

**THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

WRIT APPEAL No.147 of 2019

JUDGMENT: *(per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)*

This intra Court appeal against an interlocutory order is by the Government and its officials in the Department of Education.

2. The first respondent is an educational institution. Respondents 2 and 3 are stated to be students.

3. According to the Government, the first respondent - school has no recognition and from some time after 2014, there is no entitlement for the school to conduct any examination or to claim any benefit because there is no recognition to it to conduct any classes at all.

4. As per the impugned interlocutory order, which is issued by the learned Single Judge in furtherance of the earlier orders, the students were permitted to write the examination and if they fail to pass, they could take next examination by paying fee for March, 2019 examination. Obviously, this is only an arrangement to ensure that equitable consideration can be properly adjusted at final hearing. It does not mean that a final call has been answered by the learned Single Judge either in favour of the school or in the interest of the Government.

5. The learned Government Pleader for Education points out the judgment of the Apex Court in ***Minor Sunil Oraon Tr. Guardian v. C.B.S.E***¹, to argue for the position that having regard to the *ratio decidendi* of that decision, the writ petitioner is not entitled to succeed.

¹ AIR 2007 SC 458

6. We see that the direction for permission to write examination and for further examination in case of failure cannot be carried forward from time to time unless the Court takes a final call on the eligibility of the writ petitioner to relief. Therefore, it is appropriate to permit the impugned order to continue for the time being, however, with a request to the learned Single Judge to expedite the consideration of the main issue between the writ petitioner-school and the Government on the question of recognition. This will enable determination of issues as to eligibility of the students to go for the examinations hereinafter.

7. For the aforesaid reasons, without interfering with the impugned interlocutory order, and keeping intact the further consideration of the writ petition, we request the learned Single Judge to consider the hearing of the parties on the merits of the writ petition having regard to the contentions raised by the writ petitioner and the Government. The declaration of results of the examination to the extent it is provided by the impugned order will be provisional and subject to further orders that may be issued in that writ petition.

8. The writ appeal is ordered accordingly.

Miscellaneous Petitions, if any pending, shall stand closed.

There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

A.RAJASHEKER REDDY, J

Date: 28.02.2019

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