



WEB COPY

W.A.(MD) No.1580 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

**W.A.(MD) No.1580 of 2023
and
C.M.P.(MD) No.12228 of 2023**

- 1.The Director of School Education
College Road, Chennai-6
- 2.The Chief Educational Officer
Nagercoil, Kanyakumari
- 3.The District Educational Officer
Kuzhithurai
Kunyakumari

... Appellants

-vs-

The Correspondent
St.John Vinanneys Girls
Higher Secondary School
Palliyadi-629 169
Kanyakumari

... Respondent



WEB COPY

W.A.(MD) No.1580 of 2023

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 02.09.2022, passed in W.P.(MD) No.18866 of 2019, on the file of this Court.

For Appellants : Mr.R.Baskaran, Additional Advocate General
assisted by Mr.D.Sadiq Raja
Additional Government Pleader

For Respondent : Mr.K.Ragatheesh Kumar
for M/s.Isaac Chambers

J U D G M E N T

[Judgment of the Court was made by S.M.SUBRAMANIAM, J.]

This writ appeal is directed against the order of the learned Single Judge, dated 02.09.2022, passed in W.P.(MD) No.18866 of 2019.

2. The following issues are mainly raised in this writ appeal and they are:

- (i) The Teachers identified as surplus from minority Institutions (Corporate Management).
- (ii) Non minority aided Institutions, where the Teachers are identified as surplus in the District concerned.



WEB COPY

W.A.(MD) No.1580 of 2023

- (iii) The Teachers, who were appointed by the minority Institutions and not possessing the requisite educational qualifications of Teacher Eligibility certificate.
- (iv) Subject conversion and appointments without prior permission.
- (v) Single unit schools, where no surplus candidates are identified and posts are sanctioned, but approval not granted.
- (vi) In respect of cases, where prior permission has been granted but the appointments are not approved.

Let us now look into the relevant provisions of the statutes and Rules.

3. Section 26 of Tamil Nadu Recognized Private schools (Regulations) Act (hereinafter referred to as 'the Act' for the sake of brevity), provides absorption of Teachers or other persons of retrenchment. Accordingly, “Where any retrenchment of any Teacher or other person employed in any private



W.A.(MD) No.1580 of 2023

WEB COPY

school is rendered necessary consequent on any order of the Government relating to education or course of instruction or to any other matter, [or consequent on the reduction in strength of the pupil's studying in any such private school] it shall be competent for the Government or the school committee of any private school to appoint such Teacher or other person in any school or Institution maintained by the Government or in such private school, as the case may be. Explanation to this Section reads as under:

“Explanation- For the purpose of this section, the strength of the pupil's shall be determined in accordance with the norms fixed in the Grant-in-Aid Code of the Tamil Nadu Education Department or under any rule, regulation or order as may be made or issued by the Government or the Director of school Education, from time to time, for appointment of teachers or others in any private school.”

4. In the context of Section 26 of the Act, it is relevant to look into the spirit of Section 14 of the Act, which deals with payment of grant, as under:

“14. Payment of grant. - [(1) Subject to such rules as may be prescribed, the Government may continue to pay grant to the private school receiving grant from the Government, before the date of commencement of the academic year



WEB COPY

W.A.(MD) No.1580 of 2023

1991-1992 at such rate and for such purposes as may be prescribed.

Explanation. - For the purposes of this sub-section, private school receiving grant from the Government shall also include a private school receiving grant from the Government only in respect of any class or course of instruction.]

(2) The Government may withhold permanently or for any specified period the whole or part of any grant referred to in sub-section (1) in respect of any private school, -

(i) which does not comply with any of the provisions of this Act or any rules made or directions issued thereunder insofar as such provisions, rules or directions are applicable to such private school, or

(ii) in respect of which the pay and allowances payable to any teacher or other person employed in such private school are not paid to such teacher or other person in accordance with the provisions of this Act or the rules made thereunder, or

(iii) which contravenes or fails to comply with any such conditions as may be prescribed.

(3) Before withholding the grant under sub-section (2), the Government shall give the educational agency an opportunity of making its representation.”



WEB COPY

W.A.(MD) No.1580 of 2023

5. Regarding the requirements for payment of grant, Rule 11 of the Tamil Nadu Recognized Private schools (Regulation) Rules, 1974 (hereinafter referred to as 'Rules' for the sake of brevity) states as under:

“11. Payment of grant. –(1) Recognised Private schools may be paid grants from State funds directly or through Panchayat Unions. Such payment of grants shall be subject to Government orders and instructions issued, from time to time:

Provided that, schools whose recognition have been withdrawn shall not be entitled to any grant for the period of such withdrawal of recognition.”

6. Rule 15 enumerates qualifications, conditions of service of Teachers and other persons. Sub Rule 1 to Rule 15 reads as under:

15. Qualifications, conditions of service of teachers and other persons. –(1) The number of teachers and other persons employed in a private school shall not exceed the number of posts sanctioned by the Director of school Education, from time to time, with reference to the academic requirements, teacher-pupil ratio and overall financial considerations.”



WEB COPY



W.A.(MD) No.1580 of 2023

7. Rule 6 of the Tamil Nadu Minority schools (Recognition and Payment of Grant) Rules, 1977 also deals with the payment of grant as under:

“6. Payment of grant. - (1) Minority schools may be paid grants subject to the orders and instructions issued by the Government from time to time. The rate at which, and the purpose for which, the grant may be paid shall be as specified in Annexure II appended to these rules.

*Annexure II
Payment of Grant
[Vide Rule 6(1)]*

1. Minority schools may be paid grants on the basis of orders from time to time.

2. The grants payable to minority schools are the following namely:-

(1) Staff grant. - The management may be paid full grant to cover the entire approved expenditure on pay and other allowances of the teaching and non-teaching staff including other servants paid from contingencies.

(2) Maintenance grant. - (a) Pre-primary, Primary and Middle school. The management may be paid up to 6 per cent of the assessed teaching grant as maintenance grant for a calendar year.



W.A.(MD) No.1580 of 2023

WEB COPY

(b) High school. - The management may be paid maintenance grant equal to the approved expenditure for the preceding financial year on rents, taxes, ordinary repairs, upkeep contingencies and other miscellaneous items, after deducting the Management's contribution determined by Government from time to time.

(3) Training Institutes. - The training institutes may be paid teaching grant. Such grant shall be assessed on the basis of 2/3 of the net approved expenditure on pay to the staff, rent, taxes, repairs and contingencies and of the expenditure on dearness allowance, city compensatory allowance and house rent allowance.

(4) Anglo-Indian schools. - The Anglo-Indian schools may be paid full teaching grant. Such grant shall be assessed to the Anglo-Indian schools on the basis of the approved expenditure on pay and allowances to the staff, rent, taxes, repairs and contingencies after deducting the actual fee income.

Such schools may also be paid other grants specially ordered.”



W.A.(MD) No.1580 of 2023

WEB COPY

8. Holistic reading of the provisions of the Act and Rules would expressly reveal that the appellant department is empowered to deal with surplus Teachers, who all are identified during the course of inspection by the competent Educational Authority. It shall be competent for the Government or the school Committee or any private schools to appoint such Teachers or other persons in any school or the Institutions managed by the Government or in such private school as the case may be. Therefore, the authorities competent are empowered to redeploy the surplus Teachers either in the private school or in a Government school or in any other school, where vacancy arises and there is no restriction for deployment of the Teachers from one school to any another school including the minority Institutions, if teaching or non-teaching staffs are found in surplus.

9. Surplus is more than the needs. Thus, declaring teaching and non-teaching staff as surplus is an administrative exigency. In the Education Department, the surplus teaching and non-teaching staff are not ousted, but they are accommodated in the available vacancies within the school or in any other school, where their services are required. Declaring a teaching or non-



W.A.(MD) No.1580 of 2023

WEB COPY

teaching staff as surplus, *per se* would not provide a cause to file a writ petition under Article 226 of the Constitution of India and such writ petitions are not entertainable. Declaring a teaching or non-teaching staff as surplus do not violate the service conditions, but it is incidental to service. However, such declaration of surplus is to be made only in respect of the juniormost teaching or non-teaching staff in the school concerned. Such administrative exigency, which is incidental to service, would not provide an absolute right for an employee to claim a particular place or post. Status cannot be claimed in public posts, so also, place cannot be a choice for an employee.

10. Section 14 of the Act provides that subject to such Rules as may be prescribed by the Government, the grant in aid may be sanctioned. Therefore, the Government is empowered to prescribe Rules. In the absence of Rules, orders or instructions as the case may be issued for providing grant in aid to the private aided and minority schools. Therefore, payment of grant is not automatic, but subject to the Rules, orders or instructions issued by the Government in force and subject to the satisfaction of the Government with reference to conditions stipulated for sanctioning grant-in-aid.



W.A.(MD) No.1580 of 2023

WEB COPY

11. Rule 11 stipulates that schools, whose recognition has been withdrawn, shall not be entitled to any grant for the period of such withdrawal of recognition. Sub Rule 1 to Rule 11 unambiguously stipulates that recognized private schools **may** be paid grants from the State funds directly or through Panchayat Union. Such payments of grant shall be subject to the Government Orders and instructions issued from time to time.

12. The spirit of the Rules indicates that the payment of grant cannot be an absolute right, but subject to the Act, Rules, Government Orders and instructions, which all are to be complied with scrupulously. More so, Sub Rule 1 to Rule 11 expressly states that the recognized private schools **may** be paid grants from the State funds. Therefore, it is to the subjective satisfaction of the Government, its Orders and instructions to sanction grant in aid from time to time.

13. In brevity, Rule 15 speaks about the qualifications, conditions of service of Teachers and other persons. Sub Rule 1 to Rule 15 states that “The number of teachers and other persons employed in a private school shall not exceed the number of posts sanctioned by the Director of school



W.A.(MD) No.1580 of 2023

WEB COPY

Education, from time to time, with reference to the academic requirements, teacher-pupil ratio and overall financial considerations”.

14. Therefore, the posts are to be sanctioned by the Director of school Education. If the post has not been sanctioned, then payment of grant cannot be claimed. Sanctioning of posts are to be made from time to time with reference to the academic requirements, Teacher-Pupil ratio and overall financial considerations. Therefore, three essential requirements are to be complied with, i.e.,(a) academic requirements are to be ascertained, (b) Teacher-Pupil ratio is to be taken into account and (c) overall financial consideration of the State and its implication are also to be taken into consideration.

15. Rule 15(4) enumerates that appointments to various categories of Teachers shall be made by following methods. First preference is to be given to the qualified Teachers working in the school by way of promotion. If no other qualified persons employed in the same school are available, then appointment can be made from any other school and thereafter, by way of direct recruitment. In respect of the Corporate body running more than one



W.A.(MD) No.1580 of 2023

WEB COPY

school, the schools under that corporate body shall be treated as one Unit for the purpose of this Rule. Thus, Rule 15 stipulates that preference is to be given to the qualified Teachers working in the school by way of promotion and if there is no other qualified Teachers, then alone they can appoint Teachers from any other school or thereafter by way of direct recruitment.

16. When the service conditions of Teachers in Rule 15 say so, similar procedure are to be adopted for the purpose of regulating the surplus Teachers, who all are identified during the inspection by the competent authorities of the education department.

17. Therefore, on identification of surplus Teachers, they are to be redeployed in the vacancies available in the same school or in any other school within the Corporate Management / Joint Management as the case may be and if no posts are available either in the school, in which the Teacher is working or in the Corporate Management or in the Joint Management, then alone such Teachers are to be redeployed in any other school, where the vacancies are available. The said procedure is settled by the Division Bench of this Court in the case of **Secretary to Government, Government of Tamil**



W.A.(MD) No.1580 of 2023

WEB COPY

Nadu, school Education Department and others vs. Iruthaya Amali and another reported in [W.A.(MD)76 of 2019 etc., batch] dated 31.03.2021.

18. In the above judgment, the relevant reliefs granted in para 95 are extracted hereunder for the purpose of considering the present writ appeal:

“95. In view of the aforesaid discussions, we are inclined to pass the following orders in this batch of cases:

.....

(b) For the purpose of fixing the staff strength of a school, school shall be the unit and not the Educational agency / joint management / corporate management.

.....

(u) Till such excess teaching staff are identified under all category of schools as indicated above, no recruitment shall be made by the State Government / Education Department for the purpose of appointment of teachers under various categories like Secondary grade teacher, Graduate teacher, Post-Graduate teacher, Language teacher, Physical education teacher etc.,

(v) Like that insofar as aided minority institutions are concerned, if it is a stand alone institution, their right of appointing a teacher in a vacancy within the sanctioned strength for the academic year 2021-22 shall not be affected



WEB COPY

W.A.(MD) No.1580 of 2023

because of the identified excess teachers in other schools. At the same time, even if the school is a minority institution, however being administered by a joint management or corporate management, in respect of those schools, even though vacancy arose within the sanctioned strength of such school or schools under corporate management or joint management, those vacancies shall not be filled up unless the excess staff identified in all other schools under the same corporate or joint management are exhausted fully and only after exhausting the redeployment process on all excess teachers identified in the group of schools under the same corporate management, they shall be free to make appointment afresh from open market in the vacancy if any still, within the sanctioned strength."

19. As far as para 95(i) of the judgment in *Iruthaya Amali's* case is concerned, that has been stayed by the Hon'ble Supreme Court and therefore, we are not inclined to consider the said relief granted in the said judgment.

20. The learned Additional Advocate General and the respective learned counsels appearing on behalf of the respondent have no serious objections in implementing para 95(b), (u) and (v) of the judgment in *Iruthaya Amalai's* Case.



W.A.(MD) No.1580 of 2023

WEB COPY

21. However, it is necessary to clarify that the staff strength of the school is to be fixed on unit basis and as decided by the Division Bench at para 95(b) of the *Iruthaya Amali's* case. There is no dispute that the school shall be a unit and not the educational agencies/joint management/corporate management for the purpose of fixation of cadres. However, for the purpose of identification of surplus and redeployment, para 95(v) is to be followed. Thus the school shall be a unit for the purpose of fixation of cadre strength and for redeployment. The relief granted in para 95(v) in *Iruthaya Amali's* case is to be adopted by accommodating the surplus Teachers initially in the school concerned or in the corporate management/joint management and if no vacancies are available either in the school or in corporate management/joint management, thereafter, those Teachers can be accommodated in any other school, where the vacancies are available for redeployment.

22. The learned Additional Advocate General made an undertaking that after redeployment of surplus Teachers from one school to another school, if student strength has been increased in compliance with Pupil-Teacher ratio or additional posts are sanctioned, then those redeployed



W.A.(MD) No.1580 of 2023

WEB COPY

Teachers will be reverted back to his/her parent school or Unit as the case may be based on their respective seniority. It is needless to state that the junior most Teacher has to be declared as surplus. If more Teachers are found surplus over and above the sanctioned strength and after declaring those junior most Teachers as surplus and they being redeployed to any other school, thereafter on arising of vacancy in their parent school, they must be redeployed to their parent school and in this regard, the appellants have no objections and such a procedure is to be followed scrupulously wherever required.

23. As far as the ground raised regarding the requisite qualification of pass in Teachers Eligibility Test, there is a controversy, in view of the ratio laid down by the Constitution Bench of the Hon'ble Supreme Court in the case of ***Pramathi Educational and Cultural Trust and others vs. Union of India [2014 4 MLJ 486(SC)]***, however, the two judges bench of the Hon'ble Supreme Court subsequently in the case of ***Ashwini Thanappan vs. Director of Education*** and another [(2014) 8 SCC 272] referred the matter by stating as follows:



WEB COPY

W.A.(MD) No.1580 of 2023

1.Issue notice. It is submitted by the learned Counsel for the Petitioner that interpretation of Article 27 arises for consideration of this Court. It is also pointed out by the learned Counsel that the judgment reported in Pramati Educational and Cultural Trust (r) and Others Vs. Union of India (UOI) and Others, is inconsistent with the judgment of the Constitution Bench of this Court in P.A. Inamdar and Others Vs. State of Maharashtra.

2.Prima facie, we are of the opinion that the submission requires a further examination. If such examination is to be undertaken, the implications will have impact on all the States, in which case perhaps it is desirable to put all the States on notice and matter be heard by a Bench of appropriate strength. We, therefore, deem it appropriate to direct the Registry to place the matter before Hon'ble the Chief Justice of India for appropriate directions in the matter.”

24. While referring the matter, the Hon'ble Supreme Court considered the larger repercussions in respect of the observations made in *Pramathi's* case, since there is a possibility of discrimination amongst the Teachers in the matter of appointment. If exemptions are granted from



W.A.(MD) No.1580 of 2023

WEB COPY

possessing the requisite educational qualification of TET only for the minority Institution, then there will be two set of Teachers, who all are qualified and unqualified working in non-minority schools and minority schools. This will result in an anomalous situation while identifying the surplus Teachers and at the time of redeployment.

25. In the matter of Teachers Eligibility Test, the learned Additional Advocate General relied upon Section 23(1) of the Right of Children to Free and Compulsory Education Act, which reads as under:

“23 Qualifications for appointment and terms and conditions of service of teachers. ?

(1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.”

26. In exercise of powers under the said Act, the National Council for Teachers Education, admittedly, issued notification that the pass in Teachers Eligibility Test is the mandatory qualification for appointment to the teaching post all over the Country. Therefore, any exemption from the educational qualification would result in discrimination amongst the Teachers and would



W.A.(MD) No.1580 of 2023

WEB COPY

create an anomalous situation in the matter of declaring Teachers as surplus and redeployment of those Teachers in minority schools and non-minority schools.

27. Since the matter has already been referred by two Judges Bench of the Hon'ble Supreme Court, we are leaving the issue regarding Teachers Eligibility Test qualification open at present in the context of Pramathi's case. But regarding Teacher Eligibility Test, other perspective is possible and required with reference to the Tamil Nadu Recognized Private Schools (Regulations) Act and Rules in force.

28. It is relevant to look into the various judgments of the Hon'ble Supreme Court in the matter of prescribing educational qualifications, salary, service conditions applicable to State aided Institutions including minority Institution. The Apex Court time and again considered the right to the minorities under Article 30(1) of the Constitution of India.

29 (a). In the case of **Sk.Md.Rafique Vs. Managing Committee, ContaiRahamania High Madrasah and Ors**, reported in W.P.No.4511 of



W.A.(MD) No.1580 of 2023

WEB COPY

2015 MANU/SC/0004/2020, the Hon'ble Supreme Court of India held as follows:

Article 30(1) gives two rights to the minorities,

(1) to establish and

(2) to administer, educational institutions of their choice.

The right to administer cannot obviously include the right to mal-administer. The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers, possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. It stands to reason, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable Regulations to ensure the excellence of the institutions to be aided.

Khanna, J. in his concurring opinion

Regulation which is designed to prevent maladministration of an educational institution cannot be said to offend Clause (1) of Article 30. At the same time it has to be ensured that under the power of making Regulations nothing is done as would detract from the character of the institution as a minority educational institution or which would impinge upon the rights of the minorities to establish and administer educational institutions of their choice.



W.A.(MD) No.1580 of 2023

WEB COPY

Balance has, therefore, to be kept between the two objections that of

1.ensuring the standard of excellence of the institution

2.preserving the right of the minorities to establish and administer their educational institutions.

Regulations which embrace and reconcile the two objectives can be considered to be reasonable. a law which interferes with a minority's choice of qualified teachers or its disciplinary control over teachers and other members of the staff of the institution is void as being violative of Article 30(1). It is, of course, permissible for the State and its educational authorities to prescribe the qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers.

(b) In the case of Secretary, ***Malankara Syrian Catholic College***
Vs. T.Jose and Ors, reported in MANU/SC/5280/2006, the Hon'ble Supreme Court of India held as follows:

“19. The general principles relating to establishment and administration of educational institution by minorities may be summarized thus:

(i) The right of minorities to establish and administer educational institutions of their choice comprises the following rights:



W.A.(MD) No.1580 of 2023

WEB COPY

- a) To choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution;
- b) To appoint teaching staff (Teachers/Lecturers and Head-masters/Principals) as also non-teaching staff; and to take action if there is dereliction of duty on the part of any of its employees;
- c) To admit eligible students of their choice and to set up a reasonable fee structure;
- d) To use its properties and assets for the benefit of the institution;

(ii) The right conferred on minorities under Article 30 is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position vis-à-vis the majority. There is no reverse discrimination in favour of minorities. The general laws of the land relating to national interest, national security, social welfare, public order, morality, health, sanitation, taxation etc. applicable to all, will equally apply to minority institutions also.

(iii) The right to establish and administer educational institutions is not absolute. Nor does it include the right to maladminister. There can be regulatory measures for ensuring educational character and standards and maintaining academic excellence. There can be checks on administration as are necessary to ensure that the administration is efficient and sound, so as to serve the academic needs of the institution. **Regulations made by the State**



W.A.(MD) No.1580 of 2023

WEB COPY

concerning generally the welfare of students and teachers, regulations laying down eligibility criteria and qualifications for appointment, as also conditions of service of employees (both teaching and non- teaching), regulations to prevent exploitation or oppression of employees, and regulations prescribing syllabus and curriculum of study fall under this category. Such regulations do not in any manner interfere with the right under Article 30(1).

(iv) Subject to the eligibility conditions/qualifications prescribed by the State being met, the unaided minority educational institutions will have the freedom to appoint teachers/Lecturers by adopting any rational procedure of selection.

(v) Extension of aid by the State, does not alter the nature and character of the minority educational institution. Conditions can be imposed by the State to ensure proper utilization of the aid, without however diluting or abridging the right under Article 30(1).

20. Aided institutions give instruction either in secular education or professional education. Religious education is barred in educational institutions maintained out of State fund. These aided educational minority institutions providing secular education or professional education should necessarily have standards comparable with non-minority educational institutions. Such standards can be attained and maintained only by having well



W.A.(MD) No.1580 of 2023

WEB COPY

qualified professional teachers. An institution can have the services of good qualified professional teachers only if the condition of service ensures security, contentment and decent living standards. ***That is why State can regulate the service conditions of the employees of the minority educational institutions to ensure quality of education. Consequently, any law intended to regulate the service conditions of employees of educational institutions will apply to minority institutions also, provided that such law does not interfere with the overall administrative control of the managements over the staff.***

(c) In the case of ***State of Kerala Vs. Very Rev.Mother Provincial, reported in MANU/SC/0065/1970***, the Constitution Bench of the Hon'ble Supreme Court of India emphatically held as follows:

“9. The next part of the right relates to the administration of such institutions.

Administration means 'management of the affairs' of the institution.

This management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right.



W.A.(MD) No.1580 of 2023

WEB COPY

10. There is, however, an exception to this and it is that the standards of education are not a part of management as such.

*These standards concern the body politic and are dictated by considerations of the advancement of the country and its people. Therefore, if universities establish syllabi for examinations they must be followed, subject however to special subjects which the institutions may seek to teach, and to a certain extent the State may also regulate the conditions of employment of teachers and the health and hygiene of students. Such regulations do not bear directly upon management as such although they may indirectly affect it. Yet the right of the State to regulate education, educational standards and allied matters cannot be denied. **The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern.** While the management must be left to them, they may be compelled to keep in step with others.*

These propositions have been firmly established in the State Bombay v. Bombay Education Society MANU/SC/0029/1954 : [1955]1SCR568 , The State of Madras v. S.C. Dorairajan MANU/SC/0007/1951 : [1951]2SCR525 , In re the Kerala Education Bill 1957 MANU/SC/0029/1958 : [1959]1SCR995, Sidharajbhai v. State of Gujarat MANU/SC/0076/1962 : [1963]3SCR837, Katra Education Society v. State of U.P. and Ors. [1966] 3 S.C.R. 728



W.A.(MD) No.1580 of 2023

WEB COPY

Gujarat University, Ahmedabad v. Krishna Ranganath Mudholkar and Ors. [1963] Su 1 S. C. R. 112 and Rev. Father W. Proost and Ors. v. State of Bihar MANU/SC/0248/1968 : [1969]2SCR73 . In the last case it was said that the right need not be enlarged nor whittled down. The Constitution speaks of administration and that must fairly be left to the minority institutions and no more. Applying these principles we now consider the provisions of the Act.”

(d) In the case of *All Saints High school, Hyderabad and Ors Vs. Government of Andhra Pradesh and Ors, reported in MANU/SC/0059/1980*, the Three Judges Bench of the Hon'ble Supreme Court of India made the following observations:

“3. These decisions show that while the right of the religious and linguistic minorities to establish and administer educational institutions of their choice cannot be interfered with, restrictions by way of regulations for the purpose of ensuring educational standards and maintaining the excellence thereof can be validly prescribed. For maintaining educational standards of an institution, it is necessary to ensure that it is competently staffed. Conditions of service which prescribe minimum qualifications for the staff, their pay scales, their entitlement to other benefits of service and the laying down of safeguards which must be observed before they are removed or dismissed from service or their services are terminated are all permissible measures of a regulatory character.



W.A.(MD) No.1580 of 2023

WEB COPY

As observed by Das C.J., in *Re: Kerala Education Bill*, (supra) "Right to administer cannot obviously include the right to mal-administer", and in the words of Shah J., in *Rev. Sidhajbhai*, (supra) "The right is subject to reasonable restrictions in the interest of efficiency of instruction, discipline, health, sanitation, morality, public order and the like". Hidayatullah C.J. said in *Very Rev. Mother Provincial* (supra) that **"Standards of education are not a part of management as such", that the "minority institutions cannot be permitted to fall below the standard of excellence expected of educational institutions" and that "the right of the State to regulate education, educational standards and the allied matters cannot be denied"**. Justice Jaganmohan Reddy, in *D.A.V. College* (supra) reiterated while upholding Clause 18 of the *Guru Nanak University, Amritsar Act, 1961* that regulations governing recruitment and service conditions of teachers of minority institutions, which are made in order to ensure their efficiency and excellence do not offend against their right to administer educational institutions of their choice

27. Another important factor which has to be noticed is that the terms in which Article 30 is couched are absolute and unconditional as compared to Article 19 which is hedged in by reasonable restrictions which may be imposed by the State in public interest. Thus, in a way the fundamental right contained in Article 30 is more effective and wider than the fundamental rights contained in Part III of the Constitution. This, however, does not mean that the State is



W.A.(MD) No.1580 of 2023

WEB COPY

completely deprived of even the right to regulate the working of the minority institutions and to make rules in order to improve the standards of education imparted therein so as to achieve excellence and efficiency in the educational standards of these institutions. Regulatory measures cannot in any sense be regarded as placing restrictions or curbing the administrative autonomy of the institutions concerned. But care must be taken by the State to see that in passing regulatory measures it does not transcend its limits so as to interfere with the internal administration of the management of the institutions concerned so as to violate the spirit and policy of Article 30. The question of the scope and ambit of Article 30 of the Constitution of India was very exhaustively considered as far back as in 1959 in Re: Kerala Education Bill (Supra). This case arose when the President of India called for the opinion of the Supreme Court on a Reference being made to it under Article 143(1) of the Constitution of India. The Reference was heard by 7 Judges of this Court out of which 6 of them excepting Venkatarama Aiyar, J. gave a unanimous opinion regarding various clauses of the Bill. The provisions of the Kerala Education Bill are not pari materia with the provisions of the Act with which we are concerned in this case, but this Court while delivering its opinion has laid down a number of salutary principles which throw a flood of light on the scope and interpretation of Article 30 of the Constitution of India.”



W.A.(MD) No.1580 of 2023

WEB COPY

(e) In ***Re The Kerala Education Bill, 1957 Reference under Article 143(1) of the Constitution of India, reported in AIR 1958 SC 956***, the Seven Judges Bench of the Hon'ble Supreme Court of India made the following observations:

*"We have to reconcile between these two conflicting interests and to give effect to both if that is possible and bring about a synthesis between the two. The Directive Principles cannot ignore or override the fundamental rights but must, as we have said, subserve the fundamental rights. We have already observed that Article 30(1) gives two rights to the minorities, (1) to establish and (2) to administer, educational institutions of their choice. The right to administer cannot obviously include the right to maladminister. **The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers, possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars.** It stands to reason, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided.*



W.A.(MD) No.1580 of 2023

WEB COPY

*If the State grants aid to an educational institution, it must have the power to see that the institution is properly and efficiently run, that the education imparted therein is of the right standard, that the teachers possess the requisite qualifications that the funds are duly applied for the purpose of the institution and the like. In other words, **the State must have large powers of regulation and of control over State-aided educational institutions.** These powers must be liberally construed, and the decision of the legislature as to what they should be is not to be lightly interfered with, as it is presumed to know best the needs of the State the nature and extent of the evils rampant therein and the steps that should be taken to remedy them. But the power to regulate does not, in general, comprehend the power to prohibit, and the right to control the affairs of an institution cannot be exercised so as to extinguish it."*

(f) In the case of ***The Ahmedabad St.Xaviers' College Society and another Vs. State of Gujarat and another, reported in 1974 1 SCC 717,*** the Hon'ble Supreme Court of India held as follows:

*"It is permissible for the State to prescribe reasonable regulations and make it a condition precedent to the according of recognition or affiliation to a minority institution. **It is not, however, permissible to prescribe conditions for recognition or affiliation which have the effect of impairing the right or the minority to establish and administer their educational institutions.***



W.A.(MD) No.1580 of 2023

WEB COPY

Affiliation and recognition are not mentioned in Art. 30(1). **The position all the same remains that refusal to, recognise or affiliate minority institutions unless the minorities surrender the right to administer those institutions would have the effect of rendering the right guaranteed by Art. 30 (1) to be wholly illusory and indeed a teasing illusion.** An educational institution can hardly serve any purpose or put to any practical utility unless it is affiliated to a University or is otherwise recognised like other educational institutions. The right conferred by Art. 30 is a real and meaningful right. Article 30(1) was intended to have a real significance and it is not permissible to 'construe it in such a manner as would rob it of that significance.

The argument that unless law is wholly destructive of the right of minorities under Art.30(1) it would not be liable to be struck down is untenable and runs counter to the plain language of Art.13. The law which interferes with the minorities' choice of a governing-body or management council would be violative of the right guaranteed by Art. 30 (1). Section 33A which provides for a new governing body for the management of the college and also for selection committees as well as the constitution thereof should be quashed so far as the minority educational institutions are concerned because of the contravention of Art. 30(1).

The law which interferes with a minority's choice of qualified teachers or its disciplinary control over teachers and other members of the staff of the institution is void as being violative of Art. 30(1).



WEB COPY

W.A.(MD) No.1580 of 2023

(g) In the case of **Board of Secondary Education Vs. Director of Public Instructions, reported in 1998 8 SCC 555**, the Hon'ble Supreme Court of India held as follows:

"The decisions of this Court make it clear that in the matter of appointment of the Principal, the management of a minority educational institution has a choice. It has been held that one of the incidents of the right to administer a minority educational institution is the selection of the Principal. Any rules which take away this right of the management have been held to be interfering with the right guaranteed by Article 30 of the Constitution. In this case, both Julius Prasad selected by the management and the third respondent are qualified and eligible for appointment as Principal according to rules. The question is whether the management is not entitled to select a person of their choice. The decisions of this Court including the decision in State of Kerala v. Very Rev. Mother Provincial, and Ahmedabad St. Xavier's College Society v.State of Gujarat, make it clear that this right of the minority educational institution cannot be taken away by any rules or regulations or by any enactment made by the State. We are, therefore, of the opinion that the High Court was not right in holding



W.A.(MD) No.1580 of 2023

WEB COPY

*otherwise. **The State has undoubtedly the power to regulate the affairs of the minority educational institutions also in the interest of discipline and excellence. But in that process, the aforesaid right of the management cannot be taken away, even if the Government is giving hundred per cent grant.***

(h) In the case of **T.M.A.Pai Foundation & Ors. Vs. State of Karnataka, reported in 2002 8 SCC 481**, the Eleven Judges Bench of the Hon'ble Supreme Court of India held as follows:

“So far as the statutory provisions regulating the facets administration is concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as conditions of affiliation to an University or Board have to be complied with, but in the matter of day-to-day Management, like appointment of staff, teaching and non-teaching and administrative control over them, the Management should have the freedom and there should not be any external controlling agency. However, a rational procedure for selection of teaching staff and for taking disciplinary action has to be W.P.No.4511 of 2015 evolved by the Management itself. For redressing the grievances of such employees who are subjected to punishment or termination from service, a mechanism will have to be evolved and in our opinion, appropriate tribunals could be constituted, and till then, such tribunal



W.A.(MD) No.1580 of 2023

WEB COPY

*could be presided over by a Judicial officer of the rank of District Judge. **The state or other controlling authorities, however, can always prescribe the minimum qualifications, salaries, experience and other conditions bearing on the merit of an individual for being appointed as a teacher of an educational institution.***

***Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State without interfering with overall administrative control of Management over the staff, Government/University representative can be associated with the selection committee and the guidelines for selection can be laid down.** In regard to un-aided minority educational institutions such regulations, which will ensure a check over unfair practices and general welfare, of teachers could be framed.”*

30. The Eleven Judges Bench of the Apex Court, in **T.M.A.Pai Foundation's** case in unequivocal terms held that the State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a Teacher or a principal of any educational institution. Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the state, without



W.A.(MD) No.1580 of 2023

WEB COPY

interfering with the overall administrative control of the management. Thus, clear distinction had been drawn by the Eleven Judges Bench of the Apex Court regarding the power of the State to stipulate minimum qualifications, salary, experience and other service conditions in respect of the State aided Institutions including minority.

31. The Special Act will prevail over the general laws. The Act is a special legislation, which would be applicable in respect of State aided schools including minority schools. Even in case, the Right of Children to Free and Compulsory Education Act is said to be inapplicable in *Pramathi's* case by the Apex Court, there is no impediment for the State to prescribe the qualifications of Teachers Eligibility Test under the Tamil Nadu Recognized Private Schools (Regulations) Act and the Rules in force. Such decision has been upheld by the Eleven Judges Bench of the Apex Court in *T.M.A.Pai Foundation's* case. Therefore, the right to administer means right to administer in accordance with law. Thus the Act and Rules enacted by the State regulating the educational qualifications, salary and service conditions are valid and enforceable to all state aided schools including minority.



W.A.(MD) No.1580 of 2023

WEB COPY

32. Right to administer by the minority would not exempt the power of the State from regulating the educational qualifications, salary and other service conditions for the teaching and non-teaching staff in order to maintain uniform standards in the matter of education. In this context, Section 3 of the Act provides power of the Government to regulate the school education. Accordingly, the Government may regulate different stage of education and courses of instruction in private schools. In *T.M.A.Pai Foundation's* case the Eleven Judges Bench held that regulations can be framed governing the service conditions for teaching and other staff, for whom aid is provided by the State without interfering over all administrative control of management. When the Eleven Judges bench has been distinguished the power of State to enact Act and Rules governing service conditions for teaching and other staff, including qualifications, **there is no impediment for the State to prescribe Teachers Eligibility Test as a requisite qualification for appointment to teaching posts, de hors the provisions of the Right of Children to Free and Compulsory Education Act.**



W.A.(MD) No.1580 of 2023

WEB COPY

33. In respect of the judgments in the case of ***State of Tamil Nadu, Department of school Education vs. Esakkimuthu*** in W.A.(MD)No.1557 of 2023 dated 21.09.2023, which relates to non-minority Institutions, wherein prior permission was granted. Therefore, the learned Additional Advocate General has no quarrel on the principles laid down in the said judgment. More so, in the said judgment, the principles laid down in the case of *Iruthaya Amali's* case was followed.

34. Therefore, we are of the considered opinion that, wherever the school is considered as a single Unit and no surplus Teachers are identified then approval is to be granted to those Teachers, who were appointed by following the procedures as contemplated under the Act and Rules in force and if they satisfy other conditions stipulated.

35. In respect of subject conversion, if prior permission was already granted by the competent educational authorities, then such subject conversion is to be approved in accordance with the procedures contemplated. On identification of surplus Teachers, if the school is a unit, then those



W.A.(MD) No.1580 of 2023

WEB COPY

Teachers are to be redeployed in any other school within the Corporate Managements/joint managements, if posts are available and in the event of non availability of posts, the surplus Teachers are to be redeployed in any other schools, wherever the vacancies are available.

36. It is needless to state that a junior most teaching staff in excess in a school is to be declared as surplus. However, if the pupil ratio is increased or a new post is sanctioned in the said school, subsequently, the redeployed teachers are to be reverted back to their parent school by issuing appropriate orders by the competent authorities. Regarding pass in Teachers Eligibility Test as a requisite qualification, the State is empowered to make it as a mandatory qualification for all the State Aided Schools, including Minority Schools, under the Act and Rules in force and pass necessary orders to that effect.

37. Learned counsel appearing for the respondent made a submission that in respect of Minority Institutions are concerned, no prior permission is required for upgradation of teaching staff.



WEB COPY

W.A.(MD) No.1580 of 2023

38. Learned Additional Advocate General appearing for the appellants objected the said contention by stating that under the relevant provisions of the Act and Rules and as per the Government Orders, such prior permission is mandatory.

39. In view of the fact that eligibility of the teaching staff is also to be scrutinized, the matter is remanded back to the authority concerned for fresh consideration. It is open to the respondent – School to produce all the relevant documents and Judgments to establish their case before the authority concerned, who in turn shall consider the same and pass appropriate orders on merits and in accordance with law.

40. Therefore, the matter is remitted back to the competent authorities for passing fresh orders. Such an exercise is directed to be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order. The respondent is at liberty to submit fresh representations or documents, if any, in the meanwhile. Consequently, the order passed by the learned Single Judge in W.P.(MD).No.18866 of 2019,



W.A.(MD) No.1580 of 2023

WEB COPY

dated 02.09.2022 and the impugned orders in the Writ proceedings are set aside and the Writ Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

[S.M.S., J.]

[V.L.N., J.]

20.11.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

krk



WEB COPY



W.A.(MD) No.1580 of 2023

S.M.SUBRAMANIAM, J.
and
V.LAKSHMINARAYANAN, J.

krk

W.A.(MD) No.1580 of 2023
and
C.M.P.(MD) No.12228 of 2023

20.11.2023