

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.02.2018

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.100 of 2013, 7040 of 2012,25636 of 2012, 27018 to 27021
of 2012, 27189 to 27193 of 2012, 27538 to 27545 of 2012 & 27601
of 2012

and

M.P.Nos.1,1,2,2,2,2,2,2,2,2 & 1 of 2013

Tamil Evangelical Lutheran Church,
Represented by its Secretary, (TELC)
Church Council, Regn.No.2/1918-1919
Tranquebar House,
Tiruchirapalli - 620 001,
Tiruchirapalli District. ...Petitioner in WP.100 of 2013

TAMILNADU CATHOLIC EDUCATIONAL ... PETITIONER in WP.7040/12
ASSN. REG.NO.S6/1926-27
REP. BY ITS SECY.CUM TREASURER
FR. MICHAEL VYAGULAM DIOCESAN PASTROAL CNTR.
25 ROSARY CHURCH RD.
SANTHOME CHENNAI-4

CHURCH OF SOUTH INDIA OF ... PETITIONER in WP.25636/12
THOOTHUKUDI-NAZARETH DIOCESE
REP. BY ITS MANAGER
ELEMENTARY PRIMARY AND MIDDLE SCHOOLS
CALDWELL SCHOOL CAMPUS THOTHUKUDI.

MAZHARUL ULOOM HIGHER ... PETITIONER in WP.27018/12
SECONDARY SCHOOL REP BY THE CORRESPONDENT
NO.52/75-A.M.C. ROAD AMBUR 635 802
VELLORE DISTRICT

HASNATH E JARIA GIRLS HIGHER SECONDARY SCHOOL
REP BY THE CORRESPONDENT
AMBUR 635 802 VELLORE DISTRICT
... PETITIONER in WP.27019/12

MAZHARUL ULOOM AIDED PRIMARY SCHOOL
REP BY THE CORRESPONDENT
AMBUR 635 802, VELLORE DISTRICT ... PETITIONER in WP.27020/12

HASNATH E JARIA AIDED PRIMARY SCHOOL
REP BY THE CORRESPONDENT
AMBUR 635 802 VELLORE DISTRICT ... PETITIONER in WP.27021/12

MADRAS-E-ANWARUL ISLAM AIDED ... PETITIONER in WP.27189/12
MIDDLE SCHOOL
REP BY THE CORRESPONDENT PALLIKONDA
VELLORE DISTRICT

MADRAS-E-MUFID-E-AIDED ... PETITIONER in WP.27190/12
PRIMARY MUSLIM BOYS SCHOOL
REP BY THE CORRESPONDENT
NEELIKOLLAI VANIYAMBADI
VELLORE DISTRICT

MADRAS-E-MUFID-E-NISWAN ... PETITIONER in WP.27191/12
AIDED PRIMARY MUSLIM GIRLS SCHOOL REP BY
THE CORRESPONDENT NEELIKOLLAI VANIYAMBADI
VELLORE DISTRICT

KHADERIA HIGHER SECONDARY ... PETITIONER in WP.27192/12
SCHOOL REP BY THE CORRESPONDENT
VANIYAMBADI VELLORE DISTRICT

KHADERIA AIDED PRIMARY SCHOOL ... PETITIONER in WP.27193/12
REP BY THE MANAGER AND CORRESPONDENT NO.
111 JINNAH ROAD VANNIYAMBADI 635 751

OSMANIA HIGHER SECONDARY ... PETITIONER in WP.27538/12
SCHOOL REP. THE CORRESPONDENT NO.26 RAJAN
STREET TIRUPATTUR 635 601 VELLORE DISTRICT

OSMANIA AIDED ELEMENTARY ... PETITIONER in WP.27539/12
SCHOOL REP. THE CORRESPONDENT NO.26 RAJAN
STREET TIRUPATTUR 635 601 VELLORE DISTRICT

ISLAMIAH AIDED ELEMENTARY ... PETITIONER in WP.27540/12
SCHOOL REP. THE SECRETARY & CORRESPONDENT
VANIYAMBADI-635 751.

ISLAMIAH HIGHER SECONDAR ... PETITIONER in WP.27541/12
SCHOOL REP. THE CORRESPONDENT PERNAMPUT-
635 810 VELLORE DISTRICT

ISLAMIAH BOYS HIGHER SECONDARY

... PETITIONER in WP.27542/12
SCHOOL REP. THE CORRESPONDENT VANIYAMBADI-
635 751.

ISLAMIAH GIRLS HIGHER

... PETITIONER in WP.27543/12
SECONDARY SCHOOL REP. BY THE SECRETARY AND
CORRESPONDENT VANIYAMBADI-635 751.

ISLAMIAH AIDED PRIMARY

... PETITIONER in WP.27544/12
SCHOOL REP. THE CORRESPONDENT PERNAMBUT-
635 810.

ISLAMIAH BOYS HIGHER SECONDARY

... PETITIONER in WP.27545/12
SCHOOL REP. THE CORRESPONDENT MELVISHARAM-
632 509.

JALALIA AIDED PRIMARY SCHOOL

... PETITIONER in WP.27601/12
REP BY CORRESPONDENT NO.89 M.C. ROAD AMBUR
635 802 VELLORE DISTRICT

VS

1.The Union of India, rep.by its
Director, Ministry of Human
Resource Development,
Department of School Education
and Literacy, Government of India,
New Delhi.

2.State of Tamil Nadu, rep.by its
Secretary to Government,
School Education Department,
Secretariat, Chennai - 9.

3.Director of School Education,
Chennai - 6.

4.Director of Elementary Education,
Chennai - 6.

5.Director,
Teacher Education, Research and
Training, Chennai - 6.

.. Respondents in WP.100 of 2013

1 THE GOVERNMENT OF TAMIL NADU

REP. BY THE SECRETARY DEPARTMENT OF SCHOOL
EDUCATION FORT ST. GEORGE MADRAS - 600 004.

2 THE DIRECTOR OF SCHOOL
EDUCATION DPI CAMPUS COLLEGE ROAD CHENNAI-
600 006.

3 THE DIRECTOR OF ELEMENTARY
EDUCATION DPI CAMPUS COLLEGE ROAD CHENNAI-
600 006.

... RR1 to 3 in WP.No.7040/12 and in
WP.25636/12

1 THE STATE OF TAMILNADU
REP BY ADDITIONAL CHIEF SECRETARY TO THE
GOVERNMENT DEPARTMENT OF SCHOOL EDUCATION
FORT ST.GEORGE CHENNAI 9

2 THE PRINCIPAL DIRECTOR/STATE
PROJECT DIRECTOR SARVASHIKSHABIYAN DPI
COMPOUND CHENNAI 6

3 THE DIRECTOR OF SCHOOL
EDUCATION COLLEGE ROAD CHENNAI 6

4 THE DIRECTOR OF ELEMENTARY
EDUCATION COLLEGE ROAD CHENNAI 6

... RESPONDENT in WP.27018/12 to 27021/12
in WP.27189 to 27193/12
in WP.27538 to 27545/12
in WP.27601/12

Prayer in WP.100 of 2013: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring the Section 21 and 22 of "Right of Children to free and compulsory Education Act, 2009(35 of 2009) and Rule 14 of the "Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011 and the guidelines issued by the 2nd respondent in G.O.Ms.No.213, School Education Department, dated 26.12.2011 as arbitrary, un-constitutional, in-applicable, in so far as the Schools run by the Petitioner Society are concerned, in particular, wherever it deprives representation from the Management in the School Management committee and power of supervision given to the School Management Committee in preparing the School Development Plan, monitoring the working of the school is concerned.

Prayer in WP.7040/12 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration declaring Sec.21(2)(b), 22(1)(2), 38(2)(j)(k) of The Right of

Children to Free and Compulsory Education Act, 2009 (Act 35/09) r/w Rule 14 and 15 of The Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011 and the consequent G.O.Ms.No.213 dated 26.12.2011, School Education (C2) Department, as ultra-vires, unconstitutional, and inapplicable to the schools of the member educational agencies of the petitioner

Prayer in WP.25636/12: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the records pertaining to the impugned G.O.Ms.No.213 dated 26.12.2011, School Education (C2) Department, on the file of the 1st respondent and quash the same as ultra vires, unconstitutional, and inapplicable to the schools of the petitioner educational agency

Prayer in WPs.27018/12 to 27021/12 and wp.27189 to 27193/12 and WP.27538 to 27545/12: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the entire records relating to the impugned G.O. (Ms) No.213 School Education Department dated 26.12.2011 passed by the 1st respondent and quash the same as ultra virus of Act 35/09 (Central Act) and unenforceable against the petitioner School

Prayer in WP.27601 of 2012: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the entire records relating to the impugned G.O. (Ms) No.213 School Education Department dated 26.12.2011 passed by the 1st respondent and quash the same as ultra virus of Act 35 of 2009 (Central Act) and unenforceable so far as the petitioner School is concerned.

Petitioners Appearance

P.Ganesan for
M/s.C.S.Associates i WP.100/13

Dr.Fr.Xavier Arulraj
Senior Counsel
for

Arul mary in WP.7040 of 2012
in WP.25636/12

Mr.N.Ravichandran
in WP.27018 to 27021/12
in WP.27189 to 27193/12
in WP.27538 to 27543/12

Mr.T.K.Kulasekaran
in WP.27061/12

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Respondents Appearance

Mr.N.Ramesh for R1 in WP.100/13

Mr.C.Munusamy

Special Government Pleader

for RR2 to 5 in WP.100/13

for RR1 to 3 in WP.7040/12

in WP.25636/12

for RR1 to 4

in WP.27018 to 27021/12

in WP.27189 to 27193/12

in WP.27538 to 27545/12

in WP.27601 /12

C O M M O N O R D E R

The prayer made in these writ petitions is to declare Sections 21 and 22 of the Right of Children to free and compulsory Education Act, 2009 (35 of 2009) and Rule 14 of the Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011 and the guidelines issued by the second respondent in G.O.Ms.No.213, School Education Department, dated 26.12.2011 as arbitrary, un-constitutional, in-applicable, in so far as the Schools run by the Petitioner Society are concerned.

2.According to the petitioners, they are the minority institutions and have got the right to establish and administer the educational institutions as conferred under Article 30(1) of the Constitution of India. While so, the Government has issued certain guidelines in G.O.Ms.No.213 School Education (C2) Department, dated 26.12.2011, as per which, the petitioners were directed to form the School Management Committee, as the Right of Children to Free and Compulsory Education Act, 2009, mandates the same. Hence, these writ petitions.

3.When the writ petitions were taken up for consideration, the learned counsel for the petitioners and the learned Standing Counsel for the respective respondents jointly submitted that the issue involved herein is covered by the Larger Bench decision of the Hon'ble Supreme Court in Pramati Educational and Cultural Trust and others vs. Union of India and others [2014 (4) MLJ 486 (SC)], wherein, it has been held 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".

4.In the light of the Larger Bench decision of the Hon'ble Supreme Court as referred to above, all the writ petitions are

allowed by quashing G.O.Ms.No.213, School Education (C2) Department, dated 26.12.2011 as far as the petitioners are concerned. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

kak/rk

To

- 1.The Director, The Union of India,
Ministry of Human
Resource Development,
Department of School Education
and Literacy, Government of India,
New Delhi.
- 2.The Secretary to Government,
State of Tamil Nadu,
School Education Department,
Secretariat, Chennai - 9.
- 3.The Director of School Education,
College Road, Chennai - 6.
- 4.The Director of Elementary Education,
College Road, Chennai - 6.
- 5.The Director,
Teacher Education, Research and
Training, Chennai - 6.
- 6.The Additional Chief Secretary to the Government,
Department of School Education,
Fort St.George, Chennai-9.
- 7.The Principal Director
/State Project Director,
Sawashikshapiyan,
DPI, Compound, Chennai-6.

+1cc to Mr.T.K.Kulasekaran, Advocate SR.No.10106

+4cc to Mr.A.Arul Mary, Advocate SR.No. 10251, 10252

+10cc to Mr.S.N.Ravichandran, Advocate SR.No.10064
+1cc to Mr.C.S.Associates, Advocate SR.No.10653
+1cc to Government Pleader SR.No.10300

W.P.Nos.100 of 2013, 7040 of
2012,25636 of 2012, 27018 to 2702
of 2012, 27189 to 27193 of 2012,
27538 to 27545 of 2012 & 27601 of
2012

GMR (CO)
GN (27/03/2018)



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