

APHC010588332022



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3333]

FRIDAY, THE TWENTY FIRST DAY OF JUNE
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

WRIT PETITION NO: 35460/2022

Between:

United Private Educational Institutions Federation and ...**PETITIONER(S)**
Others

AND

The State Of Andhra Pradesh and Others **...RESPONDENT(S)**

Counsel for the Petitioner(S):

1.SRI VIJAY MATHUKUMILLI

Counsel for the Respondent(S):

1.GP FOR EDUCATION

The Court made the following:

The present Writ Petition came to be filed under Article 226 of the Constitution of India seeking the following relief:-

“.... to issue an appropriate writ more in the nature of Writ of Mandamus declaring the action of the 3rd Respondent, State Council for Education Research and Training (SCERT for brevity) in issuing the proceedings vide Rc.No.ESE02/591/2022-SCERT dated 03.10.2022 whereby and whereunder the directions are given to the private unaided educational institutions to compulsorily participate under Classroom Based Assessment (CBA) examination for classes I to VIII and Formative Assessment (FA) examination for classes IX and X and to remit the examination fee for conduct of such common examination @ Rs.150/and Rs.200/ as being arbitrary, illegal and violative of Articles 14 and 19 (1) (g) of the Constitution of India and against the principles of natural justice besides being in contravention of Section 29 of the Right to Education Act 2009 and consequently set aside the same and issue such other writ or order or direction as deemed fit and proper in the circumstances of case.....”

2) The case of the petitioners is that the petitioners are the Federation of United Private Educational Institutions and Educational Society respectively and have been striving for the cause of the students' right from the Kindergarten to the Post-graduation level. Respondents served copy of the impugned proceedings dated 03.10.2022 to number of Managements, who are the members of petitioner No.1 Federation and directed the District Common Examination Boards (for short “DCEBs”) to change the pattern of conduct of examination, especially for classes 1 to V and making it compulsory for the student to undergo the public examination model and also directed them to pay huge amount towards each question paper at the rate of Rs.200/- per question paper.

3) It is further submitted that the impugned proceedings emanated from the programme announced by the Government of Andhra Pradesh under the name and style "Supporting the Andhra's Learning Transformation Programme" (for short "SALT"), which is announced for the Government Schools alone. SALT scheme is a World Bank financed project, the object of which is to be achieved through the Government schools only, but it cannot be made applicable to the private unaided educational institutions in the State. The examinations were conducted even for the students studying in the private unaided schools which were called as "Slip Tests". Now, the Government has re-named the said examination as 'Classroom Based Assessment' test (for short "CBA"). Such a decision to change the nomenclature has been taken by the authorities to bring the private unaided educational institutions under the ambit of SALT. For slip tests, there should not be any separate question paper or any timelines or restriction of time. Any deviation from this procedure will be detrimental to the students studying in the private unaided educational institutions and the deviation is against Section 29 of the Right to Education Act, 2009.

4) It is further stated that Section 29 of the Right to Education Act, 2009 is very specific that the common examinations for classes I to V cannot be permitted to be conducted since the students are tender age and they cannot be pressurized to take the common examination. The

authorities cannot be allowed to act as per whims and fancies particularly when it is pertaining to the career of the minor students. Therefore, the action of respondent No.3 in issuing the impugned proceedings is illegal and unjust. Hence, the writ petition.

5) When the matter came up for admission on 04.01.2023, this Court passed the following interim order:

“.....Having regard to the facts and circumstances of the case and as the impugned proceedings, vide Rc.No.ESE02/591/2022-SCERT, dated 03.10.2022, issued by the 3rd respondent are not traceable to any of the provisions of the Education Act, the respondents are directed not to insist for payment of examination fees for question papers from 1st to 5th Classes from the private schools, until further orders. At the same time, the Managements of private schools are also directed not to collect the said fees from the students.”

6) Respondent No.3 filed counter denying the averments made in the affidavit filed by the petitioners and specifically contended that nowhere in the impugned proceedings the prescribed amount as alleged by the petitioners is mentioned. The scheme of examination in the State of Andhra Pradesh has been changed from the academic year 2012 to 2014 in a phased manner from classes I to VIII, IX, and X respectively. As per the said scheme, the previous method of Assignment Test, Unit Test, Quarterly, Half-yearly, and Annual Exam pattern has been replaced with Formative Assessments and Summative Assessments. In this method, for each academic year, 4 Formative Assessments and 2 Summative Assessments shall be conducted until academic

year 2021-22. Subsequently, the Government of Andhra Pradesh has come up with a policy to improve the learning method among the students pursuing their studies from class I to X and in the said process, a programme was introduced by the Government under the name and style "Supporting the Andhra's Learning Transformation" (SALT) programme.

7) It is further contended that for proper implementation of examinations in all the districts in the state, Government has established DCEBs, which are being functioned since 1976. The main objective of these boards is to attend the examination works for classes I to X, to maintain Uniform procedure in the coverage of syllabus and academic standards in the district. Each DCEB comprises the Chairman (District Educational Officer), the Vice Chairman (Senior Deputy Educational Officer in the district), Secretary- a Head Master, Assistant Secretary- to be nominated by the Chairman, members (11 in No.), who represent all the managements in the district, which includes the Private Un-aided Managements also.

8) Right from the establishment of DCEB, the administration and conduct of examination in the respective districts has been taken care by these Boards only. Earlier i.e., prior to A.Y. 2022-23, these DCEBS used to fix an examination fee towards the preparation, printing and distribution of question paper irrespective of the students pursuing their

studies in Government Management, Aided as well as Private Management. The examination fee varies from district to district, depending upon their transportation costs. The contention of the petitioner that Government is collecting Rs.200/- per question paper and burdening the students/parents only this year is baseless averment. Right from the introduction of DCEB's, the practice of collection of examination fee was in vogue during each academic year and this is not a new policy introduced by the Government. As the Government is providing free education in terms of RTE norms and all entitlements prescribed under the Act have been effectively implemented in the state for the academic year 2022-23, and the Government has taken a Policy decision not to collect examination fee in any form from the students pursuing their studies under Government Management from class I to VIII. In respect of students studying under Private Managements, there is no change in the implementation of the regular procedure being adopted by DCEB. With the introduction of Classroom Based Assessment Test for classes I to VIII, there will not be any kind of financial burden to the parents as the same was replaced with the "Slip Tests" of FA-I, FA-3 and SA-I for classes I to VIII only. After Covid-19, the Government has found that there is a gap in the learning outcome of the students at elementary level and in order to improve learning standards among the students, Government has taken a policy decision and introduced a Common and

Uniform Paper to the entire state in order to identify the draw backs in effective learning and based on the assessment, Government can take a new policy decision. In teaching learning process, the Continuous Comprehensive Evaluation (for short "CCE") plays a vital role in identifying the student learning standards which will help the teacher and managements to diagnosis the students' abilities to plan further steps in the teaching learning process. The CBA is a part of CCE and it helps to identify the learning gaps and misconceptions among the students. Hence, it is not the violation of Section 29 of Right to Education Act, 2009.

9) It is further contended that the SCERT being the academic research authority, has recommended CBA for research purpose. CBA is not a common examination like public examination, it is just meant for identifying the learning levels and misconceptions. Further, it is submitted that the results obtained from these assessment will be analyzed for further course of action as a part of research. As respondent No.3 is the competent authority for academic activities, it has authority to assess the academic performance in the schools and to introduce new polices for the development of the learning outcomes among the students, and requested to dismiss the writ petition.

10) Petitioners filed reply to the counter affidavit filed by respondent No.3 specifically contending that respondent No.3 has not explained in its

counter as to how the SALT programme is related to the private unaided schools. The provisions of Section 29 empowers the academic authority to issue a notification prescribing the procedure of the curriculum and evaluation, however, certain parameters are prescribed in Section 29. Respondent No.3 did not justify the introduction of Common and Uniform question paper for the entire State. Further, Section 29 (2) (g) makes it clear that the evaluation procedure should make the child free of fear, trauma and anxiety and the procedure should help the child to express freely. The new procedure that is adopted by the State infringes the Right of the Children studying in classes I to V, where the child is forced to express his views through the said evaluation procedure in the confined period of time.

11) It is further stated that curiously after filing of the present writ petition, the process of conducting examination was changed. The new procedure adopted by respondent No.3 is that the question papers for classes I to V is being forwarded through WhatsApp of the concerned Head Master, 1 hour prior to commencement of the examination. In fact, this mode of communicating the question papers is worse than the procedure adopted earlier. Respondent No.3 directed the teachers of the concerned subject/class to write the question paper on the black board by seeing the WhatsApp message. This indirectly permits the staff to carry the mobile phones into the class rooms which is prohibited by the

Honourable Apex Court on various occasions. Further, there are many allegations on the District Common Examination Boards for misappropriation of funds that are being collected by the Private Unaided Schools in the State. Hence, there is no sanctity for the DCEB being run under respondent No.3, and requested to set aside the impugned proceedings.

12) Sri Mathukumilli Sri Vijay, learned counsel for the petitioners, contended that respondent No.3 issued the impugned proceedings directing the Secretaries of the District Common Examination Boards (DCEBs) to change the pattern of conduct of examination, especially for classes I to VIII and making it compulsory for the students to undergo the public examination model and pay Rs.200/- per question paper. The said impugned proceedings are issued as a part of SALT programme, which is initiated for development of Government Schools only and it cannot be made applicable to the private educational institutions in the State and requested to set aside the impugned proceedings.

13) Learned Government Pleader for School Education contended that DCEBs are established in 1976 and right from the establishment of DCEBs, the administration and conduct of examination in the respective districts has been taken care of by these Boards only. Further, with the introduction of Classroom Based Assessment Test for classes 1 to VIII, there will not be any kind of financial burden to the parents as the same

was replaced with the "Slip Tests". The collection of examination fee is not a new method introduced by the Government and has been in practice since 1976 and just for the reason that nomenclature of the exam of the scheme/pattern of the exam is changed, the petitioners approached this Court, therefore, the interference of this Court is not warranted and requested to dismiss the writ petition.

14) As seen from the material filed by the petitioners along with the writ petition, SALT programme is launched by Andhra Pradesh for strengthening the foundation schools in the State as well as providing training and skill development to the teachers. With an aim of transforming the foundational learning requirements in government schools of Andhra Pradesh, World Bank approves a loan of 250 Million Dollars to the State Government. The Andhra Pradesh Government launched a programme named SALT which focuses on strengthening learning in schools, providing training and skill development to the teachers of the government schools. Since the SALT programme relates only to providing training and skill development to the teachers of the Government schools, the private schools are not part of SALT programme. As the private schools do not fall under the ambit of SALT programme, the direction issued in the impugned proceedings that the same question papers for all classes should be administered for both

Government and private management schools is contrary to the objectives of SALT programme.

15) As seen from the impugned proceedings, it is clear that the impugned proceedings are issued as a part of SALT programme. In the process of implementation of SALT programme, the Government of Andhra Pradesh entered into MoU with the agency named Educational Initiatives to support in the Assessment Area. To identify the learning gaps in students, Educational Initiatives have proposed to conduct three Classroom Based Assessments (CBA) in the present academic year for classes I to VIII across the State. First CBA instead of Formative Assessment 1, the second CBA instead of Formative Assessment 3 and the third CBA instead of Summative Assessment 2. The CBA schedule for the students studying in classes I to VIII is shown in Annexure 2 for primary classes 1 to V and secondary classes VI to VIII of the impugned proceedings. As per the schedule, the students have to attend two exams in each day and a separate question paper will be supplied to the students. The said pattern is similar to the pattern of conducting common examinations for 10th class.

16) Introduction of common and uniform question paper to the entire State would create fear, trauma and anxiety to the children of classes I to VIII, which is in fact contrary to Section 29 (2) (g) of the Right of Children to Free and Compulsory Education Act, 2009 (for short "Right to

Education Act”). Section 29 of the Right to Education Act deals with the curriculum and evaluation procedure, which is reads as follows:

“29. Curriculum and evaluation procedure.—(1) The curriculum and the evaluation procedure for elementary education shall be laid down by an academic authority to be specified by the appropriate Government, by notification.

(2) The academic authority, while laying down the curriculum and the evaluation procedure under sub-section (1), shall take into consideration the following, namely:—

- (a) conformity with the values enshrined in the Constitution;
- (b) all round development of the child;
- (c) building up child's knowledge, potentiality and talent;
- (d) development of physical and mental abilities to the fullest extent;
- (e) learning through activities, discovery and exploration in a child friendly and child-centered manner;
- (f) medium of instructions shall, as far as practicable, be in child's mother tongue;
- (g) **making the child free of fear, trauma and anxiety and helping the child to express views freely;**
- (h) comprehensive and continuous evaluation of child's understanding of knowledge and his or her ability to apply the same.”

17) Further, as per Section 30 of the Right to Education Act, no child shall be required to pass any Board examination till completion of elementary education.

18) “Elementary Education” is defined in Section 2 (f) of the Right to Education Act, which is as follows:

“elementary education” means the education from first class to eighth class.

19) It is clear from the above definition, that the education imparting to students studying in classes I to VIII is elementary education. Of course,

the Classroom Based Assessment (CBA) is not a Board examination, but the pattern fixing the time table, supplying the common and uniform question paper, which is being adopted by the State, is similar to the pattern of Board examination. Hence, there is every likelihood of creation of fear, trauma and anxiety in the minds of elementary school students. In fact, the procedure of conducting slip tests, which is being conducted till now is also monitored by the authorities and for the slip tests, there is no common and uniform question paper and the slip tests are conducted subject to the syllabus completed in the particular school. It is also a fact that slip tests are conducted by the concerned teacher periodically taking into consideration the syllabus completed as on that date. Based on the performance of the students, the concerned teacher is able to assess the capability of the students and the said slip tests are conducted without any particular time table, however only subject to completion of a part of the syllabus. Therefore, the system adopted by respondent No.3 through the impugned proceedings is admittedly contrary to Section 29 of the Right to Education Act.

20) In view of the above discussion, this Court is of the opinion that there is no justification for introduction of common and uniform question paper to the elementary students in the entire State, which directly hits Section 29 of the Right to Education Act. Further, the new procedure adopted by the State infringes the Right of the elementary students

studying in classes I to VIII, where the child is forced to express his/her views through the said evaluation procedure in the confined period of time, because of which there are chances of putting the child into trauma and anxiety. Therefore, the procedure of conducting Classroom Based Assessments for the students studying in I to VIII classes through the impugned proceedings is liable to be set aside and accordingly set aside. As the new procedure adopted for conducting Classroom Based Assessments for the students studying in I to VIII classes by fixing schedule and time table is set aside, the question of collecting amount for the question paper from the students studying in I to VIII classes also does not arise.

21) With the above observations, the writ petition is disposed of. No costs.

22) Miscellaneous petitions pending, if any, in this Writ Petition shall stand closed in consequence.

JUSTICE V.SUJATHA

21.06.2024
Ksp