

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION Nos.22712,11024,14297 of 2021, WP.No. 20667 of 2020, WP.Nos.4370, 22287, 23609,19343 & 11004 of 2021

COMMON ORDER:

These writ petitions are filed questioning the G.O.Ms.No.19, Social Welfare (SW.EDN) Department, dated 27.08.2021, whereby and whereunder the existing scheme under the name and style 'Best Available School' (for short, 'BAS') is sought to be discontinued with retrospective effect except to the students of only 9th and 10th classes, with a view to merge the same under 'Nadu Nedu' Programme proposed by the Government, as violative of Article 14 of the Constitution of India. In these writ petitions similar and identical facts and legal issues have been raised. The cause of action is also one and the same, hence all these writ petitions are disposed of by this common order.

2. The W.P.No.22712 of 2021 is taken as a lead case, the petitioner No.1 claims to be the registered association working for the upliftment and welfare of the downtrodden poor people and their children. The petitioner Nos.2 to 4 are the parents of some of the children, whose children were selected under the best available scheme and studying in private unaided schools selected for admissions of the students under best available school scheme (BAS). The petitioners filed these writ petitions being aggrieved by the G.O.Ms.No.19, Social Welfare (SW.EDN) Department, dated 27.08.2021.

3. The brief facts of the case are that the Government of Andhra Pradesh has taken various steps to provide educational facilities to the

downtrodden people, especially for the students belong to the scheduled castes and scheduled tribes. In furtherance of the objective of the 1st respondent - Government, it started residential schools and colleges to impart good education to children belongs to down trodden community of the society and established A.P Residential Educational Society and initially started one school for each district with attached hostels in the year 1970 itself and later A.P Social Welfare Residential Institutions were started exclusively for the students belonged to the scheduled castes, scheduled tribes and backward classes and the schools are run by the A.P social welfare educational society to provide good education to the meritorious students. The admissions of the students to the said institutions are by selection of meritorious students for the upliftment of the down trodden people.

4. The 1st respondent/Government had issued G.O.Ms.No.95 dated 04.10.1995, according sanction to the scheme of pre-metric scholarships to the Scheduled Caste bright students by selecting schools and public schools subject to the guidelines issued in respect of the scheme. The Commissioner had also ratified the said scheme as the scheme was implemented in the districts during the years 1993-1994 and 1994-1995.

5. The 1st respondent/Government had issued G.O.Ms.No.101, dated 31.05.2008 reviewing the best available school scheme (BAS) sanction of pre-metric scholarship to the scheduled caste and scheduled tribes students studying in the best available schools and guidelines were issued for operation of the best available schools. The object of the BAS scheme is to sanction scholarships to the selected scheduled caste students admitted in class V & VIII of the best available schools. The revival of the

scheme is for providing 100 percent quality education in the district itself to the down trodden students, particularly in the rural areas, as best institutions in the district are selected for that purpose. The Government Order also provides the allocation of seats as - 15 percent reserved for scheduled castes in a single institution out of which 33 percent of seats will be for female students; the number of seats allotted under the best available schools for SC/ST put together in a school should not exceed 35 percent of the total seats in the school or in any class therein and out of allotted students to each school not less than 33 percent seats shall be reserved for female students and any vacancies arisen due to drop out of students should be filled up only with the approval of the district level committee by following the procedure of merit etc. For implementation of the scheme, two level committees were formed, one is district level committee and the other is state level committee consisting as follows;

A. District Level Committee:

1. Collector, as Chairman
2. Joint Director/Deputy Director (SW) as Member Convener
3. District Educational Officer as Member
4. Convener Principal, A.P.S.W. Residential Schools Society at District Level as Member.

B. State Level Committee:

1. Commissioner/ Director, Social Welfare, as Chairman
2. Commissioner/Director, Tribal Welfare, as Member
3. Commissioner/Director, School Education, as Member
4. Commissioner/Director of B.C. Welfare, as Member
5. Secretary, APSWREIS as Convenor.

The selection of the best available schools is based on the following criteria:

Selection of Best Available Schools:-

- a. The school should be a reputed educational institution in the district having high standards of education with high reputation for disciplines and other extra curricular and co-curricular activities. It may be a public school or missionary school or residential or any other school with best quality education.
- b. The school should have been recognized by the District Educational Officer/Director of School Education. It should have a Managing Committee.
- c. The school should have registered more than 90 percent passes and at least 50 percent first class in 7th & 10th class examination continuously in the preceding five years.
- d. The school, preferably, which has residential facility and provide boarding and lodging facilities to SC students without discrimination in any manner between SCs and non SCs with regard to food, residence, class rooms accommodation etc.,
- e. The school should have adequate no. of qualified teacher as per the pattern prescribed by the education department CBSE and at least 50 % of the teaching staff should be permanent staff working in the institution for more than three years.
- f. At least 50 % of the SC students admitted in earlier years under Best Available Schools Scheme and have passed first class in 7th and 10th public examinations.
- g. The proposal for selection of a school on the above criteria shall be considered by the District Level Committee and on finding it suitable for selection, forward it to the State Level Committee along with its recommendation and necessary information about the school and hostel building.
- h. The State Level Committee will be competent to issue the selection orders, which will be valid for 3 years. While doing so, the State Level Selection Committee will consider the recommendation of the District Level Committee but arrive at its own conclusion, not necessarily in accordance with the recommendation of the District Level Committee.
- i. After the expiry of the period of three years, the continuation of the school under this scheme will be reviewed in the same manner as any new proposal. The first continuation will be granted by the District Level Committee and the second and subsequent continuation will be granted by the state level committee.
- j. The District Level Committee/ State Level Committee shall invariably get the school inspected before considering the proposal for recognition /renewal and before annual review of performance.

And the guidelines for selection of students are as under:

VI (A) Selection of Students :

- a. The selection of the students for VIII class shall be on the basis of VII class marks and by conducting test. A common test shall be conducted for admission to V class in the district which will be of class IV standard.
- b. 50% of seats may be allotted to the children of Agricultural Labourers and those from families of first generation literacy.

Rest of the 50 % seat may allotted to

- (i) Orphan children @ 20 %
- (ii) Jogin Children @ 15 %
- (iii) Children of Bonded Labourers @ 15 %.

If sufficient number of children is not available in any category, the same may be converted to other categories during that year only.

- c. The application for scholarship shall be made on plain paper as per the format given at Annexure.
- d. Only one child from one family shall be eligible for admission.
- e. The annual income of the family should not exceed Rs.18000/- per annum.
- f. The admission of students under Best Available School Scheme is restricted only to the district to which the applicant originally belongs.
- g. If a student selected by a Committee is found at a subsequent date having furnished wrong information, regarding caste & income then he or she will be disqualified and debarred from the school forthwith. Apart from prosecution of the parent/guardian the amount spent on the student will be recovered from the parents and an undertaken shall be obtained from him to this effect.
- h. Adoption deeds shall not be considered, if the natural parent/parents of the candidate are alive.

VI (B) The allotment of institution to the selected students shall be made as per the preference indicated by the parents/guardians, basing on merit and availability of seats in the institution.

(C): Transfer of the student from one school to another within the district shall not be permitted. However, the request of the parents, in exceptional cases, the District Level Committee will be competent to permit if there is no extra financial commitment involved and if proper justification exists. Where extra financial commitment is involved, it shall be done only after the approval of CSW.

VII. Sanction of Scholarship:

1. Sanction of scholarships to the students under this scheme shall be as follows:

(a) The amount of scholarship payable for a student will be decided by District Level Committee. However, scholarship shall not exceed Rs.20,000/- per annum in any case. The scholarship rate fixed by District Level Committee is to be informed to Commissioner of Social Welfare.

(b) The amount of scholarship will include the charges payable towards boarding & lodging, tuition, extra-curricular activities, uniform, text books, note books, etc.

(c) The amount of scholarship payable in case of a student selected under the scheme shall not be more than that charged by the school to non SC students.

(d) Text books, Note Books, Uniforms and other equipment shall be supplied by the Joint Director (SW) / Deputy Director (SW) of the District after obtaining a requisition from the school. The expenditure incurred by the JD/DD (SW) on such items will be deducted from the Scholarship amount payable to the Best Available School. It should be ensured that the SC student get the benefits on par with non-SC students of the school so that they do not feel discriminated.

(e) The scholarship will be sanctioned on an year to year basis till the student completes X class.

(2) Failure in the examination or detention in any class or securing of less than 60% marks in the annual examination will render the student ineligible for scholarship in the next year (except in case of prolonged ill-health) or any other circumstances beyond his control. A register shall be maintained by the DD (SW) to watch the results of the students.

(3) In case of shortage in attendance due to prolonged illness (duly certified by a medical officer), the District Collector may allow to continue him in the same class, provided the parent/guardian agrees to meet the expenses. The student becomes eligible for continuation of scholarship from the subsequent year on fulfilling the conditions.

(4) The scholarship amount is payable to the institution in three equal instalments. The 1st instalment shall be paid soon after the schools re open i.e. after admission. The second and third instalments shall be paid after 3 months duly verifying bonafides of student and that he has put in 75% attendance, facilities provided by the school etc.

(5) Unutilised portion of the boarding charges paid in advance as first subsequent instalments shall be refunded, by the school in case the student drops out prematurely or indulges in long absenteeism.

(6) The District Collector will be competent to accord the sanction of expenditure from the relevant budget head of Social Welfare Department.

(7) Scholarships shall be drawn and paid by the Joint Director (SW) / DD (SW) of the district duly following the guidelines prescribed and for any breach of these guidelines (governing sanction and disbursement) both the JD (SW) / DD (SW) and the institution shall be held responsible.

VIII. Monitoring and Supervision:

For effective monitoring and supervision of this scheme, the following procedure prescribed is to be follows:

(a) Monthly attendance particulars of students shall be obtained by the JD(SW)/DD(SW) of the district and a register shall be maintained at JD's/DD's office to watch the attendance of the students. (b) The JD / DD (SW) shall visit the schools once in two months every year to ascertain the progress of the students and facilities provided.

A register shall be maintained by the JD/DD to watch the results of the students in Annual / Public examinations. The JD/DD (SW) shall also monitor further studies taken up by the students. Copy of the annual report with names and performance (ranking in the (d)(c)class) shall be obtained by the JD/DD (SW) In respect of every student and they are to be produced before audit and inspecting authority.

(e) Any other requisite formats for reporting and maintenance of register in due course prescribed by the Commissioner of Social Welfare have to be maintained by the JD/DD (SW).

2. The Commissioner of Social Welfare, A.P., Hyderabad is directed to take necessary action accordingly.

6. The 1st respondent/Government had issued G.O.Ms.No.22 dated 21.03.2017 enhancing the seats under best available scheme in residential category and non residential category from the academic year 2017-2018. The 1st respondent had issued G.O.Ms. No.22, dated 21.03.2017 reviewing the earlier GO's and enhanced the number of seats under Best Available Scheme @ 50 % in the residential category and 100 seats in the non-residential category in each district (i.e., 650 seats in total in BAS (Residential) and 1300 seats in total in BAS (non residential) in the state from the academic year 2017-2018.

7. The 1st respondent Government is committed to its object of providing quality education to SC & ST students both within and outside Government education system, so that the gaps in educational development and attainment are bridged in the alignment with the mandate given in the Andhra Pradesh Scheduled Castes Sub-Plan and Tribal Sub-Plan (Planning, Allocation and Utilisation of Financial

Resources) Act, 2013. When the scheme is in operation, the Director, Social Welfare Department, Tadepally, Government of Andhra Pradesh issued instructions through memo dated 28.09.2020 discontinuing the scheme for the students studying from 3rd to 8th classes from the academic year 2020-2021 and continuing the same to the existing students of 9th & 10th classes during 2020-2021 academic year in the Best Available School Scheme. The scheme will be continued only for these two classes so that they can complete 10th class without problem in transition to the other Government schools at the last stage of the school education.

8. The Government have changed the policy to strengthen the Government Schools/institutions in terms of the schemes of 'Naadu-Nedu', 'Jagannanna Vidya Kanuka kits', in addition the government is sanctioning benefits to the mothers of eligible students under the scheme of 'Ammavodi'.

9. The existing students studying in 3rd to 8th classes under Best Available Schools Scheme may be admitted in (i) Government Residential Schools, subject to availability of vacancies (ii) Government Hostels (iii) Government Schools, as they are being modernized under 'Naadu-Nedu' scheme with all required infrastructural facilities and the students are being given Jagannanna Vidya Kanuka kits and the parents of the students were counselled to send their children to the above Government Schools at the earliest. But, the above said memo of the 28.09.2020 was challenged in W.P.No.18749 of 2020, this court granted *Status-quo* with regard to the continuation of the students under the BAS scheme. Thereafter, the said writ petition was allowed to withdraw in

view of the issuance of the impugned G.O.Ms.No.19, dated 27.08.2021 and with a liberty to challenge the same.

10. The 1st respondent/Government issued the impugned G.O.Ms.No.19, dated 27.08.2021, discontinuing the BAS scheme for SC/ST students with effect from the academic year 2020-2021 with the following instructions;

- (a) The existing students studying in 9th and 10th classes shall be continued in the existing schools till they complete-the-10th class education, as they are in the final stages of their high school education. Their scholarships/fees will be sanctioned by the government as per the existing scheme guidelines.
- (b) The students of the remaining classes shall be shifted to the existing government run residential schools in the respective districts.
- (c) Wherever vacancies in the residential schools do not accommodate all the existing students of BAS scheme for 2021-22. Then the remaining students shall be admitted in the available government non-residential schools, which are developed under Naadu-Nedu and the students be admitted in the nearby welfare hostels for accommodation and boarding, as per the choice of the parents.
- (d) Those students who want to continue in the same private school in classes 3rd to 8th can do so and their parents can pay the fees on their own. substantially using the Amma Vodi grant being released to the mothers. As per their capability. In case of hostellers of the scheme, they can opt to shift to the nearby government run welfare hostels and continue as day-scholars in the private schools. if they desired so. Government will, however, not sanction scholarships/fees additionally under the scheme to such children continuing in the private schools from 2021-22.

11. The impugned G.O.Ms.No.19, dated 27.08.2021 also provides option to the students studying in the 9th & 10th classes to continue in the existing schools till they complete their 10th class education. The students of the remaining classes shall be shifted to the Government run residential schools in the respective districts. Being aggrieved by the discontinuation of the BAS scheme to the students studying in 3rd to 8th classes, these writ petitions are filed raising various factual and legal issues, which affects

the students who are studying in the 3rd to 8th classes during the academic year started from April, 2021 and physical classes will commence from July-August, admissions will commence from June-July and G.O issued on 27.08.2021 withdrawing the benefits given to the students of 3rd to 8th classes who were already selected and admitted in the schools would be affected on the ground that the withdrawing the scheme from the academic year 2021-2022 amounts to withdrawal of the students from the BAS scheme retrospectively from the academic year 2021-2022. The students, who were already admitted in pursuance of the above said G.O have accrued rights to continue in the BAS scheme, the students as they were selected and opted for the schools and admitted in the schools, the benefit give to the SC/ST students and the parents have given option to admit their children under the BAS scheme. The parents are under the impression that their wards will be continued their education under the scheme till completion of 10th class.

12. The parents admitted their wards in the classes 3rd to 10th leaving other best options to admit their children in various residential government schools and other schools functioning under the Central Government schemes like Navodaya Schools, Sainik Schools as the preference has given to the rural agricultural based families.

13. Sri M. Vijay Kumar, the learned counsel appearing for the petitioners submits that in view of the *Status-Quo* granted in W.P.No. 18749 of 2020, the students continued for the academic year 2020 & 2021. Subsequently, the writ petition was withdrawn as the memo dated 28.09.2020 was challenged mainly contending that the Director has no authority to issue the memo to discontinue the BAS scheme issued under

G.O.Ms. No.101, dated 31.05.2008 exercising the power under the provisions of Article 162 of the Constitution of India.

14. During the pendency of the writ petition, inspite of *Status-quo* order in the writ petition, the 1st respondent/Government have issued the impugned G.O.Ms.No.19, dated 27.08.2021, discontinuing the BAS scheme from the academic year 2021-2022, while continuing the 9th & 10th classes students to complete their 10th class under the BAS scheme. Whereas, the same benefit of the scheme is denied to the 3rd to 8th classes students, who were already admitted and continuing under the BAS scheme. The students studying under the BAS scheme, their only fee is around Rs.20,000/- - Rs. 30,000/- which include charges, towards boarding, lodging as well as school fees. The counter also further states that in the academic year 2021 there are 26,285 students studying in classes 3rd to 10th under the scheme out of which 5,448 students studying in 9th & 10th classes during the academic year 2020-2021. The balance of 20837 students are studying in 3rd to 8th classes during the academic year 2020-2021 and out of them 8398 students already got admitted in the Government Residential /Non Residential School of their choice during the academic year 2020-2021. But for the academic year 2020-2021 the number of seats available to the 3rd to 10th classes in various Government residential schools are not spelt out and fresh admissions will be given only to the 5th class and 7th class students.

15. The drop outs of the students are very meagre and the total seats available in the residential schools in the state in particular refers to the districts and very few seats are available in the residential schools run by the Andhra Pradesh residential schools and Andhra Pradesh Social

Welfare residential schools society. All the students of 3rd to 8th class studying under BAS scheme may not get admission in those residential schools. Asking them to join in Government schools, non-residential and by staying in social welfare hostels where no proper facilities are available in the social welfare hostels attached to the government schools is not justified. The total pass percentage of the 10th class is about 48.89 percent only in Government Schools and there is a vast difference in pass percent in government schools and social welfare residential schools and private schools. The pass percentage reflects the infrastructure provided in the schools. In private educational institutions the 10th pass percentage is about 87.79% and 61.11 % in various residential schools and pass percentage is 52.49% in government schools. The pass percentage in Government Schools reflects the standard of education imparting in the government schools. Hence, the parents opted for best education under the best available scheme for their children and admitted their wards in the best available schools for residential and non-residential to give best education to their wards. At this juncture withdrawing the best available scheme benefits to their wards and asking their wards to join in residential/non residential schools run by state government, certainly amount to deprive their wards good education and causes hardship to the parents of the students whose wards are studying under the best available schools scheme.

16. Discontinuing the BAS scheme for the 3rd and 8th class students from the academic year 2021-2022 and allowing only 9th & 10th classes students to continue under the scheme is arbitrary, illegal and colourable exercise of power. Categorizing the students 3rd to 8th classes as one group and 9th and 10th classes as another group and continuing the 7scheme

benefits to the 9th and 10th classes only depriving the same to the 3rd to 8th classes certainly amounts to arbitrary classification of students studying under BAS scheme into two separate groups, is hit by the provisions of the Article 14 of Constitution of India and there is no reasonable classification and the nexus of the object sought to be achieved. By this unreasonable classification, the students studying in the 3rd to 8th classes under the BAS scheme will be deprived of their right to continue their education under the BAS scheme till completion of their 10th class, as the parents had given up their all other available options under various schemes in the residential schools, Army schools and Navodaya schools and withdrawing benefits under the best available scheme is illegal and arbitrary and violative of the provisions of the Article 14 of the Constitution of India. Hence, the impugned G.O.No.19, dated 27.08.2021 is liable to be set aside.

17. Per contra, Sri P. Sudhakar Reddy, learned Additional Advocate General appearing for the respondents submits that in view of the various schemes introduced by the 1st respondent /Government to provide good education to the downtrodden especially to the students belong to the SC/ST communities. The government has improved the existing building and infrastructure by introducing 'Nadu-Nedu' scheme under which all the students in Government schools given kits consisting of text books, note books, work books, three pairs of uniforms, one pair of shoes, two pairs of socks, belt and school bag. Under 'Nadu-Nedu' scheme the infrastructure is upgraded in the schools to the satisfaction and the need to continue the students to study in the best available school does not exist. The parents of students could also avail 'Ammavodi' scheme, where

under Rs.10,000/- is provided to the mother of the kid to give good education to the child.

18. In view of the same, the Government have taken a policy decision to withdraw the existing best available scheme in private schools and ordered to discontinue the students studying in 3rd to 8th classes from the academic year 2021-2022. It is a policy decision of the Government and this court could not interfere in the policy decision of the state government. In support of his contention, he relied on the following decisions;

(A) BALCO EMPLOYEES UNION (REGD) VERSUS UNION OF INDIA AND OTHERS reported in (2002) 2 SCC 333 wherein it was held that: In the case of a policy decision on economic matters, the courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgement of the experts who may have arrived at a conclusion unless the court is satisfied that there is illegality in the decision itself ...(Para 98)

B) RUSTOM CAVASJEE COOPER VERSUS UNION OF INDIA reported in (1970) 1 SCC 248 wherein it was held: "It is again not for this court to consider the relative merits of the different political theories or economic policies. This court has the power to strike down a law on the ground of want of authority, but the court will not sit in appeal over the policy of parliament in enacting a law."

C) NARMADA BACHAO ANDOLAN VERSUS UNION OF INDIA AND OTHERS Reported in (2000) 10 SCC 664 wherein it was held: "It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy making process and the courts are ill

equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the constitution." (Para 229).

D) small Scale Industrial Manufactures Association (Regd.) Versus Union of India and others (2021) SCC SC 246 wherein it was held: Relying upon the decision of this Court in the case of Peerless General Finance and Investment Co. Ltd. v. RBI. (1992) 2SCC 343, it is submitted that as observed by this Court the function of the Court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is further observed that the Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. (Para 31,37 & 38).

E) BAJAJ HINDUSTAN LIMITED VERSUS SIR SHADILAL ENTERPRISES LIMITED AND ANOTHER (2011) SCC 640 wherein it was held: Decisions requiring technical, commercial or expert knowledge - Courts, not being experts in said fields, cannot interfere with wisdom of policy framed by legislature or executive. (Paras 21 and 35 to 39). Courts can invalidate an executive policy only when it is clearly violative of some provisions of the statute or Constitution or is shockingly arbitrary but not otherwise. (Paras 45 and 46).

19. There is no dispute with regard to settled legal position in the above cases. In my considered opinion, the above referred decisions are not helpful to the 1st respondent's case. The fact situation of the case on hand is totally different.

20. That, while discontinuing the best available scheme, the students of 9th & 10th classes are allowed to continue till completion of their 10th class.

Whereas, the students of 3rd to 8th classes are shifted to the vacant available seats in the residential schools and government schools and hostels, but the statistical figures in respect of the vacant available seats in residential schools run by the government and Government schools are not forthcoming to shift and accommodate the students of 3rd to 8th classes studying in various private unaided educational institutions available under best available school scheme. There is mismatch of the seats and students, it is very difficult to the parents to shift their wards to the Government School having opted for the best available scheme.

21. The further contention of the learned Additional Advocate General is that the petitioner No.1 registered association has no *locus-standi* to file this writ petition challenging the government policy issued in GOMs.No.19, dated 27.08.2021. The petitioner Nos. 2 to 4 have not stated how the rights of the petitioners affected by discontinuing the scheme. Hence, the writ petition is liable to be dismissed. The said contention is unsustainable, as the 1st petitioner's association is registered to protect the rights of the people belonging to the SC & ST communities and petitioners 2 to 4 are parents of the students admitted under BAS, whose vested rights are affected by the impugned action of the 1st respondent Government.

22. Having carefully considered the facts and circumstances of the case and perused the record, this court found that the 1st respondent /Government with abode objective of providing quality education to the SC/ST students for their overall development under various schemes by providing pre-metric scholarship to the students belonging to the SC/ST communities and also started AP Residential schools and AP Social

Welfare Schools to provide quality education to the downtrodden students. The Government also issued GOMs.No.95, dated 04.10.1995, GOMs.70, dated 01.08.2001, GOMs. 101, dated 31.05.2008, GOMs. 145, dated 18.07.2008, GOMs.No. 52, dated 23.05.2014 to provide best education to them.

23. The 1st respondent/Government through GOMs.No.109, dated 31.05.2008 issued guidelines and formed the District Welfare Committee, State Welfare Committee and through GOMs.No.22, dated 21.03.2021 comprehensive guidelines were issued for selection and admission of the students from the academic year 2017-2018. The number of seats under the best available schemes were enhanced by 50 percent in the residential category and 100 seats in non residential category in each district and the total seats made available in the State is 650 seats in Best Available Schools (residential) and 1300 seats in Best Available Schools (non residential) in the state and the 15 percent of the seats reserved for SC candidates in a single institution and out of which 33 percent is provided for the girl students. The number of seats allotted under the BAS scheme for the SC/ST put together shall not exceed 35 percent of the total strength of students in the school and any class therein. Any vacant seats due to dropout shall be filled up only with the approval of the District Level Committee by following the procedure of merit, out of which 50 percent of the seats can be allotted to the children of agricultural labourer and those from families of first generation literacy. Rest of 50 percent will be allotted to (a) Orphan Children @ 20 percent (b) Jogin Children @ 15 percent and (c) Children of Bonded Labourers @ 15 percent and allotment of the seats will also be subject to annual income of the parents of the students. However, the scholarships amount should not exceed

Rs.20,000/- per annum per student as fixed by the district level committee for the non residential students and Rs. 30,000/- to the residential students as fixed by the District Committee with reference to the BAS scheme.

24. Now the 1st respondent Government have changed the scheme to strengthen the government schools for the benefit of children studying in those schools from the poorer sections of the society by issuing the impugned G.O while continuing the 9th & 10th class students who are covered by BAS scheme till completion of the 10th class and the said benefit is denied to the 3rd to 8th class students under the BAS scheme. The classification of the students under the BAS, into two groups, the students studying in 3rd to 8th classes as one group and the students studying in 9th and 10th class as another group but continuing BAS scheme for the 9th and 10th class students and denying the same to the 3rd to 8th class students is arbitrary and illegal and violative of provisions of Article 14 of the Constitution of India.

25. The best available scheme is withdrawn under the guise of providing good education facilities in the Government School and hostel facility provided to the SC/ST students under the 'nadu'nedu' scheme. While withdrawing the BAS scheme by classifying the students in two groups (1) the students studying in 9th & 10th classes and continuing them to complete their 10th class and (2) another group of students studying in 3rd to 8th class for them discontinuation of the scheme, retrospectively is arbitrary and suffers from unreasonableness. There is no intelligible differentia with the object sought to be achieved and it is violative of provisions of Article 14 of the Constitution of India, even though, it is

policy decision of the 1st respondent Government, when it is suffers from arbitrariness it is liable to be set aside.

26. The 1st respondent Government have issued the impugned GOMs.No.19 dated 27.08.2019 discontinuing the BAS from the academic year 2020-2021. When the academic year 2021-2022 has already started from the month of July/August, 2021 and students are already admitted and continuing their study and their vested right to continue their study under the BAS scheme should not be deprived by the impugned G.O. The retrospective operation of the G.O is arbitrary and illegal. The students studying in 3rd to 8th classes under BAS scheme are entitled to continue their studies under the best available scheme along with students studying in the 9th & 10th classes till completion of their 10th class as their parents were opted for the BAS scheme for their wards education leaving other options of admitting their wards in Navodaya School or Sainik School as the students have been selected and admitted in the school under BAS scheme based on their merit and economic criteria to provide quality education to the downtrodden people under BAS scheme. The most socially, economically backward sections of the society and farmer community in rural areas and orphans in the society provided best education under the BAS. In the considered opinion of this Court, the withdrawal of the scheme under the guise of better infrastructure provided in the government schools is arbitrary. The infrastructure available in the Government schools and seats and accommodation and instructing staff is not in commensurate with the population increase and mismatch of the demand and supply, for providing good education to the downtrodden people and the education alone gives impetus to downtrodden children to develop, it is better to continue the BAS scheme, and in view of its

avowed objective as per the guidelines issued in GOMs.No.101, with appropriate amendments of the guidelines. The total withdrawal of the scheme is not in the interest of the students belonging to the SC/ST communities and backward communities and discontinuance of the BAS scheme retrospectively would cause irreparable loss and injury to the students already selected and admitted under the BAS scheme, from the academic year 2020-2021, is found to be illegal and arbitrary. The students studying in the 3rd to 8th classes under the scheme have vested right to continue under the scheme till completion of their 10th class.

27. In view of the above discussion, the writ petitions are allowed setting aside the G.O.Ms.No.19, Social Welfare (SW.EDN) Department, dated 27.08.2021 in so far as discontinuing the scheme benefits to the students studying in 3rd to 8th classes under the BAS scheme from the academic year 2020-2021 and the respondents are directed to continue the students studying in the 3rd to 8th classes under the BAS scheme till completion of their 10th class as per the provisions of the BAS scheme.

28. Accordingly, these writ petitions are allowed. However, no order as to costs.

As a sequel, miscellaneous applications, pending, if any, shall also stand closed.

JUSTICE M.GANGA RAO

29th July, 2022

P K R

THE HON'BLE SRI JUSTICE M.GANGA RAO

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WRIT PETITION Nos.22712,11024,14297 of 2021, WP.No. 20667 of
2020, WP.Nos.4370, 22287, 23609,19343 & 11004 of 2021

29th July, 2022

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