

ORISSA HIGH COURT: CUTTACK

W.P.(C) No. 27401 of 2020,
W.P.(C) No. 11704 of 2020,
W.P.(C) No. 30808 of 2020,
W.P.(C) No. 2600 of 2021,
W.P.(C) No. 8275 of 2021,
W.P.(C) No. 11603 of 2021,
And
W.P.(C) NO. 14289 of 2021

In the matter of applications under Articles 226 and 227 of the Constitution of India.

AFR

W.P.(C) No. 27401 of 2020

School Managing Committee of
Amaramunda Govt. Primary School,
Amaramunda

.....

Petitioner

-Versus-

State of Odisha & Others

.....

Opp. Parties

W.P.(C) No. 11704 of 2020

Lilly Samal & others

.....

Petitioners

-Versus-

State of Odisha & Others

.....

Opp. Parties

W.P.(C) No. 30808 of 2020

School Managing Committee of
Basupur Primary School

.....

Petitioner

-Versus-

State of Odisha & Others

.....

Opp. Parties

W.P.(C) No. 2600 of 2021

Siddhartha Sankar Swain & Others Petitioners

-Versus-

State of Odisha & Others Opp. Parties

W.P.(C) No. 8275 of 2021

Chairman, SMC of Khirang Primary School Petitioner

-Versus-

State of Odisha & Others Opp. Parties

W.P.(C) No. 11603 of 2021

Biranchi Narayan Sahoo & others Petitioners

-Versus-

State of Odisha & Others Opp. Parties

W.P.(C) NO. 14289 of 2021

SMC of Kantapada Primary School Petitioner

-Versus-

State of Odisha & Others Opp. Parties

For Petitioners : M/s. K.K. Swain, K. Swain
and J.R. Khuntia, Advocates
[In W.P.(C) No. 27401 of 2020]

M/s. A.K. Pandey, D.N. Mishra,
P.K. Sasmal & P.K. Das, Advocates,
[In W.P.(C) No. 11704 of 2020]

M/s. Rajjeet Roy, S.K. Singh &
S. Sourav, Advocates.
[In W.P.(C) No. 30808 of 2020]

Mr. Durga Prasad Dhal, Advocate
[In W.P.(C) No. 2600 of 2021]

Mr. Amiya Kumar Mohanty-A,
Advocate
[In W.P.(C) No. 8275 of 2021]

M/s. Bhabani Shankar Rayaguru,
B.P. Pattanaik & P.R. Swain, Advocates
[In W.P.(C) No. 11603 of 2021]

M/s. D.N. Rath and A.K. Saa, Advocates
[In W.P.(C) No. 14289 of 2021]

For Opp. Parties: Mr. S. Parida,
Sr. Standing Counsel for S&ME Dept.

P R E S E N T:

THE HONOURABLE DR. JUSTICE B.R.SARANGI

Date of hearing : 29.04.2021 :: Date of Judgment: 04.05.2021

DR. B.R. SARANGI, J. School Managing Committee of
Amaramunda Govt. Primary School, Amaramunda, as
the petitioner, has filed W.P.(C) No. 27401 of 2020
seeking following relief:-

“a writ of mandamus or an appropriate writ be issued quashing the impugned order dated 16.09.2020 passed by the Block Education Officer, Agalpur (Duduka) under Annexure-2 so far as it relates to Merger of petitioner’s School, i.e. Amaramunda Govt. Primary School and the said School may be allowed to run in Amaramunda village without any hindrance and the Govt. Notification dated 11.03.2020 under Annexure-3 which is contrary to the Odisha Right of Children to Free and Compulsory Education Rules, 2010 may also be quashed.”

Lilly Samal and thirty-seven others, as the petitioners, have filed W.P.(C) No. 11704 of 2020 seeking following relief:-

“The petitioner therefore, humbly prays that this Hon’ble Court may graciously be pleased to admit the writ application, issue a Rule NISI calling upon the opposite parties to show cause as to why the petitioners’ school Rahala Primary School shall not be merged with the Rahala Upper Primary School which is situated within one campus and as to why the Rahala Primary School will be merged with the UGUP school, if the opposite parties failed to show cause or shown insufficient cause the rule may be made absolute against the opposite parties.”

School Managing Committee of Basupur Primary School has filed W.P.(C) No. 30808 of 2020 seeking following relief:-

“It is therefore, humbly prayed that this Hon’ble Court may graciously be pleased to issue rule NISI calling upon the Opp.Parties to show cause as to why their decision taken under notification dtd. 22.10.2020 under annexure-2 and order dated 05.11.2020 under annexure-4 to consolidate/merge Basupur Primary School with Inkerdia Primary School, shall not be quashed.

And if the Opp.Parties fail to show cause or show insufficient cause, make the said rule absolute by issuing a writ of certiorarified (sic) mandamus quashing the order directing merging of Basupur Primary School with Inkerdia Primary School under annexure-2 & 4.”

Siddhartha Sankar Swain and three others have filed W.P.(C) No. 2600 of 2021 seeking following relief:-

“Under the circumstances, the Petitioners therefore, pray that notice of ‘Rule Nisi’ be issued to the Opposite Parties calling upon them to show cause as to why the list of schools proposed for consolidation under Soro Block for the year 2020-21 to the extent of Sl. No. 1 (Aharpur Parsurampur school) shall not be quashed.

And upon the Opposite Parties not showing cause or failing to show adequate cause, the said Rule be made absolute and a writ in the nature of Mandamus or any other appropriate writ as may be deemed fit and proper be issued quashing the list of schools proposed for consolidation under Soro Block for the year 2020-21 to the extent of Sl. No.1 (Aharpur Parsurampur school).”

Chairman, SMC of Khirang Primary School, as the petitioner, has filed W.P.(C) No. 8275 of 2021 seeking following relief:-

“Issue Rule NISI calling upon to the Opp.parties to show cause as to why the impugned order dated 02.02.2021 under Annexure-1 shall not be quashed and the Opp.parties may not be prohibited to insist upon the merger of petitioner’s school as it is not coming within the ambit of policy of rationalization;

And if the Opp.parties do not show cause or show insufficient cause the impugned order of the B.E.O. dt.2.2.21 under Annexure-1 may be quashed, and an appropriate writ may be passed prohibits Opp.parties not to insist upon the merger of

petitioner's school as it is not coming within the ambit of policy rationalization."

Biranchi Narayan Sahoo and two others have filed W.P.(C) No. 11603 of 2021 seeking following relief:-

"i) The order vide No.1247/SMR dated 18.01.2021 passed by the Opp.Party No.1 under Annexure-10 and the office order dated 23.10.2018 issued by the Opp.Party No.6 under Annexure-2 shall not be set aside/quashed, as the same is illegal, arbitrary and contrary to the Notification dated 14.05.2018 under Annexure-1 as well as Notification vide No.5379/SME dated 07.03.2020,

ii) The Opp.Parties shall not be directed, not to merge the Government Primary & Upper Primary School (Satellite School) with Bapuji Bidyapitha, Dholamara (Lead School),

iii) The action of the Opp.Parties shall not be declared as illegal, arbitrary and no nest in the eye of law."

SMC of Kantapada Primary School, as the petitioner, has filed W.P.(C) No. 14289 of 2021 seeking following prayer:-

"Under the above circumstances, it is therefore humbly prayed that this Hon'ble Court may be graciously pleased to issue a writ in the nature of writ of mandamus or any other appropriate writ, direction or order by quashing the notification made by the opposite party no.1 dated 26.02.2021 under Annexure-5, so far as it relates to the petitioner's school, which has been reflected at Sl. No.79 is concerned since the petitioner's school has been enlisted in clear

violation of the guidelines under Annexures-1,2 and 4 of the writ application.

And this Hon'ble Court be further pleased to direct the opposite parties 1 to 6 to allow the petitioner's institution, i.e. Kantapada Primary School to function as usual without any interruption and by allowing it to take admission of the students.

And this Hon'ble Court be pleased to pass any further order/orders or direction/directions as this Hon'ble Court deems fit and proper in the facts and circumstances of the case."

2. On a careful reading of the reliefs, quoted hereinbefore, it is emerged that in all these writ petitions the petitioners essentially seek to quash the notification no. 5465/SME., dated 11.03.2020 issued by the Government of Odisha in School & Mass Education Department, pursuant to the policy framed vide notification no.10442/SME dated 14.05.2018, for rationalization and consolidation of schools under School & Mass Education (S&ME) Department, as well as the consequential office memorandum no. 5538/SME., dated 11.03.2020 for implementation of guidelines for the policy of rationalization and consolidation of schools. Therefore, all these writ petitions have been heard together, along with other

batch of cases, and are disposed of by this common judgment which will govern in all the cases.

3. In course of hearing, Mr. S. Parida, learned Senior Standing Counsel appearing for the State contended that since the notification no. 5465/SME., dated 11.03.2020 and subsequent office memorandum no. 5538 dated 11.03.2020 have been issued pursuant to the policy decision of the Government taken vide notification no.10442/SME dated 14.05.2018, thereby, to justify such policy decision counter affidavit has been filed by opposite party no.1 in W.P.(C) No. 27401 of 2020 and the same is adopted in all the cases.

4. Therefore, the relief sought in all these writ petitions being analogous and the cause of action involved therein being similar, with the consent of the learned counsel appearing for the respective parties and for the sake of convenience and brevity, the facts of W.P.(C) No. 27401 of 2020 are referred to, in a nutshell, for just and proper adjudication of all the cases.

5. The factual matrix, as asserted in W.P.(C) No. 27401 of 2020, is that Amaramunda Government Primary School was established in the year 1954. It is one of the oldest institutions in the locality. The said school is imparting education from Class-I to V. There are two teachers working in the said school. As such, the school in question has got sufficient infrastructure, i.e., five class rooms with a pucca building. For the year 2019-20, the roll strength of the said school was 33. Thereby, the authorities directed the Headmaster of the School not to give admission to the children in Class-I. Had the admission been made in Class-I in 2020, then certainly the strength of the school would have been increased beyond 42, as nine guardians of village Amaramunda were interested to admit their wards in Class-I of the said school. Most of the population of the village Amaramunda belonged to SC and OBC communities. Although since 1954, the said school is catering education to the need of local children of that area, basing upon the Government order dated

27.08.2020, the Block Education Officer, Agalpur, vide office order no.1048 dated 16.09.2020 directed for merger/ consolidation of Amaramunda Government Primary School with Laxmanpali Project U.P. School, even though the roll strength of the school was 33. Such direction was issued basing on the notification No. 5465/SME., dated 11.03.2020 with regard to rationalization and consolidation of schools under School and Mass Education (S&ME) Department and subsequent office memorandum no. 5538 dated 11.03.2020 with regard to implementation of guidelines for the policy of rationalization and consolidation of schools.

6. Mr. K.K. Swain, learned counsel appearing for the petitioner in W.P.(C) No.27401 of 2020 contended that the Government Notification No.5465/SME dated 11.03.2020 for rationalization and consolidation of schools under School and Mass Education Department and consequential office memorandum no.5538/SME dated 11.03.2020 with

regard to implementation of rationalization of policy decision cannot sustain in the eye of law. As a consequence thereof, the notification no.11842/SME., dated 27.08.2020 issued by the Govt. of Odisha in S&ME Department with regard to rationalization and consolidation of schools also cannot sustain. Thereby, the direction given by the Block Education Officer, Agalpur vide Annexure-2 dated 16.09.2020, in pursuance of notification no.11842/SME., dated 27.08.2020, for merger of school also cannot sustain, as the same is violative of the provisions contained in Right of Children to Free and Compulsory Education Act, 2009 (for short the "Act, 2009") read with Odisha Right of Children to Free and Compulsory Education Rules, 2010 (for short the "Rules, 2010"). It is further contended that as defined under Section 2(f) of the Act, 2009, the elementary education means the education from first class to eighth class. Thereby, the impugned notification no.5465/SME., dated 11.03.2020 and office memorandum no. 5538 dated 11.03.2020 with regard to

implementation of guidelines for the policy of rationalization and consolidation of schools also cannot sustain in the eye of law, being contrary to the provisions contained under the Act, 2009 and Rules, 2010.

It is further contended that under the Act, 2009, there is no provision for limiting roll strength of the students in a school. In the name of rationalization and consolidation of schools, as a policy decision of the Government, the roll strength of a school cannot and should not be limited to a particular strength. It is further contended that the policy decision of the Government cannot be contrary to the statutory provisions governing the field, particularly under the Act, 2009 and Rules, 2010. It is also further contended that it is the Central Government, which is empowered under the Act to remove the discrepancies. Therefore, if any difficulties are faced by the State Governments, they have to approach the Central Government under the provisions of law, instead of framing a policy on their

own for merger of schools, which is contrary to the provisions of law.

It is further contended that vide notification no.4661/SME., dated 25.02.2019, transport facilities for children of elementary schools have been provided, while issuing the notification for implementing policy decision of the Government for merger of schools, which is not permissible under the Rules, 2010. It is emphatically submitted further that Rule-6(2) of the Rules, 2010 when provides for up-gradation of schools, merger of schools is not permissible and any action taken also cannot sustain in the eye of law. Section-20 of the Act, 2009 stipulates that power to amend the schedule is only available with the Central Government, but not by any other authority, and thereby issuance of such policy decision, which touches the provisions of the Act, 2009 and Rules, 2010 framed thereunder, cannot sustain in the eye of law. As a result thereof, in view of issuance of the notification no.5465 dated 11.03.2020 for rationalization and consolidation of schools under

School & Mass Education (S&ME) Department and subsequent notification no.5538 dated 11.03.2020 for implementation of guidelines for such policy decision, the elementary education concept would lose its efficacy, if merger of schools would be taken place pursuant to such notification or office memorandum, as mentioned above. Thereby, he seeks for quashing of the said notification and consequential office memorandum and directions issued by the individual authorities to individual institutions mentioned in the different writ petitions.

To substantiate his contentions, he has relied upon ***Laxman Dundappa Dhamanekar v. Management of Vishwa Bharata Seva Samiti***, (2001) 8 SCC 378; ***Punjab Water Supply & Sewerage Board v. Ranjodh Singh***, AIR 2007 SC 1082; ***Santosh Kumar Sahu v. District Judge, Kalahandi-Nuapada***, 2009 (Supp-II) OLR 757; ***Mahadeo Bhau Khilare (Mane) v. State of Maharashtra***, (2007) 2 SCC (L & S) 194; ***Avinash Mehrotra v. Union of India***, (2009) 6 SCC

398; **Society for Unaided Private Schools of Rajasthan v. Union of India**, (2012) 6 SCC 1; **Vinod Kumar⁴ Koul v. State of Jammu & Kashmir**, 2013(I) SCC (L & S) 30; **Devi Multiplex v. State of Gujarat**, (2015) 9 SCC 132; **Lok Prahari v. State of Uttar Pradesh**, (2016) 8 SCC 389; **Life Insurance Corporation of India v. Krishna Murari Lal Asthana**, (2016) 6 SCC 515; **Employees' State Insurance Corporation v. Mangalam Publications India Private Limited**, 2018(2) SCC (L & S) 241; **Lakshmikanta Mishra v. State of Odisha**, 2017 (Supp.II) OLR 1055; **Jule Khan Bai v. State** (Civil Writ Petition No.8990 of 2016 disposed of on 20.07.2019; and **Ganesh Chandra Upadhyay v. State of Utarakhand** (Writ Petition (PIL) No.39 of 2020.

7. Mr. A.K. Pandey, learned counsel appearing for the petitioners in W.P.(C) No.11704 of 2020 contended that notification no.5465 dated 11.03.2020 and consequential office memorandum no.5538 dated 11.03.2020 in the shape of

implementation of guidelines for the policy of rationalization and consolidation/merger of schools cannot be construed to be a policy decision of the Government and at best the same can be construed to be executive instructions. More so, an executive instruction cannot supersede the statutory provisions governing the field. It is further contended that the policy decision has to be published in the official gazette and the same has not been done in the instant case.

8. Mr. R. Roy, learned counsel appearing for the petitioner in W.P.(C) No.30808 of 2020 contended that before taking any action for merger of schools, the managing committees of the institutions have not been consulted. It is therefore followed that by exercising arbitrary and unreasonable power, direction has been given for merger of schools relying upon the notification no.5465 dated 11.03.2020 and subsequent office memorandum no.5538 dated 11.03.2020 with regard to guidelines for implementation of policy decision, which cannot sustain in the eye of law. It is further contended

that the roll strength cannot be a ground for merger of the schools de hors the provisions of law governing the field. Thereby, he seeks for quashing of the notification no.5465 dated 11.03.2020 as well as office memorandum no. 5538 dated 11.03.2020 and consequential order passed by the authority concerned.

9. Mr. B.S. Rayaguru, learned counsel appearing for the petitioners in W.P.(C) No.11603 of 2021 contended that even if the impugned notifications, as referred to above, are outcome of a policy decision of the State Government, the same can be subject matter of judicial review, if the same are illegal, irrational and contrary to the provisions of law. To substantiate his contention, he has relied upon ***State of NCT of Delhi v. Sanjeev @ Bitoo***, (2005) 5 SCC 181; ***Ramana Dayaram Sethy v. International Airport Authority of India***, (1979) 3 SCC 489; and ***State of Punjab v. Brijeswar Singh Chahal***, (2016) 6 SCC 1.

10. Mr. A.K. Mohanty-A, learned counsel appearing for the petitioner in W.P.(C) No.8275 of 2021

contended that the report of the competent authority has not been taken into consideration while passing the order of merger of school and, thereby, the same cannot sustain in the eye of law. In support of his contention, he has relied upon the judgment of this Court in **Basanta Kumar Sahoo v. State of Odisha**, 2018 (II) ILR CUT-200.

11. Mr. D.N. Rath, learned counsel appearing for the petitioner in W.P.(C) No.14289 of 2021 and Mr. D.P. Dhal, learned counsel for the petitioners in W.P.(C) No.2600 of 2021 also reiterated the contentions raised by learned counsel for the petitioners in other writ petitions, as mentioned above.

12. Mr. S. Parida, learned Senior Standing Counsel appearing for School and Mass Education Department, referring to counter affidavit filed by opposite party no.1, contended that the State Government has introduced a policy of rationalization and consolidation of schools vide School and Mass Education Department notification no.5465 dated

11.03.2020 under Annexure-3 to W.P.(C) No.27401 of 2020 with the objectives (1) to reduce the number of educationally and economically sub-optimal schools; (2) to rationalize and consolidate existing schools to reduce the category of schools thus fix the range category to only four, i.e. I-V, I-VIII, I-X & VI-X; (3) to create as many integrated secondary schools as possible hence provide education up to high school level in one single campus, improving transition; and (4) to consolidate standalone Upper Primary and Secondary Schools. The exercise of consolidation is to be conducted in the manner so as to ensure optimum number of schools with optimum environment, create as many integrated secondary schools as possible and convert all other schools having reasonable enrolment to any of the four categories of schools as mentioned in the objectives of the policy, as indicated above. It is further contended that on the basis of such policy decision, guidelines to implement the policy of rationalization and consolidation of schools was issued by the Government in the Department of School

and Mass Education vide office memorandum no.5538 dated 11.03.2020. The primary objective of such rationalization and consolidation is to improve the learning environment and outcomes for students. This will be achieved by streamlining and increasing teacher per grade, with better infrastructure and concentrated investment of resources. Consolidation will lead to fully functional schools that have adequate teachers, infrastructure and resources. Consolidation will also lead to a large number of integrated schools (schools that are from I-X or VI-X) so that transition rate up to grade 10 is smooth and continuous and reduces dropout. This will also improve learning and institutional time available to teachers and students through reduction in administrative burden on teachers. It is further contended that at all times, the interest of the students will be the guiding principle of the consolidation exercise. Hence the rationalization and consolidation policy aims to achieve the following objectives:

1. Improve learning outcomes.
2. Make schools aspirational for students with a larger peer group and better sources.
3. Improvement of Pupil-Teacher Ratio (PTR) and Teacher per Grade ratio.
4. Better infrastructure facilities.
5. Better academic environment with additional Teaching Learning Materials (TLM) facilities, e-learning and curricular facilities.
6. Improve quality of monitoring.
7. Vibrant parent community as enrolment increases and PTMs stabilize.
8. Better transition rate and school management.

Thereby, it is contended that as per the provisions enumerated under the government notification dated 11.03.2020, which is impugned herein, the Government upon careful examination have laid down certain principles for consolidation of schools. While laying down the provisions and principles for consolidation of schools as per the guidelines the Government Primary/Upper Primary schools with low enrolment, having another elementary school within a reasonable distance, are to

be consolidated with nearby schools with better enrolment and/or better infrastructure. The basis on which the schools are to be selected for consolidation are mentioned in Table-1 furnished to the said notification dated 11.03.2020. It is contended that on a close scrutiny of the said table mentioned in the notification dated 11.03.2020 it is apparently clear that the primary school having less than 40 students within a non-scheduled area within a distance of 1 KM of any elementary school shall be merged with the lead school. Besides the above, on a meticulous reading of government notification dated 11.03.2020, it is made clear that the Government in the Department of School and Mass Education, while formulating the norms and guidelines for rationalization and consolidation of schools, classified the consolidation under different categories. It is further contended that under the government notification dated 11.03.2020, the school with highest class in group shall normally be the lead school with which other school (satellite school) will

consolidate, provided it has sufficient infrastructure and suitable location. In case there is more than one school having the eligibility for being the lead school, the District Level Consolidation Committee may decide as to which school will be selected as lead school. Thereby, the District Level Consolidation Committee, upon verification of the necessary factors, such as the roll strength of the satellite and lead school, the distance between two schools, the natural barrier if any between the two schools and other basic requirement for the purpose of consolidation of the concerned school, takes decision for merger of schools. Consequentially, no illegality or irregularity has been committed by issuance of such notification, which is sought to be quashed by this Court in exercise of the power of judicial review under Article 226 of the Constitution of India.

It is further contended that so far as the petitioner-school is concerned, the student strength is 33 i.e. below 40. Therefore, the petitioner-school attracts sl. no.3 of the table mentioned in the notification dated

11.03.2020 and, as such, rationalization and consolidation has been done as per roll strength for the year 2019-20. As such, the student strength was uploaded by the school concerned in the Odisha School Education Programme Authority portal, for which the school was considered for rationalization and consolidation for two reasons, i.e., (i) the student strength of the petitioner-school is 33, i.e. below 40; and (ii) distance between satellite school and lead school is 800 meters, which is well within 1 KM. Thereby, there is no arbitrary or unreasonable exercise of power of the authority directing for such merger of school. So far as other writ petitions are concerned, similar distance factors have been taken into consideration, which have been mentioned in different slabs of the table indicated in the notification dated 11.03.2020. As a consequence thereof, the decision taken by the authority is well justified and should not be interfered with in exercise of the power under judicial review as exercised by this Court and, more so, this Court is not sitting as an

appellate authority over the decision taken by the authority to have the merger of schools.

To substantiate his contentions, he has relied upon **T.N. Education Dept. v. State of Tamil Nadu**, (1980) 3 SCC 97; **State of Punjab v. Ram Lubhaya Bagga**, (1998) 4 SCC 117; **BALCO Employees' Union (Regd.) v. Union of India**, (2002) 2 SCC 333; and **Directorate Film Festival v. Gaurav Ashwin Jain**, (2007) 4 SCC 737.

13. In course of hearing, this Court passed orders on 09.03.2021, 07.04.2021 and 12.04.2021 in W.P.(C) No. 27401 of 2020 to the following effect:-

“W.P.(C) Nos. 27401, 16047, 17201, 24505, 27080, 27630, 28538, 28836, 29097, 29162, 29512, 29591, 29746, 29805, 29828, 29983, 30459, 30488, 30587, 30723, 30808, 30830, 31004, 31066, 31112, 31138, 31199, 31238, 31413, 11704, 31414, 31415, 31416, 31640, 32161, 32255, 32258, 32450, 32454, 32515, 32598, 32672, 32819, 32878, 33010, 33228, 33336, 34080, 34602, 34659, 34880, , 36635, 36692, 36760, 36844, 37089, 37528, 37959 , 16047 of 2020 and W.P.(C) No. 312, 411, 419, 586, 846, 984, 1074, 1315 1461, 1462, 1525, 1719, 1780, 1830, 1847, 1848, 2180, 2303, 2305, 2359, 2471, 2529, 2600, 2610, 2738, 2815, 3119, 3517, 3536, 3794, 3809, 3964, 4238, 4288, 4741, 4827, 4861, 4882, 5110, 5115, 5118, 5227, 5269, 5625,

5643, 5644, 5648, 5684, 5903 and 5691, 6001, 6033, 6246, 6575, 6599, 6607, 6675, 6850, 7037, 7122, 7124, 7468, 7513, 7676, 7757, 8091, 8224, 8226, 8275, 8279, 8705 and 8807 of 2021

06. 09.03.2021 The matter is taken up through hybrid arrangement (virtual/physical mode).

Heard Mr. K.K. Swain, learned counsel for the petitioner and Mr. S. Parida, learned Senior Standing Counsel for School and Mass Education Department.

Mr. S. Parida, learned Senior Standing Counsel for School and Mass Education Department contended that the State has filed counter affidavit in some cases and the same shall be adopted in all the connected cases. Due to non-availability of learned counsel for the petitioners in each case, copy of the counter affidavit has not been served with them. Therefore, he has requested learned counsel for the petitioners to collect the copy of the counter affidavit in his office enabling them to file rejoinder affidavit.

Thereby, this Court permits learned counsel for the petitioners to collect the copy of the counter affidavit from the office of the Senior Standing Counsel for School and Mass Education Department within three days.

W.P.(C) No.27401 of 2020 be treated as lead case. Accordingly, learned counsel for the petitioners is directed to file their rejoinder affidavits in all the connected cases within a period of seven days and they are requested to assist this Court for early disposal of the case.

Put up this matter on 22.03.2021.

Interim order passed earlier shall continue till the next date.

Sd/-DR. B.R. SARANGI, J.”

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“W.P.(C) Nos. 27401, 11704, 16047, 17201, 19092, 22894, 24505,27080, 27630, 28538, 28836, 29097, 29162, 29512, 29591, 29746, 29805, 29828, 29983, 30459, 30488, 30587, 30723, 30808, 30830, 31004, 31066, 31112,

31138, 31199, 31238, 31413, , 31414, 31415, 31416, 31640, 32161, 32255, 32258, 32372, 32450, 32454, 32515, 32598, 32672, 32819, 32878, 33010, 33228, 33336, 34080, 34602, 34659, 34880, 36635, 36692, 36760, , 37089, 37528, 37959, of 2020 and W.P.(C) Nos. 312, 411, 419, 586, 846, 984, 1074, 1315 1461, 1462, 1525, 1719, 1780, 1830, 1847, 1848, 2180, 2303, 2305, 2359, 2471, 2529, 2600, 2610, 2738, 2815, 3052, 3119, 3517, 3536, 3794, 3809, 3964, 4238, 4288, 4741, 4827, 4861, 4882, 4884, 5110, 5115, 5118, 5192, 5227, 5269, 5625, 5643, 5648, 5684, 5691, 5691, 5903, 6001, 6032, 6033, 3078, 6246, 6575, 6599, 6607, 6675, 6850, 7037, 7122, 7124, 7468, 7513, 7676, 7757, 8091, 8224, 8226, 8275, 8279, 8672, 8705, 8807, 8837, 8862, 9206, 9618, 9853, 9990, 10468, 10608, 10613, 10781, 10785, 10927, 11578 and 11603 of 2021

08. 07.04.2021 The matter is taken up by video conferencing mode.

Mr. S. Parida, learned Senior Standing Counsel for the School and Mass Education Department is directed to produce the file dealing with merger of schools on Monday (12.04.2021).

Put up this matter on 12th April, 2021.

Interim order passed earlier shall continue till the next date.

As the restrictions due to the COVID-19 situation are continuing, learned counsel for the parties may utilize the soft copy of this order available in the High Court's website or print out thereof at par with certified copies in the manner prescribed, vide Court's Notice No.4587, dated 25th March, 2020.

Sd/-DR. B.R. SARANGI, J"

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W.P.(C) Nos. 27401, 11704, 16047, 17201, 19092, 22894, 24505,27080, 27630, 28538, 28836, 29097, 29162, 29512, 29591, 29746, 29805, 29828, 29983, 30459, 30488, 30587, 30723, 30808, 30830, 31004, 31066, 31112, 31138, 31199, 31238, 31413, , 31414, 31415,

31416, 31640, 32161, 32255, 32258, 32372, 32450, 32454, 32515, 32598, 32672, 32819, 32878, 33010, 33228, 33336, 34080, 34602, 34659, 34880, 36635, 36692, 36760, , 37089, 37528, 37959, of 2020 and W.P.(C) Nos. 312, 411, 419, 586, 846, 984, 1074, 1315 1461, 1462, 1525, 1719, 1780, 1830, 1847, 1848, 2180, 2303, 2305, 2359, 2471, 2529, 2600, 2610, 2738, 2815, 3052, 3119, 3517, 3536, 3794, 3809, 3964, 4238, 4288, 4741, 4827, 4861, 4882, 4884, 5110, 5115, 5118, 5192, 5227, 5269, 5625, 5643, 5648, 5684, 5691, 5691, 5903, 6001, 6032, 6033, 3078, 6246, 6575, 6599, 6607, 6675, 6850, 7037, 7122, 7124, 7468, 7513, 7676, 7757, 8091, 8224, 8226, 8275, 8279, 8672, 8705, 8807, 8837, 8862, 9206, 9618, 9853, 9990, 10468, 10608, 10613, 10781, 10785, 10927, 11578 and 11603 of 2021

09. 12.04.2021 These matters are taken up by video conferencing mode.

Mr. S. Parida, learned Senior Standing Counsel for School & Mass Education Department is directed to file counter affidavit, which he relies upon in W.P.(C) No. 27401 of 2020, along with other documents by tomorrow (13.04.2021).

Mr. K.K. Swain, learned counsel appearing for the petitioner shall also file the relevant documents and rejoinder affidavit, which he sought to rely upon in W.P.(C) No. 27401 of 2020, so that all the connected matters can be disposed of.

In compliance of order dated 09.03.2021, Mr. S. Parida, learned Senior Standing Counsel for School & Mass Education Department has produced the relevant file dealing with decision of merger of schools. The same be kept on record.

Put up these matters on 15th April, 2021 for further hearing.

Interim order passed earlier shall continue till the next date of listing.

As the restrictions due to the COVID-19 situation are continuing, learned counsel for the parties may utilize a soft copy of this order available in the High Court's website or print out thereof at par with certified copy in the manner

prescribed, vide Court's Notice No.4587 dated 25.03.2020.

Sd/-DR. B.R. SARANGI, J.”

On perusal of the aforementioned orders, it reveals that vide order dated 09.03.2021, with agreement of all the parties, W.P.(C) No. 27401 of 2020 has been treated as lead case and this Court directed the petitioners to file their rejoinder affidavit to the counter affidavit filed by the State. Vide order dated 07.04.2021, this Court directed Mr. S. Parida, learned Senior Standing Counsel for the School and Mass Education Department to produce the file dealing with merger of Schools by 12.04.2021. On 12.04.2021, in compliance of order dated 07.04.2021, Mr. S. Parida, learned Senior Standing Counsel for the School and Mass Education Department produced photocopy of the relevant files, along with note-sheets, dealing with the decision of the merger of schools, bearing File No. SME-GHS-GHS - 0099-2018, PT1-SME-GHS- GHS-0099-2018, PT2-SME-

GHS- GHS-0099-2018, PT3-SME-GHS-GHS-0099-2018
and PT4-SME-GHS-GHS-0099-2018.

14. Before delving into the notification no. 5465/SME., dated 11.03.2020 for rationalization and consolidation of schools under the School and Mass Education (S&ME) Department, for just and proper adjudication of the case, some of the office notes, which gave rise to issuance of such notification, are referred to below:-

“Noting No.1:

The Notification of Merger of Government Upper Primary Schools with nearby/adjacent Government High Schools was issued vide No. 16167 dtd. 30.08.2017. (16167-Page1). The step was taken for optimum utilization of available resources and Government, after careful consideration decided to merge 1603 Government Upper Primary Schools with adjacent/nearby Govt. High Schools.

It was dealt in the Section File bearing No. SME-GHE-GHS-0080-2015.

Further an addendum was issued vide No. 5113 dtd. 13.03.2018(5113~page1) regarding naming of the Nodal High Schools after merger.

Since last two decades there has been expansion of access to schools and at present there is hardly any un-served habitation left in the state. One of the important factors affecting the pace of growth in quality education is lack of adequate number of teachers in many schools. Ironically, many schools are running with very less number of teachers in our state although it has a high highly favourable PTR i.e. 23:1 against the

RTE Norm 40:1. This is the reason way a continuous effort has been made in last 10 years to rationalize the teachers. But rationalization of teachers alone has not solved the acute problem of vacancy of teachers in many schools especially those located in rural & remote areas.

As discussed in the meeting the DSE(O) has furnished a draft notification on Policy of Rationalisation of Schools which is attached below.

Accordingly the file is submitted for kind perusal and further orders.

Siba Prasad Murmu (Assistant Section Officer, School & Mass Education), 16-Mar-2018 17:50:13.”

“Noting No.2:

Notes above explain.

No formal proposal of DSE(O) for rationalization of schools has been received rather a draft Notification has been received in this regard on personal contact and placed herewith for kind consideration and orders of Government.

As revealed, it is proposed that such rationalization process is proposed to be made for improvement of quality education and availability of teaching as well as material resources to pace cope with the exponential growth of elementary and secondary schools in the state since last two decades.

The details of such proposed rationalization has been shown in the draft Notification placed in the correspondence side may be seen.

It is relevant to mention here that Government has already taken effective steps for merger of 1603 nos. of nearby/adjacent Government U.P. Schools with that nos. of Government High Schools in the State placed either in one campus or the adjacent campuses vide this Department Notification No.16167 dt.30.08.2017 and subsequent amendment vide Addendum No. 5113 dt. 13.3.18, attached to the file may be seen.

Now the file may be placed before Principal Secretary for kind consideration.

If considered, the file may be submitted to the Hon'ble Minister for kind approval.

For orders

BIbekananda Guru (Desk Officer, School & Mass Education), 17-Mar-2018, 12:03:45."

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"Noting No.8:

My observations are as under:

- 1. Student strength for merger for Educationally Backward Block and TSP area may be considered as a special case. Some relaxation is suggested for EBB/TSP areas.*
- 2. Addition of Class-VIII in Aided M.E. School, whenever necessary be considered.*
- 3. District Level Merger Committee (DLMC) proposed to be chaired by District Education Officer may not be appropriate, as it has larger administrative ramification. Can we not make Collector as chairman?*
- 4. Among other factors, communication facility to the lead school may also be considered.*
- 5. Maintaining of two separate attendance register for elementary and secondary teachers may be re-examined. Can we not one attendance register?*
- 6. Point-(XVIII)-In place of Trained Graduate Teachers, it may be written as Graduate with training qualification/level-III teachers so that they should not claim as TGT in future.*
- 7. Horizontal/vertical integration among Block Grant School and GIA school may be allowed. Rest seems to be in order. The typographical error be checked.*

File be submitted for approval after re-examination of the above points.

Shri Badri Narayan Patra (Cabinet Minister, School & Mass Education), 02-Apr-2018 14:17:10"

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"Noting No. 13.

Kind observation of Hon'ble Minister, SME at noting-8 and kind orders of Principal Secretary at noting-9 above may be seen.

Additional Secretary have made discussion in the matter with all concerned.

As per kind discussion as desired, the file is submitted with the following point wise compliance to the kind observation of Hon'ble Minister, SME:-

<u>Observation</u>	<u>Compliance suggested</u>
<i>1. Student strength for merger for Educationally Backward Block and TSP area may be considered may be considered as a special case</i>	<i>Relaxation as suggested can be made for them.</i>
<i>2. Addition of class-VIII in Aided M.E. School whenever necessary be considered</i>	<i>This can be considered separately as per the government norms.</i>
<i>3. District level Merger Committee (DLMC) proposed to be chaired the DEOs may not be appropriate, as it has larger ramification. Can we not make Collector as Chairman?</i>	<i>Yes, Collector can be Chairman of the DLMC.</i>
<i>4. Among other factors, communication facility to the lead school may also be considered.</i>	<i>It may be taken care of.</i>
<i>5. Maintaining of two separate attendance register for elementary and secondary teachers may be re-examined. Can we not one attendance register</i>	<i>It may not be considered as because both are of separate cadres.</i>
<i>6. Point (XVIII) in place of Trained Graduate Teachers, it may be written as Graduate with training qualification/Level-III teachers as that they should not claim TGT in future.</i>	<i>It can be considered</i>
<i>7. Horizontal/Vertical integration among block grant school and GIA school may be allowed</i>	<i>It can be considered</i>

In view of the above observation, Hon'ble Minister, SME have accepted all other suggestion approved as in order in the Resolution submitted for Government orders. As per discussion all points of observation can be meted out except point No-5 above.

Hence, if considered, the above compliance will be inserted in the draft before sending for approval.

For kind orders.

Bibekananda Guru (Desk Officer, School & Mass Education), 24-Apr-2018 19:34:59"

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“Noting 15

Sl. No	Observation	Compliance suggested
1	<i>Student strength for merger for Educationally Backward Block and TSP area may be considered as a special case. Some relation is suggested for EBB/TSP areas</i>	<i>Relaxation as suggested can be made for them</i>
2	<i>Addition of Class-VIII in Aided. M.E. School whenever necessary be considered.</i>	<i>This can be considered separately as per the government norms.</i>
3	<i>District Level Merger Committee (DLMC) proposed to be chaired by DEOs may not be appropriate as it has larger administrative ramification. Can we not make Collector as Chairman.</i>	<i>Yes, Collector can be considered as the Chairman of the DLMC.</i>
4	<i>Among other factors, communication facility to the lead School may also be considered.</i>	<i>It can be taken care of.</i>
5	<i>Maintaining of two separate attendance Register for Elementary and Secondary teachers may be re-examined. Can we not one attendance register?</i>	<i>It may not be considered as because both are of separate cadres.</i>
6	<i>Point (XVIII) In place of Trained</i>	<i>It can be considered</i>

	<i>Graduate Teachers, it may be written as Graduate with training qualification/Level-III teachers so that they should not claim TGT in future.</i>	
7	<i>Horizontal/Vertical integration among Block Grant School and GIA School may be allowed.</i>	<i>It can be considered.</i>

The kind observation of Hon'ble Minister and compliance thereon are reflected in the above table.

The file may be submitted before Principal Secretary for kind orders if the above compliance will be inserted in the draft notification to be submitted to Hon'ble Minister.

Bibekananda Guru (Desk Officer, School & Mass Education) 25-Apr-2018 13:14:28"

“Noting 16

Kind observation of Hon'ble Minister at noting 8 and orders of Principal Secretary at noting 9.

To comply and accommodate the observation of Hon'ble Minister, I have discussed the matter with SPD, OPEPA and SATH team members engaged in doing the rationalization work. Then the same was discussed with Hon'ble Minister and the point wise compliance is suggested in noting 15.

If considered the above proposal/modification as mentioned in noting 15 may be incorporated in the rationalization policy and the file may be submitted for kind Government approval.

Khagendra Kumar Padhi (Additional Secretary, School & Mass Education) 25-Apr-2018 18:58:17

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Noting 34

Dak No.38886/18 relates to the UOI No.26 dt. 5.11.18 received from the Hon'ble Minister, S&ME, S&T addressed to the Principal Secretary,

SME attached to the correspondence side and note below may be seen.

As intimated it is widely alleged that the proposal submitted by the district authority for merger of Schools in different districts are not properly examined and in many cases local issues were ignored. This aspect lead to lot of resentment. Besides, in the mid of the session it would not be prudent to further implement any merger proposal.

Hence, as intimated immediate instruction be issued to the DEOs to further examine the merger and submit their report for further examination at Government level.

In other way Hon'ble Minister, S& ME have also intimated for necessary instruction to the field authority for keeping an hold of the merger process.

Kind orders of Principal Secretary on the kind observation/order of Hon'ble Minister may be seen on the body of the UOI.

It is to mention here that taking into account the successful implementation of the earlier principle issued in this regard among the 1603 nos. of adjacent and nearby UP Schools with that of the Govt. High Schools further steps have been taken for extending the principle of merger to different Govt. Schools within a radius of 100 mtrs and even in certain cases where the student strength is less than 20.

The detail benefits/goal of such merger has been explained in this Department Notification No.10442 dt. 14.5.18 may be seen.

Although a no. of benefits are there in the merger policy of Government, but also a no. of allegations are received against the policy mainly on distance problems, hazardous communication problem and local politics among the different villages so also the naming of Schools etc.

It is further to mention here that various representations are also received for welcoming the principle of merger and request for merger of their Schools with the nearby Schools.

In face of above fact and circumstances the file may be submitted before Principal Secretary for kind orders on the UOI note received from the Hon'ble Minister, S&ME.

For orders.

Enclosures

- *Incoming Dak 38886/SME/2018 date 13-Nov-2018 10:41:01 has been added
Bibekananda Guru (Desk Officer, School & Mass Education), 13-Nov-201 11:28:28*

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Noting 37

The matter was discussed with Hon'ble Minister today at 1.00 PM in his office chamber and since the merger process is on and wherever there are no objections, it may go ahead and wherever objections are there, it may be kept pending for implementation from next academic session and there is no need to give any written direction in this regard. In the last VC with DEOs and BEOs, the matter has been explained to all. Hence, no need for further action.

Pradipta Kumar Mohapatra (Principal Secretary, School & Mass Education), 14-Nov-2018 13:18:00

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Noting-53

Notes above explains in detail.

The matter regarding rationalization and consolidation of schools under S&ME Department. The SPD, OSEPA has submitted the draft notification in consultation with DSE (O) and DEE (O) on rationalization and consolidation of schools. The modified draft notification submitted therein is attached as Notification (Draft-3) may kindly be seen.

In view of the above, before issue the notification a meeting may be conducted under the Chairmanship of Additional Chief Secretary to Govt. (S&ME) for finalization of the revised notification submitted by the OSEPA.

Submitted for kind perusal and orders.

Banamali Behera (Section Officer, School and Mass Education), 27-Aug-2019. 14:11:49.

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Noting- 70

Kind orders of ACS at noting-64, the meeting notice on the policy of rationalization and consolidation of schools under S&ME Department has been communicated to all concerned vide this Department Letter No.18270-18270 Page-1 accordingly.

Now, the file may be submitted before ACS to take the aforesaid meeting.

* Draft 18270 Date 30-Aug- 2019 11.59.45 has been added.

Bhagyalaxmi Pradhan (Assistant Section Officer, School and Mass Education), 30-Aug-2019 12:06:08.

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Noting - 82

The letter no.7139 dtd. 20.09.2019 received from Odisha School Education Programme Authority (OSEPA) vide Dak No.31137/SME/2019 at correspondence side may kindly be seen.

This letter is regarding Rationalization and Consolidation of Schools under S&ME Department. It is to mention here that as per the decision made in the meeting dtd. 31.08.2019 19139 19139 Page1 under Chairmanship of the then Additional Chief Secretary to Government, S&ME Department regarding policy of rationalisation and consolidation of schools, the Director, Secondary Education, Odisha was directed/instructed in the said meeting to submit the modified draft notification on rationalization policy of schools to this Department for obtaining necessary Govt. orders. However, now the SPD, OSEPA has submitted the modified draft notification on rationalization of policy of schools to this Department since the draft notification was earlier initiated and submitted by the SPD, OSEPA 23458/SME/2019 Create a searchable grayscale PDF file 11'Page1

DFA-6

Enclosures-

- Drafts Letter (Draft-6) Date 07-Nov-2019 17:13:39 has been added

- *Incoming Dak 31137/SME/2019 Date 07-Nov-2019 13:20:14 has been added*
- *Draft 19139 Date 05-Nov-2019 16:54:15 has been added*

Bhagyalaxmi Pradhan (Assistant Section Officer, School and Mass Education), 07-Nov-2019 17:34:32.

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Noting - 84

Notes above explain

This is regarding revised draft proposal submitted by the OSEPA for modification of some of the existing provision of rationalization/merger issued vide this Department Notification no.10442/SME dt.14.05.2018.

It is to mention here that earlier considering such proposal in a high level meeting held under the chairmanship of ACS, S&ME dt. 31.08.2019 threadbare discussion was made and as per the said decision communicated vide this Department letter No.19139 dated 11.09.2019 (attached to noting-82 to the DSE (O) with a request to furnish required modified draft principle on rationalization/merger.

Now OSEPA has forwarded the same as above.

Although, Director, OSEPA is the Chairman of the State Level Merger Committee, if considered, before taking a decision on the aforesaid draft notification, DSE (O) may be supplied with the same with a request to furnish its considered views on the same early.

For kind orders.

Bibekananda Guru (Under Secretary, School and Mass Education), 12-Nov-2019 15:00:38.

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Noting - 92

The proceeding of meeting held on 19.01.2020 (5558/SME/2020 Create a searchable grayscale PDF file 0020'Page1) at 5 P.M. under the chairmanship of Hon'ble Minister, School and Mass Education, Odisha vide Dak

No.5558/SME/2020 at correspondence side may kindly be seen.

These following points (5558/SME/2020 Create a searchable grayscale PDF file 0020'Page2) have been discussed in the aforesaid meeting for taken into consideration relating to merger of Primary/Upper Primary/High Schools with nearby viable Govt. Schools.

1. All Schools having less than 20 enrollments to be merged with nearby viable Govt. school and students in these schools to be transferred to nearby Govt. schools.
2. Subsequently efforts to be made to merge all primary/upper primary/high schools with Govt. schools if available within 1km/2km/3km respectively. Policy in this regard to be formulated. Such consolidation will enable better learning outcomes with better teacher strength and better learning facilities.
3. One-time dislocation allowance up to Rs.5000/- can be considered along with escort allowance as per RTE in eligible cases to students being transferred in these closure and merger cases (in point (1) and (2) above).

It is to mention here that earlier, a Notification on policy of Rationalization of schools has been issued vide this Department Letter No.10442/SME dtd. 14.05.2018 (10442 10442'Page1) which deals the different modalities of merger of schools may be referred to.

Submitted for kind orders.

Enclosures

- Incoming Dak 5558/SME/2020 Date 05-Feb-2020 13:08:48 has been added.

Bhagyalaxmi Pradhan (Assistant Section Officer, School and Mass Education), 05-Feb-2020 15:15:51.

Noting - 93

Notes above explains.

The proceeding of meeting held on 19.01.2020 (5558/SME/2020 Create a searchable grayscale PDF file 0020'Page1) at 5 P.M. under the chairmanship of Hon'ble Minister, School and Mass Education may kindly be seen.

There are many points have been discussed in the aforesaid meeting. Among of these, regarding merger of High Schools with nearby Viable Govt. Schools is one of them.

According of the proceeding the following points have been taken into consideration relating to merger of primary/upper primary/high schools with nearby viable Govt. Schools.

- 1. All schools having less than 20 enrollments to be merged with nearby viable Govt. school and students in these schools to be transferred to nearby Govt. schools.*
- 2. Subsequently, efforts to be made to merge all primary/upper primary/high schools with Govt. schools if available with 1km/2km/3km respectively. Policy in this regard to be formulated. Such consolidation will enable better learning Outcomes with better teacher strength and better learning facilities.*
- 3. One-time dislocation allowance up to Rs.5000/- can be considered along with escort allowance as per RTE in eligible cases to students being transferred in these closure and merger cases (in point (1) and (2) above).*

In this connection it may be stated that steps have been taken in this regard issued vide a Notification on policy of Rationalization which deals the different modalities of merger of schools (10442 10442'Page1).

Banamali Behera (Section Officer, School and Mass Education), 05-Feb-2020 16:31:58.

Noting - 94

Notes above explain.

Discussed with Jt. Secretary (Dr. P.K. Mishra) who has handed over a copy of the aforesaid minutes of the meeting held under the Chairmanship of Hon'ble Minister, S&ME for required action in the matter pertaining to Section-VIII (B).

As examined, decision on three points regarding merger of primary schools with Govt. High Schools as above at point 1 to 3 may be seen.

As revealed some changes are suggested on this Department policy of merger issued vide

Notification dt.14.5.18 as attached to the notice above may be seen.

A new concept of extending one time compensation allowance to the beneficiary students on merger/closure of the school @Rs.5000/- has been decided in the said meeting.

It is further relevant to mention here that SPD, OSEPA being the Chairman of the State Level Merger Committee as per the aforesaid Govt. guideline has in the meantime submitted another proposal vide its letter dt.20.09.19 enclosing therewith a draft notification on merger/rationalization regarding further amendment in the merger policy which has already been under process and while examining the same a meeting was held under the chairmanship of the then Addl. Chief Secretary, S&ME on 31.8.19 and as per decision of the said meeting DSE(O) who was present in the meeting has been requested to furnish a modified guideline according to the discussion for consideration of Govt. vide this Department letter dt.12.9.19 attached to the file as outgoing may be seen which is awaited.

In view of above, if considered, the aforesaid decision of the meeting held on 19.1.20 under the chairmanship of Hon'ble Minister, S&ME be sent to the SPD, OSEPA/DSE(O) for inclusion of the same in the modified draft policy on merger/rationalization and furnish the same to this Department for consideration of its acceptance/Govt. order in this regard early or else to take a decision on the above three points only now.

Submitted for kind consideration and further order in the matter.

Jt. Secretary is on leave. File submitted for direct. Bibekananda Guru (Under Secretary, School and Mass Education), 06-Feb-2020 12:05:08.

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Noting - 101

Notes above explain.

Kind orders of Principal Secretary at noting-96 and notes thereafter.

The revised & modified policy on rationalization furnished by the SPD, OSEPA as above in his letter attached to the file may be seen.

Previous policy on merger has been attached to the file may also been referred to.

As submitted a meeting has also been held under the chairmanship of Principal Secretary, SPD, OSEPA & other OSEOPA, NIC & SATH-E officials and accordingly the draft Notification has been submitted for kind approval and orders of Govt.

Draft Notification has been attached to the file as DFA-7 for consideration.

In view of above, the file is submitted for kind orders in this regard.

For orders.

Bibekananda Guru (Under Secretary, School and Mass Education), 07-Feb-2020 17:10:46.

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Noting - 111

Kind orders of Hon'ble Chief Minister at Noting No.108

In the meantime, a meeting was held under the Chairmanship of DC-cum-ACS regarding fixation of One Time Dislocation Allowance to students moved under the Rationalization and Consolidation Policy of Government Schools.

The copy of the proceedings of the said meeting is appended herewith.

Noting -111 Scan5'Page1

It is decided in the meeting to extend an amount of Rs.3000/- to each affected students from the State Budget. Further, the tentative Budget estimate of no.of school identified with 20 or less than 20 students comes to 6344 and the total nos. of students comes to 98111. Hence, the Dislocation Allowance would comes to Rs.29.43 crore.

Provision may kindly be made in the S&ME Budget under Head "Incentive and Awards" under State Sector Scheme (Elementary Education) for the Dislocation Allowance.

File may please be endorse for kind approval of Hon'ble Chief Minister.

Khagendra Kumar Padhi (Consultant, School and Mass Education), 19-Feb-2020 19:17:51.

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Noting- 121

As discussed.

The relevant documents have been scanned and attached below as directed.

1. *Noting-121 Proceeding of the meeting on 25.02.2020'Page1*
2. *Noting-121 Draft notification of Rationalization and Consolidation of schools'Page1*
3. *Noting-121 Implementation guidelines'Page1*

Submitted for orders.

Bhagyalaxmi Pradhan (Assistant Section Officer, School and Mass Education), 27-Feb-2020 15:21:37

Proceeding of the meeting on 25.02.2020.PDF

Draft notification of Rationalization and Consolidation of schools.PDF

Implementation of guidelines. PDF

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Noting- 125

Notes from noting no.121 may please be seen.

1. *The Ratioanlization and Consolidation of schools under School and Mass Education Department was approved by the Hon'ble Chief Minister at noting-115.*
2. *A meeting was held under the chairmanship of D.C.-cum-ACS as a follow up to the meeting held on 19.01.2020, the proceeding of which is embedded herewith. Noting-121 Proceeding of the meeting on 25.02.2020'Page1.*
 - a. *Currently, in the Rationalization and Consolidation of schools the following are to be taken up:-*
 - i. *All schools having less than or equal to 20 students.*
 - ii. *All primary schools having less than 40 students in non-scheduled area and less than 25 students in scheduled area within 1 K.M. of another Govt. school to be consolidated.*
 - b. *In the said meeting, it was decided that the facilitation allowance of Rs.3000/- will be*

provided from the State budget to each student transferred and joined in the new Govt. school.

3. In the light of the above discussion and proceeding of the meeting held by D.C.-cum-ACS, the Rationalization and Consolidation of school policy (embedded) is modified and submitted herewith. Noting-121 Draft notification of Rationalization and Consolidation of schools'Page1
4. For implementation of the Rationalization and Consolidation of schools, one implementation guidelines is prepared and embedded herewith.
5. In view of the above, the revised Rationalization and Consolidation policy and Implementation Guidelines embedded herewith may kindly be approved. Noting-121 Implementation guidelines'Page1
6. Currently, consolidation of school with enrollment provided in Sl.No.1 & 3 of the table-1 of the draft notification as reproduced below may kindly be approved.

Sl. No.	School category	Enrollment criteria		Distance of nearby Elementary/ Secondary
		Non-scheduled Area	Scheduled Area	
1	Any primary/UP/ Secondary school	20 or less	20 or less	Any distance
3	Primary School	Less than 40	Less than 25	1 km

The file may kindly be submitted for Govt. approval of point 2, 5 and 6.

Khagendra Kumar Padhi (Consultant, School & Mass Education), 27-Feb-2020 16:20:48

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Noting- 129

Kind orders above

Notes from Noting No.121 may please be seen.

1. The Rationalization and Consolidation of schools under School and Mass Education Department

was approved by the Hon'ble Chief Minister at noting-115.

2. A meeting was held under the chairmanship of D.C.-cum-ACS as a follow up to the meeting held on 19.01.2020, the proceeding of which is embedded herewith. Noting-121 Proceeding of the meeting on 25.02.2020'Page1
 - a. Currently, in the Rationalization and Consolidation of schools the following are to be taken up:-
 - i. All schools having less than or equal to 20 students.
 - ii. All primary schools having less than 40 students in non-scheduled area and less than 25 students in scheduled area within 1 K.M. of another Govt. school to be consolidated.
 - b. In the said meeting, it was decided that the facilitation allowance of Rs.3000/- will be provided from the State budget to each student transferred and joined in the new Govt. school.
3. In the light of the above discussion and proceeding of the meeting held by D.C.-cum-ACS, the Rationalization and Consolidation of school policy (embedded) is modified and submitted herewith. Noting-121 Draft notification of Rationalization and Consolidation of schools'Page1
4. For implementation of the Rationalization and Consolidation of schools, one implementation Guidelines is prepared and embedded herewith.
5. In view of the above, the revised Rationalization and Consolidation policy and Implementation Guidelines embedded herewith may kindly be approved. Noting-121 Implementation guidelines' Page1.
6. Currently, consolidation of school with enrollment provided in Sl.No.1 & 3 of the table-1 of the draft notification as reproduced below may kindly be approved.

<u>Sl. No.</u>	<u>School category</u>	<u>Enrollment criteria</u>		<u>Distance of nearby Elementary/ Secondary</u>
		<u>Non- scheduled Area</u>	<u>Scheduled Area</u>	
<u>1</u>	<u>Any primary/UP/ Secondary school</u>	<u>20 or less</u>	<u>20 or less</u>	<u>Any distance</u>
<u>3</u>	<u>Primary School</u>	<u>Less than 40</u>	<u>Less than 25</u>	<u>1 km</u>

The file may kindly be submitted for Govt. approval of point 2, 5 and 6.

Khagendra Kumar Padhi (Consultant, School & Mass Education), 29-Feb-2020 12:09:31

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Noting - 152

Kind orders above.

Kind orders of Hon'ble Chief Minister at Noting No-134. This is regarding Rationalization and Consolidation of schools under Schools & Mass Education Department.

As per details mentioned in noting 129, Noting-121 Proceeding of the meeting on 25.02.2020 Page1, the financial implication for this scheme is Rs.74.88 crores. There is no Budget provision for the above purpose in the Budget Estimate for the financial year 2020-21. The proposed Budget provision can be made at the time of 1st Supplementary Budget for the year 2020-21. Hence the file may kindly be endorsed to Finance Department for their kind concurrence before issue of the notification, as implementation of the scheme involves financial implication for an amount of Rs.74.88 crores (@3000 per student) which is required to be provided in the 1st Supplementary Budget for the year 2020-21.

Dillip Satpathy (FA-cum- Additional Secretary, School and Mass Education), 07-Mar-2020 17:23:21.

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Noting - 166

The earlier Notification issued vide this Department Notification No.5379/SME dtd. 07.03.2020 needs some correction.

Hence, the revised draft Notification as DFA-7 and the Implementation Guidelines as DFA-8 attached in the correspondence side may kindly be considered for its approval.

Submitted for kind order.

Enclosures

- Drafts Letter (Draft-8) 11-Mar-2020 11:35:22 has been added.

Bhagyalaxmi Pradhan (Assistant Section Officer, School and Mass Education), 11-Mar-2020 12:08:14.

*SOP Consolidation Policy_v4.docx final.docx
Rationalization and Consolidation of schools (2).docx*

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Noting - 170

Noting No-166 may please be seen.

Draft No-7 & 8 may kindly be approved.

Noting-166/SOP Consolidation Policy v4.docx final.docx

Noting-166/Rationalization and Consolidation of schools (2).docx.

Submitted.

Khagendra Kumar Padhi (Consultant, School and Mass Education), 11-Mar-2020 12:24:49

Noting - 171

Drafts 7 & 8 approved.

Chitra Arumugam (Principal Secretary, School and Mass Education), 11-Mar-2020 12:34:41”

15. This Court heard Mr. K.K. Swain, learned counsel for the petitioner in W.P.(C) No. 27401 of 2020; Mr. A.K. Pandey, learned counsel for the petitioners in W.P.(C) No. 11704 of 2020; Mr. Rajjeet Roy, learned counsel for the petitioner in W.P.(C) No. 30808 of 2020; Mr. D.P. Dhal, learned counsel for the petitioners in W.P.(C) No. 2600 of 2021; Mr.

A.K.Mohanty-A, learned counsel for the petitioner in W.P.(C) No. 8275 of 2021; Mr. B.S. Rayaguru, learned counsel for the petitioners in W.P.(C) No. 11603 of 2021; Mr. D.N. Rath, learned counsel for the petitioner in W.P.(C) No. 14289 of 2021; and Mr. S. Parida, learned Senior Standing Counsel appearing for the School and Mass Education Department through virtual mode. Perused the record and also examined the files produced on 12.04.2021, in compliance of order dated 07.04.2021, and office notes made thereunder. Pleadings have been exchanged between the parties and with the consent of learned counsel appearing for the respective parties, these writ petitions are disposed of finally at the stage of admission.

16. The facts narrated above are not in dispute. As it appears the Government in School & Mass Education Department, for rationalization and consolidation of schools, issued notification no.5465 dated 11.03.2020 and also office memorandum no.5538 dated 11.03.2020 in the shape of guidelines for

implementation of rationalization and consolidation of schools. The principles as enumerated under Clause-3-A(1)(a) of the notification no.5465 dated 11.03.2020 laid down that “Government Elementary and Secondary Schools having enrollment less than or equal to 20 to be consolidated with nearby schools irrespective of distance” was modified by issuing a corrigendum dated 14.12.2020 in Annexure-A/1 series at page 116 of the brief stating that “Government Elementary and Secondary Schools having enrollment less than or equal to 15 in Scheduled & KBK areas and less than or equal to 20 in other areas to be consolidated with nearby schools irrespective of distance” and the word “20 or less” appearing in the Table-1: Distance and Enrollment Norms for Consolidation, in 1st row at Sl. No.1, Column-4 with the heading Scheduled area as attached to Para-3 of the said Notification may be read as “15 or less in Scheduled and KBK areas”. As per para-3.(A)(1) of the notification no.5465/SME dated 11.03.2020, a school having lower roll strength shall be treated as a satellite

school and the school to which the satellite school will be merged, that school having higher roll strength will be treated as a Lead School. As per the corrigendum dated 14.12.2020, paragraph-3-A(1)(a) of the notification no.5465 dated 11.03.2020 has been modified to the above extent. The table-1 of the notification no.5465 dated 11.03.2020 states about the categories of the schools, i.e. Primary, Upper Primary and Secondary Schools and about their enrollment and the nearby distance of the said schools regarding merger. Paragraph-3.2 of the notification no.5465 dated 11.03.2020 provides about different types of merger/consolidation i.e. (i) Horizontal Consolidation; and (ii) Vertical Consolidation. Horizontal Consolidation means consolidation of same range of schools, that means Primary Schools with Primary Schools, Upper Primary Schools with Upper Primary Schools and Secondary Schools with Secondary Schools. So far as Vertical Consolidation is concerned, it means consolidation/merger of different range of schools, i.e. one Primary

School with Upper Primary School, one Primary School with Secondary School or one Upper Primary School with Secondary School. So far as paragraph-2(b) of the notification no.5465 dated 11.03.2020 is concerned there are two types of consolidation/merger of schools, i.e. (i) physical consolidation and (ii) administrative consolidation. In case of physical consolidation one or more schools shall be consolidated with the Lead School and in such case, the students, staff, records and movable assets will be physically shifted to the Lead School from the Satellite School. So far as administrative consolidation is concerned, two or more schools shall be consolidated for the purpose of optimum utilization of available resources under unified administrative supervision. Therefore, the very notification no.5465 dated 11.03.2020 issued by the Government in School and Mass Education Department under Annexure-3 to W.P.(C) No.27401 of 2020 and the corrigendum dated 14.12.2020 under Annexure-A/1 series filed by opposite party no.1, which provides the mechanism/modalities

relating to consolidation/merger of schools i.e. Primary School, Upper Primary School and Secondary School. The main ground of consolidation/merger of school as per notification no.5465 dated 11.03.2020 read with the corrigendum dated 14.12.2020 is based on the roll strength of the school. Therefore, question arises whether the State Government can take a policy decision for merger of schools on the basis of roll strength or not. The note sheets, which have been referred to above, clearly indicate that the Government have taken all endeavour for merger of schools purely on the basis of roll strength and while taking such steps the constitutional mandate read with statutory provisions have been given a go by.

17. Article-21-A, which has been inserted by the Constitution (Eighty-sixth Amendment) Act, 2002, Sec.2 and has come into force w.e.f. 01.04.2010, reads as follows:-

“21-A. Right to Education-The State shall provide free and compulsory education to all children of the age of six to fourteen years in

such manner as the State may, by law, determine.”

At this juncture, it is worthwhile to refer to Article-246, which reads as follows:-

“246. Subject-matter of laws made by Parliament and by the Legislatures of States.—*(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the –Union List”).*

*(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State 1 *** also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the –Concurrent List”).*

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the –State List”).

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included 2 [in a State] notwithstanding that such matter is a matter enumerated in the State List.”

In view of the aforesaid provision under Article 246(2) notwithstanding anything in clauses (2) and (3), Parliament and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to

any of the matters enumerated in List-III in the Seventh Schedule (in this Constitution referred to as the “Concurrent List”). Entry-25 of Concurrent List-III is as follows:

“25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.”

A perusal of the above Entry-25 makes it clear that “education” is a subject, for which both Parliament and Legislature of any State have got power to make laws.

18. Now coming to the question as to what constitute an “education”, in **Barry v. Hughes**, (1973) 1 All ER 537, it has been held that education denotes training of the mind, in contradiction to training in manual skills.

In **Padmanav Dehury v. State of Orissa**, AIR 1999 Ori 97, it has been held that the word “education” is derived from the Latin word ‘educa’ which means brining out a latent faculties. “Education” means

the act or process of imparting or acquiring general knowledge, developing the powers of reasoning and judgment, and generally of preparing oneself or others intellectually or mature life; the act or process of imparting or acquiring particular knowledge or skills. It is the result produced by instruction, training or study. Thus the word has very wide import.

In **P.A. Inamdar v. State of Maharashtra**, (2005) 6 SCC 537, the apex Court in paragraph-83 held as under:-

“Act or process of providing with knowledge. The sense in which the word “education” has been used is the systematic instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by formal schooling.”

The same view has also been taken in **Loka Shikshana Trust v. I.T. Commissioner, Mysore**, AIR 1976 SC 10 : (1976) 1 SCC 254 and **Gujarat University v. Shri Kirshna Ranganath Madholkar**, AIR 1963 SCC 703.

In **P.A. Inamdar** mentioned supra, the apex Court considering the India-Vision 2020, held that “education” is an important input both for the growth of the society as well as for the individual. Properly planned educational input can contribute to increase in the gross national products, cultural richness, build positive attitude towards technology and increase efficiency and effectiveness of the governance. Education opens new horizons for an individual, provides new aspirations and develops new values. It strengthens competencies and develops commitment. Education generates in an individual a critical outlook on social and political realities and sharpens the ability to self-examination, self-monitoring and self-criticism.

In **T.M.A. Pai Foundation v. State of Karnataka**, (2002) 8 SCC 481, the apex Court held that expression “education” occurring in various Articles of the Constitution of India means and includes education at all levels, from the primary school level up to the postgraduate level and professional education.

In ***Avinash Mehrotra v. Union of India***,

(2009) 6 SCC 398, the apex Court held that “education” today remains liberation- a tool for the betterment of our civil institutions, the protection of civil liberties, and the path to an informed and questioning citizenry. Education is of transcendental importance in the lives of individuals and in the very survival of our Constitution and Republic.

19. Right to education includes right to safe education. Education is the bringing up; the process of developing and training the powers and capabilities of human beings. In its broadest sense the word comprehends not merely the instruction received at school, or college but the whole course of training moral, intellectual and physical; is not limited to the ordinary instruction of the child in the pursuits of literature. It also comprehends a proper attention to the moral and religious sentiments of the child. And it is sometimes used as synonymous with “learning”.

20. Parliament has enacted a law, called **“The Right of Children to Free and Compulsory Education Act, 2009, (Act No. 35 of 2009)”**, which has got assent of the President on 28.08.2009 and published in G.O.I. Ext. Part-II, Sec.1 dated 27.08.2009 and came into force on 01.04.2010. The statement of objects and reasons of enacting such Act, as has been elaborately mentioned therein, is reduced hereunder:-

“The crucial role of universal elementary education for strengthening the social fabric of democracy through provision of equal opportunities to all has been accepted since inception of our Republic. The Directive Principles of State Policy enumerated in our constitution lays down that the State shall provide free and compulsory education to all children up to the age of fourteen years. Over the years there has been significant spatial and numerical expansion of elementary schools in the country, yet the goal of universal elementary education continues to elude us. The number of children, particularly children from disadvantaged groups and weaker sections, who drop out of school before completing elementary education, remains very large. Moreover, the quality of learning achievement is not always entirely satisfactory even in the case of children who complete elementary education.

2. Article 21-A, as inserted by the Constitution (Eighty-sixth Amendment) Act, 2002, provides for free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such manner as the State may, by law, determine.

3. Consequently, the Right of Children to Free and Compulsory Education Bill, 2008, is proposed to be enacted which seeks to provide,-

(a) 'compulsory education' casts an obligation on the appropriate Government to provide and ensure admission, attendance and completion of elementary education.

(b) 'Free education' means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education;

(c) the duties and responsibilities of the appropriate Governments, local authorities, parents, schools and teachers in providing free and compulsory education; and

(d) a system for protection of the right of children and a decentralized grievance redressal mechanism.

4. The proposal legislation is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibilities of schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds.

5. It is, therefore, expedient and necessary to enact a suitable legislation as envisaged in Art. 21-A of the Constitution.

6. The Bill seeks to achieve this objective."

21. In **Sanghvi Jeevraj Ghewar Chand v. Secretary, Madras Chillies, Grains and Kirana Merchants Workers Union**, AIR 1969 SC 530, the apex Court held that reference to the Statement of Objects and Reasons is permissible for understanding the

background, the antecedent state of affairs, the surrounding circumstances in relation to the statute, and the evil which the statute was sought to remedy.

Similar view has also been taken in **Secretary, Regional Transport Authority v. D.P. Sharma**, AIR 1989 SC 509; **Shashikant Laxman Kale v. Union of India**, AIR 1990 SC 2114 and **British Airway Plc. V. Union of India**, AIR 2002 SC 391.

22. In **Bhaiji v. Sub-divisional Officer, Thandla**, (2003) 1 SCC 692, summarizing the use of the Statement of Objects and Reasons in the process of construction LAHOTI, J. said: “Reference to the Statement of Objects and Reasons is permissible for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute and the evil which the statute sought to remedy. The weight of judicial authority leans in favour of the view that the Statement of Objects and Reasons cannot be utilized for the purpose of restricting and controlling the plain meaning of the language employed by the

legislature in drafting a statute and excluding from its operation such transactions which it plainly covers.

The same view has also been taken in **A Manjula Bhashini v. Managing Director, Andhra Pradesh Women's Cooperative Finance Corporation Ltd**, (2009) 8 SCC 431

23. For just and proper adjudication of the case, relevant provisions of "**Right of Children to Free and Compulsory Education Act, 2009**" are extracted hereunder for ready reference:-

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

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(d) "child belonging to disadvantaged group" means 3 [a child with disability or] a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification;

(e) "child belonging to weaker section" means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification;

(f) "elementary education" means the education from first class to eighth class;

3. Right of child to free and compulsory education.—1 [(1) Every child of the age of six to

fourteen years, including a child referred to in clause (d) or clause (e) of section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education.]

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

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8. Duties of appropriate Government.—The appropriate Government shall— (a) provide free and compulsory elementary education to every child: Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school.

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

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

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19. Norms and standards for school.—(1) No school shall be established, or recognised under

section 18, unless it fulfils the norms and standards specified in the Schedule.

(2) Where a school established before the commencement of this Act does not fulfil the norms and standards specified in the Schedule, it shall take steps to fulfil such norms and standards at its own expenses, within a period of three years from the date of such commencement.

(3) Where a school fails to fulfil the norms and standards within the period specified under sub-section (2), the authority prescribed under sub-section (1) of section 18 shall withdraw recognition granted to such school in the manner specified under sub-section (3) thereof.

(4) With effect from the date of withdrawal of recognition under sub-section (3), no school shall continue to function.

(5) Any person who continues to run a school after the recognition is withdrawn, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.

20. Power to amend Schedule.—The Central Government may, by notification, amend the Schedule by adding to, or omitting therefrom, any norms and standards.

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25. Pupil-Teacher Ratio.—(1) 1 [Within three years] from the date of commencement of this Act, the appropriate Government and the local authority shall ensure that the Pupil-Teacher Ratio, as specified in the Schedule, is maintained in each school.

(2) For the purpose of maintaining the Pupil-Teacher Ratio under sub-section (1), no teacher posted in a school shall be made to serve in any other school or office or deployed for any non-educational purpose, other than those specified in section 27.

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38. Power of appropriate Government to make rules.—(1) xxxxxxxxxx

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:— (a) xxxxxxxx

(b) the area or limits for establishment of a neighbourhood school, under section 6;

The Schedule

[Refer Secs. 19 and 25]

NORMS AND STANDARDS FOR A SCHOOL

SL. NO	ITEM	NORMS AND STANDARDS
1	<p>Numbers of teachers:</p> <p>(a) For first class to fifth class</p> <p>(b) For sixth class to eighth class</p>	<p>Admitted children</p> <p>Number of teachers</p> <p>Up to Sixty Two</p> <p>Between sixty-one to ninety Three</p> <p>Between Ninety-one to one hundred and twenty Four</p> <p>Between One hundred and twenty-one to two hundred Five</p> <p>Above One hundred and fifty children Five plus one Head teacher</p> <p>Above Two hundred children</p> <p>Pupil-Teacher Ratio (excluding Head-teacher) shall not exceed forty.</p> <p>(1) At least one teacher per class so that there shall be at least one teacher each for—</p> <p>(i) Science and Mathematics;</p> <p>(ii) Social Studies;</p> <p>(iii) Languages.</p> <p>(2) At least one teacher for every thirty-five children.</p> <p>(3) Where admission of children is above one hundred—</p> <p>(i) a full time head-teacher;</p> <p>(ii) part time instructors for—</p> <p>(A) Art Education;</p> <p>(B) Health and Physical Education;</p> <p>(C) Work Education.</p>
2	Building	<p>All-weather building consisting of—</p> <p>(i) at least one class-room for every teacher and an office-cum-store-cum-Head teacher's room;</p> <p>(ii) barrier-free access;</p>

		(iii) separate toilets for boys and girls; (iv) safe and adequate drinking water facility to all children; (v) a kitchen where mid-day meal is cooked in the school; (vi) Playground; (vii) arrangements for securing the school building by boundary wall or fencing.
3	Minimum number of working days/instructional hours in an academic year	(i) two hundred working days for first class to fifth class; (ii) two hundred and twenty working days for sixth class to eighth class; (iii) eight hundred instructional hours per academic year for first class to fifth class; (iv) one thousand instructional hours per academic year for sixth class to eighth class.
4	Minimum number of working hours per week for the teacher	forty-five teaching including preparation hours.
5	Teaching learning equipment	Shall be provided to each class as required.
6	Library	There shall be a library in each school providing newspaper, magazines and books on all subjects, including story-books.
7	Play material, games and sports equipment	Shall be provided to each class as required.

24. In exercise of power conferred under Section 38 of Right of Children to Free & Compulsory Education Act, 2009, the State Government has made a Rule called “**The Odisha Right of Children to Free and Compulsory Education Rules, 2010**”. The Rules-6 and 7 of the Rules, 2010, being relevant for the purpose of the case, are extracted below:-

“**6. Areas or limits of neighborhood** -(1) The areas or limits of neighborhood within which a school would be established by the Government or Local Authority shall be as under –

(a) In respect of children in classes I - V, a school shall be established within a walking distance of one km of the neighborhood.

(b) In respect of children in classes VI - VIII, a school shall be established within a walking distance of 3 km of the neighborhood.

(2) Wherever required, the Government shall upgrade existing schools with classes I - V to include classes VI - VIII. In respect of schools which start from class VI onwards, the Government shall endeavor to add classes I - V, if necessary.

(3) In places with difficult terrain, risk of landslides, floods, lack of roads and in general, danger for young children in the approach from their homes to the school, the State Government/Local Authority shall locate the school in such a manner as to avoid such dangers, by reducing the limits specified under sub-rule (1).

(4) For children from small hamlets, as identified by the Government/Local Authority, where no school exists within the area or limits of neighborhood specified under sub-rule (1) the Government/Local Authority shall make adequate arrangements for providing elementary education in a school, in relaxation of the limits specified under sub-rule (1).

(5) In places with high population density, the Government/local authority may consider establishment of more than one neighborhood school, having regard to the number of children in the age group of 6-14 years in such areas.

(6) The Local Authority shall identify the neighborhood school(s) where children can be admitted and make such information to public for each habitation in the Gram Panchayat office notice board within its jurisdiction.

(7) In respect of children with disabilities which prevent them from accessing the school the Government/Local Authority will endeavor to make appropriate and safe arrangements for them to

attend school through Committee and complete elementary education.

(8) The Government/Local Authority shall ensure that access of children to the school is not hindered on account of social, legal and cultural factors.

7. Responsibility of Government and Local Authority –(1) xxxxxxxxxxxx

(2) For the purpose of determining and for establishing neighborhood schools, the government/local authority shall undertake school mapping, and identify all children, including children in remote areas, children with disabilities, children belonging to disadvantaged groups, children belonging to weaker sections migrated children and children referred to in section 4, within a period of one year from the appointed date, and every year thereafter.”

25. On perusal of aforementioned provisions, it is made clear that Act, 2009 has been framed under Article 21-A of the Constitution of India, which inter alia provides for free and compulsory education to all children in the age group of 6 to 14 years as a fundamental right. To enforce and implement the objective of Article 21-A of the Constitution of India, Parliament has enacted Act, 2009. As per Section 2 (f) of the Act, 2009, elementary education means the education from first class to eight class. Section 3(1) of the Act, 2009 clearly provides that every child of the age

of six to fourteen years, including a child referred to in clause-(d) or clause (e) of Section 2 shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education. Section 6 of the Act, 2009 provides the duty of appropriate government and local authority to establish school. As per section 6 of the Act, for carrying out the provisions of the said act, the appropriate government and the local authority shall establish, within such area or limits of neighbourhood, as may be prescribed, a school where it is not so established, within a period of three years from the commencement of this Act. Section 7(1) of the Act, 2009 provides that the central government and the State governments shall have concurrent responsibility for providing funds for carrying out the provisions of the said Act. Section 8(b) of the Act, 2009 provides that the appropriate government shall ensure availability of a neighbourhood school as specified in Section 6. Section 19 of the Act, 2009 provides the norms and standards for School. Section

19(1) of the Act, 2009 provides that no school shall be established for recognized under section 18 unless it fulfills the norms and standards specified in the schedule. Section 38 of the Act, 2009 provides the power of appropriate government to make rules in various matters including the area or limits of a neighbourhood school under Section 6. The schedule appended to the Act, 2009 so far as primary schools are concerned, i.e., for classes from I-V for admitted children up to '60', two teachers are required and for classes VI-VIII at least one teacher each for science and mathematics, social studies and languages.

26. Similarly, Rule-6 of Rules, 2010 provides establishment of neighbourhood school, i.e., in respect of children in classes I-V within a walking distance of one km. of the neighbourhood. So far as children having classes VI-VIII, a school shall be established within a walking distance of 3 kms. of the neighbourhood. Rule-6(3), (4), (5), (6), (7) and (8) of Rules, 2010 provides about the contingencies in which the area or limits of the

neighbourhood school can be reduced. Therefore, combined reading of Act, 2009 and Rules, 2010, nowhere there is any provision for merger/consolidation of primary/upper primary schools with high schools. Therefore, the notification no.5465 dated 11.03.2020 regarding consolidation of various types of schools including high schools with classes VI to X, I-X or IX-X with primary and upper primary school, is contrary to the provisions of the Act, 2009 and Rules, 2010, as the very definition of elementary education as provided under Section 2 (f) of the Act, 2009 means the education from first class to eight class. Therefore, the Government has issued the notification no.5465 dated 11.03.2020 has been issued without taking into consideration the constitutional mandate as well as statutory provisions, namely, Act, 2009 and Rules, 2010. Thereby, the same cannot sustain in the eye of law.

27. The table relating to distance and enrollment norms for consolidation in the notification no.5465 dated 11.03.2020 wherein secondary schools

beyond class-VIII have been given contrary to the Act, 2009 and Rules, 2010. In the table, a primary school having roll strength less than 40 in respect of non-scheduled area and less than 25 in respect of scheduled area can be consolidated, is also contrary to the provisions of the Act, 2009, wherein it has been prescribed for classes having I-V admitted children up to 60, two teachers are required. Therefore, when there is no minimum roll strength has been prescribed for a primary school under the Act, 2009 and the Rules, 2010, the notification no.5465 dated 11.03.2020 fixing the minimum roll strength prescribed as per the table in respect of primary schools, i.e., less than 40 in respect of non-scheduled area and less than 25 in respect of scheduled area is contrary to the statute and, as such, the same cannot sustain in the eye of law.

28. In respect of the upper primary school the roll strength has been prescribed less than 50 in respect of non-scheduled area and less than 40 in respect of scheduled area, is also contrary to the

schedule appended to the Act, 2009, though while issuing the notification in the office note deals with some factual matrix with regard to natural barriers, but the same has not taken up under Rule-6 of Rules, 2010, which clearly provides that the area or limits of neighbourhood school can be reduced.

29. As has been contended by Mr. S. Parida, learned Sr. Standing Counsel for the School and Mass Education Department that government has introduced the policy of rationalization and consolidation of schools by virtue of notification no.5465 dated 11.03.2020 under Annexure-3 to W.P.(C) No.27401 of 2020 with following objectives:-

- “i) To reduce the number of educationally and economically sub-optimal school.*
- ii) To rationalize and consolidate existing schools to reduce the category of schools thus fix the range category to only four, i.e., I-V, I-VIII, I-X and VI-X.*
- iii) To create as many integrated secondary schools as possible hence provide education up to high school level in one single campus, improving transition.*
- iv) To consolidate stand alone upper primary and secondary schools.”*

It is contended that the same cannot be contrary to the Act, 2009 and Rules, 2010. But, when the government notification no.5465 dated 11.03.2020 itself runs contrary to Article 21-A of the Constitution and provisions of Act, 2009 and Rules, 2010, the mechanism provided for consolidation/merger of various category of school is not acceptable. Besides that, when the very purport of the Act, 2009 and Rules, 2010 is to provide at least one school within a walking distance of one km. of the neighbourhood, in that case, the State Government cannot and could not take steps for abolition of schools which are already there and catering to the needs of the local people. Therefore, in the guise of merger/consolidation of the schools, the very purpose of the Act, 2009 and Rules, 2010 has been frustrated. Thereby, the impugned notifications cannot sustain in the eye of law.

30. By virtue of the notification no.5465 dated 11.03.2020, an alternative Grievance Redressal Cell has been created, which can examine the specific

grievance of any party during post consolidation period, is of no use as once consolidation/merger is made any sort of grievance redressal by the alternative forum may lead to an empty formality as the Grievance Redressal Cell is created by the Government itself and the government officers are the members of the said cell. Besides that, such Grievance Redressal Cell in the district office or anywhere is being contrary to the Act, 2009 and Rules, 2010. Thereby, the same is of no use.

31. Law is well settled by catena of decisions of the apex Court as well as this Court that no man should be a Judge of his own cause, which is violative of principles of natural justice. Meaning thereby, having a Grievance Redressal Cell with some government officers, the petitioners will not get justice. Thereby, it is only an empty formality and an eye wash for implementation of the notifications, as referred to above order, and as such, the same is contrary to the provisions of law. Thereby, the impugned notifications issued by the government cannot sustain in the eye of law.

32. Coming to the petitioner's school in W.P.(C) No.27401 of 2020, no doubt the student strength of the petitioner's school was 33 for the academic session 2019-20, as the petitioner's school was not given permission for admission of students in respect of Class-I during the session 2020-21. Had the permission been given to the petitioner's school to admit students in Class-I, then the students strength of the school would have been beyond 40, as nine guardians of the village were interested to admit their wards in class-I of the said school. With regard to distance between Amaramunda Government Primary school and Laxmanpali Project Upper Primary school, the same is more than 1 km., i.e., 2.9 kms, which is evident from google map. But in the counter affidavit, the distance between the Amaramunda Government Primary school to Laxmanpali Project Upper Primary school has been shown as 800 meters. The same is beyond the actual fact and record available. The joint inquiry report, which has been placed under Annexure-B/1 to the counter affidavit, cannot be relied upon as the

distance between two schools is 2.9 kms. The further contention made in the counter affidavit that there is no natural barriers like ponds, rivers, deep forest and traffic congestion between the lead school and the satellite school is also not correct, as there is reserve forest between the road leading from Amaramunda to Laxmanplai and wild elephants are crossing the road frequently which has come out in various newspapers stating that village Amaramunda is adjacent to Cheliapat reserve forest. Therefore, at the caprice and whims of the authority, merger of schools have been made, which is a disadvantage to the local people and also contrary to the constitutional mandate as well as the provisions of the Act, 2009 and Rules, 2010. Thereby, the impugned notification no.5465 dated 11.03.2020 and consequential notification no.5538 dated 11.03.2020, i.e., guidelines for implementation of policy for rationalization and consolidation of schools, and also corrigendum issued on 14.12.2020, cannot sustain in the eye of law.

33. No doubt, the general principles of policy decision are within the complete domain of the Government. Necessarily the Government shall exercise its own discretion in this regard. But, it is a fundamental rule for the exercise of the discretionary power that discretion must be brought to bear on every case—each one must be considered on its own merits and decided as the public interest requires at the time.

34. In ***State of Gujarat v. Arvind Kumar Tewari***, (2012) 9 SCC545, the apex Court held that policy decision cannot ordinarily be subject-matter of judicial review.

The same view has also been taken by the apex Court in ***State v. Naveena***, (2009) 3 SCC 649 and ***Dilip Kumar v. State***, (2009) 5 SCC 1.

35. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as appellate authorities examining the correctness, suitability and appropriateness of a policy,

nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate.

36. In **Directorate of Film Festivals v. Gaurav Ashwin Jain**, (2007) 4 SCC 737, the apex Court held that the scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review. The judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made. Meaning thereby, judicial review is concerned, not with the decision, but with the decision-making process.

37. In **Tamil Nadu Education Department Ministerial and General Subordinate Services**

Association mentioned supra, on which reliance has been placed by Mr. S. Parida, learned Sr. Standing Counsel appearing for the School and Mass Education Department, in paragraph-16 of the judgment, the apex Court held that Court cannot strike down a G.O., or a policy merely because there is a variation or contradiction. Life is sometimes contradiction and even consistency is not always a virtue. What is important is to know whether mala fides vitiates or irrational and extraneous factor fouls.

38. In **Ram Lubhaya Bagga** mentioned supra, the apex Court in paragraph-25 held that when government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its recourses. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court would dissuade itself from entering into this realm which belongs to the executive.

39. In ***Balco Employees' Union*** mentioned supra, the apex Court held that the decision to disinvest and the implementation thereof is purely an administrative decision relating to the economic policy of the State and challenge to the same at the instance of a busy body cannot fall within the parameters of public interest litigation.

40. In ***Directorate of Film Festivals*** mentioned supra, the apex Court held that the scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on

the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review.

41. This Court is conscious of its jurisdiction which has been laid down by the apex Court in the above decisions. But applying the same to the present case, as has been held that scope of judicial review in examining the policy of the government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary, in that case, the Court may have jurisdiction to entertain the writ petitions by scrutinizing the so called policy with the above realm.

42. On perusal of the relevant note-sheets, referred to above, it reveals that while taking a decision, the authorities have not taken note of the provisions contained in Act, 2009 and Rules, 2010, as discussed above. Therefore, this Court has jurisdiction to interfere

with the decision making process, as has been held by the apex Court in catena of decisions. If in the decision making process there is non-compliance of the statutory provisions, then ultimate decision suffers from illegality and irregularity, with which the Court can interfere. In view of such power, this Court examined the government notification and consequential office memorandum dated 11.03.2020 and found that both are violative of statutory provisions governing the field.

43. Now, examining the question with regard to the jurisdiction of the Court to have a judicial review in a policy decision of the authority, it is well explained by the apex Court in **Delhi Development Authority v. Joint Action Committee**, (2008) 2 SCC 672 that a policy decision is subject to judicial review on the following grounds:

- (a) if it is unconstitutional;
- (b) if it is de hors the provisions of the Act and the regulations;
- (c) if the delegate has acted beyond its power of delegations;
- (d) if the executive policy is contrary to the statutory or a larger policy.

44. In **Laxman Dundappa Dhamanekar** (supra), the apex Court in paragraph-9 of the judgment held as follows:

“9. We noticed earlier, the appointment and conditions of service of teachers in private government-aided institutions are governed by the provisions of the Act and the statutory Rules. The said provisions are a self-contained code relating to the appointments of teachers in private-aided institutions. The field relating to method of appointment of regular teachers in a government-aided institution is fully covered by the provisions of the Act and the Rules and we do not find any provisions in the Act empowering the Government to supplement the Rules by executive instructions. It is no doubt true that if the Act had empowered the State Government to issue administrative instructions by way of supplementing the Rules, the position would be different. In such a case, the Government would have power to fill up the gaps in the Rules by issuing administrative instructions if the Rules are silent on the subject provided the same is not inconsistent with the statutory Rules already framed. In the present case, the Act does not empower the State Government to supplement the Rules by issuing administrative instructions or orders. In the absence of such provision in the Act, it is not open to the Government to supplement the Rules by executive orders. If we accept the argument of learned counsel for the respondent, it would be repugnant to Sections 3 and 15 of the Act.”

45. In **Punjab Water Supply and Sewerage Board** (supra), in paragraphs- 10 and 14 of the judgment, the apex Court held as follows:

10. *A statutory board is an autonomous body. Nothing has been brought to our notice to show that under the statute any direction issued by the State shall be binding on it. The State may have some control with regard to recruitment of employees of local authorities, but such control must be exercised by the State strictly in terms of the provisions of the Act. The statutory bodies are bound to apply the rules of recruitment laid down under the statutory rules. They being "State" within the meaning of Article 12 of the Constitution of India, are bound to implement the constitutional scheme of equality. Neither can the statutory bodies refuse to fulfil such constitutional duty, nor can the State issue any direction contrary to or inconsistent with the constitutional principles adumbrated under Articles 14 and 16 of the Constitution of India. The purported directions of the State were otherwise bad in law insofar as thereby the statutory rules were sought to be superseded. A circular letter furthermore is not a statutory instrument. It was not even issued by the State in exercise of the power under Article 162 of the Constitution of India. Even a scheme issued under Article 162 of the Constitution of India, would not prevail over statutory rules.*

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14. *Once it is held that the terms and conditions of service including the recruitment of employees were to be governed either by the statutory rules or rules framed under the proviso to Article 309 of the Constitution of India, it must necessarily be held that any policy decision adopted by the State in exercise of its jurisdiction under Article 162 of the Constitution of India would be illegal and without jurisdiction. In A. Umarani v. Registrar, Coop. Societies [(2004) 7 SCC 112 : 2004 SCC (L&S) 918] a three-Judge Bench of this Court has opined: (SCC p. 126, para 45)*

"45. No regularisation is, thus, permissible in exercise of the statutory power conferred under Article 162 of the Constitution if the appointments have been made in contravention of the statutory rules."

It was further held: (SCC pp. 126-27, para 49)

“49. It is trite that appointments cannot be made on political considerations and in violation of the government directions for reduction of establishment expenditure or a prohibition on the filling up of vacant posts or creating new posts including regularisation of daily-waged employees. (See Municipal Corpn., Bilaspur v. Veer Singh Rajput [(1998) 9 SCC 258 : 1998 SCC (L&S) 1178].)”

46. In **Mahadeo Bhau Khilare (Mane)**

(supra), the apex Court in paragraphs 7 and 10 of the judgment held as follows :

“7. Indisputably, the State of Maharashtra has framed recruitment rules. Any scheme by way of an executive instruction in terms of Article 162 of the Constitution of India, if violative of such statutory rules would not be legally sustainable. (See A. Umarani v. Registrar, Coop. Societies [(2004) 7 SCC 112 : 2004 SCC (L&S) 918].

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10. *In terms of the said scheme, Stenotypists, Typists of the IIIrd grade or similar posts of the Revenue Department could be absorbed in the State service. We would assume that the said scheme was valid in law, although it was not in view of the decision of this Court in Umarani [(2004) 7 SCC 112 : 2004 SCC (L&S) 918] . The appellants were appointed by Talathis as their assistants. They only used to assist the Talathis in their day-to-day work. They were never appointed as Talathis. No such post of Assistant to Talathis had been created and/or sanctioned by any competent authority. No recruitment rule therefor was framed. Therefore, their appointments were illegal. The State had also imposed a ban on appointment of such persons. In any event, they were appointed by the employees themselves to*

help them and not by any authority having the requisite jurisdiction therefor.”

47. In **Avinash Mehrotra** (supra), the apex Court in paragraphs 46 and 47 of the judgment held as follows:

“46. It is the fundamental right of each and every child to receive education free from fear of security and safety. The children cannot be compelled to receive education from an unsound and unsafe building.

47. In view of what happened in Lord Krishna Middle School in District Kumbakonam where 93 children were burnt alive and several similar incidences had happened in the past, therefore, it has become imperative to direct that safety measures as prescribed by the National Building Code of India, 2005 be implemented by all government and private schools functioning in our country. We direct that:

(i) Before granting recognition or affiliation, the State Governments and Union Territories concerned are directed to ensure that the buildings are safe and secure from every angle and they are constructed according to the safety norms incorporated in the National Building Code of India.

(ii) All existing government and private schools shall install fire extinguishing equipments within a period of six months.

(iii) The school buildings be kept free from inflammable and toxic material. If storage is inevitable, they should be stored safely.

(iv) Evaluation of structural aspect of the school may be carried out periodically. We direct that the engineers and officials concerned must strictly follow the National Building Code. The safety certificate be issued only after proper inspection. Dereliction in duty must attract immediate disciplinary action against the officials concerned.

(v) Necessary training be imparted to the staff and other officials of the school to use the fire extinguishing equipments.”

48. In **Society for unaided private schools of Rajasthan** (supra), in paragraph-45 of the judgment the apex Court held as follows:

“45. At the outset, we may reiterate that Article 21-A of the Constitution provides that the State shall provide free and compulsory education to all children of the specified age in such manner as the State may, by law, determine. Thus, the primary obligation to provide free and compulsory education to all children of the specified age is on the State. However, the manner in which this obligation will be discharged by the State has been left to the State to determine by law. The State may do so through its own schools or through aided schools or through private schools, so long as the law made in this regard does not transgress any other constitutional limitation. This is because Article 21-A vests the power in the State to decide the manner in which it will provide free and compulsory education to the specified category of children. As stated, the 2009 Act has been enacted pursuant to Article 21-A.”

49. In **Vinod Kumar Koul vrs. State of Jammu and Kashmir** (supra) the apex Court in para-9 of the judgment held as follows:

“9. In our view, the administrative decision of the Board, which is ex facie inconsistent with the plain language of Rule 13(i), could not have been relied upon for determining the eligibility of the appellant for appointment as the Laboratory Assistant in District Udhampur and the learned Single Judge and the Division Bench of the High Court

committed serious error by negating the appellant's challenge to the decision of the Selection Committee not to consider his candidature and that too by overlooking the fact that at the time of submission of application, the appellant was residing in District Udhampur, which is an integral part of the State of Jammu and Kashmir.”

50. In **Devi Multiplex** (supra), the apex Court in paragraph 23 of the judgment held as follows:

“23. Furthermore, the Scheme as framed on 20-12-1995 formed the basis of a statutory notification under Section 29 of Act 16 of 1977 and as such the core components of the Scheme had acquired a statutory status. By virtue of said Section 29, the Notification dated 14-2-1997 was required to be laid for not less than 30 days before the State Legislature. If the State Government was desirous of amending, varying or rescinding said Notification dated 14-2-1997, the subsequent GR dated 28-6-2000 ought to have been translated into a statutory notification under Section 29 of the Act 16 of 1977. In the absence of such steps having been undertaken, the GR dated 28-6-2000 could not in any way detract from or dilute the effect of the Scheme which had acquired statutory status.”

51. In **Lok Prahari** (supra), the apex Court in paragraph-43 and 44 of the judgment held as follows:

“43. The 1997 Rules are not statutory rules. They are in the nature of administrative or executive instructions. They would not stand the test of legality if they are not in consonance with statutory provisions. The said Rules are definitely in contravention of the statutory provisions and therefore, the said Rules can be said to be bad in law so far as they are in contravention of the statutory provisions.

44. There cannot be any dispute that when the rules and regulations or executive instructions are contrary to any statutory provision, the statutory provision would prevail and the rules or executive instructions, so far as they are contrary to the statutory provisions, would fail.”

52. In **Krishna Murari Lal Asthana** (supra), the apex Court in paragraph-15 of the judgment held as follows :-

“15. On scanning of anatomy of Rule 55 of the 1995 Rules, we are absolutely clear that it does not confer power on the Chairman of the Corporation to issue any instructions that can travel beyond the Rules. In terms of Rule 55, he has been authorised to issue instructions which are necessary and expedient for the implementation of the Rules. The Board had passed the resolution. The Board can pass a resolution and the Chairman can be the head of the Board, but it does not authorise the Board to take a decision with regard to certain matters which are within the domain of the rule-making authority. On a perusal of Section 48, it is clear as crystal that conferment of benefit, either pension or anything ancillary thereto has to be conferred by the Rules and the rule as prescribed under Section 48 of the Act is to be tabled before Parliament. In the absence of a rule, in our considered opinion, no benefit can be granted on the basis of the resolution passed by the Corporation. This being the legal position, the High Court could not have held to the contrary on the basis of the concession given by the counsel for the Union of India.”

53. In **Employees’ State Insurance Corporation** (supra), the apex Court in paragraph-16 of the judgment held as follows:-

“16. In our considered opinion, the High Court has ignored to appreciate that the effect of the ESI Act enacted by Parliament cannot be circumvented by the department office memorandum. The High Court has also failed to appreciate that the payment of interim relief/wages emanates from the provisions contained in terms of the settlement, which forms part of the contract of employment and forms the ingredients of “wages” as defined under Section 2(22) of the ESI Act and that the respondent paid interim relief, as per a scheme voluntarily promulgated by it as per the Notification dated 20-4-1996, issued by the Government of India, in view of the recommendations of “Manisana Wage Board”, pending revision of rates of wages. It was not an *ex gratia* payment. In this context, it is beneficial to note the observations of this Court in *ESI Corpn. v. Gnanambigai Mills Ltd.* [*ESI Corpn. v. Gnanambigai Mills Ltd.*, (2005) 6 SCC 67 : 2005 SCC (L&S) 800], which read thus: (SCC p. 70, para 6)

“6. In our view the High Court has gone completely wrong in concluding that by virtue of the award it ceases to be wages. As stated above, the Tribunal has not applied its mind as to whether or not the payments were wages. All that the Tribunal did was to give its imprimatur to a compromise between the parties. Merely because the parties in their compromise chose to term the payments as “*ex gratia* payments” does not mean that those payments cease to be wages if they were otherwise wages. As stated above, they were wages at the time that they were paid. They did not cease to be wages after the award merely because the terms of compromise termed them as “*ex gratia* payments”. We are therefore unable to accept the reasoning of the judgments of the High Court. The judgment of the Division Bench as well as that of the Single Judge accordingly stand set aside. It is held that the amounts paid are wages and contribution will have to be made on those amounts also. We, however, make it clear that payments of the interest will be as per the statutory provisions.”

54. In **Santosh Kumar Sahu** (supra), this Court in paragraphs 20, 21, 22 and 24 of the judgment held as follows:-

*“20. A Constitution Bench of the Supreme Court, in **B.N. Nagarajan 85 Ors. Vs. State of Mysore 81. ors.**, AIR 1966 SC 1942, has observed as under-*

"It is hardly necessary to mention that if there is a statutory rule or an Act on the matter, the executive must abide by that Act or Rule and it cannot in exercise of its executive powers under [Article 162](#) of the Constitution ignore or act contrary to that rule or the Act. "

21. Similarly, another Constitution Bench of the Supreme Court in *Sant Ram Sharma Vs. State of Rajasthan 85 Ors.*, AIR 1967 SC 1910, has observed as under:-

"It is true that the Government cannot amend or supersede statutory Rules by administrative instruction, but if the Rules are silent on any particular point, the Government can fill-up the gap and supplement the rule and issue instructions not inconsistent with the Rules already framed."

22. The law laid down above, has consistently been followed and it is settled proposition of law that an Authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory Rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions. (Vide *The Commissioner of Income-tax, Gujarat Vs. M / s. A. Raman 85 Co.*, AIR 1968 SC 49; *Union of India 85 ors. Vs. Majji Jangammayya 85 ors.*, AIR 1977 SC 757; *The District Registrar, Palghat 85 ors. Vs. M.B. Koyyakutty 85 ors.*, AIR 1979 SC 1060; *Ramendra Singh 85 ors. Vs. Jagdish Prasad 85 ors.*, AIR 1984 SC 885; P.D.

Aggarwal 85 Ors. Vs. State of U.P. 85 Ors., AIR 1987 SC 1676; M/s. Beopar Sahayak (P) Ltd. 85 Ors. Vs. Vishwa Nath 85 Ors., AIR 1987 SC 2111; Paluru Ramkrishnaiah 85 Ors. Vs. Union of India 85 Anr., AIR 1990 SC 166; Comptroller 85 Auditor General of India 85 ors. Vs. Mohan Lal Mehrotra 85 ors., AIR 1991 SC 2288; and C. Rangaswamaiah 85 Ors. Vs. Karnataka Lokayukta 85 Ors., AIR 1998 SC 2496).

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24. Thus, it is settled law that executive instructions cannot amend or supersede the statutory rules or add something therein. The orders cannot be issued in contravention of the statutory rules for the reason that an administrative instruction is not a statutory rule nor does it have any force of law; while statutory Rules have full force of law as held by the Constitution Bench of the Supreme Court in State of U.P. 85 ors. Vs. Babu Ram Upadhyaya, AIR 1961 SC 751; and State of Tamil Nadu Vs. M/s. Hind Stone etc. etc., AIR 1981 SC 711.”

55. ★ The question of merger of school had come up for consideration before the Rajasthan High Court in **Jule Khan Bai** mentioned supra, wherein the learned Single Judge has quashed the impugned order issued by the Joint Secretary, Elementary Education, Government of Rajasthan, directing merger of the Government Primary School, Rikhiyani in government Upper Primary School, Sagoroliya and also directed the opposite parties to restore the Government Primary School, Rikhiyani and ensure that the children of the age

of 6 to 14 years of village Rikhiyani are imparted free education up to class VIII, as mandated by the provisions of RTE Act.

56. Similarly, a Division Bench of Uttarakhand High Court in **Ganesh Chandra Upadhyay** mentioned supra, while hearing the writ petition, passed status quo order with regard to shifting of school from the existing locality to another until further orders.

57. In view of the settled position of law, as discussed above, it is made clear that the Court can exercise its power of judicial review, if the notification issued is unconstitutional and de hors the provisions of rules and regulations and more so the executive policy is contrary to the constitutional mandate and statutory rules.

58. Applying the said principles, children in elementary schools should be our first concern. The rise in the literacy rates in various States over the years is

primarily due to better inputs in (formal) primary education.

59. When then base is weak, everything remains weak in later years. In half-hearted primary education, all efforts to reform secondary or higher education will prove to be futile exercise.

60. Unfortunately the authorities of the system do not seem to realize this natural phenomenon, because, they themselves have no stakes in this system; they follow for their wards the “other” system of public and model schools which often has a sound basis. However, for the general run of the people, the only resort is the prevalent system run by different authorities, who swim or sink in it.

61. Elementary education obviously requires maximum attention in respect of academic, administrative and financial inputs. Many academic and administrative measures are equally important- as the purpose is not only to have funds but also to spend them most honestly and gainfully. This calls for wholesale

decentralization of powers and active involvement of local communities and panchayats.

62. With the avowed objectives of giving education to the children of the locality, lands had been donated by the then generous people for establishment of the schools and, as such, the schools were named after them and many of the schools have been established more than 10 years above and many students have come out from said institutions having elementary education. In such circumstances, directing merger of schools and consequential closure of institutions having all infrastructure, cannot be considered to be a sound approach by the authority in issuing the notification no.5465 dated 11.03.2020 and consequential guidelines issued vide office memorandum no.5538 dated 11.03.2020 and corrigendum issued on 14.12.2020.

63. As the number of primary schools is very large, formal and regular inspections are not possible. There are hundreds, if not thousands, of primary schools, which were never inspected by the department

officers. And quite often, inspections comprise only a fleeting glance.

64. Instead of finding the reasons for decreasing roll strength merger of school will not serve the purpose. It is just like without finding the cause of disease treatment has been started. There are enumerable reasons for decreasing of roll strength, instead of eradicating the ground difficulties merger is taken place due to decision is taken place at higher level without realizing the ground level reality.

65. ★ As it appears, in the State of Odisha, many categories of teachers exist – confirmed teachers, unconfirmed teachers, ad hoc teachers, tenure teachers, teachers on contractual basis, volunteer teachers, and so on. No other kind of employees or workers has such divisions. This clearly indicates the extent of regard the planners and policy- makers have for education. So the teaching profession is to be taken as a full-time job.

66. Earlier, ET and CT training teachers with less qualification were being appointed and they had got their institutional commitment. But, now appointments are being made to different categories of teachers with multifarious activities and utilizing them with a paltry sum of money. With a half fed belly, they are directed to discharge their duties. Consequentially, the objectives are not being achieved. This may be one of the reasons for reduction of roll strength of a particular school. But this can be eradicated in effective manner, if the authorities, who are in the helm of affairs, are little vigilant.

67. Now, the authorities are shedding crocodile tears to have a primary education in mother tongue, but they are granting permission in free hands for establishment and recognition of institutions in other medium, which may be a reason for reduction of students' strength in the existing schools. As it appears, Govt. of Delhi has taken drastic steps for upliftment of government primary schools in Delhi Union Territory and

that is the best example for other States to follow, so as to keep elementary education accessible to each child having the minimum infrastructure available in the locality.

68. Students in neglected rural far-flung region need special dispensation, additional dose of teaching and other activities. If Government accommodation for teaching is provided and a rational transfer policy is formulated and strictly adhered to, many problems of teachers posted in difficult rural regions will be resolved to a great extent.

69. Kendriya सत्यम् Vidyalayas and other institutions affiliated to the Central Board of Secondary Education (CBSE), primary school teachers are invariably trained graduates. It is difficult for matric or Plus-Two pass educators to teach modern, updated syllabi and texts at the primary stage – particularly the CBSE syllabi, NCERT books designed with trained graduates as elementary teachers in view.

70. But educational administration at all levels, as suggested by numerous commissions and committees on education, should be the exclusive prerogative and domain of experts, educationists and educators. Also, education at the elementary school level should be accorded a top-priority, acute and persistent financial crunch notwithstanding.

71. Article 21-A of the Constitution of India and its consequent legislation, the Right to Children to Free and Compulsory Education (RTE) Act, 2009 became operative in the country in 2010. The RTE Act confers the right to elementary education on all children, in the age group 6-14 years, on the basis of equality of opportunity in a formal school which satisfies certain essential norms and standards. All States and UTs have notified their State RTE Rules. The centrally sponsored scheme of Sarva Shiksha Abhiyan (SSA) supports States and UTs in their efforts to implement the RTE Act. Its interventions include, inter alia, opening of new schools, construction of schools and additional classrooms,

constructing toilets and drinking water facilities, provisioning for teachers, in-service training for teachers and academic resource support, free textbooks and uniforms, support for improving learning achievement levels, research, evaluation and monitoring.

72. Universalisation of primary education under the RTE Act paved the way for making education accessible to all. The status of access to education in Odisha can be assessed through different indicators such as enrolment ratio, pupil teacher ratio, drop-out rate, transition rate, buildings and infrastructure, in both primary and upper primary (together termed as 'elementary') and secondary schools.

73. Keeping the above factual and legal aspects in mind, this Court, in exercise of power under judicial review, is of the considered view that the notification no.5465 dated 11.03.2020 under Annexure-3 to W.P.(C) No.27401 of 2020 and subsequent office memorandum no.5538 dated 11.03.2020 for implementation of guidelines for policy of rationalization

and consolidation of schools, and also the corrigendum issued on 14.12.2020 under Annexure-A/1 series to above mentioned writ petition, cannot sustain in the eye of law and the same are liable to be quashed and are hereby quashed. The opposite parties are directed to restore back the position of the schools in question, as before, and provide necessary infrastructure for smooth running of the same.

74. In the result, the writ petitions are allowed. However, there shall be no order as to costs.

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DR. B.R. SARANGI,
JUDGE

Orissa High Court, Cuttack
The 4th May, 2021, Alok/Ashok/Ajaya/GDS