CASE NO.:
Writ Petition (civil) 98 of 2002
PETITIONER:
Ms. Aruna Roy and others
Vs.

RESPONDENT:
Union of India and others.
DATE OF JUDGMENT: 12/09/2002BENCH:
H.K. SEMA
JUDGMENT:
J U D G M E N T

SEMA, J

I had the privilege of reading the draft judgments prepared by my learned brothers Shah,J. and Dharmadhikari,J. I am broadly in agreement with the conclusion reached at by Brother Shah,J. However, I have some reservations in regard to the opinion expressed by him in respect of role and functions of the Central Advisory Board of Education (CABE) in evolving a national policy on education. Justice Shah was of the view that since CABE is a non-statutory body, its consultation is not necessary.

The view of Justice Shah on the role and functions of CABE at page 7 of the judgment reads thus:

"In our view, this submission cannot be accepted. Firstly, it is to be reiterated that CABE is a non-statutory body constituted by the resolutions from time to time. It is true that it is functioning since 1935. However, it being constituted by exercise of the Executive function of the Government, it cannot be held that as the CABE is not consulted, the policy laid down by the NCERT is violative of any statutory provision or rules."

While it is true that the CABE is a non-statutory body but one cannot overlook the fact that it has been in existence since 1935. It has also been accepted as an effective instrument of meaningful partnership between the States and the Centre, particularly at evolving a consensus on the major policy issues in the field of human resource development. I am, therefore, of the view that the importance of the role played by CABE cannot be side tracked on the plea that the body is non-statutory, particularly when it has been playing an important role in the past for evolving a consensus on the major policy decisions involving national policy on education.

It is now well-settled principle that past practices and conventions form a precedent and followed unless decided otherwise. In the case of CABE, the terms of nominated members is only for three years but for ex-officio members there is no fixed term of office. This would mean that the existence of the Board, as such, is in perpetuity. This would also be clearly indicative of the importance of the Board. No resolution has been brought to our notice disbanding or discontinuing CABE. The only document, which has been brought to our notice is the letter dated 12th February, 1997 written by the Deputy Secretary, Cabinet Secretariat, addressed to the Ministry of Human Resource Development, referring to its letter dated 2nd January, 1997 and saying that the Prime Minister has felt that the proposed Board is too unwieldy and desired to know whether there could be a compact Board. Thereafter, the matter appears to

have not been pursued further.

In my view, side stepping of such an important Advisory Board as CABE on the plea of non-reconstitution of nominated members is not proper. There is yet another reason as to why consultation of the Board is highly essential in issues like relating to the State and Central coordination in evolving a national consensus pertaining to national policy on education which require implementation in all the States, as the education has now been brought to the Concurrent List by the 42nd amendment to the Constitution. This would dispel the lurking suspicion in the minds of the people and also to project the transparency and purity in the decision making process of the Government.

It is true, whether to continue or to discontinue such Board is within the realm of the executive authority, but as long as it exists, consultation with such body, which has been in existence since 1935, cannot be side-tracked. The Union of India is, therefore, directed to consider the filling up the vacancies of the nominated members of CABE and convene a meeting of CABE for seeking its opinion on National Curriculum Framework for School Education (NCFSE) as expeditiously as possible and in any case, before the next academic session. This would not, however, mean that NCFSE 2000 published by NCERT is illegal for non-consultation of CABE. With this view on CABE, I concur with the view taken by Brother Shah,J in all other respects.