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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5378 OF 2013

Jayshree Vijay Mundaware,  
adult Indian Inhabitant,  
Residing at 4, L. G. Castle Apt,  
Govind Nagar, Nashik-422009

.... Petitioner

VS

- 1 The Principal/Head Mistress of  
Ashoka Universal School  
Chandsi/Wadala, Nashik
- 2 Ashoka Education Foundation,  
a public charitable Trust, through its  
trustee Mr. Ashok Motilal Kataria, having  
its office at Anshuman, near Forest  
Nursery, Gangapur Road, Nashik 422  
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- 3 The Deputy Director of Education,  
Nashik Road, Nashik
- 4 The Education Officer (Secondary),  
Zilla Parishad, Nashik
- 5 The Education Officer (Primary),  
Zilla Parishad, Nashik
- 6 The Administrative Officer,  
Shikshan Mandal, Nashik
- 7 The Director of Education, Pune
- 8 The State of Maharashtra,  
(Through the Secretary,  
Ministry of Education,  
Mantralaya, Mumbai). .... Respondents

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Mr. Salim Inamdar with Mr. Pavan S. Patil for the petitioner.

Mr. R.S. Apte, Senior Advocate with Mr. A.A. Garge for respondents 1 and 2.

Mr. A.I. Patel, AGP for respondents 3, 4, 7 and 8.

**CORAM: ANOOP V. MOHTA AND  
V. L. ACHLIYA, JJ.**

**CLOSED FOR JUDGMENT ON : July 16, 2015**

**PRONOUNCED ON : July 21, 2015**

**JUDGMENT (Per Anoop V. Mohta, J.):**

Main punctum is maintainability of the writ petition against an un-aided private minority educational institution/school, at the instance of parents, whose children are expelled/debarred from the school/college of such institution, because of stated mis-behaviour and/or bad behaviour of the mother/father/child's relative and/or for non-payment of disputed enhanced fee/payment. If yes, entitlement of reliefs on merit.

2 The Petitioner's son – Master Pavan, aged about 12 years, was admitted to Respondent No.1-School (“the school”) in June 2010 in Grade II. Her daughter – Ms. Rutuja, aged about 16

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years, was admitted to the Respondent School in June 2012 in Standard IX. The School terminated the admission of both the children unilaterally by issuing them Transfer Certificates/'Leaving Certificates' on 03/06/2013 with an accompanied letter also to Respondent Nos. 2, 3 and 4 respectively. On this certificate the reason for leaving the school was mentioned as "terminated because of parents indecent & illegal behaviour". The conduct of the children was expressly stated to be "Satisfactory".

3 Prior to this, the Petitioner, as stated, had along with other parents, objected to the stated unreasonable and illegal hike in fees by the School. That had resulted into non-payment of fees also. The Petitioner requested the Management and staff of the School to provide the structure of fees so proposed to be charged. As noted, the agitation turned into allegations and counter allegations and filing of complaints and counter complaints. All are pending. Respondent No.3-Education Officer, also directed the School/Management to withdraw the actions, but could not carry out further, for want of specific provisions. The School/Management resisted the Education Department's directions. The Petitioner has no other alternative remedy available for effective urgent reliefs, except to file the Writ Petition.

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4 This High Court (Coram- A.S. Oka and G.S. Patel, JJ.) on 16 August 2013 passed the following ad interim order :

*"1. Rule. The Advocate on record for the first and second Respondents waives service. The learned AGP waives service for the Respondent Nos.3, 4, 7 and 8. We make it clear that the preliminary objections raised by the contesting Respondents are kept open.*

*2. Heard learned counsel on the prayer for interim relief. This Petition concerns career in education of two minor children. The learned counsel appearing for the Petitioner on instructions of the Petitioner and her husband makes a categorical statement that the Petitioner and her husband will not give any publicity to this order of the Court either in Media or on any social networking either orally or in writing. Shri Apte, learned senior counsel appearing for the first and second Respondents on instructions gives similar assurance to the Court. We accept the statements made across the bar on instructions of the parties present in the Court. We hope and expect that media will not give publicity to this order.*

*3. Rule on interim relief is made returnable on 25<sup>th</sup> April 2014. By way of ad-interim relief, we pass the following order:*

**ORDER :**

*(a) The first and the second Respondents shall supply a duplicate copy of the mark-sheet of the IX standard examination of Ms. Rutuja to the Petitioner;*

*(b) The first and the second Respondents shall admit Master Pawan to the V Standard for the Academic Year 2013-2014. The first and second Respondents shall admit Ms. Rutuja to the X standard*

*for the Academic year 2013-2014;*

*(c) The aforesaid ad-interim relief in terms of prayer (b) is granted subject to following conditions;*

*(i) The Petitioner and her husband shall abide by the assurances given to this Court which have been recorded earlier and shall file a written undertaking to this Court to that effect within a period of two weeks from today;*

*(ii) The Petitioner and her husband shall file written undertakings to this Court within a period of two weeks from today stating that without prejudice to the rights and contentions of the parties in the Petition, they shall pay the fees payable in case of both the children to the first and second Respondents as set out in this order. They shall give further undertakings to this Court that they shall not make any complaint before any forum or any authority against the first and the second Respondents till the returnable date and shall not prosecute the complaints which are already pending before any forum or the authority till the returnable date; and*

*(iii) The Petitioner and her husband shall give further undertaking that they shall not enter the premises of the school of the first Respondent unless the school Authorities call them either for attending the parents' meetings or for any other purposes;*

*(d) By way of ad-interim relief, we direct the first and the second Respondents not to file any complaints against the Petitioner and her husband till the returnable date and not to prosecute any complaints which are already pending before the forum or the Authorities;*

*(e) Shri Apte, learned senior counsel appearing for the first and the second Respondents states that whenever there are regular Parents'-Teachers' meeting*

*held in respect of the V and X Classes, the first and the second Respondents shall permit the Petitioner and her husband to attend the said regular meetings and will permit their entry for the purposes of attending such meetings; we accept the statements;*

*(f) The learned counsel appearing for the Petitioner on instructions states that the total fees payable in case of both the children is Rs.65,270/- each as per the statement handed over across the bar by the learned senior counsel appearing for the first and the second Respondents, which is taken on record and marked "X" for identification. On instructions, the learned counsel appearing for the Petitioner states that the sum of Rs.65,270/- each payable in case of Ms. Rutuja and Master Pawan will be paid by the Petitioner to the first Respondent within a period of eight days from today. We accept the statements made on instructions.*

*(g) As regards the arrears of fees payable for the Academic Year 2012-2013, there appears to be a dispute between the parties. According to the case of the first and the second Respondents, in case of both Rutuja and Pawan the total amount payable is Rs.20,280/- each inclusive of late fees of Rs.1,700/- each. Learned counsel appearing for the Petitioner submits that the total amount payable on account of arrears of fees payable taken together for both the children is Rs.18,580/- and not Rs.18,580/- each;*

*(h) Since the Petition is pending for final disposal and prayer for interim relief is disposed of, we direct the Petitioner to deposit a total amount of Rs.25,000/- with the first Respondent towards the arrears of fees for the Academic Year 2012-2013 within a period of four weeks from today. We make it clear that for the time being this amount will represent arrears payable in case of both the children. Payment of this amount will be subject to further orders passed in the Petition;*

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*(i) We make it clear that if the undertakings as aforesaid are not filed by the Petitioner and her husband within the stipulated time, the ad-interim relief shall stand vacated without further reference to the Court. If the aforesaid amounts are not deposited by the Petitioner with the first Respondent within the time stipulated under this order, the ad-interim relief shall stand vacated without further reference to the Court.”*

5           The matter was also adjourned for settlement. On 22.08.2014, (Coram:-Anoop V. Mohta and A.S. Gadkari, JJ) the following order was passed:-

*“1 The learned Counsel appearing for the Petitioner makes statement that the draft Consent Terms filed by the Management is not acceptable to the Petitioner, however, time be granted to amend the Petition so that the points so raised in the Petition and so also the prayers will be argued accordingly.*

*2 The Consent Terms are taken on record and marked “X” for identification.*

*3 The Management has placed on record the original Certificate of Master Pawan Mundaware with endorsement “Transfer” by deleting the reason on the leaving certificate “terminated because of parents”. This original Certificate is taken on record and marked “A”. Petitioner is at liberty to take the original certificate at any time. The learned counsel appearing for the Petitioner, however, objecting to the noting given on the Certificate “Transfer”.”*

6           Other orders were also passed in the matter, in between, referring to the deposit of fees as that was condition for admitting

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the Petitioner's children to the school. The amendment was also carried out. This High Court (Coram:- Naresh H. Patil and A.P. Bhangale, JJ.) on 11.11.2014, refused permission for admission in year 2014-2015 as the academic year had already commenced.

7 The Petitioner moved the Supreme Court of India. The following order was passed on 13.04.2014, in Special Leave to Appeal (c ) No. 35397/2014 :

*“Heard learned counsel appearing for the parties and perused the orders time to time passed by the High Court. Learned counsel appearing for the respondents submits that on the application filed by the petitioner for early hearing of the case, the Bombay High Court fixed it for hearing on 08.06.2015.*

*In our considered view, it would be just and proper if the High Court hears the matter on merit on the date fixed and dispose of the same in accordance with law.*

*We request the High Court to decide the matter on or before 30.06.2015.*

*It is made clear that we have not expressed any opinion in regard to the merit of the case.*

*With the aforesaid observations, the special leave petition stands disposed of.”*

8 On 18 June 2015, this Court (Coram:- Anoop V. Mohta and V.L. Achliya, JJ.) passed the following order:-



*“Pursuant to order passed by the Honourable Supreme Court, today the matter is listed for hearing. Heard the learned counsel appearing for parties.*

2            *In nutshell, it is the case of Petitioner that Respondent No.2, institution, illegally cancelled the admission of two children of Petitioner and unilaterally issued the school leaving certificate on 3<sup>rd</sup> June, 2013 by recording therein in the column of reasons for leaving the school as “parents indecent and illegal behaviour”. By way of ad-interim order, this Court has directed Respondent No.2 to delete the above referred endorsement made in the school leaving certificate so as to enable the children of Petitioner to take admission in another school. Considering overall facts of the case, this Court has further directed Respondent No.2 to withdraw the school leaving certificate in respect of daughter of Petitioner and allow her to prosecute her studies in same school for the period of one year. Pursuant to the order passed by this Court, Respondent No.2 has withdrawn the school leaving certificate in respect of daughter of Petitioner and further allowed her to continue her study so as to complete her Xth standard. So far as son of Petitioner is concerned, Respondent No.2 has issued fresh school leaving certificate by deleting the aforesaid objectionable endorsement.*

3            *The learned counsel appearing for the Petitioner submits that daughter of Petitioner has completed her Xth standard from the school run by Respondent No.2. He further submits that son of Petitioner was not got admitted by Petitioner in another school though fresh school leaving certificate is issued by Respondent No.2. By referring the school leaving certificate issued by Respondent No.2, learned counsel has pointed out that for no fault or any objectionable act on the part of children of Petitioner the Respondent No.2 has cancelled their admission*

*and issued school leaving certificate with above referred endorsement. Learned counsel has pointed out that in the school leaving certificate issued by Respondent No.2, they have recorded the conduct of both the children as satisfactory. The learned counsel further submits that impugned action has been taken by Respondent No.2 without any opportunity of hearing, so also, Respondent No.2 has acted in most arbitrary and highhanded manner in cancelling the admission of son and daughter of Petitioner as well in issuing school leaving certificate with endorsement as referred above. Although the Petitioner has made representation before the Education Officer for redressal of grievance, however, no action was taken on the part of Education Officer.*

4 *During the course of hearing, it is pointed out that Respondent No.3 – Education Officer has issued letter dated 7<sup>th</sup> June, 2013, to Respondent No.2 pursuant to complaints lodged by Petitioner against Respondent Nos.1 and 2 and directed them to withdraw the action taken against the son and daughter of Petitioner.*

5 *The learned Senior Counsel appearing for Respondent No.2 – Management by referring the letter dated 11<sup>th</sup> June, 2013 (addressed to Education Officer (Secondary), Zilla Parishad, Nasik) and another letter dated 19<sup>th</sup> June, 2013 (addressed to Education Officer (Primary), Zilla Parishad, Nasik) submits that Respondent No.2 have responded said letters and justified their action. The learned Senior Counsel further submits that in their reply the Respondent No.2 has stated that the Education Officer cannot issue such direction and requested for opportunity to present their case. Thereafter, no communication was received from Respondent No.2.*

6 *The learned AGP appearing for the State submits that as Petitioner has approached this Court, therefore, the Education Officer has not proceeded*

*with the matter.*

7 *Having regard to the fact that the Education Officer though entertained the complaint, but has not taken further action in the matter, we are of the view that matter needs to be examined and appropriate decision be taken in the matter at the level of Education Officer after affording an opportunity of hearing to both the sides. Therefore, at this stage, in order to avoid further complications and allow the Competent Authority to assess the factual aspects of the matter including the power and authority of the Education Officer, we are inclined to direct the concerned Education Officer to take appropriate decision in the matter within seven days after giving an opportunity of hearing to both the sides. We therefore, direct the Petitioner as well as Respondent Nos.1 and 2 to appear before the Education Officer (Secondary), Zilla Parishad, Nasik on 23<sup>rd</sup> June, 2015 at 11:00 am without any further notice from the Education Officer. They are permitted to file additional documents in support of their respective contentions. The Education Officer is directed to decide the dispute in between the parties within seven days and submit its report. The Education Officer is directed to decide the matter on its own merits and without influenced by any of the observations made while passing of this order.*

8 *The learned AGP is directed to ensure that the order passed by this Court be communicated to the concerned Education Officer forthwith.*

9 *Stand over to 26<sup>th</sup> June, 2015.*

10 *Parties to act on the basis of authenticated copy of this order.”*

9 The matter was adjourned for the settlement again. The parties have exchanged settlement terms, but as the Petitioner

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refused to accept the conditions of settlement terms, we listed the matter, by consent, for further hearing.

10 The Education Officer's report dated 25/06/2015 has re-iterated their direction of re-admission. The School/Management has filed Writ Petition No. 5199 of 2015. The same is pending, wherein a challenge is to the power and jurisdiction of the Education Officer/Department, to issue such direction and/or to interfere with such decision of the management. The fee structure aspects are governed by the provisions having independent mechanism, The Maharashtra Education Institution (Prohibition of Capitation Fees Act), 1987 ("The State Act-1987"), The Maharashtra Educational Institutions (Regulation of Fee), Act, 2011 ("The State Act-2011") w.e.f. 21/03/2014 and The Right of Children to Free and Compulsory Education Act, 2009, (Amendment-2012) ("the RTE Act"). The school has to be recognized/approved by the State for the affiliation of the school with the ICSE. These State Acts are applicable to the school. The standard of education and related aspects need to be as per the rules, regulations, guidelines/policy of the State.

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11           There was no challenge to the earlier orders passed by this Court from time to time against the Respondents. Both the parties have acted upon the same. One child is out of school after completion of education pursuant to the orders passed by this Court. The other child, for various reasons, is unable to take his education in any other school for last year. The statement is made that he is studying at home.

12           The learned senior counsel appearing for the Respondents/management have cited various judgments, which read as under, in support of his case revolving around the rights and authority of an un-aided minority institution/school. The judgments are also for supporting their submission that writ petition is not maintainable against the minority educational institution for such reliefs. The disputed facts are involved. The Petitioner's remedy is elsewhere. The Petitioner's counsel, on instructions, has not pressed the issue with regard to the fee structure, though specifically raised, as the issues are subject matter of the writ petition filed by the Respondent/management. Various writ petitions are pending revolving around the fee structure.

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- 1 Sushmita Basu and ors v. Ballygunge Shiksha Samiti and ors<sup>1</sup>.
- 2 Satimbla Sharma and ors. v. St. Pauls Senior Secondary School and ors.,<sup>2</sup>
- 3 Sabhajit Tewary v. Union of India and ors.<sup>3</sup>
- 4 Executive Committee of Vaish Degree College, Shamli and ors v. Lakshmi Narain and ors.,<sup>4</sup>
- 5 Dental Council of India v. Subharti K.K.B. Charitable Trust and anr.<sup>5</sup>
- 6 Nashik Diocesan Council Trust and anr. v. Sunita Yogesh Pandit and ors.,<sup>6</sup>
- 7 Shri P. A. Inamdar and ors. v. State of Maharashtra and ors.<sup>7</sup>
- 8 Islamic Academy of Education and anr. v. State of Karnataka and ors.<sup>8</sup>
- 9 Ahmedabad St. Xavier's College Society v. State of Gujrat<sup>9</sup>
- 10 Society For Unaided Private Schools Of Rajasthan Vs. Union

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1 (2006) 7 SCC 680

2AIR 2011 SC 2926

3(1975) 1 SCC 485

4(1976) 2 SCC 58

5(2001) 5 SCC 486

6(2000) 10 SCC 282

72005 (3) Mh. L. J. 1067

8Writ Petition (Civil) No.350 of 1993

9AIR 1974 SC 1389

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of Indian & Anr. Vs. Union of India and Anr.<sup>10</sup>

11 *(Ms. Rutvi Dinanath Chaudhari & Anr. Vs. Ashoka Universal School & Ors.) Writ Petition No. 6654 of 2013 dated 2 May 2014 (Coram-Anoop V. Mohta and M.S. Sonak, JJ.)*

13 All above cases are distinct and distinguishable on facts and circumstances. The law so declared, needs to be respected by all. We are considering the admitted facts and circumstances of this case to apply the law so declared.

14 The rights of children education is inbuilt in the Constitution of India. Now specifically, declared through Articles 21A, and 45, apart from the RTE Act and such related State Acts and Education policies. The Central and State Government are the implementing authorities for the education of all level.

15 The unaided minority Schools/Managements are governed by Articles 29 and 30 of the Constitution of India. They are arranging their own funds and managing and imparting "School Education" from all recognized level, as per the approval/recognition granted by the respective education department/authorities." The State and its authorities/respective

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10 (2012) 6 SCC 1

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departments, control the implementation of the RTE Act. The State and the Union of India have concurrent obligations to implement the RTE Act through its respective areas and the fields. The State and its authorities have obligations and the role in implementing and executing evenly the education system at all level of all schools/institutions for all classes. Even the minority unaided institutions/schools have to obtain necessary permissions and approvals/recognitions to run their aided or unaided schools, in view of various provisions of respective State laws. The respective obligations/duty, to provide quality education by the schools, aided or unaided, cannot be in dispute.

16           The Apex Court in *Society For Unaided Private Schools Of Rajasthan (Supra)*, and *Pramati Educational and Cultural Trust (Registered) and Ors. Vs. Union of India & Ors.*<sup>11</sup> has dealt with rights of unaided minority schools, guaranteed under Articles 19(1) (g), 29 and 30 of the Constitution of India, apart from the issue of reimbursement, for imparting free education to disadvantage/weaker class of the society (Quota Children). Such schools are excluded from the purview of the RTE Act. The minority unaided schools' right to demand fee and change it from

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11   (2014) 8 SCC 1



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time to time, subject to the State laws is not in dispute. The  
authorities have been provided under the law to deal with it. The  
punk is, all are performing public function/duty to achieve  
constitutional object and goal.

17 We have to consider the point of maintainability of Writ  
Petition, in facts and the orders passed by the Court from time to time and  
the order passed by the Supreme Court, on 13.04.2015 in Special Leave  
to Appeal (C ) No.35397/2014, directing this High Court to decide the Writ  
Petition on merit. We see there is no case to accept the preliminary  
objection so raised by the Respondents. We are inclined to observe that  
such technical objection about maintainability of the writ petition is  
unsustainable.

18 Strikingly, in *Ramesh Ahluwalia Vs. State of Punjab & ors.*<sup>12</sup>

the Supreme Court has observed as under:-

*“12. We have considered the submissions made by the learned counsel for the parties. In our opinion, in view of the judgment rendered by this Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust*<sup>13</sup>, there can be no doubt that even a purely private body, where the State has no control over its internal affairs, would be amenable to the jurisdiction of the High Court under*

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12 (2012) 12 SCC 331

13 (1989) 2 SCC 691

*Article 226 of the Constitution, for issuance of a writ of mandamus. Provided, of course, the private body is performing public functions which are normally expected to be performed by the State authorities.*

14. *In view of the law laid down in the aforementioned judgments of this Court, the judgment of the learned Single Judge as also the Division Bench of the High Court cannot be sustained on the proposition that the writ petition would not be maintainable merely because the respondent - institution is a purely unaided private educational institution. The appellant had specifically taken the plea that the respondents perform public functions, i.e. providing education to children in their institutions throughout India.”*

19 It is relevant to mention that this Court, in Cricket Association of Bihar vs. The Board of Control for Cricket in India<sup>14</sup>, (Anoop V. Mohta and N. M. Jamdar, JJ.) decided on 11.11.2014 in PIL No.107/2013, as the Apex Court directed to decide the writ petition on restricted issue, inspite of similar objection being raised about the maintainability of writ petition, this Court proceeded by rejecting such preliminary objection of maintainability of writ petition by observing as under:

*“47 The preliminary objection raised by the BCCI with regard to the maintainability of the present PIL, in our view, cannot be the only reason not to consider the challenge so raised in the present petition, specifically in view of order dated 10*

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14 MANU/MH/2046/2014

*November 2014 passed by the Hon'ble Supreme Court in Board of Control for Cricket Vs. Cricket Association of Bihar & Ors., Civil Appeal No(s). 4235/2014, whereby it is observed as under:-*

*“Ms. Nalini Chidambaram, learned senior counsel however in reply concluded that the scope of the petition filed before the Bombay High Court is totally different inasmuch as the said petition is concerned only with the validity of Rules 6.2.4 and 15 of the Rules and Regulations of BCCI. She urged that the proceedings before the Bombay High Court shall not spill beyond the consideration of the validity of the said provisions and that the apprehension expressed by the BCCI that the issues arising for consideration before this Court may also be agitated before the Bombay High Court is misplaced.*

*In the light of the statement made by Ms. Chidambaram, we have no difficulty in saying that the petition pending before the Bombay High Court shall remain confined to the examination of the validity of the Rules mentioned above. Issues that fall for consideration in these proceedings need not therefore be brought within the sweep of the proceedings before the Bombay High Court.”*

48 *The learned counsel appearing for the respective parties have read and referred the following Supreme Court judgments including Division Bench judgment of this Court dealing with the issue of maintainability of such Petition under Article 226 of the Constitution of India, specifically against Respondent No. 1, in support of their respective contentions. Though the facts and circumstances are different and distinguishable, the principle with regard to entertain such PIL against BCCI and/or such body need to be tested on the foundation of present averments and/or prayers so raised in the Petition.*

50 *Therefore, taking overall view of the matter,*

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*we are inclined to entertain the present PIL. The question still remains, the scope and purpose of Article 226 of the Constitution of India, though by nature of Public Interest Litigation, to interfere with the power, function and related administration of BCCI which is nothing but a private body constituted and registered and governed by the respective rules and regulations for all the activities of the members under TNSR Act.”*

20 In Board Of Control For Cricket In India Vs. Cricket Association of Bihar & Ors.<sup>15</sup>, the Apex Court has re-iterated that the writ petition is maintainable even against the private club/body, if they are performing the public function/duty and/or where public elements alike State activities are involved. The Apex Court has observed as under:-

*“32. Having said that this Court recognized the fact that the Board was discharging some duties like the selection of Indian Cricket Team, controlling the activities of the players which activities were akin to public duties or State functions so that if there is any breach of a constitutional or statutory obligation or the rights of other citizens, the aggrieved party shall be entitled to seek redress under the ordinary law or by way of a writ petition under Article 226 of the Constitution which is much wider than Article 32.”*

.....

*“33. The majority view thus favours the view that BCCI is amenable to the writ jurisdiction of the High Court under Article 226 even when it is not 'State' within the meaning of Article 12. The rationale underlying that view if we may say with utmost respect lies in the "nature of duties and functions"*

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15 (2015) 3 SCC 251

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*which BCCI performs.” .....*

*“35. Our answer to question (i), therefore, is in the negative, qua, the first part and affirmative qua the second. BCCI may not be “State” under Article 12 of the Constitution but is certainly amenable to writ jurisdiction under Article 226 of the Constitution of India.”*

21 In the present case also we have noted that the Apex Court has directed this Court to decide the writ petition on its own merits. The School/Management, as already recorded, have never challenged the earlier orders passed by this Court. They have also acted fairly and accommodated the Petitioner's child, as recorded above. The offer was also given for the second child to accommodate him for one year for this year 2015-16, but subject to certain terms and conditions. The Petitioner, though gave undertaking and/or followed the earlier orders referring to first child, has opposed the suggestions.

22 After going through the Petitioner's affidavit and counter affidavit and Respondents' reply including, the report so filed by the Respondent-Education Department, we have noted that there was consistent agitation with regard to the payment of enhanced fees after academic year 2010-2011. The Petitioner failed to deposit the

full fee amount.

They participated in the agitation with regard to

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the fee structure along with other parents. The allegations of misbehavior on the part of the Petitioner's husband, as stated, had caused disturbance to the peace and harmony of the school. The Petitioner's case of stated false complaint and allegations and so also the FIR/Complaint filed by the Management, we are declined to decide and/or adjudicate the same. Let the law takes it own course, including factual dispute between the parties.

23 The rights of the Institution/School to increase fees every year is a matter, which just cannot be overlooked. We are not deciding the issue raised by the parents about the yearly increased fees. The remedy is elsewhere and so also the mechanism so provided under the State Acts. The matters are pending in this Court. The Petitioner has also not pressed the prayer with regard to the power and validity of the Management to increase and enhance the yearly fees within sphere of ordinance and/or even otherwise. The agitation, even if any, by the Petitioner's husband along with others, in no way can be permitted to result into disturbing the peace and harmony of the School/Management. It affects everyone, including students, teacher, staff, apart from the name and fame of the School. The agitation needs to be solved and resolved through the prescribed

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procedure and not by such personal allegations and counter allegations to the extent of filing/lodging Criminal cases.

24 Notwithstanding, the agitation and the stated misbehavior of the parents cannot be the reason and/or empower the School, for want of specific provisions under any rules, regulations and/or Act, to expel their students in such fashion, by unilaterally issuing the Transfer Certificate/Leaving Certificate, though not asked for by putting the endorsement "Terminated because of parents indecent and illegal behavior".

25 We are inclined to observe that the right of unaided minority education School to admit and to control admission and/or run and manage such schools, through their own sources, is not in dispute. The Judgments so cited by the learned Senior counsel in this regard, on law, need no further discussion, as it is settled. There is also no dispute that such unaided minority Management/School has power to enhance yearly fees to run the affair of their school, in all respects. They have the power to admit the students within the framework of law. But, cancelling of admission of such admitted student, be governed by the basic principles of law, including the elements of natural justice.



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26 Both the learned counsel were unable to point out any provisions which empowered expressly or impliedly, to expel the students in such fashion. The submission that the Management have a power to admit and/or control the admissions and therefore, they have also power to expel the student, in our view, is unacceptable and specifically, in the present facts and circumstances, as admittedly they have not followed the basic principle of natural justice. There is no appeal or other effective alternative remedy is available against such action/order of the School/Management.

27 We have already elaborated such aspects in similar situation (*Preeti Mulji Sondarwa Vs. The Controller of Examinations, Writ Petition, No. 3776 of 2015, dated 10 July 2015 (Coram- Anoop V. Mohta and V.L. Achliya, JJ)*) though by an interim order, but considering the settled position of law revolving around the principles of natural justice and its elements which we want to rely upon in this matter also while deciding this Petition finally. We are reiterating in the present matter the following points-

*“33 The basic principle of natural justice again reiterated by the Apex Court in Anand*

—

Brothers Private Limited Vs. Union of India & Ors.<sup>16</sup> and Gorkha Security Services Vs. Government (NCT of Delhi) & Ors.<sup>17</sup>. In Gorkha Security Services (Supra) the principle of natural justice even considered in administrative law, including covering proper show cause notice, purpose and reasoned orders are elaborated though not in education matter, but principle just cannot be denied as referred in other connected and supreme Court Judgments in the matter. Academician and/or expert body's decision are bound by such principle, when it goes to taking adverse decision and/or passing any order affecting the legal rights of the parties. Duty to give reasons and/or recording reasons and/or passing speaking order, is essential not only the Court, Tribunal, Judiciary but to all who takes decision, covering the rights of the parties.

34                    *The Apex Court in Gorkha Security Services (Supra) has further observed as under:-*

29.    No doubt, rules of natural justice are not embodied rules nor can they be lifted to the position of fundamental rights. However, their aim is to secure justice and to prevent miscarriage of justice. It is now well-established proposition of law that unless a statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice, in exercise of power prejudicially affecting another must be in conformity with the rules of natural justice.

35                    *The elements of "natural justice", "Show-cause notice"/"notice", "disclosure of*

16    (2014) 9 SCC 212

17    (2014) 9 SCC 105

*material”, “opportunity of all kind including of rebuttal”, “aspects of burden of proof”, “oral or personal hearing”, “pre-decisional and post- decisional hearing”, “reasoned order”, “decision” “speaking order”. This also includes, “Appellate Authority and powers of applying same principles, hearing and reasoned order.” All these cannot be just read and/or need to be a “empty formality”. This is in the background of duty to act judicially and to act fairly, keeping in mind the elements of bias, prejudice and influence of various kind. The effect of such elements and/or breaches of principle of natural justice are all interlinked and interconnected, the order of action is null and void and unsustainable in view of settled position of law declared by the Supreme Court and/or various High Courts. In the present facts and circumstances, and for the reasons so recorded above, we are also inclined to declare so.*

36 *In Anand Brothers Private Limited (Supra), the Apex Court has further dealt with the aspect of importance of findings and conclusion and the reasons on the facts and law and/or mixed question of law and facts. It is also observed as under:-*

11.

*“33. ....A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the*

*glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.”*

*The elements of natural justice are still available to/for all.”*

28 Admittedly, no show cause notice was issued before taking such drastic action of expulsion. No hearing was given to the Petitioner before passing such order against the children. On the contrary, we have noted that the action was taken because of stated parents' indecent and illegal behaviour, though the children's conduct was satisfactory. The correspondence and discussion between the parties, referring to the issue of fees and/or agitation by the Petitioner's husband-father of children, cannot be the ground to hamper the children's education and/or future career, in the guise of discipline and/or to maintain the peace and harmony. There are various ways and means to tackle the same. The parties could have settled and/or resolved the issue, instead of turning the agitation to such extent of expelling the children from the school.

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The Petitioner's son lost one year because of this conflict. The allegations and/or counter allegations, even if any, for want of specific provisions, could not have been used and utilized to expel the child from the school. There is material on record to show that the Respondent-Management also expressed that "We have sent the 'Leaving Certificate' not on the grounds of non payment of fees, but only as a part of disciplinary action". Such disciplinary action could not have been initiated against the children, whose conduct was satisfactory. The alleged misconduct of parents, cannot be the reason to punish the children. There is no supportive material placed on record by the School/Management for such action on the basis of declared law. The children cannot be punished for the alleged/stated misbehavior of the parents. It is totally impermissible. The whole action, therefore, so initiated and taken by the School/Management, in our view, is unjust, impermissible, contrary to law, apart from in clear breach of principle of natural justice and therefore void, illegal and impermissible. It is liable to be quashed and set aside. The consequence of such order, in the peculiarity of this case, should be followed by a restoration of the Petitioner's son's position to continue further study in the same school. There is no question to hold back the Petitioner's son in the same class.

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29 The Petitioner's son was due for promotion to class V at the time of impugned termination, who by this time could have been admitted to class VII in the academic year 2015-2016, had he not been expelled by the Respondent. The Petitioner's son, as stated, was not able to attend the classes of VI<sup>th</sup> Standard, and as the parties were unable to settle the matter. The statement is made that the Petitioner's son has completed his study at home, for VI<sup>th</sup> standard. Therefore, subject to eligibility and/or necessary eligibility test, we have to direct the School/Management to permit the Petitioner's son to VII<sup>th</sup> standard in the current academic year 2015-2016. This is also on the foundation that under the RTE Act, Sections 12/16 contemplate that no child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education.

30 The RTE Act, defines the "elementary education" in Section 2(f) which is from 1st Standard to 8th Standard. The RTE Act, covers all such schools for various other purposes, though specifically excluded unaided minority schools, for the reasons so recorded in Society For Unaided Private Schools of Rajasthan (Supra). But the basic rules and regulations and the purposes and object of right of education of such admitted children, which is not

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only flowing from RTE Act, but also from the Constitution of India, cannot be overlooked by all the concerned. To achieve the constitution and specifically, Article 21(A) and 45 of the Constitution of India, we have therefore, also required to consider the Constitutional right of such children referring to a free and compulsory education in school and/or even otherwise.

31 It is relevant to note the following communication addressed by the Ministry of Human Resource Development, Department of School Education and Literacy, New Delhi dated 27<sup>th</sup> August 2014 to Shri Arnab Roy, Secretary, Department of School Education, Govt. of West Bengal, Bikash Bhavan, Salt Lake, Kolkata-700 091:-

***“Subject:- Applicability of the provisions of the RTE Act, 2009 to the minority educational institutions- detention of students between Classes I to VIII.***

*The undersigned is directed to refer to your letter No. 236-SSE/14 dated 22<sup>nd</sup> April 2014 on the subject and to say that the issue relating to the applicability of the child rights conferred on children by the RTE Act, 2009 including no detention clause in elementary schools run by Minority Institutions has been considered in consultation with the Department of Legal Affairs, Ministry of Law & Justice.*

2. *The Department of Legal Affairs has opined that- “The RTE Act was amended in 2012 and provisions*

*of the Act were made applicable **Subject to provisions of articles 29 and 30 of the Constitution, which means that the provisions of RTE Act so far as these do not infringe rights conferred on minorities to the extent of 'establish and administer' shall apply to these institutions. The regulatory provisions like 'prohibition of holding back' and 'corporal punishment' which do not affect the substance of the guaranteed rights to administer educational institutions as provided under Article 30(1) appear to be applicable to the minority institutions also. In view of the above, the regulatory provisions as provided in the RTE Act appear to be applicable to minority institutions in terms of Articles 29 and 30 of the Constitution of India**".*

3. You are accordingly requested to take appropriate action for the protection of the child rights conferred on children by the RTE Act, 2009 in elementary schools."

32 In the present case, additional factor is, though there is a challenge raised/made by the Management about the power of Education Department to direct them to restore the position of the petitioner's son by not accepting the submissions/representations made by the School/Management, yet this Court cannot overlook such unilateral action of School/Management of expulsion of student/child in such fashion. We are inclined to issue order and direction even against minority School/Management and so also necessary order or direction against the person for and/or against the person who are involved in the matter, to make it effective and fruitful. As ordered, in reference to the daughter of the Petitioner



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and as both the parties already acted upon, we see there is no reason not to confirm the said order and/or pass appropriate direction of same nature against the School/Management. The conditional order so passed, dated 26 July 2013, asking the Petitioner to give undertaking, therefore, in our view, can be extended and confirmed, while disposing of the present Writ Petition. This, in no way reads and means that the Petitioner is not entitled to raise the legitimate objection of enhanced fees, if any, along with other parents. The School/Management is also entitled to raise fee in accordance with law. The balance needs to be struck by both the parties, in all respects.

33           The submission of the learned counsel appearing for the Petitioner that in view of the peculiarity of the case, an appropriate order even can be passed to implement the directions issued by Respondent No.3, order dated 7 June 2013 and also appropriate order can be issued to execute the order passed by the Education Officer, if the school refuses to follow the order/directions. Therefore, taking overall view of the matter, we are inclined to accept the submission that appropriate writ, order, direction can be issued in the interest of justice, even against the unaided minority Management. Such school, definitely performing public functions

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and has element of legal and statutory obligation/duty to provide “elementary education” to the children to whom they have already given admission.

34 Hence the following order:-

### **ORDER**

- a) We hold that Writ Petition filed by Petitioners is maintainable against Respondent Nos. 1 and 2 (Un-aided Minority Educational School/Institution) in the facts and circumstances of the case.
- b) We hereby declare that the impugned action/orders of expelling the Petitioner's son and daughter are illegal, impermissible and bad in law, including the endorsement “Terminated because of parents indecent and illegal behavior”, therefore quashed and set aside accordingly.
- c) We direct Respondent Nos. 1 and 2 to promote Master Pawan Mundaware to VII standard for the academic year 2015-16 and permit him to continue future study in the School along with other students. However, it will be subject to any eligibility test of VI Standard, only if necessary

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and/or required.

- d) The Petitioner to deposit arrears of fees, if any, without late fee, within one month from today and shall continue to pay the regular fees along with other students.
- e) The Petitioner and her husband have already filed written undertakings to this Court in view of order dated 16 August 2013. That will continue without prejudice to the rights and contentions of the parties in this Petition, till the Petitioner's son complete his education in the Institute/School. They have also filed further undertakings to this Court that they will not make any complaint before any forum or any authority against Respondent Nos. 1 and 2.
- f) The Petitioner and her husband shall abide by the assurances given to this Court which have been recorded earlier. The Petitioner and her husband not to disturb the peace and harmony of the school.
- (These directions be implemented forthwith.)
- g) They shall endeavour to settle the

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dispute/conflicts and/or compound the Criminal complaints, if any.

- h) The Petitioner and her husband have already given undertaking that they will not enter the premises of the school of Respondents, unless the school Authorities call them either for attending the parents' meetings or for any other purposes.
- i) Liberty is granted to the parents, in case they want to meet the child, to apply for appropriate permission and Respondents-Institution/School to consider the same sympathetically.
- j) Both the parties to maintain good and cordial relations in all respects.
- k) The parties are at liberty to settle the matter and/or apply for appropriate order in case of any difficulty.
- l) It is desirable that the Respondent-State Government and/or other Authority should frame some policy and/or some rules and regulations to deal with such aspects of expulsion of the students and dealing with the internal dispute between the parents and Management and/or

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other authorities and provide necessary alternative and effective mechanism to resolve the conflicts of such nature.

- m) Writ Petition is accordingly allowed.
- n) Rule made absolute accordingly.
- o) There shall be no order as to costs.

35 The learned counsel appearing for Respondent Nos. 1 and 2, on instructions, orally submitted to stay the effect and operation of the order which we have pronounced in open Court. Considering the reasons already provided and in the facts and circumstances and as it concern with the career and education of the Petitioner's son and as the academic session has already began, no case is made out for any stay as prayed. The oral application for stay of this order is rejected.

The parties to act on the basis of an authenticated copy of this order.

**(V. L. ACHLIYA, J.)**

**(ANOOP V. MOHTA, J.)**