

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (C) NO. 95 OF 2010

Society for Un-aided Private Schools
of Rajasthan

... Petitioner(s)

versus

U.O.I. & Anr.

... Respondent(s)

with Writ Petition (C) Nos: 98/2010, 126/2010, 137/2010,
228/2010, 269/2010, 310/2010, 364/2010, 384/2010,
21/2011, 22/2011, 24/2011, 47/2011, 50/2011, 59/2011,
83/2011, 86/2011, 88/2011, 99/2011, 101/2011,
102/2011, 104/2011, 115/2011, 118/2011, 126/2011,
148/2011, 154/2011, 176/2011, 186/2011, 205/2011,
238/11 and 239/11.

JUDGMENT

S. H. KAPADIA, CJI

JUDGMENT

1. We have had the benefit of carefully considering the erudite judgment delivered by our esteemed and learned Brother Radhakrishnan, J. Regretfully, we find ourselves in the unenviable position of having to disagree with the views expressed therein concerning the non-applicability of the Right of Children to Free and Compulsory Education Act, 2009 (for short "the 2009 Act") to the unaided non-minority

21A. Applying the above tests, we hold that the 2009 Act is constitutionally valid qua aided minority schools.

Conclusion (according to majority):

20. Accordingly, we hold that the Right of Children to Free and Compulsory Education Act, 2009 is constitutionally valid and shall apply to the following:

- (i) a school established, owned or controlled by the appropriate Government or a local authority;
- (ii) an aided school including aided minority school(s) 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 non-minority school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.

However, the said 2009 Act and in particular Sections 12(1) (c) and 18(3) infringes the fundamental freedom guaranteed to unaided minority schools under Article 30(1) and, consequently, applying the R.M.D. Chamarbaugwalla v.

Union of India [1957 SCR 930] principle of severability, the said 2009 Act shall not apply to such schools.

21. This judgment will operate from today. In other words, this will apply from the academic year 2012-13. However, admissions given by unaided minority schools prior to the pronouncement of this judgment shall not be reopened.

22. Subject to what is stated above, the writ petitions are disposed of with no order as to costs.

.....CJI
(S. H. Kapadia)

.....J.
(Swatanter Kumar)

New Delhi;
April 12, 2012

JUDGMENT