



W.P.No.25754 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2024

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CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.25754 of 2021
and W.M.P.No.27204 of 2021

All India Private Educational Institutions Association,
Represented by its State General Secretary K.Palaniyappan,
No.5, M.P.Avenue, Majestic Colony,
Saligramam, Chennai.

.. Petitioner

VS

- 1.Union of India
Represented by its Secretary,
Department of School Education & Literacy,
Ministry of Education, Shastri Bhawan,
Dr.Rajendra Prasad Rd., Rajpath Area,
Central Secretariat, New Delhi – 110 001.
- 2.The State of Tamil Nadu
Rep. by its Secretary,
Department of School Education,
Fort St.George, Chennai – 600 009.
- 3.The Director of School Education,
DPI Compound, College Road,
Chennai – 600 006.
- 4.The Director of Matriculation Schools,
College Road,
Chennai – 600 006.
- 5.The Director,



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Office of the Directorate of Elementary Education,
DPI Complex, College Road,
Chennai – 600 006.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of declaration declaring the clause (5) of the government Order of the 1st Respondent in GO.(Ms) No.189 dated 12.07.2010 is illegal, ultravires and against the provisions of Section 5 of the Right of Children to Free and Compulsory Education Act, 2009.

For Petitioner : Mr.A.Nilesh Ram
for M/s.K.M.Vijayan Associates

For Respondents : Mr.M.Murugesan, (for R1)
Central Government Standing Counsel

Mr.M.Rajendran, (for R2 to R5)
Additional Government Pleader

ORDER

This writ petition is filed by the All India Private Educational Institutions Association challenging clause (5) of G.O.(Ms)No.189 dated 12.07.2010. The offending clause (5) reads thus:

'5.The child shall have a right to move from one school to another either within the State or outside for completing his or her Elementary Education. In such cases, the head teacher of the school where such child was last admitted shall immediately issue the Transfer Certificate. Moreover, the delay in producing Transfer Certificate shall not be a ground for either delaying or denying admission in such other school.'



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2.The apprehension of the petitioner appears to be that if this G.O. where to be taken advantage of by all students then there would be no certainty with regard to the number of students that would remain in the school and those that would shift to other schools. This apprehension is misplaced for the reason that clause (5) and in fact the entirety of the G.O. addresses only those admissions made under the Right of Children to Free and Compulsory Education Act, 2009. This position is also confirmed in the counter filed by R4 on 05.01.2022 where at paragraph 13, they state as follows:

'13.With reference to the averments of the petitioner in paragraphs 9 to 13 13 of the affidavit it is submitted that the impugned Government Order nowhere discuss about issuance of Transfer Certificate to children in case of remaining fee to be paid to the school. Clause 5 of the impugned Government Order is within the ambit of section 5 of the RTE Act, 2009. As per the above provisions of the Act, children have right to seek transfer certificate from any type of school where they are studying, but it restricts transfer to schools specified in sub-clauses (iv) of clause (n) of section 2 of the RTE Act, 2009.'

3.Incidentally, learned counsel for R2 points out that the impugned G.O. has been passed by the second respondent and not by the first respondent as stated in the prayer.

4.With this and as the apprehension of the petitioner is found not



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to have any basis, this writ petition is dismissed. No costs. Connected
miscellaneous petition is closed.

16.07.2024

Index: Yes/No
Speaking Order
Neutral Citation: Yes
vs

To

1. The Secretary,
Department of School Education & Literacy,
Ministry of Education, Shastri Bhawan,
Dr. Rajendra Prasad Rd., Rajpath Area,
Central Secretariat, New Delhi – 110 001.
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DR. ANITA SUMANTH,J.

VS

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