

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.07.2024

PRONOUNCED ON : 19.07.2024
CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.No.3075 of 2021
and
C.M.P.Nos.21280 of 2021 & 1209 of 2022

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort st. George,
Chennai-600 009.

2. The Commissioner of School Education,
DPI Campus, College Road,
Chennai-600 006.

3. The Director of Matriculation Schools,
DPI Campus, College Road,
Chennai-600 006.

4. The Director of Elementary Education
DPI Campus, College Road,
Chennai-600 006.

... Appellants

Vs.

All India Private Schools Legal Protection Society,
No.9, North Jeganatha Nagar 1st Street,
Villivakkam, Chennai-600 049,
Rep.by its Chairman,
I.Manoharan Jeyakumar
S/o.Isaac

... Respondents

Prayer :- Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order passed on 28.10.2021 in W.P.No.16581 of 2021.

For Appellants : Mr.U.M.Ravi Chandran,
Special Government Pleader (Education)

For Respondent : Mr.G.Sankaran, Senior Counsel for
Mr.S.Nedunchezhiyan

JUDGEMENT

(Judgement was delivered by S.M.Subramaniam J.)

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State preferred the present intra court appeal challenging the writ order dated 28.10.2021.

2. The respondent instituted a writ proceedings to issue a Writ of Mandamus, directing the respondents to implement the mandatory requirement of obtaining Transfer Certificate by a student from the School where he studied, on getting admission to another School for any reason and to forbear the officials of the Education Department altering or modifying the data of private unaided institutions relates to the details of the student entered in EMIS Portal, without consent of the School Management.

3. The Writ Court adjudicated the issues and granted the relief in favour of the respondent. The Writ Court found that mere indication of the arrears of fees payable by the student, does not have any negative connotation/ impact against the student/ parents.

4. The State preferred the Appeal mainly on the ground that the findings of the Writ Court, in the impugned order, is running counter to the provisions of the Right of Children to Free and Compulsory Education Act, 2009, (herein after referred as RTE Act).

5. In context of the findings made by the Writ Court, the grounds raised by the State and the purpose and object of the RTE Act are necessarily to be considered. Incidentally, the validity of the rules and the matriculation code of the State are also to be looked into in the context of the provisions of the RTE Act.

Prelude:

6. The Transfer Certificate (hereinafter referred as 'TC') is issued to relieve a student from one school and allow him to get admission in another school. The schools insist on providing TC to give admission to students. It is difficult for any student to get an admission in the absence of a T.C. But the fundamental point is that the mandatory rule to provide a TC for gaining admission in a new school goes against the vires of the Right to Education Act. The RTE Act is a milestone in promotion of children's right to education. The Act makes it a right of every child to get education. The Act makes it obligatory for the appropriate Governments to ensure that every child gets free elementary education. Section 15 of the Act prohibits denial of admission to a child. But this Court on many instances in the past have come across cases whereby children have been denied admission on varied

grounds. And the Courts have always given precedence to the welfare and the education of the child over any other considerations.

7. When the object of a legislation itself is Right to free and compulsory education for children, all other arguments take a backseat. Right to Education for the Children is the core feature of the legislation. The right of the schools to get their pending arrear fees or the technicalities in the WMIS system is not the centre of attention for this Court. These are aspects which can be cured through minor modifications. The arrear of fees can be collected in a manner known to law from the parents and the delay in updating the WMIS system can be cured through technical alterations but the education of the child is and will always be the heart and soul of the legislation. The focal point for this Court is the welfare of the children.

8. The hub of the wheel is the children's right to education around which all other considerations flow. This Court can never allow a child to be stigmatised on the ground of non-payment of fees. The transfer certificate is a tool to ensure that a student is studying in one particular school at one time and that through the issuance of TC, the child gets relieved from one school and can gain admission into another school.

9. Hence a TC is not a tool for the schools to collect arrear fees from the parents or to weigh the financial capacity of the parents. TC is a personal document issued in the name of the child. Schools cannot put their own problems on the child by making unnecessary entries on the TC. Payment of tuition fees is the duty of the parents towards the schools. Any default in the same ought to be recovered from the parents by the school concerned in the manner known to law. Instead making entries of non-payment of fees on TC in the name of the child is sheer humiliation for the child. What will the child do if the parents failed to pay the fees? It is not their fault and to stigmatise and harass the child is a form of mental harassment under Section 17 of the RTE Act.

10. Once an entry as to the fees due is made in the TC by a school, the child's entry into another school becomes a question mark. Once arrears in fees payment is recorded in a TC, it becomes a stigma for the child. No schools would come forward to admit the child and all the more, the explicit mention of non-payment of fees on the TC will lead to socio-economic stigmatisation of the child. This strikes at the core of the RTE Act.

Remarks of non-payment or delayed payment of fees in the TC constitute mental harassment:

11. Stigmatisation of a child over non-payment or delayed payment of tuition fee shows seeds of insecurity and results in low self-esteem of the child. It lowers their confidence and emotionally impairs the child. Financial strains in the family often affect the children. This is rarely spoken about, but the child starts feeling insecure and burdened which in turn affects the psychological health of the child. Children come from different socio-economic backgrounds and when the academic year begins, some families have to go through immense strain to pay their child's tuition fee and in this process the child is made to undergo anxiety and stress. It is the duty of the school to understand the emotional challenges faced by the child during such times and instead of burdening them, it is a time to lend their care and assistance to the child. It is a traumatic experience for the child when it receives a TC with stigmatising remarks on non-payment or delayed payment of fees. Such action by the school authorities attracts section 17 of the RTE Act.

“17. Prohibition of physical punishment and mental harassment to child.—(1) No child shall be subjected to physical punishment or

mental harassment.

(2) Whoever contravenes the provisions of sub-section (1) shall be liable to disciplinary action under the service rules applicable to such person.”

It is extremely important that the child feels supported and protected. By adding such stigmatising clauses to the transfer certificates, it disrupts the normal upbringing of the child which is their right and instead instills a sense of shame and tends to make them feel punished.

TC is not mandatory:

12. This Court would also recommend that requisite amendments be made to the Tamil Nadu Education Rules and the Code of Regulations for Matriculation Schools in Tamil Nadu to amend the provision obligating the need for TC at the time of admission into schools. Any clause in the Rules or the Code framed by the State to that extent which is repugnant to the provisions of the RTE Act which is an Act of the Parliament shall be treated as null and void.

13. It is pertinent to note that Section 5 of the RTE Act prevails over the Tamil Nadu Educational Rules and the Code of regulation for

Matriculation schools in Tamil Nadu. It is noteworthy that the RTE Act is an Act of the Parliament. It is a central legislation. Any provision in the Rules or Code formulated thereunder must be in consonance with the Central Act. Any inconsistency with the Act of the Parliament renders the said provision null and void.

14. Section 5 of the Right to Education Act clearly implies that TC is not a mandatory document. This can be understood through the wordings in Section 5 as extracted below;

“5. (2) Where a child is required to move from one school to another, either within a State or outside, for any reason whatsoever, such child shall have a right to seek transfer to any other school, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of section 2, for completing his or her elementary education.

(3) For seeking admission in such other school, the Head-teacher or in-charge of the school where such child was last admitted, shall immediately issue the transfer certificate:

Provided that delay in producing transfer certificate shall not be a ground for either delaying or denying admission in such other school:

Provided further that the Head-teacher or in-charge of the school delaying issuance of transfer certificate shall be liable for

disciplinary action under the service rules applicable to him or her.”

15. Proviso to sub-section 2 of Section 5 stipulates that delay in producing TC shall not be a ground for delaying or denying admission in schools. The significance attached to a TC has been watered down through this provision. Hence the production of TC is not mandatory per se. It is an accessory rather than a necessity. This object can be deduced from the wordings of Section 5. Also when read along with Section 15, the intention of the law makers become clear.

*“15. No denial of admission.—A child shall be admitted in a school at the commencement of the academic year or within such extended period as may be prescribed:
Provided that no child shall be denied admission if such admission is sought subsequent to the extended period:
Provided further that any child admitted after the extended period shall complete his studies in such manner as may be prescribed by the appropriate Government.”*

16. These provisions gives precedence to the child’ s education over the rest. TC is a procedural tool to ensure a child’s admission, it cannot form

the basis for denying a child's admission into a school. The essence of the legislation is the child's right to education. This object cannot be diluted by a mere Transfer Certificate. That would defeat the object of the legislation.

17. Hence *Firstly*, an Act of the Parliament overrides the Rules and Code. *Secondly*, any provision of law formulated by the State legislature which is repugnant with an Act of Parliament has to go. Hence from the aforesaid interpretations, it is pristinely clear that a TC in itself is not mandatory for getting admitted in a school. When the mandatory nature of the TC itself is diluted, any further clauses to be included in the TC, more specifically the impugned Serial Number (8) in Annexure-5 of the Code of Regulations for Matriculation Schools has to be removed. This is an irrelevant clause to be added to a TC and furthermore it goes against the welfare of the children and acts against their best interest.

Socio and psychological impacts :

18. Erving Goffman¹ classically defined stigma as an “attribute that is deeply discrediting.” A discredited attribute could be readily discernible, such as one's skin colour or body size, or could be hidden but nonetheless

¹ Goffman , E. (1963). Stigma: Notes on the management of spoiled identity . New York , NY : Simon & Schuster.

discreditable if revealed, such as one's criminal record or struggles with mental illness¹.

19. Stigma reduction interventions for children should begin from schools. Legislations specifically drafted for the welfare of the children must tread the rope carefully to avert the incorporation of any stigmatising clauses, words or even inferences that may have an adverse impact on the mental health of children. A holistic approach must be adopted to reduce stigma, labelling and discrimination of children and by promoting inclusion which can be achieved only through anti-stigma interventions and shared responsibility by the schools, parents and the Government. Change begins at home, but can be carried forward to a community only with the aid and assistance of institutions like schools.

20. The schools should not involve the children in the fee collection process. It is not necessary for the child to know the details regarding payment of tuition fees. Such information should be kept away from the children to enable them to grow in a happy environment, free from stress. Children must be given an environment which is free from these burdens,

¹ Clair, Matthew. 2018. "Stigma". Core Concepts in Sociology

allowing them to grow in a happy space. Schools should strive to provide a happy and supportive environment for children.

Responsibility of schools towards children:

21. The Government run their own schools and they have the capacity to provide a quality education to all its students. This is evident from the achievement made by government school students at various reported instances. But the private schools are established insisting that they will provide better infrastructure, facilities and education to the children. Such initiative though a welcome gesture should not deteriorate the cause of promotion of education and welfare of the children as the primary goal.

22. The private school have become a major player in the education sector today through their offer of providing better education. Private schools have been established stating that they are providing better infrastructure, facilities and education as compared to government schools. So automatically the parents drift towards private schools with a desire that their children will be given much better education in private schools. We cannot tell the parents that they should not desire a better future for their children. It is their dream and naturally a fair one. Out of a desire to provide a good

education for their child they fail to weigh their financial capacity and their ability to pay the fees in private schools. It is not their fault and no one can say that because of your economic background you should not dream for a better education for your child. That is not the object of the RTE Act. Every child must be given the best of the education.

23. Hence there arises situations where the parents end up not being able to pay the fees on time. But can this burden be shifted to the child? Why should the child suffer for the economic inability of the parents? The parents are the natural guardians and in their absence the State acts as the *parens patriae*. What role does the private schools assume when the child is left under their care? Isn't the school responsible for the safety of the child during the school hours? Can the school just abandon its incumbent duty towards the the child by stating that their parents are unable to pay the fee? Is this the Goal of education?

24. This Court affirms without hesitation that the interest of a child is foremost. A child is given a special status in the society as they are incapable of meeting their own needs. A child has its own rights for a reason. A child cannot take care of itself. They are incapable of taking their own decisions in

the developmental stage. That is why they have been given immunity under the juvenile laws. It takes time for them to attain full development. Until then, they always have to depend on someone for their safety and security. It is not only the duty of the parents, but schools also assume a shared responsibility in the well being of the child. Such being the case how can we torment the child for the fault of the parents?

25. Private school pull the children to their schools stating that they will provide better education. It is out of their own will that they have begun the school and they have to meet their financial needs without a doubt. But in the process this Court can never allow a child's education to be jeopardised for monetary reasons. Payment of salaries to teachers and maintenance of infrastructure is often quoted as the reason for the fee demand by these schools. Though it is important to lit the light of wisdom to children, in the process, it should not supply heat to them. It is with this object that the RTE was established and education can never be a tool to make monetary gains. When a private school is voluntarily established with a goal to provide education to a child it is their corresponding duty to put education above others and not put the future of children at stake for monetary reasons. Education comes first and the rest follows.

26. Also harassing children over non-payment or delayed payment of fees amounts to cruelty and constitutes an offence under Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The schools have every right to initiate appropriate action for recovery of the outstanding fees, if any, from the parents in accordance with law. But in the process, harassing or punishing the the child over default in payment of fees is an offence and falls within the contours of Section75 of the JJ Act.

Education is an asset:

27. Every living being is born in this world with a basic intelligence. The goal of education is to teach the child to use this intelligence in ways which are beneficial to mankind and society. Intrinsic elements of intelligence is present within each and every child and education only provides the resources to help the child connect with this intelligence. This intellect when combined with education helps the child thrive and adapt to its surroundings. It is often stated that education only builds a child, but in essence, a child always has a potential within him/her and it is institutions such as the Schools that help them to understand their potential. That is true education. Imparting quality Education to children helps them realise their inborn potential.

28. The importance of education is often misunderstood as a means to economic gains. A child is not educationally prepared only to earn and make money as he/she grows. It is something beyond that. Education should make the children aware of their rights and duties in a society. It should strive to inculcate in the child basic Human Values. Education gives the child a certain confidence to live with Respect and dignity. It is not only economic development but most importantly Social development can happen only through education. Every section of the society can be uplifted only through good quality education which should be made available to all and that has always been the goal of our Constitution.

Conclusion:

29. The very prayer sought for by the respondent in the writ petition is running counter to the provisions of the RTE Act. The submission of Transfer Certificate at no circumstances be insisted upon by the Schools under the provisions of the RTE Act. The noble object of the Act, in order to achieve the constitutional goal, at no circumstances be allowed to be diluted by prescribing additional procedures, offending the provisions of the Act. As it is stated in the above-mentioned paragraphs, the school management shall recover the fee dues from the parents in the manner know to law. Contrarily

the school management has no right to stigmatise the children by making unnecessary entries in the Transfer Certificates.

30. Accordingly, we are inclined to pass following orders:

(i)The writ order impugned dated 28.10.2021 in W.P.No.16581 of 2021 is set aside.

(ii)The appellants are directed to revisit the Tamil Nadu Education Rules and Code of regulation for matriculation schools, and accordingly, make all necessary amendments in consonance with the provisions of the RTE Act within a period of three (3) months from the date of receipt of a copy of this order.

(iii)The appellants are directed to issue circular / instructions / orders to all the school administrations across the State of Tamil Nadu, not to insist upon to produce Transfer Certificate by the child at the time of Admission, and prohibit the School Management from making unnecessary entries in the Transfer Certificate including non-payment or delayed payment of School fees. In the event of violation, actions are to be initiated under Section 17 of the RTE Act and under the relevant laws applicable for protection of children.

31. With the above directions, the writ appeal stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

32. Registry is directed to list this case before this Bench, for reporting compliance, on 25.10.2024.

(S.M.S.J.) (C.K.J.)
19.07.2024

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Neutral Citation : Yes/No
(sha)

To

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort st. George,
Chennai-600 009.

2. The Commissioner of School Education,
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W.A.No.3075 of 2021

S.M.SUBRAMANIAM, J.

and

C.KUMARAPPAN, J.

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Pre-Delivery Order in
W.A.No.3075 of 2021

19.07.2024