

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Writ Petition No.9606 of 2021

ORDER:

The petitioner association prays for a mandamus declaring the action of respondents 2 to 19 in not implementing the proceedings in Rc.No.13029/11/2020-EST 3-CSE dated 27.10.2020 issued by 2nd respondent as illegal, arbitrary and violative of Articles 14, 19 and 300A of Constitution of India besides contravention of the provisions of the Andhra Pradesh Education Act, 1992 and the Rules framed thereunder and also the provisions of the Right of Children to Free and Compulsory Education Act, 2009 and for a consequential direction to the respondents 2 to 19 to implement clause 4 of the impugned proceedings issued by 2nd respondent.

2. The petitioner is the A.P. Private Unaided Schools Management Association, represented by its General Secretary. Their grievance is in respect of the proceedings in Rc.No.13029/11/2020-EST 3-CSE dated 27.10.2020 issued by 2nd respondent. As can be seen, the above proceedings were said to be issued in view of the representation of various teacher unions to the authorities of Education Department to take into consideration the increased enrolment into the schools during 2020-2021 instead of taking into consideration the child information as on 29.02.2020 as basis for the apportionment of teaching staff and transfer of the teachers. In that context, the Director of School Education having consulted the Regional Joint Director of School Education and District Education Officers issued the following instructions:

- 1) Re-apportionment exercise should be taken up basing on the Child Info as on 02.11.2020 but not Child Info as on 29.02.2020 data.

- 2) Child Info data should be updated in cases like New admissions, Migrated children, Govt., to Govt.
- 3) The Mandal Educational Officers / Headmasters should take action of updating of Child info in case of children admitted from Private Un-Aided Schools to Govt., Schools.
- 4) In case of admissions from private schools to Government schools the concerned Headmaster has to take undertaking from the parent of the child along with Aadhar Number duly stating that the parent is willing to admit their children in the school and TC will be submitted later. The Headmaster (including High School) should handover the parent declarations to the concerned MEO duly counter signing on the declarations.
- 5) The Mandal Educational Officers should take up the responsibility to clear the drop boxes of child info.
- 6) The Mandal Educational Officers / Headmasters should update the child info accordingly and "TOP PRIORITY" should be given to this item of work.

Instruction No.4 reads that in case of students migrating from private schools to Government schools, the concerned Headmasters are directed to take undertaking from the parent of the child along with Aadhar number duly stating that the parent is willing to admit their children in the school and T.C. will be submitted later. The Headmaster should handover the aforesaid declarations of the parent to the concerned M.E.O. duly countersigning on the declarations. In essence, if the students withdraw from private unaided educational institutions and seeks admission into Government aided schools, the Headmasters of such schools shall provide admission to such students without insisting for the Transfer Certificate (TC) / School Leaving Certificate from the concerned students. Suffice if the Headmaster obtains an undertaking from the parent of the pupil that he is willing to admit his child in the school and TC will be submitted later. The above instruction No.4 is the bone of contention in the instant case.

3. Heard M Sri Vijay, learned counsel for petitioner, and learned Government Pleader for School Education representing the respondents.

4. The submission of learned counsel for petitioner is that in view of prevalence of COVID-19 pandemic during Academic Year 2019-20, the Government of India formulated certain guidelines in the education field. One of which is the non-insistence of T.C. from the students who seek fresh admission in the schools for higher classes. These guidelines were issued keeping in view mainly the children of migrant workers and labourers, as, in view of stoppage of transportation, they were held up in the work places and could not go to native places for continuation of studies of their children. Learned counsel would further submit that taking advantage of such guidelines, the 2nd respondent, it appears, has formulated new guidelines in the impugned proceedings apparently as a drive for the children to join in Government schools. Learned counsel made it clear that the petitioner is not questioning the Government policy in making a drive to see that more targeted number of students are joined in the Government schools. He is also not questioning the students migrating from private schools to Government schools either, since, it is the right of the concerned parents as to in which school their children should study. However, the trouble lies with the instruction No.4 as the said instruction would facilitate the migration of students from private schools to Government schools without the necessity of obtaining Transfer Certificates from the private schools where they are studying now and thereby the parents of those students can totally avoid paying dues to the concerned school authorities. He would

submit that the respondent authorities are directing the private school managements to return the TCs of school leaving students without insisting for payment of dues. He would submit that such an action on the part of the respondent authorities pursuant to instruction No.4 will cause severe prejudice to the sustenance of private educational institutions. He vehemently argued that establishment and administration of private educational institutions is a fundamental right guaranteed under Article 19(1)(g) of the Constitution and as a consequence such educational institutions have a right to collect legal dues from the students. The respondent authorities except regularising the fee structure cannot deprive their legitimate right.

5. Per contra, learned Government Pleader would submit that the term "T.C. will be submitted later" in instruction No.4 was later amended and time limit of 30 days is prescribed for obtaining the record sheet / TC vide Memo in Rc.No.151/A&1/2020 dated 23.06.2021 issued by 2nd respondent instructing the Regional Joint Directors and D.E.Os that concerned Headmasters shall not insist for T.C. at the time of admission, keeping in view of COVID-19, time limit of 30 days has to be prescribed to obtain record sheet/TC from the school he / she seeks transfer to new school. He would submit that the impugned instructions were issued basing on the Government of India's guidelines keeping in view the interest of students and therefore, the petitioner cannot question the same. He would further submit that the Government can only regulate the fee structure of the private institutions so as to make them to collect just and reasonable fee, but the Government cannot make it a compulsory rule that parents should pay

arrears first and then only collect the T.Cs. He would submit that in similar circumstances the Division Bench of High Court of Delhi in W.P. (C) No.6658/2019 & C.M.Appl. No.30816/2019 has held that for non-payment of fees the management cannot struck off the name of the student from the rolls or withhold School Leaving Certificate and in order to recover the outstanding school fee, the management can file a suit. Learned Government Pleader thus prayed to dismiss the writ petition.

6. The point for consideration is whether there are merits in the writ petition to allow?

7. **Point:** As already stated supra, the petitioner Association challenges the instruction No.4 of the impugned proceedings only to the extent that by virtue of the said instruction the respondent authorities not only allowing the students to migrate from private educational institutions to Government schools without insisting for production of T.Cs, but at the same time the respondent authorities are directing the private unaided educational institutions to release the T.Cs of the school leaving students without insisting for payment of legal dues.

8. I gave my anxious consideration to the impugned proceedings vide Rc.No.13029/11/2020-EST 3-CSE dated 27.10.2020. Instruction No.4 lays down that in case of admissions from private schools to Government schools, the concerned Headmaster has to take undertaking from the parent of the child along with Aadhar number duly stating that the parent is willing to admit their children in the school and T.C. will be submitted later. The Headmaster should handover the parent declarations to the concerned

M.E.O. by duly countersigning on the declarations. It is submitted by the learned Government Pleader that the phrase “TC will be submitted later” is replaced by “Prescribing time limit of 30 days for submission of TC”. When the whole gamut of instructions is taken into consideration, instructions under the impugned proceedings were issued in the light of the representation said to have been made by various teachers associations requesting the educational authorities to consider the reapportionment of teaching staff and the transfers of teachers in the light of the increased enrolment in the schools during 2020-21 as a basis instead of child information as on 29.02.2020. Learned Government Pleader would submit that the instructions were issued also in the light of the guidelines issued by the Central Government in the context of the migrate workers and labourers who were struck up where they were due to lack of transportation facilities during COVID-19 pandemic days, ordaining that the school authorities shall not insist for T.C. for admission of a student. In my considered view, more than the reason for issuing instructions, the issue will be whether it affects the rights of one of the stakeholders in the educational field i.e., private unaided educational institutions. It is true that in instruction No.4, there is no apparent provision directing the private educational institutions to return the T.Cs of the students who want to migrate from private schools to other Government schools. However, the grievance of the petitioner is that the respondent authorities are insisting the managements of private schools to return the T.Cs without collecting the legal dues.

In this context, it must be said that the constitutional framers wished that the State shall provide free education to the citizens. That is why in

Article 41 of the Constitution, under the directive principles of State policy it was stated that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Since the economy of the Government did not permit free education for all standards, private educational institutions were permitted to be established. However, subsequently by way of amendment to the constitution, Article 21-A was introduced stating that the State shall provide free and compulsory education to all children of the age of 6 to 14 years. In the meanwhile, all the State Governments have permitted the establishment of private educational institutions. The State of Andhra Pradesh is concerned, Chapter VI of the Education Act, 1982 states that establishment of educational institutions is one of the purposes of the said Act. Section 18 says that the Government in order to provide adequate facilities for imparting various types of education in the State, establish and maintain the educational institutions and also permit any local authority or a private body of persons to establish educational institutions and maintain them. Section 20 lays down the method of granting permission for establishment of educational institutions. Thus, the parent act concerning to education i.e., the A.P. Education Act, 1982 itself, apart from Article 19(1)(g) of the Constitution, recognized the right of private bodies to establish educational institutions. Section 19(a) of the Education Act confers powers on the Government to make rules. Thus, it is needless to emphasise that when the rules are made, the interest of all the stakeholders have to be taken into consideration. With such rule making

power the Government vide G.O.Ms.No.1, Education (P.S.2) Department, dated 01.01.1994, framed the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules, 1993 (for short, 'the AP Educational Rules, 1993'). A perusal of the A.P. Educational Rules, 1993 would show that there is no clear provision with regard to the role of educational institutions when a student leaves institution by seeking his T.C. The rules are silent on that aspect. Learned Government Pleader has not brought to my notice any other enactment or body of rules meeting the present situation. Therefore, it can only be concluded that the legislation is silent in this regard. The decision of the Delhi High Court mentioned supra would show that in that decision the Division Bench referred Rule 167 of the Delhi School Education Act and Rules, 1973 which reads thus:

167. Name of the student to be struck off for non-payment of fees and contributions

“If a student omits or fails to pay the fees and contributions due to a school together with the fine due thereon by the last working day of the month in which they are due, his name shall be struck off the rolls of the school on the last working day of the month and may be re-admitted on payment of all school dues including fresh admission fee:

Provided that in the case of non-payment of fees for the month of May in which the school closes in the middle of the month for long vacation, the name of the student shall be struck off on the last working day of the month of July, if the fees remains unpaid up to that day.”

Perhaps, having found that in case of failure to pay fees and other contributions due, the school authorities can only struck off the name of the student from the rolls of the school on the last working day of the month and can re-admit on payment of the school dues and finding that there was no other provision conferring the power on the school management to withhold

the T.C. for non-payment of the dues, the Division Bench observed that there are methods for recovering the outstanding school fee by filing a suit etc. The Division Bench directed the respondent school authorities to handover the School Leaving Certificate of the concerned students. It must be said that the above decision has only persuasive value for this High Court. On the other hand, in similar circumstances, a learned single Judge of this High Court in the order dated 16.03.2021 in I.A.No.1/2021 in W.P.No.1737/2021 observed that the management shall not debar any student from attending either online or physical classes on account of non-payment of fees, arrears / outstanding fee and shall not withhold the results of examinations of any student on that account and the management may collect the fees in six (6) monthly instalments and wherever the parents have difficulty in remitting the fee, it is open to the parents to approach the school management, in which case the management is directed to consider the same on case-to-case basis sympathetically. Thus an interim arrangement was made for collection of the fees in six monthly instalments. The order of the learned single Judge, in my view, can be followed with silent modification as the said order addressed the interest of both the stakeholders.

9. Thus, on a conspectus, it is clear that the impugned proceedings do not directly affect the rights of petitioner association and other private unaided educational institutions and hence, the said proceedings can be sustained. However, at the same time, on the strength of the impugned proceedings, the respondent authorities cannot pressurize the private unaided educational institutions to handover the T.Cs of the students who are migrating from their institutions to other institutions without collecting their

legal dues since the A.P. Education Rules, 1993 are silent in that regard. Therefore, in the light of the interim order of the learned single Judge in I.A.No.1/2021 in W.P.No.1737/2021, a balance has to be struck to protect the interest of both the stakeholders.

10. Accordingly, while sustaining the impugned proceedings in Rc.No.13029/11/2020-EST 3-CSE dated 27.10.2020, the respondent authorities are directed not to force the Managements of private unaided schools to handover the Transfer Certificates and other relevant records of the students migrating from those schools to other educational institutions by not insisting the payment of their legal dues. It is directed that at such instances, the private unaided school managements can collect 50% of legally permissible dues from the concerned students and forthwith handover their T.Cs and other relevant records of the students and collect the balance amount within six (6) monthly instalments by obtaining proper undertaking from the parents/guardians of the students.

The Writ Petition is accordingly disposed of. No costs.

As a sequel, interlocutory applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

27.10.2021
MVA