

pCCA Nos. of 2011 @ SLP(C) Nos. 16149-16162/2011

ITEM NO.3

COURT NO.2

SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).16149-16162/2011

(From the judgement and order dated 10/06/2011 in MP No. 1/2011
& MP No. 2/2011 & MP No. 3/2011 & WP No. 12882/2011 & WP No. 12890/2011 & WP No. 13019/2011 & WP No. 13037/2011 & WP No. 13038/2011 & WP No. 13227/2011 & WP No. 13293/2011 & WP No. 13296/2011 & WP No. 13345/2011 & WP No. 13381/2011 & WP No. 13390/2011 of The HIGH COURT OF MADRAS)

STATE OF T.NADU & ORS.

Petitioner(s)

VERSUS

M.SESHACHALAM & ORS.

Respondent(s)

(With prayer for interim relief and office report)

Date: 14/06/2011

These Petitions were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE SWATANTER KUMAR
[VACATION BENCH]

For Petitioner(s)

Mr. P.P. Rao, Sr. Adv.
Mr. Rakesh Dwivedi, Sr. Adv.
Mr. A. Navaneetha Krishnan, A.G.
Mr. S. Guru Krishnakumar, Adv.
Mr. Subramonium Prasad, Adv.
Mr. E. Sampath Kumar, Adv.
Mr. B. Balaji, Adv.
Ms. Srikala Gurukrishnakumar, Adv.

For Respondent(s)
For RR 1 and 2 in
12882 & 13390 & R1
12890/2011

Mr. A.K. Ganguli, Sr. Adv.
Mr. M.N. Krishnamani, Sr. Adv.
Mr. T. Harish Kumar, Adv.

For Rrs 5 to 7 in
12882 & 12890

Mr. Rajiv Dutta, Sr. Adv.
Mr. V.P. Sengottuvel, Adv.
Ms. Yamunah Nachiar, Adv.

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Mr. S. Ravi Shankar, Adv.

For Rrs 11 and 12

Mr. K.V. Vishwanathan, Sr. Adv.
Mr. V.P. Sengottuvel, Adv.
Mr. S. Ravi Shankar, Adv.

For RR 1 in WP, 12882
13296 & 13037/2011

Mr. Prashant Bhushan, Adv.

Mr. Kaushal Yadav, Adv.

For RR 1 in WP 13038
& 13081/2011

Mr. Prashant Bhushan, Adv.
Mr. P.B. Suresh Bvabu, Adv.
Mr. Rajaram, Adv.
Mr. S. Gowthaman, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeals are fianlly disposed of. The
interim order passed by this Court would continue
in force unless modified by the High Court. The
Registry shall communicate this order to NCERT
and the State Government as well as the Chief
Secretary for its proper implementation.

Let this order be brought to the notice of
Hon'ble the Chief Justice of Madras High Court by
the Registrar of this Court forth with.

KALYANI GUPTA
COURT MASTER

INDU SATIJA
COURT MASTER

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[SIGNED ORDER IS PLACED ON THE FILE.]

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. OF 2011
[ARISING OUT OF SLP (C) NOS. 16149-16162 of 2011]

STATE OF T.NADU & ORS.

.... APPELLANTS

VERSUS

M.SESHACHALAM & ORS.

.... RESPONDENT

O R D E R

Leave granted.

Amendments to, principle or subordinate legislation either by executive decisions or by legislative Act should normally have one paramount consideration in mind, that is, the persons who are going to be affected by such amendment. In other words, legislative impact is one aspect which always should be examined by the Government concerned before it takes any decision which is likely to affect a larger section of the society. The legislative amendment in the present case is one such example which is bound to have upon its implementation great impact upon the education system (primary and middle) as well as the lakhs of

students for whose benefit there is dispensation of

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education by the Government in the State of Tamil Nadu.

The Division Bench of the Madras High Court vide its judgment dated 30th April, 2010, while granting reliefs to the petitioners and issuing certain directions concluded as under:-

"We have upheld the power of the State to bring in a school system common to all in the interest of social justice and quality education. As an aside, we would like to point out that the phrase 'Uniform School system' does not bring to the mind the same meaning that the words in Tamil do, which immediately indicates equity and quality in education.

Implementation of the syllabus and textbooks is postponed till the Academic Year 2011-2012 or until the State makes known the norms and the syllabus and prepares the text books in advance.

In the meantime, the State will bring the provisions of the impugned Act in line with the Central Act, e.g., the State shall specify by notification, the Academic Authority and the State Advisory Council.

The Government shall also indicate what the approved textbooks are:

The Government shall, by amending the section or by introducing a schedule to the Act, indicate that the syllabus is restricted to curricular subjects.

The schools are bound to follow the common syllabus only for the curricular subjects and not the co-curricular subjects.

The schools may choose from multiple textbooks, viz., Government produced textbooks, which are the prescribed text books and the government approved text books, in all subjects both curricular and co-curricular.

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The schools shall follow the norms as far as they are practicable.

There can be no Board Examinations upto the level of elementary education, but assessment norms may be specified.

The schools which teach all the subjects in a language other than Tamil or English shall inform the competent authority of the language of their choice; in view of the Full Bench decision, the approval is automatic.

The above intimation is only to facilitate the State to provide appropriate textbooks.

Norms shall be fixed by the Board which will include both the ex officio members and the other members. The State may make it clear whether this Board will also be the Academic Authority under the Central Act.

Since we have held that there cannot be strict and rigid norms, Section 11 and 12 of the impugned Act are struck down.

Section 14 of the impugned Act is also struck down.

64. All the writ petitions are disposed of accordingly. There shall be no order as to costs. Consequently, all the connected miscellaneous petitions are closed."

There is no dispute before us that a Special Leave Petition was preferred against this judgment of the Madras High Court which came to be dismissed by this Court on 10th September, 2010, by a reasoned order, to which one of us (Hon'ble Dr. Justice B.S. Chauhan) was a member. In other words, the judgment with far-reaching impact has attained finality. Later another

Court. Before we proceed further, it will be better for us to refer to both the unamended as well as the amended Section 3 of the Tamil Nadu Uniform System of School Education Act, 2010:

Unamended Section 3

"3 (1) Every School in the State shall follow the common syllabus and text books as may be specified by the Board for each subject:-
(a) in Standards I and VI, commencing from the academic year 2010-2011;
(b) in Standards II to V and Standards VII to X from the academic year 2011-2012.
(2) Subject to the provisions of sub-section (1) every school in the State in the State shall
(a) follow the norms fixed by the Board for giving instruction in each subject;
(b) follow the norms for conducting examination as may be specified by the Board.

AMENDED SECTION 3

"3. Every school in the State shall follow the common syllabus as may be specified by the Board for each subject in Standards I to X from such academic year as may be notified by the Government in the Tamil Nadu Government Gazette. The Government may specify different academic years for different Standards,"

Challenge was raised to this provision before the High Court. While the High Court admitted the writ petitions, it had passed an interim order staying the operation of Section 3 of the amended Act and

issuing inter alia the following directions:

(i) The provisions of Section 3 of the Tamil Nadu Uniform System of School Education (Amendment Act) 2011, (TN Act 10 of 2011) shall remain stayed pending disposal of the writ petitions.
(ii) The order of stay shall not operate as a bar for the State Government to conduct a detailed study of the common

syllabus and common text books introduced under Act 8 of 2010 and the Government shall be entitled to delete, add, modify, substitute or alter any chapters, paragraphs, portion of the text books which indeed included

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to propagate the achievement of a political party or an individual issue appropriate instructions in this regard. At this stage, we are constrained to observe that the Government should avoid to include any chapter in any of the text books with an intent to propagate a particular political party or an individual.

(iii) The various private Managements have stated that there are several books of high standard and the Government should approve the same in terms of the direction of the Division Bench as the schools should be given option to choose either the Government prescribed text books or the government approved text books. In this regard, it shall be open to such the Managements of private schools to submit with a view to comply the direction of the Division Bench contained in paragraph 63 of the judgment.

(iv) The impleading petitions are ordered and the newly impleaded parties are at liberty to file their counter affidavits.

(v) The State Government shall also file their counter affidavit in the writ petitions filed for declaration of the amending Act as ultra vires."

This interim order dated 10th June, 2011 passed by the Division Bench of the Madras High Court is challenged before us in the present appeals.

As is evident from the directions issued, the High Court in fact has stayed the operation of a statutory provision while the writ petition itself is pending final hearing before the High Court.

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It is contended before us that in the facts

and circumstances of the case and particularly the fact that operation of a legislative provision was prayed to be stayed, the High Court should have been reluctant to interfere and grant such an interim order. On the other hand, it is

contended that the larger interest of the students fully demands passing of such an order and the Government, despite its assurances various platforms has failed to comply with the directions contained in the Division Bench judgment passed on an earlier occasion. We

consider it necessary to note that the Government in furtherance to its assurance and the

directions issued by the Division Bench of the High Court had spent a large amount of money on the publication of books and nearly 9 crore books have been published at the cost of '200 crores and await distribution for the academic session 2011-12. This in fact is not admitted before us.

However, it is clear from the affidavit filed by the Secretary and even the grounds taken in the present Special Leave Petitions that substantial expenditure has been incurred on publication of the books. Though their quantum and actual amount may be a matter of controversy. We find

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that it totally unnecessary to go into controversy at this juncture particularly when the respondents (petitioners before us) still have to file their detailed counter affidavit

it is before the High Court. Be that as it may,
or not necessary for us to examine the merit
us otherwise of the submissions raised before
particularly in view of the course we propose to
pass be adopt and the orders we intend to
thereupon.

We feel it to be in the interest of justice
that the interim order passed by the High Court
should be amended and certain further directions
be issued to ensure smooth commencement of the
academic year 2011-12. Therefore, we direct as
follows:

the (a) The academic scheme in force for
VI Academic Year 2010-11 for Standards I and
shall continue to be in force in all respects for
the Academic Year 2011-12 as well.

other (b) Which text books and to what extent the
amended syllabus will be applicable to
courses shall be finally determined by the High
Court keeping in view the amended provisions of
the Act and its impact.

a (c) We hereby direct the State to appoint
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appoint, primarily to the examine ways and means
of implementing the 'uniform education system' to
the classes (II to V and VII to X) in question,
common syllabus and the books which are to be
provided for the purpose.

(d) This Committee shall also examine the

objections which are raised to the books already published or any part thereof. The Committee shall place its recommendations before the High Court within a period of three weeks from today.

(e) It is agreed before us that this Committee shall comprise of two State representatives (experts in school education); two representatives from the NCERT; two Academicians (expert in the field of School Education; Secretary (Education), State of Tamil Nadu; Director of School Education, Tamil Nadu and the Committee shall be presided over by the Chief Secretary of the State.

We further direct that this Committee shall endeavour its best to complete the proceedings within three weeks from today and place its final or interim report (if proceedings thereof are not completed) before the High Court to enable the High Court to deal with the matter expeditiously and finally.

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Counter affidavit, if any, be filed within two weeks from today by the petitioners before us (respondents in the writ petitions) with an advance copy to the other side who may file their rejoinder thereto within one week thereafter. The matter shall be placed before the Division Bench to which the matter is assigned by Hon'ble Chief Justice of the High Court for day to day hearing and its conclusion in accordance with law.

Let this order be brought to the notice of Hon'ble the Chief Justice of Madras High Court by

the Registrar of this Court forth with.

The appeals are finally disposed of.
interim order passed by this Court would continue
in force unless modified by the High Court.
Registry shall communicate this order to NCERT
and the State Government
Secretary for its proper implementation.

The

The

.....J
[DR.B.S. CHAUHAN]

.....J
[SWATANTER KUMAR]

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NEW DELHI
JUNE 14, 2011.