[2025] 9 S.C.R. 410 : 2025 INSC 1063

Anjuman Ishaat-E-Taleem Trust
v.
The State of Maharashtra and Others

(Civil Appeal No. 1385 of 2025)

01 September 2025

[Dipankar Dutta* and Manmohan, JJ.]

Issue for Consideration

1) Whether the State can insist that a teacher seeking appointment in a minority educational institution must qualify the Teacher Eligibility Test (TET); If so, whether providing such a qualification would affect any of the rights of the minority institutions guaranteed under the Constitution of India; and 2) Whether teachers appointed much prior to issuance of Notification dated 29th July, 2011 by the National Council for Teacher Education (NCTE) u/s.23(1) of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) read with the newly inserted proviso (second proviso) in s.23(2) and having years of teaching experience (25 to 30 years) are required to qualify in the TET for being considered eligible for promotion.

Headnotes†

Right of Children to Free and Compulsory Education Act, 2009 – s.23 – Teacher Eligibility Test (TET) – Whether mandatory:

Held: Obtaining the TET qualification under the RTE Act is mandatory – Consequence of not obtaining such qualification flowing from the scheme of the RTE Act is that the in-service teachers would cease to have any right to continue in service. [Para 200]

Right of Children to Free and Compulsory Education Act, 2009 – s.2(n) – Applicability of Teacher Eligibility Test (TET) to In-Service Teachers – Directions issued under Article 142 of the Constitution:

Held: The provisions of the RTE Act have to be complied with by all schools as defined in Section 2(n) of the RTE Act except the schools established and administered by the minority – Whether religious or linguistic – Till such time the reference is decided and subject to the answers to the questions formulated by this Court – Logically, in-service teachers (irrespective of the length of their

* Author

service) would also be required to qualify the TET to continue in service – However, there are in-service teachers who were recruited much prior to the advent of the RTE Act and have been imparting education to their students to the best of their ability without any serious complaint – To dislodge such teachers from service on the ground that they have not qualified the TET would seem to be a bit harsh although operation of a statute can never be seen as an evil – Bearing in mind their predicament, directions issued by invoking Art.142 of the Constitution that teachers having less than five years' service left, as on date, may continue in service till they attain the age of superannuation without qualifying the TET – However, if any such teacher (having less than five years' service left) aspires for promotion, he will not be considered eligible without having qualified the TET – Insofar as in-service teachers recruited prior to enactment of the RTE Act and having more than 5 years to retire on superannuation are concerned, they shall be under an obligation to qualify the TET within 2 years from date in order to continue in service – If any of such teachers fail to qualify the TET within that time, they shall have to quit service – They may be compulsorily retired; and paid whatever terminal benefits they are entitled to – To qualify for the terminal benefits, such teachers must have put in the qualifying period of service, in accordance with the rules – If any teacher has not put in the qualifying service and there is some deficiency, his/her case may be considered by the appropriate department in the Government upon a representation being made by him/her – Those aspiring for appointment and those in-service teachers aspiring for appointment by promotion must, however, qualify the TET; or else, they would have no right of consideration of their candidature. [Paras 214-217]

Constitution of India – Article 30 – Right of Children to Free and Compulsory Education Act, 2009 – s.12(1)(c) – Constitution Bench decision in *Pramati Educational and Cultural Trust*, exempting minority educational institutions, whether aided or unaided, falling under clause (1) of Article 30 of the Constitution, from purview of entirety of the RTE Act – Correctness of – Doubted:

Held: 1. In the wake of *Pramati Educational and Cultural Trust*, minority status seems to have become a vehicle for circumventing the mandate of the RTE Act – It has opened up a situation whereby multiple institutions have sought to acquire minority status to

become autonomous – It has also opened the door for potential misuse – Exemption of even aided minority institutions from the framework of the RTE Act has further encouraged the proliferation of minority-tagged schools not necessarily for the preservation of language, script, or culture, but to circumvent statutory obligations – This has distorted the spirit of Article 30(1), which was never intended to create enclaves of privilege at the cost of national developmental goals – The ruling in *Pramati Educational and Cultural Trust* strikes at the heart of good quality universal elementary education and its consequences are far-reaching – A reconsideration of *Pramati Educational and Cultural Trust* seems unavoidable – The minority status of an institution must be grounded in a genuine commitment to serve its community, and not merely operate as a vehicle for evading constitutional duties – If the object of Article 30 is to protect identity, then compliance with the RTE Act, insofar as it does not annihilate that identity, ought not to be viewed as an encroachment – The Court in *Pramati Educational and Cultural Trust* focused on s.12(1)(c) of the RTE Act and no other section and held the entirety of the RTE Act to be inapplicable to an entire section of society – Thereby, such section, so to say, has been totally excluded from the idea and notion of nation building by providing education to children at the grassroot level – Even if one were to accept that s.12(1)(c) violated Article 30, the same could have been read down by including at least the children of the particular minority community who also belong to weaker section and disadvantaged group in the neighbourhood – To hold that the entirety of the RTE Act is inapplicable is not reasonable and proportionate – *Pramati Educational and Cultural Trust*, ruling that RTE Act would not apply to minority institutions, in effect would offend the Article 21A right of students admitted in such institutions – They would stand denied of the various statutory entitlements and benefits that the RTE Act affords to all children between 6 and 14 years of age. [Paras 131, 132, 185, 187, 188]

2. It is doubtful as to whether *Pramati Educational and Cultural Trust* [insofar as it exempts the application of the RTE Act to minority schools, whether aided or unaided, falling under clause (1) of Article 30 of the Constitution] has been correctly decided – A coordinate Bench in *Ashwini Thanappan v. Director of Education* after recording the submission of counsel for the petitioner of *Pramati Educational and Cultural Trust* being inconsistent with the decision in *P.A. Inamdar* and requires further examination, directed

the Registry to place the matter before the Hon'ble the Chief Justice of India – The reference is yet to be answered – Hon'ble the Chief Justice of India to consider the desirability as to whether the following issues, namely, **a.** Whether the judgment in *Pramati Educational and Cultural Trust* exempting minority educational institutions, whether aided or unaided, falling under clause (1) of Article 30 of the Constitution, from the purview of the entirety of the RTE Act does require re-consideration?; **b.** Whether the RTE Act infringes the rights of minorities, religious or linguistic, guaranteed under Article 30(1) of the Constitution? And, assuming that s.12(1)(c) of the RTE Act suffers from the vice of encroaching upon minority rights protected by Article 30 of the Constitution, whether s.12(1)(c) should have been read down to include children of the particular minority community who also belong to weaker section and disadvantaged group in the neighbourhood, to save it from being declared ultra vires such minority rights?; **c.** What is the effect of non-consideration of Article 29(2) of the Constitution in the context of the declaration made in *Pramati Educational and Cultural Trust* that the RTE Act would not be applicable to aided minority educational institutions? and **d.** Whether, in the absence of any discussion in *Pramati Educational and Cultural Trust* regarding unconstitutionality of the other provisions of the RTE Act, except s.12(1)(c), the entirety of the enactment should have been declared ultra vires minority rights protected by Article 30 of the Constitution?, or such other issues as may be deemed relevant, do warrant reference to a larger Bench. [Paras 208-210]

Constitution of India – Article 21A – Constitutional goal of Universal Elementary Education and Common Schooling System:

Held: It is only in furtherance of its commitment to universal elementary education that Parliament enacted the Constitution (Eighty-sixth Amendment) Act, 2002, introducing Article 21A and elevating the right to free and compulsory education for all children aged between 6 and 14 years to the status of a fundamental right – Under the RTE Act, focus is on elementary education which is the foundational building block of a child's journey of learning, rather than tertiary or higher education – Elementary education could count as the most crucial stage in the education cycle – Universal elementary education and a common schooling system aim to uphold a shared curriculum and uniform quality standards across

both government and private schools, ensuring that every child receives an equal foundation, regardless of where they study – Without universal access, education becomes a privilege rather than a right, accentuating existing inequalities and denying children from disadvantaged backgrounds the opportunity to break the cycle of poverty – When every child receives the same minimum standard of elementary education, society moves closer to genuine substantial equality, where one's start in life does not dictate his/her future potential – Moreover, universal elementary education is the bedrock of a healthy democracy and an empowered citizenry – Countries that have succeeded in achieving universal primary education have consistently demonstrated higher levels of social mobility, public health, and national cohesion – This vision is clearly embedded in the RTE Act – s.29 mandates that the curriculum and evaluation process for elementary education must be prescribed by an academic authority notified by the appropriate government – The curriculum is to reflect constitutional values and focus on the holistic development of the child-promoting creativity, physical and mental growth, learning through play and exploration, instruction in the child's mother tongue where possible, and a stress-free, inclusive learning environment with continuous assessment – Article 21A, which guarantees the right to free and compulsory education for all children aged 6 to 14, inherently includes the right to universal elementary education – Education that reaches every child, regardless of background – It also embraces the idea of a common schooling system, where children from diverse socio-economic and cultural groups learn together in shared spaces. [Paras 93, 95, 98, 99]

Constitution of India – Whether Article 30(1) envisages blanket immunity from all forms of regulation to minority institutions:

Held: Article 30(1) has never been construed as conferring blanket immunity on minority institutions from all forms of regulation – With respect to unaided minority institutions, the interpretation of Article 30 must be guided by its underlying purpose of preserving the cultural, linguistic, and educational identity of minority communities and promoting their welfare – The mere admission of a "sprinkling of outsiders" neither defeats the purpose of Article 30 nor does it dilute or alter the minority character of such institutions. [Para 143]

Constitution of India – Does the Regulatory framework under the RTE Act, flowing from Article 21A, classify as a reasonable

restriction under Article 19(6) – Right of Children to Free and Compulsory Education Act, 2009:

Held: In a constitutional framework that is animated by the values of justice, equality, fraternity and dignity, commercial freedoms under Article 19(1)(g) must yield where they conflict with the fulfilment of Fundamental Rights particularly those of children – RTE Act is the legislative expression of a fundamental right under Article 21A – Its regulatory mandate, therefore, acquires constitutional legitimacy through Article 21A, and by extension, Article 21 – When tested against the standard of reasonableness under Article 19(6), the regulatory measures imposed by the RTE Act are not only not arbitrary, they are necessary, imperative and proportionate, and in furtherance of the larger constitutional goal and vision of Article 21A – While the autonomy of minority institutions must be protected, it is not beyond the reach of reasonable regulation in the interest of maintaining educational standards and achieving constitutional goals – Rights under Article 30(1), not being absolute, cannot be claimed to the complete exclusion of Article 21A – The former cannot be construed as overriding the mandate of the latter – Article 30(1), which guarantees minorities the right to establish and administer educational institutions of their choice, is undoubtedly a vital part of the constitutional promise to preserve linguistic and religious diversity – However, this right, like all others under Part III, is not absolute – It must be read in harmony with other Fundamental Rights and constitutional goals – When minority institutions engage in the act of imparting education, particularly elementary education, they necessarily operate within a shared constitutional ecosystem – To argue that Article 30(1) grants the minority institutions immunity from all statutory frameworks aimed at securing the right to education under Article 21A or that there can be no restrictions imposed under Article 19(6) would be to prioritize one right over another, thereby undermining the right to education under Article 21A. [Paras 146, 149, 151]

Constitution of India – Article 21A – Quality of education is inherent in the right to education – Teachers' role in imparting quality education – Discussed:

Held: While reflecting on free and compulsory education, one cannot be oblivious of the need for quality education to be imparted to children aged between 6 and 14 years – Compromising the quality

of a teacher would necessarily compromise quality of education, and is a direct threat to the right of children to quality education which is a necessary concomitant of the right guaranteed by Article 21A – This, in turn, would render the entire object and purpose of the RTE Act meaningless – In the sphere of primary education, a qualified teacher, at the very least, would be an assurance of quality education – Quality of education is, therefore, inherent in the right to education under Article 21A. [Para 163]

Constitution of India – No inherent conflict between Article 30 and 21A:

Held: Both Article 21A and Article 30(1) occupy high constitutional position and must be interpreted harmoniously by complementing each other – There is no inherent conflict between Article 21A and Article 30(1). [Para 171]

Minority institution – Applicability of Right of Children to Free and Compulsory Education Act, 2009 – Discussed:

Held: The minority status of an institution must be grounded in a genuine commitment to serve its community, and not merely operate as a vehicle for evading constitutional duties – If the object of Article 30 of the Constitution is to protect identity, then compliance with the RTE Act, insofar as it does not annihilate that identity, ought not to be viewed as an encroachment. [Para 185]

Service Law – Appointment and Recruitment – Meaning of the terms:

Held: The term 'appointment' means not only initial appointment but also covers appointment by 'promotion', among others – Appointment and recruitment are two distinct but not unrelated concepts – Recruitment is the broader process of which selection is a part that culminates in an appointment – Recruitment can be carried out from various sources, which are broadly classified into internal and external sources – Internal sources would comprise individuals who are already employed within the organization – This would include an appointment by promotion or transfer – External sources, on the other hand, consist of individuals who are not currently in the service of the recruiting organization – Direct recruitment is an appointment from external sources or from open market, so to say. [Paras 194, 196]

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Constitution of India – Judicial discipline – Precedents – Article 141:

Held: The law declared by the Supreme Court binds all courts which would include itself too – Nonetheless Supreme Court possess a unique authority, unlike the high courts and the subordinate courts, to re-examine legal principles laid down by previous Benches – Such re-examination, however, cannot obviously be resorted to except for compelling reasons – Two judges Supreme Court Bench can merely doubt the view expressed by a larger Bench; not differ and depart from such view of a larger Bench. [Paras 123, 207]

Judicial Pronouncement – True impact and legacy – Principle:

Held: The true impact and legacy of a judicial pronouncement lies not merely in the precision of its reasoning, but by whether it stands the test of time; whether, years after its pronouncement, it continues to respond meaningfully to the problem it set out to address and serve the ends of justice or has failed to do so – The test of such a decision is whether it has alleviated or aggravated the practical challenges it sought to remedy and lived realities it endeavoured to shape. [Para 132]

Service Law – No difference as such between qualification and eligibility. [Para 205]

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SCR 603 : (2005) 6 SCC 537; *Ashoka Kumar Thakur v. Union of India* **[2008] 4 SCR 1 : (2008) 6 SCC 1;** *State of Kerala v. N.M. Thomas* **[1976] 1 SCR 906 : (1976) 2 SCC 310;** *Kesavananda Bharati v. State of Kerala* **[1973] Supp. 1 SCR 1 : (1973) 4 SCC 225;** *CSIR v. KGS Bhat* **(1989) 4 SCC 635;** *T.R. Kapur v. State of Haryana* **[1987] 1 SCR 584 : (1986) Supp. SC 584;** *Secy., Malankara Syrian Catholic College v. T. Jose* **[2006] Supp. 9 SCR 644 : (2007) 1 SCC 386;** *Brahmo Samaj Education Society & Ors. v. State of West Bengal* **[2004] Supp. 2 SCR 214 : (2004) 6 SCC 224;** *Sindhi Education Society v. Chief Secretary Govt. of Delhi* **[2010] 8 SCR 81 : (2010) 8 SCC 49;** *Chandana Das (Malkar) v. State of West Bengal* **[2014] 13 SCR 796 : (2015) 12 SCC 140;** *Committee of Management, Vasanta College for Women v. Tribhuwan Nath Tripathi* **[1996] Supp. 9 SCR 56 : (1997) 2 SCC 560;** *Food Corpn. of India v. Bhanu Lodh* **[2005] 2 SCR 350 : (2005) 3 SCC 618;** *Union of India v. Pushpa Rani* **[2008] 11 SCR 440 : (2008) 9 SCC 242;** *Hardev Singh v. Union of India* **(2011) 10 SCC 121;** *J. Ranga Swamy v. Govt. of Andhra Pradesh* **(1990) 1 SCC 288;** *Union of India v. Krishna Kumar* **[2019] 1 SCR 982 : (2019) 4 SCC 319;** *Zee Telefilms v Union of India* **[2005] 1 SCR 913 : (2005) 4 SCC 649;** *B. Shama Rao v. Union Territory of Pondicherry* **[1967] 2 SCR 650 : AIR 1967 SC 1480;** *State of Orissa v. Sudhanshu Sekhar Misra* **[1968] 2 SCR 154;** *Director of Settlements, Andhra Pradesh v. M.R. Appa Rao* **[2002] 2 SCR 661 : (2002) 4 SCC 638;** *Dalbir Singh v. State of Punjab* **[1979] 3 SCR 1059 : (1979) 3 SCC 745;** *State of UP v. Synthetics & Chemicals Ltd.* **[1991] 3 SCR 64 : (1991) 4 SCC 139;** *Arnit Das v. State of Bihar* **[2000] Supp. 1 SCR 69 : (2000) 5 SCC 488;** *Madhav Rao Jivaji Rao Scindia v. Union of India* **[1971] 3 SCR 9 : (1971) 1 SCC 85;** *Christian Medical College Vellore Assn. v. Union of India* **[2020] 5 SCR 516 : (2020) 8 SCC 705;** *Mohini Jain v. State of Karnataka* **[1992] 3 SCR 658 : (1992) 3 SCC 666;** *Unni Krishnan, J. P. v. State of Andhra Pradesh* **[1993] 1 SCR 594 : (1993) 1 SCC 645;** *Rev. Sidhrajbhai Sabhai v. State of Gujarat* **[1963] 3 SCR 837;** *N.M. Nageshwaramma v. State of A.P.* **(1986) Supp. 1 SCC 166;** *Andhra Kesari Educational Society v. Director of School Education* **[1988] Supp. 3 SCR 893 : (1989) 1 SCC 392;** *State of Maharashtra v. Vikas Sahebrao Roundale* **[1992] 3 SCR 792 : (1992) 4 SCC 435;** *Chandigarh Administration. v. Rajni Vali (Mrs.)* **[2000] 1 SCR 158 : (2000) 2 SCC 42;** *State of Orissa v. Mamata Mohanty* **[2011] 2 SCR 704 : (2011) 3 SCC 436;** *Bhartiya Seva Samaj Trust v. Yogeshbhai Ambalal Patel* **[2012] 7 SCR 1054 :**

(2012) 9 SCC 310; *Aligarh Muslim University v. Naresh Agarwal* **[2024] 11 SCR 1647 : (2025) 6 SCC 1;** *Ashwini Thanappan v. Director of Education* **(2014) 8 SCC 272 – referred to.**

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List of Keywords

Minority educational institution; National Council for Teacher Education; Teacher Eligibility Test; in-service teachers; Qualification; Recruitment; Appointment; Right to education; *Pramati Educational and Cultural Trust*; Minority status; National developmental goals; Minority schools; *P.A. Inamdar*; *Ashwini Thanappan*; Minority rights; Minority community; Referred to larger bench; Universal elementary education; Common schooling system; Free and compulsory education.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1385 of 2025

From the Judgment and Order dated 12.12.2017 of the High Court of Judicature at Bombay in WP No. 4640 of 2016

With

Civil Appeal No(s). 1386, 1364-1367, 1389, 1404, 1395, 1396-1397, 1405, 1403, 1398, 1406-1408, 1393, 1399, 1391, 1401, 1390, 1409-1410, 6367, 6365, 6366, and 6364 of 2025

Appearances for Parties

Advs. for the Appellant:
S. Nagamuthu, P. Wilson, Shankaran, Ans Nadkarni, K.radhakrishnan, Jaideep Gupta, Sr. Advs., M. P. Parthiban D. Kumanan, Amol Chitale, Sarthak Sharma, Mrs. Pragya Baghel, Apoorv Malhotra, Lokesh Krishna, M/S. Shakil Ahmad Syed, Ms. Asha Gopalan Nair, Ms. Nivedita Nair, Sudarshan Lamba, Sabarish Subramanian, Ms. Jahnavi Taneja, C. Kranthi Kumar, Vishnu Unnikrishnan, Riddi Bose, Ms. Racheeta Chawla, Ms. Sampriti Bakshi, Danish Saifi, Ms. Rishi Agarwal.

Advs. for the Respondents:
R Venkataramani, Attorney General for India, K M Nataraj, A.S.G., Gopal Sankarnarayanan, Ms. Manisha T Karia, K Parameshwar, Nachiketa Joshi, Sr. Advs., A. S. Rajnarayan, Ms. Neelam Singh, Krishan Kant Kumar, Sudarshan Lamba, Vatsal Joshi, Ms. Satvika Thakur, Kanu Agrawal, Raman Yadav, Chitvan Singhal, Kartikay Aggarwal, Abhishek Kumar Pandey, Ms. Ameya Vikrma Thanvi, Oorjaswi Goswani, K. Paari Vendhan, Vishal Sinha, Tushar Srivastava, Shashibhushan P. Adgaonkar, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Ms. Shalini Chandra, Deepin Deepak Sahni, Ms. Ananya Arora, Ms. Shreya Gupta, Ms. Asha Gopalan Nair, Abdulrahiman Tamboli, Rahul Joshi, Mrs. N. Kavitha Rameshwar, A. Rajarajan, Mrs. L. Vasuki Rajarajan, R. Ramachandran, M. Yogesh Kanna, Mohd Parvez Dabas, Uzmi Jameel Husain, Syed Mehdi Imam, Vinamra Kopariha, Yash S. Vijay, Sanjay Kumar Dubey, T. Bhaskar Gowtham, Ms. Shuchi Singh, Vivek Kumar Pandey, Ms. Shivani Mishra, Alabhya Dhamija, Aditya Kashyap, Santosh Kumar, Ayush Anand, Sai Shashank V, Praneet Pranav, Bhaskar Gautam, Dr. G Babu, Mugundhan, Monu Kumar, Dr. Vinod Kumar Tewari, Sandeep Kumar Dwivedi, Bhoopesh Pandey, Jitesh Sharma, Ms.

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Saumya Mishra, Bharat Bhushan Mishra, Ms. Nidhi Jain, Ankit Goel, Rakesh Mishra, Ms. Deepika Kalia, Ms. Vasudha Singh, Ms. Vaishnavi, Ms. Madhumeet Kaur, Sudeep Chandra, Pratyaksh Semwal, Mohnish Nirwan, Ashok Kumar, Vipin Tiwari, Umesh Dubey, Ms. N. Kavitha Rameshwar, A. Rajarajan, Ms. L. Vasuki Rajarajan, R. Ramchandran, Parth Sarathi, Gyanendra Vikram Singh, Ms. Soumya Gulati, Sanjay Kumar Visen, Mrs. Shantha Devi Raman, Garvesh Kabra, Parth Kaushik, Arihant Jain, Ms. Tanisha Gopal, Sameer Shrivastava, Palak Mathur, Ms. Yashika Varshney.

Judgment / Order of the Supreme Court

Judgment

Dipankar Datta, J.

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* Ed. Note: Pagination as per the original Judgment.

I. Introduction

1. These civil appeals challenge judgments/orders of two of the three chartered high courts of the nation delivered/made on multiple proceedings instituted before them. *Inter alia*, questions as regards

applicability of the Teacher Eligibility Test[1] to minority educational institutions and whether qualifying in the TET is a mandatory prerequisite for recruitment of teachers as well as promotion of teachers already in service, were under consideration in such proceedings. In brief, the appellants before this Court are:

a. Minority educational institutions who are aggrieved because they are not being allowed to recruit teachers who have not qualified in the TET;

b. Authorities within the meaning of Article 12 of the Constitution claiming that qualifying the TET is a mandatory requirement for appointment of teachers not only in non-minority but also minority institutions, whether aided or unaided; and

c. Individual teachers, who were appointed prior to the Right of Children to Free and Compulsory Education Act, 2009[2] being enforced, claiming that the TET qualification cannot be made a mandatory requirement for the purposes of their promotion.

2. The present set of appeals raise questions of seminal importance. *Vide* order dated 28th January, 2025 in the erstwhile lead matter, *viz.* Civil Appeal No.1384 of 2025[3], the issues for consideration were framed by us. The said appeal came to be disposed of as withdrawn along with certain other appeals, *vide* order dated 20th February 2025, as the appellant(s) did not wish to pursue the appeals any further; however, the remaining tagged appeals were heard and subsequently reserved for judgment (with the lead matter now being Civil Appeal No. 1385 of 2025).

3. Two broad issues arising for consideration were noted in the order dated 28th January, 2025. The first issue was framed by a coordinate Bench vide order dated 14th February, 2022 in ***B. Annie Packiarani Bai*** (supra) whereas the other was framed by us, upon hearing counsel for the parties who had the occasion to address the Court on 28th January, 2025. The issues, as recast, read as under:

a. Whether the State can insist that a teacher seeking appointment in a minority educational institution must qualify the TET? If

1 TET

2 RTE Act

3 The Director of School Education Chennai 6 & Anr. vs. B. Annie Packiarani Bai

so, whether providing such a qualification would affect any of the rights of the minority institutions guaranteed under the Constitution of India?

and

b. Whether teachers appointed much prior to issuance of Notification No.61-1/2011/NCTE (N & S) dated 29th July, 2011 by the National Council for Teacher Education[4] under sub-section (1) of Section 23 of the RTE Act read with the newly inserted proviso (second proviso) in Section 23(2) and having years of teaching experience (say, 25 to 30 years) are required to qualify in the TET for being considered eligible for promotion?

II. ORDERS PASSED BY THE RESPECTIVE HIGH COURTS, IMPUGNED IN THE APPEALS

4. At the outset, we consider it appropriate to give a brief outline of the judgments/orders under challenge in the present surviving set of appeals.

IMPUGNED JUDGMENT IN THE LEAD APPEAL BEING CIVIL APPEAL NO. 1385 OF 2025 AND CIVIL APPEAL NO. 1386 OF 2025

5. The judgment impugned in the lead appeal is that of the High Court of Judicature at Bombay[5] dated 12th December 2017 on a writ petition[6] instituted by Azad Education Society, Miraj (a minority institution). Under challenge was a Government Resolution dated 23rd August, 2013, by which the TET qualification was made a pre-condition for appointment of teachers in schools imparting primary education by the Government of Maharashtra. The Bombay High Court considered the validity of such resolution and upheld it relying on the decision of this Court in ***Ahmedabad St. Xavier's College Society v. State of Gujarat***[7]. It was held that the impugned Government Resolution did not put any embargo on the right of the minority institutions to appoint teachers of their own choice, if found eligible being a TET qualified candidate. The writ petition, thus, came to be dismissed by

4 NCTE

5 Bombay High Court

6 Writ Petition No. 4640 of 2016

7 (1974) 1 SCC 717

the impugned order. Azad Education Society, Miraj has not preferred any appeal against the said judgment.

6. The appellant, Anjuman Ishaat-e-Taleem Trust (a recognised minority education society), was not a party to the writ petition instituted by Azad Education Society, Miraj before the Bombay High Court. It sought permission to file the special leave petition against the said judgment, which was granted. Its appeal is Civil Appeal No. 1385 of 2025.

7. The same judgment has also been impugned by the appellant, Association of Urdu Education Societies (an association managing minority educational institutions), in Civil Appeal No. 1386 of 2025 in the same manner upon being granted permission to file the special leave petition.

8. It has been argued that this judgment (dated 12th December 2017) failed to consider a judgment of a co-ordinate bench of the Bombay High Court[8] which took a contrary view.

IMPUGNED JUDGMENT IN CIVIL APPEAL NOS. 6365 - 6367 OF 2025

9. The impugned judgment in these civil appeals has been passed by the High Court of Judicature at Madras[9], whereby the writ appeals[10] filed by the appellants therein, i.e., the State of Tamil Nadu and officers in the State's Education Department, came to be dismissed.

10. The writ petitions[11] were filed by the Management of Islamiah Higher Secondary Schools (respondent herein, being a minority institution), challenging the rejection of their proposal for appointment of teachers. The District Educational Officer denied the proposal for appointment observing that surplus/excess staff under the same management must be exhausted fully before making fresh appointments.

11. A Single Judge of the High Court vide order dated 7th December, 2021, allowed the writ petition by setting aside the rejection of the proposal and held that the respondent, as a standalone institution,

8 Judgment dated 8th May, 2015 in W.P. No. 1164 of 2015 (Aurangabad Bench) titled 'Anjuman Ishaat E Taleem Trust, Aurangabad and another v The State of Maharashtra and others'

9 Madras High Court

10 Writ Appeal Nos. 1674, 1678 and 1679 of 2022

11 W.P. Nos. 11855, 11857 & 11862 of 2021

was not bound by the rule of recruiting surplus staff under the same management.

12. The writ appeal against the order of the Single Judge came to be dismissed by a Division Bench of the High Court *vide* judgment and order dated 22nd July, 2022, which is impugned in these appeals by the State of Tamil Nadu and its officers.

13. Interestingly, the argument regarding the TET qualification was not raised before the Madras High Court and is being raised for the first time in the present appeal. The State of Tamil Nadu has contended that the teachers sought to be appointed did not possess the TET qualification and hence, their proposal for appointment should be rejected on that ground alone.

Impugned Order in Civil Appeal Nos. 1364 - 1367 of 2025

14. The common order under challenge in these appeals, dated 1st April 2019, was passed by the Bombay High Court on four writ petitions[12]. Interim relief was granted thereby in favour of the writ petitioners.

15. In 2015, the Bombay Memon's Education Society, a registered minority society, had appointed Shikshan Sevaks/teachers for a school run by it, viz. Shree Ram Welfare Society's High School. In 2018, the Municipal Corporation of Greater Mumbai[13], through its Education Department informed these teachers of the requirement to qualify the TET by 30th March, 2019 and directed the school to terminate the services of those who failed to comply.

16. Challenging these directions, the affected teachers filed the said four writ petitions. The Bombay High Court granted interim stay on the MCGM's directives and also directed that the salaries of the teachers be released. Aggrieved thereby, the MCGM has preferred the present appeals.

Impugned judgment in Civil Appeal Nos. 1389, 1390, 1391, 1393, 1395, 1396, 1397, 1398, 1399, 1401, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410 of 2025

12 Writ Petition Nos. 3951, 4044, 9446 and 9447 of 2016

13 MCGM

17. The common judgment dated 2nd June, 2023 under challenge in these appeals was passed by the Madras High Court in its intra-court writ appeal jurisdiction. Several individual teachers working in minority as well as non-minority schools in Tamil Nadu petitioned the Madras High Court aggrieved by Notification F.No.61-03/20/2010/NCTE/(N&S) dated 23rd August, 2010 issued by the NCTE which laid down minimum qualification for appointment of teachers in classes I to VIII in a school and also made the TET as the minimum qualification. By notification dated 29th July, 2011, certain amendments were made to the first notification, without changing the requirement to qualify the TET. Pursuant to the NCTE notifications, the Government of Tamil Nadu, through its School Education (C2) Department, issued G.O. No.181 making the TET qualification mandatory for the State, to be conducted by the Teachers Recruitment Board (TRB). These notifications along with subsequent others, laying down the procedure for conduct of the TET, were challenged before the Madras High Court.

18. The primary grievance of the petitioners — who had not cleared the TET — was that they were being denied promotion, whilst the teachers who possessed the TET had climbed the promotion ladder and were holding higher posts. The petitioners, having been appointed prior to the notification dated 23rd August, 2010, contended that they were not required to possess the TET qualification either for promotion or for continued service. According to them, the TET could not be treated as a condition precedent for their continuation in service.

19. On the other hand, a separate batch of petitioners had approached the Madras High Court seeking a declaration that a G.O. Ms. No.13 issued by the School Education Department on 30th January, 2020, framing Special Rules for the Tamil Nadu Elementary Education Subordinate Service and restricting the requirement of the TET to direct recruitment, was *ultra vires* the RTE Act and subsequent notifications issued thereunder by the NCTE. It was contended that in-service candidates who did not possess the TET qualification could not be conferred promotion.

20. Several teachers, who had been promoted without possessing the TET qualification, also approached the Madras High Court by way of separate petitions, seeking the grant of annual increments on account of their promotions.

21. Upon extensive analysis of the submissions and considering the relevant law, the Madras High Court held that any teacher appointed as secondary grade teacher or graduate teacher/BT Assistant prior to 29th July, 2011 could continue in service and receive increments and incentives, however, it was mandatory for teachers aspiring for promotion to possess the TET qualification. The Court further held that all appointments made after 29th July, 2011 on the post of Secondary Grade Teacher must be of candidates possessing the TET qualification. Likewise, all appointments on the posts of BT Assistant/Graduate Teacher made after 29th July, 2011 – whether by direct recruitment or by promotion – must also meet the TET requirement.

22. The Special Rules for the Tamil Nadu School Educational Subordinate Service, dated 30th January, 2020, insofar as they prescribed "a pass in Teacher Eligibility Test (TET)" only for direct recruitment and not for promotion were struck down, consequently holding the TET mandatory for appointment even by promotion.

23. As regards the requirement of qualifying the TET for appointment of teachers in minority institutions, the Court referred to the decision of this Court in ***Pramati Educational and Cultural Trust v. Union of India***[14] which held that TET will not apply to minority institutions. It was made clear that the principles laid down in the judgment would not apply to minority institutions (whether aided or unaided).

Impugned judgment in Civil Appeal No. 6364 of 2025

24. This appeal, at the instance of the Union of India[15], arises from the judgment and order dated 8th January, 2019 passed by the Madras High Court in its intra-court appellate jurisdiction dismissing the writ appeal[16] filed by the State of Tamil Nadu. As a consequence thereof, the order of the Single Judge (under appeal allowing the writ petition[17] filed by M.A. Stephen Sundar Singh[18], respondent no.1 herein, was upheld. UoI was not a party to the writ petition

14 (2014) 8 SCC 1

15 UoI

16 W.A.(M.D.) 21 of 2019

17 W.P.(M.D.) 10196 of 2018

18 Stephen

before the Madras High Court, but has carried the said judgment in this civil appeal upon being granted permission to file the Special Leave Petition.

25. Stephen was appointed as a Secondary Grade Teacher in TDTA Primary and Middle School[19] – an aided minority institution. The appointment of Stephen was communicated by the school to the District Elementary Education Officer[20], for confirmation. The DEEO, however, refused to approve the appointment on the ground that Stephen had not qualified the TET. Aggrieved by the rejection, Stephen filed the writ petition, which was allowed by the High Court *vide* order dated 28th April, 2018.

26. A Division Bench of the High Court upheld the said judgment and order dated 8th January, 2019 in light of ***Pramati Educational and Cultural Trust*** (supra), consistent with the view that the RTE Act does not bind minority institutions. Consequently, Stephen was held not to be required to have cleared the TET, and the DEEO was directed to approve his appointment.

27. Aggrieved, UoI has approached this Court.

SUMMARY OF THE JUDGMENTS

28. A brief summary of the views taken by the Bombay and the Madras High Courts *vide* different judgments is encapsulated below:

IMPUGNED JUDGMENT	VIEW TAKEN	CIVIL APPEAL NOS.
BOMBAY HIGH COURT		
12th December 2017	Held that TET was mandatory for minority institutions.	1385-86 of 2025
1st April 2019	Granted interim relief to teachers (teaching in minority institution) by staying the directions which mandated TET as a qualification.	1364 - 1367 of 2025

19 School

20 DEEO

MADRAS HIGH COURT		
2nd June, 2023	TET was held to be mandatory for teachers teaching in non-minority institutions. As regards minority institutions, TET was help inapplicable, in view of the judgement of this Court in ***Pramati Educational and Cultural Trust*** (supra).	1389, 1390, 1391, 1393, 1395, 1396-99, 1401, 1403-1410 of 2025
8th January, 2019	Took the view that TET does not bind minority institutions.	6364 of 2025
22nd July, 2022	Did not consider the question of TET. The same is being argued for the first time before this Court.	6365 - 6367 of 2025

III. Previous decisions concerning the RTE Act

Society for Unaided Private Schools of Rajasthan

29. A three-Judge Bench had the occasion to consider a challenge to the constitutionality of the RTE Act, specifically to Sections 3, 12(1)(b) and 12(1)(c) thereof, in W.P. 95 of 2010 (Society for Unaided Private Schools of Rajasthan v. Union of India) and other connected writ petitions. *Vide* order dated 6th September, 2010[21], the Bench of three-Judges had referred the matter to a larger Bench. The reference order reads thus:

> "**1.** Since the challenge involved raises the question as to the validity of Articles 15(5) and 21-A of the Constitution of India, we are of the view that the matter needs to be referred to the Constitution Bench of five Judges.
>
> **2.** Issue rule nisi. The learned Solicitor General waives service of the rule. All the respondents are before us. The counter-affidavits be filed within four weeks.
>
> **3.** These petitions be placed before the Constitution Bench for directions on a suitable date."

21 (2012) 6 SCC 102

30. However, despite the aforesaid reference, the same remained unanswered. The three-Judge Bench then proceeded to hear and dispose of the matter by a majority of 2:1 vide its judgment in ***Society for Unaided Private Schools of Rajasthan v. Union of India***[22].

31. The issue in ***Society for Unaided Private Schools of Rajasthan*** (supra) is well encapsulated at paragraph 69 of the minority judgment, reading thus:

> "**69.** ……... Controversy in all these cases is not with regard to the validity of Article 21-A, but mainly centres around its interpretation and the validity of Sections 3, 12(1)(*b*) and 12(1)(*c*) and some other related provisions of the Act, which cast obligation on all elementary educational institutions to admit children of the age 6 to 14 years from their neighbourhood, on the principle of social inclusiveness. The petitioners also challenge certain other provisions purported to interfere with the administration, management and functioning of those institutions."

32. The issues so framed were approved by the majority, as it appears from the following passage:

> "**2.** The judgment of *** fully sets out the various provisions of the RTE Act as well as the issues which arise for determination, the core issue concerns the constitutional validity of the RTE Act."

33. Section 3 of the RTE Act affirms the right of a child between 6 and 14 years of age, to receive free and compulsory elementary education in a neighbourhood school. Section 12(1)(c) read with Sections 2(n)(iii) and (iv) imposes an obligation on unaided private educational institutions, both minority and non-minority, to admit in Class I (and in pre-school, if available) at least 25% of their strength from among children covered under Sections 2(d) and 2(e). Section 12(1)(b) read with Sections 2(n)(ii) provides imposes a similar obligation on aided private educational institutions.

34. *Per curiam*, challenge to the constitutionality of most of the provisions of the RTE Act was rejected. However, difference of opinion arose as

22 (2012) 6 SCC 1

to the applicability of the RTE Act to unaided minority and unaided non-minority educational institutions.

35. The minority view held that the RTE Act was not applicable to any unaided educational institution – whether minority or non-minority – as it infringed their Fundamental Rights under Articles 19(1)(g) and 30(1) of the Constitution.

36. The minority also took the view that the obligation under Section 12 (1)(c) cannot be cast on unaided private institutions, whether minority or non-minority. It was emphasized that private citizens running a private school, receiving no aid from the State, have no constitutional duty to assume the welfare responsibilities of the State. Citing the decisions of this Court in ***T.M.A. Pai Foundation v. State of Karnataka***[23] and ***P. A. Inamdar v. State of Maharashtra***[24], the learned Judge concluded that compulsory seat-sharing and fee regulation by the State constituted an unjust encroachment on the autonomy of such institutions and their Fundamental Rights under Articles 19(1)(g) and 30(1). Furthermore, it was held, as regards unaided institutions (whether minority or non-minority), that Section 12(1)(c) can be implemented only on the basis of voluntariness and consensus, as otherwise, it may violate the autonomy of such institutions. Accordingly, Section 12(1)(c) was read down as being merely directory *qua* all unaided educational institutions (minority and non-minority).

37. The majority, while agreeing that the RTE Act could not be applied to unaided minority institutions in view of the protection under Article 30(1), held that the RTE Act, particularly the obligation imposed by Section 12(1)(c), was applicable to aided minority institutions. The majority reasoned that such a provision constituted a reasonable restriction on the Fundamental Right under Article 19(1)(g), permissible under Article 19(6).

38. The majority further held that Section 12(1)(c) meets the test of reasonable classification under Article 14 of the Constitution and constitutes a reasonable restriction on the right to establish and administer educational institutions under Article 19(1)(g). *Inter alia,* the

23 (2002) 8 SCC 481

24 (2005) 6 SCC 537

court: (i) observed that Article 21-A left it for the State to determine by law how the obligation of providing free and compulsory education may be fulfilled; (ii) emphasized that the Fundamental Rights must be interpreted in conjunction with the Directive Principles of State Policy, and that any law which limits Fundamental Rights within the limits justified by the Directive Principles can be upheld as a "reasonable restriction" under Articles 19(2) to 19(6); (iii) underscored that since education is a charitable activity (and not commercial), imposing an obligation on educational institutions under Section 12(1)(c) constitutes a reasonable restriction on their Fundamental Right under Article 19(1)(g),which is a qualified right; (iv) further traced that Section 12(1)(c) is a reasonable restriction as it advances the State's obligation to provide education; (v) clarified that the RTE Act does not override the rights recognized in ***T.M.A. Pai Foundation*** (supra) and ***P. A. Inamdar*** (supra), as those decisions pertained to higher/professional education and did not address the interpretation of Article 21-A or the provisions of the RTE Act.

PRAMATI EDUCATIONAL AND CULTURAL TRUST V. UNION OF INDIA

39. While the matter stood thus, W.P. (C) No. 416 of 2012 (Pramati Educational and Cultural Trust v. Union of India) came up for consideration before a Bench of two-judges. This Bench comprised of a learned Judge who was a member of the three-Judge Bench that had decided ***Society for Unaided Private Schools of Rajasthan*** (supra). Incidentally, the three-Judge Bench had proceeded to decide ***Society for Unaided Private Schools of Rajasthan*** (supra) despite there being an earlier order of reference to a Constitution Bench [noted in paragraph 9 (supra)]. In view of such earlier reference of the issues to a Constitution Bench [noted in paragraph 9 (supra)], the said Bench *vide* its order dated 22nd March, 2013[25] was of the opinion that the matter ought to be heard by a larger Bench and, accordingly, directed that the same be placed before the Hon'ble the Chief Justice of India for its listing before an appropriate bench. Thus, the lead writ petition and the accompanying petitions came to be heard by a five-Judge Constitution Bench of this Court leading to the judgment in ***Pramati Educational and Cultural Trust*** (supra).

25 (2013) 5 SCC 752

40. ***Pramati Educational and Cultural Trust*** (supra) considered the validity of the Constitution (Ninety-third Amendment) Act, 2005 inserting clause (5) in Article 15 of the Constitution, and the Constitution (Eighty-sixth Amendment) Act, 2002, which inserted Article 21-A in Part III as an additional independent fundamental right.

41. The Constitution Bench in ***Pramati Educational and Cultural Trust*** (supra) framed specific questions for consideration, as under:

> "**(i)** Whether by inserting clause (5) in Article 15 of the Constitution by the Constitution (Ninety-third Amendment) Act, 2005, Parliament has altered the basic structure or framework of the Constitution?
>
> **(ii)** Whether by inserting Article 21-A of the Constitution by the Constitution (Eighty-Sixth Amendment) Act, 2002, Parliament has altered the basic structure or framework of the Constitution?"

42. Notably, the validity of the Constitution (Ninety-third Amendment) Act, 2005, which inserted clause (5) in Article 15, had been considered by a Constitution Bench of this Court in ***Ashoka Kumar Thakur v. Union of India***[26] to the limited extent of its application to state-maintained institutions and aided educational institutions. Relevant passages from the decision in ***Ashoka Kumar Thakur*** (supra) read as under:

> "**668.** The Constitution 93rd Amendment Act, 2005, is valid and does not violate the "basic structure" of the Constitution so far as it relates to the State maintained institutions and aided educational institutions. Question whether the Constitution (Ninety Third Amendment) Act, 2005 would be constitutionally valid or not so far as 'private unaided' educational institutions is concerned, is not considered and left open to be decided in an appropriate case. Justice ***, in his opinion, has, however, considered the issue and has held that the Constitution (Ninety Third Amendment) Act, 2005 is not constitutionally valid so far as private un-aided educational institutions are concerned.

26 (2008) 6 SCC 1

> **669.** Act 5 of 2007 is constitutionally valid subject to the definition of 'Other Backward Classes' in Section 2(g) of the Act 5 of 2007 being clarified as follows: If the determination of 'Other Backward Classes' by the Central 2 Government is with reference to a caste, it shall exclude the 'creamy layer' among such caste.
>
> **670.** Quantum of reservation of 27% of seats to Other Backward Classes in the educational institutions provided in the Act is not illegal.
>
> **671.** Act 5 of 2007 is not invalid for the reason that there is no time limit prescribed for its operation but majority of the Judges are of the view that the Review should be made as to the need for continuance of reservation at the end of 5 years."
>
> (emphasis ours)

Therefore, effectively, what remained to be considered, *qua* issue no.(i) in ***Pramati Educational and Cultural Trust*** (supra) was, whether the amendment inserting clause 5 in Article 15 is valid or not, insofar as private unaided instructions are concerned.

43. To ascertain the constitutionality of the Constitution (Ninety-third Amendment) Act, 2005, the Bench considered the objects and reasons of the Act and opined that the insertion of clause (5) to Article 15 is an enabling provision. It observed that the amendment was brought forth to fructify the object of equality of opportunity provided in the Preamble to the Constitution. The court relied on the judgment of ***State of Kerala v. N.M. Thomas***[27] which held that clause (4) of Article 16 of the Constitution is not an exception or a proviso to Article 16. Drawing an inference, it was observed that the opening words of clause (5) of Article 15 are similar to the opening words of clause (4) of Article 16 and thus held that Article 15(5) cannot be read as an exception to Article 15, but is an enabling provision intended to give equality of opportunity to backward classes of citizens in matters of public employment.

27 (1976) 2 SCC 310

44. The validity of clause (5) of Article 15 of the Constitution was then tested against the right enshrined under Article 19(1)(g) of the Constitution and the court held as thus:

> "**28.** ..... In our view, all freedoms under which Article 19(1) of the Constitution, including the freedom under Article 19(1)(g), have a voluntary element but this voluntariness in all the freedoms in Article 19(1) of the Constitution can be subjected to reasonable restrictions imposed by the State by law under clauses (2) to (6) of Article 19 of the Constitution. Hence, the voluntary nature of the right under Article 19(1)(g) of the Constitution can be subjected to reasonable restrictions imposed by the State by law under clause (6) of Article 19 of the Constitution. As this Court has held in T.M.A. Pai Foundation [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481] and P.A. Inamdar [P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537] the State can under clause (6) of Article 19 make regulatory provisions to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of maladministration by those in charge of the management. However, as this Court held in the aforesaid two judgments that nominating students for admissions would be an unacceptable restriction in clause (6) of Article 19 of the Constitution, Parliament has stepped in and in exercise of its amending power under Article 368 of the Constitution inserted clause (5) in Article 15 to enable the State to make a law making special provisions for admission of socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes for their advancement and to a very limited extent affected the voluntary element of this right under Article 19(1)(g) of the Constitution. We, therefore, do not find any merit in the submission of the learned counsel for the petitioners that the identity of the right of unaided private educational institutions under Article 19(1)(g) of the Constitution has been destroyed by clause (5) of Article 15 of the Constitution."

45. The Court further observed that clause (5) of article 15, which excluded the application of Article 19(1)(g), was constitutional and

would not be in violation of the decisions of this court in ***T.M.A. Pai Foundation*** (supra), as subsequently followed in ***P. A. Inamdar*** (supra). Thus, on this count as well, it was held that the exception provided in clause (5) of Article 15 was reasonable, and as such this court upheld the validity of Constitution (Ninety-third Amendment) Act, 2005, inserting clause (5) of Article 15.

46. The Bench then considered the validity of the Constitution (Eighty-sixth Amendment) Act, 2002.

47. It was noticed that the majority in ***Society for Unaided Private Schools of Rajasthan*** (supra) had upheld the constitutionality of the RTE Act with a caveat that it would be inapplicable to unaided minority institutions. In that context, it was observed thus:

> "**4.** Article 21-A of the Constitution reads as follows:
>
> **21-A.*Right to education***.—The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.'
>
> Thus, Article 21-A of the Constitution, provides that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. Parliament has made the law contemplated by Article 21-A by enacting the Right of Children to Free and Compulsory Education Act, 2009 (for short "the RTE Act"). The constitutional validity of the RTE Act was considered by a three-Judge Bench of the Court in *Society for Unaided Private Schools of Rajasthan* v. *Union of India* [(2012) 6 SCC 1]. Two of the three Judges have held the RTE Act to be constitutionally valid, but they have also held that the RTE Act is not applicable to unaided minority schools protected under Article 30(1) of the Constitution. In the aforesaid case, however, the three-Judge Bench did not go into the question whether clause (5) of Article 15 or Article 21-A of the Constitution is valid and does not violate the basic structure of the Constitution. In this batch of writ petitions filed by the private unaided institutions, the constitutional validity of clause (5) of Article 15 and of Article 21-A has to be decided by this Constitution Bench."
>
> (emphasis ours)

48. The validity of the Constitution (Eighty-sixth Amendment) Act, 2002, which inserted Article 21A to the Constitution of India, was considered on the anvil of the basic structure doctrine as expounded in the landmark decision of this Court in ***Kesavananda Bharati v. State of Kerala***[28]. Answering the issue in the negative, the Bench held that Parliament was within its bounds to insert Article 21-A and as such, the amendment would not be in violation of the basic structure doctrine.

49. Thereafter, the Court considered the objects and reasons of the Constitution (Eighty-third Amendment) Bill, 1997, which ultimately resulted in the enactment of the Constitution (Eighty-sixth Amendment) Act, 2002, and observed that the amendment was brought in force to satisfy the obligation under Article 45 of the Indian Constitution. The Bench, upon extracting the objects and reasons, opined thus:

> "**48.** …It will, thus, be clear from the Statement of Objects and Reasons extracted above that although the directive principle in Article 45 contemplated that the State will provide free and compulsory education for all children up to the age of fourteen years within ten years of promulgation of the Constitution, this goal could not be achieved even after 50 years and, therefore, a constitutional amendment was proposed to insert Article 21-A in Part III of the Constitution. Bearing in mind this object of the Constitution (Eighty-sixth Amendment) Act, 2002 inserting Article 21-A of the Constitution, we may now proceed to consider the submissions of the learned counsel for the parties."

50. Interpreting the word 'State' in Article 21A, it was held that 'State' would mean the State which can make the law. This, the Bench held, was the *dicta* of the 11-judge Constitution Bench of this Court in ***T.M.A. Pai Foundation*** (supra). It was held that Article 21A must be construed harmoniously with Article 19(1)(g) and Article 30(1). It then proceeded to observe as follows:

> "**49.** Article 21-A of the Constitution, as we have noticed, states that the State shall provide free and compulsory education to all children of the age of six to fourteen years

28 (1973) 4 SCC 225

in such manner as the State may, by law, determine. The word 'State' in Article 21-A can only mean the 'State' which can make the law. Hence, Mr Rohatgi and Mr Nariman are right in their submission that the constitutional obligation under Article 21-A of the Constitution is on the State to provide free and compulsory education to all children of the age of 6 to 14 years and not on private unaided educational institutions. Article 21-A, however, states that the State shall by law determine the 'manner' in which it will discharge its constitutional obligation under Article 21-A. Thus, a new power was vested in the State to enable the State to discharge this constitutional obligation by making a law. However, Article 21-A has to be harmoniously construed with Article 19(1)(*g*) and Article 30(1) of the Constitution. As has been held by this Court in *Venkataramana Devaru* v. *State of Mysore* [AIR 1958 SC 255]: (AIR p. 268, para 29)

> '*29*. … The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect could be given to both. This is what is known as the rule of harmonious construction.'

We do not find anything in Article 21-A which conflicts with either the right of private unaided schools under Article 19(1)(*g*) or the right of minority schools under Article 30(1) of the Constitution, but the law made under Article 21-A may affect these rights under Articles 19(1)(*g*) and 30(1). The law made by the State to provide free and compulsory education to the children of the age of 6 to 14 years should not, therefore, be such as to abrogate the right of unaided private educational schools under Article 19(1)(*g*) of the Constitution or the right of the minority schools, aided or unaided, under Article 30(1) of the Constitution."

51. Thus, this Court upheld the validity of the Constitution (Eighty-sixth Amendment) Act, 2002, and proceeded to hold that the RTE Act, insofar it is made applicable to minority schools referred to in Article 30(1), is *ultra vires* the Constitution of India. While overruling the decision in ***Society of Unaided Private Schools of***

Rajasthan (supra) insofar as it held that the RTE Act was applicable to aided minority schools, it was further held that the RTE Act, insofar as it is made applicable to minority schools covered under Article 30(1), aided or unaided, is *ultra vires* the Constitution. It was concluded thus:

> "**55.** When we look at the RTE Act, we find that Section 12(1)(b) read with Section 2(n)(ii) provides that an aided school receiving aid and grants, whole or part, of its expenses from the appropriate Government or the local authority has to provide free and compulsory education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent. Thus, a minority aided school is put under a legal obligation to provide free and compulsory elementary education to children who need not be children of members of the minority community which has established the school. We also find that under Section 12(1)(c) read with Section 2(n)(iv), an unaided school has to admit into twenty-five per cent of the strength of Class I children belonging to weaker sections and disadvantaged groups in the neighbourhood. Hence, unaided minority schools will have a legal obligation to admit children belonging to weaker sections and disadvantaged groups in the neighbourhood who need not be children of the members of the minority community which has established the school. While discussing the validity of clause (5) of Article 15 of the Constitution, we have held that members of communities other than the minority community which has established the school cannot be forced upon a minority institution because that may destroy the minority character of the school. In our view, if the RTE Act is made applicable to minority schools, aided or unaided, the right of the minorities under Article 30(1) of the Constitution will be abrogated. Therefore, the RTE Act insofar it is made applicable to minority schools referred in clause (1) of Article 30 of the Constitution is ultra vires the Constitution. We are thus of the view that the majority judgment of this Court in Society for Unaided

Private Schools of Rajasthan v. Union of India [(2012) 6 SCC 1] insofar as it holds that the RTE Act is applicable to aided minority schools is not correct.

56. In the result, we hold that the Constitution (Ninety-third Amendment) Act, 2005 inserting clause (5) of Article 15 of the Constitution and the Constitution (Eighty-sixth Amendment) Act, 2002 inserting Article 21-A of the Constitution do not alter the basic structure or framework of the Constitution and are constitutionally valid. We also hold that the RTE Act is not ultra vires Article 19(1)(g) of the Constitution. We, however, hold that the RTE Act insofar as it applies to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is ultra vires the Constitution. Accordingly, Writ Petition (C) No. 1081 of 2013 filed on behalf of Muslim Minority Schools Managers' Association is allowed and Writ Petitions (C) Nos. 416 of 2012, 152 of 2013, 60, 95, 106, 128, 144-45, 160 and 136 of 2014 filed on behalf of non-minority private unaided educational institutions are dismissed. All IAs stand disposed of. The parties, however, shall bear their own costs."

(emphasis ours)

For ease of reference, the decisions of this Court in so far as the applicability of the RTE Act, considered in ***Society for Unaided Private Schools of Rajasthan*** (supra) and ***Pramati Educational & Cultural Trust*** (supra), are encapsulated in the table below:

Whether the RTE Act is applicable to educational institutions:		
Society for Unaided Private Schools of Rajasthan (supra)		
	Aided	Unaided
Minority	√	x
Non-minority	√	√
Pramati Educational & Cultural Trust (supra)		
	Aided	Unaided
Minority	x	x
Non-minority	√	√

IV. Arguments of the Parties

52. Learned senior counsel and counsel for the respective parties were heard at length. We also requested Mr. Venkatramani, learned Attorney General for India to address us on the issue and to assist us in reaching the correct conclusion.

53. Accordingly, in support of the issues that ***Pramati Educational and Cultural Trust*** (supra) may be referred for reconsideration and also that qualifying the TET is mandatory, we have heard the learned Attorney General, Mr. Nataraj, learned Additional Solicitor General, and a host of other senior advocates and advocates, in favour as well as opposing the prayer for a reference and the TET being mandatory, referred to above.

54. In order to maintain brevity and avoid repetition of the arguments by counsel, a summary of the submissions on either side is provided hereafter.

55. Those opposing reconsideration contended that:

    a. There is no State legislation in place making the TET as mandatory for appointment of teachers in the State of Maharashtra.

    b. Strict TET requirement amid low pass rates and rising teacher demand will lead to shortage of teachers which will undermine the objectives of the RTE Act.

    c. Law made in exercise of the mandate of Article 21A should not abrogate the rights of minority educational institutions under Article 30(1) of the Constitution.

    d. Section 1(4) of the RTE Act itself provides that the provisions of the RTE Act are subject to Articles 29 and 30 of the Constitution – hence RTE Act is not applicable to minority institutions.

    e. TET is not a 'minimum qualification' under Section 23 of the RTE Act, but it is merely an eligibility test to assess teaching aptitude and should not be equated with a minimum qualification.

    f. The phrase 'appointment as a teacher' under Section 23 of the RTE Act should be read to mean 'initial appointment as a teacher' and would not include appointment by promotion to any grades subsequently and hence it is sufficient that the

teacher concerned has necessary minimum qualification at the time of first appointment.

g. In Section 23(1), 'appointment as teacher' refers to appointment from external sources and not from internal sources.

h. TET is not mandatory but only directory as: (i) Notification dated 23rd August, 2010, limits TET to classes I–VIII, despite NCTE's authority under Section 12A of the National Council for Teacher Education Act, 1993[29] to set qualifications up to the intermediate level; (ii) clauses 3 and 4 of the same notification allow exceptions where the TET is not required for appointment or continuation as a teacher; and (iii) consequences of not qualifying the TET are not provided in the RTE Act.

i. Teachers appointed to classes I to VIII prior to the date of the notification dated 23rd August 2010 (*vide* which NCTE laid down minimum qualifications for appointment of teachers for classes I to V and classes VI to VIII) would not be required to pass the TET for their appointment to remain valid, for, the said notification does not provide for minimum qualifications for promotions.

j. The valid and invalid provisions of the RTE Act are inseparable and, thus, the entire RTE Act cannot apply to minorities and if, at all, the issue must be referred to a larger Bench, the same has to be restricted to the applicability of Section 23 of the RTE Act.

k. The Constitution Bench in ***Pramati Educational and Cultural Trust*** (supra) upheld the exemption granted to minorities under Article 15(5), to protect the minority character of the institutions, and to prevent the majority from making a law permitting others to be imposed in a minority institution.

l. ***Society for Unaided Private Schools of Rajasthan*** (supra) held that minority educational institutions under Article 30(1) form a separate category of institutions.

m. In ***Pramati Educational & Cultural Trust*** (supra), this Court, going a step further from what was held in ***Society for Unaided Private Schools of Rajasthan*** (supra) held that all minority

29 NCTE Act

institutions, whether aided or unaided, would not fall within the purview of the RTE Act.

n. In view of ***Pramati Educational & Cultural Trust*** (supra), the RTE Act cannot apply to minority institutions, and would be in violation of Article 30. Furthermore, if the RTE Act in its entirety does not apply, the question of applying sections 12 or 23 of the RTE Act, does not arise.

o. The subject matter in ***Society for Unaided Private Schools of Rajasthan*** (supra) was with respect to the validity of the RTE Act, whereas, ***Pramati Educational & Cultural Trust*** (supra) considered the validity of both Article 15(5) and Article 21A.

p. Imposing TET qualification for promotion may cause stagnation, which could not have been the intention of the Parliament. Opportunity for promotion is vital in public service, for, promotion boosts proficiency, while stagnation hampers effectiveness (see ***CSIR vs. KGS Bhatt***[30]);

q. There cannot be retrospective removal of right of promotion. Retrospectively revoking benefits acquired under existing rules would violate Articles 14 and 16 of the Constitution (see ***T.R. Kapur vs. State of Haryana***[31]).

56. Supporting the plea for a reference to reconsider ***Pramati Educational & Cultural Trust*** (supra) and that the TET qualification is mandatory, arguments as follows were advanced:

a. The right of each and every child to be taught by qualified teachers is integral to Right to Education. This right cannot be limited or impeded, except to the limited extent provided for under Article 29 or Article 30 of the Constitution.

b. Laying down higher standards is the logic of enhancing knowledge acquisition and is an independent facet of the right to education. The management of minority educational institution has no right to interfere with the educational rights of the children.

30 (1989) 4 SCC 635

31 1986 Supp. SC 584

c. To exempt a particular category of institutions would be contrary to Article 21A of the Constitution of India and create an artificial distinction. The State holds a positive obligation to ensure that every child, irrespective of caste, creed or religion, receives quality education on equal footing.

d. Article 30, granting the minorities a right to establish and administer educational institutions of their choice, does not override the State's duty to ensure that the quality of education imparted remains consistent across all institutions. Even if an educational institution is an aided minority institution, it does not provide a constitutionally valid exemption for applying a different eligibility criterion for the recruitment and promotion of teachers based on religion or language. While considering ***T.M.A. Pai Foundation*** (supra), ***Secy., Malankara Syrian Catholic College v. T. Jose***[32] held that the right of minorities to administer minority institutions under Article 30 is not to place the minorities in a better or more advantageous position. There cannot be reverse discrimination in favour of the minorities. The freedom to appoint teachers and lecturers would be subject to eligibility conditions/ qualifications.

e. A classification that seeks to differentiate the eligibility criteria for teachers based on the religious character of an institution would create an unreasonable distinction between children studying in minority-aided institutions and those in other institutions, violating Articles 14 and 21A.

f. The exemption from adhering to essential eligibility norms, i.e., the TET, would be an arbitrary classification, based neither on intelligible differentia nor bears any rational nexus with the objective sought to be achieved. This would violate Article 14 and deprive the students of the standard of education available in other institutions.

g. The burden on the State to select quality teachers lies entirely on the State. In such process, the State has an obligation and authority to regulate the quality of education, including education imparted in minority educational institutions. ***T.M.A. Pai Foundation*** (supra), as reiterated in ***Brahmo Samaj Education***

32 (2007) 1 SCC 386

Society & Ors. v. State of West Bengal[33], ***Sindhi Education Society v. Chief Secretary Govt. of Delhi***[34], **Chandana Das (Malkar) v. State of West Bengal**[35], were cited.

h. The educational institutions may have the liberty to grant relaxation to meet exigent circumstances, however, such relaxations may not continue indefinitely; also, relaxations cannot be granted to distort the regulation of recruitment. Reliance was placed on ***Committee of Management, Vasanta College for Women v. Tribhuwan Nath Tripathi***[36] and ***Food Corpn. of India v. Bhanu Lodh***[37].

i. TET is a mandatory and an indispensable qualification/eligibility criterion to ensure the maintenance of quality education, irrespective of their classification as minority/majority or aided/un-aided institutions. TET applies to recruitment and promotions, subject to statutory rules.

j. The NCTE Act was amended to insert Section 12A, which gave effect to Section 23 of the RTE Act, granting power to the Council to determine minimum standards of education of school teachers. The National Council for Teachers Education (Determination of Minimum Qualifications for Persons to be Recruited as Education Teachers and Physical Education Teachers in Pre-primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges) Regulations, 2014[38] are to be read along with Section 12A of the NCTE Act which refers to notification relaxing qualification by notification dated 23rd August, 2010 to interpret that the TET and other minimum qualifications are mandated and could have been obtained by teachers within 9 years as specified under the RTE Act and the NCTE Rules/Regulations.

k. Articles 15(5), 15(6) and 21A must be treated as the trilogy of education rights. Merely because Articles 15(5) and 15(6)

33 (2004) 6 SCC 224

34 (2010) 8 SCC 49

35 (2015) 12 SCC 140

36 (1997) 2 SCC 560

37 (2005) 3 SCC 618

38 2014 Regulations

exclude minority institutions from its scope, it must not be construed that they are relieved from their social justice obligation to aid and assist the emancipation of weaker sections of the society. While the State may not interfere with the right of management of the minority institutions, it does not mean that they cannot be called upon to share the obligations of social justice under Articles 15 and 21A of the Constitution. Thus, the State may not insist upon minority institutions to abide by Section 23 of the RTE Act unconditionally, but it can subject them to other regulatory measures. Minority institutions may be subject to absolutely minimal and negative controls. It will be a travesty of Constitutional scheme of attainment of excellence if such exclusions are provided.

l. A composite reading of Section 23(2) of the RTE Act along with the proviso thereto would reveal that the RTE Act provides 9 years for the teachers to acquire such minimum qualifications, as may be prescribed. Right of Children to Free and Compulsory Education Rules, 2010[39], framed under the RTE Act, must be read along with Section 23.

m. In exercise of powers under Section 35(1) of RTE Act, the Ministry of Human Resource Development, Government of India[40] has issued guidelines vide communication F No. 1-15/2010 EE4 dated 08th November, 2010 for implementation and relaxation of qualifications under Section 23(2) of the RTE Act, conveying that the condition of passing the TET cannot be relaxed by the Central Government.

n. The National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 were framed under the NCTE Act. NCTE also issued a notification dated 23rd August, 2010 mandating TET for appointment of teachers for standards I to VIII. In furtherance of this notification, NCTE also issued guidelines dated 11th February, 2011 for conducting the TET.

o. MHRD vide D.O.No.17-2/2017-EE.17 dated 03rd August, 2017 issued to all States and Union Territories reiterated the

39 RTE Rules

40 MHRD

last chance being given to acquire the requisite minimum qualifications and also warned that in-service teachers would not be allowed to continue beyond 01st April, 2019 without acquiring the requisite minimum qualifications.

p. In terms of ***Union of India v. Pushpa Rani***[41], as reiterated in ***Hardev Singh v. Union of India***[42], the employer (being the State) has the absolute right of fixing the qualifications for recruitment and promotion and that the court cannot sit in appeal over the discretion of the employer. The policy of employment and promotion is the exclusive domain of the employer, as per ***J. Ranga Swamy v. Govt. of Andhra Pradesh***[43]. Also, there is no vested right to promotion is the law settled by ***Union of India v. Krishna Kumar***[44].

q. Judgment of a larger Bench of this Court can be explained by a smaller bench. Similarly, the judgment in ***Pramati Educational & Cultural Trust*** (supra), in particular paragraph 55, can be adequately explained in the present case by providing a context to the RTE Act with the NCTE scheme. Only in the event that this exercise cannot be undertaken, the question of reference to a larger Bench may arise.

r. Paragraph 55 of ***Pramati Educational & Cultural Trust*** (supra) is merely *obiter dicta* and will not lead to a conclusion insofar as applicability/eligibility criteria for appointment of teachers is concerned. Applicability of the RTE Act to minority institutions was incidental to the main issue and not essential to the decision.

s. In ***Pramati Educational & Cultural Trust*** (supra), this Court was never called upon to decide the constitutional validity of the entire RTE Act or even Section 23 thereof. The Court was restricted to the validity of the Constitution (Ninety-third) Amendment Act, 2005 and Constitution (Eighty-sixth) Amendment Act, 2002. It cannot be said that the Constitution Bench in ***Pramati Educational & Cultural Trust*** (supra) was seized of the question as to whether the entire RTE Act was unconstitutional.

41 (2008) 9 SCC 242

42 (2011) 10 SCC 121

43 (1990) 1 SCC 288

44 (2019) 4 SCC 319

t. Regulation of teachers' qualification, such as the TET, fall within the permissible regulatory measure as the object is to maintain educational quality and standards. Application of paragraph 55 of ***Pramati Educational & Cultural Trust*** (supra) as a strait-jacket principle would lead to untenable position where students in minority institutions would be taught by teachers who do not meet the minimum qualification, thereby compromising educational quality. ***Pramati Educational and Cultural Trust*** (supra) did not lay down any binding law to hold the entirety of the RTE Act as unconstitutional and its observations must be restricted to Section 12(1)(c).

u. As held in ***Zee Telefilms v Union of India***[45], judgments of this Court should not be read like a statute or Euclid's theorems; observations made therein must be read in the context in which it appears. A point which was not raised before the Court would not be an authority on the said question and that per ***B. Shama Rao v. Union Territory of Pondicherry***[46], a decision is binding not because of its conclusion but what is binding is its ratio and the principle laid down therein.

v. ***State of Orissa v. Sudhanshu Sekhar Misra***[47] and ***Director of Settlements, Andhra Pradesh v. M.R. Appa Rao***[48] were placed to emphasize the role of this Court in interpreting its judgments. Further, the dissenting opinion authored by Hon'ble A.P. Sen J., in ***Dalbir Singh v. State of Punjab***[49] was cited to emphasize on the phrase 'law declared' under Article 141, to limit its application in the facts and context of the matter in which the case was decided. On the principle of binding value of judgment wherein a conclusion of law was neither raised nor preceded by consideration, reference was made to the judgment in the case of ***State of UP v. Synthetics & Chemicals Ltd.***[50] Further, reliance was placed on ***Arnit Das v. State of Bihar***[51]

45 (2005) 4 SCC 649
46 AIR 1967 SC 1480
47 [1968] 2 SCR 154
48 (2002) 4 SCC 638
49 (1979) 3 SCC 745
50 (1991) 4 SCC 139
51 (2000) 5 SCC 488

that a judgment rendered sub-silentio cannot be deemed to be a law declared to have a binding effect as contemplated under Article 141. Also, on the principle of *sub-silentio*, ***Madhav Rao Jivaji Rao Scindia v. Union of India***[52] was cited.

w. Thus, this Court would be within its authority to explain the precedential value of a larger Bench judgment, only in cases where the *ratio* and the conclusions do not match. The authority that this Court possesses to explain a previous judgment will be treated as an integral part of its constitutionally acknowledged adjudicatory process.

x. The authority available to the State Government under Article 309 is a general power and must yield to the special statutory authority enacted under the NCTE Act. Consequently, rules or executive orders issued by the State Government to keep the application of the NCTE Regulations out of reckoning will also be bad in law.

y. In ***Christian Medical College Vellore Assn. v. Union of India***[53], considering the issue of applicability of the National Eligibility cum Entrance Test, this Court held that minority institutions are equally bound to comply with the conditions imposed under the relevant Act and Regulations, which apply to all institutions. The National Education Policy (NEP), 2020 also makes the TET mandatory for all levels of teaching. The right to administer minority institutions does not grant the right to mal-administer an institution to the detriment of the students.

z. In case of transition between two realms or settings, relaxations may be implemented. When in such a scenario the State is found to be lacking in its policy, provisions of Article 142 may be invoked. In the present set of facts, Section 23 of the RTE Act read with Section 12A of the NCTE Act have been enacted by the Legislature towards reasonable transition process. If the teachers appointed prior to the cut-off date fail to adhere to the statute, their case may deserve a differential treatment but not to the extent of altering the core meaning of the statute.

52 (1971) 1 SCC 85

53 (2020) 8 SCC 705

V. The Acts, Rules, Regulations and Notifications

57. After introduction of the RTE Act, the NCTE Act came to be amended to make it in line with Article 21A of the Constitution as well as the RTE Act. The long title of the NCTE Act was also amended to include the regulation of qualifications of school teachers.

58. Further, Section 1 was amended to include sub-section (4), which made the NCTE Act applicable to schools' imparting pre-primary, primary, upper-primary, secondary or senior secondary schools. Section 2 was amended to include the definition of school which, among other things, included schools not receiving any aid or grants to meet whole or part of its expenses from a government or local authority.

59. The amendment that assumes primacy for the present issue was the insertion of section 12A, the marginal note of which reads, 'Power of Council to determine minimum standards of education of school teachers'. The aforesaid section permits the Council, i.e., the NCTE, to determine the qualifications of teachers in schools, by way of regulations. The further proviso to this section provides that the minimum qualifications of a teacher must be acquired within the period specified in the NCTE Act or the RTE Act.

60. Section 23 of the RTE Act authorizes the Central Government to authorize an academic authority to lay down "minimum qualifications" for being eligible to be appointed as a teacher:

> "**23. Qualifications for appointment and terms and conditions of service of teachers.**—(1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher. …"

61. In exercise of such powers, the Central Government *vide* Notification No. S.O. 750(E) dated 31st March, 2010 appointed NCTE as the "academic authority" to lay down the minimum qualifications for a person to be eligible for appointment as a teacher.

62. Pursuant thereto, NCTE *vide* Notification F.No. 61-03/20/2010/NCTE/(N&S) dated 23rd August, 2010 laid down minimum qualifications for a person to be eligible for appointment as a teacher in classes I

to VIII in a school referred to in clause (n) of Section 2 of the RTE Act[54]. This is when the TET was made mandatory for the first time.

Clause 3[55] of the notification provided for compulsory training for certain categories of teachers.

Clause 4[56] excluded certain categories of teachers from the requirement of attaining minimum qualifications specified in paragraph (1).

As per clause 5[57], if any advertisement for appointment of teachers

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54 **1 Minimum Qualifications. –**

(i) Classes I-V

(a) Senior Secondary (or its equivalent) with at least 50% marks and 2-year diploma in Elementary Education (by whatever name known)

OR

****

AND

(b) **Pass in the Teacher Eligibility Test (TET),** to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

(ii) Classes VI-VIII

(a) B.A/B.SC and 2 -year Diploma in Elementary Education (by whatever name known)

OR

****

AND

(b) **Pass in the Teacher Eligibility Test (TET),** to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

55 **3. Training to be undergone.- A person**

(a) with BA/ B.Sc. with at least 50% marks and B. Ed qualification shall also be eligible for appointment for class I to V up to 1st January, 2012, provided he undergoes, after appointment, an NCTE recognized 6-month special programme in Elementary Education.

(b) with D. Ed (Special Education) or B. Ed (Special Education) qualification shall undergo, after appointment an NCTE recognized 6-month special programme in Elementary Education.

56 **4. Teacher appointed before the date of this Notification.-** The following categories of teachers appointed for classes I to VIII prior to date of this Notification need not acquire the minimum qualifications specified in Para (1) above:

(a) A teacher appointed on or after the 3rd September, 2001 i.e. the date on which the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time) came into force, in accordance with that Regulation.

Provided that a teacher of class I to V possessing B. Ed qualification, or a teacher possessing B. Ed (Special Education) or D. Ed (Special Education) qualification shall undergo an NCTE recognized 6 - month special programme on elementary education.

(b) A teacher of class I to V with B. Ed qualification who has completed a 6-month Special Basic Teacher Course (Special BTC) approved by the NCTE;

(c) A teacher appointed before the 3" September 2001, in accordance with the prevalent Recruitment Rules.

57 **5. Teacher appointed after the date of this Notification in certain cases.-** Where an appropriate Government or local authority or a school has issued an advertisement to initiate the process of appointment of teachers prior to the date of this Notification, such appointments may be made in accordance with the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time).

had already been issued prior to the date of the notification, such appointments were to be made in accordance with the NCTE Regulations, 2001.

63. By three subsequent notifications[58], NCTE made amendments in the notification dated 23rd August, 2010. *Inter alia,* certain changes were made in clause 1 (which laid down minimum qualifications for appointment) regarding the educational requirement. Without going much into the details of the amendment, suffice it is to mention that the mandatory requirement of TET remained unchanged.

64. We consider it important to refer to certain parts of the notification dated 11th February, 2011 issued by NCTE *vide* which guidelines were issued for conducting the TET examination, highlighting the rationale for mandating the TET:

> "3 The rationale for including the TET as a minimum qualification for a person to be eligible for appointment as a teacher is as under:
>
> i. It would bring national standards and benchmark of teacher quality in the recruitment process;
>
> ii. It would induce teacher education institutions and students from these institutions to further improve their performance standards;
>
> iii. It would send a positive signal to all stakeholders that the Government lays special emphasis on teacher quality"

65. On 6th March, 2012, the Central Board of Secondary Education (CBSE) issued a circular stating that all teachers hired after the date of circular, to teach classes I to VIII students in CBSE-affiliated schools must pass the Teacher Eligibility Test (TET).

66. On 12th November, 2014, the NCTE laid down regulations, *inter alia*, providing for qualifications for recruitment of teachers for imparting education from pre-primary level to the senior secondary level. It will suffice to mention that the minimum qualifications for teachers teaching primary and upper primary (classes I to VIII) were the same as provided in the notification dated 23rd August, 2010.

58 dated 29th July, 2011, 28th June, 2018 and 13th November, 2019

67. As discussed above, NCTE made the TET a mandatory requirement *vide* its notification dated 23rd August, 2010. Be that as it may, in the year 2017, the Parliament made an amendment[59] in Section 23 of RTE Act by introducing a proviso in section 23(2) of the Act. The proviso reads thus:

> "Provided further that every teacher appointed or in position as on the 31st March, 2015, who does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of four years from the date of commencement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2017."

68. The Parliament, therefore, provided an opportunity to teachers appointed/in service, prior to 31st March, 2015 and who had not attained the minimum qualifications as prescribed (including the TET) to acquire the said qualifications within a period of four years from the date of commencement of the Amendment Act which was 1st April, 2017.

69. On 3rd August, 2017, the Additional Secretary, Ministry of Human Resource Development, Department of School Education & Literacy, issued a letter to the State secretaries, reminding that the last date to acquire minimum qualifications is 1st April, 2019, and no teacher, who did not possess minimum qualifications under the RTE Act, would be permitted to continue in service beyond the given date.

VI. Analysis and Reasons

70. The task at our hand is indeed onerous. ***Pramati Educational and Cultural Trust*** (supra), being a decision rendered by a Constitution Bench of this Court, deserves due deference. While the said decision does shed light on key issues and provides valuable insights, it also leaves some questions open that could be explored further and productively addressed.

71. The two issues we are tasked to decide, which are indeed very significant for the future generations of our nation, bring in its train one more important issue: whether the decision of the Constitution

59 Act No. 24 of 2017

Bench of five Judges of this Hon'ble Court in ***Pramati Educational and Cultural Trust*** (supra), insofar as it exempts minority schools—whether aided or unaided—falling under clause (1) of Article 30 of the Constitution from the applicability of the RTE Act, warrants reconsideration. In course of our analysis, we propose to consider whether ***Pramati Educational and Cultural Trust*** (supra) should be accepted as the last word in the matter of applicability of the RTE Act to minority institutions or whether there is a need to explore its efficacy as a binding precedent in the changed circumstances.

A. FROM PROMISE TO RIGHT: THE CONSTITUTIONAL JOURNEY OF ARTICLE 21A AND THE RIGHT TO ELEMENTARY EDUCATION IN INDIA

72. The right to elementary education in India did not begin its journey as a fundamental right. In the Constitution, as originally drafted, elementary education was initially recognized only as a Directive Principle of State Policy[60] under Article 45, which provided:

> "The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

73. Article 45 seems to be the only directive principle framed with a specific time frame, reflecting the urgency and significance that the framers of the Constitution placed on its implementation. This directive, though aspirational, was unfortunately not judicially enforceable and depended heavily on the discretion and capacity of the State. The framers of the Constitution consciously placed 'EDUCATION' in Part IV, recognizing its criticality but also acknowledging the financial and administrative limitations of the newly independent nation.

74. The drafting history of the Constitution reveals that the inclusion of elementary education as a fundamental right was deliberated upon but ultimately deferred. Several members of the Constituent Assembly advocated for a justiciable fundamental right to education, arguing that without education, other rights and civil liberties would remain meaningless[61]. However, a competing viewpoint—concerned with

60 "Directive Principles"

61 *Constituent Assembly of India Debates* (Volume 7, 08.12.1948), 7.51.18 (Z.H. Lari); (Volume 8, 19.11.1948), 7.56.22 (Ananthasayanam Ayyangar), 7.56.53 & 7.56.56 (K.T. Shah)

resource constraints and state capacity—prevailed[62]. This led to the compromise of placing the right to elementary education as a non-enforceable and a non-binding directive principle, to be pursued by the State progressively over time.

75. However, through judicial pronouncements, the movement to recognize education, particularly elementary education, as a fundamental right gained momentum.

76. A decade before the enactment of the Constitution (Eighty-sixth Amendment) Act, 2002, which introduced Article 21A, a two-Judge Bench of this Court in ***Mohini Jain v. State of Karnataka***[63] held:

> "**12.** … The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens.
>
> **17**. We hold that every citizen has a 'right to education' under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. The State may discharge its obligation through state-owned or state-recognised educational institutions. When the State Government grants recognition to the private educational institutions it creates an agency to fulfil its obligation under the Constitution. The students are given admission to the educational institutions — whether state-owned or state-recognised — in recognition of their 'right to education' under the Constitution. Charging capitation fee in consideration of admission to educational institutions, is a patent denial of a citizen's right to education under the Constitution."

77. However, in ***Unni Krishnan, J. P. v. State of Andhra Pradesh***[64], the correctness of the decision in ***Mohini Jain*** (supra) was challenged by private educational institutions. Though the decision was not affirmed

62 *Constituent Assembly of India Debates* (Volume 7, 23.11.1948)

63 (1992) 3 SCC 666

64 (1993) 1 SCC 645

in its entirety, the lead judgment of the five-Judge Constitution Bench of this Court further expanded the right to elementary education and while holding that a child up to the age of 14 years has a fundamental right to free education, held as follows:

> "**171.** In the above state of law, it would not be correct to contend that *Mohini Jain* was wrong insofar as it declared that 'the right to education flows directly from right to life'. But the question is what is the content of this right? How much and what level of education is necessary to make the life meaningful? Does it mean that every citizen of this country can call upon the State to provide him education of his choice? In other words, whether the citizens of this country can demand that the State provide adequate number of medical colleges, engineering colleges and other educational institutions to satisfy all their educational needs? *Mohini Jain* seems to say, yes. With respect, we cannot agree with such a broad proposition. *The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the directive principles in Part IV of the Constitution.* So far as the right to education is concerned, there are several articles in Part IV which expressly speak of it. Article 41 says that the 'State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want'. Article 45 says that 'the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years'. Article 46 commands that 'the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation'. Education means knowledge — and 'knowledge itself is power'. As rightly observed by John

> Adams, 'the preservation of means of knowledge among the lowest ranks is of more importance to the public than all the property of all the rich men in the country'. *(Dissertation on Canon and Feudal Law*, 1765) It is this concern which seems to underlie Article 46. It is the tyrants and bad rulers who are afraid of spread of education and knowledge among the deprived classes. Witness Hitler railing against universal education. He said: 'Universal education is the most corroding and disintegrating poison that liberalism has ever invented for its own destruction.' (Rauschning, *The Voice of Destruction : Hitler speaks*.) A true democracy is one where education is universal, where people understand what is good for them and the nation and know how to govern themselves. The three Articles 45, 46 and 41 are designed to achieve the said goal among others. It is in the light of these Articles that the content and parameters of the right to education have to be determined. *Right to education, understood in the context of Articles 45 and 41, means : (a) every child/ citizen of this country has a right to free education until he completes the age of fourteen years, and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development.* […].
>
> **175.** Be that as it may, we must say that at least now the State should honour the command of Article 45. It must be made a reality — at least now. Indeed, the National Education Policy 1986 says that the promise of Article 45 will be redeemed before the end of this century. Be that as it may, we hold that a child (citizen) has a fundamental right to free education up to the age of 14 years."
>
> (emphasis in original)

78. The decision in ***Unni Krishnan*** (supra), however, stands overruled by an eleven-Judge Constitution Bench of this Hon'ble Court in ***T.M.A. Pai Foundation*** (supra) *albeit* on a different point.

79. These two decisions together interpreted Article 21, i.e., the right to life, as including the right to elementary education, providing

the groundwork for its constitutional recognition as a fundamental right. The right to life and dignity was held to be incomplete without access to basic education, thus, reading into the Constitution an implicit fundamental right to education even before it was formally codified in 2002.

80. These judicial efforts culminated in the Constitution (Eighty-sixth Amendment) Act, 2002, which introduced Article 21A into the Constitution.

81. Alongside Article 21A, the amendment also substituted Article 45 to focus on early childhood care and education and introduced a corresponding fundamental duty under Article 51A(k), requiring parents and guardians to ensure educational opportunities for their children between the ages of 6 and 14.

82. Article 21A, thus, marked a constitutional transformation by elevating the child's right to free and compulsory elementary education to the status of an enforceable fundamental right.

83. Notably, the right to education which is positioned right after the right to life and personal liberty, underscores the intrinsic connection between life and knowledge acquisition, to be gained through elementary education. This sequence of rights is also reflective of Parliament's consciousness of the critical nexus between knowledge and human dignity.

84. Indubitably, ***Pramati Educational and Cultural Trust*** (supra) could not have and, as such, did not see anything objectionable in Article 21A to hold that it trenches upon minority rights protected by Article 30. What it said is that the power under Article 21A vesting in the State does not extend to making a law to abrogate minority rights of establishing and administering schools of their choice.

B. Breathing life into the promise: the RTE Act and the realisation of Article 21A

85. To give effect to the newly inserted fundamental right, i.e., Article 21A, Parliament enacted the RTE Act. The RTE Act breathed life into Article 21A by providing a comprehensive statutory framework to ensure access to free, compulsory, and quality elementary education for all children in the 6–14 age group.

86. As outlined in the Statement of Objects and Reasons accompanying the Right of Children to Free and Compulsory Education Bill, 2008[65], the objectives of the RTE Bill read:

> "The Right of Children to Free and Compulsory Education Bill, 2008, is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds."

87. Viewed holistically, the RTE Act—contrary to the commonly held belief—does not impose an onerous or excessive regulatory burden; rather, it lays down the bare minimum core obligations and standards that all schools [as defined in Section 2(n)] must follow to ensure that the constitutional promise envisioned by Article 21A is not rendered meaningless. They include requirements such as trained teachers, student-teacher ratio, adequate infrastructure, inclusive admission policies, age-appropriate common curriculum, etc. All these are indispensable to deliver quality elementary education.

88. At its heart, the RTE Act is an instrument for universalisation of education, which is rooted in the values of social inclusion, national development, and child-centric growth. It is aimed at bridging the gap between privileged and disadvantaged, and it ensures that every child, regardless of caste, creed, class, or community, is given a fair and equal opportunity to learn, grow, and thrive. The RTE Act is designed not to stifle institutional autonomy but to uphold a threshold of dignity, safety, equity, and universality in the learning environment for a child.

89. Born of Article 21A, the RTE Act is not merely another addition to the statute books. It is the living expression of a long-deferred promise. When the Constitution was first adopted, the right to education could find place only among the Directive Principles, tempered by

65 "RTE Bill"

the economic and institutional limitations of a newly independent nation; yet, the vision was never abandoned but merely postponed. It took the nation over half a century of democratic maturity, social awakening, and judicial insistence for this vision to be shaped into a fundamental right.

90. In this sense, Article 21A stands, perhaps, a shade taller than many other rights, not merely by hierarchy but by the weight of the journey it carries—a journey of struggle, consensus, and above all, a reaffirmation that right to elementary education is not charity, but justice.

91. Against this backdrop, if a conflict were ever to arise between the two competing fundamental rights, i.e., Article 21A and Article 30, it must be remembered that not all rights stand on equal footing when their purposes diverge and reconciliation is no longer possible. In such a scenario, Article 30, though crucial in preserving cultural and educational autonomy, must be interpreted in tandem with Article 21A, for the latter is not merely a fundamental right but we consider it to be the foundation upon which the other rights of the younger generation would find meaning and voice. Article 21A is not just a right in isolation, it is an enabler of other fundamental rights, a unifying thread that weaves together the garland of all other fundamental rights promised by our Constitution. Despite transition from Part IV to Part III of the Constitution, much of the object and purpose for introduction of Article 21A would seem lost if means to provide free and compulsory education, which is sought to be achieved by enacting the RTE Act, were withheld for minorities for no better reason than that the RTE Act abrogates their right protected under Article 30. Education for children aged 6–14 is foundational for their development and the broader goals of nation building. The right to speak freely could ring hollow, the right to vote could become mechanical and the right to livelihood could largely be rendered meaningless when the younger generation were to grow up and transition to adulthood. To deny Article 21A its rightful primacy is to reduce it to a skeletal promise—a right without fundamentals, stripped of the very essence that animates our constitutional vision.

92. Any interpretation that diminishes the scope or limits the application of the RTE Act must, therefore, be critically examined against the broader backdrop of the constitutional evolution as traced aforesaid.

C. The constitutional goal of universal elementary education and common schooling system

93. It is only in furtherance of its commitment to universal elementary education that Parliament enacted the Constitution (Eighty-sixth Amendment) Act, 2002, introducing Article 21A and elevating the right to free and compulsory education for all children aged between 6 and 14 years to the status of a fundamental right.

94. Therefore, at the outset, we must and do recognise that under the RTE Act, our focus is on elementary education which is the foundational building block of a child's journey of learning, rather than tertiary or higher education. Since independence, Universal Elementary Education and the idea of a common schooling system have stood among the foremost national as well as constitutional goals. We may ask, why does the universalisation of elementary education matter so deeply? The answer is not far to seek. It is at this stage that the seeds of equality, opportunity, and national integration are sown—shaping not only individual futures but the very character of the nation.

95. Elementary education could count as the most crucial stage in the education cycle. It lays the foundation for lifelong learning, cognitive development, and social values. It shapes a child's ability to think, question, and grow with a strong beginning. The early years of education lay the foundation for a child's growth and learning, and access to quality elementary education ensures that this foundation is strong and equitable. Therefore, universal elementary education and a common schooling system aim to uphold a shared curriculum and uniform quality standards across both government and private schools, ensuring that every child receives an equal foundation, regardless of where they study. Without universal access, education becomes a privilege rather than a right, accentuating existing inequalities and denying children from disadvantaged backgrounds the opportunity to break the cycle of poverty.

96. Once could say that in India, by the age of 9 or 10, children are already deeply socialized into a fixed set of norms and behaviours shaped by their surroundings and that these patterns are not easily unlearned or altered instantly. It is in the early years, when minds are most receptive and identities still developing, that the foundation for learning and social growth is most effectively established.

97. When every child receives the same minimum standard of elementary education, society moves closer to genuine substantial equality, where one's start in life does not dictate his/her future potential. Moreover, universal elementary education is the bedrock of a healthy democracy and an empowered citizenry. It equips individuals with the basic skills of reading, writing, and critical thinking, enabling them to participate meaningfully in civic life, understand their rights and responsibilities, and contribute productively to the economy. Countries that have succeeded in achieving universal primary education have consistently demonstrated higher levels of social mobility, public health, and national cohesion.

98. This vision is clearly embedded in the RTE Act. Section 29 mandates that the curriculum and evaluation process for elementary education must be prescribed by an academic authority notified by the appropriate government. The curriculum is to reflect constitutional values and focus on the holistic development of the child—promoting creativity, physical and mental growth, learning through play and exploration, instruction in the child's mother tongue where possible, and a stress-free, inclusive learning environment with continuous assessment.

99. In view thereof, Article 21A, which guarantees the right to free and compulsory education for all children aged 6 to 14, inherently includes the right to universal elementary education—education that reaches every child, regardless of background. It also embraces the idea of a common schooling system, where children from diverse socio-economic and cultural groups learn together in shared spaces.

D. SECTION 12(1)(C), MINORITY INSTITUTIONS AND THE BEGINNING OF THE CONUNDRUM

100. Section 12 of the RTE Act, which is the heart and soul of the RTE Act, is extracted hereunder:

> "**12. Extent of school's responsibility for free and compulsory education.**—
>
> (1) For the purposes of this Act, a school, —
>
> (a) specified in sub-clause (i) of clause (n) of section 2 shall provide free and compulsory elementary education to all children admitted therein;

(b) specified in sub-clause (ii) of clause (n) of section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent.;

(c) specified in sub-clauses (iii) and (iv) of clause (n) of section 2 shall admit in class I, to the extent of at least twenty-five per cent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion:

Provided further that where a school specified in clause (n) of section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education.

(2) The school specified in sub-clause (iv) of clause (n) of section 2 providing free and compulsory elementary education as specified in clause (c) of sub-section (1) shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed:

Provided that such reimbursement shall not exceed per-child-expenditure incurred by a school specified in sub-clause (i) of clause (n) of section 2:

Provided further that where such school is already under obligation to provide free education to a specified number of children on account of it having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation.

(3) Every school shall provide such information as may be required by the appropriate Government or the local authority, as the case may be."

101. The mandate of Section 12(1)(c) is that schools shall reserve 25% of their seats in Class I for children belonging to the *"weaker sections and disadvantaged groups from the neighbourhood"*. The cost of educating these children is reimbursed by the government, thereby enabling access to quality education for those who might otherwise be excluded due to economic or social barriers.

102. Section 12(1)(c), to our mind, is perhaps the closest our nation has come to realizing the vision of an inclusive and rights-based universal elementary education. It reflects the idea of a common school system where children from diverse socio-economic backgrounds learn together under the same roof. In a country as deeply divided along class, caste, and community lines as ours, Section 12(1)(c) offers social integration through education. It seeks to dismantle the segregated nature of our schooling system and plant the seeds of egalitarian and universal learning environments.

103. It can reasonably be said that the origins of Section 12(1)(c) are rooted in a historical context of exclusion and systemic inequity insofar as access to education is concerned. The provision is a direct response to generations of marginalisation, especially of dalits, adivasis, religious minorities, and economically weaker sections, who have been pushed to the periphery of the formal schooling system. By embedding universal elementary education into the architecture of schooling, Section 12(1)(c) attempts to reimagine classrooms as shared, inclusive spaces where every child has an equal claim to dignity and opportunity. Importantly, the spirit of Section 12(1)(c) goes beyond mere admission quotas and focuses on universalisation of elementary education.

104. This was also echoed by the MHRD's clarificatory memorandum on the provisions of the RTE[66]:

> "The idea that schooling should act as a means of social cohesion and inclusion is not new; it has been oft repeated. Inequitable and disparate schooling reinforces existing social and economic hierarchies, and promotes in the educated sections of society an indifference towards the plight of the poor.

66 Ministry of Human Resource Development, Government of India, 'Clarification on Provisions'<https://www.education.gov.in/sites/upload_files/mhrd/files/upload_document/RTE_Section_wise_rationale_rev_0.pdf > (last accessed on 31st August, 2025)

The currently used term 'inclusive' education implies, as did earlier terms like 'common' and 'neighbourhood' schools, that children from different backgrounds and with varying interests and ability will achieve their highest potential if they study in a shared classroom environment. The idea of inclusive schooling is also consistent with Constitutional values and ideals, especially with the ideals of fraternity, social justice and equality of opportunity.

For children of socio-economically weaker backgrounds to feel at home in private schools, it is necessary that they form a substantial proportion or critical mass in the class they join. The relevant universe in which the proportion needs to be considered is the class/section. It is for this reason that the RTE Act provides for admission of 25% children from disadvantaged groups and weaker sections in class I only. This implies that these children cannot be pooled together in a separate section or afternoon shift. Any arrangement which segregates, or treats these children in a differentiated manner vis-à-vis the fee-paying children will be counter-productive.

The rationale for 25% lies in the fact that the composition of caste/class indicated in the Census is fairly representative of the composition of children who are seeking admission under this provision. As per Census 2001, SCs constitute 16.2%, and STs constitute 8.2% (total 24.4%) of the population. Further, the Tendulkar Committee, set up by the Planning Commission to measure poverty, has estimated the below poverty line (BPL) population to be 37.2%. It is a fact that much of the population that suffers economic deprivation also suffers from social disadvantage. Thus, taken together, the figure of 25% for admission of children from disadvantaged groups and weaker sections is considered reasonable. Any lower proportion would jeopardize the long-term goal of the policy which is to strengthen social cohesion and bring out the best human resource potential inherent in our society as a whole. A smaller proportion would serve only a token purpose, and it will run the serious risk of creating the feeling of alienation among the children belonging to disadvantaged groups and

weaker sections. Their participation in classroom interaction will be neither strong nor sufficiently manifest to enrich the overall experiential learning taking place in any given subject area. Only a critical mass can play such a role.

The RTE Act provides for admission of 25% children from disadvantaged groups and weaker sections in Class I, not across the whole school. As children admitted to class I move to class II, new children will be admitted to class I, and so on till completion of 8 years of elementary education. The rationale for admission in class I only must be appreciated in human terms. Teachers who are used to a selective, homogeneous classroom environment cannot be expected to develop the required positive attitude and professional skills to deal with a diversified class overnight. The same applies to children. Children who have grown up to an age of nine or ten in a homogeneous or segregated environment have been socialized into a structure of norms and behaviour. They cannot be transformed on demand. Also, the overall school ethos cannot be expected to respond to a new policy in a positive manner all of a sudden. Education is indeed an act of faith and social engineering – but not quick-fix social engineering. In view of the fact that children take time to socialize and teachers take time to develop new attitudes and pedagogic skills, the RTE Act provides for admission of disadvantaged and poor children at the entry level, covering pre-school and Class I. With these children moving up, and a new cohort of children entering pre-school and Class I in each successive year, the school will gradually have a more diverse population spread across all classes. Progression at this pace will allow children the opportunity to grow up together and create bonds: bonds that can survive social walls. Progression at this pace can allow the school to develop the professional capacity to respond to the intellectual and emotional needs of children from diverse backgrounds. Children who are younger than eight years of age are yet to develop a stable social identity. Their values are still forming, and their motivation to derive meaning from experience, both concrete and social is very strong. Therefore, it is a valid

> argument that the policy of mixing children from different socio-economic strata has the best chance of succeeding if it starts from the formative years of nursery/kindergarten and Class I. Diversity enhances learning and development, while segregation impoverishes the classroom environment of all schools, private or government.
>
> Admission of 25% children from disadvantaged groups and weaker sections in the neighbourhood is not merely to provide avenues of quality education to poor and disadvantaged children. The larger objective is to provide a common place where children sit, eat and live together for at least eight years of their lives across caste, class and gender divides in order that it narrows down such divisions in our society. The other objective is that the 75% children who have been lucky to come from better endowed families, learn through their interaction with the children from families who haven't had similar opportunities, but are rich in knowledge systems allied to trade, craft, farming and other services, and that the pedagogic enrichment of the 75% children is provided by such intermingling. This will of course require classroom practices, teacher training, etc. to constantly bring out these pedagogic practices, rather than merely make children from these two sections sit together. The often voiced concern about how the 25% children from disadvantaged groups and weaker sections can cope in an environment where rich children exist can be resolved when the teaching learning process and teachers use these children as sources of knowledge so that their esteem and recognition goes up and they begin to be treated as equals."

105. Section 12(1)(c) in that manner is not just about giving disadvantaged children access to private schools. It aims to build shared spaces where children from all backgrounds learn and grow together. Privileged students gain exposure to diverse life experiences, while those from weaker sections gain confidence and opportunity. For this to succeed, pedagogy must evolve—teachers must be trained to value every child as a contributor to the learning process. Only then can the classroom become a true site of equality and transformation.

106. However, following the enactment of the RTE Act, minority educational institutions raised concerns that enforcement of Section 12(1)(c) would disrupt their autonomy or institutional character and erode their constitutionally protected rights under Article 30(1). They feared that mandatory admissions under this provision could dilute their ability to preserve their distinct linguistic or religious character.

107. To recapitulate, Section 12(1)(c) being challenged before this Hon'ble Court in ***Society for Unaided Private Schools*** (supra), by a 2:1 majority, this Court upheld the constitutionality of Section 12(1)(c) of the RTE Act insofar as it applied to aided minority schools; however, Section 12(1)(c) was held to be *ultra vires* to the extent it sought to infringe the fundamental freedoms guaranteed to unaided minority schools under Article 30(1) of the Constitution. The Bench clarified that all unaided minority schools are exempt from the purview of Section 12(1)(c) while holding that the mandate under Section 12(1)(c) alters the very character of minority institutions, running contrary to the protections guaranteed under Article 30(1). The obligations under Section 12(1)(c) were held to be directory, not mandatory. Lastly, the Court held that as far as aided minority schools are concerned, Section 12(1)(c) would apply to such schools as Article 30(1) is subject to Article 29(2).

108. To address these apprehensions and prevent potential constitutional friction, the RTE Act was amended in 2012. Through this amendment, specific sub-clauses were inserted in Section 1, explicitly stating that the RTE Act shall apply subject to Articles 29 and 30. The newly added sub-clauses (4) and (5) are extracted hereunder:

> "(4) Subject to the provisions of articles 29 and 30 of the Constitution, the provisions of this Act shall apply to conferment of rights on children to free and compulsory education.
>
> (5) Nothing contained in this Act shall apply to Madrasas, Vedic Pathsalas and educational institutions primarily imparting religious instruction."

109. While this move quelled the anxieties of minority institutions, it also opened the door to a series of new dilemmas concerning exclusion, regulatory arbitrage, and the scope of the fundamental right under Article 21A and Section 12(1)(c) vis-à-vis the rights of the minority institutions under Article 30.

110. As noted, *vide* a separate order, a reference was made to a Constitution Bench to examine the validity of Article 15(5), inserted by the Constitution (Ninety-third Amendment) Act, 2005, and Article 21A, inserted by the Constitution (Eighty-sixth Amendment) Act, 2002.

111. The said reference was answered in ***Pramati Educational and Cultural Trust*** (supra), with the five-Judge Constitution Bench unanimously holding, in paragraph 56, that *"the 2009 Act insofar as it applies to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is ultra vires the Constitution"*.

112. Thus, ***Pramati Educational and Cultural Trust*** (supra) overruled ***Society for Unaided Private Schools*** (supra) on this limited point, while affirming the remainder of the decision. While ***Society for Unaided Private Schools*** (supra) exempted unaided minority institutions from the obligations of the RTE Act, ***Pramati Educational and Cultural Trust*** (supra) went a step further by extending the exemption to even those minority schools that receive government aid. Collectively, these two judgments have placed the entire category of minority educational institutions, whether aided or unaided, beyond the purview of the requirements of the RTE Act.

113. The exemption granted to minority institutions has since become the cornerstone of constitutional debates around the balance between the right to elementary education and minority rights.

114. Against this backdrop, it is now pertinent to examine—more than a decade later since its pronouncement—the aftermath of ***Pramati Educational and Cultural Trust*** (supra) and to assess whether it has truly fulfilled the purpose it set out to achieve or whether it has, in effect, deepened the very tensions it sought to resolve.

E. THE COST OF EXCLUSION: CONSEQUENCES OF EXEMPTING MINORITY INSTITUTIONS FROM THE AMBIT OF THE RTE ACT

115. To begin with, a study conducted by the National Commission for Protection of Child Rights in 2021[67] reveals that only 8.76% of students in minority schools come from socially and economically

67 NCPCR Study

disadvantaged sections[68]. This low representation cuts across all communities and highlights a systemic exclusion.

116. As per the NCPCR Study, an overwhelming 62.5% of the total students in minority schools belong to non-minority communities, and in states like Andhra Pradesh, Jharkhand, Punjab, and Delhi, this percentage was found to be even higher. This is indicative of many institutions labelled as "minority" not serving their communities exclusively, but continuing to enjoy exemption from inclusionary mandates.

117. In this light, the consequences of ***Pramati Educational and Cultural Trust*** (supra) cannot be confined merely to its holding that aided and unaided minority institutions are exempt from the purview of the RTE Act. To grasp the full weight of the decision, there is need to look beyond its doctrinal contours and examine its consequences on the lives of millions of children for whom the RTE Act was conceived.

118. As noted, in ***Pramati Educational and Cultural Trust*** (supra), the Constitution Bench was called upon to determine two issues. For the purposes of the present matter, our concern is confined only to the second issue which the Bench framed. For ease of reference, we reproduce it once again hereunder:

> "5.2. (ii) Whether by inserting Article 21-A of the Constitution by the Constitution (Eighty-sixth Amendment) Act, 2002, Parliament has altered the basic structure or framework of the Constitution?"

119. The above issue gave rise to a connected sub-issue: whether the provisions of the RTE Act could validly apply to minority schools, aided or unaided, falling under Article 30(1) of the Constitution. The Bench while holding that Article 21A, by itself, did not violate or alter the basic structure of the Constitution, took the view while addressing the sub-issue that the entire RTE Act, insofar as it applied to minority educational institutions protected under Article 30(1), was unconstitutional and *ultra vires*.

120. What is particularly striking to us is the Bench's conclusion on the sub-issue. Such conclusion appears to be based solely on interpretation of Section 12 of the RTE Act by the Bench, and

68 NCPCR, "Impact of exemption under Article 15(5) w.r.t. article 21A of the Constitution of India on education of children of minority communities" (March 2021, NCPCR & Quality Council of India)

sub-section (1)(c) thereof in particular, mandating reservation of 25% seats at the entry level for children from weaker sections and disadvantaged groups. The Bench observed that *"legal obligation to admit children belonging to weaker sections and disadvantaged groups in the neighbourhood who need not be children of the members of the minority community which has established the school […] cannot be forced upon a minority institution because that may destroy the minority character of the school"*[69]. Resting thereon, it was concluded that if the RTE Act is made applicable to minority schools, aided or unaided, the right of the minorities under Article 30(1) of the Constitution will stand abrogated. Conspicuously silent as it is on any examination or assessment of the other provisions of the RTE Act such as those relating to teacher qualifications, infrastructural norms, or child safety measures and how, if at all, they conflict with Article 30(1) — the one aspect that eludes us is the complete absence in ***Pramati Educational and Cultural Trust*** (supra) of any discussion on or any analysis of any provision of the RTE Act *vis-à-vis* Article 30(1) of the Constitution other than Section 12.

121. The point of concern which, therefore, arises is: if the only substantive concern raised by the Bench was related to Section 12(1)(c), what then justified the sweeping conclusion that the entire RTE Act was inapplicable to minority institutions, aided or unaided? Unfortunately, ***Pramati Educational and Cultural Trust*** (supra) does not appear to offer any reasoning whatsoever for extending the exemption beyond Section 12(1)(c). In the absence of any analysis of the other sections of the RTE Act vis-à-vis Article 30(1), the blanket exclusion, with respect, appears legally suspect and questionable apart from being disproportionate.

122. We are mindful of the decision of a three-Judge Bench of this Court in ***M.R. Apparao*** (supra) where it has been held that the decision of this Court cannot be assailed on the ground that certain aspects had not been considered or that the relevant provisions were not brought to the notice of the Court. However, the relevant dictum in paragraph 7 of such decision is primarily for the guidance of the high courts and the subordinate courts which are bound by Article 141 to follow the

69 Paragraph 55

law declared, even though there could be valid reason to suspect and conclude that law had been declared without considering all aspects or relevant provisions. No matter what the circumstances are, the high courts and the subordinate courts are bound to follow the decision.

123. The law declared by the Supreme Court, per Article 141 of the Constitution, binds all courts which would include us too. Nonetheless, our jurisdiction permits and we possess a unique authority, unlike the high courts and the subordinate courts, to re-examine legal principles laid down by previous Benches. Such re-examination, however, cannot obviously be resorted to except for compelling reasons. Apart from the core issues being considered by us, as to whether reconsideration of ***Pramati Educational and Cultural Trust*** (supra) is necessitated or not, one other compelling reason that dissuades us from blindly following it has its roots in ***M.R. Apparao*** (supra) itself. In paragraph 7, we find inter alia the following passage:

> "**7.** … It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has 'declared law' it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An 'obiter dictum' as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. …"
>
> (emphasis ours)

124. To what extent ***Pramati Educational and Cultural Trust*** (supra) lays down law which is definitive and binding under Article 141 or its observations are to be treated as 'obiter dictum' would be considered later as we progress further.

125. We are a bit distressed to note from the materials placed on record including the NCPCR Study that exclusion of the RTE Act has created a fertile ground for misuse. Since the Constitution (Ninety-third Amendment) Act, 2006, there has been a sharp rise in schools applying for minority status. The NCPCR Study finds that around 85% of minority institutions received their minority status post-2006, i.e., many after the passage of the RTE Act.

126. These trends, arguably, raise concerns that the minority status is often claimed not to preserve identity, but to avoid compliance with inclusionary obligations under the RTE Act. The absence of clear guidelines on minimum enrolment of minority students has also made it easier for institutions to claim minority status without fulfilling its spirit. With no obligation to admit disadvantaged students, many of these institutions remain insulated from broader constitutional goals of equality and inclusion.

127. The RTE Act ensures children a range of entitlements like basic infrastructure, trained teachers, books, uniforms, and mid-day meals, which are essential for a dignified educational experience. However, minority schools, excluded from the RTE Act's purview, are not necessarily bound to provide these facilities. Some minority schools might provide a few facilities as are mandated by the RTE Act, but others may fall short leaving their students without access to such mandated facilities. For many of these students, such benefits are not just amenities but affirmations of belonging, equality, and recognition.

128. Beyond physical provisions, the RTE Act also ensures common curricular standards through notified academic authorities[70]. These guarantee that every child receives quality education based on constitutional values. Minority institutions, however, operate without such uniform guidelines, leaving children and their parents uncertain about what and how they are taught, and often disconnected from the national framework of universal learning.

70 see, Section 29 of the RTE Act

129. For the reasons discussed above, we hasten to observe with utmost humility at our command that the decision in ***Pramati Educational and Cultural Trust*** (supra) might have, unknowingly, jeopardized the very foundation of universal elementary education. Exemption of minority institutions from the RTE Act leads to fragmentation of the common schooling vision and weakening of the idea of inclusivity and universality envisioned by Article 21A. We are afraid, instead of uniting children across caste, class, creed, and community, it reinforces 'divides' and 'dilutes' the transformative potential of shared learning spaces. If the goal is to build an equal and cohesive society, such exemptions move us in the opposite direction. What commenced as an attempt to protect cultural and religious freedoms has inadvertently created a regulatory loophole, leading to a surge in institutions seeking minority status to bypass the regime ordained by the RTE Act.

130. It is trite that the State has been entrusted with the responsibility of achieving substantive equality by the framers of the Constitution with the introduction of Articles 14 and 15 of the Constitution. Knit neatly together, they mandate the State to ensure that the inherent inequality in the society is reduced by providing a level playing field to the weak and oppressed members of the society.

131. In the wake of ***Pramati Educational and Cultural Trust*** (supra), we are pained to observe that minority status seems to have become a vehicle for circumventing the mandate of the RTE Act. In our humble opinion, it has opened up a situation whereby multiple institutions have sought to acquire minority status to become autonomous. It has also opened the door for potential misuse. Exemption of even aided minority institutions from the framework of the RTE Act has further encouraged the proliferation of minority-tagged schools not necessarily for the preservation of language, script, or culture, but to circumvent statutory obligations. This has distorted the spirit of Article 30(1), which was never intended to create enclaves of privilege at the cost of national developmental goals.

132. We end the discussion by observing that the true impact and legacy of a judicial pronouncement lies not merely in the precision of its reasoning, but by whether it stands the test of time; whether, years after its pronouncement, it continues to respond meaningfully to the problem it set out to address and serve the ends of justice or has failed to do so. The test of such a decision is whether it has alleviated

or aggravated the practical challenges it sought to remedy and lived realities it endeavoured to shape. Painfully though, we regret to observe that the ruling in ***Pramati Educational and Cultural Trust*** (supra) strikes at the heart of good quality universal elementary education and its consequences are far-reaching.

F. Does Article 30(1) really envisage blanket immunity from all forms of regulation to minority institutions?

133. Articles 29 and 30 of the Constitution together constitute the 'Cultural and Educational Rights'. The text of both provisions is reproduced below:

> "**29. Protection of interests of minorities.—**(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
>
> (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.
>
> **30. Right of minorities to establish and administer educational institutions.—**(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
>
> (1-A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.]
>
> (2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language."

134. Clause (1) of Article 29 guarantees that any section of citizens having a distinct language, script, or culture has the right to conserve the

same. Clause (2) adds a vital equality dimension, prohibiting denial of admission into educational institutions maintained by the State or receiving aid from State funds on grounds of religion, race, caste, language, or any of them.

135. Article 30(1) of the Constitution guarantees minorities the right to establish and administer educational institutions of their choice. However, this right is not absolute, nor does it imply blanket immunity from all regulatory frameworks. This Court, in ***T.M.A. Pai Foundation*** (supra), has held that while the autonomy of minority institutions must be protected, it is not beyond the reach of reasonable regulation in the interest of maintaining educational standards and achieving constitutional goals.

136. The purpose of Article 30(1) is to preserve the linguistic and cultural identity of minority communities through education, not to create parallel systems that are insulated from universally applicable norms. Basic requirements related to infrastructure, teacher qualifications, and inclusive access, especially at the elementary level under Article 21A, do not interfere with a school's minority character. On the contrary, these norms ensure that the right to administer does not become a license to exclude or operate without accountability. Interpreting Article 30(1) as a blanket shield erodes the balance between autonomy and public interest, and undermines the constitutional vision of inclusive, equitable education for all.

137. A brief reference to the Constituent Assembly Debates may be apt at this stage. The original text of Article 29(2) [Article 23(2) in the Draft Constitution of India, 1948] read thus:

> "(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission of any person belonging to such minority into any educational institution maintained by the State."

138. This language was met with concern by the assembly members. Pandit Thakur Das Bhargava proposed three important changes: (i) replacing "no minority" with "no citizen" to universalise the protection, (ii) extending the provision to include not only State-maintained institutions but also those receiving aid from the State, and (iii) broadening the grounds of protection from just "religion, community

or language" to include "religion, race, caste, language or any of them"[71]. He stated:

> "Now, Sir, it so happens that the words 'no minority' seek to differentiate the minority from the majority, whereas you would be pleased to see that in the Chapter the words of the heading are 'cultural and educational rights', so that the minority rights as such should not find any place under this section. Now if we read Clause (2) it would appear as if the minority had been given certain definite rights in this clause, whereas the national interests require that no majority also should be discriminated against in this matter. Unfortunately, there is in some matters a tendency that the minorities as such possess and are given certain special rights which are denied to the majority. It was the habit of our English masters that they wanted to create discriminations of this sort between the minority and the majority. Sometimes the minority said they were discriminated against and on other occasions the majority felt the same thing. This amendment brings the majority and the minority on an equal status.
>
> In educational matters, I cannot understand, from the national point of view, how any discrimination can be justified in favour of a minority or a majority. Therefore, what this amendment seeks to do is that the majority and the minority are brought on the same level. There will be no discrimination between any member of the minority or majority in so far as admission to educational institutions are concerned. So I should say that this is a charter of the liberties for the student-world of the minority and the majority communities equally."
>
> (emphasis ours)

139. Shri Bhargava's proposed amendments were ultimately accepted, and what we now have as Article 29(2) reflects the deliberate and inclusive vision of the Constituent Assembly. It affirms that in matters

71 *Constituent Assembly of India Debates* (Volume 7, 08.12.1948), 7.69.35 & 7.69.36 (Pandit Thakur Dass Bhargava)

of admission to educational institutions funded by the State, no citizen—minority or majority—should face discrimination on specified grounds. The framers thus sought to establish a level playing field in education, rooted in the principles of equality and non-discrimination.

140. Is the right conferred by Article 30(1) absolute, or does it imply blanket immunity from all regulatory frameworks? A seven-Judge Bench of this Court, upon reference by the President, held in ***In Re: Kerala Education Bill, 1957***[72]:

> "20. Articles 29 and 30 are set out in Part III of our Constitution which guarantees our fundamental rights. They are grouped together under the sub-head 'Cultural and Educational Rights'. The text and the marginal notes of both the articles show that their purpose is to confer those fundamental rights on certain sections of the community which constitute minority communities. Under clause (1) of Article 29 any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own has the right to conserve the same. It is obvious that a minority community can effectively conserve its language, script or culture by and through educational institutions and, therefore, the right to establish and maintain educational institutions of its choice is a necessary concomitant to the right to conserve its distinctive language, script or culture and that is what is conferred on all minorities by Article 30(1) which has hereinbefore been quoted in full. This right, however, is subject to clause 2 of Article 29 which provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.
>
> 22. … The real import of Article 29(2) and Article 30(1) seems to us to be that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it. By admitting a non-member into it the minority institution does not shed its character and cease to be a minority

72 [1959] SCR 995

> institution. Indeed the object of conservation of the distinct language, script and culture of a minority may be better served by propagating the same amongst non-members of the particular minority community. In our opinion, it is not possible to read this condition into Article 30(1) of the Constitution."
>
> (emphasis ours)

141. As evident from the above, Article 30(1), in the context of aided minority institutions, is subject to the mandate of Article 29(2), which expressly prohibits denial of admission to any citizen in institutions maintained by the State or receiving State aid, on grounds of religion, race, caste, language, or any of them. A plain reading of Article 29(2) makes the position clear that an educational institution maintained by the State or receiving aid out of State funds cannot deny admission on, *inter alia*, grounds of religion. Significantly, ***Pramati Educational and Cultural Trust*** (supra) does not discuss Article 29(2) in the context of the answer to the second issue, though raised by the Additional Solicitor General as recorded in paragraph 47, while Article 29(2) is merely quoted in the discussion while answering the first issue at paragraph 32. To our mind, consideration of Article 29(2) in the proper perspective could have brought about a different outcome insofar as applicability of Section 12(1)(b) of the RTE Act to schools specified in sub-clause (ii) of clause (n) of Section 2 thereof.

142. With respect to unaided minority institutions, the interpretation of Article 30 must be guided by its underlying purpose, i.e., to preserve the cultural, linguistic, and educational identity of minority communities and promote their welfare. As clarified in ***In Re: The Kerala Education Bill*** (supra), the mere admission of a "sprinkling of outsiders" neither defeats the purpose of Article 30 nor does it dilute or alter the minority character of such institutions.

143. It is clear on a reading of the authorities in the relevant field that Article 30(1) has never been construed as conferring blanket immunity on minority institutions from all forms of regulation. Even at a time when the promise to provide free and compulsory elementary education was merely a directive principle under Article 45 and not yet elevated to a fundamental right, this Court in ***In Re: The Kerala Education Bill*** (supra) recognised the need to harmonise the rights under Article 30(1) with the broader constitutional duty of the State to promote free and

compulsory education. This Court observed that apparent tensions between these provisions must be resolved through reconciliation by giving effect to both and achieving a constitutional synthesis. It held that the right of minorities to administer educational institutions of their choice does not preclude the State from prescribing reasonable conditions for the grant of aid, including those intended to uphold educational standards and promote inclusivity. With respect to unaided minority institutions, the interpretation of Article 30 must be guided by its underlying purpose of preserving the cultural, linguistic, and educational identity of minority communities and promoting their welfare. As clarified in ***In Re: The Kerala Education Bill*** (supra), the mere admission of a "sprinkling of outsiders" neither defeats the purpose of Article 30 nor does it dilute or alter the minority character of such institutions.

G. DOES THE REGULATORY FRAMEWORK UNDER THE RTE ACT, FLOWING FROM ARTICLE 21A, CLASSIFY AS A REASONABLE RESTRICTION UNDER ARTICLE 19(6)?

144. This Court in its numerous decisions has affirmed that the right to establish and administer educational institutions, whether for profit or not, is protected under Article 19(1)(g) of the Constitution. For instance, the lead judgment authored by Hon'ble B.N. Kirpal, CJI.in ***T.M.A. Pai Foundation*** (supra) held thus:

> "18. With regard to the establishment of educational institutions, three articles of the Constitution come into play. Article 19(1)(g) gives the right to all the citizens to practise any profession or to carry on any occupation, trade or business; this right is subject to restrictions that may be placed under Article 19(6). Article 26 gives the right to every religious denomination to establish and maintain an institution for religious purposes, which would include an educational institution. Article 19(1)(g) and Article 26, therefore, confer rights on all citizens and religious denominations to establish and maintain educational institutions."

145. Undoubtedly so. However, Article 19(6) carves out a clear exception to Article 19 including 19(1)(g), permitting the State to impose reasonable restrictions in the interest of the general public. The RTE Act, enacted to give effect to Article 21A, ought to be viewed as one

such "reasonable restriction" falling within the contours of Article 19(6), aimed at advancing a constitutionally recognised public good, i.e., universal elementary education for children aged 6-14 years. The objective behind the RTE Act, one has to realize and remember, is not to curtail legitimate exercise of rights under Articles 19(1)(g), 26 and 30, but to ensure that the foundational rights of children are not sacrificed at the altar of unregulated commercialisation.

146. In a constitutional framework that is animated by the values of justice, equality, fraternity and dignity, commercial freedoms under Article 19(1)(g) must yield where they conflict with the fulfilment of Fundamental Rights particularly those of children. We should not forget that the RTE Act is the legislative expression of a fundamental right under Article 21A. Its regulatory mandate, therefore, acquires constitutional legitimacy through Article 21A, and by extension, Article 21. When tested against the standard of reasonableness under Article 19(6), the regulatory measures imposed by the RTE Act are not only not arbitrary, they are necessary, imperative and proportionate, and in furtherance of the larger constitutional goal and vision of Article 21A.

147. A six-Judge Bench of this Court in ***Rev. Sidhrajbhai Sabhai vs. State of Gujarat***[73] had held that:

> "15. The right established by Article 30(1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Article 19 it is not subject to reasonable restrictions. It is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their own choice. The right is intended to be effective and is not to be whittled down by so-called regulative measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole. If every order which while maintaining the formal character of a minority institution destroys the power of administration is held justifiable because it is in the public or national interest, though not in its interest as an educational institution the right guaranteed by Article 30(1) will be but a 'teasing illusion' a promise

73 [1963] 3 SCR 837

of unreality. Regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as a minority institution effective as an educational institution. Such regulation must satisfy a dual test-the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it."

148. However, the decision in ***Rev. Sidhrajbhai Sabhai*** (supra) stands overruled by the majority in ***T.M.A. Pai Foundation*** (supra). While so overruling, it was held that the right under Article 30(1) cannot be stretched to override the national interest or to prevent the Government from framing regulations in that regard. The relevant extracts are reproduced hereunder:

"**107.** The aforesaid decision does indicate that the right under Article 30(1) is not so absolute as to prevent the Government from making any regulation whatsoever. As already noted hereinabove, in *Sidhajbhai Sabhai case* [(1963) 3 SCR 837 : AIR 1963 SC 540] it was laid down that regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality and public order could be imposed. If this is so, it is difficult to appreciate how the Government can be prevented from framing regulations that are in the national interest, as it seems to be indicated in the passage quoted hereinabove. Any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by the majority or the minority. Such a limitation must necessarily be read into Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf. It is, of course, true that government regulations cannot destroy the minority character of the institution or make the right to establish and administer a mere illusion; but the right under Article 30 is not so absolute as to be above the law. It will further be seen that in *Sidhajbhai Sabhai case* [(1963) 3 SCR 837 : AIR 1963 SC 540] no

> reference was made to Article 29(2) of the Constitution. This decision, therefore, cannot be an authority for the proposition canvassed before us."

149. While the autonomy of minority institutions must be protected, it is not beyond the reach of reasonable regulation in the interest of maintaining educational standards and achieving constitutional goals.

150. Even before ***T.M.A. Pai Foundation*** (supra), a nine-Judge Bench of this Court in ***Ahmedabad St. Xavier's College Society*** (supra) held that:

> "20. The right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not an absolute right. This right is not free from regulation. Just as regulatory measures are necessary for maintaining the educational character and content of minority institutions similarly regulatory measures are necessary for ensuring orderly, efficient and sound administration. Das, C.J., in the Kerala Education Bill case summed up in one sentence the true meaning of the right to administer by saying that the right to administer is not the right to mal-administer."
>
> (emphasis ours)

151. The aforesaid discussion tends to support our opinion that rights under Article 30(1), not being absolute, cannot be claimed to the complete exclusion of Article 21A. The former cannot be construed as overriding the mandate of the latter. Article 30(1), which guarantees minorities the right to establish and administer educational institutions of their choice, is undoubtedly a vital part of the constitutional promise to preserve linguistic and religious diversity. However, this right, like all others under Part III, is not absolute. It must be read in harmony with other Fundamental Rights and constitutional goals. When minority institutions engage in the act of imparting education, particularly elementary education, they necessarily operate within a shared constitutional ecosystem. To argue that Article 30(1) grants the minority institutions immunity from all statutory frameworks aimed at securing the right to education under Article 21A or that there can be no restrictions imposed under Article 19(6) would be to prioritize one right over another, thereby undermining the right to education under Article 21A.

H. Minority institutions and the shared constitutional responsibility under Article 21A

152. An argument which has been raised before us and which was successfully argued in ***Pramati Educational and Cultural Trust*** (supra) is that Article 21A casts an obligation solely on the State to ensure full implementation of the right and, therefore, minority institutions should not be burdened with how the State intends to carry forward its vision of implementation of such right.

153. It is true that Article 21A imposes a primary duty upon the State to ensure the provision of free and compulsory elementary education. However, the fulfilment of this duty necessarily involves the participation of both public and private stakeholders in the education ecosystem. Minority institutions that voluntarily choose to engage in the public function of imparting elementary education cannot simultaneously claim complete insulation from regulatory frameworks that give effect to the constitutional mandate under Article 21A. The RTE Act is one such regulatory framework.

154. The vision of universal elementary education under Article 21A, indubitably, cannot be achieved by the State alone, in isolation. Education, especially at the foundational level, is a shared constitutional responsibility. Minority institutions, while retaining their autonomy in matters essential to their cultural and linguistic identity, do not operate in a vacuum. Once they enter the realm of formal schooling and benefit from recognition, affiliation, or aid from the State, they partake in the broader constitutional project of building an inclusive and educated society. It would therefore be constitutionally untenable to argue that such institutions remain unaffected by frameworks such as the RTE Act through which the State seeks to discharge its obligations. Reasonable participation in this vision does not and cannot dilute its institutional character.

155. We, therefore, doubt the decision in ***Pramati Educational and Cultural Trust*** (supra) on this aspect.

I. Teachers' role in imparting quality education

156. Quality of teachers and teaching standards are integral to the fundamental right to education under Article 21A cannot perhaps be doubted. This Court, times without number, has emphasized that 'education' would be meaningless if it is not accompanied by

quality education, which is primarily dependent on qualified and well-trained teachers. Further, it is the State's constitutional obligation to ensure that educational institutions maintain high teaching standards, and appointments of teachers should strictly adhere to prescribed qualifications to maintain these educational standards.

157. The importance of training for teachers was discussed by this Court in ***N.M. Nageshwaramma v. State of A.P.***[74]. Mushrooming of unauthorised teacher training institutes in the State of Andhra Pradesh was under consideration. While dismissing the writ petitions before it, the concern expressed more than forty years back by this Court appears to be relevant even now. It was said:

> "**3.** … The Teachers Training Institutes are meant to teach children of impressionable age and we cannot let loose on the innocent and unwary children, teachers who have not received proper and adequate training. True they will be required to pass the examination but that may not be enough. Training for a certain minimum period in a properly organised and equipped Training Institute is probably essential before a teacher may be duly launched. …"

158. This Court in ***Andhra Kesari Educational Society v. Director of School Education***[75] upon deciding the lis before it made the following parting remarks:

> "**20.** … Though teaching is the last choice in the job market, the role of teachers is central to all processes of formal education. The teacher alone could bring out the skills and intellectual capabilities of students. He is the 'engine' of the educational system. He is a principal instrument in awakening the child to cultural values. He needs to be endowed and energised with needed potential to deliver enlightened service expected of him. His quality should be such as would inspire and motivate into action the benefiter. He must keep himself abreast of everchanging conditions. He is not to perform in a wooden and unimaginative way. He must eliminate fissiparous tendencies and attitudes

74 (1986) Supp. SCC 166

75 (1989) 1 SCC 392

> and infuse nobler and national ideas in younger minds. His involvement in national integration is more important, indeed indispensable. It is, therefore, needless to state that teachers should be subjected to rigorous training with rigid scrutiny of efficiency. It has greater relevance to the needs of the day. The ill-trained or sub-standard teachers would be detrimental to our educational system; if not a punishment on our children. The Government and the University must, therefore, take care to see that inadequacy in the training of teachers is not compounded by any extraneous consideration."

159. Similarly, the significance of quality training to equip teachers to mould the future citizenry of the country, was discussed in ***State of Maharashtra v. Vikas Sahebrao Roundale***[76]. The relevant passage reads thus:

> "**12.** … The teacher plays pivotal role in moulding the career, character and moral fibres and aptitude for educational excellence in impressive young children. Formal education needs proper equipping of the teachers to meet the challenges of the day to impart lessons with latest techniques to the students on secular, scientific and rational outlook. A well-equipped teacher could bring the needed skills and intellectual capabilities to the students in their pursuits. The teacher is adorned as Gurudevobhava, next after parents, as he is a principal instrument to awakening the child to the cultural ethos, intellectual excellence and discipline. The teachers, therefore, must keep abreast of ever-changing techniques, the needs of the society and to cope up with the psychological approach to the aptitudes of the children to perform that pivotal role. In short teachers need to be endowed and energised with needed potential to serve the needs of the society. The qualitative training in the training colleges or schools would inspire and motivate them into action to the benefit of the students. …"

76 (1992) 4 SCC 435

160. Then again, this Court in ***Chandigarh Administration. v. Rajni Vali (Mrs.)***[77] reiterated the State's obligation to maintain a certain standard of teaching and that appointment of qualified teachers was the bare minimum to be achieved in any institution by holding thus:

> "**6.** The position has to be accepted as well settled that imparting primary and secondary education to students is the bounden duty of the State Administration. It is a constitutional mandate that the State shall ensure proper education to the students on whom the future of the society depends. In line with this principle, the State has enacted statutes and framed rules and regulations to control/ regulate establishment and running of private schools at different levels. The State Government provides grant-in-aid to private schools with a view to ensure smooth running of the institution and to ensure that the standard of teaching does not suffer on account of paucity of funds. It needs no emphasis that appointment of qualified and efficient teachers is a sine qua non for maintaining high standards of teaching in any educational institution. …"

161. In ***State of Orissa v. Mamata Mohanty***[78], the central role played by a teacher in shaping individuals, and future citizens, was emphasized to establish that the State must be uncompromising when it comes to quality of teachers recruited. This Court ruled:

> "**33.** In view of the above, it is evident that education is necessary to develop the personality of a person as a whole and in totality as it provides the process of training and acquiring the knowledge, skills, developing mind and character by formal schooling. Therefore, it is necessary to maintain a high academic standard and academic discipline along with academic rigour for the progress of a nation. Democracy depends for its own survival on a high standard of vocational and professional education. Paucity of funds cannot be a ground for the State not to provide quality education to its future citizens. It is for this reason that in order to maintain the standard of

77 (2000) 2 SCC 42

78 (2011) 3 SCC 436

> education the State Government provides grant-in-aid to private schools to ensure the smooth running of the institution so that the standard of teaching may not suffer for want of funds.
>
> **34.** Article 21-A has been added by amending our Constitution with a view to facilitate the children to get proper and good quality education. However, the quality of education would depend on various factors but the most relevant of them is excellence of teaching staff. In view thereof, quality of teaching staff cannot be compromised. The selection of the most suitable persons is essential in order to maintain excellence and the standard of teaching in the institution. It is not permissible for the State that while controlling the education it may impinge the standard of education. It is, in fact, for this reason that norms of admission in institutions have to be adhered to strictly. Admissions in mid-academic sessions are not permitted to maintain the *excellence* of education."

162. The primacy of providing elementary education and strict compliance with teaching standards and qualifications was highlighted, in ***Bhartiya Seva Samaj Trust v. Yogeshbhai Ambalal Patel***[79], in the following words:

> "**26.** … education and particularly that elementary/basic education has to be qualitative and for that the trained teachers are required. The legislature in its wisdom after consultation with the expert body fixes the eligibility for a particular discipline taught in a school. Thus, the eligibility so fixed requires very strict compliance and any appointment made in contravention thereof must be held to be void."

163. While reflecting on free and compulsory education, we cannot, therefore, be oblivious of the need for quality education to be imparted to children aged between 6 and 14 years. Compromising the quality of a teacher would necessarily compromise quality of education, and is a direct threat to the right of children to quality education

79 (2012) 9 SCC 310

which is a necessary concomitant of the right guaranteed by Article 21A. This, in turn, would render the entire object and purpose of the RTE Act meaningless. In the sphere of primary education, a qualified teacher, at the very least, would be an assurance of quality education. Quality of education is, therefore, inherent in the right to education under Article 21A.

J. Applicability of the TET to in-service teachers appointed prior to 2009 and requirement of TET qualification for promotion of teachers

164. There are yet two other connected issues that require our attention. The TET is a statutory requirement introduced under the RTE Act and the corresponding NCTE notifications. It is aimed at ensuring minimum professional standards in the recruitment of elementary school teachers, in line with the mandate under Section 23 of the RTE Act.

165. Section 23 of the RTE Act vests the Central Government with the power to designate an academic authority to prescribe minimum qualifications for teachers. Pursuant to conferment of such power, the NCTE was notified as the academic authority under sub-section (1) which is empowered to prescribe the eligibility criteria for appointment as teachers in schools governed by the RTE Act.

166. In exercise of its authority under Section 23(1), the NCTE issued a Notification dated 23rd August, 2010, later amended by Notification dated 29th July, 2011, laying down that passing the TET is a mandatory condition for appointment of teachers in classes I to VIII in schools covered by Section 2(n) of the RTE Act. The notifications clarify that the TET must be conducted by the appropriate Government in accordance with the guidelines framed by the NCTE. The legal position emerging therefrom is clear: the TET is not a mere procedural requirement but forms an essential part of the minimum qualification criteria.

167. Importantly, the first and second provisos to Section 23(2) of the RTE Act carve out a transitional obligation for in-service teachers who did not possess the minimum qualifications at the time of commencement of the RTE Act. They were required to acquire such qualifications including passing the TET within a prescribed time frame. The second proviso introduced by the Right of Children to Free and Compulsory

Education (Amendment) Act, 2017[80] extended this compliance period by a period of four years from the date of commencement of the 2017 Amendment Act, which was deemed to have come into force on 1st April, 2015, i.e., till 2019 and not 2021 if four years were calculated from the date of the notification (i.e., 9th August, 2017). The express legislative intent was to bring all in-service teachers within the ambit of uniform quality standards.

168. NCTE's notification also reinforces this requirement by stating that teachers working in unaided private schools, or those already in position as of 31st March, 2015, must qualify the TET within the stipulated period. The language of both the RTE Act and the notification leaves no room for ambiguity that even those teachers appointed prior to the RTE Act, if not qualified, must meet the TET requirement within the grace period granted. Only those appointed prior to 3rd September, 2001 in accordance with applicable recruitment rules, or those covered by specific exceptions (e.g., Special BTC or D.Ed. courses), were exempted.

169. Thus, read holistically, Section 23 of the RTE Act and the NCTE notifications together establish the TET as a compulsory qualifying criterion for all teachers appointed on or after 23rd August, 2010, and as a time-bound compliance obligation for those appointed earlier without the requisite qualifications. The sole object is to ensure uniform teaching standards across institutions imparting elementary education. Viewed in this light, the TET is not only a mandatory eligibility requirement but it is a constitutional necessity flowing from the right to quality education under Article 21A.

170. As a logical corollary to the above, it is axiomatic that those in-service teachers who aspire for promotion, irrespective of the length of their service, have to qualify the TET in order to be eligible to have their candidature considered for promotion.

K. OUR FINDINGS

On perceived conflict between Articles 21A and 30(1) and the applicability of the RTE Act to minority institutions

80 2017 Amendment Act

171. The right to education cannot be deprived of substance and rendered a right without fundamentals. It is to be noted that though Article 30 finds place in the "Cultural and Educational Rights" section of Part III, Article 21A mandating "Right to Education" for children in the age group of 6 to 14 is not placed in that section but has been consciously placed by the Parliament in the section "Right to Freedom". Can Article 21A be treated as subservient to Article 30, or for that matter, to any other constitutional right? We do not propose to proceed for a hair-splitting analysis to answer this question. Suffice it is for the present purpose that both Article 21A and Article 30(1) occupy high constitutional position and must be interpreted harmoniously by complementing each other. In our opinion, there is no inherent conflict between Article 21A and Article 30(1). On this score, we are in respectful agreement with ***Pramati Educational and Cultural Trust*** (supra).

172. One, however, has to appreciate that most provisions of the RTE Act are regulatory in nature aimed at ensuring a safe, inclusive, and meaningful learning environment for children in the 6-14 age group. Requirements such as trained teachers, adequate infrastructure, and prohibition of corporal punishment are educational essentials, not ideological impositions. Exempting minority institutions from all these obligations, regardless of their relevance to minority character is, in our opinion, neither justified nor constitutionally required.

173. The danger of such a blanket exemption is that Article 30(1) runs the risk of being reduced to a tool for evading necessary and child-centric regulatory standards. The constitutional guarantee under Article 30(1), we are inclined to the view, was intended to preserve cultural and linguistic identity and not to provide institutions unqualified immunity from laws framed in the best interest of children.

174. In our opinion, ***Pramati Educational and Cultural Trust*** (supra) did not carry forward its own reasoning to its logical end. First, the Court acknowledged that whether the 25% quota affects the minority character depends on various factors, including the institution's nature and the extent of impact. The relevant passage reads thus:

> "**33.** … Thus, the law as laid down by this Court is that the minority character of an aided or unaided minority institution cannot be annihilated by admission of students from communities other than the minority community which

> has established the institution, and whether such admission to any particular percentage of seats will destroy the minority character of the institution or not will depend on a large number of factors including the type of institution."
>
> (emphasis ours)

175. However, later, ***Pramati Educational and Cultural Trust*** (supra) went on to grant a sweeping exemption to all minority institutions, aided or unaided, falling under Article 30(1) despite what the Bench acknowledged earlier. With respect, it essentially created a dichotomy between the right to education under Article 21A and the collective rights under Article 30(1). Despite insisting on harmony, Article 30(1) seems to have been treated as an unqualified trump card, instead of harmonizing both rights in a manner that minimally impairs institutional autonomy while maximally fulfilling the State's constitutional obligations to children, particularly those from marginalized communities.

176. Incidentally, reliance placed in ***Pramati Educational and Cultural Trust*** (supra) by the Court on ***T.M.A. Pai Foundation*** (supra) was, in our opinion, could be seen as misplaced. ***T.M.A. Pai Foundation*** (supra) was about state interference in higher education, not elementary education. It is elementary education which is recognised as a fundamental right and not higher education. The objectives and stakes in primary education are vastly different. At this level, the focus is on foundational learning, inclusion, and socialization. The RTE Act itself prohibits screening procedures and merit-based filters at the elementary stage, which establishes its universal and inclusive intent. Despite what is, in ***T.M.A. Pai Foundation*** (supra), the majority of the eleven-Judge Constitution Bench clearly held that the right to administer an educational institution does not extend to the right to maladminister it [echoing the view of Hon'ble S.R. Das, CJI. in ***In Re: Kerala Education Bill, 1957*** (supra)]. The State is well within its powers to impose general regulatory measures to ensure the proper functioning and standards of such institutions, so long as these do not alter or destroy their minority character. The relevant extracts are reproduced hereunder:

> "**107.** … Any regulation framed in the national interest must necessarily apply to all educational institutions, whether

run by the majority or the minority. Such a limitation must necessarily be read into Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf. It is, of course, true that government regulations cannot destroy the minority character of the institution or make the right to establish and administer a mere illusion; but the right under Article 30 is not so absolute as to be above the law.

122. The learned Judge then observed that the right of the minorities to administer educational institutions did not prevent the making of reasonable regulations in respect of these institutions. Recognizing that the right to administer educational institutions could not include the right to maladminister, it was held that regulations could be lawfully imposed, for the receiving of grants and recognition, while permitting the institution to retain its character as a minority institution. The regulation *'must satisfy a dual test — the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it'*. (SCC p. 783, para 92) It was permissible for the authorities to prescribe regulations, which must be complied with, before a minority institution could seek or retain affiliation and recognition. But it was also stated that the regulations made by the authority should not impinge upon the minority character of the institution. Therefore, a balance has to be kept between the two objectives — that of ensuring the standard of excellence of the institution, and that of preserving the right of the minorities to establish and administer their educational institutions. Regulations that embraced and reconciled the two objectives could be considered to be reasonable. This, in our view, is the correct approach to the problem.

136. Decisions of this Court have held that the right to administer does not include the right to maladminister. It has also been held that the right to administer is not

absolute, but must be subject to reasonable regulations for the benefit of the institutions as the vehicle of education, consistent with national interest. General laws of the land applicable to all persons have been held to be applicable to the minority institutions also — for example, laws relating to taxation, sanitation, social welfare, economic regulation, public order and morality.

137. It follows from the aforesaid decisions that even though the words of Article 30(1) are unqualified, this Court has held that at least certain other laws of the land pertaining to health, morality and standards of education apply. The right under Article 30(1) has, therefore, not been held to be absolute or above other provisions of the law, and we reiterate the same. By the same analogy, there is no reason why regulations or conditions concerning, generally, the welfare of students and teachers should not be made applicable in order to provide a proper academic atmosphere, as such provisions do not in any way interfere with the right of administration or management under Article 30(1)."

(italics in original)

(underlining ours)

177. We, therefore, have serious doubts as to whether ***Pramati Educational and Cultural Trust*** (supra) was justified in granting a blanket exemption to minority institutions falling under Article 30(1) from the applicability of the RTE Act. In our considered opinion, the RTE Act ought to apply to all minority institutions, whether aided or unaided. As discussed, its implementation does not erode—let alone annihilate—the minority character protected under Article 30(1). On the contrary, applying the RTE Act aligns with the purposive interpretation of Article 30(1), which was never meant to shield institutions from reasonable regulation in pursuit of constitutional goals. There is no inherent conflict between Article 21A and Article 30(1); both can and must co-exist mutually.

On applicability of Section 12(1)(c), RTE Act to minority institutions

178. Section 12(1)(c), which mandates 25% reservation for children from disadvantaged groups and weaker sections at the entry level, serves the broader purpose of social inclusion in and universalisation of elementary education. While it is true that such a provision impacts institutional autonomy to some extent, the correct question, however, is whether it results in the annihilation of the minority character of such institution. As held in ***Pramati Educational and Cultural Trust*** (supra) itself, this requires a fact-specific analysis, and not a blanket exemption.

179. Section 12(1)(c) does not alter school demographics in a way that would compromise the minority identity of minority schools. Minority institutions undisputedly admit students from outside their community; doing so under a transparent, State-guided framework does not affect any right. Moreover, Section 12(1)(c) is accompanied by a reimbursement mechanism, which ensures financial neutrality.

180. Even assuming that a conflict exists between Section 12(1)(c) and Article 30(1), owing to the perceived interference with the admission autonomy of minority institutions, such a conflict can be reconciled by reading down Section 12(1)(c) in a manner that children admitted under Section 12(1)(c) need not necessarily be from a different religious or linguistic community. Section 12(1)(c) does not mandate that 25% of children admitted under the quota must belong to a different religious or linguistic community. In fact, the requirement can be met by admitting children from the minority community itself, provided they fall within the definitions of "weaker section" or "disadvantaged group" as specified under the RTE Act.

181. Sub-clause (d) of Section 2 defines a "child belonging to a disadvantaged group" as:

> "a child with disability or 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."

Similarly, sub-clause (e) of Section 2 defines "child belonging to weaker section" as:

> "a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government."

182. In many cases, children from the minority community itself may fall within these definitions. A Christian or a Muslim school, or a school run by a linguistic minority, for instance, may well find that a substantial number of the 25% children admitted under Section 12(1)(c) belong to their own religious or linguistic group but are otherwise socially or economically disadvantaged. Hence, the idea that Section 12(1)(c) necessarily undermines or annihilates the school's minority character is based on an incorrect presumption. Compliance with Section 12(1)(c) need not come at the cost of eroding the minority character of the school.

183. If the 25% quota is utilised by admitting children from the minority community itself, *albeit* those who are economically weak or socially disadvantaged, does the question of "annihilation" really arise at all? We have no hesitation to answer the question in the negative for the simple reason that such implementation would reinforce the minority institution's own constitutional mandate by serving the most underprivileged sections of its own community. This would not only preserve the institution's cultural and religious identity but could also affirm its commitment to intra-community upliftment. The exemption granted in ***Pramati Educational and Cultural Trust*** (supra) on the assumption of demographic dilution fails to consider this nuance and, in our humble opinion, warrants reconsideration.

184. There is one other reason why we referred to the law laid down in ***M.R. Apparao*** (supra) at an earlier part of our opinion. The question as to whether any section of the RTE Act, apart from Section 12(1)(c), or for that matter the entirety of the RTE Act is *ultra vires* Article 30 does not appear from the decision to have either been directly raised before the Constitution Bench or dealt with by it. It might appear paradoxical, but the judiciary can only definitively address constitutional issues of such importance when they are directly raised.

185. Thus, ultimately, a reconsideration of ***Pramati Educational and Cultural Trust*** (supra) seems unavoidable. The minority status of an institution must be grounded in a genuine commitment to serve its community, and not merely operate as a vehicle for evading

constitutional duties. If the object of Article 30 is to protect identity, then compliance with the RTE Act, insofar as it does not annihilate that identity, ought not to be viewed as an encroachment.

L. Summary of our views on Pramati Educational and Cultural Trust

186. Article 21A postulates primary education to be a 'public good' that must be accessible and available to all. The RTE Act is the State's legislative enforcement of this fundamental right.

187. The Court in ***Pramati Educational and Cultural Trust*** (supra) focused on Section 12(1)(c) of the RTE Act and no other section and held the entirety of the RTE Act to be inapplicable to an entire section of society. Thereby, such section, so to say, has been totally excluded from the idea and notion of nation building by providing education to children at the grassroot level. Even if one were to accept that Section 12(1)(c) violated Article 30, the same could have been read down by including at least the children of the particular minority community who also belong to weaker section and disadvantaged group in the neighbourhood. To hold that the entirety of the RTE Act is inapplicable, with due respect, does not appeal to us to be reasonable and proportionate.

188. ***Pramati Educational and Cultural Trust*** (supra), ruling that RTE Act would not apply to minority institutions, in effect would offend the Article 21A right of students admitted in such institutions. They would stand denied of the various statutory entitlements and benefits that the RTE Act affords to all children between 6 and 14 years of age.

189. The RTE Act does not alter the minority character of institutions set up under Article 30. The decision in ***Pramati Educational and Cultural Trust*** (supra) seems to us to be doubtful on various counts, in holding so. The decisions in ***T.M.A. Pai Foundation*** (supra), and ***P. A. Inamdar*** (supra) hold that even the inclusion of non-minority students in a minority institution would not dilute the institution's minority character. Pertinently, none of these decisions interpret Article 21A, which is inserted subsequently, or pertain to institutions imparting primary education.

190. Regulation in the form of norms and standards to ensure quality of education, does not dilute the minority character of an institution, and

in fact is a necessary feature of the right to education, as understood both domestically, and internationally.

191. In a scenario where the TET is held to be inapplicable to minority institutions, this would additionally result in a violation of Article 14 as differential eligibility criteria based on religious or linguistic character would be an impermissible classification, and a violation of the general right guaranteed under Article 21A.

M. Requirement of minimum qualification – whether applicable to in-service teachers?

192. It was contended that the term 'appointment' used in Section 23 of the RTE Act would mean only the initial appointment as a teacher and not appointment by promotion. Accordingly, the minimum qualifications laid down by the Council (including the TET) for 'appointment of a teacher' can only relate to 'initial appointment' of such teacher and not an appointment by 'promotion'. Therefore, it was argued that the TET is not a mandatory requirement for promotion.

193. We find ourselves in disagreement with this proposition.

194. In legal parlance, the term 'appointment' means not only initial appointment but also covers appointment by 'promotion', among others. In this context, a profitable reference may be made to the decision of this Court in ***M. Ramachandran v. Govind Ballabh***[81]. Relevant passage from such decision reads thus:

> "**6.** … There is no dispute that appointment/recruitment to any service can be made from different sources, i.e., by direct appointment, by promotion or by absorption/ transfer. The source of recruitment can either be internal or external. Internal source would relate to cases where the appointments are made by promotion or by transfer and by absorption. External source would conceive the recruitment of eligible persons who are not already in service in the organisation to which the recruitment is to be made ... ."

81 (1999) 8 SCC 592

195. Furthermore, reference may be made to the decision of this Court in ***K. Narayanan v. State of Karnataka***[82] where this Court traced the meaning of the word 'recruitment' and held:

> "**6.** … 'Recruitment' according to the dictionary means 'enlist'. It is a comprehensive term and includes any method provided for inducting a person in public service. Appointment, selection, promotion, deputation are all well-known methods of recruitment. Even appointment by transfer is not unknown. …."

196. Appointment and recruitment are two distinct but not unrelated concepts. Recruitment is the broader process of which selection is a part that culminates in an appointment. Recruitment can be carried out from various sources, which are broadly classified into internal and external sources. Internal sources would comprise individuals who are already employed within the organization. This would include an appointment by promotion or transfer. External sources, on the other hand, consist of individuals who are not currently in the service of the recruiting organization. Direct recruitment is an appointment from external sources or from open market, so to say.

197. Having noticed what this Court has held in relation to recruitment/ appointment, we turn to Section 23 of the RTE Act.

198. Reading Section 23 of the RTE Act, we find that the first proviso to sub-section (2) of Section 23 thereof assumes importance for dealing with the contention. For brevity, the proviso is reproduced below:

> "Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years."

199. The proviso provides for a deadline for all teachers, who are in service, to acquire the prescribed minimum qualifications within a period of five years. Should they fail to do so, they render themselves ineligible to continue on their post. The objective behind introducing the proviso is to uphold the best interest of the children by ensuring quality education, not only through teachers who were

82 (1994) Supp. 1 SCC 44 : 1994 SCC (L&S) 392

to be appointed after the commencement of the RTE Act but also for in-service teachers.

200. If we are to accept the contention of the in-service teachers, the abovesaid proviso would be rendered nugatory. Obtaining the TET qualification under the RTE Act is mandatory and the consequence of not obtaining such qualification flowing from the scheme of the RTE Act is that the in-service teachers would cease to have any right to continue in service. Reference may also be made to letter dated 3rd August, 2017 (discussed in paragraph 69 above) issued by the MHRD which provided a deadline beyond which the in-service teachers, having not qualified the TET, would not be permitted to continue in service.

201. Having regard to the foregoing, we see no reason to hold that the minimum qualifications prescribed by the Council would apply only for initial appointment and not for promotion.

N. On minimum qualifications versus eligibility

202. Learned senior counsel opposing the TET have argued that the phrase '*minimum qualifications*' used in Section 23 of the RTE Act will not cover the TET in its ambit. They contend that the TET is not a qualification at all but an eligibility criterion. Thus, prescribing the TET as a minimum qualification under Section 23 is incorrect. There is no statutory imprimatur to make the TET mandatory and the same must be done away with.

203. We are not persuaded to agree with this argument for reasons discussed in heading K above.

204. We reiterate and hold that the TET is indeed a qualification, necessary to be held by a person seeking appointment as a teacher in a school. Only upon a person obtaining such qualification can he become eligible for appointment as a teacher.

205. Obfuscating the true import of the synonymous expressions would not lend assistance. What must be looked into is the consequence of such qualification. The eligibility criteria, among other things, also prescribes the TET as a qualification. A person seeking appointment as a teacher must, as a qualification, pass the TET. Only by obtaining such qualification, he would be considered eligible to be appointed as a teacher. In our view, there lies no difference as such between

qualification and eligibility. In this context, we may refer to a decision of the Allahabad High Court in ***Arvind Kumar Shukla v. Union of India***[83], which held thus:

> "Further, submission of learned counsel for the petitioners is that since the reserved category candidates have availed the benefit of reservation in TET Exam, they should not be given benefit of reservation in selection and recruitment of the Assistant Teacher. I find no force in this submission of the learned counsel for the petitioners. Qualifying the TET Exam as per Rules is not a guarantee for employment. It is eligibility qualification to participate in the selection process. There is a difference between eligibility qualification and selection for employment. Reservation in educational institution is provided under Article 15 of the Constitution, whereas reservation in employment is provided under Article 16 of the Constitution. Merely because a person has secured admission in a course, which makes him eligible to participate in the selection process, does not amount to secure employment for which he becomes eligible after completing the course. Therefore, the reservation in employment cannot be denied to a person who belongs to reserved category and has secured admission in a course to become eligible for such an employment on the ground that he has already secured admission on the basis of reservation in getting admission in a course to acquire eligibility."

206. Thus, we hold that the TET is one of the minimum qualifications that may be prescribed under Section 23 of the RTE Act.

VII. Order of reference for consideration by a larger bench

207. Sitting in a combination of two Judges, we are not oblivious to the bounds of judicial discipline and the enduring authority of 'precedents'. Though a Constitution Bench decision of seven Judges of recent origin in ***Aligarh Muslim University v. Naresh Agarwal***[84] has upheld a reference made by a Bench of two-Judges directly to a

83 2018 SCC OnLine All 1665

84 (2025) 6 SCC 1

larger Bench of seven-Judges while doubting a Constitution Bench decision of five-Judges and, relying on such observations, it seems to be a permissible course of action for us to refer the issues that we propose to formulate hereafter to the Hon'ble the Chief Justice for a reference to a Bench of seven-Judges, we refrain from doing so consciously. We tread this path of making a reference with *deference* to all previous decisions of Constitution Benches on the manner of making a reference, and not in *defiance* of what the majority view is in ***Aligarh Muslim University*** (supra). We are mindful that we can merely *doubt* the view expressed by a larger Bench; not *differ and depart* from such view of a larger Bench. ***Pramati Educational and Cultural Trust*** (supra) being a Constitution Bench decision, we cannot render findings different to what has been expressed therein and direct them to be treated as final. This would only create chaos by making the same binding on all in terms of Article 141 of the Constitution.

208. In view of the foregoing discussions, we respectfully express our doubt as to whether ***Pramati Educational and Cultural Trust*** (supra) [insofar as it exempts the application of the RTE Act to minority schools, whether aided or unaided, falling under clause (1) of Article 30 of the Constitution] has been correctly decided.

209. We may also place on record that a coordinate Bench of this Court in ***Ashwini Thanappan v. Director of Education***[85] after recording the submission of counsel for the petitioner of ***Pramati Educational and Cultural Trust*** (supra) being inconsistent with the decision in ***P.A. Inamdar*** (supra) and requires further examination, directed the Registry to place the matter before the Hon'ble the Chief Justice of India. The reference, we find, is yet to be answered.

210. We, therefore, consider it expedient to follow the decision of this Court in ***Lala Shri Bhagwan v. Shri Ram Chand***[86] as well as long-standing subsequent precedents set by decisions of Constitution Benches prior to ***Aligarh Muslim University*** (supra) and urge the Hon'ble the Chief Justice of India to consider the desirability as to whether the issues formulated hereunder, or such other issues as may be deemed relevant, do warrant reference to a larger Bench:

85 (2014) 8 SCC 272

86 [1965] 3 SCR 218

a. Whether the judgment in ***Pramati Educational and Cultural Trust*** (supra) exempting minority educational institutions, whether aided or unaided, falling under clause (1) of Article 30 of the Constitution, from the purview of the entirety of the RTE Act does require reconsideration for the reasons assigned by us?

b. Whether the RTE Act infringes the rights of minorities, religious or linguistic, guaranteed under Article 30(1) of the Constitution? And, assuming that Section 12(1)(c) of the RTE Act suffers from the vice of encroaching upon minority rights protected by Article 30 of the Constitution, whether Section 12(1)(c) should have been read down to include children of the particular minority community who also belong to weaker section and disadvantaged group in the neighbourhood, to save it from being declared *ultra vires* such minority rights?

c. What is the effect of non-consideration of Article 29(2) of the Constitution in the context of the declaration made in ***Pramati Educational and Cultural Trust*** (supra) that the RTE Act would not be applicable to aided minority educational institutions?

and

d. Whether, in the absence of any discussion in ***Pramati Educational and Cultural Trust*** (supra) regarding unconstitutionality of the other provisions of the RTE Act, except Section 12(1)(c), the entirety of the enactment should have been declared *ultra vires* minority rights protected by Article 30 of the Constitution?

211. Registry is directed to place Civil Appeal Nos. 1364 - 1367, 1385 -1386 and 6364 of 2025 before the Hon'ble Chief Justice of India for appropriate directions.

212. As regards Civil Appeal Nos. 6365-6367 of 2025, we have already noted that the State of Tamil Nadu raised the argument regarding the TET for the first time before this Court. The appointment proposals of the concerned teachers were rejected on grounds other than the TET, and the TET issue was not raised before the High Court. We are mindful of the settled legal principles that prohibit the introduction of new grounds for the first time before this Court. Therefore, it would have been appropriate to dismiss the civil appeals at the outset on this basis alone. That said, we are conscious of the fact that the institution in which the teacher/respondent seeks appointment is a

minority institution. As such, it falls within the scope of the order of reference mentioned above.

213. In light of this, we direct that Civil Appeal Nos. 6365-6367 of 2025 too shall be governed by the direction in paragraph 211 above.

VIII. ORDER ON APPLICABILITY OF THE TET TO IN-SERVICE TEACHERS

214. Per the detailed discussions above and resting on the same, we hold that the provisions of the RTE Act have to be complied with by all schools as defined in Section 2(n) of the RTE Act except the schools established and administered by the minority – whether religious or linguistic – till such time the reference is decided and subject to the answers to the questions formulated above under section VII. Logically, it would follow that in-service teachers (irrespective of the length of their service) would also be required to qualify the TET to continue in service.

215. However, we are mindful of the ground realities as well as the practical challenges. There are in-service teachers who were recruited much prior to the advent of the RTE Act and who might have put in more than two or even three decades of service. They have been imparting education to their students to the best of their ability without any serious complaint. It is not that the students who have been imparted education by the non-TET qualified teachers have not shone in life. To dislodge such teachers from service on the ground that they have not qualified the TET would seem to be a bit harsh although we are alive to the settled legal position that operation of a statute can never be seen as an evil.

216. Bearing in mind their predicament, we invoke our powers under Article 142 of the Constitution of India and direct that those teachers who have less than five years' service left, as on date, may continue in service till they attain the age of superannuation without qualifying the TET. However, we make it clear that if any such teacher (having less than five years' service left) aspires for promotion, he will not be considered eligible without he/she having qualified the TET.

217. Insofar as in-service teachers recruited prior to enactment of the RTE Act and having more than 5 years to retire on superannuation are concerned, they shall be under an obligation to qualify the TET within 2 years from date in order to continue in service. If any of such teachers fail to qualify the TET within the time that we have

allowed, they shall have to quit service. They may be compulsorily retired; and paid whatever terminal benefits they are entitled to. We add a rider that to qualify for the terminal benefits, such teachers must have put in the qualifying period of service, in accordance with the rules. If any teacher has not put in the qualifying service and there is some deficiency, his/her case may be considered by the appropriate department in the Government upon a representation being made by him/her.

218. Subject to what we have said above, it is reiterated that those aspiring for appointment and those in-service teachers aspiring for appointment by promotion must, however, qualify the TET; or else, they would have no right of consideration of their candidature.

219. With the aforesaid modification of the impugned judgments/orders, all the appeals[87] relatable to in-service teachers of non-minority schools stand disposed of on the above terms.

Result of the case: Two sets of appeals directed to be placed before Hon'ble Chief Justice of India for directions while one set of appeals disposed of.

†*Headnotes prepared by:* Bibhuti Bhushan Bose

87 Civil Appeal Nos. 1389, 1390, 1391, 1393, 1395 to 1399, 1401, 1403, 1404 to 1410 of 2025