



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO.234 OF 2024

- 1) Sindhu Education Society, having its office at K.C. Bajaj Marg, Jaripatka, Nagpur 440 014, through its Secretary, Shri Deepak Bajaj.
- 2) Mahatma Gandhi Centennial Sindhu High School, having its office at K.C. Bajaj Marg, Jaripatka, Nagpur, through its head Mistress Ms. Dimpy Deepak Bajaj.

.... Petitioner(s)

// VERSUS //

- 1) The State of Maharashtra, through its Secretary, Department of Education, Mantralaya, Madam Cama Road, Mumbai 400 032.
- 2) Director of Education (Primary), State of Maharashtra, having its office at Central Building, Pune -1.
- 3) Director of Education, (Secondary and Higher Secondary), State of Maharashtra, having its office at Central Building, Pune -1.
- 4) Deputy Director of Education, Secondary and Higher Secondary, Nagpur Division, having office at Civil Lines, Nagpur 440 001.
- 5) Education Officer, (Primary), Having office at Civil Lines, Nagpur 440 001.
- 6) Education Officer (Secondary), Having

office at Civil Lines, Nagpur 440 001.

- 7) Superintendent, Salary and Pension,
Pay Unit, Finance Department
(Secondary), Nagpur 440 001.

... Respondent(s)

Mr.Akshay Naik, Senior Advocate a/b Mr.A.S.Manohar,
Advocate for petitioners.

Mr.D.V.Chavan, Government Pleader, with Mr.
H.D.Marathe, Assistant Government Pleader for respondent
Nos.1 to 4, 6 & 7.

Mr. Shaikh Majid, Advocate for respondent No.5.

CORAM : BHARATI DANGRE & ABHAY J. MANTRI, JJ.
DATE : 07/10/2024

ORAL JUDGMENT : (PER : BHARTI DANGRE, J)

‘Rule’ is made returnable forthwith. Heard finally by
consent of the counsel, representing the parties.

1. The Petitioner No.1-Sindhu Education Society, a
Linguistic Minority Institution, has secured a minority status
on 14.02.2014 from the competent officer of the Minority
Development Department and as on date, its status as
linguistic minority is in force.

Amongst the other educational institutions run by the petitioner-society, the petitioner No.2 Mahatma Gandhi Centennial Sindhu High-School, a fully grant-in-aid school, receiving grant-in-aid from the State Government is also run by the petitioner No.1.

2. The present petition is filed by the petitioners being aggrieved by the sanction of its “Staffing Pattern” for the academic year 2022-23 as well as for the academic year 2023-24 by the Education Officer (Secondary), Nagpur, who is impleaded as respondent No.6 to the petition.

It is the claim of the petitioners that the said sanction orders passed by the Education Officer, are based upon the directives of the State Government, contained in the Government Resolution dated 28.08.2015, which according to the petitioners, is inapplicable to the petitioners’ institution, in the wake of the law laid down by the Hon’ble Apex Court, as regards the applicability of the Right of Children to Free and Compulsory Education Act, 2009 (for short “the Act of 2009”) to the minority institutions and

therefore, primary relief sought in the petition is to declare that the Government Resolution issued by the Government dated 28.08.2015 is inapplicable to the petitioners.

During the pendency and final disposal of the petition, a direction is sought to the respondents to release the salary grants in respect of the teaching staff of the petitioner No.2 school as per the earlier sanction for the year 2021-2022 without insisting upon completion of post mapping, as per the impugned sanction letter dated 12.07.2023.

3. We have heard the learned Senior Advocate Mr. Akshay Naik, for the petitioners and learned Senior Advocate Mr. Chauhan, learned Government Pleader for the respondent Nos.1 to 7.

By consent of the respective Senior Advocates, we have taken up the petition for final hearing by issuing 'Rule', which is made returnable forthwith.

In the background facts laid before us through the petition, the question that arises before us is, about the

applicability of the provisions of the Act of 2009 to the linguistic minority society, in the backdrop of the protection conferred upon it, under Article 30 of the Constitution of India, being a minority institution.

The Act of 2009 was enacted by the parliament to provide free and compulsory education to all the children from the age of 6 to 14 years, realizing the crucial role of the universal elementary education for strengthening the social fabric of democracy, by providing equal opportunities to all. Since the Directives Principles of the State Policy enumerated in the Constitution clearly provide for free and compulsory education to all children up to the age of 14 years, and by introducing Article 21 -A in the Constitution of India, by (Eighty-Sixth Amendment) Act of 2002, providing for free and compulsory education to all children in the age group of 6 to 14 years and this right being recognized as a fundamental right, the Parliament enacted the Act of 2009 to give effect to the fundamental right.

4. Section (1) of the Act of 2009, set out its application, by sub-section (4) contemplated thus:

“(4) Subject to the provisions of articles 29 and 30 of the Constitution, the provisions of this Act shall apply to conferment of rights on children to free and compulsory education.”

Amongst the distinct provisions of the Act, which has enumerated the duties of the appropriate Government and Local Authority, it has also set out the responsibilities of the schools and teachers.

The Act of 2009 contemplated to have in place a School Development Plan (SDP) to be prepared by the School Management Committee with the exception, in respect of the school established and administered by the minority, based on religion and language.

The Act of 2009, also set out the manner of appointment and terms and conditions for service of the teaching staff and has also prescribed the pupil teacher ratio by introducing a provision in the form of Section 25, which

contemplate that within 3 years from the date of commencement of the Act, the appropriate Government and the local authority shall ensure that the pupil teacher ratio, as specified in the schedule, is maintained in each school.

The schedule appended to the Act of 2009 has prescribed the number of teachers for different classes depending upon the strength of the admitted students beginning from 60 students extending up to 200 children or more.

For standard 6th to 8th, the norm contemplate at least one teacher per class, so that for every class there shall be one teacher for Science and Mathematics; Social Studies; Languages and at least there shall be one teacher for every 35 students. The schedule therefore, contemplate different contingencies prescribing the ratio of the pupil to the teacher, by contemplating different situations.

5. It is the pleaded case of the petitioners that the petitioner No.2 for the year 2020-21 and 2021-22 had 102

sanctioned teaching post and 29 sanctioned posts of non-teaching staff, out of which, 80 posts of teaching staff were filled in, whereas 16 posts were lying vacant.

According to the petitioners, in the year between 2014-15 to 2021-22, the number of approved teachers stood between 102 and 110 and for each year, the posts had received sanction from the Education Department.

The petition is accompanied with copies of approval granted for the year 2014-15 to 2021-22 along with calculation regarding the number of sanctioned posts.

6. For the year 2022-23, the sanction came to be granted to 80 teaching posts by order dated 12.07.2023 and it was revealed to the petitioners, that this was so done, by application of the Government Resolution dated 28.08.2015, which was based upon the Act of 2009, by assuming that the determination of the number of teachers and its sanction was applicable even to minority schools.

7. According to the petitioners, the respondent No.2 Director of Education (Primary) issued a letter to all the Divisional Deputy Directors of Education; Education Officers; Education Inspectors; Administrative Officers of various Municipal Corporations; Municipal Councils of Nagar Panchayat; and to all Superintendents (Salary and Pension), Finance Division, thereby, notifying that the facility of post mapping of teaching and non-teaching has been provided on online portal-Shalarth and mapping should be completed immediately.

On 25.08.2023 another letter was issued intimating that although the post mapping facilities have been provided, the same had not been complied by various schools and unless the post mapping is carried out, the bills for the month of September-2023 shall not be released.

As a continuation of this communication, on 29.08.2023, the respondent No.7 i.e. the Superintendent, (Salary and Pension), Pay Unit, addressed a communication to the Headmasters of the aided schools in Nagpur, stating

that unless the work for post mapping is done by 31.08.2023, the aid from the month of September-2023 shall not be released and teachers shall not be paid their salaries.

Pursuant to this communication, the office of the Education Department refused to accept the bills for the month of August-2023 and as a consequence of this, teachers were deprived of their salaries.

With repeated persuasion, one more month was granted for completion of post mapping but at the same time, the respondents while accepting the bills of the petitioners, insisted for fresh sanction, which has reduced the number of posts in the petitioner No.2 school by 22 posts, though in terms of the Government Circular dated 21.06.1996, the number of the teachers required was computed to be 110 and factually, the petitioners enjoyed this sanction strength till the year 2021-22.

8. The aforesaid act of the respondents has constrained the petitioners to approach this Court through this petition, where the respondents were noticed from 11.01.2024 and the notice indicated that the petition shall be taken up for final disposal upon the notices being served.

9. Mr. Akshay Naik, learned Senior Advocate, has invited our attention to the Government Resolution dated 28.08.2015, which is issued, fixing new norms of staffing pattern by applying revised parameters in the wake of the Act of 2009.

The Government Resolution by making reference to the decision of the Hon'ble Apex Court delivered on 12.04.2012, upholding the constitutional validity of the Act of 2009, deemed it is necessary to fix fresh norms including opening of new schools, creation of sections, determining the Student Teacher Ratio (STR) and accordingly, fixed the new norms to be made applicable in regards the staffing pattern applicable to all Government, private, aided, partly aided, new schools, addition of new classes and it is the specific

contention of Mr. Akshay Naik, the learned Senior Advocate that this Government Resolution cannot be made applicable to the petitioners, the petitioner No.2 being a minority institution, run by the petitioner No.1, which is conferred with the minority status.

He has invited our attention to the decision of the Constitution Bench of the Hon'ble Apex Court in the case of *Pramati Educational & Cultural Trust ..vs.. Union of India* (2014) 8 SCC 1, which answered the reference made over to it by Three Judge Bench in *Society for Unaided Private Schools of Rajasthan v. Union of India* (2012) 6 SCC 102, to pronounce on the validity of Article 15(5) of the Constitution, inserted by the Constitution (Ninety-Third Amendment) Act of 2005 and on the validity of Article 21-A of the Constitution introduced w.e.f. 01.04.2010.

10. On perusal of the above decision, we have noted that the substantial questions of law before the Constitutional Bench were formulated, as below:

“(i) Whether by inserting Clause (5) in Article 15 of the Constitution by the Constitution (Ninety-third Amendment) Act, 2005, Parliament has altered the basic structure or framework of the Constitution?

(ii) Whether by inserting Article 21-A of the Constitution by the Constitution (Eighty-sixth Amendment) Act, 2002, Parliament has altered the basic structure or framework of the Constitution?”

11. Dealing with the contention that clause (5) of Article 15 of the Constitution is violative of Article 14 of the Constitution of India, as it excludes from its purview, the minority institution referred to in clause (1) of Article 30 of the Constitution and the contention that clause (5) of Article 15 excludes both unaided minority institution and aided minority institution alike, the discussion is to be found in paragraph 32 where the provisions contained in Article 29(2), 30(1) and 30(2) of the Constitution are reproduced. The specific discussion as on the said issue is to be found in paragraphs 35 to 38 of the law report and we deem it appropriate to reproduce the same:

“35. We may now consider the contention of Mr. Divan that clause (5) of Article 15 of the Constitution is violative of secularism insofar as it excludes religious minority institutions referred to in Article 30(1) of the Constitution from the purview of clause (5) of Article 15 of the Constitution. In M. Ismail Faruqui v. Union of India (1994) 6 SCC 360, this Court has held that

“37. ... the Preamble of the Constitution read in particular with Articles 25 to 28 emphasises this aspect and indicates that ... the concept of secularism embodied in the constitutional scheme [is] a creed adopted by the Indian people ...”.

Hence, secularism is no doubt a basic feature of the Constitution, but we fail to appreciate how clause (5) of Article 15 of the Constitution which excludes religious minority institutions in clause (1) of Article 30 of the Constitution is in any way violative of the concept of secularism. On the other hand, this Court has held in T.M.A. Pai Foundation (2002) 8 SCC 481 that the essence of secularism in India is the recognition and preservation of the different types of people, with diverse languages and different beliefs and Articles 29 and 30 seek to preserve such differences and at the same time unite the people of India to form one strong nation. (see paragraph 161 of the majority judgment of Kirpal, C.J., in T.M.A. Pai Foundation at page 587 of the SCC). In our

considered opinion, therefore, by excluding the minority institutions referred to in clause (1) of Article 30 of the Constitution, the secular character of India is maintained and not destroyed.

36. We may now come to the submission of Mr. Nariman that the fundamental right under Article 21 read with Article 51-A(j) of the Constitution is violated by clause (5) of Article 15 of the Constitution. According to Mr. Nariman, every person has a right under Article 21 and a duty under Article 51-A(j) to strive towards excellence in all spheres of individual and collective activity, but this will not be possible if private educational institutions in which a person studies for the purpose of achieving excellence are made to admit students from amongst backward classes of citizens and from the Scheduled Castes and the Scheduled Tribes. This contention, in our considered opinion, is not founded on the experience of educational institutions in India.

37. Educational institutions in India such as Kendriya Vidyalayas, Indian Institute of Technology, All India Institute of Medical Sciences and Government Medical Colleges admit students in seats reserved for backward classes of citizens and for the Scheduled Castes and the Scheduled Tribes and yet these Government institutions have produced excellent students who have grown up to be good administrators, academicians, scientists, engineers, doctors and the like. Moreover, the contention

that excellence will be compromised by admission from amongst the backward classes of citizens and the Scheduled Castes and the Scheduled Tribes in private educational institutions is contrary to the Preamble of the Constitution which promises to secure to all citizens “fraternity assuring the dignity of the individual and the unity and integrity of the nation”. The goals of fraternity, unity and integrity of the nation cannot be achieved unless the backward classes of citizens and the Scheduled Castes and the Scheduled Tribes, who for historical factors, have not advanced are integrated into the main stream of the nation. We, therefore, find no merit in the submission of Mr. Nariman that clause (5) of Article 15 of the Constitution violates the right under Article 21 of the Constitution.

38. We accordingly hold that none of the rights under Articles 14, 19(1)(g) and 21 of the Constitution have been abrogated by clause (5) of Article 15 of the Constitution and the view taken by Bhandari, J. in Ashoka Kumar Thakur v. Union of India (2008) 6 SCC 1 that the imposition of reservation on unaided institutions by the Ninety-third Amendment has abrogated Article 19(1)(g), a basic feature of the Constitution is not correct. Instead, we hold that the Constitution (Ninety-third Amendment) Act, 2005 inserting clause (5) of Article 15 of the Constitution is valid.”

12. Testing the submission in the backdrop of Article 21-A of the Constitution and the decision in the case of *Society for Unaided Private Schools of Rajasthan v. Union of India* (2012) 6 SCC 1, a Three Judge Bench, which by majority had held the Act of 2009 to be constitutionally valid, paragraph 64 of the said decision was reproduced, since it was held that the Act of 2009 shall apply to the following:

*“(i) a school established, owned or controlled by the appropriate Government or a local authority;
(ii) an aided school including aided minority school(s) receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;
(iii) a school belonging to specified category; and
(iv) an unaided non-minority school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.”*

13. On consideration of the arguments in support of the proposition and the submissions advanced on behalf of the Union of India, the Court expressed its opinion in the following words:

“49. Article 21-A of the Constitution, as we have noticed, states that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. The word ‘State’ in Article 21-A can only mean the ‘State’ which can make the law. Hence, Mr. Rohatgi and Mr. Nariman are right in their submission that the constitutional obligation under Article 21-A of the Constitution is on the State to provide free and compulsory education to all children of the age of 6 to 14 years and not on private unaided educational institutions. Article 21-A, however, states that the State shall by law determine the “manner” in which it will discharge its constitutional obligation under Article 21-A. Thus, a new power was vested in the State to enable the State to discharge this constitutional obligation by making a law. However, Article 21-A has to be harmoniously construed with Article 19(1)(g) and Article 30(1) of the Constitution. As has been held by this Court in Venkataramana Devaru v. State of Mysore (AIR 1958 SC 255, p. 268 para 29):

“29. ... The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each

other, they should be so interpreted that, if possible, effect could be given to both. This is what is known as the rule of harmonious construction.”

We do not find anything in Article 21A which conflicts with either the right of private unaided schools under Article 19(1)(g) or the right of minority schools under Article 30(1) of the Constitution, but the law made under Article 21-A may affect these rights under Articles 19(1)(g) and 30(1). The law made by the State to provide free and compulsory education to the children of the age of 6 to 14 years should not, therefore, be such as to abrogate the right of unaided private educational schools under Article 19(1)(g) of the Constitution or the right of the minority schools, aided or unaided, under Article 30(1) of the Constitution.”

14. In addition to the aforesaid, the pertinent observations, in paragraph Nos.53 to 55, deserve a reproduction, as has reasoned as to why the Act of 2009 cannot be made applicable to minority schools, aided or unaided; the primary reason set out being, right of minority under Article 30(1) of the Constitution shall be abrogated, if it is so done.

We reproduce the relevant paragraphs of the Law Report in support of the aforesaid conclusion:

“53. When we examine the 2009 Act, we find that under Section 12(1)(c) read with Section 2(n)(iv) of the Act, an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority is required to admit in class I, to the extent of at least twenty-five per cent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion. We further find that under Section 12(2) of the 2009 Act such a school shall be reimbursed expenditure so incurred by it to the extent of per- child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed. Thus, ultimately it is the State which is funding the expenses of free and compulsory education of the children belonging to weaker sections and several groups in the neighbourhood, which are admitted to a private unaided school. These provisions of the 2009 Act, in our view, are for the purpose of providing free and compulsory education to children between the age group of 6 to 14 years and are consistent with the right under Article 19(1)(g) of the Constitution, as interpreted by this Court in T.M.A. Pai Foundation

(2002) 8 SCC 481 and are meant to achieve the constitutional goals of equality of opportunity in elementary education to children of weaker sections and disadvantaged groups in our society. We, therefore, do not find any merit in the submissions made on behalf of the non-minority private schools that Article 21-A of the Constitution and the 2009 Act violate their right under Article 19(1)(g) of the Constitution.

*54. Under Article 30(1) of the Constitution, all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. Religious and linguistic minorities, therefore, have a special constitutional right to establish and administer educational schools of their choice and this Court has repeatedly held that the State has no power to interfere with the administration of minority institutions and can make only regulatory measures and has no power to force admission of students from amongst non-minority communities, particularly in minority schools, so as to affect the minority character of the institutions. Moreover, in *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225, Sikri, C.J., has even gone to the extent of saying that Parliament cannot in exercise of its amending power abrogate the rights of minorities. To quote the observations of Sikri, C.J. in *Kesavananda Bharati v. State of Kerala* (SCC p.339, para 178)*

“178. The above brief summary of the work of the Advisory Committee and the Minorities Sub-committee shows that no one ever contemplated that fundamental rights appertaining to the minorities would be liable to be abrogated by an amendment of the Constitution. The same is true about the proceedings in the Constituent Assembly. There is no hint anywhere that abrogation of minorities’ rights was ever in the contemplation of the important members of the Constituent Assembly. It seems to me that in the context of the British plan, the setting up of Minorities Sub- committee, the Advisory Committee and the proceedings of these Committees, as well as the proceedings in the Constituent Assembly mentioned above, it is impossible to read the expression ‘Amendment of the Constitution’ as empowering Parliament to abrogate the rights of minorities.”

Thus, the power under Article 21-A of the Constitution vesting in the State cannot extend to making any law which will abrogate the right of the minorities to establish and administer schools of their choice.

55. When we look at the 2009 Act, we find that Section 12(1)(b) read with Section 2(n) (ii) provides that an aided school receiving aid and grants, whole or part, of its expenses from the appropriate Government or the local authority has to provide free and compulsory

education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent. Thus, a minority aided school is put under a legal obligation to provide free and compulsory elementary education to children who need not be children of members of the minority community which has established the school. We also find that under Section 12(1)(c) read with Section 2(n) (iv), an unaided school has to admit into twenty-five per cent of the strength of class I children belonging to weaker sections and disadvantaged groups in the neighbourhood. Hence, unaided minority schools will have a legal obligation to admit children belonging to weaker sections and disadvantaged groups in the neighbourhood who need not be children of the members of the minority community which has established the school. While discussing the validity of clause (5) of Article 15 of the Constitution, we have held that members of communities other than the minority community which has established the school cannot be forced upon a minority institution because that may destroy the minority character of the school. In our view, if the 2009 Act is made applicable to minority schools, aided or unaided, the right of the minorities under Article 30(1) of the Constitution will be abrogated. Therefore, the 2009 Act insofar it is made applicable to minority schools referred in clause (1) of Article 30 of

the Constitution is ultra vires the Constitution. We are thus of the view that the majority judgment of this Court in Society for Unaided Private Schools of Rajasthan v. Union of India (2012) 6 SCC 1, insofar as it holds that the 2009 Act is applicable to aided minority schools is not correct.”

15. In conclusion, while holding that the Constitution (Ninety-Third Amendment) Act, 2005 inserting clause (5) of Article 15 of the Constitution and Article 21-A by (Eighty-Sixth Amendment) Act, 2002, it was held, that it did not alter the basic structure or framework of the Constitution. It was also held that the Act of 2009 was held not *ultra vires* to Article 19(1)(g) of the Constitution, but it was specifically held as under:-

“ 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.”

16. The aforesaid decision is delivered by the Constitution Bench of the Hon'ble Apex Court on 06.05.2014, where it is categorically held that the Act of 2009 is not applicable to the minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution.

17. Based upon the above exposition of law by the Hon'ble Apex Court in no uncertain words, it is the argument of Mr. Akshay Naik, that in light of the aforesaid observations, it is highly inappropriate that the guidelines laid down by the State Government for giving effect to the provisions of the Act of 2009, contained in its resolution dated 28.08.2015 shall be made applicable to the minority schools. If the Act of 2009 is not applicable to the minority schools, whether aided or unaided, according to him, there is no question of applicability of the directions in the Government Resolution which is issued for implementing the provisions of Act of 2009. According to him, if the Genus cannot be made applicable, definitely its Species would not apply.

We find substance in his argument as we feel ourselves bound by the decision of the Constitution Bench of the Hon'ble Apex Court.

18. In the case of *Sindhudurg Zilla Shikshan Sanstha Vs. The Union of India and others*, (Writ Petition No.9026 of 2014) and a group of writ petitions decided by the Division Bench on 15.12.2015, when an issue of applicability of the "Staffing Pattern" and related aspects, based upon the policy of the Central Government and the State, declared under the Act 2009 and the Right of Children to Free and Compulsory Education Rules, 2010 & The Maharashtra Right of Children to Free and Compulsory Education Rules, 2011, to the "Head Masters", "Teachers", "Supervisor of aided", "non minority" recognized "private/primary Schools", governed by the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, "MEPS Act") and the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, was the issue, as the petitioners challenging the circulars to be

unconstitutional and contrary to law affecting their constitutional and legal rights, the Division Bench in paragraph 43 considered the submissions advanced on behalf of the minority aided management/school/institution based on the decision in *Pramati Educational and Cultural Trust* (supra) that the provisions of the Act 2009 are not applicable to minority institution and therefore, the schedule will also not be applicable and even circulars/GRs shall also be inapplicable. The Division Bench recorded that the minority institutions are governed and controlled by the framework of the MEPS Act and the circulars/GRs issued from time to time and it observed thus:

“43. So far as the minority institutions are concerned, the submissions are made in view of the Judgment of Pramati Educational and Cultural Trust (Supra) that the provisions of the Rte Act are not applicable to such minority institutions. The submission is therefore, made that the Schedule is also not applicable and so also the State impugned Circulars/GRs, based upon the judgments and the provisions. There is no issue that these minority institutions are governed and controlled by the State, as their establishment and/or as well as, the permission to

start educational school/institution is under the control and within the framework of the MEPS Act and the Circulars/GRs so issued from time to time. The reasons so recorded above, including the principle behind such "staffing pattern", though based upon the Schedule under the Act, in no way affect the rights of minority institutions to admit the students or charge the reasonable fee structure and to take action, if there is dereliction of duties on the part of any employee. Even the appointment of staff, teaching and non-teaching, are within the power of minority institutions, however there is no issue that the teaching and/or non-teaching staff, qualification and the related contentions are as per the provisions, Rules and Regulations and the Circulars/GRs so issued by the State for the minority institutions, if getting the aid from the State, to contend that this "staffing pattern" and the Circulars/GRs so issued for the same, are not applicable to them, in our view, is unacceptable situation. It is the obligation of the State to have a uniformity in every aspect of education providing uniform education pattern and qualification of teachers and/or staff. For uniformity, the standard of education and the staffing pattern so adopted by the State, though based upon the RTE Act and MEPS Act, just cannot be overlooked while regulating such minority institutions. This in no way takes away their rights, even to appoint the head of minority institutions. The provisions are also made and so also the statement that, the surplus teachers and the Head-masters of

minority institutions are adjusted and/or accommodated in another minority school/institutions. Therefore, the circular so issued by the State in this background, in our view, in no way can be stated to be contrary to the judgment so referred above including T.M.A. Pie Foundation Vs. The State of Karnataka & Ors. (1990) 2 SCC 199 and Pramati Educational and Cultural Trust (Supra). On the contrary, it is in the interest of all the concerned without disturbing the minorities rights so provided under Articles 29 and 30 of the Constitution of India for the State to maintain the uniformity of the education as such institutions are also recognized and permitted by the State and the staffing pattern so prescribed, need to be extended even to such institutions, including the related aspects.

44. It is important to note that there is no total bar that such minority institutions are not permitted to admit the students of other category by keeping the mandate of 50% and/or not rigid percentage so provided. (St. Stephen's College Vs. University of Delhi (1992) 1 SCC 558)). This is also in the background that till the impugned Circulars/GRs, even based upon the then existing Circulars/GRs and the provisions of State Act and the Regulation made thereunder, the minority school/institutions themselves have been following the "staffing pattern", as directed by the State, along with others. There is a power of the State to change the policy

and fixed the staffing pattern by revisiting the issue. The submission of minority institutions, so far as this part is concerned, therefore not acceptable. The staffing pattern so announced as a policy decision by the State, even for the minority institutions, as they are otherwise regulated by every such other aspects, we see there is no reason to interfere with the policy decision through this circular issued by the State even at the instance of minority institutions/school.

45. Certain degree of State control is definitely required considering the obligation of the State's Appropriate Authority and the Local Bodies, keeping in mind the uniformity standards of education to be maintained in all such schools/institutions. (Modern Dental College and Research Centre & Ors. Vs. State of Madhya Pradesh & Ors. (2009) 7 SCC 751))”

19. The observation to the aforesaid effect by the Division Bench, in our considered opinion, is nothing but an attempt to achieve uniformity in the education pattern, though it recognizes the right of the minority in appointing the head of the minority institution and in the premise of a general proposition that the minority schools to some extent are under the control of the State, the conclusion derived is that

the policy cannot be applicable to it, which includes “staffing pattern”.

In contrast of the Division Bench decision, our attention is invited to the decisions of this Court, following the decision in *Pramati Educational & Cultural Trust* (supra), this includes the decision of the Division Bench in case of *Vikas Motewar (Dr.) Vs. State of Maharashtra & ors.* 2017 (3) Bom.C.R. 497, where a right tone has been set, as regards to what extent the State Government shall exercise its control over the management/the affairs of the minority institution and we must reproduce the relevant paragraphs:

“58. In the case of Pramati Educational and Cultural Trust Vs. Union of India, (supra), the issue was with regard to implementation of Section 12(1)(c) of Right to Education Act which refers to an obligation to admit children belonging to weaker section and disadvantage groups in the neighborhood who need not be the children of the minority community which has established the school.

59. In clear terms, they opined that the application of 2009 Act, to minority schools (aided and unaided) would lead to abrogation of right of the minorities under Article

30(1) of the Constitution. Therefore, it was further held that the 2009 Act insofar as it is made applicable to minority schools referred to clause 1 of Article 31 of the Constitution is ultra vires of the Constitution and further opined that the law or the view held in society for unaided private school is not the correct law.

60. On one hand, we have the rights and obligations conferred upon the State run educational institutions, institutions run with the financial assistance of the State and without the financial assistance of the State. It is also well settled that even in the case of minority institutions when it comes to imposition of regulations by the State, such regulations have to be followed by the institution so long as they do not invade into the constitutional protection conferred upon the minority institutions under the Constitution of India. In the case on hand, the child and its parents are seeking implementation of provisions of Right to Education Act which provides not to expel, not to withhold a child from its school once admitted till it completes elementary education. On the other hand, we are dealing with the rights conferred upon the minority institution to establish and administer the school. In the judgments referred to above, it is clearly explained that the word 'establish' refers to the right to bring into existence and the word 'right to administer an institution' means the right to effectively manage and conduct its day-to-day affairs. This definitely would mean management of the

affairs of the institution. The minorities definitely have the privilege of Right and freedom to establish and administer their educational institution as they choose. It is also well settled that right to administer does not include right to maladminister. The right to administer refers always to positive and good administration. The regulations imposed in the true interest of efficiency of instruction, discipline, health, sanitation, morality, public order and the like, can always be imposed.”

20. Another decision of the Division Bench in case of ***Izak English Medium School Vs. State of Maharashtra and others*** (Writ Petition No.3085 of 2020) decided on 14.08.2024, has dealt with challenge of the petitioners, a minority institute, running on self finance and observed thus:

“11. The issue is not as simple as it looks. Section 1(5) of the RTE Act expressly excludes minority institutes from applicability of the RTE Act. Rule 1.1 and Rule 12 which seek to exclude minority institutes or the institutes imparting religious instructions is clearly in consonance with Section 1(5). Apparently, the petitioners are seeking to subject themselves to the provisions of the RTE Act by coming forward voluntarily to admit the students under 25% quota which claim itself would be inconsistent with Section 1(5).

12. Besides, by virtue of decision in *Pramati Educational and Cultural Trust (supra)* the RTE Act itself has been declared to be ultra vires, the Article 30(1) of the Constitution of India to the extent of minority schools, aided or unaided, covered under that Article. If the petitioners being minority institutions are allowed to subject themselves to the provisions of the RTE Act, it would be in stark violation of Section 1(5) as also *Pramati Education and Cultural Trust's* decision (*supra*). Once the constitutional bench of the Supreme Court has held the RTE Act itself being ultra vires Article 30(1) of the Constitution, this Court in exercise of the powers under Article 226 of the Constitution cannot permit the minority institutes like the petitioners to subject themselves to the provisions of the RTE Act. Even if they are ready and willing. Allowing them to do so could be only by making the provisions of the RTE Act applicable to them which in itself is prohibited by virtue of the declaration in *Pramati Educational and Cultural Trust (supra)*. ”

21. Though the learned Government Pleader has faintly suggested to us that since the Division Bench in *Sindhudurg Zilla Shikshan Sanstha (supra)* has taken specific view that the provisions of the MEPS Act are applicable to all private schools in the State of Maharashtra, receiving grant-in-aid

from the State Government or not, the minority educational institution are also governed by the same, but in paragraph 23 of the said decision, the Division Bench has taken cognizance of the exception carved out by Articles 29 and 30 of the Constitution and the related laws including recruitment of the head of minority schools and other persons so notified.

If it is so, then sub section (4) of Section (1), is duly recognized by the Division Bench, despite the specific observation that the impugned circulars/Government Resolutions can no way be said to be disadvantageous to the minority institution, since it does not disturb affairs of management/school and/or selection of the school head.

22. Since, we feel ourselves bound by the pronouncement of the highest Court of the country, through the Constitution Bench, we do not think that the reference is necessary, since various Division Benches of this Court, following the Constitution Bench decision had taken a clear view that the Act of 2009, being *ultra vires* to the Article 30(1) of the

Constitution, the minority institutions shall not be compelled to subject themselves to the provisions of the Act of 2009 and necessarily the Rules/Circulars formulated thereunder.

23. In the wake of the aforesaid decision, since we are of the considered view that we are bound by the decision of the Constitution Bench in the case of *Pramati Educational & Cultural Trust* (supra) that the Act of 2009 is not applicable to the minority schools, whether aided or not and as such the petitioners cannot be brought within its ambit, as a sequence, the Government Resolution dated 28.08.2015 cannot be made applicable to the petitioners.

By declaring that the Government Resolution as regards to “Staffing Pattern” cannot be made applicable to the petitioners, aided minority institution, we quash and set aside the impugned sanction dated 12.07.2023 and 06.07.2023 for the academic year 2022-23 and 2023-24, respectively, issued by the respondent No.6.

We leave it open for the respondents to continue with the staffing of the petitioner No.2 based upon the existing staffing pattern, without applicability of the impugned Government Resolution or decide the staffing pattern independent to the provisions of the Right of Children to Free and Compulsory Education Act, 2009.

24. In the result, we make the Rule absolute in the petition in terms of prayer clauses (A), (B) and (B1).

Easy on costs.

[ABHAY J. MANTRI, J]

[BHARATI DANGRE, J]