposes of the first and second contentions of the learned Attorney-General.

22. Coming to Article 14, it is accepted by the High Court that the writ petitioners did not make in their petitions any attack on clauses (1) and (2) of Rule 3 based upon the said article. It was only during the course of arguments that Article 14 appears to have been invoked. The High Court struck down the two sub-clauses on the ground that unless a school is started in accordance with the rules contained in the Code, they will not be recognised by the Secondary School Boards and the students studying in such schools cannot appear for the examinations held by the Board and the University. The approach made by the High Court, in our view, in this regard is erroneous. The provisions regarding grant of permission and recognition of schools under the Code are mainly intended for the purpose of receiving grant from the Government. We are not concerned in these proceedings regarding the effect of starting a school without complying with the requirements of the provisions of the Code or in the face of refusal of permission by the educational authorities when such schools so started do not require or receive any grant from the State. That problem does not arise for consideration before us. Hence we do not think it necessary to refer to the provision of the Maharashtra Secondary Education Board Regulation, 1966, the effect of which may be that no student having education in a school for the starting of which no permission has been given or such permission has been refused, may not be able to appear for the examinations held by the Boards concerned. So far as the destruction of grant to the schools petitioners that such grants are being made arbitrarily or any discrimination is shown in that regard. But Dr. Barlingay pressed before us the circumstances that though Clause (1) and (2) of Rule 3 may appear to be innocuous, there is a potential danger of discrimination when the said clauses are applied without any guidance by the educational authorities. He also contended that there is no right given to the applicant to be heard by the educational authorities before his application is refused. On this ground the counsel urged that clauses (1) and (2) of Rule 3 violate Article 14.

23. We have already referred to the press note and the circular letter issued by the State Government from which it is clear that the applications are dealt with in the first instance by the District Committees, whose members are familiar with the requirements of the particular areas or localities and the conditions prevailing therein regarding the requirements of a school or an additional school. The District Committees have to take into account several material and relevant factors contained not only in the Code and also specifically emphasised in the circular letter of the Government, dated October 5, 1965. It is only on the basis of the recommendations made by those Committees, that the educational authorities take a decision regarding the grant or refusal of permission to start a school. The District Committees are also bound to record their reasons in writing for recommending or not recommending the application. An appeal lies against the order passed by the Deputy Director of Education of the Government. It is not the case of any of the writ petitioners that the District Committees have acted arbitrarily. Nor is it their case that he Deputy Director of Education of the region has not based his decision on the recommendations of the District Committees. We are not

satisfied that there is any violation of Article 14.

24. From the mere act that there is no right provided for the applicant being heard before his application is rejected, it cannot be held that there is a violation of the principles of natural justice. On the other hand, it is seen that the District Committees have considered the claims of the writ petitioners as well as of the respective third respondents therein and recommended to the educational authorities that the claims of the latter are to be accepted. The reasons for rejection of the applications have also been given in the orders passed by the educational authorities.

25. When all the relevant circumstances have been taken into account by the District Committee and the educational authorities, there is no violation of any principle of natural justice merely of the reason that the applicants were not given a hearing by the educational authorities before their applications were rejected. The particulars which have to be mentioned in the prescribed application form are very elaborate and complete. The provisions in the Code read along with the instructions given by the State in the circular letter, dated October 5, 1965, refer to various relevant and material factors that had to be taken into account for the purpose of deciding whether the application is to be granted or not. As we have already pointed out it is not the case of any of the writ petitioner that these relevant factors have not been considered by the District Committees. Nor is it their case that the reasons given for rejection of the applications are not covered by the provisions contained in the Code. Clauses (1) and (2) of Rule 3 are not to be read in isolation as has been done by the High Court. On the other hand, they must be read along with the other various clause contained in the same rule as well as the detailed instructions given by the Government in the circular letter, dated October 5, 1965. It follows that the reasoning of the High Court that these two sub-clauses violate Article 14 cannot be accepted.

26. Coming to the forth contention of the learned Attorney-General, it is evident from the judgment of the High Court that clause (1) and (2) of Rule 3 have been struck down for they are vague and do not afford any standard or criteria for judging whether a school or an additional school is needed in an area or locality and whether the management is competent and reliable. We have already pointed out that the definite stand taken by the State in counter-affidavit filed before the High Court was that the provisions of the Code are executive instructions and are in the nature of administrative instructions without any statutory force. When it is admitted that the provisions contained in the Code, which include clauses (1) and (2) of Rule 3 are executive instruction, two question arise, namely, (1) whether the High Court was justified in striking down such executive instructions even assuming that these instructions were vague and (2) whether the said clause are vague. The learned Attorney-General invited our attention to the two decisions of this Court reported in State of Assam and Another v. Ajit Kumar Sharma and Others ((1965) 1 SCR 890) and Municipal Committee, Amritsar and Another v. State of Punjab and Others ((1969) 3 SCR 447 : 1969 (1) SCC 475). In the first decision this Court has laid down that where conditions for receiving grant-in-aid are laid down by mere executive instructions, it is open to a private institution to accept these instructions or not to accept them. That is a matter entirely between the Government and the private institution concerned. In the second decision it was laid down that "the rule that an Act of a competent Legislature may be 'struck down' by the Courts on the ground of vagueness is alien tour constitutional system ..... A law may be declared invalid by the superior Courts in India if the Legislature has no power to enact the law or that the law violates any of the fundamental rights guaranteed in Part III of the Constitution or is inconsistent with any constitutional provision, but not on the ground that it is vague ......". Based upon these two decisions, the learned Attorney-General urged that even on the basis that the two sub-clauses in question are vague, they could not have been struck down on that ground. Alternatively, his further contention is that those clauses are not vague.

We do not think it necessary to go into the question whether the courts have got powers to strike down even executive instructions on the ground of their being vague when such executive instructions are admittedly issued by the authorities concerned for the guidance and for being acted upon. We express no opinion on that point in these proceedings. We are of the view that the two clauses in question are not vague or ambiguous in any respect. The fallacy committed by the High Court consists in considering clauses (1) and (2) of Rule 3 in isolation. We have already pointed out that Rule 3 of the Code consists of as many as 16 clauses, which are conditions to be fulfilled for recognition being accorded. We have also referred to the circular letter, dated October 5, 1965, issued by the State Government enumerating the various matters to be taken into account by the District Committees when considering applications for grant of permission to start a school or for having an additional school in the area or the locality. Rule 3 will have to be read along with those instructions as well as the various particulars which have to be filled up in the prescribed form. If clauses (1) and (2) of Rule 3 are interpreted having due regard to the various other matters, referred to above, the District Committee had got ample guidance to decide the need of a particular locality to have a school or an additional school as also the further question regarding the competency any reliability of the management. There will be sufficient material before the District Committee to consider whether the starting of a school or on additional school in a particular area or locality will involve any unhealthy competition. In view of the clear and detailed guidance furnished not only by Rule 3 but also by the instruction contained in the circular letter, dated October 5, 1965, it is clear that there is no ambiguity in either clauses (1) and (2) of Rule 3. In considering the question of vagueness the High Court has not adverted to the various matters referred to by earlier. Therefore, we are of the opinion that the striking down of clause (1) and (2) of Rule 3 by the High Court as being vague, a erroneous.

27. The last contention of the learned Attorney-General which is on merits is that without considering the reasons given by the Deputy Director of Education for rejecting the two applications of the two writ petitioners, the High Court has issued a mandamus to the State to grant permission to those two applicants. In our opinion, this contention is also well-founded. The application of the petitioner in Special Civil Application No. 420 of 1966, which is the subject-matter of Civil Appeal No. 160 of 1968, was rejected by the Deputy Director of Education on the ground that the need of the place has been fulfilled by permitting another society to open the school at the place. The appeal filed to the State Government was unsuccessful. In the counter-affidavit filed by the State in the writ petition they had categorically referred to the recommendations of the District Committee on the applications filed by the said writ petitioner as also the third respondent therein. Regarding the writ petitioner the report of the District Committee was that it had no founds and that it was recommending another society with good financial position and experience. In this view the District Committee stated that it was not recommending the writ petitioner for the grant of permission. On the other hand, the District Committee recommended the application of Ashok Education Society, Ashoknagar (third respondent) on the ground that it was financially sound and it was a very good and experienced society and that it was also a popular society. For these reasons the applications of this society was recommended to be granted by the District Committee. It was on the basis of the recommendation of the District Committee that the Deputy Director of Education rejected the application of the writ petitioner and granted permission to the third respondent therein. The applications of both the writ petitioner and the third respondent were before the District Committee. The High Court has not found fault with these recommendations. On the other hand it has held that it is open to the authorities to refuse permission is the school is not in a financially sound position. The writ petitioner also was not able to satisfy us that the conclusion arrived at by the District Committee, which were accepted by the Deputy Director of Education were not based upon

particulars furnished in the application.

28. Coming to the application filed by the writ petitioner Special Civil Application No. 421 of 1966, which is the subject-matter of Civil Appeal No. 161 of 1968, we have already referred to the fact that the said society merely made a request for opening a school by means of a letter, dated October 29, 1965. Admittedly the applicant did not comply with the requirement of Rule 2(1) of the Code that the application should be in the prescribed form. No doubt, later on, on November 3, 1965, the said society sent a fresh application in the prescribed form, but this was not within the period mentioned in Rule 2(1) of the Code. So the said writ petitioner did not comply with Rule 2(1), read along with the press note and the circular letter, referred to above. That clearly shows that the application filed by the writ petitioner was not in the first instance in the prescribed form and that when it was sent in the prescribed form it was beyond time. Further, we have also referred to Rule 86(2), which specifically says that the schools which are not registered under the Societies Registration Act, will not be eligible for any kind of grant from the public funds. Even in the application filed by the writ petitioner in the prescribed form on November 3, 1965, it was stated under dated No. 4 that the management was not registered and that it intends to get itself registered within a month. So part from two infirmities, pointed out above, there was this additional infirmity of non-registration. Even on the date when the appeal was filed to the State Government on April 26, 1966 the society was not registered. As admitted by the said society in its writ petition, it was registered under the Societies Registration Act, 1960, only on April 27, 1966. The order, dated April 11, 1966, of the Deputy Director of Education rejecting the application was based on two grounds; (a) that the application was sent after the prescribed date and (b) that the society was not registered. That these two reasons are valid is clear from the facts mentioned above. The appeal taken to the State Government was unsuccessful. From the above circumstances it is clear that the rejection of the application was on valid grounds. The High Court, so far as we could see, has not found that these reasons are not based on the materials on record. No such contention has also been taken before us by the said writ petitioner. If so, it follows that the order of the High Court directing the State Government to issue permission to the two writ petitioners ignoring the above circumstances is clearly erroneous.

From what is stated above, the judgment of the High Court allowing Special Civil Application Nos. 420 and 421 of 1966, cannot be sustained.

29. Coming to appeal No. 878 of 1968, the facts lie within a very narrow compass. For the year 1965-66, the third respondent in Special Civil Application No. 694 of 1965, out of which the appeal arises, had made an application on October 29, 1964, for starting a new school at Shakharkherda during the year 1965-66. The writ petitioner filed objections to the grant of permission to the third respondent. On the recommendation of the District Committee, the third respondent was allowed to open standards VIII and IX with one division only during the year 1965-66. The writ petition was filed to quash the permission granted to the third respondent. The State Government in its counter-affidavit has very elaborately referred to the various matters mentioned by the third respondent in his application and also to the recommendation made by the District Committee. The District Committee had recommended permission being granted to the third respondent on the ground that the management had very good experience in running schools and that it was also financially sound. It was also stated that at the place in question even when the writ petitioner was conducting a school with standards V to X, there was another school run by the Zila Parishad with standards V to VII. It was pointed out by the State that the population in the area demanded additional school with standard VIII onwards and it was an absolute necessity. They had also given details regarding the long experience that the third respondent had in running schools in several places as also the

soundless of its financial position.

30. Before the High Court the attack made by the writ petitioner was slightly different from that the other two writ petitioners in Special Civil Applications Nos. 420 and 421 of 1964. The attack on the grant of permission to the third respondent was made by this writ petitioner really based on clauses (1) and (2) of Rule 3. According to the writ petitioner the locality was not in need of any additional school as it will involve unhealthy competition. The High Court readjusted the writ petition on the ground that the petitioner therein cannot make any grievance of the grant made to the third respondent to start a school after a proper consideration of the merits of the claim of the latter.

31. Dr. Barlingay, learned counsel for the writ petitioner, who is appellant in this appeal, found considerable difficulty to satisfy us that any legal rights of the appellant herein had been infringed by grant of permission to the third respondent. We have already referred to the fact that the State has pointed out that even when writ petitioner was running a school with Classes V to X, the Zila Parished was running another school in the same area with Clauses V to VII. The State had also pointed out that the population of the area demanded an additional school. From the mere fact that by the opening of another school, some of the students of the appellant school may seek admission in the new school, it cannot be stated that any of the appellant's legal rights have been infringed. Dr. Barlingay has not been able to satisfy us that in grating permission to the third respondent any extraneous or irrelevant matters have been taken into account by the District Committee or the educational authorities. Nor was he able to satisfy us that the reasons given by the District Committee for the grant of permission to the third respondent on the ground that it had a long experience in running schools and that its financial position is also good, are erroneous. If so, it follows that there is no merit in this appeal.

32. In the result the judgment and order of the High Court allowing Special Civil Applications Nos. 420 and 421 of 1966, are set aside and Civil Appeals Nos. 160 and 161 of 1968, are allowed. The writ petitioner in Special Civil Applications Nos. 420 and 421 of 1966, will pay the costs of the appellants in both the appeals. There will be only one hearing fee to be paid by the two writ petitioners in equal proportion.

33. The judgment and order of the High Court dismissing Special Civil Application No. 694 of 1965, are confirmed and Civil Appeal No. 878 of 1968, will stand dismissed. The appellants pay the costs of the first respondent therein.

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