

**W.P.Nos.15679, 5642, 6011, 17286, 7848, 6429, 6594, 6179, 6878,
7412,7455,7644,13688,14211,7836,10670,11011,9508,7632,
7765 of 2021 and
W.P.(MD).Nos.5615,7869,5182,4877,5207,6616,6619,6758,6202,
7537,5762, of 2021
and W.M.P.Nos.17962,17873,17870,17311 of 2021**

**M.M.SUNDRESH, J.,
and
S.KANNAMMAL, J.,**

[Order of the Court was made by *M.M.SUNDRESH, J.*]

In all these writ petitions, a challenge has been made to the constitutionality of the Act,(hereinafter called as 'Act 8 of 2021'). Pending the writ petitions, interim orders have been sought for, both for stay and injunction. Petitions have been filed seeking to implead various parties. Now, the writ petitioners seek interim orders while the impleading petitioners seek to implead themselves.

2. Learned Senior Counsel appearing for the respective petitioners made the following submissions:

2.1 As held by the Apex Court in *Dr.Jaishri Laxmanrao Patil v State of Maharashtra, Through Chief Minister and another* reported in (2021) 2 SCC 785, the Constitutional Court is not denude of the power to consider granting appropriate interim orders when challenges have been laid to the

Constitutionality of an Act. The State does not have the power or authority to introduce enactment notwithstanding the 127th Constitutional amendment. Equities are in favour of the petitioners. Mere pendency of the civil writ petitions filed before the Apex Court without interim orders will not take away the right of the petitioners in seeking interim orders vis-a-vis the powers of this Court.

3. Learned Advocate General and the learned Senior Counsel appearing for the respondents made the following submissions:

3.1 There is a presumption towards the constitutionality of the Act. The 127th constitutional amendment would facilitate the validity of the Act. The question of the power available to the State along with the issues governing adequacy of the material and legal malice, if any, can only be decided in the writ petitions. The respondents are ready with the final hearing of the matter. Attempts have been made to get the interim orders before the Apex Court. Therefore, it cannot be said that there was no occasion to seek interim order at the earlier point of time. Ultimately, it is for the Court to decide the appropriate relief. For some Institutions, the admission process is over and the same is in progress for the others. Hence, these petitions filed seeking interim orders will have to be dismissed.

4. Learned counsel appearing for the impleading petitioners submitted that inasmuch as the writ petitions have been filed challenging the validity of the Act, they should be permitted to implead as party respondents. No prejudice would be caused by their impleadment as the right which is otherwise available to the petitioners in filing the writ petition will have to be applied *ipso facto* to those who are defending the orders of the Government.

5. There are two sets of activities which are being undertaken by the State pursuant to the implementation of the enactment. By way of letter from the Deputy Secretary Letter No.4903/A2/2021-1, dated 01.04.2021, a decision was made proceeding to fill up the seats in the Educational Institutions by following the impugned enactment. Thereafter, another Government Order was passed in G.O.Ms.75, Human Resources Management (K) Department, dated 26.07.2021 seeking to adopt the enactment for the purpose of filling up the post.

6. When a challenge is laid to the constitutionality of an enactment, the Court is weighed with the principle governing presumption. Such a presumption though be termed as "shall", after notice and if the Court is of

the view that there is a need to grant appropriate interim orders then the same can be done. Similarly, the mere pendency of the cases before the Apex Court may not act as a bar since notice was issued at the time of hearing the petitioners alone. It has also been informed that due indication has been given to the petitioners to seek appropriate remedies before the High Court. We do not wish to say anything more on this aspect.

7. Upon hearing the parties, we are of the view that it would only be appropriate to adjudicate the matter one way or the other finally. In fact, that was the arrangement and understanding leading to the process of completion of the pleadings. Even otherwise, it would only be appropriate to decide the writ petitions one way or the other so that a finality could be arrived at. Having said so, the parties concerned who are already beneficiaries of the enactment and who are likely to be the beneficiaries will have to be informed sufficiently on the pendency of the other writ petitions. While observing so, we clarify that it is ultimately for the Court to decide the appropriate relief based upon its final decision on the validity of the enactment by issuing appropriate directions. We do feel that it would only serve the interest of one and all if it is made clear that any admissions made, likely to be made or appointments made or likely to be made pursuant to the impugned enactment will be subject to the result of the final

order to be passed in the writ petitions. We have already clarified that this interim order will always be subject to the final order and, therefore, the Court can pass appropriate orders even at that point of time notwithstanding the ultimate conclusion arrived at.

8. In such view of the matter, we are inclined to pass the following interim orders while allowing the petitions filed for impleadment. Since all the counsel appearing for the parties are ready with the final hearing, we are also willing to fix an early date to resolve the issue one way or the other. Accordingly, the following orders are passed:-

- i. Admissions made or to be made in tune with the impugned enactment (Act 8 of 2021) would be subject to the result of the final order to be passed.*
- ii. It is clarified that it is well open to the Court to pass appropriate orders on the admissions made in the interregnum and also the appointments as this order is only by way of interim arrangement.*
- iii. It is well open to the persons to get either admissions or appointments being the beneficiary of the enactment to file appropriate applications before this Court seeking to implead themselves.*

iv. The impleading petitions filed are accordingly allowed.

v. The newly impleaded respondents can file their pleadings within a period of two weeks from the date of receipt of a copy of this order.

vi. The petitioners shall make a publication in any one of the leading Daily both in vernacular and English indicating the pendency of the Writ Petitions which are likely to be taken up on the 14th September, 2021.

Taking into consideration the issue involved, Registry is directed to post all the writ petitions for final hearing on 14.09.2021.

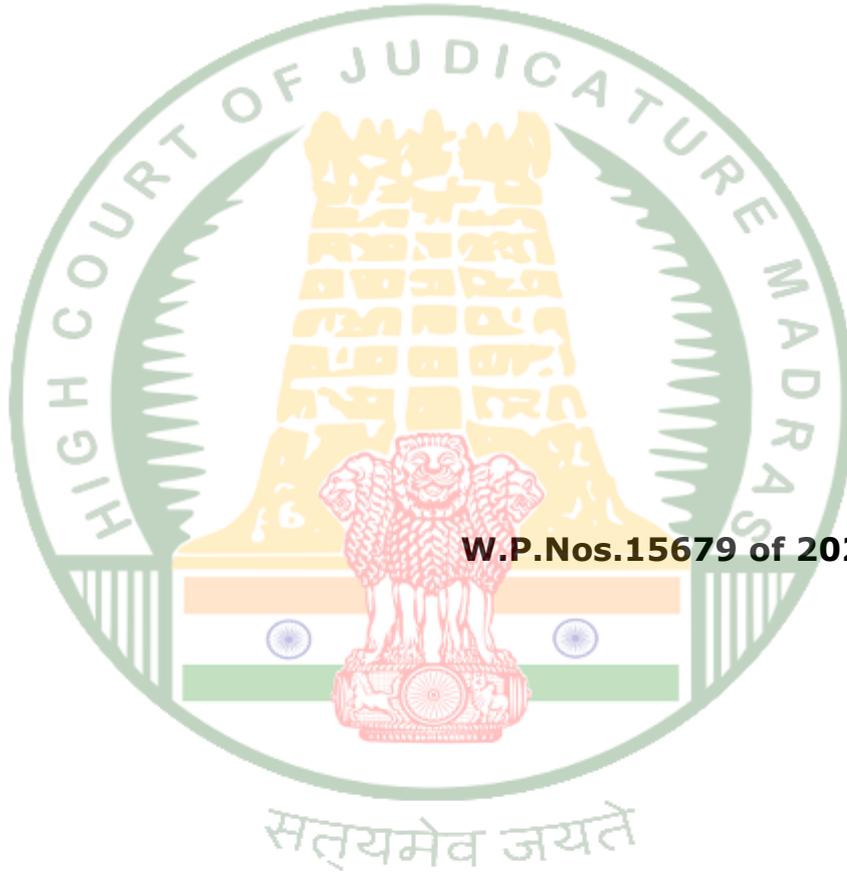
(M.M.S., J.) (S.K., J.)
25.08.2021

mml/ssm

Note : (i) Registry is directed to carry out the necessary amendments.
(ii) Issue copy of the order on 27.08.2021.

**M.M.SUNDRESH, J.,
and
S.KANNAMMAL, J.,**

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W.P.Nos.15679 of 2021 etc batch

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