

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE T.VINOD KUMAR

WRIT APPEAL Nos.657 and 661 of 2023

COMMON JUDGMENT: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. Ch.Samson Babu, learned counsel for the appellant.

Mr. Adhi Venkateshwara Rao, learned Government Pleader for School Education Department, for the official respondents.

Mr. Ali Faraz Farooqui, learned counsel for respondent No.1 in W.A.No.657 of 2023 and respondent No.5 in W.A.No.661 of 2023.

2. On admitted facts, the issue which arises for consideration in these writ appeals is whether the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (hereafter referred to as, 'the Act'), applies to the Minority Unaided Educational Institutions.

3. The background facts are that respondent No.1 in W.A.No.657 of 2023, who is represented by his father (hereinafter referred to as, 'the student'), was a student of Class-III in the Little Flower High School (hereinafter referred to as, 'the School'). According to the student, due to onset of the COVID pandemic his father could not pay the school fee and he was not permitted to attend the online classes of Class-III by the School. Thereafter, the student was not permitted to appear for the final examination of Class-III. Being aggrieved by the action of the School in not promoting the student, his father filed a complaint before the Telangana State Human Rights Commission (hereinafter referred to as, 'the Commission'). The Commission communicated the matter to the District Educational Officer to take action and to submit a report. The District Educational Officer requested the Deputy Educational Officer to submit a report after conducting an enquiry in relation to the aforesaid complaint. The Deputy Educational Officer issued a show cause notice dated

26.09.2022 to the School seeking a reply as to why contrary to the Act, the student was detained in Class-III and is not being promoted to Class-IV. However, the notice failed to elicit any response from the School. Thereupon, a reminder dated 25.10.2022 was issued by the Deputy Educational Officer. The School took a stand that the provisions of the Act do not apply to the Minority Unaided Educational Institutions. The Deputy Educational Officer submitted the report dated 27.10.2022 to the District Educational Officer concluding that the School has submitted irrelevant answers not justiciable as per the rules. The District Educational Officer thereupon issued proceedings dated 30.11.2022 stating that the provisions of the Act are applicable to all the schools including the Unaided Minority Institutions and directed the Deputy Educational Officer to issue notice to the School to promote the student to Class-IV as per Section 16 of the Act. The School has assailed the order dated 30.11.2022 in W.P.No.45920 of 2022. The student has filed a writ petition, namely W.P.No.3372 of 2023, challenging the

action of the School in not implementing the orders passed in proceedings dated 01.12.2022.

4. Learned Single Judge by a common order decided both the aforesaid writ petitions jointly and dismissed the writ petition preferred by the School and has allowed the writ petition filed by the student directing the School to promote the student to Class-IV forthwith.

5. Being aggrieved by the aforesaid common order passed by the learned Single Judge, the School has filed W.A.No.657 of 2023 against the order in W.P.No.3372 of 2023 and W.A.No.661 of 2023 against the order in W.P.No.45940 of 2022.

6. Learned counsel for the School submitted that the issue is no longer *res integra* and is answered by a Constitution Bench of the Hon'ble Supreme Court in **Pramati Educational & Cultural Trust v. Union of India**¹.

¹(2014) 8 SCC 1

7. On the other hand, learned counsel for the student fairly submits that in view of the law declared by the Constitution Bench of the Hon'ble Supreme Court, the provisions of the Act do not apply to the Minority Unaided Educational Institutions. However, learned counsel for the student submits that the father of the student could not pay the fee on account of COVID pandemic and therefore the student was denied permission to attend the online classes. Therefore, the School ought to have taken a liberal approach in the peculiar facts of the case.

8. We have considered the rival submissions made on both sides and have perused the record.

9. The issue with regard to applicability of provisions of the Act to the Minority Unaided Educational Institutions was considered by a three Judge Bench of the Hon'ble Supreme Court in **Society for Unaided Private Schools of**

Rajasthan v. Union of India², wherein the Supreme Court in paragraph 65 has held as under:

65. However, the said 2009 Act, and in particular Sections 12(1)(c) and 18(3) infringes the fundamental freedom guaranteed to *unaided minority schools* under Article 30(1) and, consequently, applying the **R.M.D. Chamarbaugwalla v. Union of India** [AIR 1957 SC 628 : 1957 SCR 930] principle of severability, the said 2009 Act shall not apply to such schools.

10. A reference was also made by another three Judge Bench of the Hon'ble Supreme Court by an order dated 06.09.2010 in **Pramati Educational & Cultural Trust** (supra). The Constitution Bench of the Hon'ble Supreme Court while answering the reference in paragraph 56 held as under:

56. In the result, we hold that the Constitution (Ninety-third Amendment) Act, 2005 inserting clause (5) of Article 15 of the Constitution and the Constitution (Eighty-sixth Amendment) Act, 2002 inserting Article 21-A of the Constitution do not alter the basic structure or framework of the Constitution and are constitutionally valid. We also hold that the 2009 Act is

² (2012) 6 SCC 1

not *ultra vires* Article 19(1)(g) of the Constitution. We, however, hold that the 2009 Act insofar as it applies to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is *ultra vires* the Constitution. Accordingly, Writ Petition (C) No. 1081 of 2013 filed on behalf of Muslim Minority Schools Managers' Association is allowed and Writ Petitions (C) Nos. 416 of 2012, 152 of 2013, 60, 95, 106, 128, 144-45, 160 and 136 of 2014 filed on behalf of non-minority private unaided educational institutions are dismissed. All IAs stand disposed of. The parties, however, shall bear their own costs.

11. In view of the aforesaid enunciation of law by a Constitution Bench of the Hon'ble Supreme Court, the issue involved in these appeals has to be answered by stating that the provisions of the Act do not apply to the Minority Unaided Educational Institutions.

12. Therefore, the common order passed by the learned Single Judge in W.P.Nos.45940 of 2022 and 3372 of 2023 dated 05.06.2023 is set aside.

13. In the instant case, the student was studying in Class-III. It is the case of the student that on account of

onset of the COVID pandemic his father could not pay the fee to the School and therefore he was denied permission to attend the online classes. Therefore, he did not comply with the minimum requirement of attendance and was denied promotion to Class-IV.

14. In the aforesaid facts, when a query was made to the learned counsel for the appellant, he fairly stated that in peculiar facts of the case, as a one time measure, the student shall be admitted to Class-IV.

15. In view of the aforesaid submission made on behalf of the School, it is directed that the student shall be promoted to Class-IV in the School and shall be permitted to prosecute his studies. We may hasten to clarify that this direction shall not be treated as a precedent, as the same is based on the concession which has been given by the learned counsel for the appellant in the peculiar facts of the case.

16. With the aforesaid direction, both the writ appeals are disposed of.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

ALOK ARADHE, CJ

T.VINOD KUMAR, J

02.08.2023
vs