

**IN THE SUPREME COURT OF INDIA  
EXTRA-ORDINARY APPELLATE JURISDICTION**

**Special Leave Petition (C) No \_\_\_\_\_ of 2024**

(D No 14432 of 2024)

**Anjum Kadari & Anr**

**.... Petitioner(s)**

**Versus**

**Union of India & Ors**

**....Respondent(s)**

**WITH**

**Special Leave Petition (C) No 7821 of 2024**

**Special Leave Petition (C) No 7857 of 2024**

**Special Leave Petition (C) No 7890 of 2024**

**Special Leave Petition (C) No 7878 of 2024**

**O R D E R**

- 1 Permission to file the Special Leave Petition granted.
- 2 A public interest petition was instituted by an advocate before the High Court of Judicature at Allahabad. The petition challenged the constitutional validity of the Uttar Pradesh Board of Madarsa Education Act 2004<sup>1</sup> as its principal relief. Apart from the above challenge, the petition also questioned the validity of certain provisions of Sections 1(5) and 2 of the Right of Children to Free and Compulsory Education Act 2009. Finally, the petition sought imposition upon all Madarsas of the National Education Policy 2020.

1 “Madarsa Act”

3 By its impugned judgment and order dated 22 March 2024, a Division Bench of the High Court held that:

- (i) The Madarsa Act is *ultra vires* and is unconstitutional; and
- (ii) The State Government shall, in consequence, take steps for accommodating all Madarsa students in regular schools recognized under the Primary Education Board and the High School and Intermediate Education Board of the State of Uttar Pradesh.

The High Court has come to the conclusion that the Madarsa Act, in question, *inter alia*, violates the principle of secularism which forms a part of the basic structure of the Constitution and is violative, *inter alia*, of Articles 14, 21 and 21-A of the Constitution.

4 The correctness of the judgment is in question in these proceedings.

5 We have heard Dr Abhishek Manu Singhvi, Mr Mukul Rohatgi, Mr P S Patwalia, Mr Huzefa A Ahmadi, Mr Salman Khurshid and Dr Menaka Guruswamy, senior counsel appearing on behalf of the petitioners.

6 Mr R Venkataramani, Attorney General for India, appears for the Union of India. Mr K M Nataraj, Additional Solicitor General, appears on behalf of the State of Uttar Pradesh. We have heard Mr S Guru Krishnakumar, Mr V Chitambaresh, Ms Swarupama Chaturvedi and Ms Archana Pathak Dave, senior counsel appearing on behalf of the intervenors.

7 Assailing the correctness of the judgment of the High Court, the broad submissions which have been urged by senior counsel appearing on behalf of the petitioners are set out below:

- (i) The Madarsa Act is principally a regulatory statute which deals with issues, such as:
  - (a) curriculum;
  - (b) instruction;
  - (c) standard of education;
  - (d) conduct of examinations; and
  - (e) qualifications for teaching;
- (ii) The statute which was the subject matter of the challenge does not provide for religious instruction and is not in conflict with Article 28(1) of the Constitution. The functions of the Board of Madarsa Education<sup>2</sup> are of a regulatory nature;
- (iii) The State legislature is competent to enact the law having due regard to the provisions of Entry 25 of List III of the Seventh Schedule of the Constitution;
- (iv) Imparting religious instruction is proscribed by Article 28(1) in an educational institution which is wholly maintained out of State funds. However, the imparting of religious education, *per se*, in secular

2 “Board”

institutions has not been proscribed by the Constitution as elucidated in the judgment of a three-Judge Bench of this Court in **Ms Aruna Roy v Union of India**<sup>3</sup>;

- (v) The impugned judgment of the High Court has unsettled the position which held the field both before the enactment of the statute and after, since Madarsa education dates back to 120 years in the State of Uttar Pradesh;
- (vi) The High Court has conflated the provisions of Article 28 of the Constitution with Article 30;
- (vii) Out of nearly 16,000 Madarsas in the State of Uttar Pradesh, only about 560 are in the receipt of State aid;
- (viii) The direction which has been issued by the High Court causes serious prejudice since as many as 17 lakh students who are receiving education in Madarsa institutions will have to be relocated. Apart from this, over 10,000 teachers who have been imparting education will be displaced;
- (ix) The history of Madarsa education in the territory comprised in the State of Uttar Pradesh dates back to 1909, followed by executive rules/regulations of 1987 and the statute which was enacted in 2004; and
- (x) The High Court has proceeded on a misconceived notion that Madarsa education consists of religious instruction. The circulars which have been issued from time to time by the government indicate that apart from subjects pertaining to Islamic theology, instruction in other subjects is also

imparted.

8 On the other hand, the Attorney General for India submitted that:

- (i) The entanglement of religion is, *per se*, a suspect issue which will need deliberation; and
- (ii) As a result of the directions of the High Court, the functioning of schools imparting Madarsa education is not paralysed and the consequence would be only a denial of State funds.

9 Mr K M Nataraj, Additional Solicitor General appearing for the State of Uttar Pradesh and Mr S Guru Krishnakumar, Mr V Chitambaresh, Ms Swarupama Chaturvedi and Ms Archana Pathak Dave, senior counsel appearing on behalf of the intervenors, submitted that:

- (i) While the State Government defended the provisions of the statute of 2004 before the High Court and had filed a counter affidavit, a decision has been taken by the State to accept the judgment;
- (ii) No Madarasas are being shut down by the State Government and the directions of the High Court merely require relocation of students pursuing their education to other secular institutions;
- (iii) The State Government bears a financial burden of Rs 1,096 crores in providing aid to Madarasas;
- (iv) Instruction which is provided in the Madarasas is not broad-based or compulsory in subjects like Maths, Science and Social Studies. The study of "secular subjects" is made optional in Madarasas; and

- (v) The purpose of the PIL before the High Court was to ensure that quality education is imparted to students pursuing their education in the State. In the absence of compulsory education in subjects such as Maths, Science and Social Studies, there is an apprehension that the educational needs of students would not be catered to.
- 10 The issues which have been raised in the Special Leave Petitions would merit closer reflection. We are, therefore, inclined to issue notice and accordingly do so. The intervenors would be at liberty to file applications for interventions, if they have not already been filed.
- 11 As regards the question of interim relief, the following circumstances must be borne in mind, at this stage:
- (i) The High Court has come to the conclusion that the Madarsa Act violates the principle of secularism which underlies the basic structure of the Constitution and, therefore offends Articles 14, 19 and 21-A as well;
  - (ii) The object and purpose of the Madarsa Act 2004 is to “provide for the establishment of a Board of Madarsa Education in the State and for the matters connected therewith or incidental thereto”. The expression “Madarsa Education” is defined in Section 2(h) of the statute to mean “education in Arabic, Urdu, Persian, Islamic-studies, Tibb Logic, Philosophy” and to include “such other branches of learning as may be specified by the Board from time to time”. Section 3 provides for the constitution of the Board. Section 9 enunciates the functions of the Board to provide the (a) prescription of courses of instruction and course books; (b) grant of degrees, diplomas, certificates and academic instructions; (c) conduct of

examinations; (d) recognition of institutions; (e) admitting candidates to examinations; (f) conduct of research and training in any branch of Madarsa education; and (f) other incidental provisions. Section 11 empowers the Board to recognize an institution in any new subject or for a higher class. The powers of the State Government are specified in Section 13. Section 20 empowers the Board to frame regulations, *inter alia*, in the matter of conferring degrees, diplomas and certificates; the conditions of recognition of institutions; courses of study; conditions in which candidates shall be admitted to the examination and research programmes of the Board; fees for admission to the examinations of the Board; the conduct of examinations; appointment of examiners and other related staff for the conduct of examinations; and admission of institutions to the privilege of recognition and the withdrawal of recognition. Section 23 provides for the appointment of the heads of institutions, teachers and other employees in terms of the regulations. Section 24 provides for the conditions of service of the heads of institutions and other employees. Section 29 empowers the Board to have its own funds into which all its receipts will be credited. Finally, a rule making power is conferred on the State Government under Section 32.

- (iii) The above provisions make it abundantly clear that the object and purpose of the statutory Board which is constituted under the Madarsa Act is regulatory in nature. The finding of the High Court that the very establishment of the Board would amount to a breach of the principles of secularism appears to conflate the concept of Madarsa education with the regulatory powers which have been entrusted to the Board;

- (iv) Article 28(1) of the Constitution provides that no religious instruction shall be provided in any educational institution wholly maintained out of State funds. In striking down the provisions of the Madarsa Act, the High Court, *prima facie*, has misconstrued the provisions of the Madarsa Act. The Madarsa Act, *per se*, does not provide for religious instruction in an educational institution maintained out of State funds. The object and purpose of the statutory provisions is regulatory in character;
- (v) The expression “religious instruction”, which is employed in Article 28(1) of the Constitution, has been explained in a judgment of a three-Judge Bench of this Court in **Ms Aruna Roy** (supra). Paragraphs 55 and 81 are reproduced below for convenience of reference:

“55... I am in agreement with the view that education of religions can be imparted even in “educational institutions” fully maintained out of State funds. But the education on religion which can be allowed to be imparted in “educational institutions fully maintained out of State funds” as mentioned in clause (1) of Article 28 of the Constitution has to be education of a nature different from religious education or religious instruction which can be imparted in educational institutions maintained by minorities or those “established under any endowment or trust” as referred in clause (2) of Article 28. I have, therefore, found it necessary to give my own opinion on the important issues raised on behalf of the petitioners questioning introduction of religious education in educational institutions fully maintained out of State funds. According to them, it runs counter to the concept of “secularism” which should guide the activities of the State in the field of education.

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81. The expression “religious instruction” used in Article 28(1) has a restricted meaning. It conveys that teaching of customs, ways of worship, practices or rituals cannot be allowed in educational institutions wholly maintained out of

State funds. But Article 28(1) cannot be read as prohibiting *study of different religions* existing in India and outside India. If that prohibition is read with the words "religious instruction", study of philosophy which is necessarily based on study of religions would be impermissible. That would amount to denying children a right to understand their own religion and religions of others, with whom they are living in India and with whom they may like to live and interact. Study of religions, therefore, is not prohibited by the Constitution and the constitutional provisions should not be read so, otherwise the chances of spiritual growth of the human being, which is considered to be the highest goal of human existence, would be totally frustrated. Any interpretation of Article 28(1), which negates the fundamental right of a child or a person to get education of different religions of the country and outside the country and of his own religion would be destructive of his fundamental right of receiving information, deriving knowledge and conducting his life on the basis of a philosophy of his liking."

- (vi) If the object and purpose of the Public Interest Litigation is to ensure that secular education in core subjects, such as, Maths, Science, Social Studies and History, besides the languages, is provided in institutions imparting Madarsa education, the remedy would not lie in striking down the provisions of the Madarsa Act, but, issuing suitable directions to ensure that students who pursue their education in these institutions are not deprived of the quality of education that is made available by the State in other institutions. The State does have a legitimate public interest in ensuring that students who pursue education in all institutions, whether at the primary, secondary or higher level, should receive education of a qualitative standard which makes them qualified to pursue a dignified existence upon receiving the degrees which are awarded to them. Whether this purpose would require jettisoning the entire statute which has been enacted by the State legislature in 2004 would merit serious consideration;

- (vii) The State Government had, in the course of the proceedings before the High Court, supported the provisions of the statute and had defended the statute both in its pleadings and submissions. However, the State Government informed this Court that it would accept the judgment of the High Court which is now under challenge by the institutions which are affected by the consequences of the judgment; and
- (viii) The High Court, while striking down the provisions of the Madarsa Act, directed that all the students would be relocated by the State. The operative directions of the High Court would impinge serious on the future course of the students. Nearly 17 lakh students are pursuing their education in these institutions. While it is entirely the choice of the students and parents to choose the institutions in which the students wish to pursue their studies, we are of the view that the impugned direction of the High Court for the relocation of the students was, *prima facie*, not warranted.
- 12 We have formulated in brief the reasons on the basis of which we are inclined to issue an interim direction pending the hearing and final disposal of the petitions. All the rights and contentions of the parties are necessarily kept open.
- 13 The State shall file its counter affidavit and response to the Special Leave Petitions on or before 31 May 2024. The rejoinder, if any, shall be filed on or before 30 June 2024. The Special Leave Petitions shall be listed for hearing and final disposal in the second week of July 2024.

14 Pending the hearing and final disposal of the Special Leave Petitions, the impugned judgment and order of the High Court dated 22 March 2024 shall remain stayed.

.....CJI.  
**[Dr Dhananjaya Y Chandrachud]**

.....J.  
**[J B Pardiwala]**

.....J.  
**[Manoj Misra]**

**New Delhi;  
April 05, 2024**

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ITEM NO.19+38

COURT NO.1

SECTION XI

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

**SPECIAL LEAVE PETITION (CIVIL) Diary No(s).14432/2024**

(Arising out of impugned final judgment and order dated 22-03-2024 in WC No. 6049/2023 passed by the High Court of Judicature at Allahabad, Lucknow Bench)

ANJUM KADARI &amp; ANR.

Petitioner(s)

**VERSUS**

UNION OF INDIA &amp; ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.78898/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.78899/2024-PERMISSION TO FILE SLP)

WITH

SLP(C) No. 7821/2024 (XI)

(WITH IA No.78543/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.78552/2024-EXEMPTION FROM FILING O.T. and IA No.78540/2024-PERMISSION TO FILE LENGTHY LIST OF DATES)

SLP(C) No. 7857/2024 (XI)

(WITH IA No.78763/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.78769/2024-EXEMPTION FROM FILING O.T. and IA No.78766/2024-PERMISSION TO FILE SYNOPSIS AND LIST OF DATES)

SLP (C) No(s). 7890/2024

(FOR ADMISSION and I.R. and IA No.78915/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.78916/2024-EXEMPTION FROM FILING O.T. )

SLP(C) No. 7878/2024 (XI)

(WITH IA No.78869/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.78871/2024-EXEMPTION FROM FILING O.T. and IA No.78870/2024-PERMISSION TO FILE LENGTHY LIST OF DATES)

Date : 05-04-2024 These petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE J.B. PARDIWALA

HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s)

Dr. Abhishek Manu Singhvi, Sr. Adv.  
 Mr. P S. Patwalia, Sr. Adv.  
 Mr. Rohit Amit Sthalekar, AOR  
 Mr. Sankalp Narain, Adv.  
 Mr. M. A. Ausaf, Adv.  
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 Mr. H. P. Sahi, Adv.  
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 Mrs. Ranjeeta Rohatgi, Adv.

Dr. Menaka Guruswamy, Sr. Adv.  
 Mr. Pradeep Kumar Yadav, Adv.  
 Mr. Vishal Thakre, Adv.  
 Mr. Gopal Singh, Adv.  
 Ms. Anjale Kumari, Adv.  
 Mrs. Chhaya, Adv.  
 Mr. Utkarsh Pratap, Adv.  
 Mr. Suvangana Agarwal, Adv.  
 Mr. Lavkesh Bhambhani, Adv.  
 Mr. Aryan P Nanda, Adv.  
 Mr. Sanjeev Malhotra, AOR

Mr. Shariq Ahmed, Adv.  
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 Mr. Tariq Ahmed, Adv.  
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 M/S. Ahmadi Law Offices, AOR

Mr. Salman Khurshid, Sr. Adv.

For Respondent(s)

Mr. R. Venkataramani, Attorney General  
 Mr. K.M. Nataraj, A.S.G.  
 Mr. Sharan Dev Singh Thakur, A.A.G.  
 Ms. Ruchira Goel, AOR  
 Mr. Siddharth Thakur, Adv.  
 Ms. Shagun Parashar, Adv.  
 Ms. Indira Bhakar, Adv.  
 Ms. Aarushi Singh, Adv.  
 Mr. Satwik Misra, Adv.

Mr. Guru Krishnakumar, Sr. Adv.  
 Ms. Archana Pathak Dave, Sr. Adv.  
 Ms. Madhavi Divan, Sr. Adv.

Mr. Sai Shashank, Adv.  
Mr. Santosh Kumar, Adv.  
Mr. Nachiketa Joshi, Adv.  
Ms. Bhavya Tyagi, Adv.  
Mr. Bhakti Vardhan Singh, Adv.  
Mr. Shuvodeep Roy, Adv.  
Mr. Pulkit Agarwal, Adv.  
Mr. Praneet Pranav, Adv.  
Mr. T Bhaskar Gowtham, Adv.  
Ms. Aarushi Singh, Adv.  
Mr. Gautam Singh, Adv.  
Mr. Amit Sharma - B, Adv.  
Mr. Amit Sharma - C, Adv.  
Ms. Aditi Tripathi, AOR  
Mr. Rahul G. Tanwani, Adv.

Mr. V Chitambareesh, Sr. Adv.  
Mr. Mahesh Thakur, AOR

Ms. Swarupama Chaturvedi, Sr. Adv.  
Mr. Abhaid Parikh, AOR  
Ms. Katyayani Anand, Adv.  
Ms. Saumya Kapoor, Adv.  
Mr. Aayush Shivam, Adv.

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

- 1 Permission to file the Special Leave Petition granted.
- 2 Issue notice in terms of the signed order. The intervenors would be at liberty to file applications for interventions, if they have not already been filed.
- 3 As regards the question of interim relief, the circumstances mentioned in the signed order must be borne in mind.
- 4 The State shall file its counter affidavit and response to the Special Leave Petitions on or before 31 May 2024. The rejoinder, if any, shall be filed on or before 30 June 2024. The Special Leave Petitions shall be listed for hearing and final disposal in the second week of July 2024.

- 5 Pending the hearing and final disposal of the Special Leave Petitions, the impugned judgment and order of the High Court dated 22 March 2024 shall remain stayed.

**(SANJAY KUMAR-I)**  
**DEPUTY REGISTRAR**

**(SAROJ KUMARI GAUR)**  
**ASSISTANT REGISTRAR**

**(Signed order is placed on the file)**