

Madras High Court

Ka. Kalaikottuthayam vs The State Of Tamil Nadu on 8 June, 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 8-6-2010

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.11168 of 2010

M.P.Nos.1 to 3 of 2010

Ka. Kalaikottuthayam ... Petitioner

Vs.

1. The State of Tamil Nadu,
rep.by its Secretary,
Education Department,
Chennai.

2. The Director of Matriculation Schools Education,
DPI Compound,
College Road,
Chennai 34.

3. The Principal,
Don Bosco Matriculation Hr.Sec.School,
13, Casa Major Road,
Egmore,
Chennai 8.

... Respondents

The prayer in the writ petition is to issue a writ of certiorari calling for the records
For Petitioner :

Mr.Sankara Subbu
for Mr.M.Pari

For Respondents 1 & 2 : Mr.G.Sankaran,

Special Government Pleader
Mrs.E.Renganayagi,
Government Advocate

For 3rd Respondent : Mrs.Narmatha Sampath

O R D E R

This writ petition is filed by the father of one minor Tamil Prabhakara Uthayam, who studied 6th standard during 2009-2010 in the third respondent Private Minority Matriculation School. As the son of the petitioner was held up in the 6th standard in the results published by the third respondent School on 6.5.2010, petitioner has filed this writ petition.

2. It is the case of the petitioner that his son joined in the third respondent School at Kinder Garden level and continued his studies upto 5th standard and on completion of 5th standard, he was admitted to the 6th standard with Admission No.13117 and Roll No.47. It is averred in the affidavit in support of the writ petition that the petitioner belongs to socially and educationally backward class, having disadvantage in social and cultural base.

3. Certain allegations are made against the third respondent School by the petitioner in the affidavit filed in support of the writ petition and the said allegations are specifically denied by the third respondent in the counter affidavit. Therefore, for deciding the issues involved in this writ petition, the said allegations and the reply stated in the counter affidavit are not necessarily to be stated in this order.

4. The main ground raised in this writ petition is that after the enactment of the Right of Children to Free and Compulsory Education Act, 2009 (Central Act 35 of 2009) (hereinafter called 'the Act'), the respondents cannot hold back a student, who studied in 6th standard as the student is within the age group of 6 to 14 years and right to education upto the age of 14 years having been declared as a fundamental right under Article 21A of the Constitution of India and to effectively enforce the said fundamental right, the Central Government/Parliament having enacted Act 35 of 2009, there is a prohibition to hold back a child below 14 years of age who are studying upto standard 8th and the action of the third respondent in holding back the petitioner's son in 7th standard by not allowing to attend the classes in 6th standard is not only in violation of the petitioner's minor son's fundamental right to free and compulsory education but also a statutory right conferred under the Central Act 35 of 2009. On the above said grounds this writ petition is filed to quash the order of the third respondent ordering holding back the petitioner's son in the 6th standard.

5. The writ petition was posted for admission on 26.5.2010. As the academic year 2010-2011 is to commence from 1.6.2010, the learned Special Government Pleader (Education) was directed to take notice on behalf of respondents 1 and 2 and the learned counsel for the petitioner was directed to serve papers to the learned counsel generally appearing for the third respondent School and adjourned the case to 27.5.2010. On 27.5.2010, the learned Special Government Pleader (Education) and the learned counsel for the third respondent School requested time to produce the records in the next vacation Court and consequently the case was adjourned for arguments on 2.6.2010. On 2.6.2010, the third respondent School filed counter affidavit, signed by the Principal of the third respondent School on 30.5.2010. The third respondent also filed a typed set of papers in support of

his contention.

6. In the counter affidavit filed by the third respondent, the allegations made in the affidavit filed in support of the writ petition against the third respondent School management have been specifically denied, for which no reply affidavit is filed by the petitioner. As far as the holding back of the son of the petitioner in the 6th standard is concerned it is stated that upto 5th standard there was no examination and the School was automatically promoting all the students, including the son of the petitioner. Petitioner's son was poor in his performance in the 6th standard and the petitioner was informed about the same. Petitioner's son failed to attend the special classes and did not improve his standards. In the annual examinations conducted in March, 2010, petitioner's son scored very low marks in all the subjects, i.e, he could score only 105 marks in all the subjects out of 1000 marks. It is also stated in the counter affidavit that the second respondent issued common instructions to all the schools, including matriculation management schools, to follow certain procedures while giving promotion to the students of standards 6, 7, 8 and 11 and it is also stated in the said proceedings that the schools should follow certain procedures and only after getting approval from the District Educational Officer/Inspector of Matriculation Schools/Inspector of Anglo Indian Schools, promotion of students can be given to the students of standards 6,7,8 and 9 and with regard to the 11th standard students, approval has to be obtained from the Chief Educational Officer. It is also stated in the said proceedings that for 11th standard the percentage of pass should be above 85%. In the counter affidavit it is further stated that the students who have failed upto three subjects, would be permitted to take up an instant examination on 7.6.2010 and the petitioner's son having failed in all the subjects, he cannot appear for the instant examination and therefore there is no scope for promoting the petitioner's son to 7th standard and therefore holding back the petitioner's son in the 6th standard is just and proper.

7. Mr.Sankara Subbu, learned counsel appearing for the petitioner submitted that after the enactment of the Central Act 35 of 2009, which came into force from 1.4.2010, the respondents are not justified in any manner to hold back a student in 6th standard or in any one of the standards from standards 1 to 8 as there is a prohibition under Section 13 of the Act. The learned counsel further submitted that even discontinued students within the age group of 6 to 14 are to be admitted in the nearby school in a standard according to their age as per Section 4 of the Act. The learned counsel further added that the Act having been made applicable to the State of Tamil Nadu and the third respondent school being coming within the definition of Section 2(n)(iv) of the Act, the action of the third respondent in holding back the petitioner's son in 6th standard is illegal. The learned counsel further submitted that the action of the department in issuing the circular dated 5.4.2010 in giving direction to follow certain norms to give promotion to the students of standards 6, 7 and 8 being contrary to the provisions of Central Act 35 of 2009, the said action of the department has to be declared as invalid and the consequential order passed by the third respondent holding back the petitioner's son in 6th standard is liable to be set aside and the petitioner's son is entitled to get automatic admission in 7th standard, as there is no provision for conducting any examination or to hold back any student in standards 1 to 8. The learned counsel for the petitioner also submitted that if the management is in any way reluctant to continue the son of the petitioner in the third respondent School, the petitioner is willing to apply for transfer certificate, if his son is given promotion order promoting him from 6th standard to 7th standard.

8. In answer to the said submissions, Mrs.Narmadha Sampath, learned counsel appearing for the third respondent School submitted that the management is willing to give such certificates, provided the competent authority of the Education Department approve the said promotion. The learned counsel further submitted that in the light of the proceedings issued by the department as stated supra, the petitioner is not entitled to get promotion order as the department may not act contrary to the circular issued on 5.4.2010.

9. The said submission made by the learned counsel for the petitioner as well as the learned counsel for the third respondent are recorded. In the light of the above undisputed fact this Court has to necessarily consider the issue on merits.

10. The learned counsel for the third respondent submitted that the third respondent is bound to follow the instructions issued by the department while giving promotion to all the candidates including the petitioner's son and he having failed in all the subjects scoring very low marks, cannot be promoted to 7th standard and consequently the third respondent held back the petitioner's son in 6th standard.

11. The learned Government Advocate (Education) appearing for the respondents 1 and 2 submitted that the department is entitled to follow certain uniform norms for maintaining excellence of education and therefore a circular was issued and the same was followed for promoting students of standards 6, 7 and 8 and therefore there is no illegality in the said proceedings and in the consequential order passed by the third respondent, holding back the petitioner's son in 6th standard.

12. I have considered the rival submissions made by the learned counsel for the petitioner, learned Special Government Pleader and the learned counsel for the third respondent School.

13. The issues to be decided in this writ petition are,

(i) Whether the students in Standards 6 to 8 can be held back without admitting them in higher standards, who are aged below 14 years of age, after the enactment of the Central Act 35 of 2009, which was implemented from 1.4.2010 ?

(ii) Whether the petitioner's son can be held back in 6th standard by the third respondent by relying upon the circular dated 5.4.2010 issued by the Department ?

(iii) To what relief the petitioner is entitled to ?

14. The facts in this case are not in dispute. Admittedly the petitioner's son is a student of third respondent school from Kinder Garden level and he was admitted to the 6th standard after passing 5th standard in the academic year 2009-2010 with admission No.13117 and Roll No.47 in Section 'A'. It is not in dispute that the third respondent School is a reputed School maintaining excellence of education. The third respondent School is an unaided Christian Religious Minority Matriculation School, granted recognition by the second respondent under the Code of Matriculation.

15. The Parliament amended the Constitution of India by inserting Article 21A by Amendment No.86 on 12th December, 2002 by Amendment Act, 2002, on the basis of the law declared by the Honourable Supreme Court in the decision reported in (1993) 1 SCC 645 (J.P.Unnikrishnan v. State of Andhra Pradesh), holding that the right to education upto the age of 14 is a fundamental right to every citizen under Article 21 of the Constitution of India. Pursuant to the said amendment made in the year 2002, the children upto the age of 14 are guaranteed to get free and compulsory education. However, the said right is not given effect to fully. Hence the Government of India and the Parliament thought fit to introduce a Bill called "The Right of Children to Free and Compulsory Education Bill, 2008", which seeks to provide the following,

(a) that every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards;

(b) 'compulsory education' casts an obligation on the appropriate Government to provide and ensure admission, attendance and completion of elementary education;

(c) 'free education' means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education;

(d) the duties and responsibilities of the appropriate Governments, local authorities, parents, schools and teachers in providing free and compulsory education; and

(e) a system for protection of the right of children and a decentralized grievance redressal mechanism.

The said legislation was introduced with the object to honour the values of equality, social justice and democracy and creation of just and humane society. In the objects and reasons it is stated that it is enacted to maintain and promote the quality of children from disadvantaged and weaker sections also and it is not merely the responsibility of the schools run or supported by the appropriate Government, but also of schools which are not depending on Government funds (unaided schools). The Bill was passed by both the Houses of Parliament and enacted as an Act called 'The Right of Children to Free and Compulsory Education Act, 2009' (Central Act 35 of 2009). The Presidential assent was given to the said Act on 26.9.2009 and the Act came into force from 1.4.2010, pursuant to the notification issued by the Government of India.

16. In Section 1(2) of the Act it is stated that the Act shall extend to the whole of India, except the state of Jammu and Kashmir. Thus the applicability of the Act to the State of Tamil Nadu is not in dispute. For proper appreciation, the relevant provisions of the Act are extracted hereunder. In section 2(c) 'child' is defined as follows:

"Section 2(c) "child" means a male or female child of the age of six to fourteen years"

Section 2(d) defines child belonging to disadvantaged group, which reads thus, "Section 2(d) "child belonging to disadvantaged group" means a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification."

Section 2(f) defines 'elementary education' thus, "Section 2(f) "elementary education" means the education from first class to eighth class"

Elementary education is explained as classes 1 to 8. On perusal of the definition of child it is clear that children within the age group of 6 to 14 are entitled to get free and compulsory education in schools. Section 2(n) defines schools, which reads as follows:

"Section 2(n) "School" means any recognised school imparting elementary education and includes-

- (i) a school established, owned or controlled by the appropriate Government or a local authority;
- (ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;
- (iii) a school belonging to specified category; and
- (iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority."

As per Section 2(n)(iv) unaided schools not receiving any kind of aid or grant is also included within the definition of Schools. Therefore there is no difficulty in applying the said act and provisions to the third respondent unaided school. Section 3(1) reads as follows, "Section 3. Right of child to free and compulsory education.- (1) Every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education."

Section 4 states special provision for children not admitted to or who have not completed elementary education, which reads as follows, "Section 4. Special provisions for children not admitted to, or who have not completed, elementary education.- Where a child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age:

Provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time-limits, as may be prescribed:

Provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years."

Section 8 deals with "Duties of appropriate Government". 'Appropriate Government' in this case is the Government of Tamil Nadu. Section 8(c) gives protection to child belonging to weaker sections and the child belonging to disadvantaged group from discrimination, which reads as follows;

"Section 8(c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds."

Section 8(f) ensures admission, attendance and completion of education by every child which reads as follows:

"Section 8(f) ensure and monitor admission, attendance and completion of elementary education by every child."

Section 10 deals with "Duty of parents and guardians", which reads as follows:

"Section 10. Duty of parents and guardian. It shall be the duty of every parent or guardian to admit or cause to be admitted his or her child or ward, as the case may be, to an elementary education in the neighbourhood school."

Section 11 states that children above the age of 3 years shall be given all facilities to undergo free pre-education within the age of 3 to 6 by the appropriate Government. Section 13 prohibits collection of capitation fee and screening test, which reads as follows, "Section 13. No capitation fee and screening procedure for admission. (1) No school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parents or guardian to any screening procedure.

(2) Any school or person, if in contravention of the provisions of sub-section (1),-

(a) receives capitation fee, shall be punishable with fine which may extend to ten times the capitation fee charged;

(b) subjects a child to screening procedure, shall be punishable with fine which may extend to twenty-five thousand rupees for the first contravention and fifty thousand rupees for each subsequent contraventions."

Section 15 prohibits denial of admission to a child at the commencement of the academic year, which reads as follows:

"Section 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.

Section 16 prohibits holding back and expulsion of a child, which reads as follows, "Section 16. Prohibition of holding back and expulsion.- No child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education."

Section 17 prohibits punishment and mental harassment to child which reads as follows:

"Section 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.

Section 19 mandates compliance of norms and standards specified in the schedule by all recognised schools. Existing schools are granted time to fulfil the standards within three years from the date of commencement of the act as per Section 19(2). Section 30 deals with examination and completion certificate which reads as follows:

"Section 30. Examination and completion certificate.- (1) No child shall be required to pass any Board examination till completion of elementary education.

(2) Every child completing his elementary education shall be awarded a certificate, in such form and in such manner, as may be prescribed."

Section 38 enables the appropriate government to make rules for carrying out the provisions of the Act. Admittedly the State of Tamil Nadu has not framed any rule in accordance with Section 38 of the Act after implementing the said Act from 1.4.2010 till date. It is well settled that any rule or notification can be issued for the purpose of carrying out the provisions of the Act and no rule or notification can be issued contrary to the Act. The said issue is already well settled as per the judgment of the Supreme Court reported in (2008) 4 SCC 171 (Dhananjay Malik v. State of Uttaranjal) and (2008) 14 SCC 336 (Sandur Micro Circuits Ltd. v. Commissioner of Central Excise, Belgaum).

17. The contention of the third respondent School that the Education Department gave direction to follow the circular dated 5.4.2009 to promote the students of standards 6, 7 and 8 cannot be countenanced in view of the fact that the Central Act 35 of 2009 clearly prohibits screening of admission under section 13. Further Section 16 prohibits holding back of any student in elementary classes, i.e., from standards 1 to 8. Section 17 prohibits mental harassment of child below 14 years of age by any means. Failing a student in 6th standard will cause mental harassment to him. Section 30 prohibits passing any Board examinations till the completion of elementary education. Further, Section 4 of the Act contemplates admission of students in any school even if the child has not completed the course in the lower class and give a positive direction to Schools to admit the child in

a standard as per the age of the child. Thus, it is evident that Act 35 of 2009 is not only prohibitory in nature in failing/holding back any student upto 8th standard, who are aged upto 14 years of age and not to deny admission to any child upto 8th standard in any standard appropriate to the age of the child.

18. The contention of the third respondent that his writ petition is not maintainable against a minority unaided School, cannot be sustained. The third respondent School is discharging public duty by administering an educational institution/School. The petitioner has filed this writ petition to enforce the fundamental and statutory rights of his son, who is a child as defined in Act 35 of 2009. In the decision reported in AIR 1981 SC 487 (Ajay Hasia v. Khalid Mujib) the Honourable Supreme Court held that a writ is maintainable against a private School/Institution in the matter of education, i.e., admission of students.

19. The Act 35 of 2009 came into force from 1.4.2010. When the Central Act has been enacted for a particular issue the State Act hitherto applied shall be treated as repugnant insofar as it violates the Central enactment as held by the Judgments of the Supreme Court reported in (1996) 3 SCC 15 (Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust v. State of Tamil Nadu), (2000) 5 SCC 231 (Jaya Gokul Educational Trust v. Commissioniонер and Secretary to Government, Higher Education Department), which followed the judgment of the Supreme Court reported in (1995) 4 SCC 104 (State of Tamil Nadu v. Adhiyaman Educational & Research Institute). The said Judgments were followed by the Division Bench of this Court in the decision reported in (2005) 3 MLJ 97 (N.Priyadarshini v. The Secretary to Government, Education Department, Chennai) while challenge was made when the State of Tamil Nadu abolished the entrance examination for admission to professional courses during 2005-2006.

20. The circular/direction issued by the Education Department cannot be justified either under Rule 30 of the Tamil Nadu Education Rules for Government and Aided schools; Article 15 of the Code of Regulations for Matriculation Schools in Tamil Nadu for Matriculation Schools; and Article 48 of the Code of Regulations for Anglo Indian Schools, or any other provisions of the above said Rule or Code, as the same are contrary to the positive and prohibitory provision contained in Act 35 of 2009. Further all those rules and articles contained in the code are administrative instructions, having no statutory force.

(a) In (1996) 3 SCC 15 (Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust v. State of Tamil Nadu) the Supreme Court held that the State cannot rely upon the Dr.M.G.R.Medical University, Tamil Nadu (Amendment and Validation) Act, 1989 in the light of Section 10-A of the Indian Medical Council Act, 1956 while establishing a new Medical College. The Supreme Court further held that now the field regarding setting up of new medical colleges is concerned is occupied by the Central Act and hence the State Act to that extent is invalid in view of Article 254 of the Constitution.

(b) In (2000) 5 SCC 231 (Jaya Gokul Educational Trust v. Commissioner and Secretary to Government Higher Education Department) the Supreme Court held that on the enactment of the Central Act, namely AICTE Act, 1987, the provisions of the State law if repugnant to the provisions

of the Central Act would stand impliedly repealed to the extent of repugnancy and such repugnancy would have to be adjudged on the basis of the tests which are applied for adjudging repugnancy under Article 254 of the Constitution.

(c) In (1995) 4 SCC 104 (State of Tamil Nadu v. Adhiyaman Educational and Research Institute) the Supreme Court held the same view.

(d) The Division Bench of this Court in the decision reported in 2005 WLR 368 (Bharathidasan University, etc. v. Dhanalakshmi Srinivasan, Educational and Charitable Trust, etc.) held that the Central Act will prevail over the Private Colleges Regulation Act, 1976 and the University Act enacted by the State of Tamil Nadu, while granting recognition to B.Ed Colleges under the NCTE Act, 1993.

21. Insofar as the higher education is concerned, the State can prescribe higher marks than the one prescribed by the Central agency namely NCTE, AICTE and MCI and the same is settled as per the judgment of the Supreme Court reported in (2004) 4 SCC 513 (State of Tamil Nadu v. S.V.Bratheep). Insofar as the elementary education is concerned, the same having been declared as a fundamental right upto the age of 14 by insertion of Article 21A of the Constitution of India in the year 2002 and the statutory protection given under Act 35 of 2009, which came into force from 1.4.2010, the students upto the age of 14 are entitled to exercise the said fundamental right as well as the statutory rights conferred on them by the Constitution of India as well as the Right of Children to Free and Compulsory Education Act, 2009. It is also settled proposition of law that even a candidate who has successfully completed 10th standard Board examinations cannot be denied admission for a particular group in the same school in XI standard on the ground that he has not scored the cut-off marks for admission to the particular group. The said issue was considered by the Supreme Court in the decision reported in (1995) 5 SCC 512 (Principal Cambridge School v. Payal Gupta) and the supreme Court in paragraphs 5 to 10 held that prescription of certain percentage of marks for admission to a particular group in XI standard of the students, who passed out in 10th standard in the same school is unsustainable and no one can be denied of admission in the XI standard on the ground that he has not secured the cut-off marks for admission to a particular group in XI standard. The said Judgment was followed by the Division Bench of this Court in the decision reported in (2007) 4 MLJ 400 (D.Aravinth v. State of Tamil Nadu) which is also approved by the Supreme Court in the decision reported in (2009) 1 SCC 794 (Principal Kendriya Vidyalaya v. Saurabh Chaudhary).

22. Section 30 of Act 35 of 2009 is also taken note of by the Division Bench of this Court in the decision reported in 2010 WLR 401 (Krishnagiri District Private Schools Association v. The State of Tamil Nadu & Another) while considering the validity of Uniform System of School Education Act, 2010 (Tamil Nadu Act 8 of 2010). In the said judgment the Division Bench of this Court in paragraph 55(iv) struck down Section 3(2)(b) of the State Act as the same is in contravention of Section 30(1) of the Central Act. Section 3(2)(b) of the State Act enables the authorities to follow the norms for conducting examinations. The said Act of the State is made applicable from the academic year 2010-2011 in the light of the implementation of Act 35 of 2009 with effect from 1.4.2010.

23. Thus, there is a statutory prohibition for failing a student and retaining in the same standard for any reason, including the reason that the student has scored very low marks in the examinations conducted, either in the class examinations or in Term examinations including final examinations. When the Central Act prohibits holding back of any child in any class in the age group of 6 to 14, who will normally be undergoing classes in standards 1 to 8 as per the definition mentioned above, I am of the view that the first respondent Department or any other officer is not competent to issue any norms for giving promotion to students of standards 1 to 8, as the promotion to higher class is automatic. Even though the conduct of examination is not prohibited under Section 16, getting pass marks in number of subjects is not required for giving promotion to higher class. The object behind the said provisions is that no student should leave the school within the age group of 6 to 14 for any reason, i.e., due to non-payment of fee, not passing the examination, etc. When right to education upto the age of 14 is guaranteed as a fundamental right under Article 21A of the Constitution of India, and right to free and compulsory education also has now been declared as a statutory right apart from fundamental right as per Act 35 of 2009 with effect from 1.4.2010, as rightly contended by the learned counsel for the petitioner the department cannot issue any circular giving direction to the third respondent or any other school authority to give promotion by fixing any norms to students of standards 1 to 8.

24. In fine, it is ordered that the action of the department in issuing circular dated 5.4.2010 which is admittedly after coming into force of the Central Act 35 of 2009 with effect from 1.4.2010 is clearly illegal and the same is declared as invalid. The third respondent following the circular only took the impugned decision of holding back the son of the petitioner in 6th standard due to scoring of low marks in the annual examination. When the circular dated 5.4.2010 is declared as invalid and the petitioner's son having established his right to get admission in 7th standard in terms of sections 4, 16 and 30 of the Act, which prohibits holding back of any student in the same class, the action of the third respondent in holding back the petitioner's son in 6th standard without promoting him to the 7th standard is also illegal.

25. On the basis of the above finding and in the light of Article 21A of the Constitution of India as well as the provisions contained in Act 35 of 2009, the impugned order is set aside and the respondents are directed to promote/admit the son of the petitioner in 7th standard in the third respondent school forthwith. As the learned counsel for the petitioner during the course of the arguments submitted that the petitioner is willing to apply for Transfer Certificate and the learned counsel for the third respondent school also expressed her willingness to issue Transfer Certificate, it is open to the petitioner to apply for the Transfer Certificate and get admitted his son in 7th standard in any other school of his choice. It is made clear that as Section 15 of the Act prohibits expulsion of a child from the School, the third respondent cannot issue Transfer Certificate compulsorily, without any request made by the petitioner. If Transfer Certificate is to be issued to the petitioner's son by the third respondent on the voluntary request made by the petitioner, the third respondent is directed to issue Transfer Certificate stating that the son of the petitioner, namely Tamil Prabhakara Udayam is promoted to 7th standard.

The writ petition is allowed with the above directions and observations. No costs. Connected miscellaneous petitions are closed.

Index : Yes/No.

Internet : Yes/No.

8-6-2010

Note: Issue copy today itself (8.6.2010)

vr

To

1. The Secretary, Education Department, Chennai.
2. The Director of Matriculation Schools Education,
DPI Compound, College Road, Chennai 34.

N. PAUL VASANTHAKUMAR, J.

Vr

Pre-Delivery Order in

W.P.No.11168 of 2010

8-6-2010

