

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.02.2018

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.7853 & 30433 of 2012

and M.P.No.1 of 2012

The Church of South India  
Trust Association,  
Diocese of Madras,  
Rt.Rev.Dr.V.Devasahayam  
Bishop in Madras Diocese,  
No.226, Cathedral Road,  
Chennai - 600 086.

..Petitioner in W.P.No.7853 of 2012

Madrasa-E-AZAM Aided Primary School,  
Rep the Manager & Correspondent,  
Fort.Vaniyambadi - 635 751.  
Vellore District.

..Petitioner in W.P.No.30433 of 2012

vs

1.The Government of Tamil Nadu,  
Rep.by The Secretary,  
Department of School Education,  
Fort St.George, Madras - 600 009.

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.

.. Respondents in W.P.No.7853 of 2012

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1.The State of Tamil Nadu,  
Rep.by Additional Chief Secretary to the Government,  
Department of School Education,  
Fort St.George, Chennai - 9.

2.The Principal Director/State Project Director,  
SarvaShiksh Abiyan  
DPI Compound,  
Chennai - 600 006.

3.The Director of School Education,  
College Road,  
Chennai - 600 006.

4.The Director of Elementary Education,  
College Road,  
Chennai - 600 006.

.. Respondents in  
W.P.No.30433 of 2012

Prayer in W.P.No.7853 of 2012: 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 of 2009)r/w Rules 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 petitioner educational agency.

Prayer in W.P.No.30433 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 1<sup>st</sup> respondent and quash the same as ultra virus of Act 35 of 2009 (Central Act) and unenforceable against the petitioner school.

For Petitioner  
(in W.P.No.7853 of 2012) : Dr.Fr.A.Xavier Arulraj, SC  
for Mr.A.Arul Mary

For Petitioner  
(in W.P.No.30433 of 2012 : Mr.S.N.Ravichandran

For Respondents : M/s.C.Munusamy  
in both WPs Special Government Pleader (Edn)

#### C O M M O N O R D E R

The prayer made in the writ petition in WP.No.7853 of 2012 is to declare Sections 21(2)(b), 22(1)(2) and 38(2)(j)(k) of the Right of Children to free and compulsory Education Act, 2009 (Act 35 of 2009) r/w Rules 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, School Education (C2) Department, dated 26.12.2011 as ultra vires, unconstitutional and inapplicable, in so far as the Schools run by the Petitioner Association are concerned.

Challenging the order in G.O.Ms.No.213, School Education (C2) Department, dated 26.12.2011, the petitioner has come up with the writ petition in WP.No.30433 of 2012.

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, the present writ petitions.

3. When the writ petitions were taken up for consideration, the learned counsel for the petitioners and the learned Special Government Pleader (Education) for the 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, both 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 Petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kak/rk

To

1. The Secretary,  
The Government of Tamil Nadu,  
Department of School Education,  
Fort St. George, Madras - 600 009.

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.

4.The Additional Chief Secretary to the Government,  
The State of Tamilnadu,  
Department of School Education,  
Fort St.George, Chennai - 9.

5.The Principal Director/State Project Director,  
SarvaShiksh Abiyan  
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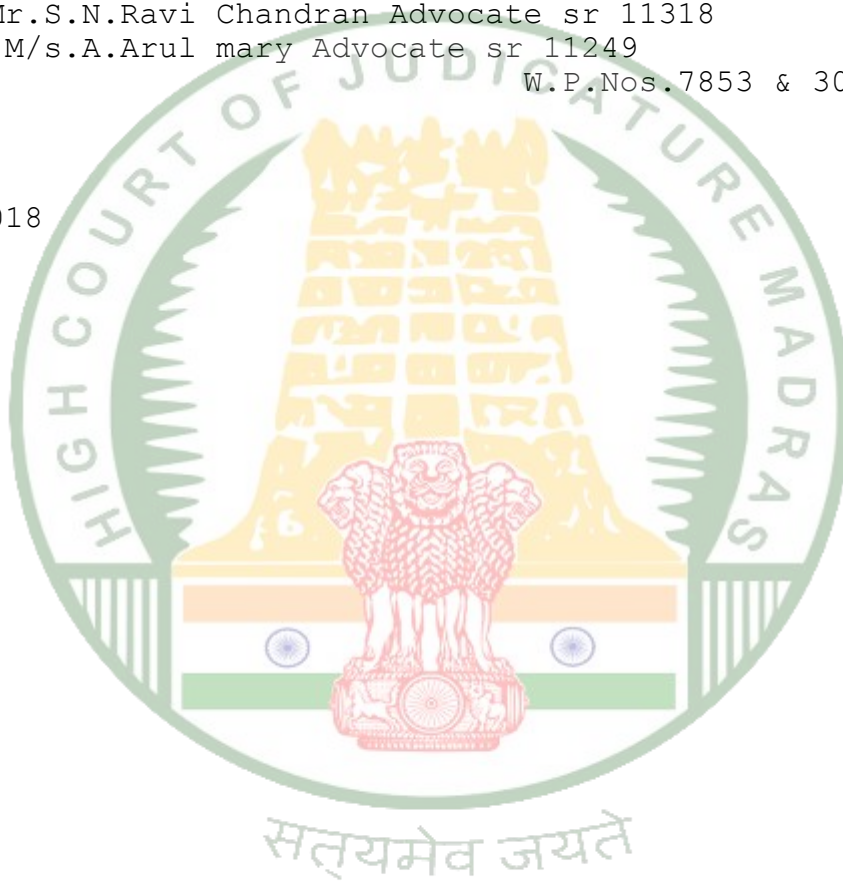
+1 cc to the Govt Pleader sr 11721

+1 cc to Mr.S.N.Ravi Chandran Advocate sr 11318

+2 ccs to M/s.A.Arul mary Advocate sr 11249

W.P.Nos.7853 & 30433 of 2012

svi(co)  
aa05/04/2018



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