$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

42.

\+ W.P.(C) 131/2014

ST. COLUMBA'S SCHOOL ..... Petitioner
Through Mr. Romy Chacko with Mr. Varun Mudgal, Advocates

versus

LT. GOVERNOR OF DELHI & ANR. ..... Respondents
Through Ms. Zubeda Begum, Standing Counsel for R-1 & 2.
Mr. Ashok Agarwal with Ms. Nisha Tomar, Advocate for R-3.
Mr. Vivek Goyal, CGSC for R-4.

WITH

43.

\+ W.P.(C) 228/2014

CARMEL CONVENT SCHOOL & ORS ..... Petitioners
Through Mr. Romy Chacko with Mr. Varun Mudgal, Advocates

versus

LT. GOVERNOR OF DELHI AND ANR ..... Respondents
Through Ms. Zubeda Begum, Standing Counsel for R-1 & 2.
Mr. Vivek Goyal, CGSC for R-3.

AND

44.

\+ W.P.(C) 255/2014 & CM APPL. 500/2014

MOUNT CARMEL SCHOOL ..... Petitioner
Through Mr. Romy Chacko with Mr. Varun Mudgal, Advocates

versus

DIRECTORATE OF EDUCATION & ORS ..... Respondents
Through Ms. Zubeda Begum, Standing Counsel for R-1 & 2 with Ms. Sumila Sagar, DEO, Zone 19, Vasant Vihar. Mr. Rajiv Bansal with Ms. Nidhi Raman, Advocates for R-3.

AND

45.
\+ W.P.(C) 257/2014

MONTFORT SCHOOL & ORS ..... Petitioners
Through Mr. Romy Chacko with Mr. Varun Mudgal, Advocates

versus

LT. GOVERNOR OF DELHI & ORS ..... Respondents
Through Ms. Zubeda Begum, Standing Counsel for R-1 & 2.
Mr. Vivek Goyal, CGSC for R-3.

AND

46.
\+ W.P.(C) 344/2014 & CM APPL. 674/2014

MATHA JAI KAUR PUBLIC SCHOOL ..... Petitioner
Through Mr. Romy Chacko with Mr. Varun Mudgal, Advocates

versus

LT. GOVERNOR OF DELHI & ANR. ..... Respondents
Through Ms. Zubeda Begum, Standing Counsel for R-1 & 2.

AND

47.

\+ W.P.(C) 615/2014 & CM APPL. 1232/2014

ST. MARYS SCHOOL & ANR. ..... Petitioners
Through Mr. Romy Chacko with Mr. Varun Mudgal, Advocates

versus

LT.GOVERNOR OF DELHI & ANR. ..... Respondents
Through Ms. Zubeda Begum, Standing Counsel for R-1 & 2.
Mr. Rajiv Bansal with Ms. Nidhi Raman, Advocates for R-3.

AND

49.

\+ W.P.(C) 1390/2014 & CM APPL. 2901/2014

ST. MARYS PUBLIC SCHOOL ..... Petitioner
Through Mr. Jose Abraham, Advocate

versus

LT. GOVERNOR OF DELHI AND ANR ..... Respondents
Through Ms. Zubeda Begum, Standing Counsel for R-1 & 2.

AND

50.

\+ W.P.(C) 1565/2014 & CM APPL. 3270/2014

ST. ANTHONY SR. SEC. SCHOOL & ANR. ..... Petitioners
Through Mr. Romy Chacko with Mr. Varun Mudgal, Advocates

versus

LT. GOVERNOR OF DELHI & ANR. ..... Respondents
Through Ms. Zubeda Begum, Standing Counsel for R-1 & 2.

% Date of Decision : 1st September, 2014

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present batch of petitions has been filed challenging the order dated 18th December, 2013 as well as Notification dated 30th December, 2013 issued by the Lieutenant Governor of Delhi to the extent it directs private unaided minority schools to admit children belonging to EWS category to the extent of 20% at entry level and provide free ship to them till completion of their school education.

2. According to the Notification, the aforesaid directions have been issued in pursuance to this Court's Division Bench orders dated 24th September, 2012 and 4th December, 2012 in W.P.(C) 3715/2011 and W.P.(C) 6439/2011.

3. On the first date of hearing of the present batch of petitions, learned counsel for respondent-Government of NCT of Delhi had stated that as the land to petitioners-schools had been given on concessional rates because of sponsorship of the Directorate of Education, petitioners-schools were obliged to admit students belonging to EWS category.

4. Though no document has been placed on record to show that the petitioners-schools had undertaken to provide free ship, yet this Court is of

the view that even if the said fact is assumed to be true, the present petitions would have to succeed as the Constitution Bench of the Supreme Court recently on ***06th May, 2014*** in ***Pramati Educational & Cultural Trust & Ors. vs. Union of India & Ors., W.P.(C) 416/2012*** has held as under:-

> *"25. We may now deal with the contention of Mr. Divan that clause (5) of Article 15 of the Constitution is violative of Article 14 of the Constitution as it excludes from its purview the minority institutions referred to in clause (1) of Article 30 of the Constitution and the contention of Mr. Nariman that clause (5) of Article 15 excludes both unaided minority institutions and aided minority institutions alike and is thus violative of Article 14 of the Constitution. Articles 29(2) 30(1) and 30(2) of the Constitution, which are relevant, for deciding these contentions, are quoted hereinbelow:*
>
> > *"29. Protection of interests of minorities-(1)*
> > *.....*
> > *(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.*
> >
> > *30. Right of minorities to establish and administer educational institutions-(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.*
> >
> > *(1A) ……..*
> >
> > *(2) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language."*

On the question whether the right of minority institutions under Article 30(1) of the Constitution would be affected by admission of students who do not belong to the minority community which has established the institutions, Kirpal C.J. writing the majority judgment in T.M.A. Pai Foundation (supra) considered the previous judgments of this Court and then held in paragraph 149 at page 582 and 583 of the SCC:

> *"149. Although the right to administer includes within it a right to grant admission to students of their choice under Article 30(1), when such a minority institution is granted the facility of receiving grant-in-aid, Article 29(2) would apply, and necessarily, therefore, one of the right of administration of the minorities would be eroded to some extent. Article 30(2) is an injunction against the state not to discriminate against the minority educational institution and prevent it from receiving aid on the ground that the institution is under the management of a minority. While, therefore, a minority educational institution receiving grant-in-aid would not be completely outside the discipline of Article 29(2) of the Constitution by no stretch of imagination can the rights guaranteed under Article 30(1) be annihilated. It is this context that some interplay between Article 29(2) and Article 30(1) is required. As observed quite aptly in St. Stephen's case "the fact that Article 29(2) applies to minorities as well as non-minorities does not mean that it was intended to nullify the special right guaranteed to minorities in Article 30(1)." The word "only" used in Article 29(2) is of considerable significance and has been used for some avowed purpose. <u>Denying admission to non-minorities for the purpose of accommodating minority students to a reasonable extent will not be only on grounds of religion etc., but is</u>*

primarily meant to preserve the minority character of the institution and to effectuate the guarantee under Article 30(1). The best possible way is to hold that as long as the minority educational institution permits admission of citizens belonging to the non-minority class to a reasonable extent based upon merit, it will not be an infraction of Article 29(2), even though the institution admits students of the minority group of its own choice for whom the institution was meant. What would be a reasonable extent would depend upon variable factors, and it may not be advisable to fix any specific percentage. The situation would vary according to the type of institution and the nature of education that is being imparted in the institution. Usually, at the school level, although it may be possible to fill up all the seats with students of the minority group, at the higher level, either in colleges or in technical institutions, it may not be possible to fill up all the seats with the students of the minority group. However, even if it is possible to fill up all the seats with students of the minority group, the moment the institution is granted aid, the institution will have to admit students of the non-minority group to a reasonable extent, whereby the character of the institution is not annihilated, and at the same time, the rights of the citizen engrafted under Article 29(2) are not subverted. It is for this reason that a variable percentage of admission of minority students depending on the type of institution and education is desirable, and indeed, necessary, to promote the constitutional guarantee enshrined in both Article 29(2) and Article 30."

Thus, the law as laid down by this Court is that the minority character of an aided or unaided minority institution cannot be annihilated by admission of students from communities other

than the minority community which has established the institution, and whether such admission to any particular percentage of seats will destroy the minority character of the institution or not will depend on a large number of factors including the type of institution.

26. Clause (5) of Article 15 of the Constitution enables the State to make a special provision, by law, for the advancement of socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes. Such admissions of socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes who may belong to communities other than the minority community which has established the institution, may affect the right of the minority educational institutions referred to in clause (1) of Article 30 of the Constitution. In other words, the minority character of the minority educational institutions referred to in clause (1) of Article 30 of the Constitution, whether aided or unaided, may be affected by admissions of socially and educationally backward classes of citizens or the Scheduled Castes and the Scheduled Tribes and it is for this reason that minority institutions, aided or unaided, are kept outside the enabling power of the State under clause (5) of Article 15 with a view to protect the minority institutions from a law made by the majority. As has been held by the Constitution Bench of this Court in Ashoka Kumar Thakur v. Union of India (supra), the minority educational institutions, by themselves, are a separate class and their rights are protected under Article 30 of the Constitution, and, therefore, the exclusion of minority educational institutions from Article 15(5) is not violative of Article 14 of the Constitution.

xxxx xxxx xxxx xxxx

45. 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 Sripadagalvaru v. State of Kerala & Anr. (supra) Sikri, CJ., 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, CJ. In Kesavananda Bharati Sripadagalvaru v. State of Kerala & Anr. (supra):

> *"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 21A 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.

46. When we look at the 2009 Act, we find that Section 12(1)(b) read with Section 2(n) (iii) 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 & Anr. (supra) insofar as it holds that the 2009 Act is applicable to aided minority schools is not correct."

(emphasis supplied)

5. This Court is of the view that as the Constitution Bench has held that even after amending the Constitution, the State cannot abrogate the rights of

the minorities to establish and administer schools of their choice, then by a covenant in a lease deed, Government certainly cannot appropriate the right to nominate non-minority EWS students to a minority school.

6. In the opinion of this Court, the Constitutional mandate will prevail *dehors* any alleged provision in the lease deed.

7. Consequently, present batch of writ petitions is allowed. All pending applications are also disposed of.

MANMOHAN, J

SEPTEMBER 01, 2014
rn