

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4144/2024  
(Arising out of SLP(C) No.6256/2024)

REGISTERED UNAIDED PRIVATE SCHOOLS  
MANAGEMENT ASSOCIATION KARNATAKA

Appellant(s)

VERSUS

STATE OF KARNATAKA & ORS.

Respondent(s)

WITH

CIVIL APPEAL NO.4145/2024  
(Arising out of SLP(C) No. 6257/2024)

CIVIL APPEAL NO.4146/2024  
(Arising out of SLP(C) No.6469/2024 @ Diary No(s). 11192/2024)

O R D E R

1. Heard Mr. K. V. Dhananjay, learned counsel for the appellant(s) and Mr. Devdatt Kamat, learned senior counsel for the respondent-State at length.
2. Permission to file special leave petition in Diary No(s). 11192/2024 is granted.
3. Leave granted in all SLPs.
4. Having regard to the urgency in the matters, the same were finally heard with the consent of the learned counsels for the parties.
5. The present set of appeals arise out of the interim order dated 07.3.2024 passed by the Division Bench of the High Court of

Karnataka at Bengaluru in I.A. No.4/2024 in W.A. No.379 and 380 of 2024, arising out of the judgment and order dated 06.3.2024 passed by the Single Bench in W.P. Nos.26489 and 24745 of 2023.

6. The Single Bench vide the said judgment dated 06.03.2024 while considering the earlier judgment dated 10.03.2023 in Writ Petition No.1668/2023, and other writ petitions and elaborately discussing the provisions of the Karnataka Education Act, 1983 (hereinafter referred to as "Education Act") as also the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as "RTE Act"), had observed as under:-

"51. The fact remains that the entire process of the setting up of the question paper, conduct of examination, evaluation methodology and declaration of results are all monitored by the Board namely, KSEAB, which would mean that an external agency other than the respective Schools would be making an evaluation/assessment for SA-2 for the academic 2022-2023 for 50 marks, which would be proportionate to 20 marks. This would mean, that the respective Schools would not have the liberty to assess or evaluate the students by themselves for 20 marks out of 100 marks. This is not contemplated under the RTE Act, on the basis of which, the present circular has emanated.

52. In view of the State Government admitting the fact of bringing this mechanism for evaluation of students for the 5th or 8th standard coming under the purview of Section 16 of the RTE Act, it will have to be seen whether Section 16 of the RTE Act provides the State Government any such mechanism to conduct assessment/ evaluation and if so, what

would be the process for such assessment/evaluation. At the cost of repetition, Section 16(1) contemplates regular examination; Section 16(2) contemplates that if the child fails he shall be given additional instructions and an opportunity for re-examination within a period of two months from the date of declaration of result; Section 16(3) states the appropriate Government may allow the schools to hold back the child in 5th or 8th standard, in such manner and subject to such condition as may be prescribed, if he fails in the re-examination as referred to in sub-Section (2). Proviso to Section 16(3) states the appropriate Government not to hold back any child till the stage of elementary education. Section 16(4) states no child shall be expelled from a school till the completion of elementary education.

53. On careful perusal of Section 16 of the RTE Act and its sub-Sections, in my opinion, there is no power vested with the appropriate Government/State Government to conduct any examination of its own other than the regular examination contemplated under the above said Section. It can also be further inferred from the above said Section 16 that there is no scope under the said Section for conducting an assessment or evaluation other than the regular examination by an external agency/board and to award marks as per Section 16(1) of the RTE Act.

54. This being the state of affairs, in order to improve the learning outcomes in the elementary classes, it was proposed to substitute Section 16 of the RTE Act to empower the appropriate Government to take decision as to whether to hold

back a child in the 5<sup>th</sup> or 8<sup>th</sup> standard or in both classes or not to hold back any child in any class till the completion of elementary education. Accordingly, the substitution to Section of the RTE, Act was brought in to force with effect from 01.03.2019. Thereafter, there was an amendment to Section 38 of the Act, by incorporating sub-Clause (fa) of sub-Section (2) of Section 38 of the Act. 55. In the fag end of the academic year 2022-2023 the State Government has issued the impugned circulars to conduct a uniform assessment by limiting the assessment only to SA-2 which is the final summative assessment with an intention to have an assessment and to determine whether a student would be held back or not. It is also not in dispute that marking of the assessment being limited to SA-2 would be for the total marks of 20 and in the event a student gets lesser than 35 marks in FA-1 to FA-4 and SA-1 & SA-2, then the student would need further assessment, but however, in no event a student is made to stay back/detained in the same class. This methodology of assessment/evaluation of the State for the aforementioned students of the 5<sup>th</sup> and 8<sup>th</sup> standard is to understand and have an idea for the benefit of the parents and students as to what is the merit of the student and where he stands requiring or calling for improvement or assistance.

56. The object and intent of the appropriate Government or State Government is laudable and appreciable wherein it is making an attempt to have checks and balances or mechanism for assessment and evaluation and also for remedial actions. In the present generation and state of affairs large

number of schools mushrooming in every nook and corner of the street in the District and State level, it is necessary to bring about a proper mechanism with regard to checks & balances and evaluation & assessment of the school children of 1<sup>st</sup> to 9<sup>th</sup> standard and so also, a similar assessment with regard to the schools and the teaching staff. However, while bringing about such mechanism the appropriate Government or State Government or the schools for that matter would have to necessarily follow the process and procedure laid down and prescribed under the statute. It is cardinal principle of law that when any scheme/circular/order of the Government is implemented it has to evolve or emanate from a statute under which it is governed.

57. The State Government has issued the impugned circulars to prescribe certain assessment and evaluation under the provisions of the RTE Act. No doubt, the appropriate Government being the State Government is empowered to make Rules and Regulations to carry out the provisions of the Act, but while doing so it will have to be necessarily follow the procedure prescribed under the Act. Section 38(4) of the Act states, 'every rule or notification made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislatures'. Though it is the contention of the learned Additional Advocate General that the State has not decided to make any rule or notification and it is only formulating certain assessment and evaluations for the aid and benefit of the students coming under the State syllabus, therefore, the question of

following the process and procedure of the Act more specifically Section 38 or any other provisions of the Act would not attract and that the arguments of the petitioners is flawed as State Government has not made any rule and accordingly, the question of public consultation, debate or discussion are unwarranted. I am afraid the contention of learned Additional Advocate General cannot be accepted for the reason that by virtue of the impugned circulars, there is a change which is brought by the State Government by way of assessment/evaluation and awarding of 20 marks for SA-2 for the academic year 2022-2023, which would-invariably - be assessed by the Board - KSEAB of the State. Thereby an external agency is coming into play for awarding of 20 marks for SA-2 for the students of 5th or 8th standard thereby out of 100 marks to be awarded the Schools are deprived of 20 marks which is taken away by the impugned circulars. This is not contemplated under Section 16 of the RTE Act.

58. It is a cardinal principle of law that when the State Government wishes to bring about a Government order or Circulars, it has to be in consonance with the Act and the Rules. The said Circulars if any can only supplement the Act or Rules, but in no circumstances, supplant the Rules. In situation where such Circulars are issued to supplant the Rules which is in the guise of the Rules, the prescribed procedure and process have to be followed as contemplated under the Act. Section 38(4) of the RTE Act contemplates when Rules/notifications can be made by the appropriate Government, it will have to be laid as soon as may

be after it is-made before the State Legislature, which admittedly in the present case has not been done or followed.

59. Nothing prevents the State Government from making an assessment/evaluation in order to improve the learning outcomes in the elementary classes. A mechanism or a procedure can be set up to evaluate the learning outcomes but whether the State has the powers to award a percentage of marks from out of 100 marks from the Schools by conducting a separate exam other than the Schools conducting the exams, well the answer in my opinion is 'NO' as Section 16 of the RTE Act does not contemplate so."

7. The State of Karnataka having preferred the Writ Appeals being W.A. Nos.379/2024 & 380/2024, the Division Bench in I.A. No.4/2024 has passed the following impugned order:-

"I.A.4/2024 in both these appeals are allowed. Consequently, the operation of the impugned order dated 06.03.2024 passed by the learned Single Judge in W.P.No.26489/2023 C/w. W.P.No.24745/2024 is stayed, until further orders, pending disposal of these writ appeals."

8. Having heard learned counsel for the parties and having gone through the provisions contained in the Education Act as well as RTE Act, as also the other material made available on record, it appears that the Division Bench has sought to stay the operation of the Order passed by the Single Bench on 06.03.2024 which in fact had followed the earlier judgment dated 10.03.2023 passed by the

another Single Bench in the previous petition, and had quashed the impugned Notifications dated 06.10.2023 and 09.10.2023, which enabled the State Government to proceed with the Board Examinations for the classes 5th, 8th, 9th and 11th as scheduled. It may be noted that earlier though the judgment dated 10.03.2023 was sought to be challenged by the State Government by filing an Intra-court Appeal, the same was disposed of at the instance of learned Government counsel for the State as having become infructuous.

9. Since the writ appeals are pending before the Division Bench for considerations, we do not wish to elaborately consider the submission made at this stage in the present set of appeals. However, suffice is to say that *prima facie* the impugned Notifications appear to have been issued in violation of the provisions contained in Section 30 of the RTE Act which reads as under:-

“Section 30. Examination and completion certificate  
(1) No child shall be required to pass any Board examination till completion of elementary education.  
(2) Every child completing his elementary education shall be awarded a certificate, in such form and in such manner, as may be prescribed.”

10. From the bare reading of the above provision, it is discernible that no child is required to pass any Board examination till completion of elementary education i.e. from 1st class to 8th class as defined in Section 2(f) of the RTE Act. Hence, the State



Government should and could not have held the Board Examination for the classes 1<sup>st</sup> to 8<sup>th</sup>.

11. Though an attempt was made by Mr. Devdatt Kamat, learned senior counsel for the respondent-State to submit that the said Notifications were issued in view of the provisions contained in the Education Act, the said submission was not accepted by the Single Bench in the elaborately discussed judgment impugned in the writ appeals.

12. Since the said Notifications have already been set aside by the Single Bench, in our opinion, the Division Bench should not have permitted the State Government to proceed further with the examination which according to the State is Summative examination for the class 5<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 11<sup>th</sup>.

13. We are apprised that the Summative examination of the Class 11 is already over, and the same for Classes 5, 8 and 9 have already commenced since yesterday i.e. 11.3.2024 which are likely to be concluded on 18.3.2024.

14. In our opinion, the said examinations are being conducted pursuant to the Notifications which have been declared illegal by the Single Bench, the State Government should not be permitted to conduct the examinations pursuant thereto unnecessarily creating complications in the Education policy affecting the career of the students.

15. In that view of the matter, we allow the present appeals and set aside the impugned order passed by the Division Bench dated 07.3.2024 in IA No.4/2024.

16. We hereby clarify that the Division Bench may decide the writ appeals on merits and in accordance of law without being influenced by the observations made by us in the instant order.

.....J.  
(BELA M. TRIVEDI)

.....J.  
(PANKAJ MITHAL)

NEW DELHI;  
March 12, 2024

ITEM NO.51

COURT NO.15

SECTION IV-A

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 6256/2024

(Arising out of impugned final judgment and order dated 07-03-2024 in IA No. 4/2024 in W. A. No.379 of 2024 passed by the High Court Of Karnataka At Bengaluru)

REGISTERED UNAIDED PRIVATE SCHOOLS  
MANAGEMENT ASSOCIATION KARNATAKA

Petitioner(s)

VERSUS

STATE OF KARNATAKA & ORS.

Respondent(s)

(IA No.63583/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENT  
IA No.63585/2024-EXEMPTION FROM FILING O.T. )

WITH

SLP(C) No. 6257/2024 (IV-A)  
(FOR ADMISSION and I.R.

IA No.63602/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENT

IA No.63603/2024-EXEMPTION FROM FILING O.T.

IA No. 63602/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENT

IA No. 63603/2024 - EXEMPTION FROM FILING O.T.)

Diary No(s). 11192/2024 (IV-A)  
(FOR ADMISSION and I.R.

IA No.63607/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No.63608/2024-EXEMPTION FROM FILING O.T.

IA No.63606/2024-PERMISSION TO FILE PETITION (SLP/TP/WP/..))

Date : 12-03-2024 These petitions were called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE BELA M. TRIVEDI  
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Petitioner(s) Mr. K. V. Dhananjay, Adv.  
Ms. Navpreet Kaur, Adv.  
Mr. A. Velan, AOR  
Mr. Mritunjay Pathak, Adv.

Mr. Sudharshan Suresh, Adv.  
Ms. Honey Kumbat, Adv.  
Mr. Sainath D.M., Adv.  
Ms. Ananya K., Adv.  
Mr. Dheeraj S.J., Adv.  
Mr. Anirudh Kulkarni, Adv.

For Respondent(s) Mr. Devdatt Kamat, Sr. Adv.  
Mr. Nishant Patil, AAG  
Mr. D. L. Chidananda, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

1. Permission to file special leave petition in Diary No(s). 11192/2024 is granted.
2. Leave granted in all SLPs.
3. The present appeals are allowed in terms of the signed order.
4. Pending applications stand disposed of.

(RASHMI DHYANI PANT)  
COURT MASTER (SH)

(MAMTA RAWAT)  
COURT MASTER (NSH)

(signed order is placed on the file)