

**IN THE HON'BLE HIGH COURT FOR THE STATES OF PUNJAB &
HARYANA AT CHANDIGARH**

CWP No 38195 of 2018

MEMO OF PARTIES

NISA Education having registered office at A-24-D, Ground Floor, Hauz Khas, New Delhi through its President Sh. Kulbhushan Sharma son of Sh. J.P. Sharma, age 52 years, resident of House No. 52-53, Vidhya Nagar, Nanhera, P.O. Kuldeep Nagar, Ambala Cantt., Haryana.

Petitioner

VERSUS

1. The Ministry of Human Resources Development through its Secretary, Department of School Education and Literacy, Shastri Bhawan, New Delhi.
2. The Union Territory of Chandigarh through its Director, School Education, Deluxe Building, Sector 9, Chandigarh.
3. The Central Board of Secondary Education through its chairman, Shiksha Kendra-II, Community Centre, Preet Vihar, New Delhi.
4. The District Education Officer, Union Territory Chandigarh, Deluxe Building, Sector 9, Chandigarh.

Respondents

Petitioner through Counsel

Place: Chandigarh
Dated: 07.12.2018

(PANKAJ MAINI)
Advocate
P-1390/2001
Counsel for the Petitioner

Civil Writ Petition under Article 226/227 of the Constitution of India praying for the issuance of any writ, orders or directions especially in the nature of certiorari to quash the orders issued by the respondent no. 4 on 18.09.2018 (**Annexure P-4**) vide which the respondent no. 4 has issued the orders to all the schools situated in Union Territory of Chandigarh by prescribing the books of NCERT alone on the basis of the circulars issued by the respondent no. 3 on different dates as the respondent no. 3 has ignored the National Curriculum issued by the NCERT (**Annexure P-6**) which is the megnacata to be followed by all the authorities related to the education matters; a writ of certiorari may kindly be issued regarding the instructions issued by the respondents to reduce the weight of the school bags by curtailing the books to be taught to the students studying in the member schools of the petitioner association

culminates in the infringement of the liberty granted by the respondent no. 3 bye-laws notified on 28.01.1988 (**Annexure P-7**) to prescribe the books by their own by considering the overall development of the students thus, the independence of the private schools could not be hampered in any manner as per law settled down in **TMA PAI's** case; a writ of certiorari may kindly be issued to the respondent no. 1 to set aside the letter dated 20.11.2018 (**Annexure P-5**) vide which the respondent no. 1 has directed to all the States and Union Territories regarding formulation of guidelines vide which the subjects to be taught to the students have been prescribed without ensuring the overall skills and educational development of the students as prescribed in the National Curriculum Framework 2005 notified by the National Council of Educational Research & Training (NCERT) (**Annexure P-6**); a writ of

certiorari may kindly be issued to the respondents to set aside the notifications issued by the respondents on 18.09.2018 (**Annexure P-4**) and 20.11.2018 (**Annexure P-5**) as it is incongruous to the bye-laws issued by the respondent no. 3 which deals with the autonomy of the member schools of the petitioner association, as well as, the rule 15.1 (d) of the respondent no. 3 notification given the liberty to the member school of the petitioner association to prescribe the books by following the curriculum prescribed by the respondent no. 3 and NCERT; a writ of prohibition may kindly be issued to the respondents to not to apply the orders/notifications dated 18.09.2018 (**Annexure P-4**) and 20.11.2018 (**Annexure P-5**) upon the member schools of the petitioner association before submitting a detailed status report before this Hon'ble court showing the scientific study carried out by them which

prompted them to pass such type of orders by putting the overall development of the students under eclipse and whether the respondents are investing in creating the intellectual property by making the overall development of the students or not; a writ of mandamus may kindly be issued to the respondents to not to harp upon the notifications issued by the respondent no. 1, as well as, respondent no. 2 & 4 dated 18.09.2018 (**Annexure P-4**) and 20.11.2018 (**Annexure P-5**) as the guidelines framed by them is not based upon the National Curriculum Frame Work 2005 issued by the NCERT (**Annexure P-6**), as well as, no scientific frame work has been adopted by the respondents while issuing such type of orders which would culminate in the stagnation of the overall development of the students but also impossible not only to comply with by the management of the member schools of the

petitioner association, as well as, by the students and their parents; a writ of mandamus may kindly be issued to the respondents to not to apply the notifications dated 18.09.2018 (**Annexure P-4**) and 20.11.2018 (**Annexure P-5**) as the member schools of the petitioner association are complying with the guidelines given in the National Curriculum 2005 published by NCERT (**Annexure P-6**) to get the overall development of the students and to attain the healthy environment in the school premises thus, these notifications are treated as nonest in respect of the member schools of the petitioner association; a writ of mandamus may kindly be issued to the respondents to not to apply the notifications/orders dated 18.09.2018 (**Annexure P-4**) and 20.11.2018 (**Annexure P-5**) as the National Curriculum Framework of 2005 (**Annexure P-6**), as well as, respondent no. 3 bye-laws (**Annexure P-7**) are the statutory

provisions which could not be by-passed without making the amendment in the byelaws by the legislature, as well as, orders passed by the respondents are not based upon any scientific study carried out by the respondents before applying the aforesaid orders upon the member schools of the petitioner association.

RESPECTFULLY SHOWETH:

1. That the members of the petitioner society are the citizens of India. The authorized signatory who is filing the present petition before this Hon'ble court is the citizen of India and the resident of the State of Haryana thus, fully competent to invoke the extraordinary writ jurisdiction of this Hon'ble court by way of filing the present writ petition under Article 226/227 of Constitution of India to get the illegal orders passed by the respondents in haste be set aside.
2. That the petitioner society has been registered in the name of NISA Education on 26.10.2015 at New Delhi and the Registrar of Societies, South District, Government of NCT of Delhi has issued the certificate of registration under his seal and signature on 26.10.2015 by giving the legal sanctity to the society. Copy of the certificate dated 26.10.2015 is appended herewith as **Annexure P-1**.

3. That the society was registered having the aims and objectives to rake up the issues of the private schools so that the member schools of the society could carry out their functions without any problem apart from other aims and objectives for which the society was established. The copy of the memorandum of association of society is appended herewith as **Annexure P-2**.
4. That the list of the member schools situated in the different districts of the Union of India including the Union Territory of Chandigarh, State of Punjab and State of Haryana also. The association is representing the interest of almost all the private un-aided schools situated in the different States of Union of India and have several thousands of schools are its members who are situated in different parts of the country including the aforesaid states and union territory. The list of some of the member schools situated in Union Territory of Chandigarh, State of Punjab and Haryana is appended herewith as **Annexure P-3**.
5. That the grouse of the member schools of the petitioner association is that the respondent no. 1 has passed the orders on 20.11.2018 and directed all the States and Union Territories situated in the country to pass same orders without going into the aspect that whether their orders would culminate in the chaos created by their orders not only amongst the member schools of the petitioner association but also amongst the students studying in the

different classes, as well as, for their parents also as everybody is in doldrum situation regarding the implementation of the conditions given in the orders regarding applicability of NCERT books and curtailing the weight of the school bags for the students from Class 1st to Class 10th during the mid-session, as well as, without carrying out the elaborate study to justify their orders which is totally illogical and could not substantiate on the litmus test of law.

6. That the respondent no. 4 has passed the orders on 18.09.2018 which was marked to all the Government/Government aided situated in the Union Territory of Chandigarh. In the Subject dated 18.09.2018, the respondent no. 4 has issued the guidelines to be complied with by all the schools by relying upon the orders passed by the Hon'ble Madras High Court in Writ Petition No. 25680 of 2017 dated 29.05.2018. The directions issued by the respondent no. 4 are reproduced below for the kind perusal of this Hon'ble court:

“You are advised to comply with the following order's as advised by the Directorate which are as under:

- i. No Homework is to be given in classes I & II.*
- ii. Not to prescribe any other subjects except language and mathematics for Class I & II students and language, EVS and*

Mathematics for Class III to V students as prescribed by NCERT.

- iii. To prescribe and use NCERT books alone as per CBSE circular dated 09.08.20217 and other circulars (CBSE circulate dated 12.04.2016, 19.04.2017 and other related circulars).*
- iv. Guidelines issued by CBSE vide circular dated 12.09.2016 to reduce the weight of school bags are to be followed.”*

Copy of the orders dated 18.09.2018 passed by the respondent no. 4 is appended herewith as **Annexure P-4**.

7. That the respondent no. 1 has passed the orders on 20.11.2018 in which the same types of directions were issued to all the States and Union Territories situated in the State of Haryana vide letter dated 15.10.2018 to formulate the guidelines in this regard as per the instructions issued by the Government of India. Though, these instructions dated 20.11.2018 were issued by the administration of Lakshadweep but in this office circular the respondent no. 1 has issued the guidelines for all the States and Union Territories of the country. The respondents no.1 has issued the following guidelines which are to be strictly complied with by all the schools as notified by the respondent no.1. The instructions issued by the respondent no.1 in this regard

are reproduced below for the kind perusal of this Hon'ble Court:

“Therefore all the Schools under Department of Education is hereby directed to strictly comply the following instructions with immediate effect.

1. *Home work shall not be assigned to the students of class I & II.*
2. *Schools should not prescribe any other subjects except Language and Mathematics for Class I & II and Language, EVS and Mathematics for Class III to V students as prescribed by the NCERT.*
3. *Students should not ask to bring additional books; extra materials and the weight of the School bag should not exceed the following limit.*

| <i>Sr. No.</i> | <i>Class</i> | <i>Weight of school Bag</i> |
|----------------|----------------------|-----------------------------|
| <i>1</i> | <i>I-II</i> | <i>1-5 Kg</i> |
| <i>2</i> | <i>III-V</i> | <i>2-3 Kg.</i> |
| <i>3</i> | <i>VI & VII</i> | <i>4. Kg</i> |
| <i>4</i> | <i>VIII & IX</i> | <i>4.5. Kg</i> |
| <i>5</i> | <i>X</i> | <i>5 Kg”</i> |

Copy of the order dated 20.11.2018 issued by the respondent no.1 is appended herewith as **Annexure P-5.**

8. That the CBSE Byelaws published on 28.01.1988 are notified as the Central Board of Secondary Education Affiliation Byelaws.
9. That the member schools of the petitioner association who are situated in different states of the Union of India including the Union Territory of Chandigarh, State of Punjab, as well as, Haryana are affiliated with the respondent no.3 and their respective State Education Boards. The member schools are already following the comprehensive Byelaws notified by the respondent no.3 to get affiliated from them, as well as, in day to day working. After that the respondent no.3 has amended their Byelaws on 18.10.2018, which are more or less are same. Copy of the CBSE Byelaws dated 28.01.1988 is appended herewith as **Annexure P-6**.
10. That the National Council for Teacher Education has circulated the National Curriculum Frame Work in 2005 which is the Magna Carta for the respondents, as well as, different States Situated in the Country. The functioning of the members schools are based upon this frame work of 2005 to get over and development of the student studying in their schools, as well as, to create a Healthy Environment for the students and the teachers, so that the who passed out from the members schools of the petitioner association could prove as an asset for the Country by providing them a healthy and safe environment so that the every student

could able to flourish its identity. The national frame curriculum frame work provide the comprehensive studies on every aspect of the education including the curricular arrears, schools stages and assessment, school and classroom environment and systematic reforms to be carried out. The respondents are bound to consider the National Curricular Framework published by National Council of Education Research and Training in 2005 while passing the orders which are next to impossible for implementation by everybody who are effected with these orders. Copy of the National Curriculum Framework of 2005 is appended herewith as **Annexure P-7**.

11. That the respondent no.4 while passing the orders on 18.09.2018 (**Annexure P-4**) has relied upon the circular issued by the respondent no.3 on 12.04.2016, 19.04.2017, 09.08.2017 and other related circulars while prescribing the use of the books published by NCERT.
12. That it is humbly submitted that the respondents while passing the order dated 18.09.2018 and 20.11.2018 (**Annexure P-4** and **Annexure P-5**) have failed to consider the Circular issued by the respondent no.3 on 06.02.2014 in which the respondent no.3 have made the stress upon the compliance of the CBSE Byelaws. The rule 15.1 (D) deals with the books in school. The clause given in rule 15.1(D) are reproduced below for the kind perusal of this Hon'ble Court:-

“Rule 15.1(d):-

The school will follow the syllabus on the basis of curriculum prescribed by NCERT/CBSE and text books publishing by NCERT/CBSE for the Middle Classes as far as practicable or exercise extreme care while selecting books of private publishers. The content must be scrutinised to preclude any objectionable content that hurts the feelings of any class, community, gender, religious group in society. If found prescribing books having such content, the school will have to take responsibility of such content.

Provided that the school would put a list of such books prescribed by it on its website with the written declaration duly signed by the Manager and the Principal to the effect that they have gone through the contents of the books prescribed by the school and own the responsibility.”

This circular is based upon the CBSE Byelaws and still in existence the rule 15.1(d) grants the independence members school of the petitioner association to prescribe the books of private publisher then in that eventuality the respondent cannot force the members schools of the petitioner association to prescribe the books of NCERT only without carrying out the scientific studies in this regard or revising the 2005 National Curriculum Framework by constituting the committee in this regard which shows that the respondents are acting in haste manner, as well as, the

passing the orders in fit and bits without getting the proper studies be carried out in this manner. The orders passed by the respondents in mid-session instead of doing any betterment for the students but culminated in a loss for the students. Copy of the circular dated 06.02.2014 is appended herewith as **Annexure P-8**.

13. That the respondent no.4 while passing the orders on 18.09.2018 (**Annexure P-4**) have relied upon the various circular issued by the respondent no.3 vide which the schools affiliated with them are being directed to prescribe the books of NCERT only which was challenged before the Hon'ble Madras High Court by way of filing the Writ Petition No.18900 of 2017 and WMP Numbers 20411 of 2017 and 20412 of 2017. The Hon'ble Bench of the Madras High Court vide orders dated 16.08.2017 has granted the stay on the circulars issued by the respondent no.3 on different dates, thus the respondent no.3 has withdrawn the circular dated 06.04.2017 as per the interims orders of the Hon'ble High Court dated 26.06.2017, thus once the respondents have withdrawn the orders, thus the respondent no.4 cannot rely upon the circulars already withdrawn by the respondent no.3. Once the circulars withdrawn their legal sanctity has already been elapsed, thus they cannot be revived by the respondents by passing the fresh orders. Copy of the orders dated 16.08.2017 passed by the Hon'ble Madras High Court in writ petition no.18900 of 2017 is appended herewith as **Annexure P-9**.

14. That the Hon'ble Supreme Court of India in the matter of **T.M.A. Pai Foundation and Ors. Vs State of Karnataka 2003 Vol.2 SCT**, gave the independence to the Educational Institution , which the respondents are trying to hampered by passing such type of Administrative orders which could not be substantiate in the eyes of law. While passing the orders the respondents have relied upon the judgment passed by the Hon'ble Madras High Court in the matter of **M. Purshothaman Vs. The Secretary** on 29.05.2018. It is pertinent to mention here that these are the interim orders not the final orders. The Hon'ble Bench have issued the directions by passing the following orders :

“48. For the above reasons, the following directions are given:

- (a) Direction to the respondents, especially the respondents 3,4 and 5 to prohibit CBSE schools from prescribing any homework to Class I and II students.*
- (b) Direction to the respondents 3 and 4 to constitute flying squads to randomly verify that Class I and II Children are not given homework.*
- (c) Direction to the first respondent/Union Government to direct all the State Governments and union territories forthwith, not to prescribe any homework for Class I & II*

Students in the State Board/Matriculation/Anglo Indian Schools.

- (d) Direction to the first respondent/Union Government to direct the State Governments, not to prescribe any other subjects except language and Mathematics for Class I & II students and language, EVS and mathematics for Class II to V students as prescribed by NCERT.*
- (e) Directions to the respondents to disaffiliate schools prescribing homework and non-prescribed subjects for Class I and II students and class III to V students.*
- (f) Directions to the respondents especially, respondents 3 to 5 to prescribe and use NCERT books alone as per CBSE circular dated 09.08.2017 and other circulars.*
- (g) Directions to the Union Government to formulate a policy forthwith in the lines of “The Children School Bags (Limitation on Weight) Bill, 2006”.*
- (h) Direction to Union Government, the first respondent herein to direct the State Government and Governments of Union Territories forthwith to formulate “ Children School Bag Policy” reducing the weight of the School bags in the line of guidelines issued by*

either State of Telangana or State of Maharashtra.

(i) Directions to the Union Government, the first respondent herein to direct the State Governments and Governments of Union Territories forthwith to form special squads to inspect the schools and prevent the use of non-prescribed books.

(j) The respondents are directed to issue circulars to the schools incorporating the orders of this Court forthwith and file and report within four weeks.

49. Children, who are the future of this country, should be shaped properly by providing them age appropriate education, training, without any stress and agony. If they are put to stress and agony, it is likely to have a lasting impact on their physical and mental well-being. In that event, they cannot become good and responsible citizens of our country. It is therefore, the collective duty of parents, teachers and the Government to see that the children are allowed to enjoy their childhood; admitted in schools after attaining the appropriate age and provided conducive atmosphere for stress-free education. Parents should not be overambitious to make their children No.1 in education. This kind of attitude or mindset is unwarranted as it will not help any of the stakeholders. Knowledge is different

from information. The education imparted to children should enable them to gain knowledge rather than store information. Children should be allowed to develop life skills, which will go a long way in helping them in every stage of their life. Our country has got rich man power, especially, the children form 35% of the population and if they are properly educated, then the future of our country would be bright.

Even about 2400 years ago, the Greek Philosopher Plato insisted not to force children into learning.

“Do not train children in learning by force and harshness, but direct them to it by what amuses their minds, so that you may be better able to discover with accuracy, the peculiar bent of genius of each”

50. Call the matter after four weeks for filing compliance reports and passing further directions.”

Copy of the orders dated 29.05.2018 passed by the Hon'ble Madras High Court is appended herewith as **Annexure P-10.**

15. That the judgment passed by the Madras High Court is in violation of the law settled down by the Constitutional Bench of the Hon'ble Supreme Court of India which means that the orders passed by the Hon'ble Delhi High Court is antitheses to the law settled down by the Hon'ble Supreme Court of India, thus it is having no legal sanctity and the

respondents are not bound to issue such type of orders which are not in accordance with the law settled down by the Hon'ble Supreme Court of India in the matter of **Naraindas Indurkha Vs. State of M.P. and others**. The Hon'ble Supreme Court of India in the Larger Bench has upheld the following law:

- A. **Constitution of India, Articles 162 and 19(1) (g) and Schedule 7, List 2, Entry 11 – Madhya Pradesh Prathamik, Middle School Tatha Madhyamik Shiksha (Pathya Pustakon Sambandhi) Vayvastha Adhiniyam, 1973, Section 4 & 4(1), Proviso- Education-Prescription of school text books by the State Government – Before Act of 1973 coming into being State Government empowered to do so under Article 162 of the Constitution – Exercise of such power by Article 19(1) (g) of the constitution – Any executive action of State Government encroaching up private rights would have to be supported by legislative authority.**
- B. **M.P. Prathamik, Middle School Tatha madhyamik Shiksha (Pathya Pustakon Sambandhi) Vayvastha Adhiniyam, 1973, Section 4(1)- Education – Prescription of school text books by the State Government – Section 4(1) no vesting arbitrary and uncontrolled direction upon State Government therefore-Object being to ensure uniformity of standard and excellence in instruction – Achievable only if standardised text books are**

used in schools – Exercise of power by State Government is to provide best possible text books – Section 4(1) not violating Article 14 of the Constitution.

C. M.P. Prathamik, Middle School Tatha madhyamik Shiksha (Pathya Pustakon Sambandhi) Vayvastha Adhinyam, 1973, Section 4(1), Proviso – Education- Prescription of text books
– State Government issuing notification prescribing text books- Prior consultation with Education Board therefore becoming necessary – Absence thereof making such notification invalid – Function of Board exercisable by its chairman through mechanism of Regulations.

D. M.P. Prathamik, Middle School Tatha madhyamik Shiksha (Pathya Pustakon Sambandhi) Vayvastha Adhinyam, 1973, Section 4(1) – Education-Prescription of text books on languages
– Section 4(1) authorising State Government to prescribe text books – Board issuing notification therefore – Notification becoming futile ineffective – Not having binding effect on schools to use only those text books.”

It shows that the respondent while passing the such type of vague orders/instructions have totally by-pass the law upheld by the Hon'ble Supreme Court of India in the aforesaid matter, as well as, in the matter of **Uday Singh Dagar Vs. Union of India 2007 AIR (S.C) 2599**. While holding

the law on the issue of interpretation of statutes the Hon'ble Supreme Court of India has held that:

“Interpretation of Statutes – Repeal statute – Where there is a repeal of an enactment and simultaneously re-enactment where the re-enacted enactment manifests an intention incompatible with or contrary to provisions of the repeal statute has to be ascertained upon consideration of all the relevant provisions of the re-enacted enactment this is no longer respondent integra.”

16. That the orders/notification passed by the respondents on 18.09.2018 (**Annexure P-4**) and 20.11.2018 (**Annexure P-5**) are liable to be set aside on the basis of following *interalia* grounds:

i. That the matter of education falls in List III i.e. Concurrent List on which is Central Legislature, as well as, State Legislature could frame the Rules or Act. At Sr. No. 25 in List III, Educational matters stands depicted 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.”

It is humbly submitted that the settled preposition of law is very much clear in this regard that the law framed by the Parliament would prevailed over the

law framed by the State Legislature if any. But here the situation is totally different as the respondents have issued the Office Orders by way of notifications thus, these notifications have no ramification upon the already rules framed in the State Education Codes.

The Rule 10 of the Haryana School Education Code grants the liberty to the private un-aided schools to prescribe the books of their choice. The provisions given in Rule 10 of Haryana Education Code are reproduced below for the kind perusal of this Hon'ble court:

“10. Matter to be provided in the syllabi:

The Director or Affiliating Board as the case may be, shall, while specifying the syllabi (for the primary, middle, secondary and senior secondary stage) shall decide about the contents to be laid down. However, recognized un-aided schools may adopt any text books based upon such contents.”

- ii. That the Impugned Circulars/Orders have been passed without considering the judgment dated 21.02.2018 passed by **Hon'ble Delhi High Court in Association of School Vendors and Ors v. CBSE and Ors. (WP(C) No. 7414/ 2017 decided on 21" February, 2018)**, which has attained finality wherein, the

Hon'ble Delhi High Court while dealing with inter alia the issue that whether sale of books inside the school premises amount to 'commercialization' or not held that circular issued by Respondent No. 3 prohibiting of sale of non NCERT books inside the school campus as arbitrary and further held that the Impugned Circular in such case does not satisfy the test of reasonable restriction under Article 19 (6) of the Constitution of India.

- iii. That the Respondents have completely over-looked the core issue of the autonomy of choice of multiple text books, learning curves of children, recommended in Chapter 5 of NCF – 2005. It is submitted that Clause 5.5.1 deals with plurality of text books, and as such, the concept of plurality, conceptualized and made applicable over the years has been taken away by the Impugned orders/notifications.
- iv. That NCF 2005 observes availability of multiple text books for schools as they widen teachers' choices and also provide for the incorporation of diversity in relation to children's needs and interests. It is submitted that when a number of books and supplementary materials are available, the teacher can be encouraged to decide which text lessons are appropriate for its class/students and this would

substantially enhance the teachers' autonomy and choice.

- v. That NCERT in its National Curriculum Framework 2005 under paragraph 4.6.6 recommended the need for plurality and alternative materials, suggesting inter-alia:

“The pluralistic and diverse nature of Indian society definitely makes a strong case for preparing a variety of not only textbooks but also other materials, so as promote children's creativity, participation and interest, thereby enhancing their learning. No one text book can cater to the diverse needs of different groups of students. Further, the same content/ concept can be taught in different ways. Schools government or private could have the choice of text books to follow for different subjects. Boards or text book bureaus could consider developing more than one series of books, or even endorsing books published by other publishers and allow schools to choose from a range.

As far back as 1953, the report of Secondary Education Commission made a number of recommendations for removing the defects in the text books, wherein it was pointed out that

“no single text book should be prescribed for any subject of study, but a reasonable number of books which satisfy the standards laid down should be recommended, leaving the choice to the school concerned.”

In its section on the essential for curricula development, the Kothari Commission Report emphasized the curricular revision had been of an adhoc character and that the curriculum is prepared at the state level and prescribed uniformly for all schools. Such procedure undermines the agency of teachers and head teachers, and render the spirit of exploration and innovation impossible.

- vi. That passing of the Impugned Circulars/Orders in the middle of the ongoing school term and without any consultation with the stakeholders is an arbitrary exercise of power violative of Article 14 of the Constitution of India.
- vii. That there is no factual/scientific basis behind the issuance of the Impugned Circulars/Orders and the respondents have not provided the basis on which the weight of the bag has been determined/classified.
- viii. That the Impugned Circulars/Orders mandates the school to prescribe and use NCERT books alone

thereby indirectly circumventing Clause 2.4.7 of Affiliation Bye Laws-2018 of Central Board of Secondary Education (CBSE) which inter alia states that "The School may prescribe NCERT Text Books in the classes and subject in which these have been published by the NCERT Extreme Care should be taken in the selection of books of private publishers so that there is no objectionable content that hurts the feeling of any, class, community, gender or any religious group in the society.

17. That the following questions of law have been enumerated in the present writ petition for the kind perusal and adjudication by this Hon'ble court:
 - i. Whether the orders passed by the respondent no.1 on 20.11.2018 (**Annexure P-5**) and by relying upon that notification/orders the similar notification/orders have been passed by the respondent no.4 on 18.09.2018 (**Annexure P-4**) by relying upon the orders passed by the Hon'ble Madras High Court in the matter of **M. Purshothaman Vs. The Secretary on 29.05.2018** (**Annexure P-10**) whereas, the orders passed by the Hon'ble Madras High Court are interim orders as well as it is antithesis to the law settled down by the Hon'ble Supreme Court of India (Larger Bench) in the matter of **Naraindas Indurkha Vs. State of M.P. and others**. As once the matter has been settled down by the Hon'ble

Supreme Court of India the notification/orders dated 18.09.2018 (**Annexure P-4**) and 20.11.2018 (**Annexure P-5**) passed by the respondents have no legal sanctity and could not be applicable upon the rights of the members schools of the petitioner association?

- ii. Whether the orders passed by the respondents could be sustained in the eyes of the law where the orders passed by the respondents during the mid session is nothing else but to create the chaos amongst the very stake holders. While passing such type of orders the respondents have not considered the national curriculum framework 2005 issued by the NCERT (**Annexure P-6**), as well as, the circulars issued by the respondent no.3 from time to time along with its byelaws?
- iii. Whether the notifications/orders passed by the respondents which are under challenge before this Hon'ble Court could sustained in the eyes of law which are not only incontrary to the national curriculum framework 2005 (**Annexure P-6**), as well as CBSE Byelaws (**Annexure P-7**) thus could the orders passed by the respondents on 18.09.2018 (**Annexure P-4**) and 20.11.2018(**Annexure P-5**) could sustain at the litmus test of issue settled down by the Hon'ble Supreme Court of India in the matter of **Uday Singh Dagar Vs. Union of India 2007 AIR (S.C) 2599?**

iv. Whether the notification issued by the respondent no.1 on 20.11.2018 (**Annexure P-5**) and by the respondent no.4 on 18.09.2018 are in contrary to the Byelaws issued by the respondent no.3 on 28.01.1988 (**Annexure P-7**) as well as the school codes published by the state of Haryana etc. which clearly stated that the private unaided schools are having the right to prescribe the books of private publishers as well as the CBSE Byelaws rule 15.1(d) also reiterate the same wording and without amending the statutory code by the legislature without adopting the due process of law the aforesaid notifications/orders could not made applicable upon the members schools of the petitioner association?

18. That the petitioner association has left with no other efficacious remedy except to approach this Hon'ble court by way of filing the present writ petition to get illegal orders notification passed by the respondent be set aside as no right, appeal or revision is available to the petitioner association on behalf of its member schools.

19. That no such or similar petition has been filed by the petitioner association before this Hon'ble court or before the Hon'ble Supreme Court of India on the same cause of action.

PRAYER CLAUSE

i. It is, therefore, respectfully praying for the issuance of any writ, orders or directions especially in the nature of certiorari to quash the orders issued by the respondent no. 4 on

18.09.2018 (**Annexure P-4**) vide which the respondent no. 4 has issued the orders to all the schools situated in Union Territory of Chandigarh by prescribing the books of NCERT alone on the basis of the circulars issued by the respondent no. 3 on different dates as the respondent no. 3 has ignored the National Curriculum issued by the NCERT (**Annexure P-6**) which is the megnacata to be followed by all the authorities related to the education matters;

- ii. A writ of certiorari may kindly be issued regarding the instructions issued by the respondents to reduce the weight of the school bags by curtailing the books to be taught to the students studying in the member schools of the petitioner association culminates in the infringement of the liberty granted by the respondent no. 3 bye-laws notified on 28.01.1988 (**Annexure P-7**) to prescribe the books by their own by considering the overall development of the students thus, the independence of the private schools could not be hampered in any manner as per law settled down in **TMA PAI's** case; a writ of certiorari may kindly be issued to the respondent no. 1 to set aside the letter dated 20.11.2018 (**Annexure P-5**) vide which the respondent no. 1 has directed to all the States and Union Territories regarding formulation of guidelines vide which the subjects to be taught to the students have been prescribed without ensuring the overall skills and educational development of the students as prescribed in the National Curriculum

Frame work 2005 notified by the National Council of Educational Research & Training (NCERT) (**Annexure P-6**);

iii A writ of certiorari may kindly be issued to the respondents to set aside the notifications issued by the respondents on 18.09.2018 (**Annexure P-4**) and 20.11.2018 (**Annexure P-5**) as it is in contrary to the bye-laws issued by the respondent no. 3 which deals with the autonomy of the member schools of the petitioner association, as well as, the rule 15.1 (d) of the respondent no. 3 notification given the liberty to the member school of the petitioner association to prescribe the books by following the curriculum prescribed by the respondent no. 3 and NCERT;

iv A writ of prohibition may kindly be issued to the respondents to not to apply the orders/notifications dated 18.09.2018 (**Annexure P-4**) and 20.11.2018 (**Annexure P-5**) upon the member schools of the petitioner association before submitting a detailed status report before this Hon'ble court showing the scientific study carried out by them which prompted them to pass such type of orders by putting the overall development of the students under eclipse and whether the respondents are investing in creating the intellectual property by making the overall development of the students or not; a writ of mandamus may kindly be issued to the respondents to not to harp upon the notifications issued by the respondent no. 1, as well as, respondent no. 2 & 4 dated 18.09.2018

(**Annexure P-4**) and 20.11.2018 (**Annexure P-5**) as the guidelines framed by them is not based upon the National Curriculum Frame Work 2005 issued by the NCERT (**Annexure P-6**), as well as, no scientific frame work has been adopted by the respondents while issuing such type of orders which would culminate in the stagnation of the overall development of the students but also impossible not only to comply with by the management of the member schools of the petitioner association, as well as, by the students and their parents; a writ of mandamus may kindly be issued to the respondents to not to apply the notifications dated 18.09.2018 (**Annexure P-4**) and 20.11.2018 (**Annexure P-5**) as the member schools of the petitioner association are complying with the guidelines given in the National Curriculum 2005 published by NCERT (**Annexure P-6**) to get the overall development of the students and to attain the healthy environment in the school premises thus, these notifications are treated as nonest in respect of the member schools of the petitioner association;

- v. A writ of mandamus may kindly be issued to the respondents to not to apply the notifications/orders dated 18.09.2018 (**Annexure P-4**) and 20.11.2018 (**Annexure P-5**) as the National Curriculum Framework of 2005 (**Annexure P-6**), as well as, respondent no. 3 bye-laws (**Annexure P-7**) are the statutory provisions which could not be bye-passed without making the amendment in the

byelaws by the legislature, as well as, orders passed by the respondents are not based upon any scientific study carried out by the respondents before applying the aforesaid orders upon the member schools of the petitioner association in the interest of justice.

- vi. The petitioner may kindly be granted the exemption from serving the advance notice upon the respondents before filing the present writ petition before this Hon'ble Court.
- vii. The petitioner association may kindly be granted exemption from filing the certified copies of the Annexure P-1 to Annexure P10, without appending the certified copies of the aforesaid annexure, as well as the permission be also granted to append the photocopies of the Annexure P-1 to P-10 alongwith this petition.

AD INTERIM PRAYER:

It is humbly prayed that till the pendency of the present writ petition before this Hon'ble Court the implementation of the orders dated 18.09.2018 (**Annexure P-4**) and 20.11.2018 (**Annexure P-5**) passed by the respondents be put under eclipse in the interest of justice and fair play as these orders are not in consonance with the National Curriculum Framework 2005 issued by the NCERT (**Annexure P-7**) and the law upheld by the Hon'ble Supreme Court of India on the prescription of the books of private publishers by the members of the petitioner association.

Petitioner through Counsel

Place: Chandigarh
Dated: 07.12.2018

(PANKAJ MAINI)
Advocate
P-1390/2001
Counsel for the Petitioner

VERIFICATION:

Verified that all the contents mentioned in the writ petition are true and correct to the best of the knowledge of the petitioner and nothing have been concealed from this Hon'ble Court. In para no 1 to 16, 18 and 19 are true to the best of knowledge of the petitioner and question of law has been mentioned in para no. 17 of the writ petition.

Place: Chandigarh

Dated: 07.12.2018

PETITIONER