

IN THE SUPREME COURT OF INDIA

ORDER XXI RULE 3 (1) A

CIVIL APPELLATE JURISDICTION

Special Leave Petition Civil No. 5690 of 2022

(Against the Common Impugned Final Judgment and Order
dated 15.03.2022 passed by the Hon'ble High Court of Karnataka
at Bengaluru in Writ Petition No. 2146 of 2022)

WITH PRAYER FOR INTERIM RELIEF

IN THE MATTER OF:

Shafa & Another

... Petitioners

Versus

Chief Secretary Primary & Higher Education Department, State
of Karnataka & Others

... Respondents

AND WITH

I. A. No. 47578 of 2022

An application for bringing Additional Documents on Record.

AND WITH

I. A. No. 47579 of 2022

An application for Directions.

AND WITH

I. A. No. 47580 of 2022

An application seeking permission for filing lengthy Synopsis
and List of Dates and Events.

AND WITH

I. A. No. 47581 of 2022

An application for exemption from filing official Translation of
Documents.

FOR PAPER-BOOK INDEX

KINDLY SEE INSIDE

Advocate for the Appellants/ Petitioners: Shadan Farasat

RECORD OF PROCEEDINGS

[illegible]

Diary No. 9024 of 2022

Declaration

All defects have been duly cured. Whatever has been added / deleted / modified in the petitions the result of curing of defects and nothing else. Except curing the defects, nothing has been done. Paper books are complete in all respects.



Shadan Farasat
Advocate-on-Record

24/03/2022

+91-9818009824

AoR Code: 1985

Ravi Kumar Rahul

C/o Mr. Shadan Farasat

+91-7838001284

+91-8800515913

I. D. Card No.: 4482

INDEX

S. No.	Particulars	Page No. of Part to it belongs		Remarks
		Part I (Contents of Paperback)	Part II Contents of file alone)	
I	II	III	IV	V
	Court Fee			
1.	Office report on limitation	A	A	
2.	Listing Proforma	A1-A2	A1-A2	
3.	Cover Page of Paperback	A3		
4.	Index of Record of Proceedings	A4		
5.	Limitation Report prepare by the Registry	A5		
6.	Defect List	A6-A		
7.	Note Sheet	Ns1- Ns__	Ns1- Ns__	
8.	Synopsis & List of Dates & Events	B-NN		
9.	A certified copy of the Common Impugned Final Judgment and Order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka at	1-130		

	Bengaluru in Writ Petition No. 2146 of 2022			
10.	Special Leave Petition with supporting Affidavit.	131-175		
11.	Appendix: Central Government Act, The Constitution of India, 1949, Articles: 14, 15, 19, 21, 25, 29, 46, 51, 246 & 253; State Government Act, Karnataka Education Act, 1983, Sections: 7 & 133.	176-187		
12.	ANNEXURE P-1: A true typed translated copy of the extract of Circular No. ED 580 SHH 2013 dated 31.01.2014, issued by the Government of Karnataka.	188-192		
13.	ANNEXURE P-2: A true typed translated copy of the relevant extracts of the Guidelines 2021-22 issued by the Department	193-217		

	of Pre-University Education, Govt. of Karnataka.			
14.	ANNEXURE P-3: A true typed translated copy of the representation dated 30.12.2021 by the Students of Government Pre-University College, Udupi District before Deputy Director, Pre-University, Udupi District.	218-219		
15.	ANNEXURE P-4: A true typed translated copy of letter dated 25.01.2022 bearing No. EP 14 SHH 2022 issued by Respondent No. 1.	220-221		
16.	ANNEXURE P-5: A true copy of the Writ Petition No. 2146 of 2022 filed before the High Court of Karnataka at Bangalore titled as <i>Ayesha Hajeera Almas & Ors. v. Chief Secretary,</i>	222-249		

	<i>Primary & Higher Education & Ors.</i>			
17.	ANNEXURE P-6: A true typed translated copy of the College Development Committee meeting held on 31.01.2022.	250-253		
18.	ANNEXURE P-7: A true typed translated copy of the Government of Karnataka Order No. EP 14 SH 2022 dated 05.02.2022.	254-257		
19.	ANNEXURE P-8: A true copy of the Statement of Objections filed by the Respondent State before the High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022.	258-298		
20.	ANNEXURE P-9: A true copy of the Common Interim Order dated 10.02.2022 passed by the	299-305		

	High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022.			
21.	ANNEXURE P-10: A true copy of the Statement of Objections filed by Respondent No. 15 before the High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022.	306-319		
22.	ANNEXURE P-11: A true copy of the Statement of Objections filed by Respondent No. 5 & 6 before the High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022.	320-330		
23.	ANNEXURE P-12: A true copy of the Rejoinder to the State Objection with Verifying Affidavit filed by	331-352		

	Petitioners before the High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022.			
24.	ANNEXURE P-13: A true copy of the Statement of Objections filed by Respondent No. 13 before the High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022.	353-358		
25.	ANNEXURE P-14: A true copy of the Statement of Objections filed by Respondent No. 12 before the High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022.	359-376		
26.	ANNEXURE P-15: A true copy of the Rejoinder to the Statement of Objections	377-390		

	filed by Respondent No. 5 & 6 before the High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022.			
27.	ANNEXURE P-16: A true copy of the Rejoinder to the Statement of Objections filed by Respondent No. 12 before the High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022.	391-400		
28.	ANNEXURE P-17: A true copy of the Rejoinder to the Statement of Objections filed by Respondent No. 13 before the High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022.	401-408		
29.	ANNEXURE P-18: A	409-419		

	true copy of the Rejoinder to the Statement of Objections filed by Respondent No. 15 before the High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022.			
30.	I. A. No. 47578 of 2022 An application for bringing Additional Documents on Record.	420-421		
31.	ANNEXURE P-19: A true copy of First PUC Annual Examination March-April 2022, issued by the Department of Pre University Education, Udupi District, Udupi.	422		
32.	I. A. No. 47579 of 2022 An application for Directions.	423-425		
33.	I. A. No. 47580 of 2022 An application seeking permission for filing lengthy Synopsis and List	426-427		

	of Dates and Events.			
34.	I. A. No. 47581 of 2022 An application for exemption from filing official Translation of Documents.	428-431		
35.	Letter	432		
36.	Vakalatama with authority letter	433-434	433-434	
37.	Filing Memo	435	435	

IN THE SUPREME COURT OF INDIA**ORDER XXI RULE 3 (1) A****CIVIL APPELLATE JURISDICTION**Special Leave Petition Civil No. **5960** of 2022

(Against the Common Impugned Final Judgment and Order
dated 15.03.2022 passed by the Hon'ble High Court of Karnataka
at Bengaluru in Writ Petition No. 2146 of 2022)

IN THE MATTER OF:

Shafa & Another

... Petitioners**Versus**

Chief Secretary Primary & Higher Education Department, State
of Karnataka & Others

... Respondents**OFFICE REPORT ON LIMITATION**

1. The Petition is in time.
2. The petition is not barred by time and there is delay of **NIL** days in filing the same against the Common Impugned Final Judgment and Order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022 and no application for condonation of **NIL** days delay in filing the petition has been filed.
3. There is delay of **NIL** days in Re-filing the petition and petition for Condonation of **NIL** days in Re-filing has been filed.

Place: - New Delhi**Filed On: - 23.03.2022****(BRANCH OFFICER)**

PROFORMA FOR FIRST LISTING

SECTION - _____

The case pertains to (Please tick/check the correct box):

- ❖ Central Act: **The Constitution of India, 1949**
 - ❖ Section : **14, 15, 19, 21, 25, 29, 46, 51, 246 & 253**
 - ❖ Central Rule : **N.A.**
 - ❖ Rule No(s): **N.A.**
 - ❖ State Act: **Karnataka Education Act, 1983**
 - ❖ Section : **7 & 133**
 - ❖ State Rule : **N.A.**
 - ❖ Rule No(s) : **N.A.**
 - ❖ Impugned Interim Order : **N.A.**
 - ❖ Impugned Final Order/Decree : **15.03.2022**
 - ❖ High Court : **High Court of Karnataka at Bengaluru**
 - ❖ Name of Judges: **Hon'ble Mr. Ritu Raj Awasthi, CJ.,
Hon'ble Mr. Krishna S. Dixit, J.,
Hon'ble Ms. J. M. Khazi, J.**
 - ❖ Tribunal/Authority : **N.A.**
-

1. Nature of matter : **Civil**
2. (a) Petitioner/appellant No. 1: **Shafa & Another**
(b) e-mail ID : **N.A.**
(c) Mobile phone number: **N.A.**
3. (a) Respondent No. 1: **Chief Secretary Primary & Higher
Education Department, State of
Karnataka & Others**
(b) e-mail ID : **N.A.**
(c) Mobile phone number: **N.A.**
4. (a) Main category classification: **18 Ordinary Civil
Matters**

(b) Sub classification : **1807 Others**

5. Not to be listed before: **N.A.**

6. (a) Similar disposed of matter with citation, if any & case details: **No any disposed of matters**

(b) Similar pending matter with case details: **No any similar pending matters**

7. **Criminal Matters:**

(a) Whether accused/convict has surrendered: **____N.A.____**

(b) FIR No. **____** N. A. **____**; Date: **____** N. A. **____**

(c) Police Station: **____** N. A. **____**

(d) Sentence Awarded: **____** N. A. **____**

(e) Period of sentence undergone including period of Detention/Custody Undergone: **____** N. A. **____**

8. **Land Acquisition Matters :**

(a) Date of section 4 notification: **N.A.**

(b) Date of section 6 notification: **N.A.**

(c) Date of section 17 notification: **N.A.**

9. **Tax Matters:** State the tax effect: **N.A.**

10. **Special Category** (first petitioner/appellant only): Senior citizen > 65 years **N.A.** , SC/ST **N.A.**, Woman/Child **Yes**, Disabled **N.A.**, Legal Aid Case **N.A.**, In Custody **N. A.**

11. Vehicle Number (in case of Motor Accident Claim matters) **N.A.**

Date: 23.03.2022

AOR for Petitioner(s)

(Name): **Shadan Farasat**

Registration No. **1985**

Email: **shadanfarasat@gmail.com**

SYNOPSIS

Petitioners are minor students pursuing Science in Respondent No. 1 Pre-university College (“**PUC**”). Being constant adorners of the *hijab*, they have been adversely affected by Government Order bearing No. EP14SH2022 dated 05.02.2022, issued by the Under Secretary to the Government, Department of Education (Pre-University) (“**Impugned G.O.**”) proscribing the wearing of *hijab* in PUCs and the consequent order dated 15.03.2022 (“**Impugned Judgement**”) passed by the Hon'ble High Court of Judicature of Karnataka at Bengaluru (“**Hon’ble High Court**”) in a batch of writ petitions, including Writ Petition No. 2146/2022, filed by the Petitioners, upholding the Impugned G.O. The consequent and continued violation of Petitioners’ fundamental rights has constrained them to file the present petition.

By way of the Impugned G.O., and an affiliated circular also issued by the Department of Education on the same even date, College Development Committees, instituted pursuant to a notification issued by the Department of Education (Pre-University) in 2014, have effectively been given the power to regulate the uniform of students such that the practise of wearing *hijab*/headscarf was proscribed. This was despite Guidelines issued by the Department of Pre-University College, State of Karnataka which make it abundantly clear that uniform is not mandatory for students studying in PUCs, and that any attempt to impose the same would be illegal.

Accordingly, the Impugned G.O. was challenged in the Impugned Judgement for explicitly violating Articles 14, 15, 19,

21, 25 and 29 guaranteed as fundamental rights under the Constitution of India. Further, the Impugned G.O. was challenged for straying away from India's international obligations under *inter alia* the Convention on the Rights of the Child, which India acceded to, without reservations, on 11.12.1992.

The Impugned G.O. was also challenged for vesting power of regulating uniform and effectively proscribing the wearing of *hijab/headscarf* to an extra-legal body, the College Development Committee (“**CDC**”), which does not derive its legitimacy or powers from either the parent Act, the “Karnataka Education Act, 1983” (“**1983 Act**”), nor any of the subsequent Rules enacted.

The Hon'ble High Court of Karnataka *vide* the Impugned Judgement dated 15.03.2022 dismissed the writ petitions erroneously holding that:

- (a) **Wearing of *hijab/headscarf* by Muslim women does not form part of essential religious practices in Islamic Faith.**
- (b) **Prescription of school uniform is a reasonable restriction constitutionally permissible, which students cannot object to.**
- (c) **The Government had the power to issue the Impugned G.O. and no case is made out for its invalidation.**
- (d) **The right to privacy and free speech of female Muslim students was not infringed to a sufficient extent warranting the interference of the Court.**

These holdings of the Hon'ble High Court are patently erroneous and flatly violate the fundamental rights promised under the Constitution of India.

THE IMPUGNED JUDGEMENT DOES NOT PROPERLY APPRECIATE THE BLATANT MANNER IN WHICH THE IMPUGNED G.O. VIOLATES ARTICLE 25 OF THE CONSTITUTION

The Impugned G.O. effectively dictates the delegated body that the CDC is to regulate uniform wearing in a manner that exclusively prescribes the wearing of *hijab/headscarf*. Such is the blatant nature of the Impugned G.O. that the State itself could not defend the paragraphs of the Impugned G.O. which singly prohibit the practise of wearing *hijab/headscarf*. An exercise of “overenthusiasm” is the term that was attributed by the State before the Hon'ble High Court to those paragraphs of the Impugned G.O. which blatantly infringe the right of Muslim female students to freely practise their religion and discriminate solely against Muslim female students, without prohibiting any other religious practises or observances.

Despite the same, the Impugned Judgement holistically upheld the Impugned G.O. finding no bone with the manner in which it singly proscribes the wearing of *hijab/headscarf* without grounding such prohibition in any restriction provided under Article 25 of the Constitution.

It has been repeatedly reiterated by several judgements of this Hon'ble Court that restrictions to the right to freely profess, practise and propagate religion must emanate from Article 25. To this extent, this Court in *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay, 1962 Supp (2) SCR 496* has stated that,

“17... Article 25 guarantees the right to every person, whether citizen or non-citizen, the freedom of conscience and the right freely to profess, practise and propagate religion. But this guaranteed right is not an absolute one. **It is subject to (1) public order, morality and health, (2) the other provisions of Part III of the Constitution, (3) any existing law regulating or restricting an economic, financial, political or other secular activity which may be associated with religious practice, (4) a law providing for social welfare and reform, and (5) any law that may be made by the State regulating or restricting the activities aforesaid or providing for social welfare and reform.** I have omitted reference to the provisions of Explanations I and II and other parts of Article 25 which are not material to our present purpose. It is noteworthy that the right guaranteed by Article 25 is an individual right, as distinguished from the right of an organised body like a religious denomination or any section thereof, dealt with by Article 26. Hence, every member of the community has the right, so long as he does not in any way interfere with the corresponding rights of others, to profess, practise and propagate his religion, and everyone is guaranteed his freedom of conscience. The question naturally arises: Can an individual be compelled to have a particular belief on pain of a penalty, like excommunication? One is entitled to believe or not to believe a particular tenet or to follow or not to follow a particular practice in matters of religion. No one can, therefore, be compelled, against his own judgment and belief, to hold any particular creed or follow a set of religious practices. **The Constitution has left every person free in the matter of his relation to his Creator, if he believes in one. It is, thus, clear that a person is left completely free to worship God according to the dictates of his conscience, and that his right to worship as he pleased is unfettered so long as it does not come into**

conflict with any restraints, as aforesaid, imposed by the State in the interest of public order, etc. A person is not liable to answer for the verity of his religious views, and he cannot be questioned as to his religious beliefs, by the State or by any other person. Thus, though his religious beliefs are entirely his own and his freedom to hold those beliefs is absolute, he has not the absolute right to act in any way he pleased in exercise of his religious beliefs. He has been guaranteed the right to practise and propagate his religion, subject to the limitations aforesaid. His right to practise his religion must also be subject to the criminal laws of the country, validly passed with reference to actions which the legislature has declared to be of a penal character. Laws made by a competent legislature in the interest of public order and the like, restricting religious practices, would come within the regulating power of the State. For example, there may be religious practices of sacrifice of human beings, or sacrifice of animals in a way deleterious to the well-being of the community at large. It is open to the State to intervene, by legislation, to restrict or to regulate to the extent of completely stopping such deleterious practices. It must, therefore, be held that though the freedom of conscience is guaranteed to every individual so that he may hold any beliefs he likes, his actions in pursuance of those beliefs may be liable to restrictions in the interest of the community at large, as may be determined by common consent, that is to say, by a competent legislature. It was on such humanitarian grounds, and for the purpose of social reform, that so called religious practices like immolating a widow at the pyre of her deceased husband, or of dedicating a virgin girl of tender years to a God to function as a devadasi, or of ostracising a person from all social contacts and religious communion on account of his having eaten forbidden food or taboo, were stopped by legislation.”

(emphasis supplied)

It has been categorically stated in the Impugned Judgement that the prohibition upon the *hijab/headscarf* is not a result of any need for public order (page 118 of the Impugned Judgement). In fact, it is the say of the State and also held in the Impugned Judgement that any reference to “public order” in the Impugned G.O. did not hold the same meaning as the phrase employed in the Constitution.

Further, no ground of health, morality was claimed for issuing the Impugned G.O. Additionally, the G.O. was not stated to be an exercise in reform or regulation of any economic, financial, political or other secular activity which may be associated with religious practice. Importantly, the Impugned G.O., which claims its legitimacy from the 1983 Act, would have been *ultra vires* the Act if it tried to introduce “welfarist” agendas through the back door by proscribing *hijab/headscarf* in PUCs since the Act itself does not carry such intent.

Since the Impugned G.O. does not draw power to proscribe the wearing of *hijab/headscarf* from any of these restrictions founded in the Constitution, the prohibition upon Petitioners from wearing the *hijab/headscarf* is thus unconstitutional.

The Impugned Judgement by introducing a new and much weathered element of “uniform policy” to prohibit Petitioners from wearing the *hijab/headscarf* in PUCs, in direct contravention of their religious tenets, has absolutely no feet to sustain itself in constitutional law. Nor could mere reference to the objects of the 1983 Act, of “*cultivating a scientific and secular outlook through education*” be sufficient to denude the

constitutional right of the Petitioners to practise the religion in their educational institution.

Further, by singly proscribing only one religious practise, the Hon'ble High Court has ignored the emphatic reiteration of this Hon'ble Court that coerced uniformity cannot be propagated in the name of maintaining a secular outlook (*Bijoe Emmanuel v. State of Kerala (1986) 3 SCC 615*).

In this regard, the following observations of Shankarrao Deo, a Member of the Constituent Assembly, in the Constituent Assembly Debate on 14.09.2019 (Vol. IX, Pg. 7) become apposite:

*“As I have tried to understand Indian culture, Sanskriti, Indian religion and Indian spiritual traditions, **it is not uniformity but unity in diversity**. It is Vividhata that India stands for. That is our richness; that is the contribution that India can make to the world-culture and world progress. I would like to maintain the variety of cultures, the different languages, each without obstructing, hindering or killing the unity of the country”*

(emphasis supplied)

THE IMPUGNED JUDGEMENT WRONGLY HELD THAT HIJAB/HEADSCARF IS NOT ESSENTIAL TO ISLAM

Without establishing any constitutional reasonable restriction for why *inter alia* the Petitioners are being prohibited from wearing the *hijab/headscarf* by way of the Impugned G.O., the Hon'ble High Court directly proceeded to hold that the wearing of the *hijab/headscarf* is not essential to Islam. It did this without discussing precedents which specifically stipulate that the *hijab/headscarf* is essential to Islam, as in *Amna Bint Basheer and Ors. vs. Central Board of Secondary Education and Ors.*,

(2016) 2 KLJ 605, which examined the relevant Quranic Suras and the *Hadith* while arriving at the conclusion in favour of the *hijab/headscarf*. It may be relevant to pay heed to these relevant extracts from this judgement of the Kerala High Court:

"21. In the original text in Arabic, the veil is referred as a 'Khumur'. In 'the Islamic digest of Aqeedah and Fiqh' by Mahmoud Rida Murad 'Khumur' is mentioned as follows:

"Khumur, or head cover, is the cloth which covers all of the hair on the head, while the work, 'juyoob' (pl. of jaib) means not only the bosom, as commonly thought, but it includes the neck too."

22 . In the Chapter 33 known as "The Clans" in verse 59 of the Holy Quran, the command is as follows:

"O Prophet, tell your wives and your daughters and the women of the believers to lower over them a portion of their jilbabs. That is more suitable that they will be known and not be harmed. And even Allah Forgiving and Merciful." (Ref: Ibid)

23. The reference of jilbab in the above chapter would indicate that the Islamic dress code for women not only consists of a scarf that covers the head, the neck and the bosom but also includes the overall dress that should be long and loose. The jilbab in Arabic Dictionary like lisanu-Al-Arab referred as the loose outer garment.

24. In one of the Hadidhs (words of Prophet Mohammed), explaining the Quranic verses to his sister-in-law 'Asma' is as follows:

"O Asma! It is not correct for a woman to show her parts other than her hands and face to strangers after she begins to have menstruation."

[Reported by Abudawud ref: hadith No. 4092 kitab al libas (book of clothing Sunan Abu Dawud)]

25. In another Hadidh reported by Thirmidi is as follows:

"Abdullah, son of Umar bin al-Khattab, with whom Allah is pleased, reported that the Messenger of Allah, said: On the Day of Resurrection, Allah will not look at the man who trails his garment along boastfully". Thereupon, Umm Salamah asked, 'What should women do with their garments?' The Prophet said: 'They should lower their garments a hand span,' Umm Salamah further said, 'Women's feet would still be uncovered.' The Messenger of Allah (S), replied: 'Let them lower them a forearm's length, but not longer.'

[Ref: The Islamic Digest of Aqeedah and Fiqh by Mahmoud Rida Murad]

27. In the event of infringement of the dress code, punishment is referred in the Hadiths as follows:

"Fudhalah bin Ubaid reported that the Messenger of Allah(s) said. Three people about whose evil fate you should not feel sorry: a man who disassociates himself from the Muslim Ummah, disobeys his Imam (the ruler of the Muslim Ummah), and dies in that state; a slave who runs away from his master and dies before returning to him; a woman whose husband goes away after having provided her with provisions but she displays her beauty, in tabarruj during his absence. So do not be concerned about them. The jilbab must conceal the underclothes. Such requirement applies to the garment a Muslimah should wear for Salah as well. He said. There will be, in the latter days of my Ummah, women who will be dressed and yet undressed. (They will be wearing) On their heads (things) resembling camels' humps. Curse them. They are accursed."

28. Thus, the analysis of the Quranic injunctions and the Hadiths would show that it is a farz to cover the head and wear the long sleeved dress except face part and exposing the body otherwise is forbidden (haram). When farz is violated by any action opposite to farz that action becomes forbidden (haram).

However, there is a possibility of having different views or opinions for the believers of the Islam based on ijithihad (independent reasoning). This Court is not discarding such views. The possibility of having different propositions is not a ground to deny the freedom, if such propositions have some foundation in the claim. As has been adverted above, the claim of the petitioners is well founded even though, a different view is possible. This Court is only expected to safeguard such freedom based on the Constitution in preference to giving a religious verdict.

29. The discussions as above would show that covering the head and wearing a long sleeve dress by women have been treated as an essential part of the Islamic religion. It follows a fortiori, Article 25(1) protects such prescription of the dress code.”

(emphasis supplied)

Instead of appreciating the relevant texts as they are followed in the religion, the Hon’ble High Court, in the Impugned Judgement, participated in an exercise of interpretation while declaring that wearing hijab is not mandatory under Quranic injunction. The Hon’ble High Court attempted to place reliance on footnote no. 3767 to verse 59 in a translated copy of the Quran, overriding verses of the Quran, most particularly Chapter 24 (Surah Noor) verse (Ayath) no. 31, to interpret that the *hijab*/headscarf isn’t a mandatory tenet in Islam. (page 65 of the Impugned Judgement) The Hon’ble High Court made further attempts to interpret the Quran, inferring the cultural and historical background behind the wearing of the *hijab*/headscarf. (pages 62-73 of the Impugned Judgement). Such a meaning-making project has been criticised in arriving at essential

religious practises of a religion in *Bijoe Emmanuel* in the following terms:

“20. The meaning of the expression “religion” in the context of the Fundamental Right to freedom of conscience and the right to profess, practise and propagate religion, guaranteed by Article 25 of the Constitution, has been explained in the well known cases of Commissioner, Hindu Religious Endowment, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [Commr, HRE v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282 : 1954 SCR 1005] , Ratilal Panachand Gandhi v. State of Bombay [AIR 1954 SC 388, 392 : 1954 SCR 1055] and S.P. Mittal v. Union of India [(1983) 1 SCC 51] . It is not necessary for our present purpose to refer to the exposition contained in these judgments except to say that in the first of these cases Mukherjea, J. made a reference to “Jehovah's Witnesses” and appeared to quote with approval the views of Latham, C.J. of the Australian High Court in Adelaide Company v. The Commonwealth [67 CLR 116] and those of the American Supreme Court in West Virginia State Board of Education v. Barnette [87 Law Ed 1628, 1633 : 319 US 624, 629 (1943)] . In Rotilal's case [AIR 1954 SC 388, 392 : 1954 SCR 1055] we also notice that Mukherjea, J. quoted as appropriate Davar, J.'s following observations in Jamshed Ji v. Soonabai [(1909) 33 Bom 122 : 10 Bom LR 417] :

“If this is the belief of the community and it is proved undoubtedly to be the belief of the Zoroastrian community, — a secular Judge is bound to accept that belief — it is not for him to sit in judgment on that belief, he has no right to interfere with the conscience of a donor who makes a gift in favour of what he believes to be the advancement of his religion and the welfare of his community or mankind.”

We do endorse the view suggested by Davar, J's observation that the question is not whether a particular religious belief or practice appeals to our reason or sentiment but whether the belief is genuinely and conscientiously held as part of the profession or practice of religion. Our personal views and reactions are irrelevant. If the belief is genuinely and conscientiously held it attracts the protection of Article 25 but subject, of course, to the inhibitions contained therein.”

(emphasis supplied)

THE IMPUGNED JUDGEMENT IS UNCONSTITUTIONAL FOR NOT RECOGNISING THE MANNER IN WHICH THE IMPUGNED G.O. RESTRICTS *INTER ALIA* PETITIONERS' ACCESS TO EDUCATION

That the most pernicious consequence of the impugned judgement is the blind eye it turns to the deprivation of education to female Muslim students due to the operation of the Impugned G.O.

The Impugned G.O. creates an inconducive atmosphere to accessing education without fear of exclusion or discrimination and poses as a hindrance to female Muslim students from being able to access education. This constitutionally guaranteed right to education is being deprived presently with many female students like the present Petitioners being unable to access school and education.

Further, since the Impugned G.O. covers “all educational institutions”, it is also contrary to The Right of Children to Free & Compulsory Education Act, 2009, wherein the appropriate government has been mandated to provide free and compulsory education to every child. Further, Section 8 of the Act states:

Section 8. Duties of appropriate Government. —The appropriate Government shall—

- (a) -----*
- (b) -----;*
- (c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;*
- (d) -----*
- (e) -----*

(emphasis supplied)

THE IMPUGNED JUDGEMENT WRONGLY HELD THAT THE IMPUGNED G.O. DOES NOT INFRINGE THE RIGHT TO PRIVACY TO A SUFFICIENT EXTENT, WARRANTING JUDICIAL INTERFERENCE

That the Impugned Judgement was patently wrong in holding that the Impugned G.O. did not infringe the right of, *inter alia*, Petitioners to privacy to a sufficient extent. By impugning religious observances by students in a few educational institutions and seeking the adornment of uniform that promotes “unity, equality and public order”, the decisional autonomy of students to express their faith and belief in public has been taken away. Decisional autonomy inheres within it the right to make intimate personal choices, including regarding one’s faith and dress, and express them freely in public. (*Justice K.S. Puttaswamy & Ors. v. Union of India & Ors. (2017) 10 SCC 1*). Further, this is not a derivative right or a right in the penumbra as has been stated in the Impugned Judgement.

By hindering personal development and interfering with the right to be left alone, the Impugned G.O., in its very essence, violates the right to privacy as articulated in *Puttaswamy (supra)* in the following terms:

“297. What, then, does privacy postulate? *Privacy postulates the reservation of a private space for the individual, described as the right to be let alone. The concept is founded on the autonomy of the individual. The ability of an individual to make choices lies at the core of the human personality. The notion of privacy enables the individual to assert and control the human element which is inseparable from the personality of the individual. The inviolable nature of the human personality is manifested in the ability to make decisions on matters intimate to human life. The autonomy of the individual is associated over matters which can be kept private. These are concerns over which there is a legitimate expectation of privacy. The body and the mind are inseparable elements of the human personality. The integrity of the body and the sanctity of the mind can exist on the foundation that each individual possesses an inalienable ability and right to preserve a private space in which the human personality can develop. Without the ability to make choices, the inviolability of the personality would be in doubt. Recognising a zone of privacy is but an acknowledgment that each individual must be entitled to chart and pursue the course of development of personality. Hence privacy is a postulate of human dignity itself. Thoughts and behavioural patterns which are intimate to an individual are entitled to a zone of privacy where one is free of social expectations. In that zone of privacy, an individual is not judged by others. Privacy enables each individual to take crucial decisions which find expression in the human personality. It enables individuals to preserve their*

beliefs, thoughts, expressions, ideas, ideologies, preferences and choices against societal demands of homogeneity. Privacy is an intrinsic recognition of heterogeneity, of the right of the individual to be different and to stand against the tide of conformity in creating a zone of solitude. Privacy protects the individual from the searching glare of publicity in matters which are personal to his or her life. Privacy attaches to the person and not to the place where it is associated. Privacy constitutes the foundation of all liberty because it is in privacy that the individual can decide how liberty is best exercised. Individual dignity and privacy are inextricably linked in a pattern woven out of a thread of diversity into the fabric of a plural culture.

298. *Privacy of the individual is an essential aspect of dignity. Dignity has both an intrinsic and instrumental value. As an intrinsic value, human dignity is an entitlement or a constitutionally protected interest in itself. In its instrumental facet, dignity and freedom are inseparably intertwined, each being a facilitative tool to achieve the other. The ability of the individual to protect a zone of privacy enables the realisation of the full value of life and liberty. Liberty has a broader meaning of which privacy is a subset. All liberties may not be exercised in privacy. Yet others can be fulfilled only within a private space. Privacy enables the individual to retain the autonomy of the body and mind. The autonomy of the individual is the ability to make decisions on vital matters of concern to life. Privacy has not been couched as an independent fundamental right. But that does not detract from the constitutional protection afforded to it, once the true nature of privacy and its relationship with those fundamental rights which are expressly protected is understood. Privacy lies across the spectrum of protected freedoms. The guarantee of equality is a guarantee against arbitrary State action. It prevents the State*

from discriminating between individuals. The destruction by the State of a sanctified personal space whether of the body or of the mind is violative of the guarantee against arbitrary State action. Privacy of the body entitles an individual to the integrity of the physical aspects of personhood. The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination. When these guarantees intersect with gender, they create a private space which protects all those elements which are crucial to gender identity. The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual. Above all, the privacy of the individual recognises an inviolable right to determine how freedom shall be exercised. An individual may perceive that the best form of expression is to remain silent. Silence postulates a realm of privacy. An artist finds reflection of the soul in a creative endeavour. A writer expresses the outcome of a process of thought. A musician contemplates upon notes which musically lead to silence. The silence, which lies within, reflects on the ability to choose how to convey thoughts and ideas or interact with others. These are crucial aspects of personhood. The freedoms under Article 19 can be fulfilled where the individual is entitled to decide upon his or her preferences. Read in conjunction with Article 21, liberty enables the individual to have a choice of preferences on various facets of life including what and how one will eat, the way one will dress, the faith one will espouse and a myriad other matters on which autonomy and self-determination require a choice to be made within the privacy of the mind. The constitutional right to the freedom of religion under Article 25 has implicit within it the ability to choose a faith and the freedom to express or not express those choices to the

world. These are some illustrations of the manner in which privacy facilitates freedom and is intrinsic to the exercise of liberty. The Constitution does not contain a separate article telling us that privacy has been declared to be a fundamental right. Nor have we tagged the provisions of Part III with an alpha-suffixed right to privacy: this is not an act of judicial redrafting. Dignity cannot exist without privacy. Both reside within the inalienable values of life, liberty and freedom which the Constitution has recognised. Privacy is the ultimate expression of the sanctity of the individual. It is a constitutional value which straddles across the spectrum of fundamental rights and protects for the individual a zone of choice and self-determination.

299. Privacy represents the core of the human personality and recognises the ability of each individual to make choices and to take decisions governing matters intimate and personal. Yet, it is necessary to acknowledge that individuals live in communities and work in communities. Their personalities affect and, in turn are shaped by their social environment. The individual is not a hermit. The lives of individuals are as much a social phenomenon. In their interactions with others, individuals are constantly engaged in behavioural patterns and in relationships impacting on the rest of society. Equally, the life of the individual is being consistently shaped by cultural and social values imbibed from living in the community. This state of flux which represents a constant evolution of individual personhood in the relationship with the rest of society provides the rationale for reserving to the individual a zone of repose. The lives which individuals lead as members of society engender a reasonable expectation of privacy. The notion of a reasonable expectation of privacy has elements both of a subjective and objective nature. Privacy at a subjective level is a reflection of

those areas where an individual desires to be left alone. On an objective plane, privacy is defined by those constitutional values which shape the content of the protected zone where the individual ought to be left alone. The notion that there must exist a reasonable expectation of privacy ensures that while on the one hand, the individual has a protected zone of privacy, yet on the other, the exercise of individual choices is subject to the rights of others to lead orderly lives. For instance, an individual who possesses a plot of land may decide to build upon it subject to zoning regulations. If the building bye-laws define the area upon which construction can be raised or the height of the boundary wall around the property, the right to privacy of the individual is conditioned by regulations designed to protect the interests of the community in planned spaces. Hence while the individual is entitled to a zone of privacy, its extent is based not only on the subjective expectation of the individual but on an objective principle which defines a reasonable expectation.”

(emphasis supplied)

In fact, in *Puttaswamy* itself, the right to dress and religious observances was explicitly recognised to be in that zone of privacy which should be kept away from the “state glare” in the following terms,

“372...Insofar as religious beliefs are concerned, a good deal of the misery our species suffer owes its existence to and centres around competing claims of the right to propagate religion. *Constitution of India protects the liberty of all subjects guaranteeing the freedom of conscience and right to freely profess, practise and propagate religion. While the right to freely “profess, practise and propagate religion” may be a facet of free speech guaranteed under Article 19(1)(a), the*

freedom of the belief or faith in any religion is a matter of conscience falling within the zone of purely private thought process and is an aspect of liberty.

373... The choice of appearance and apparel are also aspects of the right to privacy. The freedom of certain groups of subjects to determine their appearance and apparel (such as keeping long hair and wearing a turban) are protected not as a part of the right to privacy but as a part of their religious belief. Such a freedom need not necessarily be based on religious beliefs falling under Article 25..."

(emphasis supplied)

THE IMPUGNED JUDGEMENT WRONGLY HELD THAT *INTER ALIA* THE PETITIONERS' RIGHT TO FREE SPEECH IS NOT BEING VIOLATED

The Impugned Judgement turned a blind eye to the fact that the Impugned G.O. was the result of a group of students heckling students like the Petitioners because of their practise of wearing a *hijab*/headscarf.

Any attempt of the State to silence the expression of an individual or a group expressing themselves and their religious beliefs without harming anyone, merely because a group of individuals are "heckling" them and disrupting order has been repeatedly held to be a suppression of the right to free speech of the individual, both in India and abroad.

The Petitioners in the captioned petition and other such girls have been wearing *hijab*/headscarf peacefully for a long time. Disorder started when some students started wearing saffron shawls to heckle the Muslim students. Notably, the saffron shawl wearers were not asserting any religious identity of their own. Their only

object was to heckle the Muslim girls. Instead of punishing these saffron shawl wearers, the State has, wrongly, punished the Muslim students, abusing them of their right to decisional autonomy in professing their religious symbols, intrinsic to their personhood, in an educational setting.

The silencing of speech due to hecklers has been categorically stemmed in India. In the case of *Lakshmi Ganesh Films & Ors. v. Government of AP & Ors, 2006 (4) ALD 374 (AP HC)*, the censorship of a movie by the Government, under a Government Order, for protection of peace and tranquility of the State was held unconstitutional. It was stated thus in the judgement,

“43. Under our constitutional scheme, the Legislative and Executive power is consecrated to the other two great branches of the State. Nevertheless, no other branch of our Government is as qualified to identify, draw and effectuate the boundaries between the rights of individuals and those of society as the Judicial branch. The Legislative and executive branches are known on occasion to yield too easily to the politically expedient and the popular. Freedom of speech and expression is too cherished a constitutional value. It cannot be absolute and it cannot also be subject to the heckler's veto finding resonance in State action. Alexander Meiklejohn a celebrated educator-philosopher pointed out that the Constitution does not prohibit the abridging of speech but it does forbid the abridging of freedom of speech [Free speech and its relation to Self-Government (New York - Harper and Brothers - 1948)].

44. Terminiello (supra) provides a valuable illustration on facts apposite to our lis. Terminiello was convicted of disorderly conduct based on a speech he delivered in an auditorium filled to capacity with over eight hundred persons present. Outside a

crowd of over one thousand gathered to protest against the meeting. A cordon of policemen was assigned to maintain order. They could not wholly contain or prevent several disturbances. From among the angry and turbulent crowd, some threw stink bombs and broke the windows. Terminiello also goaded his opponents, referring to them in pejorative epithets: At trial, the jury was instructed by the judge that it could convict (on the charge of breach of peace) if it found that Terminiello's speech included expressions that stirs the public to anger, invites dispute, brings about a condition of unrest, or creates a disturbance.

45 . Douglas, J., writing for the majority stated: *The vitality of civil and political institutions in our society depends on free discussion, it is only through free debate and free exchange of ideas that Government remains responsive to the will of the people and peaceful change is effected. -----*

“Accordingly a function of free speech under our system of Government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.”

(emphasis supplied)

In fact, in the US, in ***Tinker v Des Moines 393 U.S. 503 (1969)***, it was specifically held that fear of a disturbance in school was not an adequate reason for school principals to forbid pupils from wearing black armbands, as a symbol of their opposition to the war in Vietnam. Pertinently it was stated,

“...But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom

of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk, Terminiello v. Chicago, 337 U. S. 1 (1949); and our history says that it is this sort of hazardous freedom -- this kind of openness -- that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society.”

(emphasis supplied)

The ethos of the Indian jurisprudence while protecting free speech from hecklers has been succinctly encapsulated in *Maqbool Fida Hussain v Raj Kumar Pandey (2008) CriLJ 4107* (approved in *Indibly Creative (P) Ltd. v. State of WB (2020) 12 SCC 436*) where, while holding that the Bharat Mata painting of Mr. MF Hussain was not obscene under Section 292, it was stated as follows,

“131. A liberal tolerance of a different point of view causes no damage. It means only a greater self-restraint. Diversity in expression of views whether in writings, paintings or visual media encourages debate. A debate should never be shut out. ‘I am right’ does not necessarily imply You are wrong’. Our culture breeds tolerance both in thought and in actions. I have penned down this judgment with this fervent hope that it is a prologue to a broader thinking and greater tolerance for the creative field. A painter at 90 deserves to be in his home-painting his canvass.”

(emphasis supplied)

**THE IMPUGNED JUDGEMENT IS WRONG IN UPHOLDING THE
IMPUGNED G.O. WHICH IS MANIFESTLY ARBITRARY AND
VIOLATES THE RIGHT TO EQUALITY**

The Impugned G.O., while being facially neutral, actually singles out only the practice of *hijab/headscarf*, proscribing the same. In doing so, it violates the promise of substantive equality under Articles 14 & 15 of the Constitution and further subordinates an already disadvantaged class.

The Impugned G.O., by being capricious and discriminatory, falls foul of the test of manifest arbitrariness which has been propounded as such in the case of *Shayara Bano v. Union of India AIR 2017 SC 4609*,

“...not fair, not reasonable, discriminatory, not transparent, capricious, biased, with favoritism or nepotism and not in pursuit of promotion of healthy competition and equitable treatment. Positively speaking, it should conform to norms which are rational, informed with reason and guided by public interest, etc.”.

(emphasis supplied)

**THE IMPUGNED JUDGEMENT IS WRONG FOR NOT HOLDING THE
IMPUGNED G.O. TO BE VIOLATIVE OF ARTICLE 29 OF THE
CONSTITUTION OF INDIA**

The Impugned G.O. violates Article 29(1) of the Constitution, which recognizes and protects the rights of any section of the citizens to conserve its distinct culture. Notably, this Article and the consequent right, which provides succour to the right to Muslim girls to wear headscarves, is not subject to any restrictions whatsoever, as confirmed by the Hon’ble Supreme Court in

Jagdev Singh Sidhanti v. Pratap Singh Daulta, AIR 1965 SC 183.

That the right to converse one's distinct culture, or the right to practice religion, right to privacy, to free expression and speech cannot be subject to forcible waiver in order to avail the right to education as recognised in *Basheshar Nath vs The Commissioner of Income Tax, 1959 AIR SC 149.*

THE IMPUGNED JUDGEMENT ERRED IN IGNORING THE ADMISSION GUIDELINES ISSUED BY THE KARNATAKA PRE-UNIVERSITY BOARD

The Hon'ble High Court has further erred in the Impugned Judgement by failing to appreciate that the Karnataka Pre-University Board, which is the statutory body that supervises pre-university education in the State of Karnataka, has been issuing comprehensive admission guidelines prior to ever academic year, giving effect to Rule 6 of Karnataka Pre-University Education (Academic, Registration, Grant-in-aid etc) Rules 2006. These Guidelines specifically state that no uniform can be mandated in PUCs, and any attempt to do so shall be treated as illegal. These Guidelines have the same effect as any other department manual viz., police manual or CBI investigation manual, which has been upheld by this Hon'ble Court on multiple occasions.

THE IMPUGNED JUDGEMENT IS WRONG FOR NOT HOLDING THE IMPUGNED G.O. TO BE IN VIOLATION OF INDIA'S NATIONAL AND INTERNATIONAL OBLIGATIONS ON PROTECTING THE RIGHTS OF CHILDREN

The rights of child under Article 21 of the Constitution include India's international obligations to protect and promote the rights

of children, specifically the rights enumerated in the Convention on the Rights of the Child (“**the Convention**”), acceded to by India on 11.12.1992, placing binding obligations on the country to protect the best interests of the child in all state action. These obligations have also been codified in municipal law under the Commission for the Protection of Child Rights Act, 2005 (“**2005 Act**”). The Statement of Objects and Reasons of the 2005 Act specifically recognizes India’s international obligations vis-à-vis child rights as such,

“WHEREAS India participated in the United Nations (UN) General Assembly Summit in 1990, which adopted a Declaration on Survival, Protection and Development of Children;

AND WHEREAS India has also acceded to the Convention on the Rights of the Child (CRC) on the 11th December, 1992;

AND WHEREAS CRC is an international treaty that makes it incumbent upon the signatory States to take all necessary steps to protect children's rights enumerated in the Convention;

AND WHEREAS in order to ensure protection of rights of children one of the recent initiatives that the Government have taken for Children is the adoption of National Charter for Children, 2003;

AND WHEREAS the UN General Assembly Special Session on Children held in May, 2002 adopted an Outcome Document titled "A World Fit for Children" containing the goals, objectives, strategies and activities to be undertaken by the member countries for the current decade;

AND WHEREAS it is expedient to enact a law relating to children to give effect to the policies adopted by the Government in this regard, standards prescribed in the CRC, and all other relevant international instruments;”

(emphasis supplied)

Under Article I of the Convention a child has been identified to be anyone under 18 years of age. Pertinently Petitioners herein and all other female Muslim students who are affected by the Impugned G.O. fall under this definition of “child”.

The following rights of the child protected by the Convention become apposite in the present case:

“Article 2

1. *States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*
2. *States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.*

Article 14

1. *States Parties shall respect the right of the child to freedom of thought, conscience and religion.*
2. *States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.*
3. *Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law*

and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

(...)

Article 29

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;*
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;*
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;*
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;*
- (e) The development of respect for the natural environment.*

(...)

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his

or her own culture, to profess and practise his or her own religion, or to use his or her own language.”

(emphasis supplied)

The vision of child rights codified in the 2005 Act has been pursuant to the power granted to the Parliament under Article 253 of the Constitution of India. These legislations thus conclusively occupy the field and cannot be eclipsed by any modified understanding of child rights meant to “reform” children by way of State law. Thus, the 1983 Act or the 1995 Rules cannot be lent any colour that deviates from the framework of child rights India has committed itself to internationally and consequently codified in domestic law.

It has further been held in a catena of judgements of this Hon’ble Court that rules of customary international law, if not contrary to municipal law, must be understood to have been incorporated in municipal law and that international law is not confined to relations between states but also to matters of social concern such as education (*People’s Union for Civil Liberties v. Union of India and Anr* (1977) 1 SCC 301).

Moreover, in *National Legal Services Authority v. Union of India and Ors.* (2014) 5 SCC 438, this Hon’ble Court has held that the State must, in view of Article 51 of the Constitution, interpret the language of the Constitution in light of the UN charter and that domestic courts are under an obligation to give due regard to international conventions and norms for construing the domestic laws. This is especially so when there is no inconsistency between them and there is a vacuum in domestic law. Further, any international convention not inconsistent with

fundamental rights must be read into the provisions of Articles 14, 15, 19 and 21 of the Constitution to enlarge the meaning and content thereof and promote the object of constitutional guarantee. Thus, this Hon'ble Court is bound to consider the obligations under the Convention while testing the constitutionality of the impugned G.O., and must read the provisions of the Convention into the fundamental rights guaranteed in our Constitution, specifically Articles 14, 15, 19, and 21. This being the position of law, given that the Convention specifically prohibits exclusion of children from education on the grounds of their religion and requires states to protect the religious and cultural identities of children in educational institutions, including ensuring that the *hijab*/headscarf is allowed in educational institutions, the impugned G.O. is in violation of India's international obligations, India's domestic law implementing which implement those obligations, and also fundamental rights enshrined in Part III of the Constitution.

It is thus, in this light that Petitioners have been constrained to approach this Hon'ble Court against the order of the Hon'ble High Court dated 15.03.2022. This challenge is especially in light of Guidelines that were issued by the Department of Pre-University College, State of Karnataka making it explicitly clear that uniform would not be considered mandatory for students studying in PUCs. In such a legal and factual matrix, a rigid interpretation of a uniform policy which is being implemented by the CDC, which is an extra-legal body, and derives no power and legitimacy from the 1983 Act, cannot be the basis for depriving

girls like the Petitioner from exercising the right to practise their religion while accessing education.

Thus, the Petitioners are before this Hon'ble Court praying that the Impugned Judgement of the Hon'ble High Court be set aside. In the interim, due to the approaching annual examination of the Petitioners, interim relief is being sought that the Petitioners and other such girls be allowed to take the exam while wearing a *hijab/headscarf*.

LIST OF DATES AND EVENTS

<u>DATE</u>	<u>PARTICULARS</u>
31.01.2014	Karnataka Government issued Circular No. ED 580 SHH 2013, which advised all Government Pre-University Colleges to create and operate a “ College Development Committee ” in accordance with Guidelines prescribed by the same. A true typed translated copy of the extract of Circular No. ED 580 SHH 2013 dated 31.01.2014, issued by the Government of Karnataka is hereby attached as ANNEXURE P-1 at pages <u>188</u> to <u>192</u> .
2021-2022	Petitioners took admission in Govt. PU Girls College, Udupi.
01.07.2021	The Department of Pre-University Education issued guidelines for the academic year 2021-2022 on 19.08.2020 which were implemented by Respondent No. 5 on 01.07.2021. The academic guidelines at chapter VI under the

	<p>heading of important information clearly state that <i>“no uniform is mandated in Pre-university Colleges, if any institution attempts to impose it, department will take strict action against them.”</i></p> <p>A true typed translated copy of the relevant extracts of the Guidelines 2021-22 issued by the Department of Pre-University Education, Govt. of Karnataka, is hereby attached as ANNEXURE P-2 at pages <u>193</u> to <u>217</u>.</p>
Since September 2021	<p>Petitioners in lieu of their decision to cover their head with Hijab, faced discrimination by the teaching staff of the college. Most of the teaching faculty took adverse and punitive measures such as removing the Petitioners from their class, marking them absent and further making them stand out-side the class throughout the period.</p>
December 2021	<p>Parents of the Petitioner met Respondent No. 6, the Principal of the College to convey their grievance and enforce the rights of the Petitioners to wear Hijab. Respondent No. 6 kept delaying the meeting citing Mid-Term Exams. Once the exams got over, the teachers continued to harass the <i>Hijab</i> clad girls including the Petitioner by way of not allowing them to sit in the class without the permission</p>

	of Respondent No. 6. The Parents of the Petitioners again approached the Respondent No. 6. to discuss the same, once the exams were over, however they were compelled to wait for the whole day without even meeting them. This eventually frustrated the Petitioners and their parents who were forced to eventually concede before the College Authorities.
30.12.2021	Students including the Petitioners gave a detailed representation to Respondent No. 3 stating their reasons of wearing <i>hijab</i> and how it was their constitutional right, further requesting them to accommodate the same in the PUC so as to not deny them of their fundamental right to education and practise of free religion. A true typed translated copy of the representation dated 30.12.2021 by the Students of Government Pre-University College, Udupi District before Deputy Director, Pre-University, Udupi District is hereby attached as ANNEXURE P-3 at pages <u>218</u> to <u>219</u> .
January 2022	Petitioners weren't allowed to attend colleges on all working days and were directed to sit outside their classrooms like culprits. On 13 th January seeing no hope and being targeted

	from every corner, the Petitioners organized a peaceful protest in front of the college along with their parents to seek their right to education which was continuously and vehemently denied to them due to religious and cultural vengeance.
14.01.2022	Respondent No. 6 summoned the Petitioners for protesting against the college authorities which were denying them their fundamental rights. College teaching staff forcefully compelled the Petitioners to write an apology letter against their wishes. Subsequently, the Petitioners were not only ill-treated and intimidated by the teaching staff but also severely manhandled and threatened by the college authorities.
25.01.2022	Respondent No. 1 issued a letter to the Director, Department of Pre-University Education to maintain status quo regarding the wearing of uniform until the High Level Committee constituted for this issue gave its recommendations. A true typed translated copy of letter dated 25.01.2022 bearing No. EP 14 SHH 2022 issued by Respondent No. 1 is hereby attached as Annexure P- 4 at pages <u>220</u> to <u>221</u> .

29.01.2022	<p>Aggrieved by the forceful enforcement of the illegal uniform policy and the subsequent hostile treatment towards <i>inter alia</i> the Petitioners, the Petitioners filed writ petition titled <i>Ayesha Hajeera Almas & Ors. v. Chief Secretary, Primary & Higher Education & Ors.</i> before the Hon'ble High Court in WP(C) No. 2146/2022. A true copy of the Writ Petition No. 2146 of 2022 filed before the High Court of Karnataka at Bangalore titled as <i>Ayesha Hajeera Almas & Ors. v. Chief Secretary, Primary & Higher Education & Ors.</i> is hereby attached as Annexure P- 5 at pages <u>222</u> to <u>249</u>.</p>
31.01.2022	<p>Respondent No. 15 chaired a meeting announcing the “government’s order” in detail and illegally declared that “<i>Students should not come to college without Hijab.If in case Hijab is worn it will be violation of the discipline of the college, and the college atmosphere should not be spoilt anymore.</i>” In this manner female Muslim students like the Petitioners were singly targeted and discriminated against. A true typed translated copy of the College Development Committee meeting held on 31.01.2022 is hereby attached as Annexure P- 6 at pages <u>250</u> to <u>253</u>.</p>

<p>05.02.2022</p>	<p>The Department of Education (Pre-University), State of Karnataka issued Government Order No. EP14SH2022 along with an affiliated circular (Impugned G.O.).</p> <p>The Circular issued by the Department stated that there was a need to maintain a uniform in order to maintain equality and unity vis-à-vis religion. While <i>prima facie</i> neutral, it went on to cite judgements that predominantly spoke of the <i>hijab</i>.</p> <p>The G.O thus issued, in continuance of the Circular, clearly mandated students of all Government Schools to abide by Uniforms prescribed by the Government whereas students of Private Schools were mandated to abide by the uniform prescribed by their respective administrative committees in accordance with Karnataka Education Act, 1983. A true typed translated copy of the Government of Karnataka Order No. EP 14 SH 2022 dated 05.02.2022 is hereby attached as ANNEXURE P-7 at pages <u>254</u> to <u>257</u>.</p>
<p>07.02.2022</p>	<p>The Respondent State filed its Statement of Objections in the hearing that commenced before the Single Bench of the Hon'ble High Court, before the Hon'ble High Court. A true copy of the Statement of Objections filed by</p>

	the Respondent State before the High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022 is hereby attached as ANNEXURE P-8 at pages <u>258</u> to <u>298</u> .
09.02.2022	The Single-Judge Bench of the Karnataka HC, comprising of Hon'ble Mr. Justice Krishna S Dixit, who was hearing the present batch of petitions referred the matter to the Hon'ble Mr. Chief Justice Ritu Raj Awasthi, for reference to a larger bench.
10.02.2022	<p>The Full Bench of High Court passed an interim order prohibiting students from wearing religious clothing - hijab, saffron stoles, scarves etc to their respective educational institutions where the College Development Committees have prescribed the student dress code/uniform. The relevant extracts of the order are as such:</p> <p><i>10. In the above circumstances, we request the State Government and all other stakeholders to reopen the educational institutions and allow the students to return to the classes at the earliest. Pending consideration of all these petitions, we restrain all the students regardless of their religion or faith from wearing saffron shawls (Bhagwa), scarfs, hijab, religious flags or the like within the classroom, until further orders.</i></p> <p><i>11. We make it clear that this order is confined</i></p>

	<p><i>to such of the institutions wherein the College Development Committees have prescribed the student dress code/uniform.</i></p> <p>A true copy of the Common Interim Order dated 10.02.2022 passed by the High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022 is hereby attached as ANNEXURE P-9 at pages <u>299</u> to <u>305</u>.</p>
11.02.2022	Hon'ble Supreme Court declined 'urgent hearing' of the issue stating it will only get involved at an appropriate stage.
14.02.2022	Respondent No. 15 filed his Statements of Objections before the Hon'ble High Court. A true copy of the Statement of Objections filed by Respondent No. 15 before the High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022 is hereby attached as ANNEXURE P-10 at pages <u>306</u> to <u>319</u> .
21.02.2022	<p>Respondents No. 5 & 6 filed their Statement of Objections before the Hon'ble High Court.</p> <p>Further the Petitioners filed a common Rejoinder to the Statements of Objections filed by the State before the Hon'ble High Court. A true copy of the Statement of Objections filed by Respondent No. 5 & 6 before the High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022 is hereby attached as ANNEXURE P-11 at pages <u>320</u> to <u>330</u>. A</p>

	true copy of the Rejoinder to the State Objection with Verifying Affidavit filed by Petitioners before the High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022 is hereby attached as ANNEXURE P-12 at pages <u>331</u> to <u>352</u> .
22.02.2022	Respondent No. 13 filed her Statement of Objections before the Hon'ble High Court. A true copy of the Statement of Objections filed by Respondent No. 13 before the High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022 is hereby attached as ANNEXURE P-13 at pages <u>353</u> to <u>358</u> .
23.02.2022	Respondent No. 12 filed her Statement of Objections before the Hon'ble High Court. A true copy of the Statement of Objections filed by Respondent No. 12 before the High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022 is hereby attached as ANNEXURE P-14 at pages <u>359</u> to <u>376</u> .
25.02.2022	The Petitioners filed Rejoinders to the Statement of Objections filed by Respondent Nos. 5, 6, 12, 13 & 15. A true copy of the Rejoinder to the Statement of Objections filed by Respondent No. 5 & 6 before the High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022 is hereby attached as

	<p>ANNEXURE P-15 at pages <u>377</u> to <u>390</u>. A true copy of the Rejoinder to the Statement of Objections filed by Respondent No. 12 before the High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022 is hereby attached as ANNEXURE P-16 at pages <u>391</u> to <u>400</u>. A true copy of the Rejoinder to the Statement of Objections filed by Respondent No. 13 before the High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022 is hereby attached as ANNEXURE P-17 at pages <u>401</u> to <u>408</u>. A true copy of the Rejoinder to the Statement of Objections filed by Respondent No. 15 before the High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022 is hereby attached as ANNEXURE P-18 at pages <u>409</u> to <u>419</u>.</p>
15.03.2022	<p>Hon'ble High Court disposed of W.P. 2146 of 2022 by way of a Common Order in W.P. No. 2347 of 2022 titled <i>Resham v. State of Karnataka</i> dated 15.03.2022 (Impugned Order), upholding the Impugned G.O. dated 05.02.2022.</p>
23.03.2022	<p>Hence the present SLP.</p>

(2 set)

9/11/2022

mahammed A&F&K

1

IN THE HIGH COURT OF KARNATAKA AT BENGALURU



DATED THIS THE 15TH DAY OF MARCH, 2022

PRESENT

THE HON'BLE MR. RITU RAJ AWASTHI, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE KRISHNA S. DIXIT

AND

THE HON'BLE MS. JUSTICE J. M. KHAZI

WRIT PETITION NO. 2347/2022 (GM-RES) C/w
WRIT PETITION NO. 2146/2022 (GM-RES),
WRIT PETITION NO. 2880/2022 (GM-RES),
WRIT PETITION NO. 3038/2022 (GM-RES),
WRIT PETITION NO. 3424/2022 (GM-RES-PIL),
WRIT PETITION NO. 4309/2022 (GM-RES),
WRIT PETITION NO. 4338/2022 (GM-RES-PIL)

IN W.P. NO.2347 OF 2022

BETWEEN:

1. SMT RESHAM,
D/O K FARUK,
AGED ABOUT 17 YEARS,
THROUGH NEXT FRIEND
SRI MUBARAK,
S/O F FARUK,
AGED ABOUT 21 YEARS,
BOTH RESIDING AT NO.9-138,
PERAMPALI ROAD,
SANTHEKATTE,
SANTHOSH NAGARA, MANIPAL ROAD,
KUNJIBETTU POST,
UDUPI, KARNATAKA-576105.

... PETITIONER

(BY PROF. RAVIVARMA KUMAR, SENIOR ADVOCATE FOR
SHRI ABHISHEK JANARDHAN, SHRI ARNAV. A. BAGALWADI &
SHRI SHATHABISH SHIVANNA, ADVOCATES)

This Certified copy contains 129
And Copying charges of ₹. 387/-
Received

Pages



AND:

- 1 . STATE OF KARNATAKA,
REPRESENTED BY THE PRINCIPAL SECRETARY,
DEPARTMENT OF PRIMARY AND
SECONDARY EDUCATION
- 2 . GOVERNMENT PU COLLEGE FOR GIRLS
BEHIND SYNDICATE BANK
NEAR HARSHA STORE
UDUPI
KARNATAKA-576101
REPRESENTED BY ITS PRINCIPAL
- 3 . DISTRICT COMMISSIONER
UDUPI DISTRICT
MANIPAL
AGUMBE - UDUPI HIGHWAY
ESHWAR NAGAR
MANIPAL, KARNATAKA-576104.
- 4 . THE DIRECTOR
KARNATAKA PRE-UNIVERSITY BOARD
DEPARTMENT OF PRE-UNIVERSITY EDUCATION
KARNATAKA, 18TH CROSS ROAD,
SAMPIGE ROAD,
MALESWARAM,
BENGALURU-560012.

... RESPONDENTS

(BY SHRI PRABHULING K. NAVADGI, ADVOCATE GENERAL A/W
SHRI. ARUNA SHYAM, ADDITIONAL ADVOCATE GENERAL
SHRI VINOD KUMAR, ADDITIONAL GOVERNMENT ADVOCATE
SHRI SUSHAL TIWARI,
SHRI SURYANSHU PRIYADARSHI &
SHRI ANANYA RAI, ADVOCATES FOR
RESPONDENTS 1 TO 3
SHRI DEEPAK NARAJJI, ADVOCATE IN IA 2/2022
SHRI KALEESWARAM RAJ & RAJITHA T.O. ADVOCATES IN
IA 3/2022 & IA 7/2022
SMT. THULASI K. RAJ & RAJITHA T.O. ADVOCATES IN
IA 4/2022 & IA 6/2022
SHRI SUSHAL TIWARI, ADVOCATE IN IA 5/2022
SHRI BASAVAPRASAD KUNALE &
SHRI MOHAMMED AFEF, ADVOCATES IN IA 8/2022
SHRI AKASH V.T. ADVOCATE IN IA 9/2022
SHRI R. KIRAN, ADVOCATE, IN IA 10/2022
SHRI AMRUTHESH N.P., ADVOCATE IN IA 11/2022



SHRI MOHAMMAD SHAKEEB, ADVOCATE IN IA 12/2022
 Ms. MAITREYI KRISHNAN, ADVOCATE IN IA 13/2022
 SHRI ADISH C. AGGARWAL, SENIOR ADVOCATE IN IA 14/2022,
 IA 18/2022, IA 19/2022 & IA 21/2022
 SHRI GIRISH KUMAR. R., ADVOCATE, IN IA 15/2022
 Smt. SHUBHASHINI. S.P. PARTY-IN-PERSON IN IA 16/2022
 SHRI ROHAN KOTHARI, ADVOCATE IN IA 17/2022
 SHRI RANGANATHA P.M., PARTY-IN-PERSON IN IA 20/2022)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE RESPONDENT No. 2 NOT TO INTERFERE WITH THE PETITIONERS FUNDAMENTAL RIGHT TO PRACTICE THE ESSENTIAL PRACTICES OF HER RELIGION, INCLUDING WEARING OF *HJAB* TO THE RESPONDENT No. 2 UNIVERSITY WHILE ATTENDING CLASSES AND ETC.

IN W.P. NO.2146 OF 2022

BETWEEN:

1. AYESHA HAJEERA ALMAS
 AGED ABOUT 18 YEARS,
 D/O MUPTHI MOHAMMED ABRURUL,
 STUDENT,
 REPRESENTED BY HER MOTHER KARANI,
 SADIYA BANU
 W/O MUPTHI MOHAMMED ABRURUL,
 AGED ABOUT 40 YEARS,
 R/AT NO 2-82 C KAVRADY,
 OPP TO URDU SCHOOL,
 KANDLUR VTC KAVRADY,
 P O KAVRADI,
 KUNDAPURA UDUPI 576211
2. RESHMA
 AGE ABOUT 17 YEARS
 D/O K FARUK
 STUDENT
 REPRESENTED BY HER MOTHER
 RAHMATH W/O K FARUK
 AGED ABOUT 45 YEARS
 R/AT NO 9-138 PERAMPALLI ROAD
 AMBAGILU SANTOSH NAGAR
 SANTHEKATTE UDUPI 576105
3. ALIYA ASSADI
 AGED ABOUT 17 YEARS,



D/O AYUB ASSADI
STUDENT
REPRESENTED BY HER FATHER
AYUB ASSADI
S/O ABDUL RAHIM
AGED ABOUT 49 YEARS,
R/AT NO 4-2-66 ABIDA MANZIL
NAYARKERE ROAD KIDIYOOOR
AMBALAPADI UDUPI 576103

- 4 . SHAFI
AGED ABOUT 17 YEARS,
D/O MOHAMMED SHAMEEM
STUDENT
REPRESENTED BY HER MOTHER
SHAHINA
W/O MOHAMMED SHAMEEM
AGED ABOUT 42 YEARS,
R/AT NO 3-73 MALLAR
GUJJI HOUSE MALLAR VILLAGE
MAJOOR KAUP UDUPI 576106

- 5 . MUSKAAN ZAINAB
AGED ABOUT 17 YEARS
D/O ABDUL SHUKUR
STUDENT
REPRESENTED BY HER FATHER
ABDUL SHUKUR
S/O D ISMAIL SAHEB
AGED ABOUT 46 YEARS
R/AT NO 9-109 B,
VADABHANDESHWARA MALPE UDUPI 576108

... PETITIONERS

(BY SHRI. SANJAY HEGDE, SENIOR ADVOCATE FOR
SHRI MOHAMMED TAHIR & SMT.TANVEER AHMED MIR,
ADVOCATES FOR PETITIONERS 1, 3 TO 5)

(V/O DT. 15.02.2022, PETITION IN RESPECT OF PETITIONER No.2
STANDS DISMISSED AS WITHDRAWN)

AND:

- 1 . CHIEF SECRETARY
PRIMARY AND HIGHER EDUCATION EDUCATION
DEPARTMENT
KARNATAKA GOVERNMENT MINISTRY
MS BUILDING BANGALORE 560001

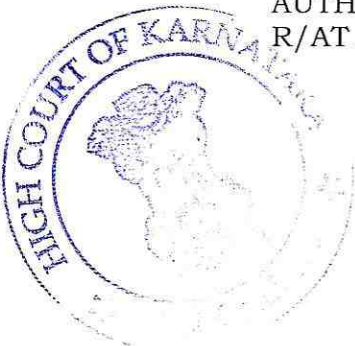


- 2 . DIRECTOR
PU EDUCATION DEPARTMENT
MALLESHWARAM
EDUCATION DEPARTMENT
BANGALORE 560012
- 3 . DEPUTY DIRECTOR
PRE UNIVERSITY COLLEGE
UDUPI DIST UDUPI 576101
- 4 . DEPUTY COMMISSIONER
DC OFFICE UDUPI
CITY UDUPI 576101
- 5 . GOVT PU COLLEGE FOR GIRLS
UDUPI CITY UDUPI 576101
REP BY ITS PRINCIPAL
- 6 . RUDRE GOWDA
S/O NOT KNOWN
AGE ABOUT 55 YEARS,
OCCUPATION PRINCIPAL
OFFICE AT GOVT PU COLLEGE FOR GIRLS
UDUPI CITY UDUPI 576101
- 7 . GANGADHAR SHARMA
AGE ABOUT 51
S/O NOT KNOWN
VICE PRINCIPAL OF GOVT COLLEGE
R/AT NO 21/69 ANRGHYA
7TH CROSS MADVANAGAR
ADIUDUPI UDUPI 576102
- 8 . DR YADAV
AGE ABOUT 56
S/O NOT KNOWN
HISTORY LECTURER
OFFICE AT GOVT PU COLLEGE FOR GIRLS
UDUPI CITY UDUPI 576101
- 9 . PRAKASH SHETTY
AGE ABOUT 45
S/O NOT KNOWN
POLITICAL SCIENCE SUB LECTURER
OFFICE AT GOVT PU COLLEGE FOR GIRLS
UDUPI CITY UDUPI 576101



- 10 . DAYANANDA D
AGE ABOUT 50 YEARS,
S/O NOW KNOWN
SOCIOLOGY SUB LECTURER
OFFICE AT GOVT PU COLLEGE FOR GIRLS
UDUPI CITY UDUPI 576101
- 11 . RUDRAPPA
AGE ABOUT 51 YEARS
S/O NOT KNOWN
CHEMISTRY SUB LECTURER
OFFICE AT GOVT PU COLLEGE FOR GIRLS
UDUPI CITY UDUPI 576101
- 12 . SHALINI NAYAK
AGE ABOUT 48 YEARS,
W/O NOT KNOWN
BIOLOGY SUB LECTURER
OFFICE AT GOVT PU COLLEGE FOR GIRLS
UDUPI CITY UDUPI 576101
- 13 . CHAYA SHETTY
AGE ABOUT 40 YEARS,
W/O NOT KNOWN
PHYSICS SUB LECTURER
R/AT KUTPADY UDYAVAR UDUPI 574118
- 14 . DR USHA NAVEEN CHANDRA
AGE ABOUT 50 YEARS
W/O NOT KNOWN TEACHER
OFFICE AT GOVT PU COLLEGE FOR GIRLS
UDUPI CITY UDUPI 576101
- 15 . RAGHUPATHI BHAT
S/O LATE SRINIVAS BHARITHYA
AGE ABOUT 53 YEARS
LOCAL MLA AND
UNAUTHIRIZED CHAIRMAN OF CDMC
D NO 8-32 AT SHIVALLY VILLAGE PO
SHIVALLY UDUPI 576102
- 16 . YASHPAL ANAND SURANA
AGE ABOUT 50 YEARS
S/O NOT KNOWN
AUTHORIZED VICE CHAIRMAN OF CDMC
R/AT AJJARAKADU UDUPI H O UDUPI 576101

... RESPONDENTS



(BY SHRI PRABHULING K. NAVADGI, ADVOCATE GENERAL A/W
SHRI ARUNA SHYAM, ADDITIONAL ADVOCATE GENERAL
SHRI VINOD KUMAR, ADDITIONAL GOVERNMENT ADVOCATE
SHRI SUSHAL TIWARI,
SHRI SURYANSHU PRIYADARSHI &
Ms. ANANYA RAI, ADVOCATES FOR RESPONDENTS 1 TO 4.
SHRI S.S. NAGANAND, SENIOR ADVOCATE FOR
SHRI RAKESH S.N. & SHRI S. VIVEKANANDA, ADVOCATES FOR R-
5 & R6.
SHRI RAGHAVENDRA SRIVATSA, ADVOCATE FOR R-7
SHRI GURU KRISHNA KUMAR, SENIOR ADVOCATE FOR
SHRI K. MOHAN KUMAR, ADVOCATE FOR R-8 & IN IA 2/2022
SHRI VENKATARAMANI, SENIOR ADVOCATE FOR
SHRI KASHYAP N. NAIK, ADVOCATE FOR R-12
SHRI VENKATARAMANI, SENIOR ADVOCATE FOR
SHRI VIKRAM PHADKE, ADVOCATE FOR R-13
SHRI NISHAN G.K. ADVOCATE FOR R-14
SHRI SAJAN POOVAYYA, SENIOR ADVOCATE FOR
SHRI MANU KULKARNI & SHRI VISHWAS N., ADVOCATES
FOR R-15
SHRI SAJAN POOVAYYA, SENIOR ADVOCATE FOR
SHRI MRINAL SHANKAR & SHRI N.S. SRIRAJ GOWDA, ADVOCATES
FOR R-16
SHRI SHIRAJ QUARAISHI & SHRI RUDRAPPA P., ADVOCATES IN IA
6/2022)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE THE
WRIT OF MANDAMUS AND ORDER TO RESPONDENT NOS. 1 AND 2
TO INITIATE ENQUIRY AGAINST THE RESPONDENT NO.5 COLLEGE
AND RESPONDENT NO.6 i.e., PRINCIPLE FOR VIOLATING
INSTRUCTION ENUMERATED UNDER CHAPTER 6 HEADING OF
IMPORTANT INFORMATION OF GUIDELINES OF PU DEPARTMENT
FOR ACADEMIC YEAR OF 2021-22 SAME AT ANNEXURE-J FOR
MAINTAINING UNIFORM IN THE P U COLLEGE AND ETC.

IN W.P. NO.2880 OF 2022

BETWEEN:

1. MISS AISHAT SHIFA
D/O ZULFIHUKAR
AGED ABOUT 17 YEARS
SANTOSH NAGAR
HEMMADY POST
KUNDAPUR TALUK



UDUPI DISTRICT-576230
 REP BY HER NATURAL GUARDIAN AND
 FATHER MR ZULFHUKAR

- 2 . MISS THAIRIN BEGAM
 D/O MOHAMMAD HUSSAIN
 AGED ABOUT 18 YEARS
 KAMPA KAVRADY
 KANDLUR POST
 KUNDAPURA
 UDUPI DISTRICT-576201.

... PETITIONERS

(BY SHRI DEVADUTT KAMAT, SENIOR ADVOCATE FOR
 SHRI MOHAMMAD NIYAZ, ADVOCATE FOR PETITIONERS)

AND:

- 1 . THE STATE OF KARNATAKA
 VIDHANA SOUDHA
 DR AMBEDKAR ROAD
 BANGALORE - 560001
 REPRESENTED BY ITS PRINCIPAL SECRETARY
- 2 . THE UNDER SECRETARY TO GOVERNMENT
 DEPARTMENT OF EDUCATION
 VIKAS SOUDHA
 BANGALORE-560001.
- 3 . THE DIRECTORATE
 DEPARTMENT OF PRE UNIVERSITY EDUCATION
 BANGALORE-560009.
- 4 . THE DEPUTY COMMISSIONER
 UDUPI DISTRICT
 SHIVALLI RAJATADRI
 MANIPAL
 UDUPI-576104.
- 5 . THE PRINCIPAL
 GOVERNMENT PU COLLEGE
 KUNDAPURA
 UDUPI DISTRICT-576201.

... RESPONDENTS

(BY SHRI PRABHULING K. NAVADGI, ADVOCATE GENERAL A/W
 SHRI ARUNA SHYAM, ADDITIONAL ADVOCATE GENERAL
 SHRI VINOD KUMAR, ADDITIONAL GOVERNMENT ADVOCATE



SHRI SUSHAL TIWARI,
SHRI SURYANSHU PRIYADARSHI &
Ms. ANANYA RAI, ADVOCATES FOR RESPONDENTS 1 TO 5
SHRI AIYAPPA, K.G. ADVOCATE IN IA 2/2022.
SHRI S. VIVEKANANDA, ADVOCATE IN IA 3/2022
SMT. SHIVANI SHETTY, ADVOCATE IN IA 4/2022.
SHRI SHASHANK SHEKAR JHA, ADVOCATE IN IA 5/2022)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE
IMPUGNED DIRECTION DATED 05.02.2022 VIDE ORDER No.EP 14
SHH 2022 PASSED BY THE RESPONDENT NO. 2 VIDE ANNEXURE-A
AND ETC.

IN W.P. NO.3038 OF 2022

BETWEEN:

1. MISS SHAHEENA
D/O ABDUL RAHEEM
AGED ABOUT 19 YEARS
SANTOSH NAGAR
HEMMADI POST, KUNDAPUR TALUK
UDUPI DISTRICT-576230.
2. MISS SHIFA MINAZ
D/O NAYAZ AHAMMAD
AGED ABOUT 18 YEARS
SANTOSH NAGAR
HEMMADI POST,
KUNDAPUR TALUK
UDUPI DISTRICT-576230.

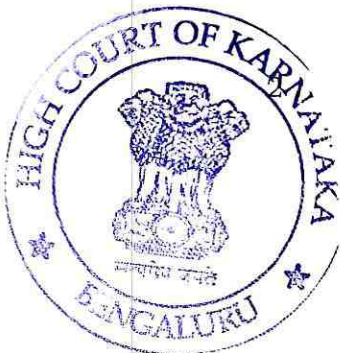
... PETITIONERS

(BY SHRI YUSUF MUCHCHALA, SENIOR ADVOCATE FOR
SHRI NAVEED AHMED, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
VIDHANA SOUDHA
DR AMBEDKAR ROAD
BANGALORE-560001
REPRESENTED BY ITS PRINCIPAL SECRETARY

THE UNDER SECRETARY TO GOVERNMENT
DEPARTMENT OF EDUCATION
VIKAS SOUDHA



BANGALORE-560001.

3. THE DIRECTORATE
DEPARTMENT OF PRE UNIVERSITY EDUCATION
BANGALORE-560009
4. THE DEPUTY COMMISSIONER
UDUPI DISTRICT
SHIVALLI RAJATADRI MANIPAL
UDUPI-576104.
5. THE PRINCIPAL
GOVERNMENT PU COLLEGE
KUNDAPURA
UDUPI DISTRICT-576201.

... RESPONDENTS

(BY SHRI PRABHULING K. NAVADGI, ADVOCATE GENERAL A/W
SHRI ARUNA SHYAM, ADDITIONAL ADVOCATE GENERAL
SHRI VINOD KUMAR, ADDITIONAL GOVERNMENT ADVOCATE
SHRI SUSHAL TIWARI, SHRI SURYANSHU PRIYADARSHI &
Ms. ANANYA RAI, ADVOCATES)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE
IMPUGNED DIRECTION DATED 05.02.2022 VIDE ORDER No.EP 14
SHH 2022 PASSED BY THE RESPONDENT NO. 2 VIDE ANNEXURE-A
AND ETC.

IN W.P. NO.3424 OF 2022

BETWEEN:

DR VINOD G KULKARNI
M.D. (BOM) (PSYCHIATRY) D P M (BOM)
FIPS LLB (KSLU)
AGED ABOUT 70 YEARS,
OCCUPATION CONSULTING
NEUROPSYCHIATRIST ADVOCATE AND
SOCIAL ACTIVIST
R/O MANAS PRABHAT COLONY,
VIDYANAGAR, HUBBALLI -580 021
DIST DHARWAD KARNATAKA
CELL NO.9844089068

... PETITIONER

(BY DR. VINOD G. KULKARNI, PETITIONER -IN-PERSON)



AND:

- 1 . THE UNION OF INDIA
NEW DELHI
REPRESENTED BY
THE PRINCIPAL SECRETARY TO
MINISTRY OF HOME AFFAIRS
NORTH BLOCK NEW DELHI-110011
PH NO.01123092989
01123093031
Email: ishso@nic.in
- 2 . THE UNION OF INDIA
NEW DELHI
REPRESENTED BY
THE PRINCIPAL SECRETARY TO
MINISTRY OF LAW AND JUSTICE
4TH FLOOR A-WING SHASHI BAHAR
NEW DELHI--110011
PH NO.01123384205
Email: secylaw-dla@nic.in
- 3 . THE STATE OF KARNATAKA
BY ITS CHIEF SECRETARY
VIDHANA SOUDHA
BANGALURU-560001
Email: cs@karnataka.gov.in

... RESPONDENTS

(BY SHRI PRABHULING K. NAVADGI, ADVOCATE GENERAL A/W
SHRI. ARUNA SHYAM, ADDITIONAL ADVOCATE GENERAL
SHRI VINOD KUMAR, ADDITIONAL GOVERNMENT ADVOCATE
SHRI SUSHAL TIWARI, SHRI SURYANSHU PRIYADARSHI &
Ms. ANANYA RAI, ADVOCATES FOR RESPONDENT No.3.

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA, PRAYING FOR APPROPRIATE
WRIT OR ORDER OR DIRECTIONS IN THE NATURE OF MANDAMUS
OR ANY OTHER APPROPRIATE WRIT ORDER OR DIRECTIONS BE
ISSUED TO THE RESPONDENTS TO DECLARE THAT ALL THE
STUDENTS OF VARIOUS SCHOOLS AND COLLEGES IN KARNATAKA
AND IN THE COUNTRY SHALL ATTEND THEIR INSTITUTIONS BY
SPORTING THE STIPULATED UNIFORM AND ETC.



IN W.P. NO.4309 OF 2022**BETWEEN:**

- 1 . MS ASLEENA HANIYA
D/O LATE MR UBEDULLAH
AGED ABOUT 18 YEARS
R/AT NO.1560 13TH MAIN ROAD HAL 3RD STAGE
KODIHALLI BANGALORE-560008
STUDYING AT NEW HORIZON COLLEGE
ADDRESS 3RD A CROSS 2ND A MAIN ROAD
NGEF LAYOUT, KASTURI NAGAR
BANGALORE-560043.
- 2 . MS ZUNAIRA AMBER T
AGED ABOUT 16 YEARS
MINOR REPRESENTED BY HER FATHER
MR TAJ AHMED
R/A NO.674 9TH A MAIN 1ST STAGE 1ST CROSS
CMH ROAD OPPOSITE KFC SIGNAL
INDIRANAGAR
BANGALORE-560038

STUDYING AT SRI CHAITANYA TECHNO SCHOOL
ADDRESS-PLOT NO.84/1 GARDEN HOUSE 5TH MAIN
SRR KALYAN MANTAPA
OMBR LAYOUT, BANASWADI
KASTURI NAGAR
BENGALURU-560043.

... PETITIONERS

(BY SHRI A.M. DAR, SENIOR ADVOCATE FOR
SHRI MUNEER AHMED, ADVOCATE)

AND:

- 1 . THE STATE OF KARNATAKA
REPRESENTED BY THE PRINCIPAL SECRETARY
DEPARTMENT OF PRIMARY AND SECONDARY DEPARTMENT
2ND GATE 6TH FLOOR M S BUILDING
DR AMBEDKAR VEEDHI
BENGALURU-560001.
- 2 . THE UNDER SECRETARY TO GOVERNMENT
DEPARTMENT OF EDUCATION
VIKAS SOUDHA
BANGALORE-560001.



- 3 . THE DIRECTOR
KARNATAKA PRE-UNIVERSITY BOARD
DEPARTMENT OF PRE-UNIVERSITY EDUCATION
KARNATAKA
NO.18TH CROSS ROAD SAMPIGE ROAD
MALESWARAM
BENGALURU-560012.
- 4 . THE COMMISSIONER
EDUCATION DEPARTMENT
GOVT OF KARNATAKA
N T ROAD
BANGALORE-560001.
- 5 . DIRECTOR GENERAL OF POLICE
STATE OF KARNATAKA
STATE POLICE HEADQUARTERS NO.2
NRUPATHUNGA ROAD
BANGALORE-560001.
- 6 . THE PRINCIPAL
REPRESENTED BY COLLEGE MANAGEMENT
NEW HORIZON COLLEGE
ADDRESS 3RD A CROSS 2ND A MAIN ROAD
NGEF LAYOUT, KASTURI NAGAR
BANGALORE-560043.
- 7 . THE PRINCIPAL
REPRESENTED BY SCHOOL MANAGEMENT
SRI CHAITANYA TECHNO SCHOOL
ADDRESS PLOT NO.84/1 GARDEN HOUSE
5TH MAIN SRR KALYAAN MANTAPA
OMBR LAYOUT, BANASWADI KASTURI NAGAR
BENGALURU-560043.
- 8 . THE INSPECTOR OF POLICE
RAMAMURTHYNAGAR POLICE STATION
KEMPE GOWDA UNDER PASS ROAD
NGEF LAYOUT
DOORAVANI NAGAR, BENGALURU
KARNATAKA-560016.

... RESPONDENTS

(BY SHRI PRABHULING K. NAVADGI, ADVOCATE GENERAL A/W
SHRI. ARUNA SHYAM, ADDITIONAL ADVOCATE GENERAL
SHRI VINOD KUMAR, ADDITIONAL GOVERNMENT ADVOCATE
SHRI SUSHAL TIWARI, SHRI SURYANSHU PRIYADARSHI &
Ms. ANANYA RAI, ADVOCATES FOR RESPONDENTS 1 TO 5 & 8)



THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED GOVERNMENT ORDER NO. EP 14 SHH 2022 DATED 05.02.2022, PRODUCED AS ANNEXURE-A AND ETC.

IN W.P. NO.4338 OF 2022

BETWEEN:

GHANSHYAM UPADHYAY
AGED 51 YEARS,
INDIAN INHABITANT,
OCCUPATION,
ADVOCATE HAVING HIS OFFICE AT 506,
ARCADIA PREMISES,
195, NCPA ROAD,
NARIMAN POINT,
MUMBAI-400021

... PETITIONER

(BY SHRI SUBHASH JHA & AMRUTHESH. N.P., ADVOCATES FOR PETITIONER)

AND:

- 1 . UNION OF INDIA
THROUGH THE MINISTRY OF HOME AFFAIRS,
NEW DELHI
REPRESENTED BY ITS SECRETARY
- 2 . STATE OF KARNATAKA
THROUGH THE HOME MINISTRY
VIDHANA SOUDHA,
BENGALURU-560001
REPRESENTED BY CHIEF SECRETARY
- 3 . THE PRINCIPAL SECRETARY
DEPARTMENT OF PRIMARY AND SECONDARY EDUCATION,
VIDHAN SOUDHA,
BENGALURU-560001
- 4 . THE DIRECTOR
CENTRAL BUREAU OF INVESTIGATION,
KARNATAKA



5. NATIONAL INVESTIGATION AGENCY
BENGALURU,
KARNATAKA
REPRESENTED BY DIRECTOR

... RESPONDENTS

(BY SHRI PRABHULING K. NAVADGI, ADVOCATE GENERAL A/W
SHRI. ARUNA SHYAM, ADDITIONAL ADVOCATE GENERAL
SHRI VINOD KUMAR, ADDITIONAL GOVERNMENT ADVOCATE
SHRI SUSHAL TIWARI, SHRI SURYANSHU PRIYADARSHI &
Ms. ANANYA RAI, ADVOCATES FOR RESPONDENT NOS. 2 & 3.

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE CBI/NIA AND/OR SUCH OTHER INVESTIGATION AGENCY AS THIS HONBLE COURT MAY DEEM FIT AND PROPER TO MAKE A THOROUGH INVESTIGATION WITH REGARD TO THE MASSIVE AGITATION TAKING PLACE ALL OVER THE COUNTRY AND SPIRALLING EFFECT AND IMPACT BEYOND THE GEOGRAPHICAL LIMITS OF INDIA IN THE AFTERMATH OF ISSUANCE OF GOVERNMENT ORDER DTD.5.2.2022 ISSUED UNDER KARNATAKA EDUCATION ACT 1983 BY THE STATE OF KARNATAKA AND TO FIND OUT AS TO WHETHER THERE IS INVOLVEMENT OF RADICAL ISLAMIST ORGANIZATIONS SUCH AS PFI, SIO (STUDENT ISLAMIC ORGANIZATION) CFI (CAMPUS FRONT OF INDIA) JAMAAT-E-ISLAMI WHICH IS FUNDED BY SAUDI ARABIAN UNIVERSITIES TO ISLAMISE INDIA AND TO ADVANCE RADICAL ISLAM IN INDIA AND SUBMIT THE REPORT OF SUCH ENQUIRY/INVESTIGATION TO THIS HON'BLE COURT WITHIN SUCH MEASURABLE PERIOD OF TIME AS THIS HONBLE COURT MAY DEEM FIT AND PROPER AND ETC.

THESE WRIT PETITIONS, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, THE **CHIEF JUSTICE** PRONOUNCED THE FOLLOWING:

ORDER

This judgment, we desire to begin with what Sara Shinger from Centralia, Illinois concluded her well



researched article "VEILED WOMEN: HIJAB, RELIGION, AND CULTURAL PRACTICE-2013":

"The hijab's history...is a complex one, influenced by the intersection of religion and culture over time. While some women no doubt veil themselves because of pressure put on them by society, others do so by choice for many reasons. The veil appears on the surface to be a simple thing. That simplicity is deceiving, as the hijab represents the beliefs and practices of those who wear it or choose not to, and the understandings and misunderstandings of those who observe it being worn. Its complexity lies behind the veil."

Three of these cases namely W.P.No.2347/2022, W.P.No.2146/2022 & W.P.No.2880/2022, were referred by one of us (Krishna S Dixit J.) vide order dated 09.02.2022 to consider if a larger Bench could be constituted to hear them.

The Reference Order *inter alia* observed:

"All these matters essentially relate to proscription of hijab (headscarf) while prescribing the uniform for students who profess Islamic faith...The recent Government Order dated 05.02.2022 which arguably facilitates enforcement of this rule is also put in challenge. Whether wearing of hijab is a part of essential religious practice in Islam, is the jugular vein of all these matters...The said question along with other needs to be answered in the light of constitutional guarantees availing to the religious minorities. This Court after hearing the matter for some time is of a considered opinion that regard being had to enormous public importance of the questions involved, the batch of these cases may be heard by a Larger Bench, if Hon'ble the Chief Justice so decides in discretion...In the above circumstances, the Registry is directed to place the papers immediately at the hands of Hon'ble the Chief Justice for consideration..."

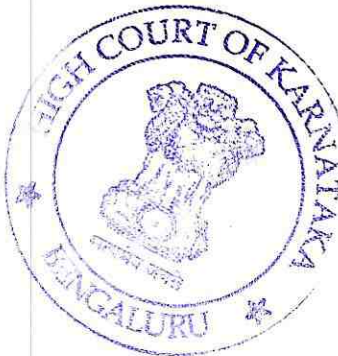


Accordingly, this Special Bench came to be constituted the very same day vide Notification dated 09.02.2022 to hear these petitions, to which other companion cases too joined.

I. PETITIONERS' GRIEVANCES & PRAYERS BRIEFLY STATED:

(i) In Writ Petition No. 2347/2022, filed by a petitioner – girl student on 31.01.2022, the 1st, 3rd & 4th respondents happen to be the State Government & its officials, and the 2nd respondent happens to be the Government Pre-University College for Girls, Udupi. The prayer is for a direction to the respondents to permit the petitioner to wear *hijab* (head – scarf) in the class room, since wearing it is a part of '*essential religious practice*' of Islam.

(ii) In Writ Petition No. 2146/2022 filed by a petitioner-girl student on 29.01.2022, the 1st, 3rd & 4th respondents happen to be the State Government & its officials and the 2nd respondent happens to be the Government Pre – University College for Girls, Udupi. The prayer column has the following script:



"1. Issue the **WRIT OF MANDAMUS** and order to respondent no 1 and 2 to initiate enquiry against the Respondent 5 college and Respondent no 6 i.e. Principal for violating instruction enumerated under Chapter 6 heading of "Important information" of

*Guidelines of PU Department for academic year of 2021-22 same at **ANNEXURE J** for maintaining uniform in the PU college.,*

2. Issue **WRIT OF MANDAMUS** to Respondent no 3 conduct enquiry against the Respondent no 6 to 14 for their Hostile approach towards the petitioners students.,

3. Issue **WRIT OF QUO WARRANTO** against the Respondent no 15 and 16 under which authority and law they interfering in the administration of Respondent no 5 school and promoting their political agenda. And,

4. **DECLARE** that the status quo referred in the letter dated 25/01/2022 at **ANNEXURE H** is with the consonance to the Department guidelines for the academic year 2021-22 same at **ANNEXURE J...**"

(iii) In Writ Petition Nos.2880/2022, 3038/2022 & 4309/2022, petitioner – girl students seek to lay a challenge to the Government Order dated 05.02.2022. This order purportedly issued under section 133 read with sections 7(2) & (5) of the Karnataka Education Act, 1983 (hereafter '1983 Act') provides that, the students should compulsorily adhere to the dress code/uniform as follows:

- a. in government schools, as prescribed by the government;
- b. in private schools, as prescribed by the school management;
- c. in Pre-University colleges that come within the jurisdiction of the Department of the Pre-University Education, as prescribed by the



College Development Committee or College Supervision Committee; and

- d. wherever no dress code is prescribed, such attire that would accord with '*equality & integrity*' and would not disrupt the '*public order*'.

(iv) In Writ Petition No.3424/2022 (GM-RES-PIL), filed on 14.02.2022 (when hearing of other cases was half way through), petitioner – Dr.Vinod Kulkarni happens to be a consulting neuro – psychiatrist, advocate & social activist. The 1st and 2nd respondents happen to be the Central Government and the 3rd respondent happens to be the State Government. The first prayer is for a direction to the respondents "*to declare that all the students of various schools and colleges in Karnataka and in the country shall attend their institutions by sporting the stipulated uniform*" (sic). Second prayer reads "*To permit Female Muslim students to sport Hijab provided they wear the stipulated school uniform also*" (sic).

(v) In Writ Petition No.4338/2022 (GM-RES-PIL), filed on 25.02.2022 (when hearing of other cases was half way through), one Mr. Ghanasham Upadhyay is the petitioner. The 1st respondent is the Central



Government, 2nd & 3rd respondents happen to be the State Government & its Principal Secretary, Department of Primary & Secondary Education; the 4th & 5th respondents happen to be the Central Bureau of Investigation and National Investigation Agency. The gist of the lengthy and inarticulate prayers are that the Central Bureau of Investigation/National Investigation Agency or such other investigating agency should make a thorough investigation in the nationwide agitation after the issuance of the Government Order dated 05.02.2022 to ascertain the involvement of radical organizations such as Popular Front of India, Students Islamic Organization of India, Campus Front of India and *Jamaat-e-Islami*; to hold and declare that wearing of *hijab, burqa* or such "*other costumes by male or female Muslims and that sporting beard is not an integral part of essential religious practice of Islam*" and therefore, prescription of dress code is permissible. There are other incoherent and inapplicable prayers that do not merit mentioning here.



(vi) The State and its officials are represented by the learned Advocate General. The respondent-Colleges

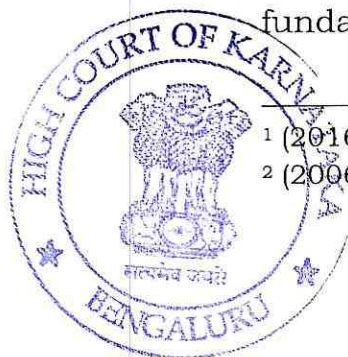
and other respondents are represented by their respective advocates. The State has filed the Statement of Objections (this is adopted in all other matters) on 10.02.2022; other respondents have filed their Statements of Objections, as well. Some petitioners have filed their Rejoinder to the Statement of Objections. The respondents resist the Writ Petitions making submission in justification of the impugned order.

II. BROAD CONTENTIONS OF PETITIONERS:

(i) Petitioner – students profess and practice Islamic faith. Wearing of *hijab* (head – scarf) is an ‘essential religious practice’ in Islam, the same being a *Quranic* injunction vide *AMNAH BINT BASHEER vs. CENTRAL BOARD OF SECONDARY EDUCATION*¹ and *AJMAL KHAN vs. ELECTION COMMISSION OF INDIA*². Neither the State Government nor the Schools can prescribe a dress code/uniform that does not permit the students to wear *hijab*. The action of the respondent – schools in insisting upon the removal of *hijab* in the educational institutions is impermissible, as being violative of the fundamental right guaranteed under Article 25 of the

¹ (2016) SCC OnLine Ker 41117

² (2006) SCC OnLine Mad 794



Constitution vide *SRI VENKATARAMANA DEVARU vs. STATE OF MYSORE*³ and *INDIAN YOUNG LAWYERS ASSOCIATION vs. STATE OF KERALA*⁴

(ii) The impugned Government Order dated 05.02.2022 is structured with a wrong narrative that wearing of *hijab* is not a part of '*essential religious practice*' of Islam and therefore, prescribing or authorizing the prescription of dress code/uniform to the students consistent with the said narrative, is violative of their fundamental right to freedom of conscience and the right to practice their religious faith constitutionally guaranteed under Article 25 vide *BIJOE EMMANUAL vs. STATE OF KERALA*⁵.

(iii) One's personal appearance or choice of dressing is a protected zone within the '*freedom of expression*' vide *NATIONAL LEGAL SERVICES AUTHORITY vs. UNION OF INDIA*⁶; What one wears and how one dresses is a matter of individual choice protected under '*privacy jurisprudence*' vide *K.S PUTTASWAMY vs. UNION OF INDIA*⁷. The Government Order and the action of the schools to the extent that they do

³ 1958 SCR 895

⁴ (2019) 11 SCC 1

⁵ (1986) 3 SCC 615

⁶ (2014) 5 SCC 438

⁷ (2017) 10 SCC 1



not permit the students to wear *hijab* in the institutions are repugnant to these fundamental rights constitutionally availing under Articles 19(1)(a) & 21.

(iv) The action of the State and the schools suffers from the violation of '*doctrine of proportionality*' inasmuch as in taking the extreme step of banning the *hijab* within the campus, the possible alternatives that pass the '*least restrictive test*' have not been explored vide *MODERN DENTAL COLLEGE vs. STATE OF MADHYA PRADESH*⁸ and *MOHD. FARUK V. STATE OF MADHYA PRADESH*⁹.

(v) The impugned Government Order suffers from '*manifest arbitrariness*' in terms of *SHAYARA BANO VS. UNION OF INDIA*¹⁰. The impugned Government Order suffers from a gross non-application of mind and a misdirection in law since it is founded on a wrong legal premise that the Apex Court in *AHSA RENJAN vs. STATE OF BIHAR*¹¹, the High Courts in Writ Petition(C) No. 35293/2018, *FATHIMA HUSSAIN vs. BHARATH EDUCATION SOCIETY*¹², *V.KAMALAMMA vs. DR. M.G.R. MEDICAL UNIVERSITY and SIR*

⁸ (2016) 7 SCC 353

⁹ (1969) 1 SCC 853

¹⁰ (2017) 9 SCC 1

¹¹ (2017) 4 SCC 397

¹² AIR 2003 Bom 75



*M. VENKATA SUBBARAO MARTICULATION HIGHER SECONDARY SCHOOL STAFF ASSOCIATION vs. SIR M. VENKATA SUBBARAO MARTICULATION HIGHER SECONDARY SCHOOL*¹³ have held that the wearing of *hijab* is not a part of essential religious practice of Islam when contrary is their demonstrable ratio.

(vi) The impugned Government Order is the result of acting under dictation and therefore, is vitiated on this ground of Administrative Law, going by the admission of learned Advocate General that the draftsmen of this order has gone too far and the draftsman exceeded the brief vide *ORIENT PAPER MILLS LTD vs. UNION OF INDIA*¹⁴ and *MANOHAR LAL vs. UGRASEN*¹⁵. Even otherwise, the grounds on which the said government order is structured being unsustainable, it has to go and that supportive grounds cannot be supplied *de hors* the order vide *MOHINDER SINGH GILL vs. CHIEF ELECTION COMMISSIONER*.¹⁶

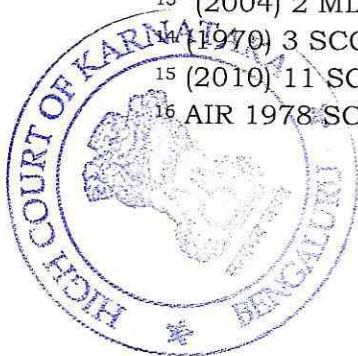
(vii) The Government is yet to take a final decision with regard to prescription of uniform in the Pre-University

¹³ (2004) 2 MLJ 653

¹⁴ (1970) 3 SCC 76

¹⁵ (2010) 11 SCC 557

¹⁶ AIR 1978 SC 851



Colleges and a High Level Committee has to be constituted for that purpose. The *Kendriya Vidyalayas* under the control of the Central Government too permit the wearing of *hijab* (head-scarf). There is no reason why similar practise should not be permitted in other institutions.

(viii) The Karnataka Education Act, 1983 or the Rules promulgated thereunder do not authorize prescription of any dress code/uniform at all. Prescribing dress code in a school is a matter of '*police power*' which does not avail either to the government or to the schools in the absence of statutory enablement. Rule 11 of Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc) Rules, 1995 (hereafter '1995 Curricula Rules') to the extent it provides for prescription of uniform is incompetent and therefore, nothing can be tapped from it.

(ix) The *College Betterment (Development) Committee* constituted under Government Circular dated 31.1.2014 is only an extra-legal authority and therefore, its prescription of dress code/uniform for the students is without jurisdiction.

The prospectus issued by the Education Department prohibits prescription of any uniform. The composition & complexion of



College Betterment (Development) Committee under the Government Circular dated 31.1.2014 *inter alia* compromising of local Member of Legislative Assembly as its President and his nominee as the Vice – President would unjustifiably politicize the educational environment and thereby, pollute the tender minds. The Pre-University institutions are expected to be independent and safe spaces.

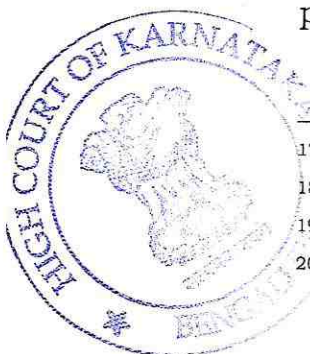
(x) The *College Betterment (Development) Committee* which *inter alia* comprises of the local Member of Legislative Assembly vide the Government Circular dated 31.1.2014, apart from being unauthorized, is violative of ‘*doctrine of separation of powers*’ which is a basic feature of our Constitution vide *KESAVANANDA BHARATI vs. STATE OF KERALA*¹⁷ read with *RAI SAHIB RAM JAWAYA KAPUR vs. STATE OF PUNJAB*¹⁸, and *STATE OF WEST BENGAL vs. COMMITTEE FOR PROTECTION OF DEMOCRATIC RIGHTS*¹⁹ also infringes upon of the principle of accountability vide *BHIM SINGH vs. UNION OF INDIA*²⁰. This committee has no power to prescribe school uniforms.

¹⁷ AIR 1973 SC 1461

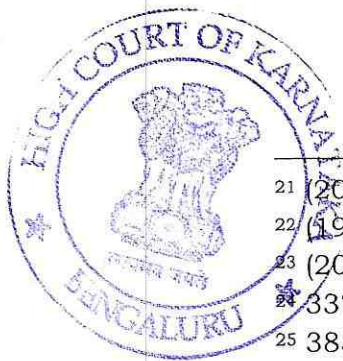
¹⁸ AIR 1955 SC 549

¹⁹ (2010) 3 SCC 571

²⁰ (2010) 5 SCC 538



(xi) The ground of 'public order' (*sārvajanika suvyavasthe*) on which the impugned Government Order is founded is un-understandable; this expression is construed with reference to 'public disorder' and therefore, the State action is bad vide *COMMISSIONER OF POLICE vs. C. ANITA*²¹. If wearing of *hijab* disrupts the public order, the State should take action against those responsible for such disruption and not ban the wearing of *hijab*. Such a duty is cast on the State in view of a positive duty vide *GULAM ABBAS vs. STATE OF UTTAR PRADESH*²², *INDIBLY CREATIVE PVT. LTD vs. STATE OF WEST BENGAL*²³. In addition such a right cannot be curtailed based on the actions of the disrupters, i.e., the 'hecklers don't get the veto' vide *TERMINIELLO vs. CHICAGO*²⁴, *BROWN vs. LOUISIANA*²⁵, *TINKER vs. DES MOINES*²⁶, which view is affirmed by the Apex Court in *UNION OF INDIA vs. K.M.SHANKARAPPA*²⁷. This duty is made more onerous because of positive secularism contemplated by the



²¹ (2004) 7 SCC 467

²² (1982) 1 SCC 71

²³ (2020) 12 SCC 436

²⁴ 337 U.S. 1 (1949)

²⁵ 383 U.S. 131 (1966)

²⁶ 393 U.S. 503 (1969)

²⁷ (2001) 1 SCC 582

Constitution vide *STATE OF KARNATAKA vs. PRAVEEN BHAI THOGADIA (DR.)*²⁸, *ARUNA ROY vs. UNION OF INDIA*²⁹.

(xii) Proscribing *hijab* in the educational institutions apart from offending women's autonomy is violative of Article 14 inasmuch as the same amounts to 'gender-based' discrimination which Article 15 does not permit. It also violates right to education since entry of students with *hijab* to the institution is interdicted. The government and the schools should promote plurality, not uniformity or homogeneity but heterogeneity in all aspects of lives as opposed to conformity and homogeneity consistent with the constitutional spirit of diversity and inclusiveness vide *VALSAMMA PAUL (MRS) vs. COCHIN UNIVERSITY*³⁰, *SOCIETY FOR UNAIDED PRIVATE SCHOOLS OF RAJASTHAN vs. UNION OF INDIA*³¹ and *NAVTEJ SINGH JOHAR vs. UNION OF INDIA*³².

(xiii) The action of the State and the school authorities is in derogation of International Conventions that provide for protective discrimination of women's rights vide *UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948)*, *CONVENTION OF*

²⁸ (2004) 4 SCC 684

²⁹ (2002) 7 SCC 368

³⁰ (1996) 3 SCC 545

³¹ (2012) 6 SCC 1

³² AIR 2018 SC 4321



ELIMINATION ON ALL FORMS OF DISCRIMINATION AGAINST WOMEN (1981), INTERNATIONAL COVENANTS ON CIVIL AND POLITICAL RIGHTS (1966), UNITED NATIONS CONVENTION ON RIGHTS OF CHILD (1989). To provide for a holistic and comparative view of the 'principle of reasonable accommodation' as facets of 'substantive-equality' under Article 14 & 15 vide LT. COL. NITISHA vs. UNION OF INDIA³³; petitioners referred to the following decisions of foreign jurisdictions in addition to native ones: MEC FOR EDUCATION: KWAZULU – NATAL vs. NAVANEETHUM PILLAY³⁴, CHRISTIAN EDUCATION SOUTH AFRICA vs. MINISTER OF EDUCATION³⁵, R. vs. VIDEOFLEX³⁶, BALVIR SSINGH MULTANI vs. COMMISSION SCOLAIRE MARGUERITE - BOURGEOYS³⁷, ANTONIE vs. GOVERNING BODY, SETTLERS HIGH SCHOOL³⁸ and MOHAMMAD FUGICHA vs. METHODIST CHURCH IN KENYA³⁹.

(xiv) In W.P.No.2146/2022, the school teachers have been acting in derogation of the Brochure of the Education

³³ (2021) SCC OnLine SC 261

³⁴ [CCT51/06 [2007] ZACC 21]

³⁵ [2000] ZACC 2

³⁶ 1948 2D 395

³⁷ (2006) SCC OnLine Can SC 6

³⁸ 2002 (4) SA 738 (T)

³⁹ (2016) SCC OnLine Kenya 3023



Department which prohibits prescribing any kind of uniform inasmuch as they are forcing the students to remove *hijab* and therefore, disciplinary action should be taken against them. The respondents – 15 & 16 have no legal authority to be on the College Betterment (Development) Committee and therefore, they are liable to be removed by issuing a Writ of *Quo Warranto*.

III. CONTENTIONS OF RESPONDENT – STATE & COLLEGE AUTHORITIES:

Respondents i.e., State, institutions and teachers per contra contend that:

(i) The fact matrix emerging from the petition averments lacks the material particulars as to the wearing of *hijab* being in practice at any point of time; no evidentiary material worth mentioning is loaded to the record of the case, even in respect of the scanty averments in the petition. Since how long, the students have been wearing *hijab* invariably has not been pleaded. At no point of time these students did wear any head scarf not only in the class room but also in the institution. Even otherwise, whatever rights petitioners claim under Article 25 of the Constitution, are not absolute. They are susceptible to reasonable restriction and regulation by

law. In any circumstance, the wearing *hijab* arguably as being part of 'essential religious practice' in Islam cannot be claimed by the students as a matter of right in all-girl-institutions like the respondent PU College, Udupi.

(ii) Wearing *hijab* or head scarf is not a part of 'essential religious practice' of Islamic faith; the Holy Quran does not contain any such injunctions; the Apex Court has laid down the principles for determining what is an 'essential religious practice' vide *COMMISSIONER HINDU RELIGIOUS ENDOWMENTS MADRAS vs. SRI LAKSHMINDRA THIRTHA SWAMIAR OF SRI SHIRUR MUTT*⁴⁰, *DURGAH COMMITTEE, AJMER vs. SYED HUSSAIN ALI*⁴¹, *M. ISMAIL FARUQUI vs. UNION OF INDIA*⁴², *A.S. NARAYANA DEEKSHITULU vs. STATE OF ANDHRA PRADESH*⁴³, *JAVED vs. STATE OF HARYANA*⁴⁴, *COMMISSIONER OF POLICE vs. ACHARYA JAGADISHWARANANDA AVADHUTA*⁴⁵, *AJMAL KHAN vs. THE ELECTION COMMISSION*⁴⁶, *SHARAYA BANO, INDIAN YOUNG LAWYERS ASSOCIATION*. Wearing *hijab* at the most may be a

⁴⁰ AIR 1954 SC 282

⁴¹ AIR 1961 SC 1402

⁴² (1994) 4 SCC 360

⁴³ (1996) 9 SCC 611

⁴⁴ (2003) 8 SCC 369

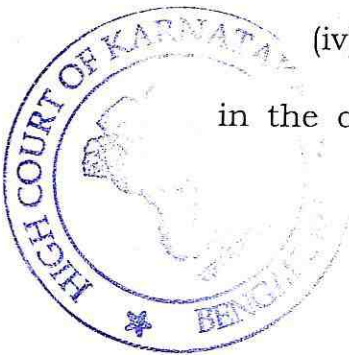
⁴⁵ (2004) 12 SCC 770

⁴⁶ 2006 SCC OnLine Mad 794

'cultural' practice which has nothing to do with religion. Culture and religion are different from each other.

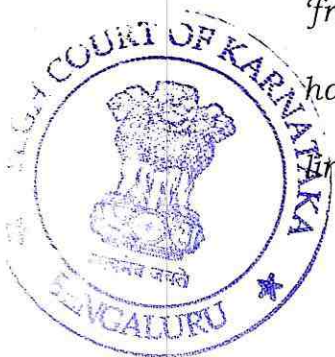
(iii) The educational institutions of the kind being '*qualified public places*', the students have to adhere to the campus discipline and dress code as lawfully prescribed since years i.e., as early as 2004. The parents have in the admission forms of their wards (minor students) have signified their consent to such adherence. All the students had been accordingly adhering to the same all through. It is only in the recent past; quite a few students have raked up this issue after being brainwashed by some fundamentalist Muslim organizations like Popular Front of India, Campus Front of India, *Jamaat-e-Islami*, and Students Islamic Organization of India. An FIR is also registered. Police papers are furnished to the court in a sealed cover since investigation is half way through. Otherwise, the students and parents of the Muslim community do not have any issue at all. Therefore, they cannot now turn around and contend or act to the contrary.

(iv) The power to prescribe school uniform is inherent in the concept of school education itself. There is sufficient



indication of the same in the 1983 Act and the 1995 Curricula Rules. It is wrong to argue that prescription of uniform is a '*police power*' and that unless the Statute gives the same; there cannot be any prescription of dress code for the students. The so called '*prospectus*' allegedly issued by the Education Department prohibiting prescription of uniform/dress code in the schools does not have any authenticity nor legal efficacy.

(v) The Government Order dated 05.02.2022 is compliant with the scheme of the 1983 Act, which provides for '*cultivating a scientific and secular outlook through education*' and this G.O. has been issued under Section 133 read with Sections 7(1)(i), 7(2)(g)(v) of the Act and Rule 11 of the 1995 Curricula Rules; this order only authorizes the prescription of dress code by the institutions on their own and it as such, does not prescribe any. These Sections and the Rule intend to give effect to constitutional secularism and to the ideals that animate Articles 39(f) & 51(A). The children have to develop in a healthy manner and in conditions of '*freedom and dignity*'; the school has to promote the spirit of '*harmony and common brotherhood transcending religious, linguistic, regional or sectional diversities*'. The practices that



are derogatory to the dignity of women have to be renounced. All this would help nation building. This view is reflected in the decision of Apex Court in *MOHD. AHMED KHAN vs. SHAH BANO BEGUM*⁴⁷.

(vi) The Government Order dated 5.02.2022 came to be issued in the backdrop of social unrest and agitations within the educational institutions and without engineered by Popular Front of India, Students Islamic Organization of India, Campus Front of India & *Jamaat-e-Islami*. The action of the institutions in insisting adherence to uniforms is in the interest of maintaining '*peace & tranquility*'. The term '*public order*' (*sārvajanika suvyavasthe*) employed in the Government Order has contextual meaning that keeps away from the same expression employed in Article 19(2) of the Constitution.

(vii) The '*College Betterment (Development) Committees*' have been established vide Government Circular dated 31.01.2014 consistent with the object of 1983 Act and 1995 Curricula Rules. For about eight years or so, it has been in place with not even a little finger being raised by anyone nor is there any complaint against the composition or functioning of these Committees. This Circular is not put in challenge in

⁴⁷ (1985) 2 SCC 556



any of the Writ Petitions. These autonomous Committees have been given power to prescribe uniforms/dress code vide *SIR M. VENKATA SUBBARAO & ASHA RENJAN supra*, *FATHIMA THASNEEM vs. STATE OF KERALA*⁴⁸ and *JANE SATHYA vs. MEENAKSHI SUNDARAM ENGINEERING COLLEGE*⁴⁹. The Constitution does not prohibit elected representatives of the people being made a part of such committees.

(viii) The right to wear *hijab* if claimed under Article 19(1)(a), the provisions of Article 25 are not invocable inasmuch as the simultaneous claims made under these two provisions are not only mutually exclusive but denuding of each other. In addition, be it the freedom of conscience, be it the right to practise religion, be it the right to expression or be it the right to privacy, all they are not absolute rights and therefore, are susceptible to reasonable restriction or regulation by law, of course subject to the riders prescribed vide *CHINTAMAN RAO vs. STATE OF MADHYA PRADESH*⁵⁰ and *MOHD. FARUK V. STATE OF MADHYA PRADESH, supra*.

(ix) Permitting the petitioner – students to wear *hijab* (head – scarf) would offend the tenets of human dignity

⁴⁸ 2018 SCC OnLine Ker 5267

⁴⁹ 2012 SCC OnLine Mad 2607

⁵⁰ AIR 1951 SC 118



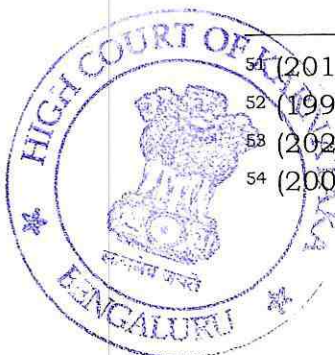
inasmuch as, the practice robs away the individual choice of Muslim women; the so called religious practice if claimed as a matter of right, the claimant has to *prima facie* satisfy its constitutional morality vide *K.S PUTTAWAMY supra*, *INDIAN YOUNG LAWYERS ASSOCIATION supra*. There is a big shift in the judicial approach to the very idea of essential religious practice in Islamic faith since the decision in *SHAYARA BANO*, *supra*, which the case of the petitioners overlooks. To be an essential religious practice that merits protection under Article 25, it has to be shown to be essential to the religion concerned, in the sense that if the practice is renounced, the religion in question ceases to be the religion.

(x) Children studying in schools are placed under the care and supervision of the authorities and teachers of the institution; therefore, they have '*parental and quasi - parental*' authority over the school children. This apart, schools are '*qualified public places*' and therefore exclusion of religious symbols is justified in light of 1995 Curricula Regulation that are premised on the objective of secular education, uniformity and standardization vide *ADI SAIVA SIVACHARIYARGAL NALA*



*SANGAM vs. STATE OF TAMIL NADU*⁵¹, *S.R. BOMMAI vs. UNION OF INDIA*⁵², *S.K. MOHD. RAFIQUE vs. CONTAI RAHAMANIA HIGH MADRASAH*⁵³ and *CHURCH OF GOD (FULL GOSPEL) IN INDIA vs. K.K.R MAJESTIC COLONY WELFARE ASSOCIATION*⁵⁴. What is prescribed in *Kendriya Vidyalayas* as school uniform is not relevant for the State to decide on the question of school uniform/dress code in other institutions. This apart there is absolutely no violation of right to education in any sense.

(xi) Petitioner-students in Writ Petition No.2146/2022 are absolutely not justified in seeking a disciplinary enquiry against some teachers of the respondent college and removal of some others from their position by issuing a Writ of *Quo Warranto*. As already mentioned above, the so called prospectus/instructions allegedly issued by the Education Department prohibiting the dress code in the colleges cannot be the basis for the issuance of coercive direction for refraining the enforcement of dress code. The authenticity and efficacy of the prospectus/instructions are not established.



⁵¹ (2016) 2 SCC 725

⁵² (1994) 3 SCC 1

⁵³ (2020) 6 SCC 689

⁵⁴ (2000) 7 SCC 282

In support of their contention and to provide for a holistic and comparative view, the respondents have referred to the following decisions of foreign jurisdictions, in addition to native ones: *LEYLA SAHIN vs. TURKEY*⁵⁵, *WABE and MH MÜLLER HANDEL*⁵⁶, *REGINA vs. GOVERNORS OF DENBIGH HIGH SCHOOL*⁵⁷ and *UNITED STATES vs. O'BRIEN*⁵⁸ and *KOSE vs. TURKEY*⁵⁹.

IV. All these cases broadly involving common questions of law & facts, are heard together on day to day basis with the concurrence of the Bar. There were a few Public Interest Litigations espousing or opposing the causes involved in these cases. However, we decline to grant indulgence in them by separate orders. Similarly, we decline to entertain applications for impleadment and intervention in these cases, although we have adverted to the written submissions/supplements filed by the respective applicants.

Having heard the learned counsel appearing for the parties and having perused the papers on record, we

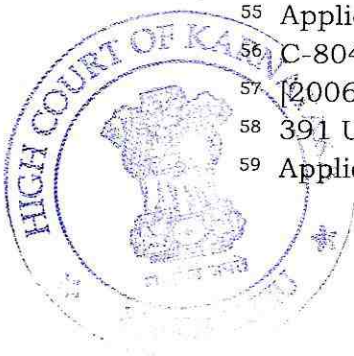
⁵⁵ Application No. 44774/98

⁵⁶ C-804/18 and C-341/19 dated 15th July 2021

⁵⁷ [2006] 2 WLR 719

⁵⁸ 391 US 367 (1968)

⁵⁹ Application No. 26625/02



have broadly framed the following questions for consideration:

SL.NO.	QUESTIONS FOR CONSIDERATION
1.	Whether wearing <i>hijab</i> /head-scarf is a part of 'essential religious practice' in Islamic Faith protected under Article 25 of the Constitution?
2.	Whether prescription of school uniform is not legally permissible, as being violative of petitioners Fundamental Rights <i>inter alia</i> guaranteed under Articles, 19(1)(a), (i.e., <i>freedom of expression</i>) and 21, (i.e., <i>privacy</i>) of the Constitution?
3.	Whether the Government Order dated 05.02.2022 apart from being incompetent is issued without application of mind and further is manifestly arbitrary and therefore, violates Articles 14 & 15 of the Constitution?
4.	Whether any case is made out in W.P.No.2146/2022 for issuance of a direction for initiating disciplinary enquiry against respondent Nos.6 to 14 and for issuance of a Writ of <i>Quo Warranto</i> against respondent Nos.15 & 16?

V. SECULARISM AND FREEDOM OF CONSCIENCE & RELIGION UNDER OUR CONSTITUTION:

Since both the sides in their submissions emphasized on Secularism and freedom of conscience & right to religion, we need to concisely treat them in a structured way. Such a need is amplified even for adjudging the validity of the Government Order dated 05.02.2022, which according to the State gives effect to and operationalizes constitutional Secularism.



SECULARISM AS A BASIC FEATURE OF OUR CONSTITUTION:

(i) 'India, that is Bharat' (Article 1), since centuries, has been the sanctuary for several religions, faiths & cultures that have prosperously co-existed, regardless of the ebb & flow of political regimes. Chief Justice S.R. Das in *IN RE: KERALA EDUCATION BILL*⁶⁰ made the following observation lauding the greatness of our heritage:

"...Throughout the ages endless inundations of men of diverse creeds, cultures and races - Aryans and non-Aryans, Dravidians and Chinese, Scythians, Huns, Pathans and Mughals - have come to this ancient land from distant regions and climes. India has welcomed them all. They have met and gathered, given and taken and got mingled, merged and lost in one body. India's tradition has thus been epitomised in the following noble lines:

"None shall be turned away From the shore of this vast sea of humanity that is India" (Poems by Rabindranath Tagore)..."

In *S.R.BOMMAI*, *supra* at paragraph 25, the Hon'ble Supreme Court of India observed: *"India can rightly be described as the world's most heterogeneous society. It is a country with a rich heritage. Several races have converged in this sub-continent. They brought with them their own cultures, languages, religions and customs. These diversities threw up*

⁶⁰ (1959) 1 SCR 996



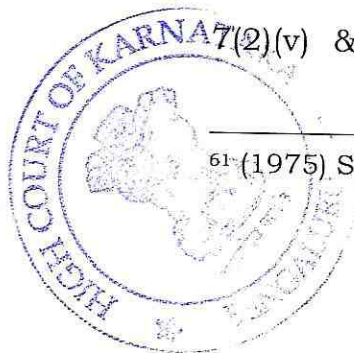
their own problems but the early leadership showed wisdom and sagacity in tackling them by preaching the philosophy of accommodation and tolerance..."

(ii) The 42nd Amendment (1976) introduced the word 'secular' to the Preamble when our Constitution already had such an animating character *ab inceptio*. Whatever be the variants of its meaning, secularism has been a *Basic Feature* of our polity vide *KESAVANANDA, supra* even before this Amendment. The ethos of Indian secularism may not be approximated to the idea of *separation between Church and State* as envisaged under American Constitution post First Amendment (1791). Our Constitution does not enact Karl Marx's structural-functionalist view '*Religion is the opium of masses*' (1844). H.M.SEERVAI, an acclaimed jurist of yester decades in his *magnum opus* 'Constitutional Law of India, Fourth Edition, Tripathi at page 1259, writes: '*India is a secular but not an anti-religious State, for our Constitution guarantees the freedom of conscience and religion. Articles 27 and 28 emphasize the secular nature of the State...*' Indian secularism oscillates between *sārva dharma samabhāva* and *dharma nirapekshata*. The Apex Court in *INDIRA NEHRU*



*GANDHI vs. RAJ NARAIN*⁶¹ explained the basic feature of secularism to mean that *the State shall have no religion of its own and all persons shall be equally entitled to the freedom of conscience and the right freely to profess, practice and propagate religion*. Since ages, India is a secular country. For India, there is no official religion, inasmuch as it is not a theocratic State. The State does not extend patronage to any particular religion and thus, it maintains neutrality in the sense that it does not discriminate anyone on the basis of religious identities *per se*. Ours being a 'positive secularism' vide *PRAVEEN BHAI THOGADIA supra*, is not antithesis of religious devoutness but comprises in religious tolerance. It is pertinent to mention here that Article 51A(e) of our Constitution imposes a Fundamental Duty on every citizen '*to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women*'. It is relevant to mention here itself that this constitutional duty to transcend the sectional diversities of religion finds its utterance in section 7(2)(v) & (vi) of the 1983 Act which empowers the State

⁶¹ (1975) Supp. SCC 1



Government to prescribe the curricula that would amongst other inculcate the sense of this duty.

VI. CONSTITUTIONAL RIGHT TO RELIGION AND RESTRICTIONS THEREON:

(i) Whichever be the society, *'you can never separate social life from religious life'* said Alladi Krishnaswami Aiyar during debates on Fundamental Rights in the Advisory Committee (April 1947). The judicial pronouncements in America and Australia coupled with freedom of religion guaranteed in the Constitutions of several other countries have substantially shaped the making of *inter alia* Articles 25 & 26 of our Constitution. Article 25(1) & (2) read as under:

"25. Freedom of conscience and free profession, practice and propagation of religion

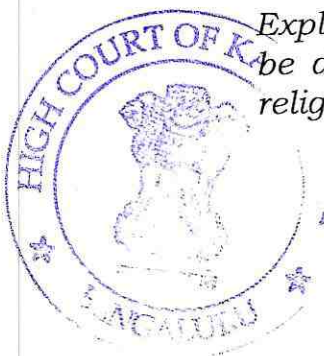
(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law -

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I - The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.



Explanation II - In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly."

This Article guarantees that every person in India shall have the freedom of conscience and also the right to profess practise and propagate religion. It is relevant to mention that unlike Article 29, this article does not mention 'culture' as such, which arguably may share a common border with religion. We shall be touching the cultural aspect of *hijab*, later. We do not propose to discuss about this as such. The introduction of word 'conscience' was at the instance of Dr. B.R.Ambedkar, who in his wisdom could visualize persons who do not profess any religion or faith, like Chāarvāakas, atheists & agnostics. Professor UPENDRA BAXI in '*THE FUTURE OF HUMAN RIGHTS*' (Oxford), 3rd Edition, 2008, at page 149 says:

"...Under assemblage of human rights, individual human beings may choose atheism or agnosticism, or they may make choices to belong to fundamental faith communities. Conscientious practices of freedom of conscience enable exit through conversion from traditions of religion acquired initially by the accident of birth or by the revision of choice of faith, which may thus never be made irrevocably once for all..."



BIJOE EMMANUEL, *supra* operationalized the freedom of conscience intricately mixed with a great measure of right to religion. An acclaimed jurist DR. DURGA DAS BASU in his 'Commentary on the Constitution of India', 8th Edition at page 3459 writes: "It is next to be noted that the expression 'freedom of conscience' stands in juxtaposition to the words "right freely to profess, practise and propagate religion". If these two parts of Art. 25(1) are read together, it would appear, by the expression 'freedom of conscience' reference is made to the mental process of belief or non-belief, while profession, practice and propagation refer to external action in pursuance of the mental idea or concept of the person...It is also to be noted that the freedom of conscience or belief is, by its nature, absolute, it would become subject to State regulation, in India as in the U.S.A. as soon as it is externalized i.e., when such belief is reflected into action which must necessarily affect other people..."

(ii) There is no definition of religion or conscience in our constitution. What the American Supreme Court in *DAVIS V. BEASON*⁶² observed assumes relevance: "...the term religion

has reference to one's views of his relation to his Creator and to



the obligation they impose of reverence for His Being and character and of obedience to His will. It is often confounded with cultus of form or worship of a particular sect, but is distinguishable from the latter". **WILL DURANT**, a great American historian (1885-1981) in his Magnum Opus 'THE STORY OF CIVILIZATION', Volume 1 entitled 'OUR ORIENTAL HERITAGE' at pages 68 & 69 writes:

"The priest did not create religion, he merely used it, as a statesman uses the impulses and customs of mankind; religion arises not out of sacerdotal invention or chicanery, but out of the persistent wonder, fear, insecurity, hopefulness and loneliness of men..." The priest did harm by tolerating superstition and monopolizing certain forms of knowledge...Religion supports morality by two means chiefly: myth and tabu. Myth creates the supernatural creed through which celestial sanctions may be given to forms of conduct socially (or sacerdotally) desirable; heavenly hopes and terrors inspire the individual to put up with restraints placed upon him by his masters and his group. Man is not naturally obedient, gentle, or chaste; and next to that ancient compulsion which finally generates conscience, nothing so quietly and continuously conduces to these uncongenial virtues as the fear of the gods..."

In *NARAYANAN NAMBUDRIPAD vs. MADRAS*⁶³, Venkatarama Aiyar J. quoted the following observations of Leatham C.J in

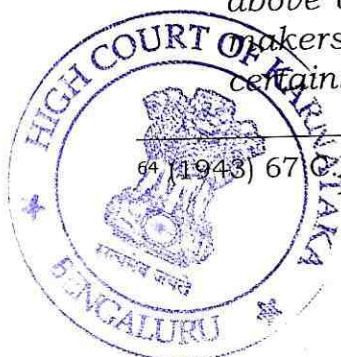


ADELAIDE CO. OF JEHOVAH'S WITNESSES INC. V.
COMMONWEALTH⁶⁴:

"It would be difficult, if not impossible, to devise a definition of religion which would satisfy the adherents of all the many and various religions which exist, or have existed, in the world. There are those who regard religion as consisting principally in a system of beliefs or statement of doctrine. So viewed religion may be either true or false. Others are more inclined to regard religion as prescribing a code of conduct. So viewed a religion may be good or bad. There are others who pay greater attention to religion as involving some prescribed form of ritual or religious observance. Many religious conflicts have been concerned with matters of ritual and observance..."

In *SHIRUR MUTT* supra, 'religion' has been given the widest possible meaning. The English word 'religion' has different shades and colours. It does not fully convey the Indian concept of religion i.e., 'dharma' which has a very wide meaning, one being 'moral values or ethics' on which the life is naturally regulated. The Apex Court referring to the aforesaid foreign decision observed:

"...We do not think that the above definition can be regarded as either precise or adequate. Articles 25 and 26 of our Constitution are based for the most part upon article 44(2) of the Constitution of Eire and we have great doubt whether a definition of "religion" as given above could have been in the minds of our Constitution-makers when they framed the Constitution. Religion is certainly a matter of faith with individuals or communities



64 (1943) 67 C.L.R. 116, 123

and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine of belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress..."

(iii) It is relevant to quote what BERTRAND RUSSELL in his 'EDUCATION AND SOCIAL ORDER' (1932) at page 69 wrote: 'Religion is a complex phenomenon, having both an individual and a social aspect ...throughout history, increase of civilization has been correlated with decrease of religiosity.' The free exercise of religion under Article 25 is subject to restrictions imposed by the State on the grounds of public order, morality and health. Further it is made subordinate to other provisions of Part III. Article 25(2)(a) reserves the power of State to regulate or restrict any economic, financial, political and other secular activities which may be associated with religious practice. Article 25(2)(b) empowers the State to legislate for social welfare and reform even though by so doing, it might interfere with religious practice.



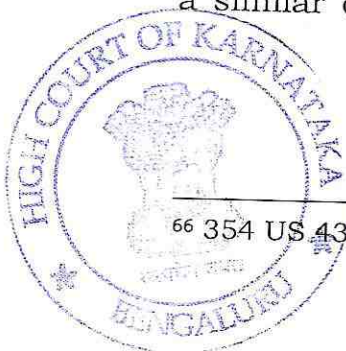
H.M.SEERVAI⁶⁵ at paragraph 11.35, page 1274, states: *"It has been rightly held by Justice Venkatarama Aiyar for a very strong Constitution Bench that Article 25(2) which provides for social and economic reform is, on a plain reading, not limited to individual rights. So, by an express provision, the freedom of religion does not exclude social and economic reform although the scope of social reform, would require to be defined."* This apart, Article 25(1) deals with rights of individuals whereas Article 25(2) is much wider in its content and has reference to communities. This Article, it is significant to note, begins with the expression '*Subject to...*'. Limitations imposed on religious practices on the ground of public order, morality and health having already been saved by the opening words of Article 25(1), the saving would cover beliefs and practices even though considered essential or vital by those professing the religion. The text & context of this Article juxtaposed with other unmistakably show that the freedom guaranteed by this provision in terms of sanctity, are placed on comparatively a lower pedestal by the Makers of our Constitution *qua* other Fundamental Rights conferred in Part III. This broad view



draws support from a catena of decisions of the Apex Court beginning with *VENKATARAMANA DEVARU, supra*.

(iv) RELIGIOUS FREEDOM UNDER OUR CONSTITUTION VIS-À-VIS AMERICAN CONSTITUTION:

The First Amendment to the US Constitution confers freedoms in absolute terms and the freedoms granted are the rule and restrictions on those freedoms are the exceptions evolved by their courts. However, the Makers of our Constitution in their wisdom markedly differed from this view. Article 25 of our Constitution begins with the restriction and further incorporates a specific provision i.e., clause (2) that in so many words saves the power of State to regulate or restrict these freedoms. Mr. Justice Douglas of the US Supreme Court in *KINGSLEY BOOKS INC. vs. BROWN*⁶⁶, in a sense lamented about the absence of a corresponding provision in their Constitution, saying "*If we had a provision in our Constitution for 'reasonable' regulation of the press such as India has included in hers, there would be room for argument that censorship in the interest of morality would be permissible*". In a similar context, what Chief Justice Hidayatullah, observed



in *K.A.ABBAS vs. UNION OF INDIA* ⁶⁷ makes it even more evoking:

"...The American Constitution stated the guarantee in absolute terms without any qualification. The Judges try to give full effect to the guarantee by every argument they can validly use. But the strongest proponent of the freedom (Justice Douglas) himself recognised in the Kingsley case that there must be a vital difference in approach... In spite of the absence of such a provision Judges in America have tried to read the words 'reasonable restrictions' into the First Amendment and thus to make the rights it grants subject to reasonable regulation ..."

Succinctly put, in the United States and Australia, the freedom of religion was declared in absolute terms and courts had to evolve exceptions to that freedom, whereas in India, Articles 25 & 26 of the Constitution appreciably embody the limits of that freedom.

(v) What is observed in *INDIAN YOUNG LAWYERS ASSOCIATION*, *supra* at paragraphs 209 & 210 about the scope and content of freedom of religion is illuminating:

"...Yet, the right to the freedom of religion is not absolute. For the Constitution has expressly made it subject to public order, morality and health on one hand and to the other provisions of Part III, on the other. The subjection of the individual right to the freedom of religion to the other provisions of the Part is a nuanced departure from the position occupied by the other rights to freedom recognized in Articles 14, 15, 19 and 21. While



guaranteeing equality and the equal protection of laws in Article 14 and its emanation, in Article 15, which prohibits discrimination on grounds of religion, race, caste, sex or place of birth, the Constitution does not condition these basic norms of equality to the other provisions of Part III. Similar is the case with the freedoms guaranteed by Article 19(1) or the right to life under Article 21. The subjection of the individual right to the freedom of religion under Article 25(1) to the other provisions of Part III was not a matter without substantive content. Evidently, in the constitutional order of priorities, the individual right to the freedom of religion was not intended to prevail over but was subject to the overriding constitutional postulates of equality, liberty and personal freedoms recognised in the other provisions of Part III.

Clause (2) of Article 25 protects laws which existed at the adoption of the Constitution and the power of the state to enact laws in future, dealing with two categories. The first of those categories consists of laws regulating or restricting economic, financial, political or other secular activities which may be associated with religious practices. Thus, in sub-clause (a) of Article 25 (2), the Constitution has segregated matters of religious practice from secular activities, including those of an economic, financial or political nature. The expression "other secular activity" which follows upon the expression "economic, financial, political" indicates that matters of a secular nature may be regulated or restricted by law. The fact that these secular activities are associated with or, in other words, carried out in conjunction with religious practice, would not put them beyond the pale of legislative regulation. The second category consists of laws providing for (i) social welfare and reform; or (ii) throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. The expression "social welfare and reform" is not confined to matters only of the Hindu religion. However, in matters of temple entry, the Constitution recognised the disabilities which Hindu religion had imposed over the centuries which restricted the rights of access to dalits and to various groups within Hindu society. The effect of clause (2) of Article 25 is to protect the ability of the state to



enact laws, and to save existing laws on matters governed by sub-clauses (a) and (b). Clause (2) of Article 25 is clarificatory of the regulatory power of the state over matters of public order, morality and health which already stand recognised in clause (1). Clause 1 makes the right conferred subject to public order, morality and health. Clause 2 does not circumscribe the ambit of the 'subject to public order, morality or health' stipulation in clause 1. What clause 2 indicates is that the authority of the state to enact laws on the categories is not trammelled by Article 25..."

VII. AS TO PROTECTION OF ESSENTIAL RELIGIOUS PRACTICE AND THE TEST FOR ITS ASCERTAINMENT:

(i) Since the question of *hijab* being a part of essential religious practice is the bone of contention, it becomes necessary to briefly state as to what is an *essential religious practice* in Indian context and how it is to be ascertained. This doctrine can plausibly be traced to the Chief Architect of our Constitution, Dr. B.R.Ambedkar and to his famous statement in the Constituent Assembly during debates on the Codification of Hindu Law: "*the religious conception in this country are so vast that they cover every aspect of life from birth to death...there is nothing extraordinary in saying that we ought to strive hereafter to limit the definition of religion in such a manner that we shall not extend it beyond beliefs and such*



rituals as may be connected with ceremonials which are essentially religious..." [Constituent Assembly Debates VII:

781]. In *ACHARYA JAGADISHWARANANDA AVADHUTA*,
supra, it has been observed at paragraph 9 as under:

"The protection guaranteed under Articles 25 and 26 of the Constitution is not confined to matters of doctrine or belief but extends to acts done in pursuance of religion and, therefore, contains a guarantee for rituals, observances, ceremonies and modes of worship which are essential or integral part of religion. What constitutes an integral or essential part of religion has to be determined with reference to its doctrines, practices, tenets, historical background, etc. of the given religion... What is meant by "an essential part or practices of a religion" is now the matter for elucidation. Essential part of a religion means the core beliefs upon which a religion is founded. Essential practice means those practices that are fundamental to follow a religious belief. It is upon the cornerstone of essential parts or practices that the superstructure of a religion is built, without which a religion will be no religion. Test to determine whether a part or practice is essential to a religion is to find out whether the nature of the religion will be changed without that part or practice. If the taking away of that part or practice could result in a fundamental change in the character of that religion or in its belief, then such part could be treated as an essential or integral part. There cannot be additions or subtractions to such part because it is the very essence of that religion and alterations will change its fundamental character. It is such permanent essential parts which are protected by the Constitution. Nobody can say that an essential part or practice of one's religion has changed from a particular date or by an event. Such alterable parts or practices are definitely not the "core" of religion whereupon the belief is based and religion is founded upon. They could only be treated as mere embellishments to the non-essential (sic essential) part or practices."

- (ii) *INDIAN YOUNG LAWYERS ASSOCIATION* surveyed the development of law relating to essential religious practice and the extent of its constitutional patronage consistent with



the long standing view. Ordinarily, a religious practice in order to be called an 'essential religious practice' should have the following indicia: (i) *Not every activity associated with the religion is essential to such religion. Practice should be fundamental to religion and it should be from the time immemorial.* (ii) *Foundation of the practice must precede the religion itself or should be co-founded at the origin of the religion.* (iii) *Such practice must form the cornerstone of religion itself. If that practice is not observed or followed, it would result in the change of religion itself and,* (iv) *Such practice must be binding nature of the religion itself and it must be compelling.* That a practice claimed to be essential to the religion has been carried on since time immemorial or is grounded in religious texts *per se* does not lend to it the constitutional protection unless it passes the test of essentiality as is adjudged by the Courts in their role as the guardians of the Constitution.

ESSENTIAL RELIGIOUS PRACTICE SHOULD ASSOCIATE WITH CONSTITUTIONAL VALUES:

(i) March of law regarding essential religious practice: Law is an organic social institution and not just a black letter section. In order to be 'living law of the people', it marches



with the ebb and flow of the times, either through legislative action or judicial process. Constitution being the Fundamental Law of the Land has to be purposively construed to meet and cover changing conditions of social & economic life that would have been unfamiliar to its Framers. Since *SHAYARA BANO*, there has been a paradigm shift in the approach to the concept of essential religious practice, as rightly pointed by the learned Advocate General. In *INDIAN YOUNG LAWYERS ASSOCIATION*, this branch of law marched further when the Apex Court added another dimension to the concept of essential religious practice, by observing at paragraphs 289 & 291 as under:

"For decades, this Court has witnessed claims resting on the essentiality of a practice that militate against the constitutional protection of dignity and individual freedom under the Constitution. It is the duty of the courts to ensure that what is protected is in conformity with fundamental constitutional values and guarantees and accords with constitutional morality. While the Constitution is solicitous in its protection of religious freedom as well as denominational rights, it must be understood that dignity, liberty and equality constitute the trinity which defines the faith of the Constitution. Together, these three values combine to define a constitutional order of priorities. Practices or beliefs which detract from these foundational values cannot claim legitimacy..."

Our Constitution places the individual at the heart of the discourse on rights. In a constitutional order characterized by the Rule of Law, the constitutional



commitment to egalitarianism and the dignity of every individual enjoins upon the Court a duty to resolve the inherent tensions between the constitutional guarantee of religious freedom afforded to religious denominations and constitutional guarantees of dignity and equality afforded to individuals. There are a multiplicity of intersecting constitutional values and interests involved in determining the essentiality of religious practices. In order to achieve a balance between competing rights and interests, the test of essentiality is infused with these necessary limitations."

Thus, a person who seeks refuge under the umbrella of Article 25 of the Constitution has to demonstrate not only *essential religious practice* but also its engagement with the constitutional values that are illustratively mentioned at paragraph 291 of the said decision. It's a matter of concurrent requirement. It hardly needs to be stated, if *essential religious practice* as a threshold requirement is not satisfied, the case does not travel to the domain of those constitutional values.

VIII. SOURCES OF ISLAMIC LAW, HOLY QURAN BEING ITS PRINCIPAL SOURCE:

1. The above having been said, now we need to concisely discuss about the authentic sources of Islamic law inasmuch as Quran and *Ahadith* are cited by both the sides in support of their argument & counter argument relating to wearing of *hijab*. At this juncture, we cannot resist our feel to

reproduce *Aiyat* 242 of the Quran which says: "***It is expected***



that you will use your commonsense". (Quoted by the Apex Court in *SHAH BANO, supra*.

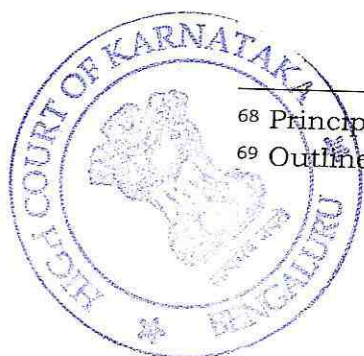
(i) SIR DINSHAH FARDUNJI MULLA'S TREATISE⁶⁸, at sections 33, 34 & 35 lucidly states:

"33. Sources of Mahomedan Law: There are four sources of Mahomedan law, namely, (1) the Koran; (2) Hadis, that is, precepts, actions and sayings of the Prophet Mahomed, not written down during his lifetime, but preserved by tradition and handed down by authorized persons; (3) Ijmaa, that is, a concurrence of opinion of the companions of Mahomed and his disciples; and (4) Qiyas, being analogical deductions derived from a comparison of the first three sources when they did not apply to the particular case."

"34. Interpretation of the Koran: The Courts, in administering Mahomedan law, should not, as a rule, attempt to put their own construction on the Koran in opposition to the express ruling of Mahomedan commentators of great antiquity and high authority."

"35. Precepts of the Prophet: Neither the ancient texts nor the precepts of the Prophet Mahomed should be taken literally so as to deduce from them new rules of law, especially when such proposed rules do not conduce to substantial justice..."

(ii) FYZEE'S TREATISE: Referring to another Islamic jurist of great repute Asaf A.A. Fyzee⁶⁹, what the Apex Court at paragraphs 7 & 54 in *SHAYARA BANO, supra*, observed evokes interest:



⁶⁸ Principles of Mahomedan law, 20th Edition (2013)

⁶⁹ Outlines of Muhammadan, Law 5th Edition (2008)

"7. There are four sources for Islamic law- (i) Quran (ii) Hadith (iii) Ijma (iv) Qiyas. The learned author has rightly said that the Holy Quran is the "first source of law". According to the learned author, pre-eminence is to be given to the Quran. That means, sources other than the Holy Quran are only to supplement what is given in it and to supply what is not provided for. In other words, there cannot be any Hadith, Ijma or Qiyas against what is expressly stated in the Quran. Islam cannot be anti-Quran...

54. ...Indeed, Islam divides all human action into five kinds, as has been stated by Hidayatullah, J. in his Introduction to Mulla (supra). There it is stated:

"E. Degrees of obedience: Islam divides all actions into five kinds which figure differently in the sight of God and in respect of which His Commands are different. This plays an important part in the lives of Muslims.

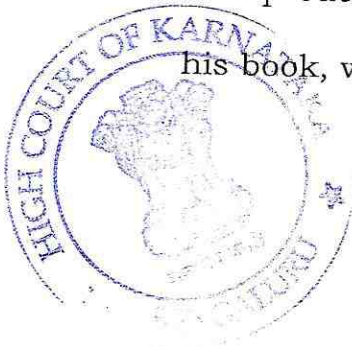
(i) First degree: Fard. Whatever is commanded in the Koran, Hadis or ijmaa must be obeyed. Wajib. Perhaps a little less compulsory than Fard but only slightly less so. (ii) Second degree: Masnun, Mandub and Mustahab: These are recommended actions. (iii) Third degree: Jaiz or Mubah: These are permissible actions as to which religion is indifferent (iv) Fourth degree: Makruh: That which is reprobated as unworthy (v) Fifth degree: Haram: That which is forbidden."

The Apex Court at paragraph 55 of SHAYARA BANO has treated the structural hierarchy of binding nature of Islamic norms starting from Quran and ending with Haram, while proscribing the obnoxious practice of triple talaq. The argument of hijab being mandatory under Ahadith, if not under Quran, shall be treated hereinafter, in the light of such a structure.



2. AS TO WHICH AUTHORITATIVE COMMENTARY ON HOLY QURAN, WE ARE PRINCIPALLY RELYING UPON AND REASONS FOR THAT:

(i) At the outset we make it clear that, in these cases, our inquiry concerns the nature and practice of wearing of *hijab* amongst Muslim women and therefore, references to the Holy Quran and other sources of Islamic law shall be confined to the same. During the course of hearing, the versions of different authors on this scripture were cited, viz., Abdullah Yusuf Ali, Abdul Haleem, Pickthall, Muhammad *Hijab*, Dr. Mustafa Khattab, Muhammad Taqi-ud-Din al-Hilali, Muhammad Muhsin Khan, Dr. Ghali. However, this Court prefers to bank upon the '*The Holy Quran: Text, Translation and Commentary*' by Abdullah Yusuf Ali, (published by Goodword Books; 2019 reprint), there being a broad unanimity at the Bar as to its authenticity & reliability. The speculative and generalizing mind of this author views the verses of the scriptures in their proper perspective. He provides the unifying principles that underlie. His monumental work has a systematic completeness and perfection of form. It is pertinent to reproduce Abdullah Yusuf Ali's '*Preface to First Edition*' of his book, which is as under:

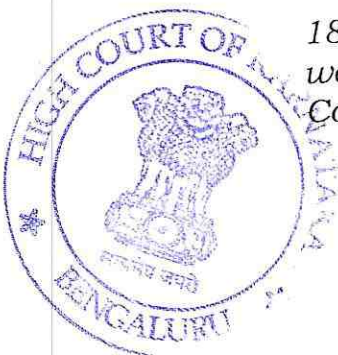


"...In translating the Text I have aired no views of my own, but followed the received commentators. Where they differed among themselves, I have had to choose what appeared to me to be the most reasonable opinion from all points of view. Where it is a question merely of words, I have not considered the question important enough to discuss in the Notes, but where it is a question of substance, I hope adequate explanations will be found in the notes. Where I have departed from the literal translation in order to express the spirit of the original better in English, I have explained the literal meaning in the Notes... Let me explain the scope of the Notes. I have made them as short as possible consistently with the object I have in view, viz., to give to the English reader, scholar as well as general reader, a fairly complete but concise view of what I understand to be the meaning of the Text..."

(ii) There is yet another reason as to why we place our reliance on the commentary of Mr. Abdullah Yusuf Ali. The Apex court itself in a catena of cases has treated the same as the authoritative work. In *SHAYARA BANO*, we find the following observations at paragraphs 17 & 18:

"17. Muslims believe that the Quran was revealed by God to the Prophet Muhammad over a period of about 23 years, beginning from 22.12.609, when Muhammad was 40 years old. The revelation continued upto the year 632 – the year of his death. Shortly after Muhammad's death, the Quran was completed by his companions, who had either written it down, or had memorized parts of it. These compilations had differences of perception. Therefore, Caliph Usman - the third, in the line of caliphs recorded a standard version of the Quran, now known as Usman's codex. This codex is generally treated, as the original rendering of the Quran.

18. During the course of hearing, references to the Quran were made from 'The Holy Quran: Text Translation and Commentary' by Abdullah Yusuf Ali, (published by Kitab

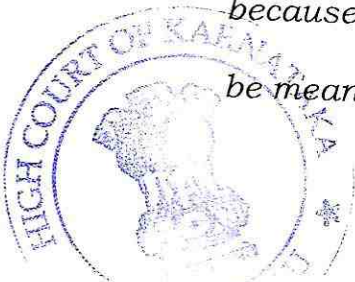


Bhawan, New Delhi, 14th edition, 2016). Learned counsel representing the rival parties commended, that the text and translation in this book, being the most reliable, could safely be relied upon. The text and the inferences are therefore drawn from the above publication...The Quran is divided into 'suras' (chapters). Each 'sura' contains 'verses', which are arranged in sections...."

The above apart, none at the Bar has disputed the profound scholarship of this writer or the authenticity of his commentary. We too find construction of and comments on suras and verses of the scripture illuminative and immensely appealing to reason & justice.

IX. AS TO HIJAB BEING A QURANIC INJUNCTION:

(i) Learned advocates appearing for the petitioners vehemently argued that the Quran injuncts Muslim women to wear *hijab* whilst in public gaze. In support, they heavily banked upon certain *suras* from Abdullah Yusuf Ali's book. Before we reproduce the relevant suras and verses, we feel it appropriate to quote what Prophet had appreciably said at *sūra (ii) verse 256* in Holy Quran: ***'Let there be no compulsion in religion...'*** What Mr. Abdullah Yusuf Ali in footnote 300 to this verse, appreciably reasons out, is again worth quoting: *'Compulsion is incompatible with religion because religion depends upon faith and will, and these would be meaningless if induced by force...'* With this at heart, we are



reproducing the following verses from the scripture, which were pressed into service at the Bar.

Sūra xxiv (Nūr):

The environmental and social influences which most frequently wreck our spiritual ideals have to do with sex, and especially with its misuse, whether in the form of unregulated behavior, of false charges or scandals, or breach of the refined conventions of personal or domestic privacy. Our complete conquest of all pitfalls in such matters enables us to rise to the higher regions of Light and of God-created Nature, about which a mystic doctrine is suggested. This subject is continued in the next Sūra.

Privacy should be respected, and the utmost decorum should be observed in dress and manners

(xxiv. 27 – 34, and C. 158)

Domestic manners and manners in public or collective life all contribute to the highest virtues, and are part of our spiritual duties leading upto God"

(xxiv. 58 – 64, and C. 160).

*"And say to the believing women
That they should lower
Their gaze and guard*.
Their modesty; that they
Should not display their
Beauty and ornaments* except
What (must ordinarily) appear
Thereof; that they should
Draw their veils over
Their bosoms and not display
Their beauty except
To their husband, their fathers,
Their husbands' father, their sons,
Their husbands' sons,
Their brothers or their brothers' sons,
Or their sisters' sons,*

* References to the footnote attached to these verses shall be made in subsequent paragraphs.



Or their women, or the slaves
Whom their right hands
Possess, or male servants
Free from physical needs,
Or small children who
Have no sense of the shame
Of sex; that they
Should strike their feet
In order to draw attention
To their hidden ornaments.
And O ye Believers!
Turn ye all together
Towards God, that ye
May attain Bliss.*”

(xxiv. 31, C. - 158)

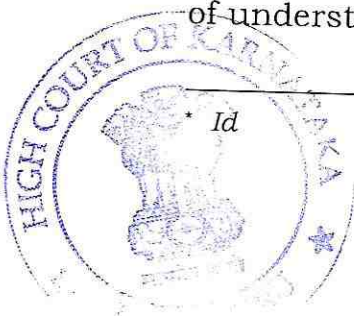
Sūra xxxiii (Ahzāb)

“Prophet! Tell
Thy wives and daughters,
And the believing women*,
That they should case
Their outer garments over*
Their persons (when abroad):
That is most convenient,
That they should be known*
(As such) and not molested.
And God is Oft – Forgiving,*
Most Merciful.”

(xxxiii. 59, C. - 189)

Is hijab Islam-specific?

- (ii) *Hijab* is a veil ordinarily worn by Muslim women, is true. Its origin in the Arabic verb *hajaba*, has etymological similarities with the verb “to hide”. *Hijab* nearly translates to partition, screen or curtain. There are numerous dimensions of understanding the usage of the *hijab*: visual, spatial, ethical



and moral. This way, the *hijab* hides, marks the difference, protects, and arguably affirms the religious identity of the Muslim women. This word as such is not employed in Quran, cannot be disputed, although commentators may have employed it. Indian jurist Abdullah Yusuf Ali referring to *sūra* (xxxiii), verse 59, at footnote 3765 in his book states: “*Jilbāb, plural Jalābib: an outer garment; a long gown covering the whole body, or a cloak covering the neck as bosom.*”. In the footnote 3760 to Verse 53, he states: “**...In the wording, note that for Muslim women generally, no screen or hijab (Purdah) is mentioned, but only a veil to cover the bosom, and modesty in dress. The screen was a special feature of honor for the Prophet’s household, introduced about five or six years before his death...**” Added, in footnote 3767 to verse 59 of the same sura, he opines: “**This rule was not absolute: if for any reason it could not be observed, ‘God is Oft. Returning, Most Merciful.’...**” Thus, there is sufficient intrinsic material within the scripture itself to support the view that wearing *hijab* has been only recommendatory, if at all it is.

(iii) The Holy Quran does not mandate wearing of *hijab* or headgear for Muslim women. Whatever is stated in the

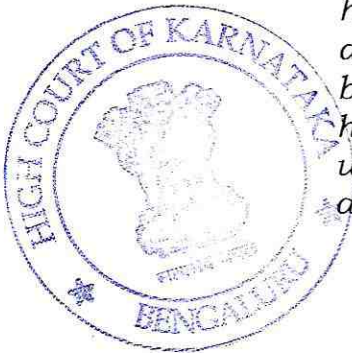


above *sūras*, we say, is only directory, because of absence of prescription of penalty or penance for not wearing *hijab*, the linguistic structure of verses supports this view. This apparel at the most is a means to gain access to public places and not a religious end in itself. It was a measure of women enablement and not a figurative constraint. There is a laudable purpose which can be churned out from Yusuf Ali's footnotes 2984, 2985 & 2987 to verses in *Sūra xxiv (Nūr)* and footnotes 3764 & 3765 to verses in *Sūra xxxiii (Ahzāb)*. They are reproduced below:

Sūra xxiv (Nūr)

"2984. The need for modesty is the same in both men and women. But on account of the differentiation of the sexes in nature, temperaments and social life, a greater amount of privacy is required for women than for men, especially in the matter of dress and uncovering of the bosom."

"2985. Zinat means both natural beauty and artificial ornaments. I think both are implied here but chiefly the former. The woman is asked 'not to make a display of her figure or appear in undress except to the following classes of people: (1) her husband, (2) her near relatives who would be living in the same house, and with whom a certain amount of negligé is permissible: (3) her women i.e., her maid-servants, who would be constantly in attendance on her; some Commentators include all believing women; it is not good form in a Muslim household for women to meet other women, except when they are properly dressed; (4) slaves, male and female, as they would be in constant



attendance; but this item would now be blank, with the abolition of slavery; (5) old or infirm men-servants; and (6) infants or small children before they get a sense of sex.

“2987. While all these details of the purity and the good form of domestic life are being brought to our attention, we are clearly reminded that the chief object we should hold in view is our spiritual welfare. All our brief life on this earth is a probation, and we must make our individual, domestic, and social life all contribute to our holiness, so that we can get the real success and bliss which is the aim of our spiritual endeavor. Mystics understand the rules of decorum themselves to typify spiritual truths. Our soul, like a modest maiden, allows not her eyes to stray from the One True God. And her beauty is not for vulgar show but for God.”

Sūra xxxiii (Ahzāb)

“3764. This is for all Muslim women, those of the Prophet’s household, as well as the others. The times were those of insecurity (see next verse) and they were asked to cover themselves with outer garments when walking abroad. It was never contemplated that they should be confined to their houses like prisoners.”

“3765. Jilbāb, plural Jalābib: an outer garment; a long gown covering the whole body, or a cloak covering the neck as bosom.”

(iv) The essential part of a religion is primarily to be ascertained with reference to the doctrine of that religion itself, gains support from the following observations in INDIAN

YOUNG LAWYERS ASSOCIATION:

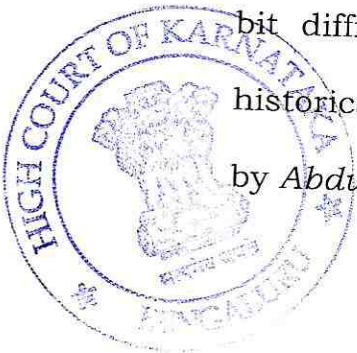


"286. In determining the essentiality of a practice, it is crucial to consider whether the practice is prescribed to be of an obligatory nature within that religion. If a practice is optional, it has been held that it cannot be said to be 'essential' to a religion. A practice claimed to be essential must be such that the nature of the religion would be altered in the absence of that practice. If there is a fundamental change in the character of the religion, only then can such a practice be claimed to be an 'essential' part of that religion."

It is very pertinent to reproduce what the Islamic jurist Asaf A.A. Fyzee, *supra* at pages 9-11 of his book states:

"...We have the Qur'an which is the very word of God. Supplementary to it we have Hadith which are the Traditions of the Prophet- the records of his actions and his sayings- from which we must derive help and inspiration in arriving at legal decisions. If there is nothing either in the Qur'an or in the Hadith to answer the particular question which is before us, we have to follow the dictates of secular reason in accordance with certain definite principles. These principles constitute the basis of sacred law or Shariat as the Muslim doctors understand it. And it is these fundamental juristic notions which we must try to study and analyse before we approach the study of the Islamic civil law as a whole, or even that small part of it which in India is known as Muslim law..."

(v) Petitioners pressed into service *sūra* (xxxiii), verse 59, in support of their contention that wearing *hijab* is an indispensable requirement of Islamic faith. This contention is bit difficult to countenance. It is relevant to refer to the historical aspects of this particular verse as vividly explained by Abdullah Yusuf Ali himself at footnote 3766:



"The object was not to restrict the liberty of women, but to protect them from harm and molestation under the conditions then existing in Medina. In the East and in the West a distinctive public dress of some sort or another has always been a badge of honour or distinction, both among men and women. This can be traced back to the earliest civilizations. Assyrian Law in its palmist days (say, 7th century B.C.), enjoined the veiling of married women and forbade the veiling of slaves and women of ill fame: see Cambridge Ancient History, III.107"

It needs to be stated that wearing *hijab* is not religion-specific, as explained by Sara Slininger from Centralia, Illinois in her research paper *"VEILED WOMEN: HIJAB, RELIGION, AND CULTURAL PRACTICE"*. What she writes throws some light on the socio-cultural practices of wearing *hijab* in the region, during the relevant times:

"Islam was not the first culture to practice veiling their women. Veiling practices started long before the Islamic prophet Muhammad was born. Societies like the Byzantines, Sassanids, and other cultures in Near and Middle East practiced veiling. There is even some evidence that indicates that two clans in southwestern Arabia practiced veiling in pre-Islamic times, the Banū Ismā'īl and Banū Qaḥṭān. Veiling was a sign of a women's social status within those societies. In Mesopotamia, the veil was a sign of a woman's high status and respectability. Women wore the veil to distinguish themselves from slaves and unchaste women. In some ancient legal traditions, such as in Assyrian law, unchaste or unclean women, such as harlots and slaves, were prohibited from veiling themselves. If they were caught illegally veiling, they were liable to severe penalties. The practice of veiling spread throughout the ancient world the same way that many other ideas traveled from place to place during this time: invasion."



(vi) Regard being had to the kind of life conditions then obtaining in the region concerned, wearing *hijab* was recommended as a measure of social security for women and to facilitate their safe access to public domain. At the most the practice of wearing this apparel may have something to do with *culture* but certainly not with religion. This gains credence from Yusuf Ali's Note 3764 to verse 59 which runs as under:

"...The times were those of insecurity (see next verse) and they were asked to cover themselves with outer garments when walking abroad. It was never contemplated that they should be confined to their houses like prisoners."

History of mankind is replete with instances of abuse and oppression of women. The region and the times from which Islam originated were not an exception. The era before the introduction of Islam is known as *Jahiliya*-a time of barbarism and ignorance. The Quran shows concern for the cases of 'molestation of innocent women' and therefore, it recommended wearing of this and other apparel as a measure of social security. May be in the course of time, some elements of religion permeated into this practice as ordinarily happens in any religion. However, that *per se* does not render the practice predominantly religious and much less essential



to the Islamic faith. This becomes evident from Ali's footnote 3768 to verse 60 which concludes with the following profound line **"Alas! We must ask ourselves the question: 'Are these conditions present among us today?'"** Thus, it can be reasonably assumed that the practice of wearing *hijab* had a thick nexus to the *socio-cultural* conditions then prevalent in the region. The veil was a safe means for the women to leave the confines of their homes. Ali's short but leading question is premised on this analysis. What is not religiously made obligatory therefore cannot be made a quintessential aspect of the religion through public agitations or by the passionate arguments in courts.

(vii) Petitioners also relied upon verses 4758 & 4759 (Chapter 12) from Dr. Muhammad Muhsin Khan's *'The Translation of the Meanings of Sahih Al-Bukhari, Arabic-English'*, Volume 6, Darussalam publication, Riyadh, Saudi Arabia. This verse reads:

"4758. Narrated 'Aishah': May Allah bestow His Mercy on the early emigrant women. When Allah revealed:

"...and to draw their veils all over their Juyubihinna (i.e., their bodies, faces, necks and bosoms)..." (V.24:31) they tore their Murut (woolen dresses or waist-binding clothes or aprons etc.) and covered their heads and faces with those torn Muruts.



4759. Narrated Safiyya bint Shaiba: Aishah used to say: "When (the Verse): '... and to draw their veils all over their Juhubihinna (i.e., their bodies, faces, necks and bosoms, etc.)...' (V.24:31) was revealed, (the ladies) cut their waist-sheets from their margins and covered their heads and faces with those cut pieces of cloth."

Firstly, no material is placed by the petitioners to show the credentials of the translator namely Dr. Muhammad Muhsin Khan. The first page of volume 6 describes him as: "Formerly Director, University Hospital, Islamic University, Al-Madina, Al-Munawwara (Kingdom of Saudi Arabia). By this, credentials required for a commentator cannot be assumed. He has held a prominent position in the field of medicine, is beside the point. We found reference to this author in a decision of Jammu & Kashmir High Court in *LUBNA MEHRAJ VS. MEHRAJ-UD-DIN KANTH*⁷⁰. Even here, no credentials are discussed nor is anything stated about the authenticity and reliability of his version of Ahadith. Secondly, the text & context of the verse do not show its obligatory nature. Our attention is not drawn to any other verses in the translation from which we can otherwise infer its mandatory nature. Whichever be the religion, whatever is stated in the scriptures, does not become *per se* mandatory in a wholesale way. That is how the concept of essential religious practice, is



coined. If everything were to be essential to the religion logically, this very concept would not have taken birth. It is on this premise the Apex Court in *SHAYARA BANO*, proscribed the 1400 year old pernicious practice of *triple talaq* in Islam. What is made recommendatory by the Holy Quran cannot be metamorphosed into mandatory dicta by Ahadith which is treated as supplementary to the scripture. A contra argument offends the very logic of Islamic jurisprudence and normative hierarchy of sources. This view gains support from paragraph 42 of *SHAYARA BANO* which in turn refers to Fyzee's work. Therefore, this contention too fails.

X. AS TO VIEWS OF OTHER HIGH COURTS ON HIJAB BEING AN ESSENTIAL RELIGIOUS PRACTICE:

Strangely, in support of their version and counter version, both the petitioners and the respondents drew our attention to two decisions of the Kerala High Court, one decision of Madras and Bombay each. Let us examine what these cases were and from which fact matrix, they emanated.

(i) *In re AMNAH BINT BASHEER, supra*: this judgment was rendered by a learned Single Judge A.Muhamed Mustaque J. of Hon'ble Kerala High Court on 26.4.2016. Petitioner, the students (minors) professing Islam had an



issue with the dress code prescribed for All India Pre-Medical Entrance Test, 2016. This prescription by the Central Board of Secondary Education was in the wake of large scale malpractices in the entrance test during the previous years.

At paragraph 29, learned Judge observed:

“Thus, the analysis of the Quranic injunctions and the Hadiths would show that it is a farz to cover the head and wear the long sleeved dress except face part and exposing the body otherwise is forbidden (haram). When farz is violated by action opposite to farz that action becomes forbidden (haram). However, there is a possibility of having different views or opinions for the believers of the Islam based on Ijithihad (independent reasoning). This Court is not discarding such views. The possibility of having different propositions is not a ground to deny the freedom, if such propositions have some foundation in the claim...”

Firstly, it was not a case of school uniform as part of Curricula as such. Students were taking All India Pre-Medical Entrance Test, 2016 as a onetime affair and not on daily basis, unlike in schools. No Rule or Regulation having force of law prescribing such a uniform was pressed into service. Secondly, the measure of ensuring personal examination of the candidates with the presence of one lady member prior to they entering the examination hall was a feasible alternative. This ‘reasonable exception’ cannot be stretched too wide to swallow the rule itself. That feasibility



evaporates when one comes to regular adherence to school uniform on daily basis. Thirdly, learned Judge himself in all grace states: “*However, there is a possibility of having different views or opinions for the believers of the Islam based on Ijithihad (independent reasoning).*” In formulating our view, i.e., in variance with this learned Judge’s, we have heavily drawn from the considered opinions of Abdullah Yusuf Ali’s works that are recognized by the Apex Court as being authoritative vide *SHAYARA BANO* and in other several decisions. There is no reference to this learned authors’ commentary in the said judgment. Learned Judge refers to other commentators whose credentials and authority are not forthcoming. The fact that the Writ Appeal against the same came to be negatived⁷¹ by a Division Bench, does not make much difference. Therefore, from this decision, both the sides cannot derive much support for their mutually opposing versions.

(ii) *In re FATHIMA THASNEEM supra*: the girl students professing Islam had an issue with the dress code prescribed by the management of a school run by a religious minority (Christians) who had protection under Articles 29 & 30 of the

⁷¹ (2016) SCC Online Ker 487



Constitution. This apart, learned Judge i.e., A.Muhammed Mustaque J. was harmonizing the competing interests protected by law i.e., community rights of the minority educational institution and the individual right of a student. He held that the former overrides the latter and negated the challenge, vide order dated 4.12.2018 with the following observation:

“10. In such view of the matter, I am of the considered view that the petitioners cannot seek imposition of their individual right as against the larger right of the institution. It is for the institution to decide whether the petitioners can be permitted to attend the classes with the headscarf and full sleeve shirt. It is purely within the domain of the institution to decide on the same. The Court cannot even direct the institution to consider such a request. Therefore, the writ petition must fail. Accordingly, the writ petition is dismissed. If the petitioners approach the institution for Transfer Certificate, the school authority shall issue Transfer Certificate without making any remarks. No doubt, if the petitioners are willing to abide by the school dress code, they shall be permitted to continue in the same school...”

This decision follows up to a particular point the reasoning in the earlier decision (2016), aforementioned. Neither the petitioners nor the respondent-State can bank upon this decision, its fact matrix being miles away from that of these petitions. This apart, what we observed about the earlier decision substantially holds water for this too.



(iii) *In re FATHIMA HUSSAIN, supra*: This decision by a Division Bench of Bombay High Court discussed about Muslim girl students' right to wear *hijab* "...in exclusive girls section cannot be said to in any manner acting inconsistent with the aforesaid verse 31 or violating any injunction provided in Holy Quran. **It is not an obligatory overt act enjoined by Muslim religion that a girl studying in all girl section must wear head-covering.** The essence of Muslim religion or Islam cannot be said to have been interfered with by directing petitioner not to wear head-scarf in the school." These observations should strike the death knell to Writ Petition Nos.2146, 2347, 3038/2022 wherein the respondent college happens to be all-girl-institution (not co-education). The Bench whilst rejecting the petition, at paragraph 8 observed: "We therefore, do not find any merit in the contention of the learned counsel for the petitioner that direction given by the Principal to the petitioner on 28-11-2001 to not to wear head-scarf or cover her head while attending school is violative of Article 25 of Constitution of India." We are at loss to know how this decision is relevant for the adjudication of these petitions.

(iv) *In re SIR M. VENKATA SUBBARAO, supra*: The challenge in this case was to paragraph 1 of the Code of



Conduct prescribing a dress code for the teachers. The Division Bench of Madras High Court while dismissing the challenge at paragraph 16 observed as under:

“For the foregoing reasons and also in view of the fact that the teachers are entrusted with not only teaching subjects prescribed under the syllabus, but also entrusted with the duty of inculcating discipline amongst the students, they should set high standards of discipline and should be a role model for the students. We have elaborately referred to the role of teachers in the earlier portion of the order. Dress code, in our view, is one of the modes to enforce discipline not only amongst the students, but also amongst the teachers. Such imposition of dress code for following uniform discipline cannot be the subject matter of litigation that too, at the instance of the teachers, who are vested with the responsibility of inculcating discipline amongst the students. The Court would be very slow to interfere in the matter of discipline imposed by the management of the school only on the ground that it has no statutory background. That apart, we have held that the management of the respondent school had the power to issue circulars in terms of clause 6 of Annexure VIII of the Regulations. In that view of the matter also, we are unable to accept the contention of the learned counsel for appellant in questioning the circular imposing penalty for not adhering to the dress code.”

This case has completely a different fact matrix. Even the State could not have banked upon this in structuring the impugned Govt. Order dated 5.2.2022. The challenge to the dress code was by the teacher and not by the students. The freedom of conscience or right to religion under Article 25 was not discussed. This decision is absolutely irrelevant.



(v) *In re PRAYAG DAS vs. CIVIL JUDGE*

*BULANDSHAHR*⁷²: This decision is cited by the petitioner in W.P.No.4338/2022 (PIL) who supports the case of the State. This decision related to a challenge to the prescription of dress code for the lawyers. The Division Bench of Allahabad High Court whilst rejecting the challenge, observed at paragraph 20 as under:

"In our opinion the various rules prescribing the dress of an Advocate serve a very useful purpose. In the first place, they distinguish an Advocate from a litigant or other members of the public who may be jostling with him in a Court room. They literally reinforce the Shakespearian aphorism that the apparel oft proclaims the man. When a lawyer is in prescribed dress his identity can never be mistaken. In the second place, a uniform prescribed dress worn by the members of the Bar induces a seriousness of purpose and a sense of decorum which are highly conducive to the dispensation of justice..."

This decision is not much relevant although it gives some idea as to the justification for prescribing uniform, be it in a profession or in an educational institution. Beyond this, it is of no utility to the adjudication of issues that are being debated in these petitions.



XI. AS TO WEARING HIJAB BEING A MATTER OF FREEDOM OF CONSCIENCE:

(1) Some of the petitioners vehemently argued that, regardless of right to religion, the girl students have the freedom of conscience guaranteed under Article 25 itself and that they have been wearing *hijab* as a matter of conscience and therefore, interdicting this overt act is offensive to their conscience and thus, is violative of their fundamental right. In support, they heavily rely upon *BIJOE EMMANUEL supra*, wherein at paragraph 25, it is observed as under:

"We are satisfied, in the present case, that the expulsion of the three children from the school for the reason that because of their conscientiously held religious faith, they do not join the singing of the national anthem in the morning assembly though they do stand up respectfully when the anthem is sung, is a violation of their fundamental right to freedom of conscience and freely to profess, practice and propagate religion."

Conscience is by its very nature subjective. Whether the petitioners had the conscience of the kind and how they developed it are not averred in the petition with material particulars. Merely stating that wearing *hijab* is an overt act of conscience and therefore, asking them to remove *hijab* would offend conscience, would not be sufficient for treating it as a ground for granting relief. Freedom of conscience as already mentioned above, is in distinction to right to religion as was



clarified by Dr. B.R.Ambedkar in the Constituent Assembly Debates. There is scope for the argument that the freedom of conscience and the right to religion are mutually exclusive. Even by overt act, in furtherance of conscience, the matter does not fall into the domain of right to religion and thus, the distinction is maintained. No material is placed before us for evaluation and determination of pleaded conscience of the petitioners. They have not averred anything as to how they associate wearing *hijab* with their conscience, as an overt act. There is no evidence that the petitioners chose to wear their headscarf as a means of conveying any thought or belief on their part or as a means of symbolic expression. Pleadings at least for urging the ground of conscience are perfunctory, to say the least.

(2) BIJOE EMMANUEL CASE: ITS FACT MATRIX AND RATIO DECIDENDI.

(i) Since the petitioners heavily banked upon *BIJOE EMMANUEL*, in support of their contention as to freedom of conscience, we need to examine what were the material facts of the case and the propositions of law emanating therefrom.

This exercise we have undertaken in the light of what Rupert Cross and J.W.Harris in their '*PRECEDENT IN ENGLISH LAW*',



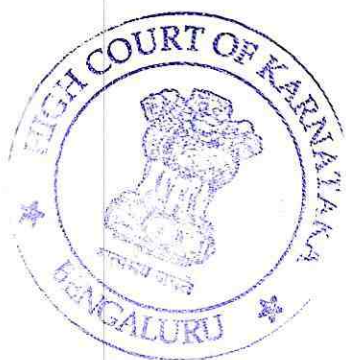
4th Edition – CLARENDON, at page 39 have said: “*the ratio decidendi is best approached by a consideration of the structure of a typical judgment...A Judge generally summarizes the evidence, announcing his findings of fact and reviews the arguments that have been addressed to him by counsel for each of the parties. If a point of law has been raised, he often discusses a number of previous decisions...It is not everything said by a Judge when giving judgment that constitutes a precedent...This status is reserved for his pronouncements on the law...The dispute is solely concerned with the facts...It is not always easy to distinguish law from fact and the reasons which led a Judge to come to a factual conclusion...*” What LORD HALSBURY said more than a century ago in the celebrated case of *QUINN vs. LEATHEM*⁷³ is worth noting. He had craftily articulated that a decision is an authority for the proposition that is laid down in a given fact matrix, and not for all that which logically follows from what has been so laid down.

(ii) With the above in mind, let us examine the material facts of *BIJOE EMMANUEL*: Three ‘law abiding children’ being the faithful of Jehovah witnesses, did

⁷³ (1901) A.C. 495



respectfully stand up but refused to sing the National Anthem in the school prayer. This refusal was founded on the dicta of their religion. They were expelled under the instructions of Deputy Inspector of School. These instructions were proven to have no force of law. They did not prevent the singing of National Anthem nor did they cause any disturbance while others were singing. Only these facts tailored the skirt, rest being the frills. The decision turned out to be more on the right to religion than freedom of conscience, although there is some reference to the conscience. The court recognized the negative of a fundamental right i.e., the freedom of speech & expression guaranteed under Article 19 as including right to remain silent. What weighed with the court was the fact 'the children were well behaved, they respectfully stood up when the National Anthem was sung and would continue to do so respectfully in the future' (paragraph 23). Besides, Court found that their refusal to sing was not confined to Indian National Anthem but extended to the Songs of every other country.

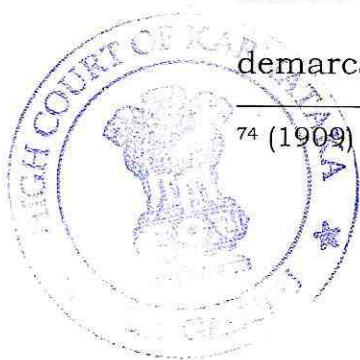


(iii) True it is that the *BIJOE EMMANUEL* reproduces the following observation of Davar J. made in *JAMSHEDJI CURSETJEE TARACHAND vs. SOONABAI*⁷⁴:

"...If this is the belief of the community--and it is proved undoubtedly to be the belief of the Zoroastrian community--a secular judge is bound to accept that belief--it is not for him to sit in judgment on that belief--he has no right to interfere with the conscience of a donor who makes a gift in favour of what he believes to be in advancement of his religion and for the welfare of his community or of mankind..."

These observations essentially relate to 'the belief of the Zoroastrian community'. It very little related to the 'freedom of conscience' as envisaged under Article 25 of the Constitution enacted about four decades thereafter. The expression 'conscience of a donor' is in the light of religious belief much away from 'freedom of conscience'. After all the meaning of a word takes its colour with the companion words i.e., *noscitur a sociis*. After all, a word in a judgment cannot be construed as a word employed in a Statute. In the absence of demonstrable conformity to the essentials of a decision, the denomination emerging as a ratio would not be an operationable entity in every case comprising neighbourly fact matrix. What is noticeable is that *BIJOE EMMANUEL* did not demarcate the boundaries between 'freedom of conscience'

⁷⁴ (1909) 33 BOM. 122



and 'right to practise religion' presumably because the overt act of the students in respectfully standing up while National Anthem was being sung transcended the realm of their conscience and took their case to the domain of religious belief. Thus, *BIJOE EMMANUEL* is not the best vehicle for drawing a proposition essentially founded on freedom of conscience.

XII. PLEADINGS AND PROOF AS TO ESSENTIAL RELIGIOUS PRACTICE:

(i) In order to establish their case, claimants have to plead and prove that wearing of *hijab* is a religious requirement and it is a part of '*essential religious practice*' in Islam in the light of a catena of decision of the Apex Court that ultimately ended with *INDIAN YOUNG LAWYERS ASSOCIATION*. The same has already been summarized by us above. All these belong to the domain of facts. In *NARAYANA DEEKSHITHULU*, it is said: "...What are essential parts of religion or religious belief or matters of religion and religious practice is essentially a question of fact to be considered in the context in which the question has arisen and the evidence-factual or legislative or historic-presented in that context is required to be considered and a decision reached..." The



claimants have to plead these facts and produce requisite material to prove the same. The respondents are more than justified in contending that the Writ Petitions lack the essential averments and that the petitioners have not loaded to the record the evidentiary material to prove their case. The material before us is extremely meager and it is surprising that on a matter of this significance, petition averments should be as vague as can be. We have no affidavit before us sworn to by any *Maulana* explaining the implications of the *suras* quoted by the petitioners' side. Pleadings of the petitioners are not much different from those in *MOHD. HANIF QUARESHI*, supra which the Apex Court had critized. Since how long all the petitioners have been wearing *hijab* is not specifically pleaded. The plea with regard to wearing of *hijab* before they joined this institution is militantly absent. No explanation is offered for giving an undertaking at the time of admission to the course that they would abide by school discipline. The Apex Court in *INDIAN YOUNG LAWYERS ASSOCIATION*, supra, has stated that matters that are essential to religious faith or belief; have to be adjudged on the evidence borne out by record. There is absolutely no material placed on record to prima facie show that wearing of



hijab is a part of an essential religious practice in Islam and that the petitioners have been wearing *hijab* from the beginning. This apart, it can hardly be argued that *hijab* being a matter of attire, can be justifiably treated as fundamental to Islamic faith. It is not that if the alleged practice of wearing *hijab* is not adhered to, those not wearing *hijab* become the sinners, Islam loses its glory and it ceases to be a religion. Petitioners have miserably failed to meet the threshold requirement of pleadings and proof as to wearing *hijab* is an inviolable religious practice in Islam and much less a part of '*essential religious practice*'.

In view of the above discussion, we are of the considered opinion that wearing of *hijab* by Muslim women does not form a part of *essential religious practice* in Islamic faith.

XIII. AS TO SCHOOL DISCIPLINE & UNIFORM AND POWER TO PRESCRIBE THE SAME:

(i) We are confronted with the question whether there is power to prescribe dress code in educational institutions.

This is because of passionate submissions of the petitioners

that there is absolutely no such power in the scheme of 1983 Act or the Rules promulgated thereunder. The idea of



schooling is incomplete without teachers, taught and the dress code. Collectively they make a singularity. No reasonable mind can imagine a school without uniform. After all, the concept of school uniform is not of a nascent origin. It is not that, Moghuls or Britishers brought it here for the first time. It has been there since the ancient *gurukul* days. Several Indian scriptures mention *samavastr/shubhravesh* in Samskrit, their English near equivalent being uniform. 'HISTORY OF DHARMASĀSTRA' by P.V. Kane, Volume II, page 278 makes copious reference to student uniforms. (This work is treated by the Apex Court as authoritative vide *DEOKI NANDAN vs. MURLIDHAR*⁷⁵). In England, the first recorded use of standardized uniform/dress code in institutions dates to back to 1222 i.e., *Magna Carta* days. 'LAW, RELIGIOUS FREEDOMS AND EDUCATION IN EUROPE' is edited by Myrian Hunter-Henin; Mark Hill, a contributor to the book, at Chapter 15 titles his paper 'BRACELETS, RINGS AND VEILS: THE ACCOMMODATION OF RELIGIOUS SYMBOLS IN THE UNIFORM POLICIES OF ENGLISH SCHOOLS'. At page 308,

what he pens is pertinent:

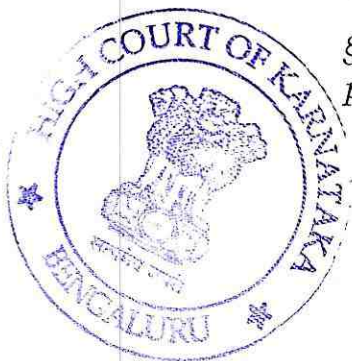


'...The wearing of a prescribed uniform for school children of all ages is a near-universal feature of its educational system, whether in state schools or in private (fee-paying) schools. This is not a matter of primary or secondary legislation or of local governmental regulation but rather reflects a widespread and long-standing social practice. It is exceptional for a school not to have a policy on uniform for its pupils. The uniform (traditionally black or grey trousers, jumpers and jackets in the coloured livery of the school and ties for boys serves to identify individuals as members of a specific institution and to encourage and promote the corporate, collective ethos of the school. More subtly, by insisting upon identical clothing (often from a designated manufacturer) it ensures that all school children dress the same and appear equal: thus, differences of social and economic background that would be evident from the nature and extent of personal wardrobes are eliminated. It is an effective leveling feature-particularly in comprehensive secondary schools whose catchment areas may include a range of school children drawn from differing parental income brackets and social classes...'

'AMERICAN JURISPRUDENCE', 2nd Edition. (1973), Volume 68, edited by The Lawyers Cooperative Publishing Company states:

"§249. In accord with the general principle that school authorities may make reasonable rules and regulations governing the conduct of pupils under their control, it may be stated generally that school authorities may prescribe the kind of dress to be worn by students or make reasonable regulations as to their personal appearance...It has been held that so long as students are under the control of school authorities, they may be required to wear a designated uniform, or may be forbidden to use face powder or cosmetics, or to wear transparent hosiery low-necked dresses, or any style of clothing tending toward immodesty in dress..."

§251. Several cases have held that school regulations proscribing certain hairstyles were valid, usually on the



basis that a legitimate school interest was served by such a regulation. Thus, it has been held that a public high school regulation which bars a student from attending classes because of the length or appearance of his hair is not invalid as being unreasonable, and arbitrary as having no reasonable connection with the successful operation of the school, since a student's unusual hairstyle could result in the distraction of other pupils, and could disrupt and impede the maintenance of a proper classroom atmosphere or decorum..."

(ii) The argument of petitioners that prescribing school uniforms pertains to the domain of 'police power' and therefore, unless the law in so many words confers such power, there cannot be any prescription, is too farfetched. In civilized societies, preachers of the education are treated next to the parents. Pupils are under the supervisory control of the teachers. The parents whilst admitting their wards to the schools, in some measure share their authority with the teachers. Thus, the authority which the teachers exercise over the students is a shared 'parental power'. The following observations In *T.M.A.PAI FOUNDATION*, at paragraph 64, lend credence to this view:

"An educational institution is established only for the purpose of imparting education to the students. In such an institution, it is necessary for all to maintain discipline and abide by the rules and regulations that have been lawfully framed. The teachers are like foster-parents who are required to look after, cultivate and guide the students in their pursuit of education..."



It is relevant to state that not even a single ruling of a court nor a sporadic opinion of a jurist nor of an educationist was cited in support of petitioners argument that prescribing school uniform partakes the character of '*police power*'. Respondents are justified in tracing this power to the text & context of sections 7(2) & 133 of the 1983 Act read with Rule 11 of 1995 Curricula Rules. We do not propose to reproduce these provisions that are as clear as gangetic waters. This apart, the Preamble to the 1983 Act mentions *inter alia* of "*fostering the harmonious development of the mental and physical faculties of students and cultivating a scientific and secular outlook through education.*" Section 7(2)(g)(v) provides for promoting "*harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities to renounce practices derogatory to the dignity of women.*" The Apex Court in *MODERN DENTAL COLLEGE*, supra, construed the term 'education' to include 'curricula' vide paragraph 123. The word 'curricula' employed in section 7(2) of the Act needs to be broadly construed to include the power to prescribe uniform. Under the scheme of 1983 Act coupled with international conventions to which India is a party, there is a



duty cast on the State to provide education at least up to particular level and this duty coupled with power includes the power to prescribe school uniform.

(iii) In the *LAW OF TORTS*, 26th Edition by RATANLAL AND DHIRAJLAL at page 98, parental and quasi parental authority is discussed: *"The old view was that the authority of a schoolmaster, while it existed, was the same as that of a parent. A parent, when he places his child with a schoolmaster, delegates to him all his own authority, so far as it is necessary for the welfare of the child. The modern view is that the schoolmaster has his own independent authority to act for the welfare of the child. This authority is not limited to offences committed by the pupil upon the premises of the school, but may extend to acts done by such pupil while on the way to and from the school..."* It is relevant to mention an old English case in *REX vs. NEWPORT (SALOP)*⁷⁶ which these authors have summarized as under:

"At a school for boys there was a rule prohibiting smoking by pupils whether in the school or in public. A pupil after returning home smoked a cigarette in a public street and next day the schoolmaster administered to him five strokes with a cane. It was held that the father of the boy by sending him to the school authorized the schoolmaster to administer reasonable punishment to the boy for

⁷⁶ (1929) 2 KB 416



breach of a school rule, and that the punishment administered was reasonable."

Even in the absence of enabling provisions, we are of the view that the power to prescribe uniform as of necessity inheres in every school subject to all just exceptions.

(iv) The incidental question as to who should prescribe the school uniform also figures for our consideration in the light of petitioners' contention that government has no power in the scheme of 1983 Act. In *T.M.A.PAI FOUNDATION*, the Apex Court observed at paragraph 55 as under:

"...There can be no doubt that in seeking affiliation or recognition, the Board or the university or the affiliating or recognizing authority can lay down conditions consistent with the requirement to ensure the excellence of education. It can, for instance, indicate the quality of the teachers by prescribing the minimum qualifications that they must possess, and the courses of study and curricula. It can, for the same reasons, also stipulate the existence of infrastructure sufficient for its growth, as a pre-requisite. But the essence of a private educational institution is the autonomy that the institution must have in its management and administration. There, necessarily, has to be a difference in the administration of private unaided institutions and the government-aided institutions. Whereas in the latter case, the Government will have greater say in the administration, including admissions and fixing of fees, in the case of private unaided institutions, maximum autonomy in the day-to-day administration has to be with the private unaided institutions. Bureaucratic or governmental interference in the administration of such an institution will undermine its independence..."



Section 133(2) of the 1983 Act vests power in the government to give direction to any educational institution for carrying out the purposes of the Act or to give effect to any of the provisions of the Act or the Rules, and that the institution be it governmental, State aided or privately managed, is bound to obey the same. This section coupled with section 7(2) clothes the government with power *inter alia* to prescribe or caused to be prescribed school uniform. The government vide Circular dated 31.1.2014 accordingly has issued a direction. Significantly, this is not put in challenge and we are not called upon to adjudge its validity, although some submissions were made *de hors* the pleadings that to the extent the Circular includes the local Member of the Legislative Assembly and his nominee respectively as the President and Vice President of the College Betterment (Development) Committee, it is vulnerable for challenge. In furtherance thereof, it has also issued a Government Order dated 5.2.2022. We shall be discussing more about the said Circular and the Order, a bit later. Suffice it to say now that the contention as to absence of power to prescribe dress code in schools is liable to be rejected.



XIV. AS TO PRESCRIPTION OF SCHOOL UNIFORM TO THE EXCLUSION OF HIJAB IF VIOLATES ARTICLES, 14, 15, 19(1)(a) & 21:

(i) There has been a overwhelming juridical opinion in all advanced countries that in accord with the general principle, the school authorities may make reasonable regulations governing the conduct of pupils under their control and that they may prescribe the kind of dress to be worn by students or make reasonable regulations as to their personal appearance, as well. In *MILLER vs. GILLS*⁷⁷, a rule that the students of an agricultural high school should wear a khaki uniform when in attendance at the class and whilst visiting public places within 5 miles of the school is not ultra vires, unreasonable, and void. Similarly, in *CHRISTMAS vs. EL RENO BOARD OF EDUCATION*⁷⁸, a regulation prohibiting male students who wore hair over their eyes, ears or collars from participating in a graduation diploma ceremony, which had no effect on the student's actual graduation from high school, so that no educational rights were denied, has been held valid. It is also true that our Constitution protects the rights of school children too against unreasonable regulations. However, the prescription of dress code for the students that

⁷⁷ (D.C. Ill) 315 F SUP. 94

⁷⁸ (D.C. Okla.) 313 F SUPP. 618



too within the four walls of the class room as distinguished from rest of the school premises does not offend constitutionally protected category of rights, when they are 'religion-neutral' and 'universally applicable' to all the students. This view gains support from Justice Scalia's decision in *EMPLOYMENT DIVISION vs. SMITH*⁷⁹. School uniforms promote harmony & spirit of common brotherhood transcending religious or sectional diversities. This apart, it is impossible to instill the scientific temperament which our Constitution prescribes as a fundamental duty vide Article 51A(h) into the young minds so long as any propositions such as wearing of *hijab* or *bhagwa* are regarded as religiously sacrosanct and therefore, not open to question. They inculcate secular values amongst the students in their impressionable & formative years.

(ii) The school regulations prescribing dress code for all the students as one homogenous class, serve constitutional secularism. It is relevant to quote the observations of Chief Justice Venkatachalaiah, in *ISMAIL FARUQUI*, supra:

⁷⁹ 494 U.S. 872 (1990)

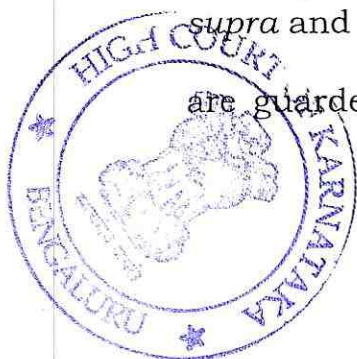


"The concept of secularism is one facet of the right to equality woven as the central golden thread in the fabric depicting the pattern of the scheme in our Constitution... In a pluralist, secular polity law is perhaps the greatest integrating force. Secularism is more than a passive...It is a positive concept of equal treatment of all religions. What is material is that it is a constitutional goal and a Basic Feature of the Constitution."

It is pertinent to mention that the preamble to the 1983 Act appreciably states the statutory object being *"fostering the harmonious development of the mental and physical faculties of students and cultivating a scientific and secular outlook through education."* This also accords with the Fundamental Duty constitutionally prescribed under Article 51A(e) in the same language, as already mentioned above. Petitioners' argument that *'the goal of education is to promote plurality, not promote uniformity or homogeneity, but heterogeneity'* and therefore, prescription of student uniform offends the constitutional spirit and ideal, is thoroughly misconceived.

(iii) Petitioners argued that regardless of their freedom of conscience and right to religion, wearing of *hijab* does possess cognitive elements of *'expression'* protected under Article 19(1)(a) vide *NATIONAL LEGAL SERVICES AUTHORITY,*

supra and it has also the substance of privacy/autonomy that are guarded under Article 21 vide *K.S.PUTTASWAMY, supra.*



Learned advocates appearing for them vociferously submit that the Muslim students would adhere to the dress code with *hijab* of a matching colour as may be prescribed and this should be permitted by the school by virtue of 'reasonable accommodation'. If this proposal is not conceded to, then prescription of any uniform would be violative of their rights availing under these Articles, as not passing the 'least restrictive test' and 'proportionality test', contended they. In support, they press into service *CHINTAMAN RAO and MD. FARUK, supra*. Let us examine this contention. The Apex Court succinctly considered these tests in *INTERNET & MOBILE ASSN. OF INDIA vs. RESERVE BANK OF INDIA*⁸⁰, with the following observations:

"...While testing the validity of a law imposing a restriction on the carrying on of a business or a profession, the Court must, as formulated in *Md. Faruk*, attempt an evaluation of (i) its direct and immediate impact upon of the fundamental rights of the citizens affected thereby (ii) the larger public interest sought to be ensured in the light of the object sought to be achieved (iii) the necessity to restrict the citizens' freedom (iv) the inherent pernicious nature of the act prohibited or its capacity or tendency to be harmful to the general public and (v) the possibility of achieving the same object by imposing a less drastic restraint... On the question of proportionality, the learned Counsel for the petitioners relies upon the four-pronged test summed up in the opinion of the majority in *Modern Dental College and Research*



Centre v. State of Madhya Pradesh. These four tests are (i) that the measure is designated for a proper purpose (ii) that the measures are rationally connected to the fulfilment of the purpose (iii) that there are no alternative less invasive measures and (iv) that there is a proper relation between the importance of achieving the aim and the importance of limiting the right...But even by our own standards, we are obliged to see if there were less intrusive measures available and whether RBI has at least considered these alternatives..."

(iv) All rights have to be viewed in the contextual conditions which were framed under the Constitution and the way in which they have evolved in due course. As already mentioned above, the Fundamental Rights have relative content and their efficacy levels depend upon the circumstances in which they are sought to be exercised. To evaluate the content and effect of restrictions and to adjudge their reasonableness, the aforesaid tests become handy. However, the petitions we are treating do not involve the right to freedom of speech & expression or right to privacy, to such an extent as to warrant the employment of these tests for evaluation of argued restrictions, in the form of school dress code. The complaint of the petitioners is against the violation of essentially 'derivative rights' of the kind. Their grievances do not go to the core of *substantive rights* as such but lie in the penumbra thereof. So, by a sheer constitutional logic, the



protection that otherwise avails to the *substantive rights* as such cannot be stretched too far even to cover the *derivative rights* of this nature, regardless of the '*qualified public places*' in which they are sought to be exercised. It hardly needs to be stated that schools are '*qualified public places*' that are structured predominantly for imparting educational instructions to the students. Such '*qualified spaces*' by their very nature repel the assertion of individual rights to the detriment of their general discipline & decorum. Even the *substantive rights* themselves metamorphise into a kind of *derivative rights* in such places. These illustrate this: the rights of an under - trial detainee qualitatively and quantitatively are inferior to those of a free citizen. Similarly, the rights of a serving convict are inferior to those of an under - trial detainee. By no stretch of imagination, it can be gainfully argued that prescription of dress code offends students' fundamental right to expression or their autonomy. In matters like this, there is absolutely no scope for complaint of manifest arbitrariness or discrimination *inter alia* under Articles 14 & 15, when the dress code is equally applicable to all the students, regardless of religion, language, gender or the like. It is nobody's case that the dress code is sectarian.



(v) Petitioners' contention that *'a class room should be a place for recognition and reflection of diversity of society, a mirror image of the society (socially & ethically)'* in its deeper analysis is only a hollow rhetoric, *'unity in diversity'* being the oft quoted platitude since the days of *IN RE KERALA EDUCATION BILL, supra*, wherein paragraph 51 reads: *'...the genius of India has been able to find unity in diversity by assimilating the best of all creeds and cultures.'* The counsel appearing for Respondent Nos.15 & 16 in W.P.No.2146/2022, is justified in pressing into service a House of Lords decision in *REGINA vs. GOVERNORS OF DENBIGH HIGH SCHOOL, supra* wherein at paragraph 97, it is observed as under:

"But schools are different. Their task is to educate the young from all the many and diverse families and communities in this country in accordance with the national curriculum. Their task is to help all of their pupils achieve their full potential. This includes growing up to play whatever part they choose in the society in which they are living. The school's task is also to promote the ability of people of diverse races, religions and cultures to live together in harmony. Fostering a sense of community and cohesion within the school is an important part of that. A uniform dress code can play its role in smoothing over ethnic, religious and social divisions..."

(vi) It hardly needs to be stated that our Constitution is founded on the principle of *'limited government'*. *"What is the most important gift to the common person given by this*



Constitution is 'fundamental rights', which may be called 'human rights' as well." It is also equally true that in this country, the freedom of citizens has been broadening precedent by precedent and the most remarkable feature of this relentless expansion is by the magical wand of judicial activism. Many new rights with which the Makers of our Constitution were not familiar, have been shaped by the constitutional courts. Though the basic human rights are universal, their regulation as of necessity is also a constitutional reality. The restriction and regulation of rights be they fundamental or otherwise are a small price which persons pay for being the members of a civilized community. There has to be a sort of balancing of competing interests i.e., the collective rights of the community at large and the individual rights of its members. True it is that the Apex Court in *NATIONAL LEGAL SERVICES AUTHORITY supra*, said that dressing too is an 'expression' protected under Article 19(1)(a) and therefore, ordinarily, no restriction can be placed on one's personal appearance or choice of apparel. However, it also specifically mentioned at paragraph 69 that this right is "*subject to the restrictions contained in Article 19(2) of the Constitution.*" The said decision was structured keeping the



'gender identity' at its focal point, attire being associated with such identity. Autonomy and privacy rights have also blossomed vide *K.S.PUTTASWAMY, supra*. We have no quarrel with the petitioners' essential proposition that what one desires to wear is a facet of one's autonomy and that one's attire is one's expression. But all that is subject to reasonable regulation.

(vii) Nobody disputes that persons have a host of rights that are constitutionally guaranteed in varying degrees and they are subject to reasonable restrictions. What is reasonable is dictated by a host of qualitative & quantitative factors. Ordinarily, a positive of the right includes its negative. Thus, right to speech includes right to be silent vide *BIJOE EMMANUEL*. However, the negative of a right is not invariably coextensive with its positive aspect. Precedentially speaking, the right to close down an industry is not coextensive with its positive facet i.e., the right to establish industry under Article 19(1)(g) vide *EXCEL WEAR vs. UNION OF INDIA*⁸¹. Similarly, the right to life does not include the right to die under Article 21 vide *COMMON CAUSE vs. UNION OF INDIA*⁸², attempt to

⁸¹ AIR 1979 SC 25

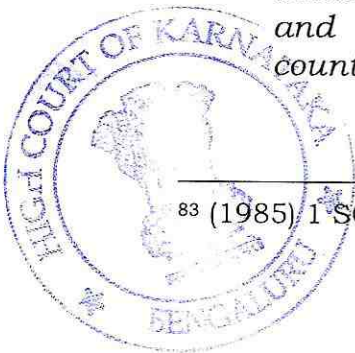
⁸² (2018) 5 SCC 1



commit suicide being an offence under Section 309 of Indian Penal Code. It hardly needs to be stated the content & scope of a right, in terms of its exercise are circumstantially dependent. Ordinarily, liberties of a person stand curtailed *inter alia* by his position, placement and the like. The extent of autonomy is enormous at home, since ordinarily residence of a person is treated as his inviolable castle. However, in 'qualified public places' like schools, courts, war rooms, defence camps, etc., the freedom of individuals as of necessity, is curtailed consistent with their discipline & decorum and function & purpose. Since wearing *hijab* as a facet of expression protected under Article 19(1)(a) is being debated, we may profitably advert to the 'free speech jurisprudence' in other jurisdictions. The Apex Court in *INDIAN EXPRESS NEWSPAPERS vs. UNION OF INDIA*⁸³ observed:

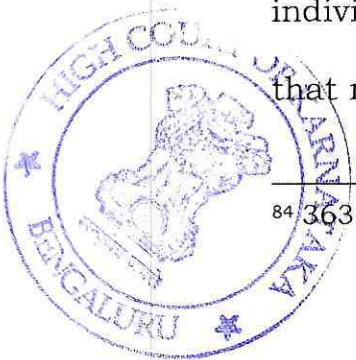
"While examining the constitutionality of a law which is alleged to contravene Article 19(1)(a) of the Constitution, we cannot, no doubt, be solely guided by the decisions of the Supreme Court of the United States of America. But in order to understand the basic principles of freedom of speech and expression and the need for that freedom in a democratic country, we may take them into consideration..."

⁸³ (1985) 1 SCC 641



(viii) In US, the Fourteenth Amendment is held to protect the First Amendment rights of school children against unreasonable rules or regulations vide *BURNSIDE vs. BYARS*⁸⁴. Therefore, a prohibition by the school officials, of a particular expression of opinion is held unsustainable where there is no showing that the exercise of the forbidden right would materially interfere with the requirements of a school's positive discipline. However, conduct by a student, in class or out of it, which for any reason-whether it stems from time, place, or type of behavior-materially disrupts class work or involves substantial disorder or invasion of the rights of others, is not immunized by the constitutional guaranty of freedom of speech vide *JOHN F. TINKER vs. DES MOINES INDEPENDENT COMMUNITY SCHOOL, supra*. In a country wherein right to speech & expression is held to heart, if school restrictions are sustainable on the ground of positive discipline & decorum, there is no reason as to why it should be otherwise in our land. An extreme argument that the students should be free to choose their attire in the school individually, if countenanced, would only breed indiscipline that may eventually degenerate into chaos in the campus and

⁸⁴ 363 F 2d 744 (5th Cir. 1966)



later, in the society at large. This is not desirable to say the least. It is too farfetched to argue that the school dress code militates against the fundamental freedoms guaranteed under Articles, 14, 15, 19, 21 & 25 of the Constitution and therefore, the same should be outlawed by the stroke of a pen.

(ix) CONCEDING HIJAB ON THE PRINCIPLE OF REASONABLE ACCOMMODATION:

The counsel for the petitioners passionately submitted that the students should be permitted to wear *hijab* of structure & colour that suit to the prescribed dress code. In support of this, they bank upon the '*principle of reasonable accommodation*'. They drew our attention to the prevalent practice of dress codes/uniforms in *Kendriya Vidyalayas*. We are not impressed by this argument. Reasons are not far to seek: firstly, such a proposal if accepted, the school uniform ceases to be uniform. There shall be two categories of girl students viz., those who wear the uniform with *hijab* and those who do it without. That would establish a sense of '*social-separateness*', which is not desirable. It also offends the feel of uniformity which the dress-code is designed to bring about amongst all the students regardless of their religion & faiths. As already mentioned above, the statutory



scheme militates against sectarianism of every kind. Therefore, the accommodation which the petitioners seek cannot be said to be reasonable. The object of prescribing uniform will be defeated if there is non-uniformity in the matter of uniforms. Youth is an impressionable period when identity and opinion begin to crystallize. Young students are able to readily grasp from their immediate environment, differentiating lines of race, region, religion, language, caste, place of birth, etc. The aim of the regulation is to create a 'safe space' where such divisive lines should have no place and the ideals of egalitarianism should be readily apparent to all students alike. Adherence to dress code is a mandatory for students. Recently, a Division Bench of this Court disposed off on 28.08.2019, Writ Petition No.13751 OF 2019 (EDN-RES-PIL) between *MASTER MANJUNATH vs. UNION OF INDIA* on this premise. What the *Kendriya Vidyalayas* prescribe as uniform/dress code is left to the policy of the Central Government. Ours being a kind of Federal Structure (Professor K.C. Wheare), the Federal Units, namely the States need not toe the line of Center.

(x) Petitioners' heavy reliance on the South African court decision in *MEC FOR EDUCATION: KWAZULU-NATAL*,



supra, does not much come to their aid. Constitutional schemes and socio-political ideologies vary from one country to another, regardless of textual similarities. A Constitution of a country being the Fundamental Law, is shaped by several streams of forces such as history, religion, culture, way of life, values and a host of such other factors. In a given fact matrix, how a foreign jurisdiction treats the case cannot be the sole model readily availing for adoption in our system which ordinarily treats foreign law & foreign judgments as matters of facts. Secondly, the said case involved a nose stud, which is ocularly insignificantly, apparently being as small as can be. By no stretch of imagination, that would not in any way affect the uniformity which the dress code intends to bring in the class room. That was an inarticulate factor of the said judgment. By and large, the first reason *supra* answers the Malaysian court decision too⁸⁵. Malaysia being a theistic Nation has Islam as the State religion and the court in its wisdom treated wearing *hijab* as being a part of religious practice. We have a wealth of material with which a view in respectful variance is formed. Those foreign decisions cited by

⁸⁵ HJH HALIMATUSSAADIAH BTE HJ KAMARUDDIN V. PUBLIC SERVICES COMMISSION, MALAYSIA (CIVIL APPEAL NO. 01-05-92) DECIDED ON 5-8-1994 [1994] 3 MLJ

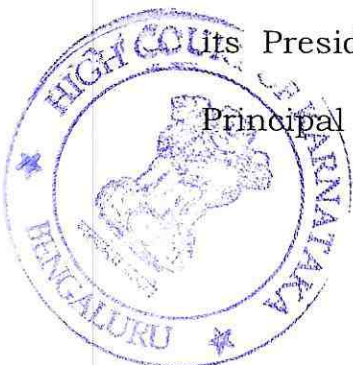


the other side of spectrum in opposing *hijab* argument, for the same reasons do not come to much assistance. In several countries, wearing of burqa or *hijab* is prohibited, is of no assistance to us. Noble thoughts coming from whichever direction are most welcome. Foreign decisions also throw light on the issues debated, cannot be disputed. However, courts have to adjudge the causes brought before them essentially in accordance with native law.

In view of the above, we are of the considered opinion that the prescription of school uniform is only a reasonable restriction constitutionally permissible which the students cannot object to.

XV. AS TO VALIDITY OF GOVERNMENT CIRCULAR DATED 31.1.2014 CONCERNING THE FORMATION OF SCHOOL BETTERMENT (DEVELOPMENT) COMMITTEES:

(i) The government vide Circular dated 31.1.2014 directed constitution of School Betterment Committee *inter alia* with the object of securing State Aid & its appropriation and enhancing the basic facilities & their optimum utilization. This Committee in every Pre-University College shall be headed by the local Member of Legislative Assembly (MLA) as its President and his nominee as the Vice President. The Principal of the College shall be the Member Secretary. Its



membership comprises of student representatives, parents, one educationist, a Vice Principal/Senior Professor & a Senior Lecturer. The requirement of reservation of SC/ST/Women is horizontally prescribed. It is submitted at the Bar that these Committees have been functioning since about eight years or so with no complaints whatsoever. Petitioners argued for Committee's invalidation on the ground that the presence of local Member of Legislative Assembly and his nominee would only infuse politics in the campus and therefore, not desirable. He also submits that even otherwise, the College Development Committee being extra-legal authority has no power to prescribe uniform.

(ii) We are not much inclined to undertake a deeper discussion on the validity of constitution & functioning of School Betterment (Development) Committees since none of the Writ Petitions seeks to lay challenge to Government Circular of January 2014. Merely because these Committees are headed by the local Member of Legislative Assembly, we cannot hastily jump to the conclusion that their formation is bad. It is also relevant to mention what the Apex Court said in



STATE OF PUNJAB VS. GURDEV SINGH⁸⁶, after referring to Professor Wade's Administrative Law:

"...Apropos to this principle, Prof. Wade states: 'the principle must be equally true even where the 'brand' of invalidity' is plainly visible; for their also the order can effectively be resisted in law only by obtaining the decision of the Court (See: Administrative Law 6th Ed. p. 352). Prof. Wade sums up these principles: The truth of the matter is that the court will invalidate an order only if 'the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plain- tiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another, and that it may be void against one person but valid against another.'" (Ibid p. 352) It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for..."

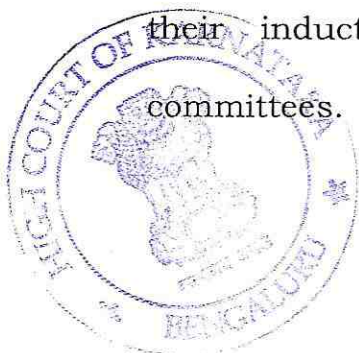
It is nobody's case that the Government Circular is *void ab initio* and consequently, the School Betterment (Development) Committees are *non est*. They have been functioning since last eight years and no complaint is raised about their performance, nor is any material placed on record that warrants consideration of the question of their validity despite

⁸⁶ AIR 1992 SC 111



absence of pleadings & prayers. It hardly needs to be stated that schools & hospitals amongst other, are the electoral considerations and therefore, peoples' representatives do show concern for the same, as a measure of their performances. That being the position, induction of local Members of Legislative Assembly in the Committees *per se* is not a ground for voiding the subject Circular.

(iii) We have already held that the schools & institutions have power to prescribe student uniform. There is no legal bar for the School Betterment (Development) Committees to associate with the process of such prescription. However, there may be some scope for the view that it is not desirable to have elected representatives of the people in the school committees of the kind, one of the obvious reasons being the possible infusion of '*party-politics*' into the campus. This is not to cast aspersion on anyone. We are not unaware of the advantages of the schools associating with the elected representatives. They may fetch funds and such other things helping development of institutions. This apart, no law or ruling is brought to our notice that interdicts their induction as the constituent members of such committees.



XVI. AS TO VALIDITY OF GOVERNMENT ORDER DATED 5.2.2022 PROVIDING FOR PRESCRIPTION OF DRESS CODES IN EDUCATIONAL INSTITUTIONS:

(i) The validity of Government Order dated 05.02.2022 had been hotly debated in these petitions. Petitioners argue that this order could not have been issued in purported exercise of power under sections 133 and 7(2) of the 1983 Act read with Rule 11 of the 1995 Curricula Rules. The State and other contesting respondents contend to the contrary, *inter alia* by invoking sections 142 & 143 of the 1983 Act, as well. This Order *per se* does not prescribe any dress code and it only provides for prescription of uniform in four different types of educational institutions. The near English version of the above as submitted by both the sides is already stated in the beginning part of the judgment. However, the same is reiterated for the ease of reference:

Students should compulsorily adhere to the dress code/uniform as follows:

a. in government schools, as prescribed by the government;

b. in private schools, as prescribed by the school management;

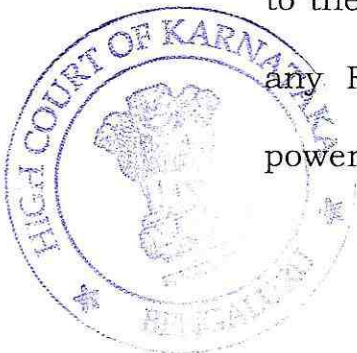
c. in Pre-University colleges that come within the jurisdiction of the Department of the Pre-University



Education, as prescribed by the College Development Committee or College Supervision Committee; and

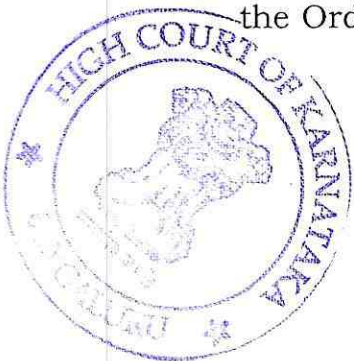
- d. wherever no dress code is prescribed, such attire that would accord with 'equality & integrity' and would not disrupt the 'public order'.*

(ii) Petitioners firstly argued that this Order suffers from material irregularity apparent on its face inasmuch as the rulings cited therein do not lay down the ratio which the government wrongly states that they do. This Order refers to two decisions of the Kerala High Court and one decision of Bombay and Madras High Courts each. We have already discussed all these decisions supra at paragraph (X) and therefore, much need not be discussed here. Regardless of the ratio of these decisions, if the Government Order is otherwise sustainable in law, which we believe it does, the challenge thereto has to fail for more than one reason: The subject matter of the Government Order is the prescription of school uniform. Power to prescribe, we have already held, avails in the scheme of 1983 Act and the Rules promulgated thereunder. Section 133(2) of the Act which is broadly worded empowers the government to issue any directions to give effect to the purposes of the Act or to any provision of the Act or to any Rule made thereunder. This is a wide conferment of power which obviously includes the authority to prescribe



school dress code. It is more so because Rule 11 of 1995 Curricula Rules itself provides for the prescription of school uniform and its modalities. The Government Order can be construed as the one issued to give effect to this rule itself. Such an order needs to be construed in the light of the said rule and the 2014 Circular, since there exists a kinship *inter se*. Therefore, the question as to competence of the government to issue order of the kind is answered in the affirmative.

(iii) Petitioners' second contention relates to exercise of statutory power by the government that culminated into issuance of the impugned order. There is difference between existence of power and the exercise of power; existence of power *per se* does not justify its exercise. The public power that is coupled with duty needs to be wielded for effectuating the purpose of its conferment. Learned counsel appearing for the students argued that the Government Order has to be voided since the reasons on which it is structured are *ex facie* bad and that new grounds cannot be imported to the body of the Order for infusing validity thereto vide *COMMISSIONER OF*



*POLICE vs. GORDHANDAS BHANJE*⁸⁷. This decision articulated the Administrative Law principle that the validity of a statutory order has to be adjudged only on the reasons stated in the order itself. We have no quarrel with this principle which has been reiterated in *MOHINDER SINGH GILL, supra*. However, we are not sure of its invocation in a case wherein validity of the impugned order can otherwise be sustained on the basis of other intrinsic material. As we have already mentioned, the Government Order is issued to give effect to the purposes of the 1983 Act and to Rule 11 of the 1995 Curricula Rules. That being the position the question of un-sustainability of some of the reasons on which the said Order is constructed, pales into insignificance.

(iv) Petitioners next argued that the Government Order cites '*sārvajanika suvyavasthe*' i.e., '*public order*' as one of the reasons for prescribing uniform to the exclusion of *hijab*; disruption of public order is not by those who wear this apparel but by those who oppose it; most of these opposers wear *bhagwa* or such other cloth symbolic of religious overtones. The government should take action against the hooligans disrupting peace, instead of asking the Muslim girl



students to remove their *hijab*. In support of this contention, they drew attention of the court to the concept of '*hecklers veto*' as discussed in *K.M.SHANKARAPPA, supra*. They further argued that ours being a '*positive secularism*', the State should endeavor to create congenial atmosphere for the exercise of citizens rights, by taking stern action against those who obstruct vide *PRAVEEN BHAI THOGADIA, supra*. Again we do not have any quarrel with the proposition of law. However, we are not convinced that the same is invocable for invalidating the Government Order, which *per se* does not prescribe any uniform but only provides for prescription in a structured way, which we have already upheld in the light of our specific finding that wearing *hijab* is not an *essential religious practice* and school uniform to its exclusion can be prescribed. It hardly needs to be stated that the uniform can exclude any other apparel like *bhagwa* or *blue shawl* that may have the visible religious overtones. The object of prescribing uniform cannot be better stated than by quoting from '*MANUAL ON SCHOOL UNIFORMS*' published by U.S. Department of Education:

'A safe and disciplined learning environment is the first requirement of a good school. Young people who are safe and secure, who learn basic American values and the



essentials of good citizenship, are better students. In response to growing levels of violence in our schools, many parents, teachers, and school officials have come to see school uniforms as one positive and creative way to reduce discipline problems and increase school safety.'

(v) We hasten to add that certain terms used in a Government Order such as '*public order*', etc., cannot be construed as the ones employed in the Constitution or Statutes. There is a sea of difference in the textual structuring of legislation and in promulgating a statutory order as the one at hands. The draftsmen of the former are ascribed of due diligence & seriousness in the employment of terminology which the government officers at times lack whilst textually framing the statutory policies. Nowadays, courts do often come across several Government Orders and Circulars which have lavish terminologies, at times lending weight to the challenge. The words used in Government Orders have to be construed in the generality of their text and with common sense and with a measure of grace to their linguistic pitfalls. The text & context of the Act under which such orders are issued also figure in the mind. The impugned order could have been well drafted, is true. '*There is scope for improvement even in heaven*' said Oscar Wilde. We cannot resist ourselves from quoting what Justice Holmes had said in *TOWNE vs.*



*EISNER*⁸⁸, “a word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.” Thus, there is no much scope for invoking the concept of ‘law and order’ as discussed in *ANITA* and *GULAB ABBAS*, *supra*, although the Government Order gives a loose impression that there is some nexus between wearing of *hijab* and the ‘law & order’ situation.

(vi) Petitioners had also produced some ‘loose papers’ without head and tail, which purported to be of a brochure issued by the Education Department to the effect that there was no requirement of any school uniform and that the prescription of one by any institution shall be illegal. There is nothing on record for authenticating this version. Those producing the same have not stated as to who their author is and what legal authority he possessed to issue the same. Even otherwise, this purported brochure cannot stand in the face of Government Order dated 05.02.2022 whose validity we have already considered. Similarly, petitioners had banked upon the so called *research papers* allegedly published by

‘Pew Research Centre’ about religious clothing and personal

⁸⁸ 245 U.S.418 (1918)



appearance. They contend that this paper is generated from the research that studied various religious groups & communities and that a finding has been recorded: *'Most Hindu, Muslim and Sikh women cover their heads outside the home'* and therefore, the Government Order which militates against this social reality, is arbitrary. We are not inclined to subscribe to this view. No credentials of the researchers are stated nor the representative character of the statistics mentioned in the papers are demonstrated. The authenticity of the contents is apparently lacking.

(vii) Petitioners contended that the said Government Order has been hastily issued even when the contemplated High Powered Committee was yet to look into the issue as to the desirability of prescription and modules of dress codes in the educational institutions. The contents of Government Order give this impression, is true. However, that is too feeble a ground for faltering a policy decision like this. At times, regard being had to special conditions like social unrest and public agitations, governments do take certain urgent decisions which may appear to be *knee-jerk* reactions.

However, these are matters of perceptions. May be, such decisions are at times in variance with their earlier stand.



Even that cannot be faltered when they are dictated by circumstances. After all, in matters of this kind, the doctrine of '*estoppel*' does not readily apply. Whether a particular decision should be taken at a particular time, is a matter left to the *executive wisdom*, and courts cannot run a race of opinions with the Executive, more particularly when policy content & considerations that shaped the decision are not judicially assessable. The doctrine of '*separation of powers*' which figures in our constitution as a '*basic feature*' expects the organs of the State to show due deference to each other's opinions. The last contention that the Government Order is a product of '*acting under dictation*' and therefore, is bad in law is bit difficult to countenance. Who acted under whose dictation cannot be adjudged merely on the basis of some concessional arguments submitted on behalf of the State Government. Such a proposition cannot be readily invoked inasmuch as invocation would affect the institutional dignity & efficacy of the government. A strong case has to be made to invoke such a ground, in terms of pleadings & proof.

In view of the above, we are of the considered opinion that the government has power to issue the impugned Order dated 05.2.2022 and that no case is made out for its invalidation.



XVII. INTERNATIONAL CONVENTIONS AND EMANCIPATION OF WOMEN:

(i) There have been several International Conventions & Conferences in which India is a participant if not a signatory. *UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948)*, *CONVENTION OF ELIMINATION ON ALL FORMS OF DISCRIMINATION AGAINST WOMEN (1981)*, *INTERNATIONAL COVENANTS ON CIVIL AND POLITICAL RIGHTS (1966)*, *UNITED NATIONS CONVENTION ON RIGHTS OF CHILD (1989)*, are only a few to name. Under our *Constitutional Jurisprudence*, owing to Article 51 which provides for promotion of international peace & security, the International Conventions of the kind assume a significant role in construing the welfare legislations and the statutes which have kinship to the subject matter of such Conventions. In a sense, these instruments of International Law permeate into our domestic law. Throughout, there has been both legislative & judicial process to emancipate women from pernicious discrimination in all its forms and means. Women regardless of religion being equal, if not superior to men, are also joining defence services on permanent commission basis vide Apex



Court decision in C.A.No.9367-9369/2011 between THE SECRETARY, MINISTRY OF DEFENCE vs. BABITA PUNIYA, decided on 17.2.2020. Be it business, industry, profession, public & private employments, sports, arts and such other walks of life, women are breaking the glass ceiling and faring better than their counterparts.

(ii) It is relevant to quote what Dr. B.R.Ambedkar in his book 'PAKISTAN OR THE PARTITION OF INDIA' (1945) at Chapter X, Part 1 titled 'Social Stagnation' wrote:

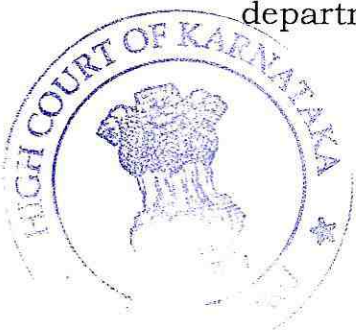
"...A woman (Muslim) is allowed to see only her son, brothers, father, uncles, and husband, or any other near relation who may be admitted to a position of trust. She cannot even go to the Mosque to pray, and must wear burka (veil) whenever she has to go out. These burka woman walking in the streets is one of the most hideous sights one can witness in India...The Muslims have all the social evils of the Hindus and something more. That something more is the compulsory system of purdah for Muslim women... Such seclusion cannot have its deteriorating effect upon the physical constitution of Muslim women... Being completely secluded from the outer world, they engage their minds in petty family quarrels with the result that they become narrow and restrictive in their outlook... They cannot take part in any outdoor activity and are weighed down by a slavish mentality and an inferiority complex...Purdah women in particular become helpless, timid...Considering the large number of purdah women amongst Muslims in India, one can easily understand the vastness and seriousness of the problem of purdah...As a consequence of the purdah system, a segregation of Muslim women is brought about ..."



What the Chief Architect of our Constitution observed more than half a century ago about the *purdah* practice equally applies to wearing of *hijab* there is a lot of scope for the argument that insistence on wearing of *purdah*, veil, or headgear in any community may hinder the process of emancipation of woman in general and Muslim woman in particular. That militates against our constitutional spirit of 'equal opportunity' of 'public participation' and 'positive secularism'. Prescription of school dress code to the exclusion of *hijab*, *bhagwa*, or any other apparel symbolic of religion can be a step forward in the direction of emancipation and more particularly, to the access to education. It hardly needs to be stated that this does not rob off the autonomy of women or their right to education inasmuch as they can wear any apparel of their choice outside the classroom.

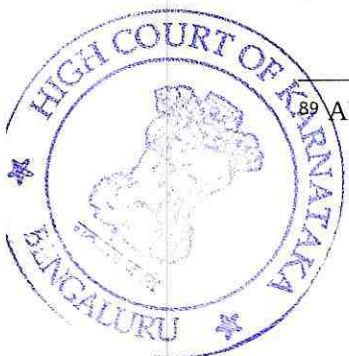
XVIII. AS TO PRAYER FOR A WRIT OF QUO WARRANTO IN SOME WRIT PETITIONS:

The petitioners in W.P. No.2146/2022, have sought for a Writ of Mandamus for initiating a disciplinary enquiry on the ground that the respondent Nos.6 to 14 i.e., Principal & teachers of the respondent-college are violating the departmental guidelines which prohibit prescription of any



uniform and for their hostile approach. Strangely, petitioners have also sought for a Writ of *Quo Warranto* against respondent Nos. 15 & 16 for their alleged interference in the administration of 5th respondent school and for promoting political agenda. The petition is apparently ill-drafted and pleadings lack cogency and coherence that are required for considering the serious prayers of this kind. We have already commented upon the Departmental Guidelines as having no force of law. Therefore, the question of the said respondents violating the same even remotely does not arise. We have also recorded a finding that the college can prescribe uniform to the exclusion of *hijab* or *bhagwa* or such other religious symbols, and therefore, the alleged act of the respondents in seeking adherence to the school discipline & dress code cannot be faltered. Absolutely no case is made out for granting the prayers or any other reliefs on the basis of these pleadings. The law of *Quo Warranto* is no longer in a fluid state in our country; the principles governing issuance of this writ having been well defined vide *UNIVERSITY OF MYSORE vs. C.D. GOVINDA RAO*⁸⁹. For seeking a Writ of this nature, one has to demonstrate that the post or office which the

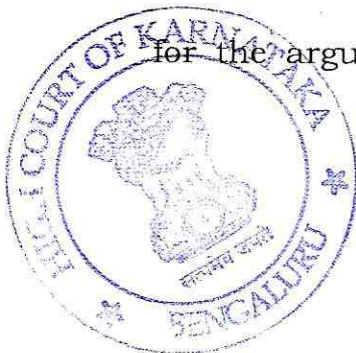
⁸⁹ AIR 1965 SC 491



person concerned holds is a public post or a public office. In our considered view, the respondent Nos.15 & 16 do not hold any such position in the respondent-school. Their placement in the College Betterment (Development) Committee does not fill the public character required as a pre-condition for the issuance of Writ of *Quo Warranto*.

In view of the above, we are of the considered opinion that no case is made out in W.P. No.2146/2022 for issuance of a direction for initiating disciplinary enquiry against respondent Nos. 6 to 14. The prayer for issuance of Writ of *Quo Warranto* against respondent Nos. 15 and 16 is rejected being not maintainable.

From the submissions made on behalf of the Respondent – Pre – University College at Udupi and the material placed on record, we notice that all was well with the dress code since 2004. We are also impressed that even Muslims participate in the festivals that are celebrated in the ‘*ashta mutt sampradāya*’, (Udupi being the place where eight *Mutts* are situated). We are dismayed as to how all of a sudden that too in the middle of the academic term the issue of *hijab* is generated and blown out of proportion by the powers that be. The way, *hijab imbroglio* unfolded gives scope for the argument that some ‘*unseen hands*’ are at work to



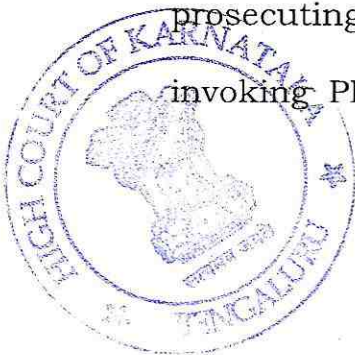
engineer social unrest and disharmony. Much is not necessary to specify. We are not commenting on the ongoing police investigation lest it should be affected. We have perused and returned copies of the police papers that were furnished to us in a sealed cover. We expect a speedy & effective investigation into the matter and culprits being brought to book, brooking no delay.

XIX. THE PUBLIC INTEREST LITIGATIONS:

(i) One Dr. Vinod Kulkarni has filed PIL in W.P.No.3424/2022 seeking a Writ of Mandamus to the Central Government and State Government *inter alia* 'to permit Female Muslim students to sport Hijab provided they wear the stipulated school uniform also' (sic). The petition mentions about *BIJOE EMMANUEL, INDIAN YOUNG LAWYERS ASSOCIATION, JAGADISHWARANANDA AVADHUTA, CHANDANMAL vs. STATE OF WEST BENGAL*⁹⁰ and such other cases. Petition is unsatisfactorily structured on the basis of some print & electronic media reports that are not made part of the paper book. There is another PIL in *GHANSHYAM UPADHYAY VS. UNION OF INDIA* in W.P.No.4338/2022 (GM-



RES-PIL) *inter alia* seeking a Writ of Mandamus for undertaking an investigation by the Central Bureau of Investigation (CBI), National Investigating Agency (NIA) as to the involvement of radical Islamic organizations such as Popular Front of India, Students Islamic Organization of India, Campus Front of India and *Jamaat-e-Islami* and their funding by some foreign universities to Islamize India. There are other incoherent prayers. This petitioner opposes the case of students who desire to wear *hijab*. Most of the contentions taken up in these petitions are broadly treated in the companion Writ Petitions. We are not inclined to entertain these two Writ Petitions filed in PIL jurisdiction, both on the ground of their maintainability & merits. The second petition, it needs to be stated, seeks to expand the parameters of the essential *lis* involved in all these cases much beyond the warranted frame of consideration. In W.P.No.3942/2022 (GM-RES-PIL) between *ABDUL MANSOOR MURTUZA SAYED AND STATE OF KARNATAKA* decided on 25.02.2022, we have already held that when the aggrieved parties are effectively prosecuting their personal causes, others cannot interfere by invoking PIL jurisdiction. A battery of eminent lawyers are

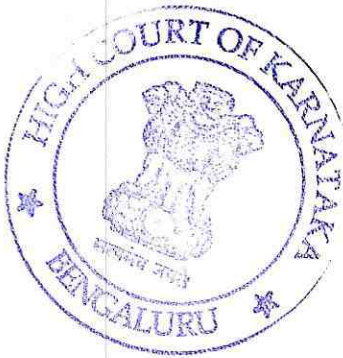


representing the parties on both the sides. Even otherwise, no exceptional case is made out for our indulgence.

In view of the above, we are of the considered opinion that both the above Writ Petitions filed as Public Interest Litigations are liable to be rejected, absolutely no case having been made out for indulgence.

In the above circumstances, all these petitions being devoid of merits, are liable to be and accordingly are dismissed. In view of dismissal of these Writ Petitions, all pending applications pale into insignificance and are accordingly, disposed off.

Costs made easy.



**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

**Sd/-
JUDGE**

SJ/CBC

TRUE COPY
[Signature]
17/3/22
Section Officer
High Court of Karnataka
Bengaluru - 560 001

- a) The date on which the application was made 16/3/22
- b) The date on which charges and additional Charges if any are called for —
- c) The date on which charges and additional Charges if any are deposited/Paid —
- d) The date on which the copy is ready 17/3/22
- e) The date of notifying that the copy is ready For delivery 17/3/22
- f) The date on which the applicant is required to appear on or before 21/3/22
- g) The date on which the copy is delivered to the Applicant
- h) Examined by 17/3/22 *KTM*

IN THE SUPREME COURT OF INDIA**ORDER XXI RULE 3 (1) A****CIVIL APPELLATE JURISDICTION**

Special Leave Petition Civil No. 5690 of 2022

(Against the Common Impugned Final Judgment and Order
dated 15.03.2022 passed by the Hon'ble High Court of Karnataka
at Bengaluru in Writ Petition No. 2146 of 2022)

WITH PRAYER FOR INTERIM RELIEF**IN THE MATTER OF:-**

Position of the parties	In the High Court	In this Hon'ble Court
1. Shafa (Minor / Student), D/o Mohammed Shameem, aged about 17 years, Represented by her Mother Shahina, W/o Mohammed Shameem, aged about 42 years, R/o 3-73, Mallar Gujji House, Mallar Village, Majoor, Kaup, Udupi, Karnataka - 576106	Petitioner No. 4	Petitioner No. 1
2. Muskaan Zainab,	Petitioner	Petitioner No. 2

(Minor / Student), **No. 5**
 D/o Abdul Shukur,
 aged about 17
 years, Represented
 by her Father
 Abdul Shukur, S/o
 D Ismail Saheb,
 aged about 46
 years, R/o 9-109-
 B,
 Vadabhandeshwara
 Malpe, Udupi,
 Karnataka - 576108

VERSUS

- | | | |
|--|--|---|
| <p>1. Chief Secretary
 Primary And Higher
 Education
 Department, State of
 Karnataka, M. S.
 Building, Bangalore -
 560001</p> | <p>Respondent
 No.1</p> | <p>Contesting
 Respondent No.
 1</p> |
| <p>2. Director, P. U.
 Education
 Department,
 Malleshwaram,
 Education
 Department,</p> | <p>Respondent
 No. 2</p> | <p>Contesting
 Respondent No.
 2</p> |

Bangalore 560012

- | | | | |
|----|--|-----------------------------|--|
| 3. | Deputy Director,
Pre University
College, Udupi
Dist., Udupi
576101 | Respondent
No. 3 | Contesting
Respondent No.
3 |
| 4. | Deputy
Commissioner, D.
C. Office Udupi,
City Udupi -
576101 | Respondent
No. 4 | Contesting
Respondent No.
4 |
| 5. | Govt P. U. College
for Girls, Udupi
City, Udupi
576101,
Represented by its
Principal | Respondent
No. 5 | Contesting
Respondent No.
5 |
| 6. | Rudre Gowda, age
about 55 years,
Occupation
Principal, Office at
Government P. U.
College for Girls,
Udupi City, Udupi
576101 | Respondent
No. 6 | Contesting
Respondent No.
6 |
| 7. | Gangadhar Sharma,
age about 51 years, | Respondent
No. 7 | Contesting
Respondent No. |

Vice Principal of
Government
College, R/o 21/69
Anrghya, 7TH
Cross Madvanagar,
Adiudupi, Udupi
576102

7

- | | | |
|---|--|--|
| <p>8. Dr Yadav, age
about 56 years,
History Lecturer,
Office at
Government P. U.
College for Girls,
Udupi City, Udupi
576101</p> | <p>Respondent
No. 8</p> | <p>Contesting
Respondent No.
8</p> |
| <p>9. Prakash Shetty, age
about 45 years,
Political Science
Sub Lecturer,
Office at
Government P. U.
College for Girls,
Udupi City, Udupi
576101</p> | <p>Respondent
No. 9</p> | <p>Contesting
Respondent No.
9</p> |
| <p>10. Dayananda D, age
about 50 years,
Sociology sub</p> | <p>Respondent
No. 10</p> | <p>Contesting
Respondent No.
10</p> |

Lecturer, office at
Government P. U.
College for Girls,
Udupi City, Udupi
576101

- | | | |
|---|--|--|
| <p>11. Rudrappa, age
about 51 years,
Chemistry Sub
Lecturer, office at
Government P. U.
College for Girls,
Udupi City, Udupi
576101</p> | <p>Respondent
No. 11</p> | <p>Contesting
Respondent No.
11</p> |
| <p>12. Shalini Nayak, age
about 48 years,
Biology Sub
Lecturer, Office at
Government P. U.
College for Girls,
Udupi City, Udupi
576101</p> | <p>Respondent
No. 12</p> | <p>Contesting
Respondent No.
12</p> |
| <p>13. Chaya Shetty, age
about 40 years,
Physics Sub
Lecturer, R/o
Kutpady Udyavar,
Udupi 574118</p> | <p>Respondent
No. 13</p> | <p>Contesting
Respondent No.
13</p> |

- | | | |
|--|--|---|
| 14. Dr Usha Naveen
Chandra, age about
50 years, Teacher,
Office at
Government P. U.
College for Girls,
Udupi City, Udupi
576101 | Respondent

No. 14 | Contesting

Respondent No.

14 |
| 15. Raghupathi Bhat,
S/O Late Srinivas
Bharithya, age
about 53 years,
Local MLA and
unauthirized
chairman of
CDMC, D NO 8-32
at Shivally Village
PO, Shivally,
Udupi 576102 | Respondent

No. 15 | Contesting

Respondent No.

15 |
| 16. Yashpal Anand
Surana, age about
50 years,
Authorized Vice
Chairman of
CDMC, R/o
Ajjarakadu Udupi,
HO, Udupi 576101 | Respondent

No. 16 | Contesting

Respondent No.

16 |

- | | | |
|--|---------------------------------------|---|
| 17. Ayesha Hajeera
Almas, aged about
18 years, D/O
Mupthi Mohammed
Abrurul, Student,
Represented by her
Mother Karani,
Sadiya Banu, W/o
Mupthi Mohammed
Abrurul, aged
about 40 years, R/o
NO 2-82 C
Kavrady, Opp to
Urdu School,
Kandler, VTC
Kavrady, P/O
Kavradi,
Kundapura, Udupi
576211 | Petitioner

No. 1 | Proforma

Respondent No.

17 |
| 18. Reshma, age about
17 years, D/O K
Faruk, Student,
Represented by her
Mother, Rahmath
W/o K Faruk, aged
about 45 years, R/o
No 9-138 | Petitioner

No. 2 | Proforma

Respondent No.

18 |

Perampalli Road,
 Ambagilu Santosh
 Nagar, Santhekatte
 Udupi 576105

<p>19. Aliya Assadi, aged about 17 years, D/o Ayub Assadi, Student, Represented by her Father, Ayub ASSADI, S/o Abdul Rahim, aged about 49 years, R/o No 4-2-66 Abida Manzil, Nayarkere Road Kidiyoor, Ambalapadi, Udupi 576103</p>	<p>Petitioner No. 3</p>	<p>Proforma Respondent No. 19</p>
---	---	--

To,
 The Hon'ble Chief Justice of India
 And His Companion Justices of The
 Hon'ble Supreme Court of India.

This Special Leave Petition of
 the Petitioner above named

MOST RESPECTFULLY SHEWETH

1. This Special Leave Petition (“SLP”) challenges the Common Impugned Final Judgment and Order dated 15.03.2022 (“**Impugned Order**”) passed by the Hon'ble

High Court of Karnataka at Bengaluru (“**Hon’ble High Court**”) in a batch of writ petition, where present Petitioners were arrayed as Petitioner no 4 and 5 in Writ Petition No. 2146 of 2022. The Impugned Judgment is being challenged for wrongly upholding impugned Government Order dated 05.02.2022 issued by the State of Karnataka.

- 1A. It is submitted that the party arrayed as Respondent No. 1 in the Impugned Order is *Chief Secretary, Primary and Higher Education Department, Karnataka Government Ministry, M. S. Building, Bangalore - 560001*. However, in the affidavit, vakalatnama and memo of parties in the present petition, Respondent No. 1 has been arrayed as *Chief Secretary Primary And Higher Education Department, State of Karnataka*. It is submitted that both these parties are one and the same and the two titles may be treated to be interchangeable.

2. **QUESTIONS OF LAW:**

That, the instant Special Leave Petition raises the following substantial questions of the law which need adjudication by this Hon’ble Court:

- A. Whether the Hon’ble High Court erred in upholding the Impugned G.O. which prohibits Petitioners and other like students from wearing the *hijab/ headscarf* and freely practicing their religion, without grounding such proscription under any reasonable restriction as provided in Article 25 of the Constitution of India?

- B. Whether the Hon'ble High Court erred in allowing the State of Karnataka to restrict the right of students like the Petitioners to practice their religion merely in furtherance of a uniform policy?
- C. Whether the Hon'ble High Court erred in upholding the impugned G.O. which, by way of the doctrine of dictation, evidently discriminates, under Article 15(1) of the Constitution, only against one religious practice- the Islamic practice of wearing a *hijab/ headscarf*?
- D. Whether the Hon'ble High Court erred in upholding the Impugned G.O. by wrongly holding that the practise of wearing *hijab/ headscarf* is not an essential religious practise, in direct contravention of previous judicial pronouncements?
- E. Whether the Hon'ble High Court erred in upholding the impugned G.O. which vests the extra-legal body, the College Development Committee to administer uniforms, and effectively directs them to prohibit the wearing of *hijab/ headscarf*?
- F. Whether the Hon'ble High Court erred in allowing the proscription of *hijab/ headscarf* in Pre-University Colleges, when the Guidelines issued by the Department of Pre-University College, State of Karnataka, which give effect to Rule 6 of the Karnataka Pre University Education (Academic, Registration, Administration and Grant-in-aid etc.) Rules, 2006 ("**2006 Rules**"), make it abundantly clear that uniform is not mandatory for students studying in

Pre-University College, and any attempt to impose such uniform will be illegal.

- G.** Whether the Hon'ble High Court erred in holding that the Petitioners' right to privacy has not been violated to the extent which warrants interference of the Court on that count?
- H.** Whether the Hon'ble High Court erred in holding that the Petitioners' right to free speech has not been violated to the extent which warrants interference of the Court on that count?
- I.** Whether the Hon'ble High Court erred in upholding the Impugned G.O., finding that it proportionally restricted the right of female Muslim students to freely profess and practise their religion?
- J.** Whether the Hon'ble High Court erred while holding that the impugned G.O. is not manifestly arbitrary?
- K.** Whether the Hon'ble High Court erred in upholding the impugned G.O. even though it flagrantly violates Article 29 of the Constitution of India.
- L.** Whether the Hon'ble High Court erred in holding that the impugned G.O does not betray India's international obligations, which have been codified in municipal law.

3. DECLARATION IN TERMS OF RULE 3 (2)

The Petitioner states that no other petition seeking leave to appeal has been filed by him against the common impugned final judgment and order before this Hon'ble Court.

4. DECLARATION IN TERMS OF RULE 5

The Annexures produced along with the SLP are true copies of the pleadings/documents that formed part of the records of the case in the court below against whose order leave to appeal is being sought in this petition.

5. GROUNDS

Being aggrieved by and dissatisfied with the impugned order of the Hon’ble High Court of Karnataka, the Petitioner is filing the instant Special Leave Petition, inter alia, on the following grounds:

- A. That the Hon’ble High Court has erred in upholding the Impugned G.O. when it violates the right of students like the Petitioners to practice their religion, without attributing such restriction to the ground of “*public order, health or morality*” under Article 25(1)(a).
- B. That the Hon’ble High Court has erred in upholding the restriction on wearing of *hijab/ headscarf* in educational institutions when the State has admitted that the G.O. has not been issued to maintain public order (*page 34 of the impugned order, point vi*).
- C. That the Hon’ble Court has wrongly upheld the Impugned G.O. when no other ground of “morality or health” has been claimed as the “reasonable restriction” which is being used to curtail the right of students like the Petitioners to wear the *hijab/ headscarf* and exercise their right to freely practice their religion.

- D. That the Hon'ble High Court has erred in upholding the impugned G.O. when no other ground under Article 25(2) exists, or can be availed, to restrict Petitioners and other such students' right to wear the *hijab/ headscarf*.
- E. That since the 1983 Act is not a welfare legislation, in any case, no argument can be laid by the State that the Impugned G.O. is an endeavour in bringing reform.
- F. That, the Impugned G.O. also falls foul of the 1983 Act which, in its Statement of Objects, proposes diversity rather than uniformity in school premises.
- G. That the general object of "*cultivating a scientific and secular outlook through education*" in the 1983 Act cannot suffice to give the State power to empower the CDCs to restrict the Petitioners and other such students from freely practising their religion and wearing the headscarf, when it does not affect the right of other students and does not offend the secular nature of the State.
- H. That in this regard, a Division Bench of the Hon'ble Madras High court, while dealing with a writ petition challenging performance of *Saraswati Puja* and *Ayutha Puja* in Government offices by the Government servants in *S.P. Muthu Raman v. Chief Secretary, Government of Tamil Nadu and Ors. 2012 (1) CWC 383* has held that

"16. Similarly, *Saraswathy Pooja* is referable to showing respect to education, knowledge, and the

script. When the State has declared the day as holiday, it cannot be said that the State is propagating festivals offending secular nature. The form of worship or veneration to files and records on the close of the working day preceding the holiday for Ayutha Pooja or Saraswathy Pooja cannot be called as religious activity by the Government, affecting the secular State. In Government Offices, if an individual shows respect and reverence to the materials, books, files or records which are being handled by the individual, it will be referable to his individual freedom and there is nothing to show that it affects the secular nature of the State. Showing respect to the place of work and the objects of work will in no way offend the feeling of others or offend secularism. In other words, so long as the individual shows reverence and performs such pooja without affecting the rights of other persons/individuals and the third parties, it cannot be said that it offends the secular nature of the State. The Indian Constitution recognizes the religious right of each and every citizen, particularly, to his right to freedom of conscience and the right freely to profess, practice and propagate religion. The State advances the concept of unity in diversity. The State is empowered to regulate by law in terms of Article 25(2). The Government Order which is referred to in the present case is to ensure that a Government Office is not converted into a place of worship or prayer. It is not the case of the petitioner that a new construction is undertaken in the State Government

office premises for the purpose of prayer or worship in violation of the Government Order. Petitioner also cannot state that he is offended by any individual showing respect and reverence to the objects of work, profession or occupation. It will amount to curtailing the right guaranteed under our Constitution.

17. If the petitioner's grievance is to be considered in a manner in which it is expressed, then a Hindu, a Christian or a Muslim or for that matter a person of any faith cannot pray silently or show reverence to his profession before he starts his work. A Sikh or Jain cannot show reverence to his religious Guru. If the relief sought for by the petitioner should be accepted, it is likely to cause disharmony among various religious groups as similar writ petition will be filed by one or other individual to restrain others from performing prayer of any kind or showing reverence even if it does not affect or offend others."

(emphasis supplied)

- I.** That in the absence of any ground or reasonable restriction, as provided for constitutionally, no ground exists to restrict students like the Petitioners from wearing the *hijab/headscarf* in educational institutions.
- J.** That, to this extent, it has been held in the case of ***Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt, AIR 1954 SC 282***

"20... What Article 25(2)(a) contemplates is not regulation by the State of religious practices as

such, the freedom of which is guaranteed by the Constitution except when they run counter to public order, health and morality but regulation of activities which are economic, commercial or political in their character though they are associated with religious practices.”

(emphasis supplied)

Further, this Hon’ble Court has stated the following in *Ratilal Panachand Gandhi v. State of Bombay, 1954 SCR 1055*, in this regard:

“10. Article 25 of the Constitution guarantees to every person and not merely to the citizens of India, the freedom of conscience and the right freely to profess, practise and propagate religion. This is subject, in every case, to public order, health and morality. Further exceptions are engrafted upon this right by clause (2) of the article. Sub-clause (a) of clause (2) saves the power of the State to make laws regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; and sub-clause (b) reserves the State's power to make laws providing for social reform and social welfare even though they might interfere with religious practices. Thus, subject to the restrictions which this article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the

edification of others. It is immaterial also whether the propagation is made by a person in his individual capacity or on behalf of any church or institution. The free exercise of religion by which is meant the performance of outward acts in pursuance of religious belief, is, as stated above, subject to State regulation imposed to secure order, public health and morals of the people. What sub-clause (a) of clause (2) of Article 25 contemplates is not State regulation of the religious practices as such which are protected unless they run counter to public health or morality but of activities which are really of an economic, commercial or political character though they are associated with religious practices.”

(emphasis supplied)

K. That, further it has been held in the case of *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay*, 1962 Supp (2) SCR 496 that,

“17... Article 25 guarantees the right to every person, whether citizen or non-citizen, the freedom of conscience and the right freely to profess, practise and propagate religion. But this guaranteed right is not an absolute one. It is subject to (1) public order, morality and health, (2) the other provisions of Part III of the Constitution, (3) any existing law regulating or restricting an economic, financial, political or other secular activity which may be associated with religious practice, (4) a law providing for social welfare and reform, and (5) any law that may be made by the State regulating or restricting the activities aforesaid or providing for social welfare and reform. I have omitted

*reference to the provisions of Explanations I and II and other parts of Article 25 which are not material to our present purpose. It is noteworthy that the right guaranteed by Article 25 is an individual right, as distinguished from the right of an organised body like a religious denomination or any section thereof, dealt with by Article 26. Hence, every member of the community has the right, so long as he does not in any way interfere with the corresponding rights of others, to profess, practise and propagate his religion, and everyone is guaranteed his freedom of conscience. The question naturally arises: Can an individual be compelled to have a particular belief on pain of a penalty, like excommunication? One is entitled to believe or not to believe a particular tenet or to follow or not to follow a particular practice in matters of religion. No one can, therefore, be compelled, against his own judgment and belief, to hold any particular creed or follow a set of religious practices. **The Constitution has left every person free in the matter of his relation to his Creator, if he believes in one. It is, thus, clear that a person is left completely free to worship God according to the dictates of his conscience, and that his right to worship as he pleased is unfettered so long as it does not come into conflict with any restraints, as aforesaid, imposed by the State in the interest of public order, etc. A person is not liable to answer for the verity of his religious views, and he cannot be questioned as to his religious beliefs, by the State or by any other person. Thus, though his religious beliefs are entirely his own and his***

freedom to hold those beliefs is absolute, he has not the absolute right to act in any way he pleased in exercise of his religious beliefs. He has been guaranteed the right to practise and propagate his religion, subject to the limitations aforesaid. His right to practise his religion must also be subject to the criminal laws of the country, validly passed with reference to actions which the legislature has declared to be of a penal character. Laws made by a competent legislature in the interest of public order and the like, restricting religious practices, would come within the regulating power of the State. For example, there may be religious practices of sacrifice of human beings, or sacrifice of animals in a way deleterious to the well-being of the community at large. It is open to the State to intervene, by legislation, to restrict or to regulate to the extent of completely stopping such deleterious practices. It must, therefore, be held that though the freedom of conscience is guaranteed to every individual so that he may hold any beliefs he likes, his actions in pursuance of those beliefs may be liable to restrictions in the interest of the community at large, as may be determined by common consent, that is to say, by a competent legislature. It was on such humanitarian grounds, and for the purpose of social reform, that so called religious practices like immolating a widow at the pyre of her deceased husband, or of dedicating a virgin girl of tender years to a God to function as a devadasi, or of ostracising a person from all social contacts and religious communion on account of his having eaten

forbidden food or taboo, were stopped by legislation.”

(emphasis supplied)

- L. That in light of the exposition on Article 25 of the Constitution, the right to freely profess and practice religion cannot be derogated to the extent that it can be restricted by way of a mere uniform policy created by extra-legal College Development Committees.
- M. That, thus, the Hon’ble High Court has erred in upholding the proscription on the practice of wearing *hijab/ headscarf* in Pre-University Colleges without truly identifying the constitutional ground on which it is being permitted.
- N. That, further, the Hon’ble High Court has erred in dismissing *hijab/ headscarf* as an essential religious practice despite categoric holdings by the Kerala High Court in ***Amna Bint Basheer and Ors. vs. Central Board of Secondary Education and Ors., (2016) 2 KLJ 605*** that the practice is essential to Islam. The relevant extracts are as follows:

“16. Coming back to the core issue in this writ petition about the dress code; it is to be noted Islam embrace and encompass guidance to the human in all walks of life. The Shariah is the Islamic law. The Shariah consists of two things.

i. The laws revealed through Holy Quran.

ii. The laws that are taken from the lifestyle and teachings of the prophet Mohammed. This part is called Hadiths.

The Holy Quran consist of a broad and general prepositions. It is often through Hadiths, Quranic prepositions are interpreted or explained. Therefore, validity of expected conduct of the believer rests on the credibility of reporting of Hadiths as well. The whole idea of Quranic injunctions and Hadiths is to reduce the rights and obligations to formulate certain standards of behavior of individuals in his conduct in obedience to the commands of the God. This presuppose to bind his own behavior as well as of the community.

17. As has been note above the Hadiths have significant role in determining the Shariah law. In Chapter 7 'Surah' known as 'Heights', the Quran reminds believer the requirements of following the Hadiths. In verse 157, it is stated as follows:

"Those who follow the messenger, the prophet who can neither read nor write, whom they will find described in the Torah and the Gospel (which are) with them. He will enjoin on them that which is right and forbid them which is wrong. He will make lawful for them all good things and prohibit for them only the foul; and he will relieve them of their burden and the fetters that they used to wear. Then those who believe in him, and honour him, and help him and follow the light which is sent down with him, they are successful."

In another Chapter 59 known as 'Exile', in verse 7, the Quran commands the believer as follows:

"Whatever the messenger gives you, take it. And whatsoever he forbidden abstain from it."

However, there is a possibility of reporting Hadiths in different way about life, sayings and teaching of prophet Mohamed, the Messenger. This is one of the reason, the different schools of thoughts have come into existence among the Muslims. The different propositions that may also result in conflict of views and opinions. As far as the constitutional Courts are concerned, when called upon to decide the rights premised

on the freedom guaranteed under Article 25(1) or 26 is to accommodate such different propositions to honour such freedom. The constitutional Courts are looking the issue from the angle of freedom guaranteed and not to take-up on the task of validity of such propositions, as the priests or proponents of such proposition would do. The Constitutional Courts are expected to safeguard all such proposition, stems from belief or faith, irrespective of the challenge being made for acceptance of such propositions within or outside the religion. The authority to decide what is valid or not valid should be left to the discretion of the persons referred under Article 25(1) or to the denominations as referred under Article 26. The right of denominations underscores here the right to profess and practice in an organized manner by a sect within a large group of religion. The Court will always have to protect the essence of such liberty. However, nothing would impede the State being guardian of all citizens to bring any legislation consistent with the essential practice of religion.

18. *The petitioners' concern is that the dress code as now prescribed would not allow the candidates to wear the headscarf and full sleeve dress. It is the case of the petitioners that Shariah mandates women to wear the headscarf and full sleeve dress and therefore, any prescription contrary is repugnant to protection of the religious freedom as provided under Article 25(1).*

19. *Therefore, this Court has to examine the nature of the dress code prescribed for women in Islam and; such prescription is an essential part of the religion or not; and if it forms part of essential religious practice, can it be regulated in the light of Article 25(1).*

20. *In Chapter 24 known as "The Light" in verse 31 in Holy Quran, the command is as follows:*

"31. And tell the believing women to lower their gaze and be modest, and to display of their adornment only that which is apparent, and to draw their veils over their bosoms, and not to reveal their adornment save to their own husbands or fathers or husbands' fathers, or their sons or their husbands' sons, or their brothers or their brothers' sons or sisters' sons, or their women, or their slaves, or male attendants who lack vigour, or children who know naught of women's nakedness. And let them not stamp their feet so as to reveal what they hide of their adornment. And turn unto Allah together, O believers, so that ye may succeed." [Ref: Ibid]

21. *In the original text in Arabic, the veil is referred as a 'Khumur'. In 'the Islamic digest of Aqeedah and*

Fiqh' by Mahmoud Rida Murad 'Khumur' is mentioned as follows:

"Khumur, or head cover, is the cloth which covers all of the hair on the head, while the work, 'juyoob' (pl. of jaib) means not only the bosom, as commonly thought, but it includes the neck too."

22 . In the Chapter 33 known as "The Clans" in verse 59 of the Holy Quran, the command is as follows:

"O Prophet, tell your wives and your daughters and the women of the believers to lower over them a portion of their jilbabs. That is more suitable that they will be known and not be harmed. And even Allah Forgiving and Merciful." (Ref: Ibid)

23. The reference of jilbab in the above chapter would indicate that the Islamic dress code for women not only consists of a scarf that covers the head, the neck and the bosom but also includes the overall dress that should be long and loose. The jilbab in Arabic Dictionary like lisanu-Al-Arab referred as the loose outer garment.

24 . In one of the Hadidhs (words of Prophet Mohammed), explaining the Quranic verses to his sister-in-law 'Asma' is as follows:

"O Asma! It is not correct for a woman to show her parts other than her hands and face to strangers after she begins to have menstruation."

[Reported by Abudawud ref: hadith No. 4092 kitab al libas (book of clothing Sunan Abu Dawud)]

25. In another Hadidh reported by Thirmidi is as follows:

"Abdullah, son of Umar bin al-Khattab, with whom Allah is pleased, reported that the Messenger of Allah, said: On the Day of Resurrection, Allah will not look at the man who trails his garment along boastfully". Thereupon, Umm Salamah asked, 'What should women do with their garments?' The Prophet said: 'They should lower their garments a hand span,' Umm Salamah further said, 'Women's feet would still be uncovered.' The Messenger of Allah (S), replied: 'Let them lower them a forearm's length, but not longer.'

[Ref: The Islamic Digest of Aqeedah and Fiqh by Mahmoud Rida Murad]

26. The prescription of the dress code as above is essential or not has to be understood with reference to the Shariah injunctions. There are five kinds of rules recognized in Islamic law to classify the nature of the law for its operation which are as follows:

- i. Farz: Strictly obligatory. Five times prayer, Compulsory payment (zakat), Fasting, etc.*
- ii. Haram: Those are strictly forbidden. Consumption of liquor, eating of pork etc.*
- iii. Mandub: Things which are advice to do. These are things which one fails to perform would not cause any harm to him like additional prayers apart from the five times obligatory prayers.*
- iv. Makruh: Which means advice to refrain from. These sins are a lesser category which is short of forbidden, such as wasting food, water, etc*
- v. Jaiz: This is about the things, the religion is in different. These things are lawful and would not reap any rewards.*

(Ref: *Outlines of Mohammadan Law* by Asaf A.A. Fyzee)

27. In the event of infringement of the dress code, punishment is referred in the Hadiths as follows:

"Fudhalah bin Ubaid reported that the Messenger of Allah(s) said. Three people about whose evil fate you should not feel sorry: a man who disassociates himself from the Muslim Ummah, disobeys his Imam (the ruler of the Muslim Ummah), and dies in that state; a slave who runs away from his master and dies before returning to him; a woman whose husband goes away after having provided her with provisions but she displays her beauty, in tabarruj during his absence. So do not be concerned about them. The jilbab must conceal the underclothes. Such requirement applies to the garment a Muslimah should wear for Salah as well. He said. There will be, in the latter days of my Ummah, women who will be dressed and yet undressed. (They will be wearing) On their heads (things) resembling camels' humps. Curse them. They are accursed."

28. Thus, the analysis of the Quranic injunctions and the Hadiths would show that it is a farz to cover the head and wear the long sleeved dress except face part and exposing the body otherwise is forbidden (haram). When farz is violated by any action opposite to farz that action becomes forbidden (haram). However, there is a possibility of having different views or opinions for the believers of the Islam based on ijithihad (independent reasoning). This Court is not discarding such views. The possibility of having

different propositions is not a ground to deny the freedom, if such propositions have some foundation in the claim. As has been adverted above, the claim of the petitioners is well founded even though, a different view is possible. This Court is only expected to safeguard such freedom based on the Constitution in preference to giving a religious verdict.

29. The discussions as above would show that covering the head and wearing a long sleeve dress by women have been treated as an essential part of the Islamic religion. It follows a fortiori, Article 25(1) protects such prescription of the dress code.”

(emphasis supplied)

- O. That the Hon’ble High Court erred in supplanting its understanding of the practice of wearing *hijab/ headscarf* and placing it in a historical and cultural context, to deprive it of its status of “essential practice” to the religion of Islam.
- P. That the Hon’ble High Court has failed to appreciate the ratio laid down in *Shayara Bano v. Union of India AIR 2017 SC 4609 (para 55)*, which upholds the authority of the Quran and protects all practices which emanate from the Quranic injunction.
- Q. That to this extent, the statement of law of Hon’ble Bombay High Court in *Jamshedji v. Soonabhai, 10 Bom LR 417* and its reiteration in *Bijoe Emmanuel v. State of Kerala, (1986) 3 SCC 615* are apposite:

“20. The meaning of the expression “religion” in the context of the Fundamental Right to freedom of

conscience and the right to profess, practise and propagate religion, guaranteed by Article 25 of the Constitution, has been explained in the well known cases of Commissioner, Hindu Religious Endowment, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [Commr, HRE v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282 : 1954 SCR 1005] , Ratilal Panachand Gandhi v. State of Bombay [AIR 1954 SC 388, 392 : 1954 SCR 1055] and S.P. Mittal v. Union of India [(1983) 1 SCC 51] . It is not necessary for our present purpose to refer to the exposition contained in these judgments except to say that in the first of these cases Mukherjea, J. made a reference to “Jehovah's Witnesses” and appeared to quote with approval the views of Latham, C.J. of the Australian High Court in Adelaide Company v. The Commonwealth [67 CLR 116] and those of the American Supreme Court in West Virginia State Board of Education v. Barnette [87 Law Ed 1628, 1633 : 319 US 624, 629 (1943)] . In Rotilal's case [AIR 1954 SC 388, 392 : 1954 SCR 1055] we also notice that Mukherjea, J. quoted as appropriate Davar, J.'s following observations in Jamshed Ji v. Soonabai [(1909) 33 Bom 122 : 10 Bom LR 417] :

“If this is the belief of the community and it is proved undoubtedly to be the belief of the Zoroastrian community, — a secular Judge is bound to accept that belief — it is not for him to sit in judgment on that belief, he has no right to interfere with the conscience of a donor who makes

a gift in favour of what he believes to be the advancement of his religion and the welfare of his community or mankind.”

We do endorse the view suggested by Davar, J's observation that the question is not whether a particular religious belief or practice appeals to our reason or sentiment but whether the belief is genuinely and conscientiously held as part of the profession or practice of religion. Our personal views and reactions are irrelevant. If the belief is genuinely and conscientiously held it attracts the protection of Article 25 but subject, of course, to the inhibitions contained therein.”

(emphasis supplied)

- R. That it has been wrongly held in the impugned judgement that the above extracts from ***Jamshedji*** and ***Bijoe Emmanuel*** are solely pertaining to the beliefs of the Zoroastrian community; rather they lay down the appropriate exposition on the application of the essential religious practice test, across the board.
- S. That the Hon'ble High Court has erred in upholding the Impugned G.O. which attempts to coerce homogeneity in the name of uniformity and maintaining secular outlook, as against the *diktats* of this Hon'ble Court in ***Bijoe Emmanuel v. State of Kerala (1986) 3 SCC 615***.
- T. That the Hon'ble High Court erred in upholding the Impugned G.O. by stating that it does not affect the right of privacy of students like the Petitioners to the extent that it warrants interference. That the Hon'ble

Court has made no statement whatsoever about how the right of the female Muslim student has not been affected to a “sufficient extent”.

- U. That the Hon’ble High Court has wrongly contended that the right being claimed by Petitioners is a “derivative right” and falls within a “penumbra of rights” which cannot be enforced.
- V. That this Hon’ble Court has categorically held that the right to make decisions about one’s intrinsic personhood, which includes the right to dressing is at the core of the right to privacy. In this regard, it had been held as follows in Justice K.S. Puttaswamy & Ors. v. Union of India & Ors. (2017) 10 SCC 1:

“297. What, then, does privacy postulate? Privacy postulates the reservation of a private space for the individual, described as the right to be let alone. The concept is founded on the autonomy of the individual. The ability of an individual to make choices lies at the core of the human personality. The notion of privacy enables the individual to assert and control the human element which is inseparable from the personality of the individual. The inviolable nature of the human personality is manifested in the ability to make decisions on matters intimate to human life. The autonomy of the individual is associated over matters which can be kept private. These are concerns over which there is a legitimate expectation of privacy. The body and the mind are inseparable elements of the human personality. The integrity of the body and

the sanctity of the mind can exist on the foundation that each individual possesses an inalienable ability and right to preserve a private space in which the human personality can develop. Without the ability to make choices, the inviolability of the personality would be in doubt. Recognising a zone of privacy is but an acknowledgment that each individual must be entitled to chart and pursue the course of development of personality. Hence privacy is a postulate of human dignity itself. Thoughts and behavioural patterns which are intimate to an individual are entitled to a zone of privacy where one is free of social expectations. In that zone of privacy, an individual is not judged by others. Privacy enables each individual to take crucial decisions which find expression in the human personality. It enables individuals to preserve their beliefs, thoughts, expressions, ideas, ideologies, preferences and choices against societal demands of homogeneity. Privacy is an intrinsic recognition of heterogeneity, of the right of the individual to be different and to stand against the tide of conformity in creating a zone of solitude. Privacy protects the individual from the searching glare of publicity in matters which are personal to his or her life. Privacy attaches to the person and not to the place where it is associated. Privacy constitutes the foundation of all liberty because it is in privacy that the individual can decide how liberty is best exercised. Individual dignity and privacy are inextricably linked in a pattern woven

out of a thread of diversity into the fabric of a plural culture.

298. *Privacy of the individual is an essential aspect of dignity. Dignity has both an intrinsic and instrumental value. As an intrinsic value, human dignity is an entitlement or a constitutionally protected interest in itself. In its instrumental facet, dignity and freedom are inseparably intertwined, each being a facilitative tool to achieve the other. The ability of the individual to protect a zone of privacy enables the realisation of the full value of life and liberty. Liberty has a broader meaning of which privacy is a subset. All liberties may not be exercised in privacy. Yet others can be fulfilled only within a private space. Privacy enables the individual to retain the autonomy of the body and mind. The autonomy of the individual is the ability to make decisions on vital matters of concern to life. Privacy has not been couched as an independent fundamental right. But that does not detract from the constitutional protection afforded to it, once the true nature of privacy and its relationship with those fundamental rights which are expressly protected is understood. Privacy lies across the spectrum of protected freedoms. The guarantee of equality is a guarantee against arbitrary State action. It prevents the State from discriminating between individuals. The destruction by the State of a sanctified personal space whether of the body or of the mind is violative of the guarantee against arbitrary State action. Privacy of the body entitles an individual to*

the integrity of the physical aspects of personhood.

*The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination. When these guarantees intersect with gender, they create a private space which protects all those elements which are crucial to gender identity. The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual. Above all, the privacy of the individual recognises an inviolable right to determine how freedom shall be exercised. An individual may perceive that the best form of expression is to remain silent. Silence postulates a realm of privacy. An artist finds reflection of the soul in a creative endeavour. A writer expresses the outcome of a process of thought. A musician contemplates upon notes which musically lead to silence. The silence, which lies within, reflects on the ability to choose how to convey thoughts and ideas or interact with others. These are crucial aspects of personhood. The freedoms under Article 19 can be fulfilled where the individual is entitled to decide upon his or her preferences. **Read in conjunction with Article 21, liberty enables the individual to have a choice of preferences on various facets of life including what and how one will eat, the way one will dress, the faith one will espouse and a myriad other matters on which autonomy and self-determination require a choice to be made within the privacy of the mind. The constitutional right to the freedom of religion***

under Article 25 has implicit within it the ability to choose a faith and the freedom to express or not express those choices to the world. These are some illustrations of the manner in which privacy facilitates freedom and is intrinsic to the exercise of liberty. The Constitution does not contain a separate article telling us that privacy has been declared to be a fundamental right. Nor have we tagged the provisions of Part III with an alpha-suffixed right to privacy : this is not an act of judicial redrafting. Dignity cannot exist without privacy. Both reside within the inalienable values of life, liberty and freedom which the Constitution has recognised. Privacy is the ultimate expression of the sanctity of the individual. It is a constitutional value which straddles across the spectrum of fundamental rights and protects for the individual a zone of choice and self-determination.

299. Privacy represents the core of the human personality and recognises the ability of each individual to make choices and to take decisions governing matters intimate and personal. Yet, it is necessary to acknowledge that individuals live in communities and work in communities. Their personalities affect and, in turn are shaped by their social environment. The individual is not a hermit. The lives of individuals are as much a social phenomenon. In their interactions with others, individuals are constantly engaged in behavioural patterns and in relationships impacting on the rest of society. Equally, the life of the individual is

being consistently shaped by cultural and social values imbibed from living in the community. This state of flux which represents a constant evolution of individual personhood in the relationship with the rest of society provides the rationale for reserving to the individual a zone of repose. The lives which individuals lead as members of society engender a reasonable expectation of privacy. The notion of a reasonable expectation of privacy has elements both of a subjective and objective nature. Privacy at a subjective level is a reflection of those areas where an individual desires to be left alone. On an objective plane, privacy is defined by those constitutional values which shape the content of the protected zone where the individual ought to be left alone. The notion that there must exist a reasonable expectation of privacy ensures that while on the one hand, the individual has a protected zone of privacy, yet on the other, the exercise of individual choices is subject to the rights of others to lead orderly lives. For instance, an individual who possesses a plot of land may decide to build upon it subject to zoning regulations. If the building bye-laws define the area upon which construction can be raised or the height of the boundary wall around the property, the right to privacy of the individual is conditioned by regulations designed to protect the interests of the community in planned spaces. Hence while the individual is entitled to a zone of privacy, its extent is based not only on the subjective expectation of the

individual but on an objective principle which defines a reasonable expectation.”

(emphasis supplied)

W. That Justice Chelameswar in ***Puttaswamy (supra)***, has, infact categorically recognized that the right to dress and religious observances is part of that zone of privacy which should be kept away from the “state glare”, in the following terms:

*“372...Insofar as religious beliefs are concerned, a good deal of the misery our species suffer owes its existence to and centres around competing claims of the right to propagate religion. **Constitution of India protects the liberty of all subjects guaranteeing the freedom of conscience and right to freely profess, practise and propagate religion. While the right to freely “profess, practise and propagate religion” may be a facet of free speech guaranteed under Article 19(1)(a), the freedom of the belief or faith in any religion is a matter of conscience falling within the zone of purely private thought process and is an aspect of liberty.***

373... The choice of appearance and apparel are also aspects of the right to privacy. The freedom of certain groups of subjects to determine their appearance and apparel (such as keeping long hair and wearing a turban) are protected not as a part of the right to privacy but as a part of their religious belief. Such a freedom need not necessarily be based on religious beliefs falling under Article 25...”

(emphasis supplied)

- X. That the Hon'ble Court has erred in upholding the Impugned G.O., when it for the reasons stated above restricts access of Petitioners and other such students to education, a fundamental right guaranteed under Article 21 of the Constitution of India.
- Y. That the Hon'ble High Court has erred in upholding the Impugned G.O. and stating that it does not infringe on the right of students like the Petitioners to free speech to a sufficient extent. That no indication of what would be sufficient has been provided in the impugned judgement.
- Z. That the impugned G.O. evidently and sufficiently violates the right of Petitioners and other such students to free speech. That any attempt of the State to silence the expression of an individual or a group expressing themselves and their religious beliefs without harming anyone, merely because a group of individuals are "heckling" them and disrupting order has been repeatedly held to be a suppression of the right to free speech of the individual. (*Indibly Creative (P) Ltd. v. State of WB (2020) 12 SCC 436*).
- AA. That the Hon'ble High Court has erred in upholding the impugned G.O. which is evidently discriminatory and manifestly arbitrary, as it singles out the one religious practice of wearing *hijab/ headscarf* and proscribes it.
Manifest arbitrariness has been defined as such in *Shayara Bano (supra)*:

“...not fair, not reasonable, discriminatory, not transparent, capricious, biased, with favoritism or nepotism and not in pursuit of promotion of healthy competition and equitable treatment. Positively speaking, it should conform to norms which are rational, informed with reason and guided by public interest, etc.”

(emphasis supplied)

- BB.** That the Hon’ble High Court erred in holding that Impugned G.O. proportionally restricts the rights of students like the Petitioners.
- CC.** That the Hon’ble High Court has erred in upholding the impugned G.O. without noticing its flagrant violation of Article 29 of the Constitution of India.
- DD.** That Article 29 and the consequent right, which provides succour to the right to Muslim girls to wear headscarves, is not subject to any restrictions whatsoever, as confirmed by the Hon’ble Supreme Court in *Jagdev Singh Sidhanti v. Pratap Singh Daulta*, AIR 1965 SC 183.
- EE.** That the Hon’ble High Court has erred in passing an order which doesn’t allow students like the Petitioner to wear headscarves or even their *dupattas* over their heads in the classrooms, while the same is allowed in the school compound, and is not found to be destructive of public order.
- FF.** That the Hon’ble Court has erred in upholding the Impugned GO which confers upon an extra-legal body, the College Development Committee, the power to

regulate uniform, and effectively giving this delegated body the power to restrict the Petitioners' right to wear *hijab/ headscarf*.

GG. That the College Development Committee is the product of a Government Circular of Karnataka bearing No. ED 580 SHH 2013 dated 31.01.2014, which traces no legitimacy from the 1983 Act, and also has not been conferred any specific powers under the Act. That being the case, it cannot be conferred such a wide-ranging power of regulating uniform to the effect that it infringes on the Petitioners and other such students' right to free practice of religion.

HH. That the Hon'ble High Court has further erred in upholding the impugned G.O. especially when the Guidelines issued by the Department of Pre-University College, State of Karnataka make it abundantly clear that uniform is not mandatory for students studying in Pre-University College, and any attempt to impose uniform will be illegal.

II. That the Hon'ble High Court has erred in holding that the Impugned G.O. itself does not proscribe the *hijab/ headscarf*. By singling out the instance of *hijab/ headscarf* and proscribing it, by way of doctrine of dictation it effectively instructs the extra-legal CDC to proscribe the *hijab/ headscarf*.

JJ. That the Hon'ble High Court has erred in commenting on the issue of essential religious practises while the

issue is pending adjudication before a Bench of this Hon'ble Court.

KK. That the Hon'ble High Court has erred in passing the Impugned Judgement which disturbs and jeopardizes education of thousands of Muslim students including that of Petitioners herein.

LL. That Hon'ble High Court has failed to understand the sequence of events which targetted Muslim students, with Respondent No. 15 denying entry of Petitioners in educational institutions while wearing the *hijab* and the subsequent heckling of Muslim female students by other students wearing saffron shawls.

MM. That the Hon'ble High Court erred in upholding the impugned G.O. when it very evidently violates India's national and international obligations on protecting the rights of children.

NN. That the impugned G.O. violates India's obligations under the the Convention on the Rights of the Child, acceded to by India on 11.12.1992, placing binding obligations on the country to protect the best interests of the child in all state action. That specifically the impugned G.O. violates Articles 14, 29 and 30 of this Convention.

OO. That, the Hon'ble High Court has failed to appreciate that that the Impugned Judgement is passed under the dictates of Section 133 (2) and Section 7 (2)(g)(v) of the 1983 Act read with Rule 11 of the Karnataka Educational Institutions (Classification, Regulation and

Prescription of Curricula) Rules, 1995, while the case before the Hon'ble High Court was of one under the 2006 Rules.

PP. That the Hon'ble High Court did not consider any pleadings, rejoinders, oral or written arguments of the Petitioners while passing the Impugned Judgement, which has no legal foundation and is not even based on the assertions of the Respondents.

QQ. That the impugned order is also otherwise bad in law and on facts.

RR. That Petitioner seeks leave of this Hon'ble Court to raise additional grounds *vide* subsequent applications.

6. GROUNDS FOR INTERIM RELIEF

Annual examinations of the Petitioners are tentatively scheduled to commence in March 29, 2022 onwards. It is humbly prayed that the Petitioners be permitted to take the examinations while wearing the *hijab/ headscarf*. Prohibition upon the Petitioners from taking the exam while wearing a *hijab/ headscarf* will affect an entire academic year of theirs and have serious adverse implications on their career.

7. MAIN PRAYER

In the circumstances set forth above, it is therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- a.** Grant special leave to appeal against the common impugned final judgment and order dated 15.03.2022 passed by the Hon'ble High Court of Judicature of

Karnataka at Bengaluru in Writ Petition No. 2146 of 2022; and

- b. Pass any other or further orders as may be deemed fit and proper in the interest of justice.

8. PRAYER FOR INTERIM RELIEF

In the circumstances set forth above, it is therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- a. Grant Petitioners the relief of appearing for their annual examination while wearing a *hijab/ headscarf*.
- b. Pass any other or further orders as may be deemed fit and proper in the interest of justice.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER SHALL AS IN DUTY BOUND EVER PRAY.

DRAWN BY:

Tanvi Tuhina, Adv.

Aman Naqvi, Adv.

Place: New Delhi

Drawn On: 20.03.2022

Filed On: 23.03.2022

FILED BY:



SHADAN FARASAT

Advocate for the Petitioners

IN THE SUPREME COURT OF INDIA

ORDER XXI RULE 3 (1) A

CIVIL APPELLATE JURISDICTIONSpecial Leave Petition Civil No. 5690 of 2022

(Against the Common Impugned Final Judgment and Order
dated 15.03.2022 passed by the Hon'ble High Court of Karnataka
at Bengaluru in Writ Petition No. 2146 of 2022)

WITH PRAYER FOR INTERIM RELIEF**IN THE MATTER OF:**

Shafa & Another

... **Petitioners****Versus**

Chief Secretary Primary & Higher Education Department, State
of Karnataka & Others

... **Respondents****CERTIFICATE**

“Certified that the Special Leave Petition is confined only to the pleadings before the Court whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds except Annexure P-19 have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/annexures attached to the special leave petition are necessary to answer the questions of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the Petitioner/person authorized by the Petitioner whose Affidavit is filed in support of the Special Leave Petition.”

Filed By:

DRAWN ON: 20.03.2022

FILED ON: 23.03.2022

SHADAN FARASAT

ADVOCATE FOR THE PETITIONERS

**THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)**

SPECIAL LEAVE PETITION (C.) No. 5690 OF 2022

IN THE MATTER OF:

Shafa and Another

... Petitioners

Versus

Chief Secretary Primary and High Education Department,
State of Karnataka and Others

... Respondents

AFFIDAVIT

I, Shahina, W/o Mohammed Shameem Aged about 42 years, R/o # 3-73 Mallar Gujji house, Mallar Village, Majoor, Kaup, Udupi, Karnataka - 574106, the Mother and **authorized Representative / guardian of Shafa (Minor) and** representing on behalf of other petitioner as well ,do hereby solemnly affirm and state as follows:

1. That I am the Mother of Shafa (Petitioner-Minor) and Representing Petitioner in the present Special Leave Petition and being conversant with the facts and circumstances of the case, I am competent to swear to the present affidavit.
2. That the contents of the Synopsis, List of Dates and Events at page No. dB to NN and Special Leave Petition from Para No. 1 to 8 at Page No. 131 to 172 and accompanying applications have been drafted by our Counsel under my instructions and the same are true and correct to my personal knowledge and belief.
3. That the annexures enclosed with the Special Leave Petition are true copies of their respective originals.

noc 6e
shahina



4. That the contents of this affidavit are true and correct to my personal knowledge and belief.

Shahina

DEPONENT

VERIFICATION

Verified at Bangalore on this the 21st day of March, 2022 that the contents of the present affidavit at Paragraphs No. 1 to 4 are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

RES

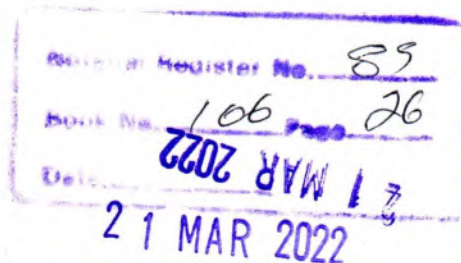


Shahina

DEPONENT

SWORN TO BEFORE ME

A. IDINABBA, BSc., L.L.B.
ADVOCATE AND NOTARY
 Flat # E32, GOLDEN ENCLAVE
 OLD AIRPORT ROAD
 MURUGESH PALAYA
 BANGALORE-560 017



21 MAR 2022

APPENDIX

Central Government Act

The Constitution of India, 1949

Article 14 - Equality before law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15 - Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
- (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to
 - (a) access to shops, public restaurants, hotels and places of public entertainment; or
 - (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
- (3) Nothing in this article shall prevent the State from making any special provision for women and children.
- (4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes].

- (5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.
- (6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,--
- (a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and
 - (b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.

Explanation.- For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.]

Article 19 - Protection of certain rights regarding freedom of speech, etc.

- (1) All citizens shall have the right-
 - (a) to freedom of speech and expression;
 - (b) to assemble peaceably and without arms;
 - (c) to form associations or unions ⁷[or co-operative societies];
 - (d) to move freely throughout the territory of India;
 - (e) to reside and settle in any part of the territory of India;
 - [and]
 - (f) [***]
 - (g) to practise any profession, or to carry on any occupation, trade or business.
- (2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of ⁴[the sovereignty and integrity of India,] the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.]
- (3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or

prevent the State from making any law imposing, in the interests of ⁴[the sovereignty and integrity of India or] public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

- (4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of ⁴[the sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.
- (5) Nothing in ⁵[sub-clauses (d) and (e)] of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.
- (6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, ⁶[nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,-
 - (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

- (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise].

Article 21 - Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 25 - Freedom of conscience and free profession, practice and propagation of religion

- (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.
- (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—
 - (a) regulating or restricting any economic, financial, political or other secular activity which maybe associated with religious practice;
 - (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Article 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,

Article 46 - Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections

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.

Article 51 - Promotion of international peace and security

The State shall endeavour to—

- (a) promote international peace and security;
- (b) maintain just and honourable relations between nations;
- (c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and
- (d) encourage settlement of international disputes by arbitration.

Article 246 - Subject-matter of laws made by Parliament and by the Legislatures of States

- (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List 1 in the Seventh Schedule (in this Constitution referred to as the "Union List").

- (2) Notwithstanding anything in clause (3), Parliament and subject to clause (1), the Legislature of any State ¹[**] also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").
- (3) Subject to clauses (1) and (2), the Legislature of any State ¹[***] has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').
- (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included ²[in a State] notwithstanding that such matter is a matter enumerated in the State List.

Article 253 - Legislation for giving effect to international agreements

Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

State Government Act

Karnataka Education Act, 1983

Section 7 - Government to prescribe curricula, etc..

- (1) Subject to such rules as may be prescribed, the State Government may, in respect of educational institutions, by order specify,-

- (a) the curricula, syllabi and text books for any course of instruction;
 - (b) the duration of such course;
 - (c) the medium of instruction;
 - (d) the scheme of examinations and evaluation;
 - (e) the number of working days and working hours in an academic year;
 - (f) the rates at which tuition and other fees, building fund or other amount, by whatever name called, may be charged from students or on behalf of students;
 - (g) the staff pattern (teaching and non-teaching) and the educational and other qualifications for different posts;
 - (h) the facilities to be provided, such as buildings, sanitary arrangements, playground, furniture, equipment, library, teaching aid, laboratory and workshops;
 - (i) such other matters as are considered necessary.
- (2) The curricula under sub-section (1) may also include schemes in respect of,-
- (a) moral and ethical education;
 - (b) population education, physical education, health education and sports;
 - (c) socially useful productive work, work experience and social service;
 - (d) innovative, creative and research activities;
 - (e) promotion of national integration;
 - (f) promotion of civic sense; and
 - (g) inculcation of the sense of the following duties of citizens, enshrined in the Constitution namely:-

- (i) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (ii) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (iii) to uphold and protect the sovereignty, unity and integrity of India;
- (iv) to defend the country and render national service when called upon to do so;
- (v) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities to renounce practices derogatory to the dignity of women;
- (vi) to value and preserve the rich heritage of our composite culture;
- (vii) to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures;
- (viii) to develop the scientific temper, humanism and the spirit of inquiry and reform;
- (ix) to safeguard public property and to abjure violence;
- (x) to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement.

- (3) The prescription under sub-section (1) may be different for the different categories of educational institutions.
- (4) (a) The objectives of education at the primary level shall be universalisation of education at the primary level by comprehensive access by both formal and non-formal means and by improving retention and completion rates with curriculum development and teacher education to help children attain the required level of achievement in the following basic purposes:-
- (i) development of 'basic skills' in literacy in the mother tongue and Kannada (where mother tongue is not Kannada), numeracy and communication;
 - (ii) development of 'life skills' for understanding of and meaningful interaction with the physical and social environment, including study of Indian culture and history, science, health and nutrition;
 - (iii) introduction of 'work experience' or socially useful productive work to provide children with the ability to help themselves, to orient them to the work processes of society and to develop right attitudes to work;
 - (iv) promotion of values including moral values; and
 - (v) development of good attitudes towards further learning.
- (b) The main objective of education at the secondary level shall be to impart such general education as may be prescribed so as to make the pupil fit either for higher

academic studies or for job-oriented vocational courses. The general education so imparted shall, among others, include,-

- (i) the development of linguistic skills and literary appreciation in the regional language;
- (ii) the attainment of prescribed standards of proficiency in any two other selected languages among classical or modern Indian languages including Hindi and English;
- (iii) the acquisition of requisite knowledge in mathematics and physical and biological sciences, with special reference to the physical environment of the pupil;
- (iv) the study of social sciences with special reference to history, geography and civics so as to acquire the minimum necessary knowledge in regard to the State, country and the world;
- (v) the introduction of 'work experience' or 'socially useful productive work' as an integral part of the curriculum; and
- (vi) training in sports, games, physical exercises and other arts.

(5) In every recognised educational institution,-

- (a) the course of instruction shall conform to the curricula and other conditions under sub-section (1); and
- (b) no part of the working hours prescribed shall be utilised for any purpose other than instruction in accordance with the curricula

Section 133 - Powers of Government to give direction

- (1) The State Government may, subject to other provisions of this Act, by order, direct the Commissioner of Public Instruction or the Director or any other officer not below the rank of the District Educational Officer to make an enquiry or to take appropriate proceeding under this Act in respect of any matter specified in the said order and the Director or the other officer, as the case may be, shall report to the State Government in due course the result of the enquiry made or the proceeding taken by him.
- (2) The State Government may give such directions to any educational institution or tutorial institution as in its opinion are necessary or expedient for carrying out the purposes of this Act or to give effect to any of the provisions contained therein or of any rules or orders made thereunder and the Governing Council or the owner, as the case may be, of such institution shall comply with every such direction.
- (3) The State Government may also give such directions to the officers or authorities under its control as in its opinion are necessary or expedient for carrying out the purposes of this Act, and it shall be the duty of such officer or authority to comply with such directions.

TRUE TYPED COPY

Annexure P-1

TRANSLATION COPY OF ANNEXURE -J, PAGE NO: 100- 102

CHAPTER 10

COLLEGE DEVELOPMENT COMMITTEE AND STAFF COUNCIL:

1. Development / Managing Committee:

a) College Development Committee in Government Pre University Colleges:

Karnataka Government Circular No. ED 580 SHH 2013, dated 31-01-2014, all Government Pre University Colleges are advised to create and operate a "College Development Committee" under the following guidelines:

President	MLAs of the Respective Assembly.
Vice President	A Local Person nominated by a Vidhana Sabha member
Members	<p>1) Members of Parent Category - 04 (Four) - One of them is female member, one is PJ. Members of the SEP / OP must be compulsory.</p> <p>2) One member who is interested in the field of education.</p> <p>3) Student Representatives - 02 (Two) - One of them should be a student (This does not apply</p>

	to the Pre University college for boys) 4) Vice Principal and senior Teachers of composite degree college Senior College Lecturer.
Member Secretary	5) Respective College Principal

b) FORMATION OF A MANAGING COMMITTEE IN PRIVATE UNAIDED PRE UNIVERSITY COLLEGES:

Guidelines on forming a Managing Committee in Private Pre University Colleges that are accredited statewide and teaching Pre University courses as specified in Section 42 of the Karnataka Education Act, 1983:

"Managing Committee": The Managing Committee shall be constituted by the Managing Committee for a period of two years. Two other members must be representatives of the mothers who are elected according to the stipulated rules.

- 1) The Management Committee shall be renewed every two years.
- 2) The Management Committee shall have not less than eleven and not more than fifteen members nominated by the Management committee to the Board of Directors, including two Heads of the Academic Institute and two faculty representatives of that institution and at least two other members of the Board of Directors who are elected or their parents representing in the committee.

Clauses:

- i) Nominate senior members of the teaching staff for a period of two years in terms of seniority.
- ii) There shall be no less than three representatives in the institution, but not more than two persons who are close relatives. However, "close relatives" for this purpose are not to nominate persons who are not close relatives to more than two members of the Managing Committee. Husband- wife, father - mother, children, elder brother – younger brother, younger sister – elder sister, brother-in-law, sister-in-law Sister means son or daughter.

Department of Pre-University Education Circular No: PAPUSHI / Accreditation - 01 / Other-015/2011-12 Dated: 09-12-2011 It was advised to send the copy to the District Deputy Director and Director. The College Principal, who does not constitute this Board of Management, will be made a direct liability and the accreditation of such a college will be revoked.

2. STAFF COUNCIL

The Principal shall constitute the College's Staff Council, consisting of at least two chairmen and a maximum of eight senior lecturers, as shall be the subject of the College's academic development examination and administration (consisting of minimum of two lecturers in the same department, lecturers can be hired up to maximum of eight, depending on the number of students in their college). Creating a Staff Council into subgroups to perform specific responsibilities in the care of the Principal.

a. Responsibilities of the Sub-Committee:

- conducting short / half yearly / supplementary / yearly exams.
- Individual scoring on a consolidated basis.
- Submission of data to the Progress Score Committee within one week from the date of completion of the examinations. After handing over the Progress Scores to the students, call the Parents' Meeting and inform the student's progress (including attendance) and obtain the parent's signature on the same.

b) Responsibilities of Progress Committee:

- Entering short / semester / supplementary exams on a consolidated basis based on individual scoring.
- Fill the marks in the Progress report and make it mandatory for the students within ten days from the end of the exam to provide the assignments.

c) Responsibilities of the Attendance Subcommittee:

- To record the attendance of each student in the consolidated attendance area within ten days from the date of completion of examinations and Filling the details of the exams scores of students in the Progress Scoreboard and submitting them to the Examination Committee through the Progress Score Committee.

d) These are the responsibilities of the Subcommittee on Discipline / Complaint / Ragging / Extra-curricular Activities:

- Discipline - Commitment to discipline in students.
- Promote / Encourage students to participate in non-extracurricular activities.
- Examining and resolving complaints from students, parents and the public.

- Set aside one day a week to accept and address student / parent / public requests. Set aside at least two hours to ensure that all lecturers and staff are available during that period.
- Supreme Court decision dated 31-05-2007 to take action to create a conducive environment for ragging cases in colleges. However, if Ragging is found in educational institutions, the department will take legal action against such students and educational institutions.
- In order to prohibit the sale of cigarette and tobacco products within 100 yards of the college premises, take measures to ban cigarette and tobacco products as per COMPACT 2003 (6),

NOTE:

- The lecturers in each classroom shall listen and resolve the complaints / requests / grievances / concerns related to the students and settlement of disputes by the Disciplinary committee.
- The District Deputy Director, who was in charge of resolving the grievances / complaints at the college level, and then to the Director, The Department of Pre University Education, Bangalore

TRUE TYPED TRANSLATED COPY

Annexure P-2

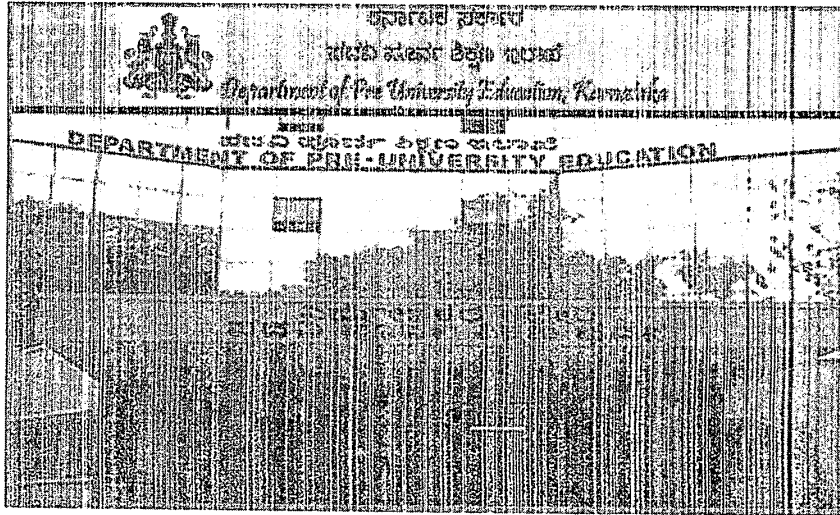
Translation Copy of ANNEXURE -J Page no. 49 and 50



Government of Karnataka

Department of Pre-University Education

Guidelines: 2021-22



Department of Pre-University Education

18th Main Road, Sampige Road, Malleshwaram, Bengaluru – 560012

e-mail: commissioner.pue@gmail.com

Phone Numbers: 080-23562033, 080-23561944

Fax Number: 080-2361852 Website: www.pue.kar.nic.in

CONTENTS

Chapter	Subject / Detail	Page Number
i.	Education	3
ii.	Languages and compositions assigned to Pre-University education	4-5
iii.	Enrollment	6-12
iv.	About the Facilities offered to students with disabilities	13-16
v.	College / composition / subject change	17-21
vi.	Admission / Allocation of seats	22-34
vii.	Details of Fees	35-46
viii.	Enrolment, Education, catalog of symbolic, sports and other activities.	47-69
ix.	College Term, Prohibition on Home Tuitions/ teaching and Conducting of Educational Conferences.	50 & 51
x.	College Development Committee and Staff Council	52-54
xi.	Duties of Chairman	55-58
xii.	Lecturers Attendance, Duties and Remuneration to Lecturers	59&60
xiii.	Information and List of Sports activities.	61-68
xiv.	Cultural educational tour and other activities	69-71
xv.	NSS and Information on National Green.	72
xvi.	Information on Scholarships	73-75
xvii.	Application / Forms of Certificates	76-98

TRANSLATION COPY OF CHAPTER I, Page No. 51

TIME TABLE SCHEDULE

1. 2021-22 Year Time Table

Date: 15.07.2021 to 31.03.2022	Start of Second PUC online classes
Date: 16.08.2021 to 31.03.2022	Start of First PUC online classes
Date : 30.04.2022	Summer Holidays

2. First and Second PUC Registration Schedule.

Classroom	Last date of enrolment without fine (The fee must be deposited to the treasury on the next working day)	Delay in documentation Rs.670/- (Rupees Six hundred and seventy only) with fine fee (include 2 days) (The fee must be deposited to the treasury on the next working day)	Special Fine Rs.2890/- (Rs.2220/- Rupees Two Thousand Two hundred and twenty only) + Rs.670/- Rupees Six hundred and seventy only) two days included (The fee must be deposited to the treasury
-----------	---	---	---

			on the next working day).
First PUC	SSLC – From the next day of result published up to date:09.09.2021	11.09.2021 to 22.09.2021	23.09.2021 to 04.10.2021
Second PUC	15.07.2021 to 13.08.2021	16.08.2021 to 27.08.2021	30.08.2021 to 09.09.2021

Government / Department various stage admissions fees deposited assigned admission dated next working day (with Fine, without Fine and Special Fine). It is the responsibility of the principal and the admission department to deposit the fees to the treasury.

TRANSLATION COPY OF ANNEXURE -J, PAGE NO: 70 – 72

CHAPTER-6

ALLOCATION OF ADMISSION SEATS

Distribution of seats by roster system:

- In all forms of colleges, based on marks, any group reservation student on merit, if they fall within the cut-off marks which is assigned to the general category, then they shall be considered under general category and they shall be added to the general category list.
- Subsequently the respective reservation group must follow accordingly as per the prescribed reservation rules.
- The students belonging to the various categories if they do not file any application then such admissions shall be transferred to general category and distributed as per roster system.
- For any reason, applications belonging to the respective category should not be transferred to the general category without full consideration.
- Such transfers should be specified in Shara.

A. PROCEDURE TO BE FOLLOWED IN GOVERNMENT PRE UNIVERSITY COLLEGES:

1. All available admissions should be made / allocated on merit basis and as per roster system.
2. Even in similar other colleges on the available government admissions 50 % of the admissions shall be on vertically, accordingly as per the reservation category rule 1995 rule 14(6) and these shall be allocated to the girl students and on

the basis of the merit as per roster system it should be distributed to the girl students.

B. PROCEDURE TO BE FOLLOWED IN GENERAL PRIVATELY AIDED PRE UNIVERSITY COLLEGES:

As per rule 1995 sub section 12(b), such similar colleges have the power to allocate 20 % of the total number of admissions as per their management discretion.

1. The remaining 80% of entries must be allocated on a merit basis and as per roster system.
2. In these colleges of the available government admissions 50 % of the admissions shall be on vertically, accordingly as per the reservation category rule 14(5) of 1995 the reservation should be allocated for girl students and on the basis of the merit as per roster system it should be distributed to the girl students.
3. In these colleges if one or two classes are unaided, for that class admissions must be made as per Para A (1) and A (2).
4. In these colleges if one class if all the subjects are unaided, then to such class admission must be made as per Para U (1) and (2).

C. PROCEDURE TO BE FOLLOWED IN PRIVATE MINORITY
(Language & Religious) INSTITUTIONS AIDED PREUNIVERSITY
COLLEGES.

1. In these colleges the management committee has the powers to distribute up-to 50 % of their admissions to their own caste persons.
2. The remaining 50 % of the admission seats to be allocated as per merit and roster system.
3. In these colleges of the available government admissions 50 % of the admissions shall be on vertically, accordingly as per the reservation category rule 14(6) of 1995 the reservation should be allocated for girl students and on the basis of the merit as per roster system it should be distributed to the girl students.

D. PROCEEDURE TO BE FOLLOWED IN PRIVATE SCHEDULED CASTE
/ SCHEDULED TRIBE AIDED PREUNIVERSITY COLLEGES:

1. In these colleges the management committee has the powers to distribute up-to 50 % of their admissions to the students belonging to their own caste.
2. The remaining 50 % of the admission seats to be allocated as per merit and roster system.
3. In these colleges of the available government admissions 50 % of the admissions shall be on vertically, accordingly as per the reservation category rule 14(1) of 1995 the reservation should be allocated for girl students and on the basis of the merit as per roster system it should be distributed to the girl students.

E. PROCEDURE TO BE FOLLOWED IN ALL SECTIONS PRIVATE UNAIDED PREUNIVERSITY COLLEGES.

In these colleges the management committee has the powers to distribute up-to 50 % of their admissions at their discretion.

1. The remaining 50 % of the admission seats to be allocated as per merit and roster system.
2. In these colleges of the available government admissions 50 % of the admissions shall be on vertically, accordingly as per the reservation category rule 14(1) of 1995 the reservation should be allocated for girl students and on the basis of the merit as per roster system it should be distributed to the girl students.

SPECIAL NOTICE:

Those who are studying in Pre University Colleges, in the name of CET / AIEEE / IT / JEE, Integrated course, Bridge Course, etc., are charged illegally more than the prescribed fee, and joining any other Institutions, departments or if any teaching is found being conducted with the help of any other resource/ persons or with the help of any Electronic Media, the accreditation of such colleges will be revoked, and the Principals and management committee members of these institutions will be prosecuted. In conjunction with, they should not use the name of the such institution with the name of their college.

Example: Excluding PU curriculum instructions, Teaching on the syllabus for independent tests /exams, etc.,

- Any colleges that is accredited by the department of Pre University they should not engage in any other kind of activity

with any other institute, coaching institute along with their college other than the governing body. If the college code is misused, stringent action will be taken against the governing body of such college.

- Similarly, the colleges which are recognized by the government, and using their college name / PU code that is recognized by the government other than the Pre University curriculum and department instructions with any other college name or association is not allowed. If it is misused, Strict action will be taken against the management committee.
- Similarly, it is also illegal for any institution to leave the curriculum that is prescribed in the name of PU College, and teaching any other curriculum and forcing students to buy guidebooks, in such institutions Principal & management committee members will be legally prosecuted.
- Except for a textbook printed by the Department of Pre University, it is illegal to pressure the parents / students to buy books and other textbooks.
- Uniform is not mandatory for students studying in Pre University college under Government / Pre University Education Department / Education Act. But some college principals and management committee members have imposed uniforms as mandatory which is illegal. Any violation of the foregoing instructions will be taken seriously

PRACTICAL CLASSES:

Principals prepare and schedule practical subjects classes as per the Department Guidelines. Principals who are not conducting practical classes as per the college schedule will be punished.

NSQF

The NSQF Course for First and Second PUC students from the 2016-17 academic year has been launched in Automobile, IT, Retail, Beauty and Wellness. It is mandatory for principals of colleges with NSQF courses to provide student information on the PU Online portal. It is the responsibility of the Principal to conduct NSQF classes in collaboration with Vice Principals and NSQF Trainers and to follow up on the Circulars issued by NSDS SSA RMSA and Deputy Directors, Department of Pre-University Education.

(Form 1)

Government Pre University Admission Seat Sharing

(Eg: When there are Two Combinations in a class 40+40=80 is allocated)

SEAT MATRIX TO BE FOLLOWED IN GOVERNMENT PRE UNIVERSITY COLLEGES for any ONE COMEINATION. Like PCMB/HEBA/HESP etc.,

SL NO	TOTAL IN TAKE	GIRLS(G) BOYS (B)	IN TAKE	CM 50 %	SC 50 %	ST 50 %	C-1 4 %	2A 15 %	2B 4%	3A 4%	3B 5 %	Surplus
1	40	G	20	9*	3	1**	1	3	1	1	1	
		B	20	9*	3	1**	1	3	1	1	1	
		TOTAL	40	19*	6	1*	2	6	2	2	2	
2	80	G	40	20	6	1	1*	6	2**	2**	2	
		B	40	20	6	1	2**	6	1*	2**	2	
		TOTAL	80	40	12	2	3	12	3	4	4	
3	120	G	60	30	9	2	2*	9	2*	2*	3	1**
		B	60	30	9	2	2*	9	2*	2*	3	1**
		TOTAL	120	60	18	4	4*	18	5**	5**	6	
4	160	G	80	40	12	2*	3*	12	3*	3*	4	1**
		B	80	40	12	2*	3*	12	3*	3*	4	1**
		TOTAL	160	80	24	5	6*	24	6*	7**	8	
5	200	G	100	50	15	3	4	15	4	4	5	
		B	100	50	15	3	4	15	4	4	5	
		TOTAL	200	100	30	6	8	30	8	8	10	
6	240	G	120	60	18	3	5	18	5	5	6	
		B	120	60	18	3	5	18	5	5	6	
		TOTAL	240	120	36	6	10	36	10	10	12	
7	280	G	140	70	21	4	6**	21	6**	5*	7	
		B	140	70	21	4	5*	21	6**	6**	7	
		TOTAL	280	140	42	8	11	42	12	11	14	
8	320	G	160	80	24	5	6*	24	6*	6*	8	
		B	160	80	24	5	6*	24	6*	6*	8	
		TOTAL	320	160	48	10	13**	48	12*	13*	16	

Special Note: 1. This (**) group with the lowest percentage of points should be moved to the same line as this (*) group.

The idea is to create a reservation (horizontal) in the following groups:

Person with Disabilities	Ex Defence Personnels	For state / national level athletes	Humanitarian victims	For those who have participated in the Republic Day Camp NNC 'A' certificate	CBS / ICSE Students
5 %	2%	5%	5%	5%	5%

(Form 2)

Allocation of Admissions in Aided Pre University Colleges

SEAT MATRIX TO BE FOLLOWED IN AIDED PRE-UNIVERSITY COLLEGES.

Note: For subsidized classes only (Management quota 20 % + Govt quota 80 %)

SL NO	TOTAL IN TAKE	Management QUOTA	GIRLS (Govt Quota)	Govt Quota	GM 50 %	SC 50 %	ST 50 %	C-1 4 %	2A 15 %	2B 4%	3A 4%	3B 5 %	Surplus
1	40	8	G	16	7*	2	1**	1	2	1	1	1	
			B	16	7*	2	1**	1	2	1	1	1	
				32	16	4	1	2**	4	2**	1*	2	
2	80	16	G	32	16	5	1	1	5	1	1	2	
			B	32	16	5	1	1	5	1	1	2	
				64	32	10	2	2	10	2	2	4	
3	120	24	G	48	24	7	1*	2	7	2	2	2*	1**
			B	48	24	7	1*	2	7	2	2	2*	1**
				96	48	14	3*	4	14	4	4	5*	
4	160	32	G	64	32	10	2	2*	10	2*	2*	3	1**
			B	64	32	10	2	2*	10	2*	2*	3	1**
				128	64	20	5	6*	20	6*	7**	6	
5	200	40	G	80	40	12	3**	3*	12	3*	3*	4	
			B	80	40	12	3**	3*	12	3*	3*	4	
				160	80	24	5	7**	24	6*	6*	8	
6	240	48	G	96	48	14	3	4	14	4	4	5	
			B	96	48	14	3	4	14	4	4	5	
				192	96	28	6	8	28	8	8	10	
7	280	56	G	112	56	17	3	4*	17	4*	4*	6	1**
			B	112	56	17	3	4*	17	4*	4*	6	1**
				224	112	34	6	9*	34	9*	8	12	
8	320	64	G	128	64	19	4	5*	19	5*	5*	6*	1**
			B	128	64	19	4	5*	19	5*	5*	6*	1**
				256	128	38	8	10	38	11*	11*	12	

Special Note: 1. This (**) group with the lowest percentage of points should be moved to the same line as this (*) group.

The idea is to create a reservation (horizontal) in the following groups:

Person with Disabilities	Ex Defence Personnels	For state / national level athletes	Humanitarian victims	For those who have participated in the Republic Day Camp NNC 'A' certificate	CBS / ICSE Students
5 %	2%	5%	5%	5%	5%

(Form 3)

Schedule Cast / Tribe/ Language / Religious Minority / Grant & Other Un-Aided Pre University Colleges.

SEAT MATRIX TO BE FOLLOWED IN MINORITY (Linguistic & Religious)/ SC/ST AIDED & OTHER UNAIDED PRE-UNIVERSITY COLLEGES.

(Applicable to other non-subsidized college grants)

SL NO	TOTAL IN TAKE	Management QUOTA	GIRLS(G) BOYS (B)	Govt Quota	GM 50 %	SC 50 %	ST 50 %	C-1 4 %	2A 15 %	2B 4%	3A 4%	3B 5 %	Surplus Seat
1	40	20	G	10	4*	1*	Nil *	1**	1*	1**	1**	1**	
			B	10	4*	1*	Nil *	1**	1*	1**	1**	1**	
				20	9*	3*	1*	1	3*	1	1	1	
2	80	40	G	20	9	3	1	1	3	1	1	1	
			B	20	9	3	1	1	3	1	1	1	
				40	19*	6	2	2	6	2	2	2	
3	120	60	G	30	14*	5**	1	1	5**	1	1	2**	
			B	30	14*	5**	1	1	5**	1	1	2**	
				60	29*	10**	2	2	10**	2	2	3**	
4	160	80	G	40	19*	6	1	2**	6	2**	2**	2	
			B	40	19*	6	1	2**	6	2**	2**	2	
				80	40*	12	2	3*	12	3*	3*	4	1**
5	200	100	G	50	25	7*	2**	2	7*	2	2	3**	
			B	50	25	8**	1*	2	8**	2	2	2*	
				100	50	15	3	4	15	4	4	5	
6	240	120	G	60	30	9	2	2*	9	2*	2*	3	1**
			B	60	30	9	2	2*	9	2*	2*	3	1**
				120	60	18	4	5*	18	5*	4*	6	
7	280	140	G	70	35	10*	2	3	10*	3	3	3	
			B	70	35	11*	2	3	10*	3	3	3	
				140	70	21	4	6	20	6	6	7	
8	320	160	G	80	40	12	2*	3*	12	3*	3*	4	1**
			B	80	40	12	2*	3*	12	3*	3*	4	1**
				160	80	24	5*	6	24	6	7*	8	

Special Note: 1. This (**) group with the lowest percentage of points should be moved to the same line as this (*) group.

The idea is to create a reservation (horizontal) in the following groups:

Person with Disabilities	Ex Defence Personnels	For state / national level athletes	Humanitarian victims	For those who have participated in the Republic Day Camp NNC 'A' certificate	CBS / ICSE Students
5 %	2%	5%	5%	5%	5%

SPECIAL NOTE: 1) Privately funded Scheduled Caste / Scheduled Tribe / Language and Religious Minority Institutions. These admissions must be made mandatory for students belonging to their cast / tribe.
2) These admissions may be shared at the discretion of the institution in all classes of unaided colleges

(Form 4)

Seat Matrix Information as per Roster System in Government Colleges

SL NO	SANCTIONED			Govt Quota (X)	Boy's Girls	Boy's Girls Quota Y=50%(X)	GM 50% Y	SC 15% Y	ST 3% Y	C-1 4% Y	2a 15% Y	2B 4% Y	3a 4% Y	3B 5% Y
	Combination	Sections	In take Seats											
1	FCMB			B	B									
					G									
					Total									
2	PCMCs				B									
					G									
					Total									
3	PCME				B									
					G									
					Total									
4	HESP				B									
					G									
					Total									
5														
Total														

Place:

Date:

Signature of Principal with seal

(Form 5)

Seat Matrix Information as per Roster System in other Aided Colleges

Note: In such colleges total admissions total 20 % & (X) 80 % Government.

SL NO	SANCTIONED				Govt Quota (X)	Boy's Girls	Boy's Girls Quota Y=50%(X)	GM 50% Y	SC 15% Y	ST 3% Y	C-1 4% Y	2a 15% Y	2B 4% Y	3a 4% Y
	Combination	Sections	In take Seats	Management Quota										
1	PCMH				B	B								
						G								
						Total								
2	PCMCs					B								
						G								
						Total								
3	PCMF					B								
						G								
						Total								
4	PCMst					B								
						G								
						Total								
5														
Total														

Place:

Date:

Signature of Principal with seal

(Form 6)

Seat Matrix Information as per Roster System in other Aided Colleges

(For Non Grant Colleges)

Note: Management admissions at other colleges are 50% of total admissions and (x) government admissions are 50%.

SL NO	SANCTIONED			Management Quota	Govt Quota (X)	Boy's Girls	Boy's Girls Quota Y=50%(X)	GM 50 % Y	SC 15 % Y	ST 3 % Y	C-1 4% Y	2a 15 % Y	2 B 4 % Y	3a 4 % Y	3 B 5 % Y
	Combination	Sections	Intake Seats												
1	PCMB				B	B									
						G									
						Total									
2	PCMCs					B									
						G									
						Total									
3	PCME					B									
						G									
						Total									
4	HESP					B									
						G									
						Total									
5															
Total															

Place:

Date:

Signature of Principal with seal

(Form 7)

Seat Matrix Information on a roster system in unaided colleges

Note: Management admissions at other colleges are 50% of total admissions and (x) government admissions are 50%.

SL NO	SANCTIONED			Management Quota	Govt Quota (X)	Boys Girls	Boys Girls Quota Y=50%(X)	GM 50 % Y	SC 15 % Y	ST 3 % Y	C-1 4% Y	2a 15 % Y	2 B 4 % Y	3a 4 % Y	3 B 5 % Y
	Combination	Sections	Intake Seats												
1	PCMB				B	B									
						G									
						Total									
2	PCMCs					B									
						G									
						Total									
3	PCME					B									
						G									
						Total									
4	HESP					B									
						G									
						Total									
5															
Total															

Place:

Date:

Signature of Principal with seal

(Form 8)

Enrollment Information for Students in First and Second and Third Lists in
Government Colleges

Details of Registered and Unregistered Students

SL NO	SANCTIONED			Details	Govt Quota (X)	Boy's Girls	Boy's Girls Quota Y=50% (X)	GM 50% (Y)	SC 15% (Y)	ST 3% (Y)	C- 1 4% (Y)	2a 15% (Y)	2B 4% (Y)	3a 4% (Y)	
	Combination	Sections	In take Seats												
1	PCMB 1st List			Admitted candidates	B	B									
						G									
					Total										
				Not Admitted candidates											
2	PCMB 2nd List			Admitted candidates		B									
						G									
				Not Admitted candidates											
					Total										
3	PCMB 3rd List			Admitted candidates		B									
						G									
				Not Admitted candidates											
					Total										
4	HESP 1st List														
Total															

Place:

Date:

Signature of Principal with seal

(Form 9)

Enrollment Information for Students in First and Second & Third Lists

Description of student who have registered and not registered

Note: Management admissions at colleges are 20% of total admissions and (x) government admissions are 80%.

Sl NO	SANCTIONED			Detail:	Govt Quota (X)	Boy's Girls	Boy's Quota Y=50% (X)	GM 50% (Y)	SC 15% (Y)	ST 3% (Y)	C-1 4% (Y)	2a 15% (Y)	2B 4% (Y)	3a 4% (Y)
	Combination	Sections	In take Seats											
1	PCMB 1st List			Admitted candidates	B	B								
						G								
						Total								
				Not Admitted candidates										
2	PCMB 2nd List			Admitted candidates		B								
						G								
				Not Admitted candidates										
3	PCMB 3rd List			Admitted candidates		B								
						G								
				Not Admitted candidates										
				Total										
4	HESP 1st List													
Total														

Place:

Date:

Signature of Principal with seal

(Form 10)

Enrollment Information for Students in First and Second & Third Lists

Description of student who have registered and not registered

Note: Management admissions at colleges are 50% of total admissions and (x) government admissions are 50%.

SL NO	SANCTIONED			Details	Govt Quota (X)	Boy's Girls	Boy's Quota Y=50% (X)	GM 50% (Y)	SC 15% (Y)	ST 3% (Y)	C-1 4% (Y)	2a 15% (Y)	2B 4% (Y)	3a 4% (Y)
	Combination	Sections	In take Seats											
1	PCMB 1st List			Admitted candidates	B	B								
						G								
				Not Admitted candidates	Total									
2	PCMB 2nd List			Admitted candidates		B								
						G								
				Not Admitted candidates	Total									
3	PCMB 3rd List			Admitted candidates		B								
						G								
				Not Admitted candidates	Total									
4	HESP 1st List													
Total														

Place:

Date:

Signature of Principal with seal

(Form 11)

Enrollment Information for Students in First and Second & Third Lists

Description of student who have registered and not registered

Note: Note: Management admissions at colleges are 50% of total admissions and (x) government admissions are 50%.

SL NO	SANCTIONED			Detail:	Govt Quota (X)	Boy's Girls	Boy's Quota Y=50% (X)	GM 50% (Y)	SC 15% (Y)	ST 3% (Y)	C-1 4% (Y)	2a 15% (Y)	2B 4% (Y)	3a 4% (Y)
	Combination	Sections	In take Seats											
1	PCMB 1st List			Admitted candidates	B	B								
				Not Admitted candidates		Total								
2	PCMB 2nd List			Admitted candidates		B								
				Not Admitted candidates		Total								
3	PCMB 3rd List			Admitted candidates		B								
				Not Admitted candidates		Total								
4	HESP 1st List													
Total														

Place:

Date:

Signature of Principal with seal

(Form 12)

Every date Composition / class enrollment information for first PUC.
(Must be entered at the end of each day)

Sl No	Date	Entry Number	Name of the Student	Combination to enroll	Reservation Group
1					
2					
-					
4					

Place:

Date:

Signature of Principal with seal

(Form 13)

a) Information on the receipt of applications filled in the first PUC:
Handling of filled applications received

Sl No	Date	Received Number	Name of the Student	Combination to enroll	Total Marks scored	Reservation Group
1						
2						
-						
3						

Place:

Date:

Signature of Principal with seal

(FORM 14)

a) Maintain filled applications received.
(daily to be updated & displayed on website)

Sl No	Date	Acknowledgement Number		Total accepted Applications	Signature of Principal
		From	To		
1					
2					
3					
4					

Place:

Date:

Signature of Principal with seal

TRUE TYPED TRANSLATED COPY

Annexure P-3

Translation Copy of Annexure-F, Page No. 41 to 42

From,

Students,
Government Pre-University College,
Udupi District.

To,

Deputy Director,
Pre-University
Udupi District.

Dear Sir,

Subject: In respect of preventing us to wear the hijab in the college, which is a symbol of our modesty, and an integral part of our religious practice and also by diminishing our right to education.

We are students of Government Pre-University College - Udupi. We have been observing Hijab from so many days and continuing our studies. But now they are not allowing us to attend our classes and insult and abusing our faith.

Article 25 of the Constitution of India incorporates the right to religious freedom as a fundamental right. This means that all individuals are equally entitled to freedom of conscience and have the right to freely practice and propagate religion, and Article 26 of the Constitution states that all religions can perform their own religious duties.

Wearing the Hijab for a Muslim Woman is One of their religious beliefs. As a symbol of modesty, we wear the hijab on all occasions

as an important part of our religious observance. But this right is being taken away from us.

We are persecuted for practicing our religion. But the other religions religious worships and other programs are done in the presence of teachers in the college. Our parents said that we are ready to wear a college uniform colored hijab. But they are not ready to accept this.

Most Importantly, the Hijab was worn in college from earlier. But now some of the members in the college are obstructing for wearing of Hijab and the students who are wearing the hijab are being denied entry to the classes.

Our parents visited the college several times in respect of this issue, In spite of this the principal was unable to provide with any solution. We therefore request you to give us a permission to enter the college and attend the classes and allowing us to wear our hijab which is a sign of modesty and an important part of our religious practice.

Thanking You

Yours Faithfully

Sd/-

Place: Udupi

Date: 30/12/2021

TRUE TYPED TRANSLATED COPY

Annexure P-4

Translation Copy of Annexure-H, Page No. 45-46 & 47-48

Government of Karnataka

No. EP 14 SHH 2022

Ministry of Government of Karnataka
Multi-Storey Building
Bangalore, Dt: 25/01/2022

From,

Chief Secretary
(Primary and Secondary Education)
Department of Education
Bangalore

To,

Director
Department of Pre-University Education,
18th Cross, Malleswaram,
Bangalore

Subject: Directions to inform Students of Government PU College –
Udupi District in respect of Uniform & Hijab

Reference: Letter Dated 17/01/2022 of Shri Abdul Azeem -
Chairman of Karnataka State Minorities Commission.

In respect to the above mentioned subject and bringing to the notice about the reference letter, even though Uniform is not mandatory for students attending State Pre-University Colleges. But Students in Government Udupi Pre university college are wearing uniforms with their consent, as at the time of taking admission students are aware about the uniform / dress code and they have

consented and voluntarily taken admission in the college. In all these days there was no issue regarding uniform recently the issue was created which is not good in respect of their studies.

A high level committee was constituted to study the uniform policy of Pre University Colleges in different states and also consider the judgement of Supreme Court and various State High courts and provide their observations in respect of State Pre University College uniform and dress code. The Government will take action expeditiously after receiving their report and recommendations.

Till this procedure It is directed to inform the students to maintain the status quo in respect of the uniform / dress code assigned to the boy's / girl students at their Institutional Level.

Yours Faithfully

Sd/-

Padmini. S.N

Under-Secretary to Government
Department of P.U-Education

Dt: 25-01-22

TRUE TYPED TRANSLATED COPY

Annexure P-5
IN THE HON'BLE HIGH COURT OF
KARNATAKA AT BANGALORE
(Original Jurisdiction)

Writ Petition No - 2146 /2022 (GM-EDU)

Between

Ayesha Hajeera Almas and others

Petitioners

And

Chief Secretary

Primary and Higher Education

And others

Respondents

INDEX

S.No.	Particular	Page no
1	Synopsis and Brief facts	1-5
2.	Memorandum Writ Petition under Article 226 and 227.	6-26
3.	Annexure A Identify documents of Petitioner no1 and her representing parent	27-28
4.	Annexure B Identify documents of Petitioner no1 and her representing parent	29-31
5.	Annexure C Identify documents of Petitioner no1 and her representing parent	32-34
6.	Annexure D Identify documents of Petitioner no1 and her representing parent	35-37
7.	Annexure E Identify documents of Petitioner no1 and her representing parent	38-40

8.	Annexure F Copy of representation dated 30/12/2021 given to the Respondent no 3	41-42
9.	Annexure G Copy of representation dated 30/12/2021 given to the Respondent no 3	43-44
10.	Annexure H Letter dated 25/01/2022 issued by the Respondent no 1 to Respondent no 2 with legible copy	45-48
11.	Annexure J Guidelines issued by the Respondent no 2 for the academic year 2021-22	69-133
12.	Annexure K Media report regarding respondent no 16	135-136
13.	Annexure L Judgement of Hon'ble Kerala High court.	137-150
14	Vakalatnama	151-152

Bangalore

29/01/2022

Counsel for petitioners

IN THE HON'BLE HIGH COURT OF
KARNATAKA AT BANGALORE
(Original Jurisdiction)

Writ Petition No - 2146 /2022 (GM-EDU)

Between

Ayesha Hajeera Almas and others Petitioners

And

Chief Secretary

Primary and Higher Education

And others

Respondents

SYNOPSIS

Date	Event
2021-22	Petitioners taken admission in the Respondent no 5 PU college.
01/07/2021	Respondent no 2 has issued guidelines for the academic year 2021-22
Sep 2021	Petitioners start facing discrimination With the teaching staff of College.
Ist week of Dec 2021	Petitioners parents met Respondent no 6 to resolve the issue amicably which Delayed due midterm exam.
30 /12/2021	Petitioners gave representation to the Respondent no 3 and 4 for resolve their issue with the college.
01/01/2022	Respondent no 15 and 16 conducted illegal meeting College development committee and give illegal dictate to the petitioners and their parents not to

- wear Headscarf else other community students will wear their saffron color shawl.
- 13/01/2022 Petitioners hold protest in front of college gate.
- 14/01/2022 College teaching staff forcefully compelled petitioner no 4-6 to write apology letter against their wishes, male teaching staff intimidated them and Respondent no 13 manhandled them.
- 25/01/2022 Respondent no 1 has issued letter to the respondent no 2 to maintain status quo in Respondent no 5 college.
- 29/01/2022 Aggrieved by the hostility treatment and forcing illegal uniform norm to prevent petitioners from their cultural and religious right of wearing head scarf. Petitioners filed this writ.

BRIEF FACT OF THE CASE

The petitioners are the students of Govt PU girl's college Udupi, and wearing their regular head scarf, over the college uniform, and Respondent no 6, 7 and 13 insisted the petitioners student to remove the head scarf by shaming them due to their conduct and invoking their religious identity. Since September 2021 petitioners faced discrimination in their class and whenever Respondent no 5-12 takes their classes remove petitioners from the class

and mark their absent and made them stand outside the class as punishment and it is still continuing till today.

In the month of December parents of the petitioners went to speak to Respondent no 6 i.e. Principal delayed the discussion citing mid-term exam, From the last week of December 2021 after the exam class teacher doesn't allow petitioners student to attend the class used to send to the Respondent no 6 office to take permission and candidly inform them either to remove their head scarf or get permission from the principal through their parents, even when their parents comes to college to speak to principal i.e. Respondent no 4, they compel to wait for whole day without meeting, the conduct of the respondent no 4 -12 is appears to frustrate the petitioners and their parents and compel them to concede before them.

On 30/12/2021 seeing no resolve petitioners student approached the Respondent no 3 and 4 with the representation to intervene in the matter and finish their ordeal.

On 01/01/2022 Respondent no 6 principal called a meeting of so called College development committee (CDC) which has no legal sanctity and illegal composition of political entities to interfere in the management and functioning of colleges and percolate their political agenda, Respondent no 15 and 16 are the self-claimed chairman and vice chairman in this illegal CDC, in this meeting Respondent no

15 declared the petitioners will not wear head scarf , if they continue then other students (according to their narrations Hindus students) will wear mafflor / saffron shawl to counter them and blend the entire issue into communal colour.

After this meeting petitioners didn't allow to attend the colleges in all working days and made to sit outside of classroom like a culprit, on 13th January seeing no hope and being targeted from every corner petitioners thought of doing peaceful protest in front of college gate alongwith their parents to seek their right of education which was continuously denied due to religious and cultural vengeance, that time respondent no 6 / principal called local media at the instance of Respondent no 16, which took petitioners picture with the placard to circulate in the social and electronic media to divide society in communal line.

On 14th January 2021, petitioners no 4, 5 and 6 went to college that time respondent no 6 has called them this chamber and scolded them for conducting protest in front of college gate and making a media issue and subsequently he called respondent no 7-11 in his chamber to write an apology letter, these respondents threaten petitioners no 4-6 with their gestures and gave blank paper in their hands to forcefully write apology, when they refused they called Respondent no 13 as well, who manhandled them physically and threaten them to spoil their education

completely and they cannot help as entire system is against them.

Finally on 25th January 2021 local leaders from the Muslim communities went to meet Respondent no 15 to resolve the issue being self-claimed CDC chairman and local MLA that time , he handed over the copy of letter dated 25/01/2021 issued by the Respondent no 1 to Respondent no 2 in connection of this very same issue and directed to maintain status qua in this academic years, which has no clarity about the petitioners classes and their right of wearing headscarf and illegal imposing of uniform rule by the Respondent college, Being aggrieved with the continues hostility by the colleges principal and teaching staff and dividing society in communal line by the respondent no 16 and 15, petitioners are prefer this writ petition.

Bangalore

29/01/2022

Counsel for the petitioners

IN THE HON'BLE HIGH COURT OF
KARNATAKA AT BANGALORE
(Original Jurisdiction)

Writ Petition No - 2146 /2022 (GM-EDU)

Between

1. Ayesha Hajeera Almas
Age about 18 years
D/o Mupthi Mohammed Abrurul
Student
Represented by Her Mother
Karani Sadiya Banu
W/o Mupthi Mohammed Abrurul,
Age about 40 years
R/at No 2-82 C, Kavrady,
Opp to Urdu School, Kandler,
VTC, Kavrady , PO Kavradi,
Kundapura, Udupi -576211
2. Rreshma
Age about 17 years
D/o K Faruk
Student
Represented by Her Mother
Rahmath
W/o K Faruk,
Age about 45 years
R/at No- 9-138, Perampalli Road
Ambagilu Santosh Nagar,
Santhekatte , Udupi -576105
3. Aliya Assadi
Age about 17 years
D/o Ayub Assadi

Student
Represented by Her Father
Ayub Assadi
S/o Abdul Rahim,
Age about 49 years
R/at No- 4-2-66, Abida Manzil
Nayarkere Road, Kidiyoor
Ambalapadi , Udupi -576103

4. Shafa
Age about 17 years
D/o Mohammed Shameem
Student
Represented by Her Mother
Shahina
W/o Mohammed Shameem,
Age about 42 years
R/at No- 3-73, Mallar Gujji House,
Mallar Village, Majoor,
Kaup, Udupi -576106

5. Muskaan Zainab
Age about 17 years
D/o Abdul Shukur
Student
Represented by Her Father
Abdul Shukur
S/o D Ismail Saheb,
Age about 46 years
R/at No- 9-109 B,
Vadabhandeshwara,
Malpe, Udupi -576108

And

1. Chief Secretary
Primary and Higher Education
Education department
Karnataka Government Ministry
MS building
Bangalore -560001
2. Director
PU education department,
Malleshwaram Education Department,
Bangalore - 560012
3. Deputy Director
Pre-University College
Udupi Dist
Udupi -576101
4. Deputy commissioner
DC office
Udupi City
Udupi - 576101
5. Govt PU college for girls
Udupi City
Udupi -576101
Rep by its Principal
6. Rudre Gowda
S/o Not known
Age about 55 years
Occupation - Principal
Office at
Govt PU college for girls
Udupi City
Udupi -576101
7. Gangadhar Sharma
Age about 51
S/o Not Known

Vice Principal of
Govt College
R/at #21/69 Anrghya,
7th cross Madvanagar,
Adiudupi,Udupi- 576102

8. Dr. Yadav

Age about 56
S/o Not Known
History Lecturer
Office at
Govt PU college for girls
Udupi City
Udupi -576101

9. Prakash Shetty

Age about 45
S/o Not Known
Political Science Sub Lecturer
Office at
Govt PU college for girls
Udupi City
Udupi -576101

10. Dayananda D

Age about 50year
S/o Not Known
Sociology Sub Lecturer
Office at
Govt PU college for girls
Udupi City
Udupi -576101

11. Rudrappa

Age about 51years

S/o Not Known
Chemistry Sub Lecturer
Office at
Govt PU college for girls
Udupi City
Udupi -576101

12. Shalini Nayak
Age about 48years
W/o Not Known
Biology Sub Lecturer
Office at
Govt PU college for girls
Udupi City
Udupi -576101

13. Chaya Shetty
Age about 40years
W/o Not Known
Physics Sub Lecturer
R/at Kutpady, Udyavar
Udupi-

14. Dr Usha Naveen Chandra
Age about 50 years
W/o Not known
Teacher
Office at
Govt PU college for girls
Udupi City
Udupi -576101

15. Raghupathi Bhat
S/o Late Srinivas Bharithya
Age about 53 years

Local MLA and
Unauthorized Chairman of CDMC
D No. 8-32 at Shivally Village,
PO – Shivally,
Udupi -576102

16. Yashpal Anand Surana

Age about 50 years

S/o Not known

Unauthorized Vice chairman of CDMC

R/at Ajjarakadu, Udupi Ho,

Udupi - 576101

Respondents

Writ Petition Under article 226 and 227 OF
Constitution of India R/w section 482 of
CrPC

The petitioners most respectfully and humbly submit this petition as under:

1. The Address of the petitioners for the issuance of any summons by this Hon'ble court is as shown in the cause title and for their counsel is, Mohammed Tahir, Ronald Desa, Advocates, Access Law, No. 65, Vox Hogan, Cockburn Road, Bangalore -560051.
2. The service of the summons for the respondent is as shown in the cause title.
3. Petitioners are the students of Respondent no 3 college and are presented by their respective parents in this writ petition, copy of their IDs, Adhar Cards

and their parents Adhar Cards are presented herewith as **ANNEXURE A, B, C, D, AND E** respectively.

4. Respondent no 1 is administrative head of Department of Education, Respondent no 2 is the departmental head of PUC board, Respondent no 3 is the PUC Departmental head of Udupi Dist, Respondent no 4 is the administrative head of Udupi Dist, Respondent no 5 is the educational institution, Respondent no 6 is the Principal of the educational institution, Respondent no 7- 14 are the teaching staff of different departments of the educational institution, Respondent no 15 and 16 are member of political parties and interfering in the issue under the fake entity to promote their divisive political agenda.

BRIEF FACTS OF THE CASE

5. The petitioners are the students of Govt PU girl's college Udupi, and wearing their regular head scarf, over the college uniform, and Respondent no 6, 7 and 13 insisted the petitioners student to remove the head scarf by shaming them due to their conduct and invoking their religious identity.
6. Inspite of this petitioners continues the same convincing their alma masters that it part of their religious and social culture and wearing headscarf is not coming in the way of school discipline and their education.

7. In the month of Aug 2020 Respondent no 6 and 7 rebuke petitioners and tell them that their parents had signed the consent letter at the time of admission accepting the terms and condition of school and specifically admitted that their wards won't wear the headscarf, so now they cannot breach the same.
8. Respondent no 6-14 whenever finds the petitioners anywhere in the college scold them and threaten them with the marking absent in their attendance and not awarding internal marks.
9. Respondent no 13 specifically informed petitioner no 5 that in the past also some girls used to wear headscarf, to teach listen them, she incite other students to pull their scarf, if you and other student doesn't fall in line so, they have to face the same treatment.
10. Since September 2021 petitioners faced discrimination in their class and whenever Respondent no 5-12 takes their classes remove petitioners from the class and mark their absent and made them stand outside the class as punishment and it is still continuing till today.
11. In the month of December parents of the petitioners went to speak to Respondent no 6 i.e. Principal, he replied that now exams are going on, he will discuss the issue after the exam and when they demand about the consent letter which college

teachers used to refer the petitioners, then Respondent no 6 candidly accepted that there is no specific condition regarding headscarf and it is common form regarding maintaining school rules and discipline.

12. From the last week of December 2021 after the exam class teacher doesn't allow petitioners student to attend the class used to send to the Respondent no 6 office to take permission and candidly inform them either to remove their head scarf or get permission from the principal through their parents, even when their parents comes to college to speak to principal i.e. Respondent no 4, they compel to wait for whole day without meeting, the conduct of the respondent no 4 -12 is appears to frustrate the petitioners and their parents and compel them to concede before them.
13. On 30/12/2021 seeing no resolve petitioners student approached the Respondent no 3 and 4 with the representation to intervene in the matter and finish their ordeal, after receiving the representation Respondent no 3 immediately called respondent no 6 i.e. Principal and scolded him for not allowing petitioners to attend the class and directed him to allow the student immediately. Copy of these presentations are presented herewith as **ANNEXURE**

F AND G respectively for the kind perusal of this Hon'ble court.

14. On 01/01/2022 Respondent no 6 principal called a meeting of so called College development committee (CDC) which has no legal sanctity and illegal composition of political entities to interfere in the management and functioning of colleges and percolate their political agenda, Respondent no 15 and 16 are the self-claimed chairman and vice chairman in this illegal CDC, in this meeting Respondent no 15 declared the petitioners will not wear head scarf , if they continue then other students (according to their narrations Hindus students) will wear mafflor / saffron swal to counter them and blend the entire issue into communal colour.
15. After this meeting petitioners didn't allow to attend the colleges in all working days and made to sit outside of classroom like a culprit, on 13th January seeing no hope and being targeted from every corner petitioners thought of doing peaceful protest in front of college gate alongwith their parents to seek their right of education which was continuously denied due to religious and cultural vengeance, that time respondent no 6 / principal called local media at the instance of Respondent no 16, which took petitioners picture with the placard to circulate in the social and electronic media to divide society in communal line.

16. On 14th January 2021, petitioners no 4, 5 and 6 went to college that time respondent no 6 has called them this chamber and scolded them for conducting protest in front of college gate and making a media issue and subsequently he called respondent no 7-11 in his chamber to write an apology letter, these respondents threaten petitioners no 4-6 with their gestures and gave blank paper in their hands to forcefully write apology, when they refused they called Respondent no 13 as well, who manhandled them physically and threaten them to spoil their education completely and they cannot help as entire system is against them.
17. Finally on 25th January 2021 local leaders from the Muslim communities went to meet Respondent no 15 to resolve the issue being self-claimed CDC chairman and local MLA that time , he handed over the copy of letter dated 25/01/2021 issued by the Respondent no 1 to Respondent no 2 in connection of this very same issue and directed to maintain status qua in this academic years, which has no clarity about the petitioners classes and their right of wearing headscarf and illegal imposing of uniform rule by the Respondent college, Copy of the letter dated 25/01/2022 is presented as **ANNEXURE H** for the kind perusal of this Hon'ble court. Being aggrieved

with the continues hostility by the colleges principal and teaching staff and dividing society in communal line by the respondent no 16 and 15, petitioners are prefer this writ under following grounds

GROUND FOR THE RELIEF SOUGHT.

18. It is submitted that respondent teaching staff is acting in seer vengeance against the petitioners due to their religious identity and in the past also they indulge in similar vengeful conduct even incite other students to target the Muslim students who don't follow their words.

19. It is submitted that as that as the latest 2021-22 academic guidelines at chapter VI under the heading of important information, it is clearly stated that there no uniform is in Pre- university college, if any institution attempts to impose it, department will take strict action against them

Government/Pre university education department/ uniform is not compulsive for students studying under pre university under education act, if any college principal and college administration made uniform compulsory it's considered as illegal, if violate the above mentioned direction it will considered seriously.

Copy of complete guidelines are annexed at **ANNEXURE J** for the Kind perusal of this Hon'ble court, considering this these guidelines respondent college and principal has acted against the

departmental guidelines by implementing uniform norm, committing perpetual error imposing on the petitioners and making loss of their education under the guise of illegal uniform rule.

20. It is submitted that petitioners have never indulge in any misconduct and only asserting their religious and cultural right which is no way coming in the way of any education and discipline of school and has great respect to institution and their teachers inspite their hostile behavior and conduct.
21. It is submitted that respondent no 15 and 16 are interfering the in guise of CDC (College development committee) which has no legal sanctity and promote their communal agenda of dividing society which is polluting the young minds which become the breeding grounds religious intolerance and hatred, recent crime incidents of mock bidding of Muslim females in Social media through illegal social media apps i.e. 'Sully deals' and "bully bai" and also indecent and immoral discussion targeting Muslim females in club house social media apps , these venom is spilled due to communal and divisive agenda which is against the humanity and constitutional values of this nation and same is under threat by the divisive forces.

22. It is submitted catena of judgement Hon'ble apex court explained secularism as

" In Aruna Roy v Union of India (2002) & SSC 368, Supreme Court of India held that the essence of secularism is non-discrimination of people by the State on the basis of religious differences.

In the case of Abhiram Singh v. C D Commachem (2017)10 SCC 1, The Court held that secularism does not say that the State should stay aloof from religion instead it should give equal treatment to every religion. Religion and caste are vital aspects of our society, and it is not possible to separate them completely from politics.

The Court held that secularism is the basic structure of the Constitution and therefore cannot be amended. Secularism is derived from the cultural principle of tolerance and ensures the equality of all religions. No religion will be at risk in India because the Government would not be aligned to any religion. The Court also said that there is an essential connection between secularism and democracy and if we need that democracy should work properly and the

marginalized group can avail the benefit, then there must be a secular state."

Thus, the conduct of the petitioners i.e. wearing headscarf by the young girls is part and parcel of their cultural and religious practices and no way in coming the way of legal functioning and respondent teaching staffs and political leaders are opposing it due to their own personal and political preference, which has no place in secular society and more particularly in a case where department itself has declared that there is no uniform for the Pre-University college and also suggest action against them.

23. It is submitted that respondent no 16 has tainted past and has proven record of spreading hatred against the one particular community and accused in first mob lynching incident in India, wherein he leads the mob to "naked parade of two Muslim man in public" at AdiUdupi and still he threatens with the same to the minority community, copy of his recent media statement is presented herewith as **ANNEXURE K.**

24. It is submitted that the circular dated 25/01/2022 has to be read along with the departmental guidelines of 2021-22 academic year

and no uniform rule should be imposed on the petitioners and any other student of the school.

25. It is submitted that respondent no 15 and 16 are illegally interfering in the name of College development committee which has no legal sanctity form contrary to the "**Karnataka pre university (academic registration administration, grant-in etc.) rules 2006**" and promoting their divisive political agenda.

26. It is submitted that when the controversy arises in the case of wearing headscarf in NEET exam and AIIMS medical exam Hon'ble Kerala high court has appreciated the contention of Muslims girls students and permitted them to attend the exam with the headscarf considering wearing headscarf doesn't come in the purview of impediments suggest under Article 25 of Constitution of India. Copy of (2016) 2 KLT 601 KERALA HIGH COURT AMNA BINT BASHEER AND ANOTHER Vs. CENTRAL BOARD OF SECONDARY EDUCATION is presented herewith as **ANNEXURE L**.

27. It is submitted that petitioners have no other remedy accept filing this writ petition.

28. It is submitted that petitioners have not filed any other writ petition or application seeking similar relief.

GROUND FOR THE INTERIM PRAYERS

29. It is submitted that petitioners are not able to attend the regular physical classes since 1st Jan 2022 and losing their valuable academic period which may cost their education.
30. It is submitted that respondent teachers have marked absent in petitioners' attendance illegally several times in Nov and Dec 2021 and continuously in month of Jan 2022 inspite they attended the school and forcefully sent them out of the class in order to prevent time from attending main exam.
31. It is submitted that petitioners have not committed any wrong and faced discrimination due to some fringe element in the school and society.
32. It is submitted that petitioners are ready to abide with all the rules and norms of the school undisputedly with the following their cultural and religious right of wearing headscarf.
33. It is submitted that if interim relief is not granted at this stage then petitioners valuable right of education will jeopardize and secular and human agenda will get defeated by the communal and

divisive agenda inspite have rules in the favour of petitioners.

PRAYER

WHEREFORE, it is humbly prayed that this Hon'ble Court be pleased to

1. issue the **WRIT OF MANDAMUS** and order to respondent no 1 and 2 to initiate enquiry against the Respondent 5 college and Respondent no 6 i.e. Principal for violating instruction enumerated under Chapter 6 heading of "Important information" of Guidelines of PU Department for academic year of 2021-22 same at **ANNEXURE J** for maintaining uniform in the PU college.,
2. Issue **WRIT OF MANDAMUS** to Respondent no 3 conduct enquiry against the Respondent no 6 to 14 for their Hostile approach towards the petitioners students.,
3. Issue **WRIT OF QUO WARRANTO** against the Respondent no 15 and 16 under which authority and law they interfering in the administration of Respondent no 5 school and promoting their political agenda. And,

4. **DECLARE** that the status quo referred in the letter dated 25/01/2022 at **ANNEXURE H** is with the consonance to the Department guidelines for the academic year 2021-22 same at **ANNEXURE J.**,
5. Grant any other relief considering the fact and circumstance of the case, in the interest of justice and good conscience.

INTERIM PRAYER

Wherefore, Petitioners humbly prays to this Hon'ble court to direct respondent no 5 and 6 to permit petitioners to attend classes with their headscarf without any bias and discrimination and also provide attendance in all days in which petitioners forced to leave classes, due to bias approach of teaching staff, in this academic year or till the disposal of this writ petition, in the interest of justice and equity.

Bangalore

29 /01/2022

Counsel for petitioners
Mohammed Tahir
KAR/1663/2012

IN THE HON'BLE HIGH COURT OF
KARNATAKA AT BANGALORE
(Original Jurisdiction)

Writ Petition No -

/2022 (GM-EDU)

Between

Ayesha Hajeera Almas and others

Petitioners

And

Chief Secretary

Primary and Higher Education

And others

Respondents

VERIFYING AFFIDAVIT

I, Karani Sadiya Banu W/o Mupthi Mohammed Abrurul, Age about 40 years, R/at No 2-82 C, Kavrady, Opp to Urdu School, Kandlur, VTC, Kavrady, PO Kavradi, Kundapura, Udupi -576211 today at Bangalore, mother and representing Petitioner no 1 in this petitioner state and affirm also on the behalf of other petitioners and their respective representatives as under

1. I am the representing petitioner no 1 and this and conversant with the fact of this case as issue and relief of all other petitioners are uniform so I am also presenting this verification affidavit in their behalf, I am well conversant with the facts deposing hereto.
2. That the statements, made in paragraphs 1 to 33 of the petition accompanying this affidavit are true to the best of my knowledge, information, and belief and based on the narration of petitioners students

3. That the documents i.e., produced as Annexure 'A' and
K & L are originals or true computer copies of the originals,
annexure J is the guidelines downloaded from the
department official website,
Identified by me

Advocate

Bangalore

Deponent

29-01-2022 Sworn to and signed before me at
Bangalore on this 29th day of Jan , 2022

No. of corrections

TRUE COPY

COMMITTEE MEETING

Date: 31/01/2022

The Chairperson of the College Development Committee held a meeting and announced the government's order in detail.

Those attended the meeting.

- 1) ALMAS – 2nd Science Sd/-
- 2) ALIYA ASADI – 2nd Commerce B Sd/-
- 3) SHAFI – Commerce B Sd/-
- 4) BIBI AYESHA - 2nd Commerce B Sd/-
- 5) RAHMATH PARENTS - 2nd Commerce B PARENTS Sd/-
- 6) SADIYA
- 7) IPTHISAM PARENT Sd/-
- 8) DEPUTY DIRECTOR Sd/-
- 9) Mrs. TARADEVI Sd/-
- 10) RESHAM 2nd Commerce A Sd/-
- 11) UDAY KUMAR
- 12) JAYESH KAMATH, MEMBER Sd/-
- 13) Smt.LATA RAO, MEMBER Sd/-
- 14) Smt.SHANTHI, MEMBER Sd/-
- 15) Sri.DAYANAND, Senior Lecturer Sd/-
- 16) Kum TANUSHA, Student Member
- 17) Kum BRUNDA, Student Member
- 18) JAYALAKSHMI HIGH SCHOOL HEAD

The President of the College Development Committee informed on the government order on the wearing of hijab demanded by students (4) and their parents.

Under the government's directive, these students were asked to come to the college wearing their uniforms, as they had been in the past, until the government formed a committee to study and take a final decision.

All community students are studying in college. The welfare of everyone is very important. Because of one community objections are coming from all other communities and such opportunity should not be allowed for it and he told the parents to send their children in the same uniform worn by them in the previous year.

In the next financial year, lets follow as per the final decision of the government.

One of the student's parents informed us that we have been asking the principal since December 10th. For which a member said it cannot be decided by a president or a principal. Since 1985, the College Development Committee has adhered to the wearing of College Uniform code. It cannot be decided by the Principal alone.

In the Social Media the issue of hijab has not been taken up by the College Principal, any lecturer or development committee. The Media has repeatedly asked the principals for their stand on this issue.

Mrs. Taradevi, a member of the Development Committee, urged parents to resolve the problem here, and informed the students to think from the perspective of their education.

All students were asked to cooperate together in shaping their future, and should avoid coming in contact with Electronic Media.

The Deputy Director of the PU Education Department spoke to the parents on the importance of uniforms and said that lecturers would be able to look at all students equally when teaching a lesson. Parents were asked to send their students to college in the uniform that they wore in the previous year and to help them with their education.

Students should come to college without Hijab. If in case Hijab is worn it will be violation of the discipline of the college, and the college atmosphere should not be spoilt anymore.

These students were advised not to ruin the environment of this college or any other college in Udupi.

If parent send their children to college with Hijab, Disciplinary action will be taken against the students.

MLA Sir

Sri.Raghupathi Bhat Sir

Sd/-

Principal

Pramod KP Sd/-

PI, UTPS

Yeshpal Sir Sd/-

TRUE TYPED TRANSLATED COPY

Annexure P-7

KARNATAKA GOVERNMENT PROCEEDINGS

SUBJECT: Regarding dress code of Students of all schools and colleges in the State.

Read: 1) Karnataka education act 1983

2) Government Circular No 509 SHH 2013.

Dated: 31.01.2014

INTRODUCTION:

The above-mentioned Circular No. 1 of the Government of Karnataka Act of 1983 passed in 1983 (1-1995) Article 7 (2) As explained in paragraph (3), the students of all the schools of the State of Karnataka shall act in the same manner as in the family and shall not be confined to any particular class. The government is empowered to issue appropriate directions to schools and colleges under section 133 of the present Act.

In the above-mentioned circular No. (2), Pre university education is an important stage in a student's life Development committee are being set up in all the schools and colleges in the state in order to comply to all the notices issued by the government and to ensure appropriate utilization of the funds and to develop the infrastructure and to protect and improve the quality of education. It is entrusted to discharge functions in the schools and colleges as per the decision of the respective development committees.

Be it any supervision committee in educational institutions (Govt schools and colleges – SDMC, in private college, parents and teacher's committee and such institution/s administrative department) in an intention to provide conducive educational

environment they should formulate and execute the rules which are in consonance with the government policies. Such committee's decisions will be regarding to their respective schools and colleges.

Students programs will be conducted for the convenience of all the boys and girl's students to take part and bring in uniformity, however in certain educational institution it is noticed that several students are following the practice as per their religion, due to which equality and unity is being affected in the schools and colleges which is brought to the attention of the education department.

In the cases before the Supreme Court of the country and the High Courts of various States relating to the Uniform Dress Code instead of the Personal Dress Code, the following are the decisions as follows:

- 1) The High Court of the State of Kerala in WP No 35293/2018 Dated: 04.12.2018 . The Court has stated the principle stated in Order-9 as follows:

“9. The Apex Court in *Asha Renjan & others V/s State of Bihar & others* [(2017) 4 SCC 3971] when the Balance Test is accepted, the competing rights have been taken up and the individual rights but by upholding larger rights to remain to hold such relationship between institution and students”

- 2) In the case of *Fatima Hussein Syed vs. India Education Society and others*, (AIR 2003 Bom 75), a similar issue has arisen in the Kartik English School, Mumbai, which has been examined by the Bombay High Court. The Principal of

this school directed the applicant not to wear a head scarf or cover his head in violation of Article 25 of the Constitution. Finally, it was decided that it was not violation of article 25 of constitution India.

- 3) By considering the above mentioned decision rendered by the Supreme Court the Madras High Court also V.Kamalamm Vs Dr. MGR Medical University, Tamilnadu and others. In the decision the court has upheld the decision to alter the dress code.

As per the above mentioned decision rendered by the Hon'ble Supreme Court and by various High Courts, to direct not to wear headscarf's and also not to allow covering of the head is not violation of article 25 and also the government has after thorough contemplation of Karnataka education act 1983 has ordered as hereunder.

Government Order No: EP14SH2022 Bangalore,

Date: 05.02.2022

On the basis of the factors mentioned in the circular, by utilizing the powers enshrined in Karnataka education act 1983, under subsection (2), it is ordered in all the Government schools to mandatorily abide to the uniform which is prescribed by the Government. Private schools shall allow to wear only such uniforms which are prescribed by their respective administrative committee.

Colleges coming under the jurisdiction of pre university education board shall wear the uniform as per the respective college development committee (CDC) as administered. In a circumstance where the uniform is not prescribed by the governing body, it is directed to wear such uniform which protects quality and solidarity, and which will not affect the public peace.

By order of the Governor of Karnataka

And by his name

Sd/-

N (Padmani SN)

Under Secretary to Government

Department of Education (Pre-University)

TRUE TYPED TRANSLATED COPY

Annexure P-8

258

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

W.P.

2146

Of 20.2.2022

clw 2367/2022

Between :-

Ayesha Hazeena Alwas

PETITIONER

And :-

State & Ors.,

RESPONDENT

INDEX

Sl. No.	Particulars	Page Nos.
(1)	STATEMENT OF OBJECTIONS	1-39
(2)	VERIFYING AFFIDAVIT	40
(3)	ANNEXURE - R ₁	41-89
(4)	ANNEXURE - R ₂	90-101
(5)	ANNEXURE - R ₃	102-105
(6)	ANNEXURE - R ₄	106-111
(7)	ANNEXURE - R ₅	112-113
(8)	ANNEXURE - R ₆	114
(9)	MEMO OF APPEARANCE Ann-R ₇	115
(10)	COPY SERVED ACK. Ann-R ₈	116-120
(11)	Memo of appearance	121
(12)	Copy served acknowledged.	122

Place : Bengaluru :

Dated :

Government Advocate

And

Advocate for Respondent/s

RNR

(B.V. Krishna)

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

W.P.NO.2146/2022 (EDN-RES)

C/W

W.P.No.2347/2022

BETWEEN:

Ayesha Hazeema Almas

... PETITIONER

AND:

The Chief Secretary,
Dept. of Primary and Higher Education
and others

... RESPONDENTS

~~*

STATEMENT OF OBJECTIONS FILED ON BEHALF OF
RESPONDENTS - STATE

Under Rule 21 of the Karnataka High Court Writ Proceeding Rules, the Respondents - State above named humbly submits as follows:

1. Writ Petition No.2146 of 2022 has been filed by three Second Year P.U. students and two First Year P.U. students of Government P.U. College for Girls, Udupi City, Udupi seeking following prayers:-

- (i) Writ of mandamus to initiate enquiry against Respondent No.5 - College and Principal for violation of guidelines of Pre University Department for the academic year 2021-22 at Annexure-J;
- (ii) conduct enquiry against the Respondent Nos. 6 to 14 for their hostile approach towards the Petitioners;

Admini Sal.

- (iii) Writ of Quo-warranto against the Respondent Nos. 15 and 16 under which authority and law they are interfering in the administration of Respondent No.5 - School/College;
- (iv) Declaration status-quo referred in Letter dated 25.01.2022 at Annexure-H is with the consonance to the department guidelines for the academic year 2021-22 at Annexure-J and along with other reliefs.

2. Writ Petition No.2347 of 2022 has been filed by the second Petitioner in W.P.No.2146 of 2022 claiming to be a student of second year P.U of Government P.U. College for Girls, Udupi City, Udupi seeking following prayers:-

- (i) Issue an appropriate writ, order or direction in the nature of mandamus directing the Respondent No.2 not to interfere with the Petitioner's fundamental right to practice the essential practice of her religion, including wearing of hijab to the 2nd Respondent University while attending classes;
- (ii) Issue an appropriate writ, order or direction in the nature of mandamus directing the Respondents to permit the Petitioner to wear hijab (head scarf) while attending her classes, as being a part of essential practice of her religion;
- (iii) Issue an appropriate writ, order or direction in the nature of mandamus declaring that the Petitioner's right to wear hijab is a fundamental right guaranteed under the constitution guaranteed under Article 14 and 25 of the Constitution of India and is an essential practice of Islam religion;

Induvar & N.

3. At the outset it is submitted that these Writ Petitions are neither maintainable on facts nor on law and hence, the same are liable to be dismissed.

4. The second petitioner has preferred the above writ petitions suppressing the filing of the other petition with identical interim and main relief and espousing the same cause of action and therefore both Petitioner are liable to be dismissed on the ground alone of suppression of material facts with exemplary costs.

5. In absence of a settled law on the disputed question of facts and without proper declaration of fact, writ petition for adjudicating question of law involving said disputed facts cannot be maintained. When the matter involves disputed question of facts without any finding/declaration by the competent authority or the court cannot be interfered by this Hon'ble Court in writ petition preferred under Article 226 and 227 of the Constitution of India.

6. There is no sufficient pleading and any sufficient material placed on record in support of the main prayers/interim prayer sought in the writ petition and there both the Petitions are liable to rejected on this ground alone.

7. The reliefs sought in the Writ Petition cannot be granted and the Petitioners have not given any representation to the Principal - Respondent No. 5 or College Development Committee. The Respondent - P.U. College being an institution governed under the Karnataka Education Act, 1983 is under the

Jadhav S. N.

administration of the Respondent No. 5 - College Development Committee under the chairmanship of local M.L.A. and other office bearers. The Karnataka Education Act is a comprehensive legislation and a complete code, which regulates the Educational Institutions in Karnataka. Section 6 & 7 reads as follows:

6. Educational institutions to be in accordance with this Act. - No educational institution shall be established or maintained otherwise than in accordance with the provisions of this Act or the rules made thereunder.

7. Government to prescribe curricula, etc.- (1) Subject to such rules as may be prescribed, the State Government may, in respect of educational institutions, by order specify,-

- (a) the curricula, syllabi and text books for any course of instruction;
- (b) the duration of such course;
- (c) the medium of instruction;
- (d) the scheme of examinations and evaluation;
- (e) the number of working days and working hours in an academic year;
- (f) the rates at which tuition and other fees, building fund or other amount, by whatever name called, may be charged from students or on behalf of students;
- (g) the staff pattern (teaching and non-teaching) and the educational and other qualifications for different posts;

Radhika S.N.

- (h) the facilities to be provided, such as buildings, sanitary arrangements, playground, furniture, equipment, library, teaching aid, laboratory and workshops;
- (i) such other matters as are considered necessary.

(2) The curricula under sub-section (1) may also include schemes in respect of,-

- (a) moral and ethical education;
- (b) population education, physical education, health education and sports;
- (c) socially useful productive work, work experience and social service;
- (d) innovative, creative and research activities;
- (e) promotion of national integration;
- (f) promotion of civic sense; and
- (g) inculcation of the sense of the following duties of citizens, enshrined in the Constitution namely:-
 - (i) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
 - (ii) to cherish and follow the noble ideals which inspired our national struggle for freedom;

Radhika S. N.

- (iii) to uphold and protect the sovereignty, unity and integrity of India;
 - (iv) to defend the country and render national service when called upon to do so;
 - (v) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities to renounce practices derogatory to the dignity of women;
 - (vi) to value and preserve the rich heritage of our composite culture;
 - (vii) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
 - (viii) to develop the scientific temper, humanism and the spirit of inquiry and reform;
 - (ix) to safeguard public property and to abjure violence;
 - (x) to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement.
- (3) The prescription under sub-section (1) may be different for the different categories of educational institutions.

Radhika S. N.

(4) (a) The objectives of education at the primary level shall be universalisation of education at the primary level by comprehensive access by both formal and non-formal means and by improving retention and completion rates with curriculum development and teacher education to help children attain the required level of achievement in the following basic purposes:-

- (i) development of 'basic skills' in literacy in the mother tongue and Kannada (where mother tongue is not Kannada), numeracy and communication;
- (ii) development of 'life skills' for understanding of and meaningful interaction with the physical and social environment, including study of Indian culture and history, science, health and nutrition;
- (iii) introduction of 'work experience' or socially useful productive work to provide children with the ability to help themselves, to orient them to the work processes of society and to develop right attitudes to work;
- (iv) promotion of values including moral values; and
- (v) development of good attitudes towards further learning.

(b) The main objective of education at the secondary level shall be to impart such general education as may be prescribed so as to make the pupil fit either for

Admini & N

higher academic studies or for job-oriented vocational courses.

The general education so imparted shall, among others, include,-

- (i) the development of linguistic skills and literary appreciation in the regional language;
 - (ii) the attainment of prescribed standards of proficiency in any two other selected languages among classical or modern Indian languages including Hindi and English;
 - (iii) the acquisition of requisite knowledge in mathematics and physical and biological sciences, with special reference to the physical environment of the pupil;
 - (iv) the study of social sciences with special reference to history, geography and civics so as to acquire the minimum necessary knowledge in regard to the State, country and the world;
 - (v) the introduction of 'work experience' or 'socially useful productive work' as an integral part of the curriculum; and
 - (vi) training in sports, games, physical exercises and other arts.
- (5) In every recognised educational institution,- (a) the course of instruction shall conform to the curricula and other conditions under sub-section (1); and (b) no part of the working hours prescribed shall be utilised for any purpose other than instruction in accordance with the curricula.

Jasviri SN

Section 133 reads as follows:

133. Powers of Government to give directions.-

- (1) The State Government may, subject to other provisions of this Act, by order, direct the Commissioner of Public Instruction or the Director or any other officer not below the rank of the District Educational Officer to make an enquiry or to take appropriate proceeding under this Act in respect of any matter specified in the said order and the Director or the other officer, as the case may be, shall report to the State Government in due course the result of the enquiry made or the proceeding taken by him.
- (2) The State Government may give such directions to any educational institution or tutorial institution as in its opinion are necessary or expedient for carrying out the purposes of this Act or to give effect to any of the provisions contained therein or of any rules or orders made thereunder and the Governing Council or the owner, as the case may be, of such institution shall comply with every such direction.
- (3) The State Government may also give such directions to the officers or authorities under its control as in its opinion are necessary or expedient for carrying out the purposes of this Act, and it shall be the duty of such officer or authority to comply with such directions.

The Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995 has

Admission S.

been formulated by the Government of Karnataka in exercise of powers conferred by Sub-Section (1) of Section 145 of Karnataka Education Act, 1983, which prescribes Rules for the Educational Institutions in Karnataka. Rules 11 to 15 read as follows:

"11. Provision of Uniform, Clothing, Text Books etc.,

- (1) Every recognised educational institution may specify its own set of Uniform. Such uniform once specified shall not be changed within the period of next five years.
- (2) When an educational institution intends to change the uniform as specified in sub-rule (1) above, it shall issue notice to parents in this regard at least one year in advance.
- (3) Purchase of uniform clothing and text books from the school or from a shop etc., suggested by school authorities and stitching of uniform clothing with the tailors suggested by the school authorities, shall be at the option of the student or his parent. The school authorities shall make no compulsion in this regard.

12. Parent Teacher Committee.-

- (1) It shall be the duty of the head of every recognised educational institution, to constitute a Parent Teacher Committee within thirty days of the commencement of each academic year;
- (2) Till a Committee is constituted, under sub-rule (1) the committee constituted in the preceding academic year shall continue to function;
- (3) The parent Teacher Committee for each educational institution shall consist of the following:-

Jasmini S.M.

- (a) Three representatives of the parents of the students who have studied upto SSLC or above of whom one shall be a woman and they shall be selected from among the willing parents.
 - (b) The head of the institution;
 - (c) Three class teachers in the institution selected by rotation;
 - (d) the Secretary of the Governing Council of the Educational Institution;
- (4) Whereas, the members of the Parent teacher committee specified by clauses (b) and (d) of sub-rule (3) shall be ex-officio, the members selected under clause (a) and (b) of sub-rule (3) shall hold office, for the period till the next committee is constituted under sub-rule (i).
- (5) The functions of the Parent-Teacher Committee shall be as follows:-
- (a) to redress the grievances of the students and their parents, if any;
 - (b) to devise such action programmes as could be conducive for a healthy student-teacher, parent-teacher, teacher-management, parent-management relations.
 - (c) any other activity conducive to the welfare of the students;
- (6) The Secretary of the Governing Council shall be the Chairman of the Parent-Teacher Committee.
- (7) The Head of the Institution shall be the Member Secretary of the Parent-Teacher

Admini & M.

Committee. He shall call for all the meetings of the committee, draw up proceedings of the Board and give effect to the decisions of the committee under the orders of the Chairman of the committee; All the proceedings of the committee shall be authenticated by the Chairman. The correspondence and other secretarial activities shall be carried on by the Member-Secretary.

- (8) Every decision of the Parent-Teacher Committee shall be taken by an ordinary majority of the elected members present and voting. In case of equality of votes, the Chairman shall have a casting vote.
- (9) The Parent-Teacher Committee shall meet at least once in three months in the premises of the educational institution. If the Chairman is unable to attend such quarterly meeting, he shall authorise some other member to chair such meeting.
- (10) Meeting notice shall be despatched to the members of the parent Teacher Committee at least ten days in advance. The quorum for the meeting shall be one-third of the total members of whom atleast one shall be a parent member.
- (11) The first meeting of every monthly constituted parent-Teacher Committee shall be held on the day of its constitution. An order constituting the committee shall be issued by the Head of the Institution.
- (12) Meetings of the Parent-Teacher Committee shall be held during working hours of the school with in the premises of the Institution.

Admini S.N

15. Violation of Rules regarding admission fees, or any provisions in the Act or Rules by the Institution.-

1 [(1)]1 Any parent who is aggrieved by,-

- (a) violation of any of the provisions of these rules with respect to admissions by the institutions;
- (b) violation of any of provisions of these rules with respect to collection of fees; may file a petition in writing to the District Level Education Regulating Authority constituted under 1 [rule 16]

2 [(2) "The District Regulating Authority may also suo-moto or on complaint made by any person interested orally or otherwise make an enquiry to satisfy themselves as to the correctness of the complaint and may pass as if may consider fit, after giving an opportunity to the party adversely affected by it an opportunity of making representation.

8. It is clear from the above provisions that the Education Act and Rules made thereunder empowers the Educational Institutions with discretionary power to specify its own set of uniform for their students. By virtue of the powers mentioned above in Rule 11 of the Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995, the Respondent No. 5 - P.U. College has made it compulsory to have its own uniform for the students.

9. The institutions have been following the uniform dress code from several years and some of the resolutions and

Admission S.1

photographhs of the students wearing uniforms is produced to that effect is produced herewith and marked as **ANNEXURE - R1** series which has been an undisputed fact.

10. Petitioners herein and their parents are fully aware of the uniform system adopted in the college at the time of admission. By taking admission to the institution, they have submitted themselves to the uniform and educational system being imparted. Furthermore, the Petitioners have voluntarily given their undertaking that they will abide by the dress code along with the discipline of the institution. The Petitioner, while invoking the equitable writ jurisdiction ought to have disclosed this aspect before this Hon'ble Court. Having not approached the court with clean hands, they are not entitled to any equitable relief. The Petitioner are now estopped from contending otherwise. The undertaking given by the Petitioners are produced and marked as **ANNEXURE-R2** series.

11. It is submitted that the institution has received such voluntary undertaking from all students at the time of admission and as such students cannot claim any exception or exemption from the prescribed dress code. It is pertinent to note that the Petitioners herein were following the dress code and they did not ask any exemption until December 2021. It is only at the end of the academic year 2021-22, when just two months were left for the completion of academic year, that this issue was unnecessarily raised. The Petitioners did not raise any claim at the time of admission prior to December 2021. Since the Petitioners have given their consent or undertaking to follow the

Admission

uniform system of the dress code, they are estopped from claiming such exemption at a later stage after completion of major portion of 70-75% of the academic year.

12. It is submitted that Respondent No. 5 - Institution has followed the Karnataka Education Act, 1983 and The Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995 referred above and directed the students to follow the uniform dress code in the college campus and class rooms. The long-standing practice of this uniform system is a settled fact, accepted and admitted by the College Development Committee under the Chairmanship of local M.L.A. and other office bearers have discussed the subject on 31.01.2022 in the presence of some of the Petitioners and their parents. The request of the Petitioners was discussed at length and after analyzing the law, public order, and notions of secularism, equality and conflicting interest, it was decided that the existing uniform system shall continue. The students including the Petitioners cannot be allowed to wear hijab inside the premises of the Institution and if they violate the dress code and wear Hijab, such act shall amount to violation of code of conduct of the Institution and be considered as a subject matter of disciplinary action. It was made clear that strict action shall be taken against such indiscipline and thus students were requested to follow the discipline and uniform dress code prescribed by the college. Copy of the resolution dated 25.01.2022 and 31.01.2022 is produced and marked as **ANNEXURE - R3 & R4** respectively.

Adinir S.N.

13. It is submitted that the State Government in exercise of its power of superintendence and control over the institution under the Karnataka Education Act issued directions on 25.01.2022 that the Government is examining larger issues of dress code and uniform system up to P.U. level and there are conflicting views and interest in the subject and in view of the sensitivity involved in the matter a high level committee is being formed to examine and report back with the recommendations to the Government. In the meanwhile, it was also directed that the Respondent No. 5 – College shall continue with the existing uniform dress code till a comprehensive policy or decision is taken on the subject. The said direction of the Government taken on 25.01.2022, and of the above proceedings of College Development Committee on 31.01.2022, has been specifically communicated to the students through instructions dated 01.02.2022 by Registered Post. Copy of the directions dated 25.01.2022 and 01.02.2022 is produced herewith and marked as **ANNEXURE – R5 & R6** respectively.

14. It is submitted that both the institution and the Respondent – Department are receiving various requests and complaints regarding the issue of Uniform. On the basis of the claim made by the Petitioners, certain other students are also taking their own dress code or pattern as per their religious beliefs. Since the issue involved is very sensitive and only an expert committee can decide such matters, the institution and its administration shall be in a better position to decide such issue. In **M. Venkata Subba Rao v. M. Venkata Subba Rao** reported in 2004 (2) CTC 1, the court upheld this contention.

Dadurao S. N.

The relevant extract of the judgement is produced herewith for ready reference:

"15. In regard to the arguments as to the power of a matriculation school to impose fine, reliance was placed on Regulation 21 relating to imposition of minor punishments. It is true that under Regulation 21, there is no provision for imposition of fine for any irregularity or breach of code of conduct on the part of the teachers. In fact, the code of conduct for teachers and other persons employed in a matriculation school is detailed under Appendix-VII of the Regulations. Imposition of dress code is not one of the code of conduct enumerated thereunder. However, we have traced the power of the management to enforce dress code, by issuance of directions in order to maintain uniform discipline, to clause 6 of Annexure VIII of the Regulations. When the management of the school is empowered to issue directions to the teachers to be followed, the necessary corollary would be that, for non compliance of such directions, the management is entitled to take action. We find that fine is one of the modes of imposition of penalty on the students for violation of the disciplinary regulations. Of course, the learned counsel for appellant is right in contending that in the event the directions are not followed, the management may be at liberty to take disciplinary action. In view of the fact that the overall control of the school shall vest with the management as per Regulation 3 coupled with the power under clause 6 of Annexure VIII of the Regulations, we do not find any irregularity in imposing fine on the

Jadhav & Co.

teachers for violation of the directions issued in respect of the dress code. For the said reason, we are unable to accept the challenge to the impugned order imposing fine for non-compliance of the directions issued by way of circulars in regard to the dress code.

16. For the foregoing reasons and also in view of the fact that the teachers are entrusted with not only teaching subjects prescribed under the syllabus, but also entrusted with the duty of inculcating discipline amongst the students, they should set high standards of discipline and should be a role model for the students. We have elaborately referred to the role of teachers in the earlier portion of the order. Dress code, in our view, is one of the modes to enforce discipline not only amongst the students, but also amongst the teachers. Such imposition of dress code for following uniform discipline cannot be the subject matter of litigation that too, at the instance of the teachers, who are vested with the responsibility of inculcating discipline amongst the students. The Court would be very slow to interfere in the matter of discipline imposed by the management of the school only on the ground that it has no statutory background. That apart, we have held that the management of the respondent school had the power to issue circulars in terms of clause 6 of Annexure VIII of the Regulations. In that view of the matter also, we are unable to accept the contention of the learned counsel for appellant in questioning the circular imposing penalty for not adhering to the dress code."

Radhika S. N.

It is also a settled law that when there are personal interests and larger interests involved, the issue of personal interest must yield to larger interest as decided in the case of **Asha Ranjan and Others v. State of Bihar reported 2017 (4) SCC 397**. In **Fathima Thasneem v. State of Kerala reported in 2018 SCC Online Kerala 5267**, the court emphasized on the State's duty to impart education. The relevant extract of the judgement is produced herewith for ready reference:

"6. Imparting education is a State function. Therefore private educational institutions discharge public function. Assuming that it is not a public function in regard to the prescription of dress code, the Fundamental Rights can be claimed as against the private actors horizontally. Horizontal application of the Fundamental Rights has been accepted by the Apex Court in various judgments. {See judgments of the Hon'ble Supreme Court in I.M.A. v. Union of India [(2011) 7 SCC 179], R.Rajagopal v. State of Tamil Nadu [(1994) 6 SCC 632], PUDR v. Union of India [(1982) 3 SCC 235]}.

7. Fundamental Rights are either in nature of the absolute right or relative right. Absolute rights are non-negotiable. Relative rights are always subject to the restriction imposed by the Constitution. The religious rights are relative rights (see Art 25 of the Constitution). In the absence of any restriction placed by the State, the Court need not examine the matter in the light of restriction under the Constitution. The Court will, therefore, have to examine the matter

Jadhavi S.N.

on a totally different angle on the conflict between Fundamental Rights available to both. The Court has to examine the prioritization of competing Fundamental Rights in a larger legal principle on which legal system function in the absence of any Constitutional guidance in this regard. The Constitution itself envisage a Society where rights are balanced to subserve the larger interest of the Society.

8. In every human relationship, there evolves an interest. In the competing rights, if not resolved through the legislation, it is a matter for judicial adjudication. The Court, therefore, has to balance those rights to uphold the interest of the dominant rather than the subservient interest. The dominant interest represents the larger interest and the subservient interest represents only individual interest. If the dominant interest is not allowed to prevail, subservient interest would march over the dominant interest resulting in chaos. The dominant interest, in this case, is the management of the institution. If the management is not given free hand to administer and manage the institution that would denude their fundamental right. The Constitutional right is not intended to protect one right by annihilating the rights of others. The Constitution, in fact, intends to assimilate those plural interests within its scheme without any conflict or in priority. However, when there is a priority of interest, individual interest must yield to the larger interest. That is the essence of liberty."

Radhika S. N.

It is submitted that the matters of internal discipline must be maintained by the Institution concerned. It is submitted that the internal decision taken by the Respondent No. 5 to regulate the internal conduct cannot be considered as unreasonable or arbitrary. It is also submitted that there is nothing preventing the student from wearing hijab outside the premises of the institution."

15. It is submitted that the Respondents or the Government is not in favour of any particular student or group nor are they interested in interfering with the religious beliefs. The only concern of the Government is to maintain uniformity, cohesiveness, discipline and public order which are indispensable to an educational institution. The great Indian nationalist and visionary, Rabindranath Tagore captured the essence of importance of equality in education in his poetic verses Where the mind is without fear:

'Where the mind is without fear and the head is held high Where knowledge is free Where the world has not been broken up into fragments by narrow domestic walls.'

The very purpose of uniform and dress code is to maintain equality among the students and maintain dignity, decorum and discipline in the institution. The feelings of oneness, fraternity and brotherhood shall be promoted within an institution. In educational institutions, students should not be allowed to wear identifiable religious symbols or dress code catering to their religious beliefs and faith. Allowing this practise would lead to a

Rachini S.N.

student acquiring a distinctive, identifiable feature which is not conducive for the development of the child and academic environment. It is necessary that educational institutions must have secular image which strengthen the continuation of national integration. Prescribing dress code will not be a hurdle or in any manner be violative of any rights as alleged by the Petitioners. On the other hand, they will be treated equally and there will not be any special identity being attributed to them or groupism they are subjected to by virtue of their appearance due to dress code. It is pertinent to note in similar case, the Madras High Court, division bench in **Jane Sathya v. Meenakshi Sundaram Engineering College reported in 2012 SCC Online Mad 2607** has taken the following view, relevant extracts are produced hereunder for ready reference:

"16. But, in the present case, she had opted to join the educational institution which had not imparted religious beliefs contrary to the faith of students. The petitioner was well informed about the working schedule of the college. Therefore, any student who joined the college is bound to attend the working schedule of the college. Such prescription of the working schedule by the college prescribing time table for the academic purpose cannot be said to be intruding into any religious faith of an individual as the individual has freedom to join any college of his / her choice. The regulations made do not offend any one's religious faith, it can never be said that religious right of such person is affected.

Admini S.N.

17. In the present case, as rightly contended by the college that the time table was informed to the students and parents on the first day of entering the academic year. If it was not suitable to any one, they should have left the campus in which event the college could have admitted another person before the cut-off date prescribed for admission. It is not the case of the petitioner that she continued her studies and insisted for her religious faith to be observed. On the other hand, she had voluntarily taken her transfer certificate and after which seeking for the refund of the fees. As rightly contended by the respondent college, the refund of fee has been stipulated in the circular issued by the AICTE and that the case of the petitioner did not come within the norms fixed by the AICTE. Therefore, the petitioner's writ petition is liable to be rejected on this short ground. Even otherwise, by the prescription of an uniform time table for all students, it can never be said that religious faith of any individual has been affected. Even in respect of educational institutions run by minorities protected under Article 30(1) of the Constitution, the Supreme Court has not precluded the State from imposing regulations and those institutions were directed to follow the general laws of land.

18. The Supreme Court in *Ahmedabad St. Xavier's College Society v. State of Gujarat* reported in (1974) 1 SCC 717 had an occasion to consider the scope of regulatory power of the State in respect of minority institution receiving aid and in paragraphs 172 and 173 it was observed as follows :

Daduni B.N.

"172. In considering the question whether a regulation imposing a condition subserves the purpose for which recognition or affiliation is granted, it is necessary to have regard to what regulation the appropriate authority may make and impose in respect of an educational institution established and administered by a religious minority and receiving no recognition or aid. Such an institution will, of course be subject to the general laws of the land like the law of taxation, law relating to sanitation, transfer of property, or registration of documents, etc., because they are laws affecting not only educational institutions established by religious minorities but also all other persons and institutions. It cannot be said that by these general laws, the State in any way takes away or abridges the right guaranteed under Article 30(1). Because Article 30(1) is couched in absolute terms, it does not follow that the right guaranteed is not subject to regulatory laws which would not amount to its abridgment. It is a total misconception to say that because the right is couched in absolute terms, the exercise of the right cannot be regulated or that every regulation of that right would be an abridgment of the right. Justice Holmes said in *Hudson County Water Co. v. McCarter*: All rights tend to declare themselves absolute to their logical extreme. Yet all in fact are limited by the neighbourhood of principles of policy which are other than those on which the particular right is founded, and which become strong enough to hold their own when a certain point is reached. No right, however absolute, can be free from regulation.

S. S. S. S.

The Privy Council said in *Commonwealth of Australia v. Bank of New South Wales* that regulation of freedom of trade and commerce is compatible with their absolute freedom; that Section 92 of the Australian Commonwealth Act is violated only when an Act restricts commerce directly and immediately as distinct from creating some indirect or consequential impediment which may fairly be regarded as remote. Likewise, the fact that trade and commerce are absolutely free under Article 301 of the Constitution is compatible with their regulation which will not amount to restriction.

173. The application of the term abridge may not be difficult in many cases but the problem arises acutely in certain types of situations. The important ones are where a law is not a direct restriction of the right but is designed to accomplish another objective and the impact upon the right is secondary or indirect. Measures which are directed at other forms of activities but which have a secondary or indirect or incidental effect upon the right do not generally abridge a right unless the content of the right is regulated. As we have already said, such measures would include various types of taxes, economic regulations, laws regulating the wages, measures to promote health and to preserve hygiene and other laws of general application. By hypothesis, the law, taken by itself, is a legitimate one, aimed directly at the control of some other activity. The question is about its secondary impact upon the admitted area of administration of educational institutions. This is especially a problem of determining

Dadurini S.A.

when the regulation in issue has an effect which constitutes an abridgment of the constitutional right within the meaning of Article 13(2). In other words, in every case, the Court must undertake to define and give content to the word abridge in Article 13(2). The question to be asked and answered is whether the particular measure is regulatory or whether it crosses the zone of permissible regulation and enters the forbidden territory of restrictions or abridgment. So, even if an educational institution established by a religious or linguistic minority does not seek recognition, affiliation or aid, its activity can be regulated in various ways provided the regulations do not take away or abridge the guaranteed right. Regular tax measures, economic regulations, social welfare legislation, wage and hour legislation and similar measures may, of course have some effect upon the right under Article 30(1). But where the burden is the same as that borne by others engaged in different forms of activity, the similar impact on the right seems clearly insufficient to constitute an abridgment. If an educational institution established by a religious minority seeks no recognition, affiliation or aid, the state may have no right to prescribe the curriculum, syllabi or the qualification of the teachers." *Fathema Hussain Sayed a Minor v. Bharat Education Society and others* reported in AIR 2003 Bombay 75.

16. It is submitted that secularism is held to be the basic feature of the Constitution. Hence, while discharging constitutional obligation of imparting education, the State has to

Jadhvi B.N.

prescribe a secular uniform/dress code for the students. Prescribing a uniform also flows from the fundamental duty caste on the State under Article 14 and Article 46 of the Constitution. Given the diversirty of our nation and society, there are many religions and denominations. Every religion and caste will have their own belief, faith and practice, way of life. When exceptions, exemptions are given to certain people, community, or religion, others will also demand their claim, there will be chaos and confusion and conflicting interest which may lead to a law and order situation. Many of the countries abroad have adopted this view point and have strictly implemented following of a uniform dress code in educational institutions and have been banned in some of the countries more have been banned Hijab in public places. Such decisions are warmly welcomed across the world and the courts of such countries have upheld these decisions.

17. It is submitted that the guidelines produced at Annexure-J for the academic year 2022 is not in conformity with Rule 11 of Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995 and as such the Petitioner cannot rely upon the same and seek for its implementation by way of this writ petition. It is only illustrative in nature and the rule has got overriding effect and it is binding on the institutions and citizens. Since the rule allows the institutions to adopt their own uniform and guidelines, Annexure-J lacks importance and the institution is justified in its discretion with the noble object of maintaining secularism and equality in the institution.

Admini S.

18. It is submitted that Petitioners have also questioned the jurisdiction and powers of the Respondent - College Development Committee, more particularly, the Respondent Nos. 15 and 16 in this context. It is relevant to refer the Circular dated 31.01.2014 issued by the Government of Karnataka directing P.U. colleges to establish College Development Committee by prescribing the modalities. The said committee is formed for the overall betterment and taking care of the administration of the students and also safeguards the interest of the students. As per the requirement of the circulars issued from time to time, the 15th Respondent being the local M.L.A. as a Chairman constituted College Development Committee. The Development Committee for the academic year 2021-22 was formed on 24.08.2021 and the said committee has been effectively functioning. The Committee has convened several meetings and taken several decisions for the welfare and wellbeing of the institution and students at large. Such being the case, the allegations made in the Writ Petitions against the members of the Development Committee and their powers to take decisions in respect of the affairs of the institution cannot be found at fault by the Petitioners, the Committee was formed and is functioning in accordance with law and Petitioners cannot question its validity. The Petitioners have not challenged the educational Act, Rules made thereunder, or the resolution of the Development Committee, directions given by the Government and as such, they are not entitled for any relief as prayed for. Without challenging the powers of the Government or institution, they cannot question the action taken ^{by} Principal or the

Adurini S.S.

Committee. Copy of the Circular and formation of College Development Committee dated 24.08.2021 is produced and marked as **ANNEXURE- R7.**

19. It is pertinent to note that, the Government of Karnataka exercising its power u/s 7(1)(i), 7(2)(g)(V) R/w Section 133 of the Karnataka Education Act, 1983 and Rule 11 of Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995 has issued Government Order dated: 04.02.2022 regarding uniform policy for the Educational institution in the state. The said notification has been issued having regard to the conflicting views, demands by various educational institutions and students at large. After raising of the issue involved in these writ petitions, the students of various institutions of state of Karnataka have started insisting of clothes to be worn of their choice and they are seeking for relaxation and exemption from following uniform dress code prescribed by various institution governed under the Act. In order to resolve the controversy the Government thought it appropriate to prescribe uniform dress code by virtue of order dated: 04.02.2022. Copy of the order dated: 04.02.2022 is produced and marked as **ANNEXURE-R8.**

20. In order to maintain public order to provide equal treatment to all students and to avoid unnecessary controversy in the college and campus of educational institution in the state, to maintain secularism among the students the above clarification has been issued making the prescription of uniform dress code clear to all the students.

Radhika S N.

21. The Petitioners do not have any enforceable right, special privilege to invoke the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India. The Petitioners under the guise of demand for wearing hijab (head scarf) or any other dress code other than the one prescribed by the college administration have unnecessarily knocked the doors of this Hon'ble Court.

22. The education being the matter of academic in nature and policy of uniform dress code and curricula etc., have been prescribed by the Government or the expert bodies with noble intention of maintaining principles of secularism, equality and brotherhood, dignity, decorum and discipline in the educational institution cannot be treated as violation of any fundamental right of the citizen. The fundamental right guaranteed to the Citizen are subject to exception of public order, morality and other fundamental rights. Since, the Constitution has not exempted nor has provided any special privilege or exception to the Petitioners they cannot insist for the same.

It is further contended that the Petitioner's fundamental right to practice the essential practice of her religion, including wearing of hijab to the 2nd Respondent^{TRF} University while attending classes is being violated. It is submitted that the Petitioner has no enforceable right to invoke jurisdiction under Article 226 of the Constitution of India. In **Shayaro Bano v. Union of India reported in 2017 (9) SCC 1**, the court laid down that there are numerous religious groups who practise diverse forms of worship or practise religions, rituals, rites etc. It would therefore,

Radwani S.H.

be difficult to devise a definition of religion which would be regarded as applicable to all religions or matters of religious practices.

In **M. Ismail Faruqui (Dr.) v. Union of India** reported in (1994) 6 SCC 360, the Constitution Bench held that the protection under Articles 25 and 26 of the Constitution is with respect to religious practice which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of practice of that religion. The latter is not protected by Article 25 of the Constitution.

Therefore, it is submitted that some practices may merely be facets of a religion and not an essential religious practise. It is submitted that insofar as the Muslim women are concerned, reference is made to burqa or hijab worn by women, whereby women veil themselves, from the gaze of strangers. It is contended that wearing a hijab is not an essential religious practise as interpreted in **Ajmal Khan v. The Election Commission** reported in 2006-4-L.W.102. The relevant extracts are produced herewith for ease of reference:

"11. In the light of the decisions enunciated in the aforesaid judgment, it is necessary to examine whether the Gosha or Purdah is an essential ingredient or part of the Muslim religion. The famed Koran translator Mohammad Marmaduke Pickthall, whose official translation of Koran was cited before us said in his 1925 lecture "The Relation of the Sexes" that there is no text in the Koran, no saying of our Prophet, which

D. S. M. B. N.

can possibly be held to justify the practice of depriving women of the natural benefits which Allah has decreed for all mankind (i.e. Sunshine and fresh air and healthy movement).... The true Islamic tradition enjoins the veiling of the hair and neck, and modest conduct that is all. This is borne out by the following Hadith: Ayesha (R) reported that Asmaa the daughter of Abu Bakr (R) came to the messenger of Allah (S) while wearing thin clothing. He approached her and said : 'O Asmaa! When a girl reaches the menstrual age, it is not proper that anything should remain exposed except this and this. He pointed to the face and hands." (Abu Dawood). He further observed that veiling of the face by women was not originally an Islamic customs. It was prevalent in many cities of the East before the coming of Islam, but not in the cities of Arabia. The purdah system, as it now exists in India, was quite undreamt of by the Muslims in the early centuries, who had adopted the face-veil and some other fashions for their women when they entered the cities of Syria, Mesopotamia, Persia and Egypt. It was once a concession to the prevailing custom and was a protection to their women from misunderstanding by peoples accustomed to associate unveiled faces with loose character. Later on it was adopted even in the cities of Arabia as a mark of (tamaddun) a word generally translated as 'civilization' but which in Arabic still retains a stronger flavour of its root meaning 'townsmanship' that is carried by the English word. It has never been a universal custom for Muslim women, the great majority of whom have never used

Justini S.M.

it, since the majority of the Muslim women in the world are peasants who work with their husbands and brothers in the fields. For them the face-veil would be an absurd encumbrance. Thus the Purdah system is neither of Islamic nor Arabian origin. It is of Zoroastrian, Persian, and Christian Byzantine origin. It has nothing to do with the religion of Islam, and, for practical reasons, it has never been adopted by the great majority of Muslim women.... The Purdah system is not a part of the Islamic law. It is a custom of that Court introduced after the Khilafat had degenerated from the true Islamic standard and, under Persian and Byzantine influences, had become mere Oriental despotism. It comes from the source of weakness to Islam not from the source of strength."

"13. The Canadian writers Syed Mumtaz Ali and Rabia Mills in their essay *Social Degradation of Women a Crime and a Libel on Islam* explain:

" One must realize and appreciate the fact that the commandment in the Qur'an in Chapter 33, verse 53, with respect to the Hijab, applies only to the "Mothers of the believers" (the wives of the Holy Prophet, p.b.u.h.) whereas the wording of the Qur'an in Chapter 33 verse 55, applies to all Muslim women in general. No screen or Hijab (Purdah) is mentioned in this verse it prescribes only a veil to cover the bosom and modesty in dress. Hence the unlawfulness of the practice of the Indian-style system of Purdah (full face veiling). Under this system, the Hijab is not only imposed upon all Muslim women, but it is also

Asadullah Khan

quite often forced upon them in an obligatory and mandatory fashion. Even the literal reading/translation of this Quranic verse does not support the assertion that the Hijab is recommended for all Muslim women. The Hijab/screen was a special feature of honour for the Prophet's p.b.u.h. wives and it was introduced only about five or six years before his death."

14. In the English translation of Koran by Muhammad Asad in Note 37 states "We may safely assume that the meaning of *illa ma zahara minha* is much wider, and that the deliberate vagueness of this phrase is meant to allow for all the time-bound changes that are necessary for man's moral and social growth.". In the Article "The Question of Hijab: Suppression or Liberation" published by The Institute of Islamic Information and Education (III&E) and reproduced in electronic form by Islamic Academy for Scientific Research the author states that the question of Hijab (Purdah) for Muslim women has been a controversy for centuries and will probably continue for many more. Some learned people do not consider the subject open to discussion and consider that covering the face is required, while a majority are of the opinion that it is not required. A middle line position is taken by some who claim that the instructions are vague and open to individual discretion depending on the situation. The wives of the Prophet (s) were required to cover their faces so that men would not think of them in sexual terms since they were the "Mothers of the Believers" but this requirement was not extended to other women."

Raduni S.H.

16. Even assuming that the Purdah or Gosha is an essential ingredient of the Muslim religion, Article 25 itself makes it clear that this right is subject to public order, morality or health and also to the other provisions of Part III of the Constitution. In *T.M.A.Pai Foundation v. State of Karnataka*, AIR 2003 SC 355, 11 Judges Bench observed as follows: -

" 82. Article 25 gives to all persons the freedom of conscience and the right to freely profess, practice and propagate religion. This right, however, is not absolute. The opening words of Article 25(1) make this right subject to public order, morality and health, and also to the other provisions of Part III of the Constitution. This would mean that the right given to a person under Article 25(1) can be curtailed or regulated if the exercise of that right would violate other provisions of Part III of the Constitution, or if the exercise thereof is not in consonance with public order, morality and health. The general law made by the government contains provisions relating to public order, morality and health; these would have to be complied with, and cannot be violated by any person in exercise of his freedom of conscience or his religion to profess, practice and propagate religion. For example, a person cannot propagate his religion in such a manner as to denigrate another religion or bring about dissatisfaction amongst people.

83. Article 25(2) gives specific power to the State to make any law regulating or restricting any economic, financial, political or other secular activity, which

Jadhav S.N.

may be associated with religious practice as provided by sub-clause (a) of Article 25(2). This is a further curtailment of the right to profess, practice and propagate religion conferred on the persons under Article 25(1). Article 25(2) covers only a limited area associated with religious practice, in respect of which a law can be made. A careful reading of Article 25(2)(a) indicates that it does not prevent the State from making any law in relation to the religious practice as such. The limited jurisdiction granted by Article 25(2) relates to the making of a law in relation to economic, financial, political or other secular activities associated with the religious practice."

18. In view of the foregoing discussion, we have no hesitation in holding that the direction of the Commission is not violative of Article 25 of the Constitution. We also do not find any substance in the complaint of violation of right to privacy. In *R. Rajagopal v. State of T.N.*, (1994) 6 SCC 632, the Supreme Court held that the right to privacy is not enumerated as a fundamental right in our Constitution, but has been inferred from Article 21. In that case, reliance was placed on *Kharak Singh v. State of U.P.*, (AIR 1963 SC 1295) and other decisions of English and American Courts, and thereafter, the Court held that the petitioners have a right to publish what they alleged to be a life story/autobiography of Auto Shankar insofar as it appears from the public records, even without his consent or authorisation. But if they go beyond that and publish his life story, they may be invading his right to privacy for the consequences in accordance with law.

Jadwini S.N.

For this purpose, the Court held that a citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. Position may, however, be different, if a person voluntarily thrust himself into controversy or voluntarily invites or raises a controversy. The preamble of our Constitution proclaims that we are a democratic republic. The democracy being the basic feature of our constitutional set up, there can be no two opinions that free and fair elections to our legislative bodies alone would guarantee a growth of healthy democracy in our country. The decision of the Election Commission of putting the photographs in the electoral roll was taken with a view to improving the fidelity of the electoral rolls and to check impersonation and eradicate bogus voting. Hence, the argument of the learned counsel that the decision violates the right to privacy is required to be rejected.

23. The identifiable feature by virtue of wearing a cloth or dress code other than uniform is not conducive to the development of the institution as also the child or student. Absolutely there is no restriction to wear the dress of their choice anywhere outside the classroom or college campus. No one has been treated differently inside the classroom or campus; discipline and decorum shall be maintained in the educational institution in order to safeguard the interest of the students and

Radhika SN

the institutions. In **Mohammed Zubair Corporal v. Union of India and Others reported in (2017) 2 Supreme Court Cases 115**, the court discussed the relevance of uniform and its importance of distinguishable feature. The relevant extract of the judgement is produced herewith for ready reference:

"18. We see no reason to take a view of the matter at variance with the judgment under appeal. The Appellant has been unable to establish that his case falls within the ambit of Regulation 425(b). In the circumstances, the Commanding Officer was acting within his jurisdiction in the interest of maintaining discipline of the Air Force. The Appellant having been enrolled as a member of the Air Force was necessarily required to abide by the discipline of the Force. Regulations and policies in regard to personal appearance are not intended to discriminate against religious beliefs nor do they have the effect of doing so. Their object and purpose is to ensure uniformity, cohesiveness, discipline and order which are indispensable to the Air Force, as indeed to every armed force of the Union."

24. The educational institution is not a place to profess, preach any particular religion or caste and on the contrary students have to maintain uniform and for this noble object the students are required to wear uniform and cloth as prescribed by the institution or concerned authority. Allowing any student to wear cloth other than prescribed uniform cloth or pattern will amount to preferential treatment, resulting in violation of Article

Justice S.M.

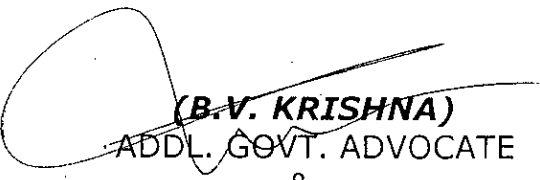
14 of the Constitution of India of other students by unfollowing the uniform dress code. Petitions are liable to be rejected on this ground alone.

25. All other averments, which are not specifically traversed herein and inconsistent with the above, are hereby denied as false and baseless.

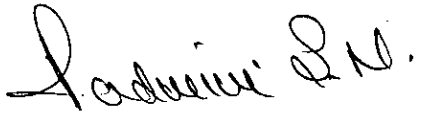
26. The Respondent reserves liberty to file additional statement of objections and grounds at the later stage as advised.

WHEREFORE, it is respectfully prayed that this Hon'ble Court may be pleased to REJECT the interim prayer and DISMISS the afore-mentioned Writ Petitions, accordingly, in the interests of Justice and Equity.

Bengaluru,
Dated:


(B.V. KRISHNA)
ADDL. GOVT. ADVOCATE
&
ADVOCATE FOR RESPONDENTS -STATE

ASSR: 0102(NF) | KNP:0202D:0402d|0702(EMAIL)(NF):1+2
SO - WP2146 of 2021 & 2347 of 2022



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

WRIT PETITION No.

2146

of 2022 (Edn)

BETWEEN :

Ayesha Harzema Alwas ^{clw}

2347/22

PETITIONER/S

AND

State of Karnataka & ors

RESPONDENTS

AFFIDAVIT

VERIFYING THE STATEMENT OF OBJECTIONS

I, Dadeeni S N ^{w/o} M.R. Prekash Age 52

Years do hereby solemnly affirm and state as follows:

1. I am working as Under Secretary to Govt. Dept. of Primary & Secondary Education (P.U.) - M.S. Bldg. 1st floor
 I have read the Petition and Affidavit filed by the Petitioner and I have acquainted myself with the facts of the case from the available records. I am authorised to swear to this Affidavit.

2. The Statements made in paragraphs 1 to 26 of the Statement of Objections accompanying this Affidavit are based on the information I gathered from the available records and I believe them to be true.

3. I state the ANNEXURES R₁ to R₈ produced along with the objections statement are true copies of the originals.

Dadeeni S N
 DEPONENT

VERIFICATION

I, the above named deponent do hereby verify that all the facts stated in the affidavit are all true to my knowledge and that no part thereof is false and nothing material is concealed there from.

Bengaluru

Date: 07.02.2022

IDENTIFIED BY ME:

[Signature]

ASSISTANT

Advocate General Offices

Bengaluru



Dadeeni S N
 DEPONENT

SWORN TO BEFORE ME

[Signature]
 C. VENKATAPATHY
 ADOCAE & NOTARY

002, Cresent Heights Apartment
 1st Cross, Snehahalli, Amruthahalli
 Sahakara Nagar (Post)
 Bengaluru - 560092

SL.No. 555 VOL.No. IPage No 5.3 Dt. 07/02/2022

No. of Corrections:

Annexure P-9

**WP NO. 2347/2022 Connected Cases: WP NO. 2146/2022,
WP NO. 2880/2022, WP NO.3038/2022
AND WP NO.3044/2022**

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

[SMT RESHAM AND ANOTHER VS. STATE OF KARNATAKA AND
OTHERS]

CJ & KSDJ & JMKJ:
10.02.2022
(VIDEO CONFERENCING)

ORDER

1. All these writ petitions essentially seek to lay a challenge to the insistence of certain educational institutions that no girl student shall wear the *hijab* (headscarf) whilst in the classrooms. Some of these petitions call in question the Government Order dated 05.02.2022 issued under sections 7 & 133 of the Karnataka Education Act, 1983. This order directs the College Development Committees all over the State to prescribe 'Student Uniform', presumably in terms of Rule 11 of Karnataka Educational Institutions (Classification, Regulation & Prescription of Curricula, etc.) Rules, 1995.

2. A Single Judge (Krishna S Dixit J) vide order dated 09.02.2022 i.e., yesterday, has referred these cases to Hon'ble the Chief Justice to consider if these matters can be heard by a Larger Bench '*regard being had to enormous public importance of the questions involved*'. Accordingly,

WP NO. 2347/2022 and connected matters

this Special Bench comprising of three Judges has immediately been constituted and these cases are taken up for consideration.

3. We have heard the learned Senior Advocates Mr. Sanjay Hegde & Mr. Devadatt Kamat appearing for the petitioners respectively in W.P.No.2146/2022 & W.P.No.2880/2022 for some time. Learned Advocate General appearing for the State also made some submissions.

4. Mr. Sanjay Hegde, learned Sr. Adv. argues that:

The 1983 Act does not have any provision which enables the educational institutions to prescribe any uniform for the students. The 1995 Rules apart from being incompetent are not applicable to Pre-University institutions since they are promulgated basically for Primary & Secondary schools. These Rules do not provide for the imposition of any penalty for violation of the dress code if prescribed by the institutions. Even otherwise the expulsion of the students for violating the dress code would be grossly disproportionate to the alleged infraction of the dress code. All stakeholders should make endeavors to create an atmosphere of peace & tranquility so that the

WP NO. 2347/2022 and connected matters

students go back to the schools and prosecute their studies. Nobody should pollute the congenial atmosphere required for pursuing education. All stakeholders should show tolerance & catholicity so that the girl students professing & practicing Islamic faith can attend the classes with *hijab* and the institutions should not insist upon the removal of hijab as a condition for gaining entry to the classrooms.

5. Learned Sr. Advocate Mr. Devadatt Kamat basically assailed the subject Government Order contending that the decisions of Kerala, Madras & Bombay High Courts on which it has been structured have been wrongly construed by the Govt. as hijab being not a part of essential religious practice of Islamic faith and that there is a gross non-application of mind attributable to the Government. He also submits that the State Government has no authority or competence to issue the impugned order mandating the College Development Committees to prescribe student uniform. He submits that dress & attire are a part of speech & expression; right to wear hijab is a matter of privacy of the citizens and that institutions cannot compel them to remove the same.

WP NO. 2347/2022 and connected matters

6. In response, learned Advocate General shortly contends that no *prima facie* case is made out for the grant of any interim relief. The impugned order *per se* does not prescribe any uniform since what uniform should be prescribed by the institutions is left to them. The agitation should come to an end immediately and peace & tranquility should be restored in the society; there is no difficulty for the reopening of the institutions that are closed for a few days in view of disturbances and untoward incidents. The agitating students should go back to schools. He denies the submissions made on behalf of petitioners. Learned Advocate General also brought to the notice of the Court that there are several counter agitations involving students who want to gain entry to the institutions with saffron and blue shawls and other such symbolic clothes and religious flags. Consequently, the Government has clamped prohibitory orders within the radius of 200 metres of the educational institutions.

7. Mr.Devadatt Kamat, learned Sr. Adv. is continuing with his arguments. Learned advocates appearing for petitioners in other connected writ petitions, learned AG appearing for the State and Mr. Sajjan Poovayya, learned

WP NO. 2347/2022 and connected matters

Sr. Adv. appearing for some institutions are also to be heard. This apart, there are advocates who want to argue for the impleading applicants. These matters apparently involve questions of enormous public importance and constitutional significance. We are posting all these matters on Monday (14.02.2022) at 2.30 p.m. for further consideration.

8. Firstly, we are pained by the ongoing agitations and closure of educational institutions since the past few days, especially when this Court is seized off this matter and important issues of constitutional significance and of personal law are being seriously debated. It hardly needs to be mentioned that ours is a country of plural cultures, religions & languages. Being a secular State, it does not identify itself with any religion as its own. Every citizen has the right to profess & practise any faith of choice, is true. However, such a right not being absolute is susceptible to reasonable restrictions as provided by the Constitution of India. Whether wearing of *hijab* in the classroom is a part of essential religious practice of Islam in the light of constitutional guarantees, needs a deeper examination.

WP NO. 2347/2022 and connected matters

Several decisions of Apex Court and other High Courts are being pressed into service.

9. Ours being a civilized society, no person in the name of religion, culture or the like can be permitted to do any act that disturbs public peace & tranquility. Endless agitations and closure of educational institutions indefinitely are not happy things to happen. The hearing of these matters on urgency basis is continuing. Elongation of academic terms would be detrimental to the educational career of students especially when the timelines for admission to higher studies/courses are mandatory. The interest of students would be better served by their returning to the classes than by the continuation of agitations and consequent closure of institutions. The academic year is coming to an end shortly. We hope and trust that all stakeholders and the public at large shall maintain peace & tranquility.

10. In the above circumstances, we request the State Government and all other stakeholders to reopen the educational institutions and allow the students to return to the classes at the earliest. Pending consideration of all these petitions, we restrain all the students regardless of their religion or faith from wearing saffron shawls (*Bhagwa*),

WP NO. 2347/2022 and connected matters

scarfs, *hijab*, religious flags or the like within the classroom,
until further orders.

11. We make it clear that this order is confined to such of the
institutions wherein the College Development Committees have
prescribed the student dress code/uniform.

12. List these matters on 14.02.2022 at 2.30 p.m. for
further consideration.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

**Sd/-
JUDGE**

AHB
List No.: 1 Sl Nos.: 1, 2, 3

TRUE COPY

Annexure P-10

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
WRIT PETITION NO. 2146/2022

BETWEEN:

Ayesha Hajeera Almas and Others

PETITIONERS

AND:

Chief Secretary, State of Karnataka and Others

RESPONDENTS

INDEX

Sl. No.	Particulars	Page No.
1.	Statement of Objections filed on behalf of Respondent No. 15	1-12
2.	Verifying Affidavit	13
3.	Annexure 'A' – A copy of the resolution dated 06.07.2004	14
4.	Annexure 'B' – A copy of the resolution dated 29.03.2013	15
5.	Annexure 'C' – A copy of the resolution dated 27.03.2014 along with typed copy.	16
6.	Annexure 'D' – A copy of the resolution dated 23.06.2018 along with typed copy.	17-18
7.	Annexure 'E' – A copy of the circular dated 25.01.2022 issued by the State Government	19-20
8.	Annexure 'F' – A copy of the resolution dated 25.01.2022 along with its typed copy.	21-24
9.	Annexure 'G' – A copy of the resolution dated 31.01.2022 along with its typed copy.	25-30

10.	Annexure 'H' - A copy of the Government Order dated 05.02.2022 and amendment order dated 05.02.2022.	31-35
11.	Annexure 'J' - A copy of the circular dated 07.06.1995.	36-42
12.	Annexure 'K' - A copy of the resolution dated 08.07.1995.	43-45
13.	Annexure 'L' - A copy of the Registration Certificate dated 03.02.1996.	46
14.	Annexure 'M' - A copy of the byelaws issued by the Government Pre-University College for Girls Betterment Committee, Udupi	47-50
15.	Annexure 'N' - A copy of this circular dated 31.01.2014.	51
16.	Annexure 'P' - Copies of the Photographs	52 - 57

BENGALURU

DATE: 14.02.2022

V. A. H. N.
ADVOCATE FOR RESPONDENT NO.15

**BEFORE THE HON'BLE HIGH COURT OF KARNATAKA
AT BENGALURU**

W. P. No. 2146/2022

BETWEEN:

AYESHA HAJEERA ALMAS AND OTHERS **PETITIONER**

AND:

CHIEF SECRETARY,
STATE OF KARNATAKA AND OTHERS **RESPONDENTS**

**STATEMENT OF OBJECTIONS FILED BY RESPONDENT
NO. 15**

Respondent No. 15 respectfully submits as follows:

1. It is submitted that the instant writ petition is not maintainable, is misconceived, devoid of merits and deserves to be dismissed *in limine*.
2. All the statements, averments and contentions in the writ petition save and except those which are specifically admitted herein. Anything that has not been specifically admitted is hereby denied. Nothing shall be deemed to be admitted for want of specific traverse.

3. This petition is fraught with misrepresentations and the averments therein are unsupported by any documentary evidence. Therefore, the instant petitions ought to be dismissed *in limine* for lacking in specificity, bona fides, abuse of process of law and gross misrepresentation of facts.

PRELIMINARY SUBMISSIONS

4. It is submitted that the Government Pre-University College for Girls, Udupi i.e., Respondent No.5 is an educational institution under the Karnataka Education Act, 1983. Respondent No. 5 is all-girls college and has a total strength of 956 students from Class VIII to Second year of Pre-University College.
5. It is relevant to note that a total of 599 students are currently enrolled in First and Second PUC cumulatively. It is further submitted that a total of 75 students belonging to the Muslim community are currently enrolled in PUC.

6. The present petition and related controversy arises out of the actions of six PUC students. It is relevant to note that except these six students (Petitioners herein), no other student has demanded the right to wear a headscarf while attending classes at Respondent No.5 college. It is solely on account of the actions of the Petitioners that classes, not only in Respondent No.5 institution but across the State of Karnataka have come to a complete standstill.
7. It is relevant to note that all the student studying in PUC in Respondent No. 5 institution including the Petitioners, have at the commencement of current academic year signed an undertaking agreeing to abide by the uniform prescribed by Respondent No.5.
8. It is pertinent to note that the prescription of uniform for the students of Respondent No.5 existed right from the date of establishment of Respondent No.5 college and the students are following the uniform dress code for the last three and half decades without any hesitation. The

resolutions dated 06.07.2004, 29.03.2013 and 23.04.2014 specifically evidences the prescription with regard to uniforms. Further, the resolution dated 23.06.2018 specifically denotes that the earlier uniform for students i.e., blue color chudidhar pants, blue and white checks top and blue color shawl i.e., Duppatta on the shoulder shall be continued for six days every week. A copy of the resolutions dated 06.07.2004, 29.03.2013, 27.04.2014 and 23.06.2018 are produced herewith as **Annexure 'A' to 'D'**, respectively.

9. Under the abovementioned circumstances, it is pertinent to note that the Petitioners themselves were in compliance with the uniform prescribed by Respondent No. 5 till as recently as December 2021. It was only on 30.12.2021 that the Petitioners for the first time demanded that they be permitted to wear headscarves and attend classes. This request of Petitioners was denied on the ground that the Respondent No.5 has a long-standing practice of a prescribed uniform, and no
-

occasion arises to deviate. Further, the State Government had further issued a circular dated 25.01.2022 directing that while the issue of permitting headscarves was pending consideration, all the students in interim period must follow the uniforms prescribed by the CDC. A copy of the circular dated 25.01.2022 issued by the State Government is produced herewith as **Annexure 'E'**. The College Development Committee ("CDC") further reiterated the Circular dated 25.01.2022 and passed a resolution dated 25.01.2022 on similar lines. A copy of the resolution 25.01.2022 is produced herewith as **Annexure 'F'**.

10. Despite the long standing prescription regarding uniform and despite the circular of the State Government dated 25.01.2022 and subsequent CDC's resolution, the Petitioners refused to abide by the uniform prescribed and continued to insist on being permitted to wear headscarves within the premises of Respondent No.5 institution. In light of the deadlock created by the

Petitioners, the College Development Committee *vide* resolution dated 31.01.2022 reiterated its earlier resolution of 25.01.2022 with the intention of smooth administration and conduct of classes. A copy of the resolution 31.01.2022 is produced herewith as **Annexure 'G'**.

11. It is relevant to note that subsequently, the Respondent No.1 issued a Government Order dated 05.02.2022 holding that headscarves were not an essential item of clothing for students professing Islam and further empowering the respective CDC's to determine the uniform for the relevant Pre-University Colleges. A copy of the government order dated 05.02.2022 is produced herewith as **Annexure 'H'**. Significantly, the order dated 05.02.2022 has not been challenged in the present petition.

12. While the Petitioners claim that wearing headscarf is an essential practice of Islam, they have failed to produce any material substantiate this claim. In the absence of

any such material, it is apparent that the present petition is without any basis in law or facts and must necessarily be dismissed.

**ESTABLISHMENT OF COLLEGE DEVELOPMENT
COMMITTEE FOR RESPONDENT NO.5 COLLEGE:**

13. In terms of the Circular dated 07.06.1995 bearing PUC Edu. Dept 1/95-96, the "Government Pre-university college for girls betterment committee, Udupi" ("**Committee**") was formed *vide* resolution dated 08.07.1995. As per the circular dated 07.06.1995, the Member of Legislative Assembly of the constituency where the college is located is the *ex officio* president of the Committee. In so far as Respondent No.5 institution is concerned, Mr. U R Sabhapathi who was the Member of Legislative Assembly, Udupi, at the relevant point in time was the first chairperson of the CDC upon its formation. A copy of the circular dated 07.06.1995 and the resolution dated 08.07.1995 is produced here with as **Annexure 'J' and 'K', respectively.** In keeping with

the mandate of circular dated 07.06.1995, the MLA, Udupi, has been the chairperson of the CDC ever since.

14. It is submitted that the CDC is registered as a Society, on 03.02.1996 under the Karnataka Society Registration Act, 1960 *vide* registration certificate no. 173/95-96. In pursuant to the registration and formation of the Committee, bye laws were formed for the functioning of this Committee. These byelaws also prescribed that Member of Legislative Assembly shall be the *ex officio* president of CDC and an eminent person of the locality will be the vice-chairperson of CDC. A copy of the registration certificate and the byelaws are produced herewith as **Annexure 'L'** and **'M'**, respectively.

15. It is submitted that Respondent No.15 became the chairperson of CDC when he was elected as the MLA of Udupi constituency in the year 2004 – 2005. Respondent No.15 was the chairperson of CDC from 06.07.2004 till 30.09.2013 and from 23.06.2018 till date.

16. In so far as, Respondent No.16 is concerned, he has been nominated to CDC by Respondent No.15 in accordance with the byelaws. It is therefore apparent that the appointment of Respondent Nos. 15 and 16 is in accordance with prescribed law and regulations. Therefore, the prayer of *quo warranto* sought by the Petitioners against Respondent Nos. 15 and 16 deserves to be dismissed in *limine*.

17. In furtherance of the Circular dated 07.06.1995, the Department of Pre-University Education, Government of Karnataka issued a circular dated 31.01.2014 bearing no. ED 580 SHH 2013. In this circular dated 31.01.2014, it is specifically denoted that *inter alia* to secure the education standards of pre-university education, College Development Committee shall be created with the incumbent MLA as the chairperson. A copy of this circular dated 31.01.2014 is produced herewith as **Annexure 'N'**.

18. It is submitted that Rule 11 of the Karnataka Educational Institutions (Classification, regulations and prescription of curricula, etc.,) Rules 1995 empowers every Educational Institution to specify the uniform for its students. In this light, the CDC has specified the uniform for the students of Respondent No.5 and the said students have been consistently adhering to the prescribed uniform.

19. It is submitted that the students of Respondent No.5 including the Petitioners are in compliance with the dress code of the prescribed by Respondent No. 5 till December 2021. Photographs evidencing the same are produced herewith as "**Annexure P**".

20. Without prejudice to the foregoing, Respondent Nos. 15 and 16 craves leave of this Hon'ble Court to traverse the averments made in the instant Writ Petition para-wise as hereunder: -

PARA WISE TRAVERSAL

21. **Para Nos. 1 to 4**: The contents of these paragraphs are matter of record and does not require traversal.
22. **Para Nos.5 to 18**: The contents of these paragraphs are denied as false and baseless. It is clarified that the Petitioners were following the uniform prescribed by Respondent No. 5 till December 2021. It was only on 30.12.2021 that the Petitioners for the first time demanded that they be permitted to wear headscarves within the premises of Respondent No.5 institution.
23. **Para No. 19**: The contents of these paragraphs are denied as false and baseless. It is clarified that an educational institution is empowered to prescribe uniform to students under that Rule 11 of the Karnataka Educational Institutions (Classification, regulations and prescription of curricula, etc.,) Rules 1995 and guidelines cannot override the rules. It is settled law that executive cannot override statutory rules.

24. **Para No. 20**: The contents of these paragraphs are denied as false and baseless.
25. **Para Nos. 21, 23 and 25**: The contents of these paragraphs are denied as false and baseless. It is submitted that the Petitioners have made unnecessary allegations against Respondent Nos. 15 and 16 which are irrelevant for the purposes of the present determination. 15 and 16 reserves liberty to take necessary actions for such false and fictitious statements.
26. **Para No. 22, 24 and 28**: The contents of these paragraphs are denied as false and baseless.
27. **Para No. 26**: The contents of these paragraphs are denied as irrelevant to the subject matter and the decision of the Hon'ble High Court of Kerala is no bearing Hon'ble Court.

WHEREFORE it is most respectfully prayed that this Hon'ble Court be pleased to dismiss the captioned Petitioner filed by the Petitioners, in the interest of justice and equity.

BENGALURU

DATE: 13.02.2022

ADVOCATE FOR RESPONDENT NO.15

TRUE COPY

Annexure P-11

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

WP No. 2146 of 2022

Petitioner/s, Appellant/s

Ayesha Hajeeera
Almas & Others

Vs.

Respondent/s

Chief Secretary Primary
& Higher Education &
Others.

INDEX

Sl. No.	Description	Pages	C.F. Paid
01.	Statement of Objection filed by R5 & R6	1-10	
02	Verifying Affidavit	11-12	
03.	Annexure R1 along with Typed copy & Translated copy	13-17	
04	Annexure R2 along with Typed copy & translated copy	18-21	
05	Annexure R3 along with Typed copy & translated copy	22-27	
06	Annexure R4 along with Typed copy & translated copy.	28-33	

Place Bengaluru.

Date 21.02.2022

Advocate for Respondent Nos 5 & 6

**IN THE HON'BLE HIGH COURT OF KARNATAKA AT
BENGALURU**

(Original Jurisdiction)

W.P. No. 2146 / 2022 (GM-EDU)

Between:

Ayesha Hajeera Almas and othersPetitioners

And

Chief Secretary

Primary and Higher Education

And others

....Respondents

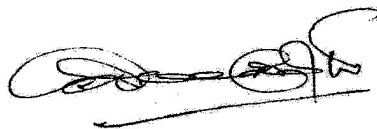
STATEMENT OF OBJECTIONS FILED BY
RESPONDENTS No. 5 AND 6

The Respondents No. 5 and 6 herein file the following Statement of Objections to the Writ Petition as follows: -

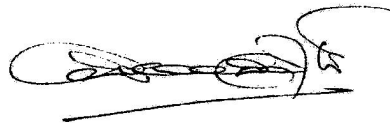
1. At the outset the allegations made against Respondents No. 5 and 6 are false and baseless.
2. It is submitted that the Petitioners are students of the Government P.U. Girls College, Udupi. The college is a Girls' college meant exclusively for girls and there are about 599 students in the college.



3. At the outset, it is submitted that the petition is not maintainable either under law or on facts and is liable to be dismissed at the threshold. The Prayer 1 seeking for mandamus and an enquiry against the Respondents 5 and 6 for violating instruction enumerated under Chapter 6 of the Guidelines of PU Department for the academic year of 2021-22 is untenable as it is seeking enforcement of certain GUIDELINES which do not have the force of law. The authority to issue the GUIDELINES does not flow from the ACT or RULES and the same cannot be enforced in a writ petition under article 226 of the Constitution of India.
4. The Prayer 2 seeking for writ of mandamus to Respondent No.3 to conduct enquiry against Respondents 6 to 14 for their hostile approach towards the Petitioners is misconceived as it not preceded by a demand, which is mandatory before approaching the court for mandamus. There is also no foundation for the false allegations in the petition against respondents 6 to 14 which calls for any enquiry.
5. The Prayer 3 seeking for a writ of quo warranto against Respondents 15 and 16 under which authority and law they are interfering in the administration of Respondent No.5 school is untenable. The writ of QUO WARRANTO does not lie against individuals who are acting in accordance with law.

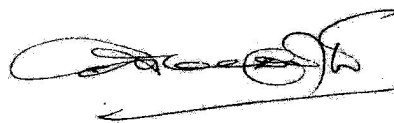


6. The Prayer no. 4 seeking for a declaration of status quo referred in the letter dated 25.01.2022 at Annexure H is with the consonance with the Department Guidelines for the Academic Year 2021-22, is misconceived as the issue relating to uniform has been regulated by the state and the guidelines have no force of law.
7. It is submitted that the girl students or the Petitioners were not in the habit of wearing hijab previously. However, occasionally some parents of the Muslim girls used to enquire whether the wearing of hijab is permitted during the college study hours. Further, the parents of Muslim girls requesting for wearing of hijab would request the principal and the teachers to ensure that their daughters are not involved in singing, dancing, music, and other extracurricular activities. In fact, some of the parents would say that Muslim girls are required to wear hijab for the purpose of constantly and continuously reminding them that they are not supposed to move freely with other girls and avoid the company of boys. Hijab is not just a scarf but is a garment that constantly and continuously reminds the Muslim girls of the restrictions placed on them. It would contradiction in terms to give education that preaches liberty and equality and permit the wearing of hijab which clearly communicates that the Muslim girls are not equal to the other girls or boys. This in fact would lead to an inferiority complex among the girl students who would be wearing the hijab. Further, wearing of hijab would give rise to a situation where the



Muslim girls would be isolated and segregated automatically from the other students. Further, since hijab would be a constant and continuous reminder of the restrictions placed on the girl students, they would not be allowed to participate in any activities like music, singing, dancing, sports, and other extracurricular activities. This in turn would result in even the teachers not selecting candidates wearing hijab for various competitions and this would, in fact, result in the Muslim girls being ignored and not getting exposed to education for the overall development and growth of the Muslim girl child.

8. It is further submitted that Petitioners have chosen to enrol in an educational institution for secular education and not for practising their religion. The right to practice their religion is not interfered with by framing regulations governing all students uniformly. A small section of students, having been instigated by radical elements in the minority community are raising issue based on religion. The practice of religion does not mean that overt expression of one's faith in educational institutions has a deleterious effect of all students. There are many students who do not want to be seen as belonging to any particular religion which is their right in a secular state. Students belonging to another religion feel uncomfortable when such external exhibition of one religion is permitted. The wearing of head covering is not universal among Muslims. Many do not consider it an essential part of Islam and do



not advocate it universally. Only in totalitarian states and some Islamic states like Saudi Arabia such mandatory prescription is seen in the world. Even in some Muslim countries like Turkey, Courts have ruled that head covering is not essential in Islam and a ban on the same is lawful and does not violate the freedom of religion. Many other western countries which profess secularism like France, have also restricted head gear in schools and public places which have been held to not violate religious freedom. Such restriction has been held to not violate any international convention. Such restriction on teachers has also been upheld in many jurisdictions. The Respondents herein have always acted in the best interest of all the girls studying in the school and college without distinguishing or differentiating them on the basis of religion, caste, creed, etc., Uniforms and dress code have been felt necessary for promoting discipline among students apart from promoting feelings of equality and fraternity among all students.

9. It is submitted that in the last week of December 2021, when the Petitioners along with a few other Muslim girls approached seeking for wearing hijab during college hours, their parents were asked to meet the school authorities. On 29.12.2021, some persons met the college authorities claiming to be the parents of the Petitioners and other Muslim girls insisting on wearing hijab. The principal and other authorities convinced them to not insist on wearing

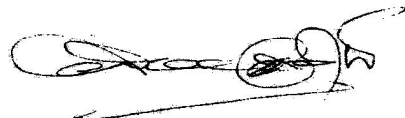


hijab during college hours. However, on 30.12.2021, some persons from the Campus Front of India (CFI) approached the college authorities and insisted on permitting hijab in college and when refused, the students and the persons with them started to behave rashly and started protesting and then the Muslim girl students refused to attend classes without wearing hijab. After that, the CFI has been co-ordinating protests and processions. It is pertinent to note that the parental rights of supervision are delegated to the school and teachers when the child is entrusted to school. Regulation of uniform is one of the aspects which can be enforced by the school and teachers. This has nothing to do with practising one's religion.

10. It is submitted that Article 25 of the Constitution of India is not an absolute and must give way to public order and "other provisions of part III of the constitution", the right to freedom under Art. 25 must be read in consonance with the freedom guaranteed to other citizens and children, to be educated in a free and fair environment without being subjected to overt religious symbols and practices, which make them uncomfortable and leads to a permanent distinction in their young minds about ones religious orientation. It is well established that religious symbols in schools evoke unfavourable feelings among large sections of the society and children.



11. The allegations made against the Respondents herein are false and baseless and the Petitioners are put to strict proof of the same. The allegations made in the Writ Petition at paragraph 5 stating "the Respondents no 6, 7, and 13 insisted the Petitioner students to remove the headscarf by shaming them due to their conduct and invoking their religious identity." is hereby vehemently denied as false and baseless. It is submitted that the Petitioners were previously not wearing headscarves and all of a sudden, the Petitioners started wearing the same and the action of the Petitioners is clearly an instigation by some organization outside the college.
12. It is submitted that the uniform worn by the students in the college has been prescribed since a very long time and the same has been continued from time to time by passing resolutions. Resolutions by the College Development Committee (CDC) in this regard for the continuation of the uniform was passed in 2004, 2006, and 2018. Copies of the minutes / resolutions dated 06.07.2004, 23.06.2018, 31.07.2018 and 25.01.2022 are herewith furnished as **Annexures R1, R2, R3 and R4.**
13. The allegation made in paragraph 7 of the writ petition that the Respondents 6 and 7 told the Petitioners that the Petitioner's parents had signed a consent letter during the time of admission which stated that their wards shouldn't wear a headscarf is hereby denied as false and baseless.



14. The allegation made in paragraph 8 of the writ petition that Respondents 6 and 7 used to scold and threaten the Petitioners by marking them absent and not rewarding them internal marks is denied as false and baseless.
15. The allegations made in paragraph 10 stating "since September 2021, the Petitioners faced discrimination in their class and whenever Respondent Nos. 5 to 12 takes their classes, remove Petitioners from the class and mark them absent and made them stand outside the class as punishment and it is still continuing today" is stoutly denied as false and baseless.
16. The allegation made in paragraph 11 stating that in the month of December the parents of the Petitioners went to speak to Respondent No.6 and Respondent No.6 sent them away telling them to discuss the issue after the exams, is denied as false and baseless.
17. The allegation made in paragraph 11 that Respondent no.6 candidly accepted that there is no specific condition regarding headscarf and it is common form regarding maintaining school rules and discipline is denied as false and baseless.
18. The allegation made in paragraph 12 that the class teacher wouldn't allow the Petitioner students to attend the

A handwritten signature in black ink, appearing to be 'S. S. S.', with a horizontal line underneath.

class and would instead send them to get permission from the principal i.e., Respondent No.6, through their parents, and would compel them to wait all day without meeting, is vehemently denied as false and baseless.

19. The allegation made in paragraph 13 that Respondent No.3 immediately called Respondent No.6 and scolded him for not allowing Petitioners to attend the class and directed him to allow the students immediately is denied as false and baseless.
20. The allegation made in paragraph 14 that "Respondent No.6 called a meeting of the so-called college development committee which has no legal sanctity and illegal composition of political entities to interfere in the management and functioning of the colleges and percolate their political agenda, Respondent No.15 and 16 are the self-claimed chairman and vice-chairman in this illegal CDC. In this meeting Respondent No.15 declared the Petitioners will not wear a headscarf. If they continue then other students will wear muffler/saffron shawl to counter them and blend the entire issue into communal colour" is vehemently denied as false and purely baseless.
21. The allegation made in paragraph 15 that Respondent No.6 called the local media at the instance of Respondent No.16 is stoutly denied as false and baseless.



22. The allegation made in paragraph 16 which states "on 14-01-2021 Petitioners No. 4, 5, and 6 went to college and Respondent No.6 has called them in the chamber and scolded them for conducting protest in front of the college gate and making a media issue and subsequently he called Respondent No. 7 to 11 in his chamber to write an apology letter, these Respondents threaten Petitioners No. 4 to 6 with their gestures and gave a blank paper in their hands to forcefully write an apology, when they refused they called Respondent No. 13 as well, who manhandled them physically and threaten them to spoil their education completely" is hereby vehemently denied as false and completely baseless. The Petitioners have made statements to suit their convenience for the purpose of filing the writ petition.

Wherefore, it is prayed that this Hon'ble Court may be pleased to dismiss the petition, in the interest of justice and equity.



Advocate for Respondents 5 and 6

Bengaluru

Dt:19.02.2022



Respondents 5 & 6

TRUE COPY

Annexure P-12

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

WP NO. 2146/2022

IN THE MATTER OF:

Ayesha Hajeera Almas & Ors.

... Petitioners

VERSUS

Chief Secretary Primary & Higher Education & Ors

... Respondents

S.no	Particulars		Page no
1.	Rejoinder to the state objection with verifying affidavit		I-XX
PROPOSITIONS AND JUDGMENTS RELIED ON BY THE PETITIONERS			
NO.	JUDGMENT	RELEVANT PARAS	PAGE NO.
USE OF HIJAB AS AN ESSENTIAL PRACTICE IN TERMS OF A MANDATORY INJUNCTION UNDER HOLY QURAN SUPPORTED BY THE HADITH, HENCE IS PROTECTED UNDER ARTICLE 25 AS WELL AS U/S. 19(1)(A) AND SUPPORTED BY THE PREAMBLE			
1.	Amnah Bint Basheer & Another Vs. CBSE, New Delhi – (2016) 2 KLJ 605	29, 30	1 - 11
2.	Bijoe Emmanuel & Others Vs. State of Kerala & Others – (1986) 3 SCC 615	15, 16, 17	12 - 29
3.	Equal Employment Opportunity Commission Vs. Abercrombie & Fitch Stores Inc. – (2015) SCC OnLine US SC 3	Internal page 1 - 3	30 - 39
DOCTRINE OF ACCOMMODATION AS AN AID TO LAW OF NON-DISCRIMINATION AND FREEDOM OF RELIGION			
4.	Mohammad Fugicha Vs. Methodist Church in Kenya (suing through its Trustees) – (2016) SCC Online Kenya 3023	Internal page 25 onwards	40 - 72
5.	Nada Rahem Vs. CBSE & Others – (2015) SCC OnLine Ker 21660	4, 5	73 - 74
6.	Vikash Kumar Vs. Union Public Service Commission & Others – (2021) 5 SCC 370	44	75 - 113
7.	Lt. Col. Nitisha & Others Vs. Union of India & Others – (2021) SCC OnLine SC 261	83 - 87	114 - 170
LAWS (SPECIFIC GOVERNMENT ORDER DATED 05.02.2022) THOUGH APPEARING TO BE NEUTRAL ON FACE BUT NONETHELESS PERPETUATES INDIRECT DISCRIMINATION QUA THE			

PETITIONERS THUS, FALLING FOUL OF ARTICLE 14 OF THE CONSTITUTION OF INDIA			
8.	Lt. Col. Nitisha & Others Vs. Union of India & Others - (2021) SCC OnLine SC 261	54 - 66, 77, 83-87, 120, 122, 143	114 - 170
9.	Mohammad Fugicha Vs. Methodist Church in Kenya (suing through its Trustees) - (2016) SCC Online Kenya 3023	Internal page no. 18 onwards	40 - 72
GOVERNMENT ORDER DATED 05.02.2022 IS IN VIOLATION OF THE 'DOCTRINE OF PROPORTIONALITY' AND THUS VIOLATES THE PETITIONERS' FUNDAMENTAL RIGHTS			
10.	Modern Dental College & Research Center Vs. State of M.P. - (2016) 7 SCC 353	61 - 66	171 - 291
GOVERNMENT ORDER DATED 05.02.2022 IS IN TEETH OF THE ULTIMATE CONSTITUTIONAL GOAL WHICH IS 'UNITY IN DIVERSITY' AND HENCE VIOLATES ARTICLE 25 AND PREAMBLE OF THE CONSTITUTION			
11.	State of Karnataka & Another Vs. Dr. Praveen Bhai Thogadia - (2004) 4 SCC 684	6, 9	292 - 303
12.	S.P. Muthu Raman Vs. The Chief Secretary, Government of Tamil Nadu & Others - 2012 (1) L.W. 765	10 - 12, 14, 15, 17 - 22, 25	304 - 316
13.	Tehseen S. Poonawala Vs. Union of India - (2018) 9 SCC 501	23,27,28,30,31	317 - 340
THE GOVERNMENT ORDER DATED 05.02.2022 IS IN BREACH OF THE INVIOABLE 'RIGHT TO DIGNITY' AND THUS VIOLATES NOT ONLY THE PREAMBLE BUT THE ENTIRE PART III OF THE CONSTITUTION OF INDIA			
14.	National Legal Services Authority Vs. Union of India - (2014) 5 SCC 438	25, 35, 36, 51, 53, 69, 70, 71, 73, 75, 96-98, 104 - 107, 128, 129	341 - 401
15.	K.S. Puttaswamy Vs. Union of India - (2017) 10 SCC 1	105, 107,	REFER TO SCC 2017 VOL. 1

Drawn & filed by:

(Tanveer Ahmed Mir, Kartik Venu,
& Mohammad Tahir)
Advocates for Petitioners

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
WP NO. 2146/2022

IN THE MATTER OF:

AYESHA HAJEERA ALMAS & ORS. ... PETITIONERS

VERSUS

CHIEF SECRETARY PRIMARY AND

HIGHER EDUCATION & ORS ... RESPONDENTS

REJOINDER FILED BY THE PETITIONERS TO THE
STATEMENT OF OBJECTIONS OF STATE

1. It is stated that the Objections filed by the State are absolutely misconceived and without merit. The Petitioners deny all averments made save those that are a matter of record or which are expressly admitted. No averments made by the State may be deemed to be any admission on the part of the Petitioners for want of specific denial or traverse.
2. That on the aspect of prior representation to the concerned authorities, it is an admitted position as stated by the Petitioners in their petition that on 30.12.2021 the Petitioner were constrained to send a representation to Respondent No. 3 (Dy. Director, PU Education Dept.) *in view of* the unheeded requests made by the Petitioners to the Respondent No. 5 & 6 to allow them to continue coming to college wearing their headscarves being an

essential tenet of their religion. Reference be made to **Annexure F of the WP [pg. 41 – 42]**.

3. That as regards the reliance of the State on the Karnataka Education Act, 1983, it is reiterated that a perusal of the powers conferred on the regulator *contain no express provision for prescribing uniform, nor any punishment prescribed against any student for failure to wear a uniform*. A perusal of Section 7 of the Act nowhere prescribes any requirement of uniform or ancillary matters related thereto. Moreover, *it would further be too much of a stretch to interpret the provisions in a manner that such provisions impliedly provide for such powers*. It is also needless to say that powers under Section 133 are to be exercised in terms of the express provisions in the Act and not in a plenary manner.
4. That as regards the reliance of the State on the Karnataka Education Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995, it is category stated that *the 1995 Rules are applicable to Education Institutions imparting Primary & Secondary Education and not at the Pre-University level*. The Pre-University level is instead guided by the Karnataka Pre-University Education (Academic, Registration, Administration and Grant-in-aid, etc.) Rules, 2006, for which *no such provisions for prescribing uniform exist nor any punishment prescribed for failure to wear a uniform exist*. Furthermore, a perusal of both sets

of rules would reveal they are intended to read disjunctively as they cover entirely different categories of fields, have entirely separate grievance redressal mechanisms, and envision an entirely separate authority exercising superintendence over the concerned educational institutions. It is thus fallacious to apply rules meant for children of far younger age brackets and in requirement of far more direction to pre-university college students. Therefore, the justification of the State for their initial actions of denial of entry, harassment and humiliation to the Petitioners for wearing a headscarf *in addition to and not in derogation of* their school dress being their bona fide, conscientious religious beliefs, is without lawful authority, and even otherwise constitutes a sweepingly disproportionate disciplinary action. Notwithstanding the same, the issuance of govt. order. dt. 05.02.2022 [post the filing of the present petition and the preliminary hearing before the Hon'ble Single Judge of this Hon'ble Court] is a *clear indication of mala fides and an implied admission that even the State itself was of the opinion the erstwhile actions taken were without lawful sanction.*

5. That as a common rejoinder to the multiple justifications of the impugned actions by the State, including the passing of the impugned order, keeping in mind the *law, public order and notions of secularism, equality, and conflicting interest* [refer to para 12 of the State's

Objections]; in order to maintain uniformity, cohesiveness, discipline and public order; to maintain equality, decorum, and discipline; and to promote oneness, fraternity, and brotherhood; and to have a secular image [refer to para 15 of the State's Objections]; and to maintain public order to provide equal treatment to all students; to maintain secularism [refer to para 20 of the State's Objections]; and that wearing a cloth or dress code other than uniform is not conducive to the development of the institution as also the child [refer to para 23 of the State's Objections]; and that allowing the Petitioners to wear clothes other than the prescribed uniform would amount to preferential treatment resulting in violation in Article 14 [refer to para 24 of the State's Objections], it is stated as follows:

a. The Petitioners' use of the hijab is an essential religious practice in terms of a mandatory injunction under the Holy Quran supported by the hadith is protected under Article 25 as well as Article 19(1)(a), further supported by the Preamble of the Constitution of India.

i. The petitioners contend that their desire to wear the head scarf of the same cloth of the uniform so prescribed, is a bona fide, conscientious attempt to obey a religious requirement which therefore, deserved due respect from the government. The validity of

the Petitioners' rights, dignity and religious beliefs stand protected under Article 25 irrespective of whether the practice is essential or not. Nor is the Petitioners' belief to be dependent on general acceptance or majority vote.

- ii. Viewed thus, the consistency and sincerity of the Petitioners practice sufficiently attracts protection under Article 25, making it incumbent on the State to justify such an action which has the effect of infringing the Petitioners' fundamental rights on the limitations prescribed therein (public order, health, morality, etc.). Reliance is placed on **Bijoe Emmanuel & Others Vs. State of Kerala & Others – (1986) 3 SCC 615**
- iii. Even assuming the test of essentiality is to apply in the present case, it has already been examined by a coordinate bench of the Hon'ble Kerala High Court in **Amnah Bint Basheer & Another Vs. CBSE, New Delhi – (2016) 2 KLJ 605** that the wearing of the hijab *is essential to the practice of the religion*. Both on the assertion of the Petitioners of their bona fide, conscientious religious beliefs, and on the test of

essentiality, the Petitioners' case is liable to succeed.

b. Even assuming the impugned order dt. 05.02.2022 is deemed 'facially neutral', the order is bad in law for being indirectly discriminatory qua the Petitioners being disproportionately affected by the State action, recognized under the concept of 'substantive equality' guaranteed under Article 14 of the Constitution of India.

i. Indirect discrimination is closely tied to the substantive conception of equality. The doctrine of substantive equality has been a critical evolution of the Indian constitutional jurisprudence on Article 14 and 15(1), now extending even to facially neutral provisions *which have the effect* of disproportionately affecting members of a community, even if the intent is indeterminate. Unless the provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are *appropriate* and *necessary*, the law is liable to be declared unconstitutional. Reliance is placed on **Lt. Col. Nitisha & Others Vs. Union of India & Others – (2021) SCC OnLine SC 261**; and of the judgment of the Kenyan

Court of Appeals in **Mohammad Fugicha Vs. Methodist Church in Kenya (suing through its Trustees) – (2016) SCC Online Kenya 3023;**

- ii. When applying the above concept of 'indirect discrimination' to the present case, *it is the Petitioners' who are disproportionately disadvantaged by the effect of the govt. order as they are being forced to pick one of their two fundamental rights to their education while compromising on their genuine religious beliefs and vice versa, whereas other students do not face the moral dilemma of choosing between their sincere religious or cultural beliefs with their education.*
- c. **Even assuming the Petitioners' fundamental rights under Article 25 and Article 19(1)(a) of the Constitution of India are not absolute, the State is obligated to balance the fundamental rights of the individual on one hand under the 'doctrine of proportionality', the basic hallmark of a modern democracy.**
 - i. This exercise of balancing competing interests is not done by eliminating the 'losing facet', but rather advocating peaceful and harmonious coexistence of both rights allowing

both to develop alongside each other, not at the expense of the other.

- ii. Thus seen, when a law / action has the effect of limiting a constitutional right, such a limitation is constitutional if it is proportional – When it is meant to achieve a proper purpose, if the measures taken to achieve such a purpose are rationally connected to its purpose, and such measures are necessary. Reliance is placed on **Modern Dental College & Research Center Vs. State of M.P. – (2016) 7 SCC 353**

d. **The principle of reasonable accommodation captures the positive obligation of the State to facilitate the constitutional guarantee of anti-discrimination within the concept of substantive equality both under Article 14 & 15(1) of the Constitution of India.**

- i. The doctrine of accommodation if properly understood, appreciated and applied, would always contribute to good governance of our schools thus entrenching constitutional and democratic principles.
- ii. The Govt. order leaves no scope for the Petitioners to wear a 'Hijab' in the school which the students honestly and genuinely

believe to be an act of obedience to their religious duty.

- iii. Therefore, a more pragmatic approach ought to have been adopted by the government in permitting exceptions and exemptions for the same. Manifest example is the practice and rules of all the Kendriya Vidyalaya Schools in the country.
- iv. The Canadian Court of Appeal in **R. Vs. Videoflex – 1984 (48) OR 2D 395** held which would be true of the Indian Constitution as well:- “The constitution determines that ours will be an open and pluralistic society which must accommodate small inconvenience that might occur where religious practices are recognized as permissible exception to otherwise justifiable homogenous requirements.”
- v. The Preamble to the Constitution clearly provides that every citizen in this country has an assurance and the Constitution intends to secure liberty of thought, expressing, belief, faith and worship as well as assuring dignity of the individual.
- vi. In **MEC for Kwazulu Natal, School Liaison Officer v. Pillay [CCT51/06 [2007] ZACC 21]**, the Constitutional Court of South Africa,

speaking through Chief Justice Langa attempted to delineate the concept and principle of accommodation as follows:- "At the core is the notion that sometimes the community whether it is the State, employer or a school must take positive measures and possibly incur an additional hardship or expense in order to allow all people to participate and enjoy their rights equally. It ensures that we do not relegate people to margins of the society because they cannot conform to certain social norms."

- vii. The South African Constitutional Court in **Christian Education South Africa Vs. Minister of Education – 2000 ZACC 2** – authoritatively observed:- "The underlying problem in any open and democratic society based on human dignity, equality and freedom in which conscientious and religious freedom has to be regarded with appropriate seriousness, is how far such democracy can and must go in allowing members of religious communities to define for themselves which laws they will obey and which not. Such society can cohere only if all its participants accept that certain basic norms and standards are binding. At the same time, the State

should, wherever reasonably possible, seek to avoid putting believers to extremely painful and intensely burdensome choices of either being true to their faith or else respectful of the law.”

- viii. Thus seen, comparative jurisprudence on anti-discrimination recognizes the concept of accommodation. When the Karnataka Education Act, 1983 itself covenants, “that the government will take all steps under this Act to value and to preserve the rich heritage and our composite culture”, it is clear that the govt. order ought to have followed the principle of accommodation in favour of the Petitioners which may be different from the majoritarian norm and which otherwise seeks to seriously impinge and violate the Petitioners’ conscientious individual belief and religious practice.
- ix. Moreover, by no stretch of imagination can it be said that the Petitioners’ would be getting *preferential treatment* for being accommodated for the reason that religious symbols, unlike class markers / fashion symbols, do not necessarily carry with them any connotations of power, status and superiority. Religious markers by contrast

create no such dilemma / inferiority. Therefore, 'accommodation' does not amount to preferential treatment. Reliance is placed on the judgment of the Kenyan Court of Appeals in **Mohammad Fugicha Vs. Methodist Church in Kenya (suing through its Trustees) – (2016) SCC Online Kenya 3023;**

e. The purported aims of the State mentioned in the Objections fail to understand the concept of 'secularism', 'equality', and mistake the concept of equality and unity for 'uniformity', when the Indian Constitution attempts to foster 'unity in diversity' and cultural heterogeneity.

i. The petitioners submit that the concept of equality is not to be confused with uniformity and in fact uniformity can be enemy of equality. Equality means equal concern and respect across differences. It does not presuppose the elimination or suppression of differences. Respect for human rights requires the affirmation of self, not the denial of self. Equality therefore does not imply a levelling or homogenization of behaviour but an acknowledgement and acceptance of difference. At the very least, it affirms that

difference should not be the basis for exclusion, marginalization, stigma and punishment – At best, it celebrates the validity that difference brings to any society.

- ii. It has appropriately been held in **State of Karnataka v. Praveen Bhai Thogadia (Dr.), (2004) 4 SCC 684** that "...Secularism is not to be confused with communal or religious concepts of an individual or a group of persons. It means that the State should have no religion of its own and no one could proclaim to make the State have one such or endeavour to create a theocratic State. Persons belonging to different religions live throughout the length and breadth of the country. Each person, whatever be his religion, must get an assurance from the State that he has the protection of law freely to profess, practise and propagate his religion and freedom of conscience. Otherwise, the rule of law will become replaced by individual perceptions of one's own presumptions of good social order. Therefore, whenever the authorities concerned in charge of law and order find that a person's speeches or actions are likely to trigger communal antagonism and hatred resulting in fissiparous tendencies

gaining foothold, undermining and affecting communal harmony, prohibitory orders need necessarily to be passed, to effectively avert such untoward happenings.

[...]

"9. Our country is the world's most heterogeneous society with a rich heritage and our Constitution is committed to high ideas of socialism, secularism and the integrity of the nation. As is well known, several races have converged in this subcontinent and they have carried with them their own cultures, languages, religions and customs affording positive recognition to the noble and ideal way of life — "unity in diversity". Though these diversities created problems in early days, they were mostly solved on the basis of human approaches and harmonious reconciliation of differences, usefully and peacefully. That is how secularism has come to be treated as a part of fundamental law, and an unalienable segment of the basic structure of the country's political system. As noted in *S.R. Bommai v. Union of India* [(1994) 3 SCC 1] freedom of religion is granted to all persons of India. Therefore, from the point of view of the State, religion,

faith or belief of a particular person has no place and given no scope for imposition on individual citizen. Unfortunately, of late, vested interests fanning religious fundamentalism of all kinds vying with each other, are attempting to subject the constitutional machineries of the State to great stress and strain with certain quaint ideas of religious priorities, to promote their own selfish ends, undeterred and unmindful of the disharmony it may ultimately bring about and even undermine national integration achieved with much difficulties and laudable determination of those strong-spirited savants of yesteryear. Religion cannot be mixed with secular activities of the State and fundamentalism of any kind cannot be permitted to masquerade as political philosophies to the detriment of the larger interest of society and basic requirement of a welfare State. Religion sans spiritual values may even be perilous and bring about chaos and anarchy all around. It is, therefore, imperative that if any individual or group of persons, by their action or caustic and inflammatory speech are bent upon sowing seeds of mutual hatred, and their proposed

activities are likely to create disharmony and disturb the equilibrium, sacrificing public peace and tranquillity, strong action, and more so preventive actions are essentially and vitally needed to be taken. Any speech or action which would result in ostracization of communal harmony would destroy all those high values which the Constitution aims at. Welfare of the people is the ultimate goal of all laws, and State action and above all the Constitution. They have one common object, that is to promote the well-being and larger interest of the society as a whole and not of any individual or particular groups carrying any brand names. It is inconceivable that there can be social well-being without communal harmony, love for each other and hatred for none. The core of religion based upon spiritual values, which the Vedas, Upanishads and Puranas were said to reveal to mankind seem to be: "Love others, serve others, help ever, hurt never" and "sarvae jana sukhino bhavantoo". One-upmanship in the name of religion, whichever it be or at whomsoever's instance it be, would render constitutional designs countermanded and chaos, claiming its heavy toll on society and

humanity as a whole, may be the inevitable evil consequences, whereof."

- f. **Thus seen, the Govt. order dt. 05.02.22 in seeking to force the Petitioners' to choose between continuing their education while compromising their genuine religious beliefs and vice versa, violates the Petitioners' core inviolable right to dignity, which finds mention in the Preamble and is implicit throughout the entirety of the Part III of the Constitution.**
6. That as regards the submission that as the Petitioners submitted undertakings to abide by the rules of the education system they cannot pray for the reliefs as claimed, it is needless to state that *the Petitioners' fundamental rights cannot be waived by any undertaking*. Even dehors the same, it is an admitted position that the State itself had also issued Guidelines for PU-Colleges for the year 2021-22 *which clearly mentioned that no uniform was prescribed for PU-Colleges*. Applying the law of estoppel, *it is the State that has approbated and reprobated in its stand*, first representing that no uniform is prescribed, taking resorting to illegal disciplinary action against the Petitioners despite their earlier guidelines [constituting an express statement / representation].

PRAYER

In view of the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may grant the relief prayed for the Petitioners herein in entirety and pass any other orders as deemed fit and proper in the interests of justice.

Bangalore

21/02/2022

Counsel for petitioners

IN THE HON'BLE HIGH COURT OF KARNATAKA AT
BANGALORE

Writ Petition No - /2022 (GM-EDU)

Between

Ayesha Hajeera Almas and others

Petitioners

And

Chief Secretary

Primary and Higher Education

And others

Respondents

VERIFYING AFFIDAVIT

I, Karani Sadiya Banu W/o Mupthi Mohammed Abrurul, Age about 40 years, R/at No 2-82 C, Kavrady, Opp to Urdu School, Kandlur, VTC, Kavrady, PO Kavradi, Kundapura, Udupi -576211 today at Bangalore, mother and representing Petitioner no 1 in this petitioner state and affirm also on the behalf of other petitioners and their respective representatives as under

1. I am the representing petitioner no 1 and this and conversant with the fact of this case as issue and relief of all other petitioners are uniform so I am also presenting this verification affidavit in their behalf, I am well conversant with the facts deposing hereto.
2. That the statements made in paragraphs 1 to 6 of the joinder to the state objection accompanying this affidavit are true to the best of my knowledge, information, and belief and based on the narration of petitioners students

and all the legal position of law and judgements was explained properly to me and with my consent it is incorporated

3. I state whatever I state above is true and correct
Identified by me

Advocate

Bangalore

Deponent

21-02-2022 Sworn to and signed before me at Bangalore
on this 22nd day of Feb , 2022

No. of corrections

TRUE COPY

Annexure P-13
IN THE HIGH COURT OF KARNATAKA,
BENGALURU

W.P. No. 2146 / 2022 (GM-RES)

Between:

Ayesha Hajeera Almas
& Others

.....Petitioners

And:

Chief Secretary
& Others

.....Respondents

Statement of Objections of Respondent No. 13

The Respondent No. 13 humbly submits and prays as follows:

1. The writ petition is neither maintainable on facts nor in law. The petitioners have made false, baseless and unsubstantiated averments and allegations and have also concealed material facts. The petitioners have not come with clean hands. On all the aforesaid counts the writ petition is liable to be dismissed.
2. All the averments made in the memorandum of writ petition, which are not specifically admitted, are hereby denied as false. The Petitioners are put to strict proof of the averments made in the memorandum of writ petition.

(Vikram Phadke)
Adv. For Resp. No. 13

3. Traversal of the allegations made in paragraphs 5, 8, 9, 12, 16, 18, 22, 30 of the writ petition:

- a. The answering Respondent is a ^{biology}~~physics~~ teacher in the Respondent No. 5 institution. The answering Respondent has never ill-treated any of the petitioners, for any reason whatsoever. The answering Respondent has never shamed the Petitioners for any reason whatsoever. The answering Respondent has never invoked the religion of the Petitioners. The answering Respondent has never threatened the Petitioners of marking them absent and / or of not awarding internal marks. The answering Respondent has neither informed or said anything to the Petitioner No. 5 or any other Petitioner that she i.e. the answering Respondent had incited other students to pull the headscarf in the past and that they (i.e the Petitioners) have to face same treatment. The answering Respondent has never sent any of the Petitioners to the Principal with a view to harass them or to take permission to wear headscarf. The answering Respondent neither manhandled the Petitioners nor threatened them of spoiling their education or threatened them. The answering Respondent has never acted in vengeance against the Petitioners for any reason, including their religious identity either in the past or at any point of time. The answering Respondent has never incited any other students to target the muslim students for any reason,

whatsoever. The answering Respondent is not opposing the Petitioners' wearing headscarf due to any personal or political preference. The answering Respondent has never marked the Petitioners' absent illegally at any point of time and the answering Respondent has never forcefully sent any of the Petitioners out of the class for any reason, including to prevent them from attending main exam.

- b. All the allegations and averments made against the answering Respondent in the synopsis of the memorandum of writ petition and in paragraphs 5, 8, 9, 12, 16, 18, 22, 30 of the memorandum of writ petition are hereby denied as false, baseless, demeaning and aimed at misleading this Hon'ble Court.
- c. The Petitioners have made motivated, false, baseless and unsubstantiated allegations, with an aim to mislead this Hon'ble Court. None of the allegations made are true and the Petitioners have not provided an iota of material to substantiate their allegations. Such malicious and irresponsible behaviour of the Petitioners tantamounts to abuse of the judicial system. The writ petition of the Petitioners is liable to be dismissed with heavy costs.

- d. The answering Respondent has always strived to impart quality education to all her students, irrespective of their religious, political or cultural backgrounds. It pains the answering Respondents that her students are making such baseless allegations against her, solely for the purpose of achieving an ulterior goal through this motivated writ petition.
 - e. The allegations in the writ petition against the answering Respondent are all false. The Petitioners have not adduced any material to substantiate their allegations, yet they have the gumption to seek for an enquiry against the answering Respondent and other teaching staff of the institution. They are not entitled to the prayers that they have sought. They seek to set in motion proceedings against the answering Respondent and other teaching staff, without any material. This attempt of the Petitioners is sheer abuse of the judicial process, which in the humble opinion of the answering Respondent should be reprimanded, otherwise it would demoralize the teachers.
4. It is humbly submitted that uniform has been prescribed and is being followed in the institution since nearly two decades and till December 2021 all students used to follow the same. However, in the last week of December 2021 the Petitioners came to the institution wearing

head-scarf / hijab and when the concerned officials of the institution informed them that they have to abide by the uniform, the Petitioners resorted to protests, thereby vitiating the teaching atmosphere of the institution. The parents of the Petitioners were also requested to meet with the officials of the institution so as to have discussion on the issue. Despite the discussion, the Petitioners intentionally resorted to protests and have now approached this Hon'ble Court on the basis of false, motivated and unsubstantiated allegations against the answering Respondent and other staff of the institution.

5. It has been the experience of the answering Respondent that to foster fraternity and equality, uniform in an academic institution helps a lot. A sense of belongingness with all students by participating in all activities of the institution by wearing common uniform is conducive for all-round development of the students. Not following the code of uniform prescribed, the students sow seeds of differentiation amongst the student community and such feelings are not conducive to the academic atmosphere. As per the knowledge of the answering Respondent, head-scarf / hijab is not a religious practice. The Petitioners have till now (i.e till the last week of December 2021) have adhered to the uniform prescribed, without any demur. However, it

seems that they are now protesting against the same at the behest of vested interests who wish to create trouble.

6. **Wherefore**, the answering Respondent humbly prays that this Hon'ble Court may be pleased to dismiss the writ petition of the Petitioners, with exemplary costs, in the interest of justice and equity.

Bengaluru
Dt. 22.02.2022

(Vikram Phadke)
Adv. For The Resp. No. 13

Verification

I, Smt. Chaya Shetty, the Respondent No. 13, do hereby state that the averments made in paragraphs 1 to 6 of the above statement of objections are true and correct to the best of my knowledge, information and belief.

Udupi
Dt. 22.02.2022

(Smt. Chaya Shetty)
Respondent No. 13

TRUE COPY

(Vikram Phadke)
Adv. For Resp. No. 13

Annexure P-14

BEFORE THE HON'BLE HIGH COURT OF
KARNATAKA, AT BANGALORE

W.P. No. 2146 / 2022 (GM - EDN)

BETWEEN :

AYESHA HAJEERA ALMAS AND OTHERS ... PETITIONER

AND

**CHIEF SECRETARY, PRIMARY AND ... RESPONDENTS
HIGHER EDUCATION AND OTHERS**

INDEX

SL No	PARTICULARS	PAGE No
1.	Statement of Objections filed by Respondent No. 12	1 - 15
2.	Verifying Affidavit	16 -/7

Place: Bangalore
Date : 23.02.2022

Advocate for Respondent No. 12

Address for Service:

sd/-
Other Side Served

Kashyap N. Naik
Advocate
Agra Legal
2nd Floor, Shivashankar Plaza
19, Lal Bagh Road, Richmond Circle
Bangalore - 560 027

**BEFORE THE HON'BLE HIGH COURT OF
KARNATAKA, AT BANGALORE**

W.P. No. 2146 / 2022 (GM - EDN)

BETWEEN :

AYESHA HAJEERA ALMAS AND OTHERS ... PETITIONER

AND

**CHIEF SECRETARY, PRIMARY AND ... RESPONDENTS
HIGHER EDUCATION AND OTHERS**

STATEMENT OF OBJECTIONS FILED BY RESPONDENT No. 12

The Respondent No. 12 in the above matter respectfully submits as follows :

I. PRELIMINARY SUBMISSIONS ON FACTS OF THE CASE

1. The Petitioners have filed the instant writ petition seeking several reliefs, such as issuance of a writ of Mandamus to Respondent No. 1 and 2 to initiate enquiry against Respondent Nos. 5 and 6 for violating the instructions specified under the guidelines of the Pre-University (PU) Department for academic year 2021 – 22 for maintaining uniform in PU colleges; for issuance of a writ of Mandamus to Respondent No. 3 (Deputy Director, PUC, Udupi District) to conduct an enquiry against Respondent No. 6 to 14 for their alleged hostile approach towards the Petitioners; issuance of a writ of Quo Warranto against the Respondent No. 15 and 16

questioning the authority under which they are allegedly interfering in the administration of Respondent No. 5 (Govt. Pre-University College, Udupi); and seeking a declaration that the status quo referred to in the letter dated 25.01.2022 (*Annexure H*) is in consonance to the Department guidelines for the academic year 2021 – 22. It is submitted that the writ petition is not maintainable on law or on facts and deserves to be dismissed as against the answering Respondent.

2. It is submitted that the answering Respondent is one of the lecturers working at the Respondent No. 5 college and is teaching chemistry in the college. It is submitted that the Respondent No. 5 college had been prescribing uniform for its students for nearly 2 (two) decades. It is submitted that for all these years, the students had been maintaining discipline in the college and had been adhering to the rules pertaining to the uniform prescribed from time to time.

3. It is submitted that on or about the last week of December, 2021, certain girl students belonging to the Muslim community approached the management / principal of the Respondent No. 5 college and made a special request to alter their dress code / uniform, more so pertaining to the wearing of a headscarf citing their religious beliefs. At the behest of the principal, the students were told ask their parents discuss regarding these issues. It is submitted that on 29.12.2021, certain persons visited the college along with some of the students and held discussions with the principal. The

answering Respondent is not aware of the exact nature of discussions that were had between the principal of the college and these persons who visited to discuss with him. The answering Respondent is also not aware if the persons who visited the college were in fact the parents of the students studying in the Respondent No. 5 Institution.

4. It is submitted that for three days, i.e., from 29th December to 31st December, the Petitioners tried to assert their rights to wear Hijab along with their uniform. The Petitioners, along with their family members met the Principal of the Respondent No. 5 institution and held discussions in the presence of police and DDPI. They were convinced from the management that they should adhere strictly to the uniform. Subsequently, when the offline/ physical classes were closed in January due to the rise in Covid19 cases as per the directions of the Deputy Commissioner, Udupi, there were some protests held outside the college at Udupi regarding the issue of uniform. It is submitted that the Petitioners have not been coming to college physically from December 31st 2021 onwards.

5. It is submitted that recently, the answering Respondent came to realize that she has been made a party to the present proceedings and several averments have been made against her in the above petition. Therefore, it is necessary for the answering Respondent to place on record the true facts and circumstances of this case as per her knowledge as also

her submissions in regard to the legal issues that have arisen in the instant case.

6. It is submitted that the answering Respondent has not been acting against the interests of any student, let alone the Petitioners herein. Unwanted allegations have been made against the answering Respondent, like other teachers, who have arrayed as respondents in this case. It is submitted that at no point of time did the answering Respondent ill-treat the Petitioners or otherwise treated them in any hostile manner owing to their religion or race. Surprisingly, allegations have been made targeting the answering Respondent with a view to mislead this Hon'ble Court by painting a picture as though several lecturers in the college have at all times been acting contrary to the interests of the Petitioners solely due to the fact that they belong to the Muslim community and / or that they had been wearing a headscarf.

7. It is submitted that the answering Respondent has been working as a lecturer for several years and at no point of time in her career has any allegation been made against her by any student that she discriminates on the ground of religion, caste, race, sex, etc. A false story has therefore been concocted by the Petitioners with an ulterior motive to seek certain reliefs from this Hon'ble Court and thereby harass the answering Respondent with a threat of enquiry to be conducted against her.

8. It is further submitted that neither the answering Respondent, nor the Respondent No. 5 college have violated any directions or circulars, or government orders issued by the Education Department and/or the Government of Karnataka at any given point of time, especially regarding the issue of uniform at the college.

9. It is submitted that Rule 11 of the Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995 clearly provides that every recognised educational institution may specify its own set of uniform(s). By virtue of the said provision, the Respondent No.5 college (which is a recognized educational institution within the meaning of the Karnataka Education Act, 1983) had been prescribing a uniform for its students from the past two decades.

10. It is submitted that there have been no issues till date by any person belonging to any community, including Muslim community, in following the prescribed uniform until the petitioners voiced their protest during December 2021. It is submitted that the Respondent No. 5 college was well within its right to prescribe uniforms and there have been no prohibition under any law for the time being in force that restricts the college from prescribing a uniform for its students.

11. It is further submitted that the Petitioners have placed reliance on the prospectus issued by the PU Department to contend that the college could not prescribe any uniform for its students. It is submitted that the prospectus of the PU Department are generally issued for every academic year as a road-map for the colleges in administering their affairs. However, the said prospectus is only an information booklet and does not stand on the same footing as orders or directions issued within the ambit of Section 133 of the Karnataka Education Act, 1983. Furthermore, neither the Karnataka Education Act, 1983 nor the Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995, nor the Karnataka Pre-University Education (Academic Registration, Administration and Grant-in-aid, etc.) Rules, 2006 empower the government to issue any prospectus or guidelines to the pre-university colleges directing them to administer the colleges in a given manner. It is therefore submitted that the prospectus of 2021 – 22 (*produced at Annexure J to the petition*) does not have any legal sanctity and is thus, unenforceable in law. Consequently, the relief of a writ of Mandamus sought in Prayer (1) based on the said prospectus is not maintainable and therefore requires to be rejected.

12. It is further submitted that no acts of the answering Respondent have been demonstrated with any adequate proof or material pleading so as to mandate the Respondent No. 3 to conduct an enquiry against the answering Respondent.

Furthermore, to the knowledge of this answering Respondent, no complaint whatsoever was filed by any of the Petitioners herein before the Respondent No. 3 seeking the said officer to conduct any such enquiry pertaining to any action of the answering Respondent. It is further submitted that neither the Petitioners nor their parents have even complained to the principal of the college (Respondent No. 6) regarding any alleged acts of the answering Respondent citing any specific incidents of discrimination or hostile behaviour. The Petitioners aver in their petition that they have been facing discrimination in their classes since September 2021, at the hands of the Respondent Nos. 5 to 12. Allegations have also been made by the Petitioners that they were unlawfully removed from the classes and marked absent as a punitive measure for the Petitioners wearing headscarves. It is submitted that all these allegations are far from the truth.

13. It is submitted that the allegations made by the Petitioners from Paragraph 7 to 11 in their petition are contrary to the very nature of relief sought by them. If the version of the Petitioners is to be believed that they were allowed to wear headscarves in the college and therefore discrimination was meted out to them at the hands of the answering Respondent, then their very case that they were not permitted to even wear the headscarves in the college becomes unfounded. It is submitted that since uniform was in place in Respondent No. 5 college, at no given point of time did the Petitioners even wear headscarves to the college until

they raked up the issue in December, 2021 for the first time. It is submitted that the Petitioners had been attending college wearing regular uniform, like all other students, and at no point of time did they even have a discussion or make any written request either to the answering Respondent or to any other lecturers / principal, to the knowledge of this Respondent, regarding their desire to wear a headscarf and too based on religious lines. No written request made by the Petitioners have even been produced with the present petition to show their bona fides.

14. It is submitted that for a lecturer imparting education in a college, it is extremely essential that all the students studying in a classroom have a spirit of common brotherhood among them and none of them could stand out owing to their religious, linguistic, regional or sectional identity. It is solely with this intent that uniforms are prescribed, especially amongst students who have not yet attained the age of majority.

15. Be that as it may, it is submitted that taking into several factors, the government intervened in the matter by issuing the Government Order dated 05.02.2022 bearing No. EP 14 SHH 2022, Bangalore (" **said GO** "), through which it directed that all the students of pre-university colleges shall conform to the uniform prescribed by the CDC (College Development Council) or the Governing Council, as the case may be, in the colleges following within the ambit of the PU

Department. The said GO has not been challenged in the present writ petition and therefore, the said GO will have to be complied per se by all the stakeholders, including these Petitioners. It is submitted that while the said GO has been challenged in few other writ petitions connected with the above petition, the Petitioners have not taken any steps to challenge the same subsequently as well. Therefore, in view of the provisions of the Karnataka Education Act, 1983 and the Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995 read with the said GO, prescription of a uniform by a college is not illegal and the Petitioners must comply with the same.

II. PARA-WISE TRAVERSALS

16. Briefly traversing the specific averments made in the petition, the answering Respondent submits as follows :

a. *Re : Para 1 to 4* : These averments are a matter of record and hence, not traversed.

b. *Re : Para 5* : The averments that the Petitioners are students of the Respondent No. 5 college is a matter of record. However, the averment that they were made to remove their headscarf by shaming them and by invoking their religious identity is hereby denied as false.

c. *Re : Para 6* : The averments that the Petitioners and their *alma maters* were continuing to wear the religious headscarf as part of their culture and the same was not coming in the way of their education is denied as false.

d. *Re : Paras 7 and 8* : The assertion of the Petitioners that during August 2020, Respondent No. 6 and 7 rebuked the Petitioners by stating that their parents had signed the consent letter which specifically admitted that their wards don't wear the headscarf and they cannot breach the same now and further that the Respondent Nos. 6 to 14 would scold the Petitioners whenever found and would threaten them with marking absent in their attendance sheets and not awarding internal marks are all denied as false and the Petitioners are put to strict proof of the same.

e. *Re : Paras 9 and 10* : The averments that the Respondent No. 13 threatened the Petitioner No. 5 that she would be ill-treated if she continued to wear the scarf and further that Respondent Nos. 5 to 12 discriminated against the Petitioners in their class and would remove them from their class and mark them absent are all denied as false and the Petitioners are put to strict proof of the same. The further averment that the Petitioners would be made to stand outside the class as punishment and the same is continued even to this day are all false and denied.

f. *Re : Paras 11 and 12 :* The averments in these paragraphs regarding the meeting of the parents of the Petitioners and the Respondent No. 6 regarding the issue of headscarves and the alleged delay on the part of the Respondent No. 6 to discuss the same are not within the knowledge of the answering Respondent. The averment that during the last week of December, 2021, the class teacher did not allow the Petitioners to attend the class or write their examinations or that the teachers used to send the Petitioners to the Respondent No. 6's office to take permission or to otherwise remove their headscarves are all denied as false. The further averment in these paragraphs regarding the conduct of Respondent Nos. 4 to 12 being hostile to the Petitioners with a view to frustrate them and their parents to concede to their demands are all denied as false and the Petitioners are put to strict proof of the same.

g. *Re : Paras 13 and 14 :* The averments that on 30.12.2021, the Petitioners approached the Respondent No. 3 and 4 to intervene in the matter and finish their ordeal and that Respondent No. 3 directed the Respondent No. 6 to allow them immediately are all not within the knowledge of the answering Respondent and hence, denied. The averment that on 01.01.2022, the Respondent No. 6 called a meeting of the CDC and during the said meeting, the Respondent No. 15 declared that the Petitioners will not wear headscarves and if they so continued, the Hindu students would wear saffron shawls or mufflers and blend the entire issue into a communal

colour are not within the personal knowledge of the answering Respondent, and hence, denied.

h. *Re : Paras 15, 16 and 17:* The assertion of the Petitioners that subsequent to the meeting on 01.01.2022, they were not allowed into the college on working days and were made to sit outside the class-room and further that on 13.01.2022, the Petitioners along with their parents made a peaceful protest in front of the college, are all denied as false. The further allegation that Respondent No. 6 called the local media at the instance of the Respondent No. 16 and took pictures of the Petitioners to circulate on social and electronic media, all appear to be concocted stories so as to paint a picture that the entire educational institution is tainted with communal teachers. The same are accordingly denied and the Petitioners are put to strict proof of the same. Similarly, the averments made in Paragraph 16 regarding the Petitioners being scolded by the Respondent No. 6 for conducting a protest and the further allegation that they were made to write an apology letter and that one lecturer manhandled the Petitioner physically and threatened to spoil their education completely are all denied as false. The answering Respondent is not aware of the meeting held amongst local leaders of Muslim community and Respondent No. 15 on 25.01.2021 and the letters being handed over to him, etc. Hence, these averments are also denied and the Petitioners are put to strict proof of the same.

i. *Re : Paras 18 to 33* : It is submitted that there are no grounds made out by the Petitioners that would warrant the issuance of a writ of Mandamus or such other writs or declarations sought for by the Petitioners. It is submitted that all the grounds made out by the Petitioners in these paragraphs are without substance, frivolous and devoid of merits. It is submitted that the entire issue in the present case has only taken a political colour and it is solely with advancing the political interests of certain persons that the above petition has been filed. It is submitted that the Petitioners in the above case are students who are not even mature enough to understand the complexity of the political issues involved herein.

17. It is submitted that none of the actions taken by the Respondents, including the said GO, violates Article 25 of the Constitution or any other right of the Petitioners insofar as it does not mandate them not to wear hijabs or religious garments at any given place. Prescription of the uniform during the hours spent by a student in an educational institution would not in any way affect his / her religious rights per se. It is also not the case of a person suspending their religious rights for any given point of time. What is intended in the GO, as well as in the Constitution of India, is that when a person lives in a community, it is extremely important that there is harmony and a spirit of common brotherhood. The Constitution further mandates that the spirit of common brotherhood should transcend religious diversities.

Therefore, on a conjoint reading of several provisions of the Constitution, it becomes extremely important that the rights of a specific individual pertaining to his / her right to profess or practice a religion would be subservient to his / her duty to live in harmony with other people in society who may not share the same faith or beliefs.

18. The answering Respondent craves leave of this Hon'ble Court to make additional submissions on facts and on law during the hearing of the above case, which may kindly be permitted.

19. Viewed from any angle, no rights of the Petitioners, more so their Constitutional rights, are even remotely affected in any manner, and there has been no illegality committed by the Respondents, either jointly or individually, that warrant any of the writs sought for being issued by this Hon'ble Court.

Wherefore, it is humbly prayed that this Hon'ble Court may be pleased to DISMISS the above petition with exemplary costs, in the interests of justice and equity.

Place : Bangalore

Date : 22.02.2022

Respondent No. 12
(SHALINI NAYAK)

VERIFICATION

I, Shalini Nayak, the Respondent No. 12 above named, do hereby verify at Udupi on this the 22nd day of February that the contents of the above statement of objections from paragraph 1 to 19 are true and correct to the best of my knowledge, information and belief.

Place: Udupi

Date : 22.02.2022

Respondent No. 12

(SHALINI NAYAK)

**BEFORE THE HON'BLE HIGH COURT OF KARNATAKA,
AT BANGALORE**

W.P. No. 2146 / 2022 (GM - EDN)

BETWEEN :

AYESHA HAJEERA ALMAS AND OTHERS ... PETITIONER

AND

**CHIEF SECRETARY, PRIMARY AND ... RESPONDENTS
HIGHER EDUCATION AND OTHERS**

VERIFYING AFFIDAVIT

I, **SHALINI NAYAK**, aged about 48 years, working as lecturer in Chemistry, Govt. P U College for Girls, Udupi City, Udupi – 576 101, do hereby solemnly affirm and state on oath as follows:

1. I state that I am the Respondent No. 12 In the above petition. I am aware of the facts and circumstances of this case and hence competent to swear to this affidavit.
2. I state that the averments contained in the accompanying statement of objections from Paragraph 1 to 8, 10, and 12 to 16 are true and correct to the best of my knowledge, information and belief that paragraphs 9, 11, 13, 15, 17 to 19 are based on legal advice. Nothing material has been concealed in the accompanying statement of objections.

*Solemnly affirmed as true on this the 22nd day of February,
2022 at Udupi*

Identified by me:

Advocate

D E P O N E N T

(Shalini Nayak)

VERIFICATION

*I, **Shalini Nayak**, the Deponent named above, do hereby
verify on this the 22nd day of February, 2022 at Udupi, that
the contents of the above affidavit are true and correct to the
best of my information, knowledge and belief and nothing
material has been concealed therefrom.*

No. of Corrections :

Sworn to before Me :

D E P O N E N T

TRUE COPY

Annexure P-15

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

PRESENTATION FORM

W.P. No. 2146/2022

(GM-EDU)

Serial No. _____

UDUPI

District

Advocate Sri MOHAMMED Tahir

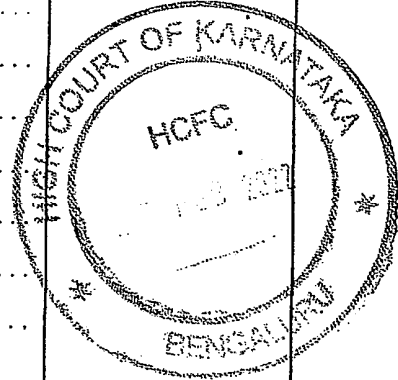
Between

AYESHA HAJEERA ALIAS**ACCESS LAW**VOX SPECTRUM HOUSE,
NO-65, Cock Burn Road,
Near Bamboo Bazar, Behind Petrol Pump,
Shivaji Nagar - 560051.
Phone : 91411628933 OTHERS

And

CHIEF SECRETARYOTHERS

Sl. No.	Description of Paper Presented	Court Fee Affixed On the Paper
1.	On the Memo of _____ petition	
2.	On the Memo of Appeal	
3.	On Vakalath	
4.	On Certified Copies	
5.	On I.A. No. _____ for	
6.	On Process Fee	
7.	On Copy Application	
8.	<u>RESPONDER FILED BY PETITIONERS</u>	
9.	<u>STATEMENT OF DRT OF R5, R6</u>	
10.	_____	



Number of Copies Furnished

Other side served

Presented by

Advocate for Petitioner /

Received Paper as above

Appellant / Respondent

Advocate's Clerk

Date 25/02/2022 Bengaluru

Receiving Clerk

Forms can be had at : The Bengaluru Advocates' Co-Op. Society Ltd., Bengaluru-9. Ph.: 080-22217361

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU
WP NO. 2146/2022**

IN THE MATTER OF:

AYESHA HAJEERA ALMAS & ORS. ... PETITIONERS

VERSUS

CHIEF SECRETARY PRIMARY AND

HIGHER EDUCATION & ORS ... RESPONDENTS

**REJOINDER FILED BY THE PETITIONERS TO THE
STATEMENT OF OBJECTIONS OF RESPONDENT NO 5
AND 6**

1. It is stated that the Objections filed by the RESPONDENT NO 5 AND 6 are absolutely misconceived and without merit. The Petitioners deny all averments made save those that are a matter of record or which are expressly admitted. No averments made by the Respondent no 5 and 6 may be deemed to be any admission on the part of the Petitioners for want of specific denial or traverse.
2. Parawise reply to the objection statement
 - a. Reply to Para no 1- it is version of respondents to defend their own case which is incorrect.
 - b. Reply to para no 2- There is no dispute that Government PU College is Girls college, Udipi but has sizable male teachers.

- c. Reply to para no 3 – Denied in toto, whereas the fact is guidelines issued by the Pre University college board for admission 2021-22 is to give effect of rule 9 of Karnataka Pre-University education (Academic, Registration, Administration and Grant-in-Aid etc) rules 2006 and all the admission forms which are produced by state in their reply and consent letter are part of these guidelines only in other words entire academic activity meticulously provided in the guidelines, if the contention of respondent version is accepted then entire academic exercise will be standstill , and department guidelines function as manual like any other department which are mandatory to follow to do the function of that department in one such manual like Karnataka Police Manual or CBI Manual validity is upheld by several court, and same is also enforceable under writ jurisdiction.
- d. Reply to para no 4- denied in toto, the fact is that prayer is squarely maintainable as except Petitioner no 2-5 (though Pet no 2 is subsequently deleted) are minor and any hostility towards the student in the name of any form of discrimination is bad, and petitioner rely on the specific instruction provided in Chapter 6 of the Guidelines, where strict direction for imposing uniform against the guidelines, and

department is duty bound to take action on its violation.

- e. Reply to para no 5- no need to reply respondent no 15 and 16 are represented by another counsel but this averment reflect that all the respondents are working tandemly against the petitioners. Whereas the fact is in the writ of Qua warrant burden used to be on Respondents to prove their authority to assume the public office.
- f. Reply to para no: Denied, as this prayer is just and proper as per the 1995 rules citing for the uniform by the state and other respondents is misplaced as this rule is applicable on Primary education and Secondary education as per rule, and in respect of Pre-University college 2006 rule applies which doesn't prescribe any uniform.
- g. Reply to para no 7- Denied in toto and respondent put to strict proof for the same, petitioners are in very much in the habit of wearing Hijab even the application form which are produced by the respondent state, evident that petitioners were in habit of wearing hijab even prior to Dec 2021 as alleged by the respondents, Hijab is nothing but part of dressing like stole which is used to cover head without making any contravening any norm, it is wrong assertion of respondents that if put any restriction of any Muslim girls it is always remain

their choice and most of the young girls wear Hijab as part of their regular practice and many girls in India and world over excelling in their public life with their Hijab, if any persons discriminate on the basis of their choice then it's that person weakness rather than Muslim girls or petitioners, practice of Hijab is accepted world over and not only muslim girls other religion also prescribed head covering even all girl students cover their heads with uniform dupatta at the time of Puja in school will it lead to any discrimination or inferiority complex, and fact is Muslim girls wear headscarf for their dignity, modesty and Chastity, and no authority can interfere in their right of clothing as long as it is decent, moral and not contravene any norm, dupatta is part of uniform, its usage is choice of each girl students.

- h. Reply to para no 8 – Denied as false and incorrect, the fact is petitioner has no disagreement about the nature of education institution, who far out educational institutions are secular, respondents are aware regular puja used to be performed in the school, all the students and teacher hold their religious symbol in the form the Tilak, Kumkum, Janiu, Mangalsutra happens, these all the accepted or not contested as such activities doesn't disturb any other persons in secular space, all students and teachers cover their head during any prayer (Puja)

in the school and stand before any deity, when same dupatta used by the petitioners or any other Muslim girls to cover their head put deleterious effect of all the students, when performing puja and other hindu festival in the school premises doesn't put deleterious on Muslims and covering head by petitioner will put deleterious effect on other students, the deleterious effect germinate from the discrimination which is happening with the petitioners herein, Hijab or scarf (or cover head) is practice of choice though is compulsory it can be understood by the practice of Namaz in Islam though it is farz or obligatory but many Muslim doesn't perform, by not performing Namaz neither any Muslim shed their religion nor become inferior to others, even if doesn't mean if anyone doesn't pray name in one day other day he cannot pray, respondent doesn't aware about the contemporary legal position of Hijab in Turkey and relying on obsolete court orders and ban of Hijab was due to their local polity and same was totally revoked now, moreover the position of Turkey or any other country doesn't apply in our nation which most exclusive and diverse than any other country of the world.

- i. Reply to para no 9 – Denied, the fact is petitioners are using Hijab as their regular attire since the admission in the case of 2nd PUC student petitioners

didn't attend much classed in 2020-21 academic year due to pandemic and even regular classes has started late in present academic year, since day one petitioners were facing resistance from some teachers and some are accommodating as well and issue has took ugly turn when Respondent no 15 and 16 got involved in the issue, 29/12/2021 is imaginary date fabricated by the respondent to support their illegal contention, no organization has approached to college, in fact local well-wisher and community and organization leader approached to the college to resolve the issue to maintain peace and harmony of the area, it is attempt to malign one particular organization to intimidate the petitioners who are already facing physical threat from all the corners even CDC chairman party shared petitioners private details which is crime under law, even assume if any organization has supported the petitioners, they have only supported to assert their right in democratic and legal way, not in way of hooliganism which was seen by the communal forces after filing this petition to give different colour to entire issue for the vested interest. Copies of FIRs and media reports are presented in separate memo.

- j. Reply to para no 10- denied as misplaced, petitioners being girls students has right to dignity, conscience, choice of cloth and manner to use any part of

uniform considering her comfort , modesty and chastity which is beyond any question along with right of religious practice under article 25, and there are several religious symbols are presented in the school which belongs to majority, same is accepted and accommodated in the secular space, then it is beyond sanity, covering head with uniform dupatta will make any difference, in can only influence preconceived mind like respondent teachers and principal who are acting at the instance of CDC.

Division Bench of Hon'ble Madras High court while dealing the writ petition challenging Saraswati Puja and Ayodha puja in Government offices by the Government servants in S.P.Muthu Raman vs The Chief Secretary has held that

"17. Similarly, Saraswathy Pooja is referable to showing respect to education, knowledge, and the script. When the State has declared the day as holiday, it cannot be said that the State is propagating festivals offending secular nature. The form of worship or veneration to files and records on the close of the working day preceding the holiday for Ayutha Pooja or Saraswathy Pooja cannot be called as religious activity by the Government, affecting the secular State. In Government Offices, if an individual shows respect and reverence to the materials, books, files or records which are being handled by the individual, it will be referable to his individual freedom and there is nothing to show that it affects the secular nature of the State. Showing respect to the place of work and the objects of work will in no way offend the feeling of others or offend secularism. In other words, so long as the individual shows reverence and performs such pooja without affecting the rights of other persons/individuals and the third parties, it cannot be said that it offends the secular nature of the State.

The Indian Constitution recognizes the religious right of each and every citizen, particularly, to his right to freedom of conscience and the right freely to profess, practise and propagate religion. The State advances the concept of unity in diversity. The State is empowered to regulate by law in terms of Article 25(2). The Government Order which is referred to in the present case is to ensure that a Government Office is not converted into a place of worship or prayer. It is not the case of the petitioner that a new construction is undertaken in the State Government office premises for the purpose of prayer or worship in violation of the Government Order. Petitioner also cannot state that he is offended by any individual showing respect and reverence to the objects of work, profession or occupation. It will amount to curtailing the right guaranteed under our Constitution.

18. If the petitioner's grievance is to be considered in a manner in which it is expressed, then a Hindu, a Christian or a Muslim or for that matter a person of any faith cannot pray silently or show reverence to his profession before he starts his work. A Sikh or Jain cannot show reverence to his religious Guru. If the relief sought for by the petitioner should be accepted, it is likely to cause disharmony among various religious groups as similar writ petition will be filed by one or other individual to restrain others from performing prayer of any kind or showing reverence even if it does not affect or offend others."

Copy of this order is annexed with the rejoinder for the kind perusal of this Hon'ble court.

k. Reply to para no 11- the allegation are true and space like school if it happen, then subject to independent investigation by the higher authority, petitioners reiterate that they were wearing hijab since day one and it is also evident from the admission form which is produced by the state.

- I. Reply to para no 12 – denied as fabricated for the purpose of this case as in 2013 to 18 Shri Pramod Mahdavraaj was representing Udupi MLA constituency as the contention of the respondent may be taken then, he supposed to lead the CDC but surprising no meeting records was presented during this period and moreover as per the Secular dated 31-01-2014 the purpose of CDC was to “utilise the grants as well as in maintaining academic standards and development of infrastructure” none of these meeting these things were discussed , except the about the uniform which is part of administration of a school, factually consistently contravene the department guidelines. the **ANNEXURE R1, R2,R3 AND R4 ARE FABRICATED** , if this court peruse the **R2** which is fabricated document says meeting no 1 of 2018-19 period on the heading, in para no 2 it is mentioned the another date **21.06.2021**, and in last para another date mentioned **31.07.2018** for the purpose of next meeting. And only in this document is categorically mentioned the blue **colored shawl on the shoulders**, with the purpose to negate the case of petitioners who are demanding to use the shawl to put over the head, such kind of averments are very unusual. **R-3** is also very interesting document is fabricated further to cover few arguments of petitioners regarding the contribution

of committee, but in their attempt of fabrication author also included Whatssapp Group in respect of Health , which concept was developed only after the advent of Pandemic from Mar 2020 , and one hand committee discourage use of Mobil phones in earlier meeting and subsequent meeting resolve to make whatsapp group by one student which is contrary to the facts, And It is also pertinent to note that the last meeting was held on **31/07/2018** then next meeting was happened only on **25/01/2022** to targets the petitioners.

m. Reply to para no 13 to 22- denied as false, as these para nothing but bare denial without any substance to make their false case before this Hon'ble court, petitioner's reiterate the same and same is need departmental investigation writ court can't give any finding on it.

3. That as regards the submission that as the Petitioners submitted undertakings to abide by the rules of the education system they cannot pray for the reliefs as claimed, it is needless to state that *the Petitioners' fundamental rights cannot be waived by any undertaking*. Even dehors the same, it is an admitted position that the State itself had also issued Guidelines for PU-Colleges for the year 2021-22 *which clearly mentioned that no uniform was prescribed for PU-Colleges*. Applying the law of

estoppel, it is the State that has approbated and reprobated in its stand, first representing that no uniform is prescribed, taking resorting to illegal disciplinary action against the Petitioners despite their earlier guidelines [constituting an express statement / representation].

4. It is submitted petitioners denied all other averments which are not specifically denied in Para 2, and reiterate all their contention raised in the petition.

PRAYER

In view of the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may grant the relief prayed for the Petitioners herein in entirety and pass any other orders as deemed fit and proper in the interests of justice.

Bangalore

25/02/2022

Counsel for petitioners

IN THE HON'BLE HIGH COURT OF KARNATAKA AT
BANGALORE

Writ Petition No - 2146/2022 (GM-EDU)

Between

Ayesha Hajeera Almas and others

Petitioners

And

Chief Secretary

Primary and Higher Education

And others

Respondents

VERIFYING AFFIDAVIT

I, Karani Sadiya Banu W/o Mupthi Mohammed Abrurul, Age about 40 years, R/al No 2-82 C, Kavrady, Opp to Urdu School, Kandler, VTC, Kavrady, PO Kavradi, Kundapura, Udupi -576211 today at Bangalore, mother and representing Petitioner no 1 in this petitioner state and affirm also on the behalf of other petitioners and their respective representatives as under

1. I am the representing petitioner no 1 and this and conversant with the fact of this case as issue and relief of all other petitioners are uniform so I am also presenting this verification affidavit in their behalf, I am well conversant with the facts deposing hereto in petition as well as in the rejoinder as it is been personally told to me by my daughter and other petitioners/ students ,
2. I state that the other legal aspect which are incorporated in the rejoinder are explained to me by my counsel and I believe it is true

3. That the statements made in paragraphs 1 to 4 of the joinder to the Respondent no 5 and 6 objection accompanying this affidavit are true to the best of my knowledge, information, and belief and based on the narration of petitioners/ students and all the legal position of law and judgements was explained properly to me and with my consent it is incorporated

4. I state whatever I state above is true and correct
Identified by me

Advocate

Bangalore

Deponent

25-02-2022 Sworn to and signed before me at Bangalore on
this 25th day of Feb , 2022

No. of corrections

TRUE COPY

Annexure P-16

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

PRESENTATION FORM

W.P. No. 2146/2022

(GM-EDU)

Serial No. _____

UDUPI

District

Advocate Sri MOHAMMED TATHIR

Between

AYESHA HAJEERA ALMAS**ACCESS LAW**

VOX SPECTRUM HOUSE,

NO-65, Cock Burn Road,

Near Bamboo Bazar, Behind Petrol Pump,

Shivaji Nagar - 560051.

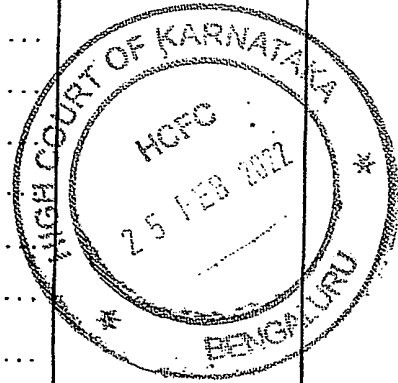
Phone : 9141162893

& OTHERS

And

CHIEF SECRETARY& OTHERS

Sl. No.	Description of Paper Presented	Court Fee Affixed On the Paper
1.	On the Memo of _____ petition	
2.	On the Memo of Appeal	
3.	On Vakalath	
4.	On Certified Copies	
5.	On I.A. No. _____ for	
6.	On Process Fee	
7.	On Copy Application	
8.	<u>REJOINDER FILED BY PETITIONERS</u>	
9.	<u>STATEMENT OF OBJ. OF R12</u>	
10.		



Number of Copies Furnished

Other side served

Presented by

Advocate for Petitioner / ✓

Received Pape as above

Appellant / Respondent

Advocate's Clerk

Date 25/02/2022 Bengaluru

Receiving Clerk

Forms can be had at : The Bengaluru Advocates' Co-Op. Society Ltd., Bengaluru-9. Ph.: 080-22217361

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU
WP NO. 2146/2022**

IN THE MATTER OF:

AYESHA HAJEERA ALMAS & ORS. ... PETITIONERS

VERSUS

CHIEF SECRETARY PRIMARY AND
HIGHER EDUCATION & ORS ... RESPONDENTS

**REJOINDER FILED BY THE PETITIONERS TO THE
STATEMENT OF OBJECTIONS OF RESPONDENT NO 12**

1. It is stated that the Objections filed by the RESPONDENT NO 12 are absolutely misconceived and without merit. The Petitioners deny all averments made save those that are a matter of record or which are expressly admitted. No averments made by the Respondent 12 may be deemed to be any admission on the part of the Petitioners for want of specific denial or traverse.
2. Parawise reply to the objection statement
 - a. Reply to Para no 1- it is version of respondents to defend their own case which is incorrect.
 - b. Reply to para no 2- denied as false, college must be having uniform but it is contrary to the guidelines of the PUC board, which specifically admits that there are some college impose uniform and same is illegal

and liable for the action. So even if any uniform is there it is against the guidelines.

- c. Reply to para no 3 – Denied, the fact is petitioners are using Hijab as their regular attire since the admission in the case of 2nd PUC student petitioners didn't attend much classed in 2020-21 academic year due to pandemic and even regular classes has started late in present academic year, since day one petitioners were facing resistance from some teachers and some are accommodating as well and issue has took ugly turn when Respondent no 15 and 16 got involved in the issue, 29/12/2021 is imaginary date fabricated by the respondent to support their illegal contention, no organization has approached to college, in fact local well-wisher and community and organization leader approached to the college to resolve the issue to maintain peace and harmony of the area, it is attempt to malign one particular organization to intimidate the petitioners who are already facing physical threat from all the corners even CDC chairman party shared petitioners private details which is crime under law, even assume if any organization has supported the petitioners, they have only supported to assert their right in democratic and legal way, not in way of hooliganism which was seen by the communal forces after filing this petition to give different colour to

- entire issue for the vested interest. Copies of FIRs and media reports are presented in separate memo.
- d. Reply to para no 4- denied in toto, till 29th Dec 2021 petitioners were allowed to come inside the college and also attended classes with Headscarf where teacher co-operated, but remain subject to punishment most of the time, but since the personal intervention of local MLA petitioner were not allowed to enter inside the college even in working days.
 - e. Reply to para no 5 , 6 and 7- denied, petitioners has faced harassment to the core in the hands of respondents teachers and principal, and subsequently from the R-15 and 16, and all that they pray proper enquire for their grievance by following the principal of natural justice, petitioners are well aware about the status of teachers and but the present polity teachers and college staff are pushing out girls students for the reason of wearing Hijab and everyone is watching in the media, petitioner has no intention to target anyone, they are just asserting their right of covering head like any other persons before this Hon'ble court and paid heavy price for doing so, and teachers are made party to observe fairness and not make any bald allegation behind their back.
 - f. Reply to para no 8, 9, 10 and 11: Denied, as this prayer is just and proper as per the 1995 rules citing

for the uniform by the state and other respondents is misplaced as this rule is applicable on Primary education and Secondary education as per rule, and in respect of Pre-University college 2006 rule applies which doesn't prescribe any uniform and give effect to Rule no 9 of 2006 rule department issue guidelines every year which specifically condon the practice of Uniform in PU college. Annexure J i.e. guidelines are not only speaks about the uniform but it is comprehensive details of administration of PU education in each academic year and has same legal force as other departmental manual best example is Karnataka Police Manual.

- g. Reply to para no 12-13- Denied in toto and respondent put to strict proof for the same, petitioners are in very much in the habit of wearing Hijab even the application form which are produced by the respondent state, evident that petitioners were in habit of wearing hijab even prior to Dec 20¹⁹ as alleged by the respondents, Hijab is nothing but part of dressing like stole which is used to cover head without making any contravening any norm, petitioners are the young girls, it cannot be expected from the young child to follow each and every procedure meticulously, whatever fact stated in the petitioner in respect of ill-treatment is true, and it is also evident from the fact that ill-treatment is

continued their personal details were shared in public forum , their family members are attacked, petitioners is not seeking any punishment in the prayer only sought enquiry, if respondents has anything for their defence they can produce before the proper forum.

- h. Reply to para no 14 – Denied as false and incorrect, the fact is petitioner has no disagreement about the nature of education institution, who far our educational institutions are secular, respondents are aware regular puja used to be performed in the school, all the students and teacher hold their religious symbol in the form the Tilak, Kumkum, Janiu, Mangalsutra happens, these all the accepted or not contested as such activities doesn't disturb any other persons in secular space, all students and teachers cover their head during any prayer (Puja) in the school and stand before any deity, when same dupatta used by the petitioners or any other Muslim girls to cover their head put deleterious effect of all the students, when performing puja and other hindu festival in the school premises doesn't put deleterious on Muslims and covering head by petitioner will put deleterious effect on other students, the deleterious effect germinate from the discrimination which is happening with the petitioners herein, can we really live behind our

religious , linguistic, regional or sectional identity which starts from our name, and age has no consideration for such decisions.

- i. Reply to para no 15- denied as false, Government order is after thought of government to negate the relief of petitioners herein and illegal as well , as it only provides pointer towards one practice and give veil direction to exclude one section of society, which has no place in democratic and secular inclusive society, it could be political agenda of divisive forces.
- j. Reply to para no 16 and its sub sections - denied as false, as these para nothing but bare denial without any substance to make their false case before this Hon'ble court, petitioner's reiterate the same and same is need departmental investigation as writ court can't give any finding on it.
- k. Reply to para no 17- Denied in toto- Respondent no 12 is making fail attempt to defend the Govt order is bad in law and Prescription of the uniform is confined only to school education, even this is not case petitioner is agitating against the uniform, petitioners are seeking accommodation of their habit to cover head, like many other religious practice which other students in secular space like this if that can be accommodated without any objections, Petitioners were targeted just for the political agenda.

3. That as regards the submission that as the Petitioners submitted undertakings to abide by the rules of the education system they cannot pray for the reliefs as claimed, it is needless to state that *the Petitioners' fundamental rights cannot be waived by any undertaking*. Even de hors the same, it is an admitted position that the State itself had also issued Guidelines for PU-Colleges for the year 2021-22 *which clearly mentioned that no uniform was prescribed for PU-Colleges*. Applying the law of estoppel, *it is the State that has approbated and reprobated in its stand*, first representing that no uniform is prescribed, taking resorting to illegal disciplinary action against the Petitioners despite their earlier guidelines [constituting an express statement / representation].
4. It is submitted petitioners denied all other averments which are not specifically denied in Para 2, and reiterate all their contention raised in the petition.

PRAYER

In view of the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may grant the relief prayed for the Petitioners herein in entirety and pass any other orders as deemed fit and proper in the interests of justice.

Bangalore

25/02/2022

Counsel for petitioners

IN THE HON'BLE HIGH COURT OF KARNATAKA AT BANGALORE

Writ Petition No - 2146/2022 (GM-EDU)

Between	
Ayesha Hajeera Almas and others	Petitioners
And	
Chief Secretary	
Primary and Higher Education	
And others	Respondents

VERIFYING AFFIDAVIT

I, Karani Sadiya Banu W/o Mupthi Mohammed Abrurul, Age about 40 years, R/at No 2-82 C, Kavrady, Opp to Urdu School, Kandlur, VTC, Kavrady, PO Kavradi, Kundapura, Udupi -576211 today at Bangalore, mother and representing Petitioner no 1 in this petitioner state and affirm also on the behalf of other petitioners and their respective representatives as under

1. I am the representing petitioner no 1 and this and conversant with the fact of this case as issue and relief of all other petitioners are uniform so I am also present. In this verification affidavit in their behalf, I am well conversant with the facts deposing hereto in petition as well as in the rejoinder as it is been personally told to me by my daughter and other petitioners/ students ,
2. I state that the other legal aspect which are incorporated in the rejoinder are explained to me by my counsel and I believe it is true

3. That the statements made in paragraphs 1 to 4 of the joinder to the Respondent no 12 objection accompanying this affidavit are true to the best of my knowledge, information, and belief and based on the narration of petitioners/ students and all the legal position of law and judgements was explained properly to me and with my consent it is incorporated

4. I state whatever I state above is true and correct

Identified by me

Advocate

Bangalore

Deponent

25-02-2022 Sworn to and signed before me at Bangalore on
this 25th day of Feb , 2022

No. of corrections

TRUE COPY

Annexure P-17

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

PRESENTATION FORM

N.P. No. 2146 / 2022 (GM-EDU)

Serial No. _____

UDUPI DistrictAdvocate Sri MOHAMMED TAHIR

Between

ACCESS LAWAYESHA HAJEERA ALMAS

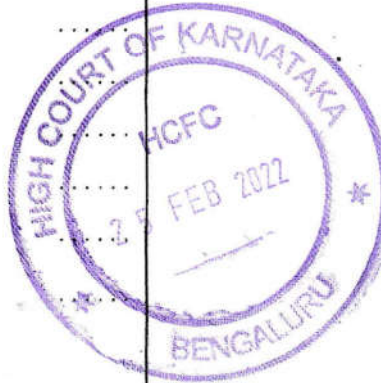
VOX SPECTRUM HOUSE,

NO-85, Cock Burn Road,
Near Bamboo Bazar, Behind Petrol Pump,
Shivaji Nagar - 560051.
Phone : 91411622939 OTHERS

And

CHIEF SECRETARYOTHERS

Sl. No.	Description of Paper Presented	Court Fee Affixed On the Paper
1.	On the Memo of _____ petition	
2.	On the Memo of Appeal	
3.	On Vakalath	
4.	On Certified Copies	
5.	On I.A. No. _____ for	
6.	On Process Fee	
7.	On Copy Application	
8.	<u>REJOINDER FILED BY PETITIONER</u>	
9.	<u>statement of obj. & R3 (R13)</u>	
10.	_____	



Number of Copies Furnished

Other side served

Presented by

Advocate for Petitioner / ✓

Received Paper as above

Appellant / Respondent

Advocate's Clerk

Date 25/02/2022 Bengaluru

Receiving Clerk

Forms can be had at : The Bengaluru Advocates' Co-Op. Society Ltd., Bengaluru-9. Ph.: 080-22217361

IN THE HIGH COURT OF KARNATAKA AT BENGALURU**WP NO. 2146/2022****IN THE MATTER OF:**

AYESHA HAJEERA ALMAS & ORS. ... PETITIONERS

VERSUS

CHIEF SECRETARY PRIMARY AND

HIGHER EDUCATION & ORS ... RESPONDENTS

**REJOINDER FILED BY THE PETITIONERS TO THE
STATEMENT OF OBJECTIONS OF RESPONDENT NO 13**

1. It is stated that the Objections filed by the RESPONDENT NO 12 are absolutely misconceived and without merit. The Petitioners deny all averments made save those that are a matter of record or which are expressly admitted. No averments made by the Respondent 12 may be deemed to be any admission on the part of the Petitioners for want of specific denial or traverse.
2. Parawise reply to the objection statement
 - a. Reply to Para no 1 and 2 - it is version of respondents to defend their own case which is incorrect.
 - b. Reply to para no 3 a – Reply to para no 5 , 6 and 7- denied, petitioners has faced harassment to the core in the hands of respondents teachers and principal, and subsequently from the R-15 and 16, and all that they pray proper enquire for their grievance by

following the principal of natural justice, petitioners are well aware about the status of teachers and but the present polity teachers and college staff are pushing out girls students for the reason of wearing Hijab and everyone is watching in the media, petitioner has no intention to target anyone, they are just asserting their right of covering head like any other persons before this Hon'ble court and paid heavy price for doing so, and teachers are made party to observe fairness and not make any bald allegation behind their back.

- c. Reply to para no 3 b- denied, it is statement of denial.
- d. Reply to para no 3 c - denied, if any incidents happens within the four wall of college, when entire system stand against the petitioners then court particularly constitutional court only can protect the right of petitioners.
- e. Reply to para no 3 d and e – denied , petitioners is seeking relief against the illegal act of respondents, and sought only enquiry against the teachers not any punishment.
- f. Replay to Para no 4 denied as false, college must be having uniform but it is contrary to the guidelines of the PUC board, which specifically admits that there are some college impose uniform and same is illegal and liable for the action. So even if any uniform is

there it is against the guidelines, petitioners made every possible attempt to achieve peaceful solutions but due arrogance of political class petitioners was forced to come before this court, even the this statement is this Respondent no 13 is from the contention of other respondents which alleged instigation by some organization, which established the contention which is raised by the different respondents are contrary to each other, which substantiate the case of petitioners in turn.

- g. Reply to para no 5 – Denied as false and incorrect, the fact is petitioner has no disagreement about the nature of education institution, who far our educational institutions are secular, respondents are aware regular puja used to be performed in the school, all the students and teacher hold their religious symbol in the form the Tilak, Kumkum, Janiu, Mangalsutra can happens, these all the accepted or not contested as such activities doesn't disturb any other persons in secular space, all students and teachers cover their head during any prayer (Puja) in the school and stand before any deity, when same dupatta used by the petitioners or any other Muslim girls to cover their head put deleterious effect of all the students, when performing puja and other hindu festival in the school premises doesn't put deleterious on Muslims

and covering head by petitioner will put deleterious effect on other students, the deleterious effect germinate from the discrimination which is happening with the petitioners herein, can we really live behind our religious , linguistic, regional or sectional identity which starts from our name, and age has no consideration for such decisions.

3. That as regards the submission that as the Petitioners submitted undertakings to abide by the rules of the education system they cannot pray for the reliefs as claimed, it is needless to state that *the Petitioners' fundamental rights cannot be waived by any undertaking*. Even de hors the same, it is an admitted position that the State itself had also issued Guidelines for PU-Colleges for the year 2021-22 *which clearly mentioned that no uniform was prescribed for PU-Colleges*. Applying the law of estoppel, *it is the State that has approbated and reprobated in its stand*, first representing that no uniform is prescribed, taking resorting to illegal disciplinary action against the Petitioners despite their earlier guidelines [constituting an express statement / representation].
4. It is submitted petitioners denied all other averments which are not specifically denied in above Para , and reiterate all their contention raised in the petition.

PRAYER

In view of the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may grant the relief prayed for the Petitioners herein in entirety and pass any other orders as deemed fit and proper in the interests of justice.

Bangalore

25/02/2022

Counsel for petitioners

IN THE HON'BLE HIGH COURT OF KARNATAKA AT BANGALORE

Writ Petition No - 2146/2022 (GM-EDU)

Between

Ayesha Hajeera Almas and others

Petitioners

And

Chief Secretary

Primary and Higher Education

And others

Respondents

VERIFYING AFFIDAVIT

I, Karani Sadiya Banu W/o Mupthi Mohammed Abrurul, Age about 40 years, R/at No 2-82 C, Kavrady, Opp to Urdu School, Kandlur, VTC, Kavrady, PO Kavradi, Kundapura, Udupi -576211 today at Bangalore, mother and representing Petitioner no 1 in this petitioner state and affirm also on the behalf of other petitioners and their respective representatives as under

1. I am the representing petitioner no 1 and this and conversant with the fact of this case as issue and relief of all other petitioners are uniform so I am also presenting this verification affidavit in their behalf, I am well conversant with the facts deposing hereto in petition as well as in the rejoinder as it is been personally told to me by my daughter and other petitioners/ students ,
2. I state that the other legal aspect which are incorporated in the rejoinder are explained to me by my counsel and I believe it is true

3. That the statements made in paragraphs 1 to 4 of the joinder to the Respondent no 13 objection accompanying this affidavit are true to the best of my knowledge, information, and belief and based on the narration of petitioners/ students and all the legal position of law and judgements was explained properly to me and with my consent it is incorporated

4. I state whatever I state above is true and correct

Identified by me

Advocate

Bangalore

Deponent

25-02-2022 Sworn to and signed before me at Bangalore on
this 25th day of Feb , 2022

No. of corrections

TRUE COPY

Annexure P-18

409

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

PRESENTATION FORM

W.P. No. 2146/2022

(GM-EDU)

Serial No. _____

UDUPI

District

Advocate Sri MOHAMMED TAHIR

Between

AYESHA HAJEERA ALNAS

ACCESS LAW
VOX SPECTRUM HOUSE,
NO-65, Cock Burn Road,
Near Bamboo Bazar, Behind Petrol Pump,
Shivaji Nagar - 560051.
Phone : 9141162893

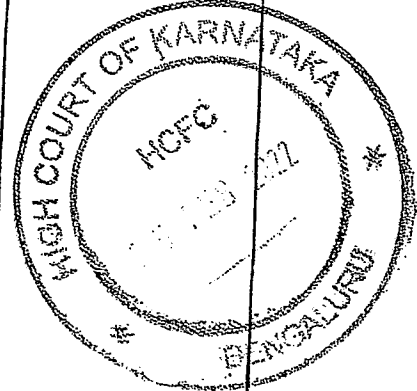
& Others

And

CHIEF SECRETARY

& Others.

Sl. No.	Description of Paper Presented	Court Fee Affixed On the Paper
1.	On the Memo of _____ petition	
2.	On the Memo of Appeal	
3.	On Vakalath	
4.	On Certified Copies	
5.	On I.A. No. _____ for	
6.	On Process Fee	
7.	On Copy Application	
8.	<u>REDOINDER FILED BY PETITIONERS</u>	
9.	<u>STATEMENT OF OBJ. of R/S</u>	
10.	



Number of Copies Furnished

Other side served

Presented by

Advocate for Petitioner / K

Received Pape as above

Appellant / Respondent

Advocate's Clerk

Date 25/02/2022 Bengaluru

Receiving Clerk

Forms can be had at : The Bengaluru Advocates' Co-Op. Society Ltd., Bengaluru-9. Ph.: 080-22217361

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
WP NO. 2146/2022

IN THE MATTER OF:

AYESHA HAJEERA ALMAS & ORS. ... PETITIONERS

VERSUS

CHIEF SECRETARY PRIMARY AND

HIGHER EDUCATION & ORS ... RESPONDENTS

REJOINDER FILED BY THE PETITIONERS TO THE
STATEMENT OF OBJECTIONS OF RESPONDENT NO 15

(Note- NO objection is filed in respect of R-16 but
submission was made on his behalf as well)

1. It is stated that the Objections filed by the RESPONDENT NO 15 are absolutely misconceived and without merit. The Petitioners deny all averments made save those that are a matter of record or which are expressly admitted. No averments made by the Respondent no 15 may be deemed to be any admission on the part of the Petitioners for want of specific denial or traverse.
2. Parawise reply to the objection statement
 - a. Reply to Para no 1 -3- Denied it is version of respondents to defend their own case which is incorrect and misleading.

- b. Reply to para no 4 and 5- There is no dispute that Government PU College is Girls College, Udupi but has sizable male teachers.
- c. Reply to para no 6- denied as false, several students wants to wear hijab as their regular practice but succumb under the illegal pressure of college committee which is headed by right wing part and assisted by the person has criminal antecedent against Muslims, the problem in state is further inflated by the divisive forces after filing this petition, following the word of national party head " Apada mai Awaskar" आपदा मे अवसर (means opportunity in disaster), and made a small uniform issue as full fledged political issue, in each date of list of this case issue has amplified i.e. 1/02/2022 petition list in memo of posting head – issue spread to nearby taluk Kundapura by sending boys to with saffron shawl to counter muslim girls, 03/2/2022 – matter list for preliminary hearing learned AG appeared and sought time- in days issue spread to another 15-16 district of Karnataka by inciting boys and girls to wear saffron shawl to prevent and target Muslim girls, 08-02-2022 Senior counsel in connected matter did commanding arguments- issue spread to other places muslims girls are chased by paid mob shouting religious slogan and several places arsoning happened , on 09/02/2022 next date

matter was referred to larger bench and Hon'ble CM declared 3 days holiday to paint the issue as large law and order problem which in fact created by the divisive forces. In between on 05/02/2022 came out be arbitrary order targeting one community and change entire course of issue, so all these development it appears that state used their all might against the petitioners who are just young teenager and only made attempt to come to this Hon'ble court to assert their right against this their personal details are shared in social media by respondent 15 party, their relatives are attacked.

- d. Re to Para no 7- admitted to extend to signing of admission form it doesn't waive their right to dressing to cover their modesty and chastity without contravening uniform norms like other students, who carry their religious symbols in secular space which are very well adopted in secular place like headscarf.
- e. Re to Para no no 8 - Reply to para no 12 – denied as fabricated for the purpose of this case as in 2013 to 18 Shri Pramod Mahdavraaj was representing Udupi MLA constituency as the contention of the respondent may be taken then, he supposed to lead the CDC but surprising no meeting records was presented during this period and moreover as per the Secular dated 31-01-2014 the purpose of CDC

was to "utilise the grants as well as in maintaining academic standards and development of infrastructure" none of these meeting these things were discussed, except the about the uniform which is part of administration of a school, factually consistently contravene the department guidelines.

the **ANNEXURE A, B, C and D ARE FABRICATED**

, if this court peruse the **D** which is fabricated document says meeting no 1 of 2018-19 period on the heading, in para no 2 it is mentioned the another date **21.06.2021**, and in last para another date mentioned **31.07.2018** for the purpose of next meeting. And only in this document is categorically mentioned the blue **colored shawl on the shoulders**, with the purpose to negate the case of petitioners who are demanding to use the shawl to put over the head, such kind of averments are very unusual.

- f. Re to Para no 9, 10 and 11- Denied in toto - even uniform is there in the college it is contrary to department guidelines in that event petitioners sought accommodation to use headscarf or covering their head with duppatta. The order dated 25/01/2022 issued at the instance of Res no 15 to prevent further petitioners from their legitimate demand as by then matter was flashing in national and international media, it speaks about the status

quo and according to petitioners it should be as per the department guideline which accommodate petitioner rights as well. And subsequent resolution dated 25/1/2022 and 31/01/2022 are intimidating to the petitioner on the strength of managed order circular dated 25/01/2022.

- g. Re to Para no 11- denied , it is passed subsequently to negate this writ petition, same is challenged in connected matter and in this petition as well IA no 1 filed against this order dated 05/02/2022.
- h. Re to Para no 12- Denied- Hijab is not only a religious practice but also a way of expression considering dignity , modesty and chastity of girls which cannot be denied by any rule or law , apart of this several religious practices are there in secular space which is become part and parcel of live and accepted world over and Hijab is also one of such practice.
- i. Re to para no 13- denied – unable to give elaborate answer as no legible copy was served to the petitioners counsel but can make out it is different than the illegal CDC.
- j. Re to para no 14- denied and misleading as Betterment committee are wrongly demonstrated as College development committee which came into effect after circular date 31/01/2014

- k. Re to Para no 15- denied and misleading as circular regarding CDC was issue on 31/01/2014 then it is highly unlikely respondent no 15 would have been part of such committee before that, and it is pertinent to note that in year 2013 to 18 another MLA was there and no proceeding of that period is presented it show all the relevant proceeding produce before this court is fabricated.
- l. Re to para no 16 – Denied as in writ of Quo warranto burden used to be on Respondent to established his authority in public office, not on the petitioners in B R Kapoor vs State of Tamilnadu and Anr supreme court of India held the " Quo waranto is writ which lies against the person who according to the ealtor is not entitled to hold on office of public nature and is only a usurper office. It is the persons against who the writ of Quo warranto is directed, who is required to show by what authority that person is entitled to hold the office."
- m. Re to para no 17- denied , even if this circular is accepted on the face but it doesn't give any to CDC to interface in the administration of P U college and not even one document is produced by the any respondents which shows that CDC has done any work in the compliance of circular dated 31/01/2014.
- n. Re to para no 18- Denied, as this prayer is just and proper as per the 1995 rules citing for the uniform

by the state and other respondents is misplaced as this rule is applicable on Primary education and Secondary education as per rule, and in respect of Pre-University college 2006 rule applies which doesn't prescribe any uniform.

- o. Reply to para no 19 – Denied in toto, very selected photos are produced no date is provided even presence of any petitioner is marked thus court cannot consider it.
 - p. Reply to para no 26 – no need to reply
 - q. Reply to para no 21 to 27- denied as false, as these para nothing but bare denial without any substance to make their false case before this Hon'ble court, petitioner's reiterate the same and same is need departmental investigation writ court can't give any finding on it.
3. That as regards the submission that as the Petitioners submitted undertakings to abide by the rules of the education system they cannot pray for the reliefs as claimed, it is needless to state that *the Petitioners' fundamental rights cannot be waived by any undertaking*. Even dehors the same, it is an admitted position that the State itself had also issued Guidelines for PU-Colleges for the year 2021-22 *which clearly mentioned that no uniform was prescribed for PU-Colleges*. Applying the law of

estoppel, it is the State that has approbated and reprobated in its stand, first representing that no uniform is prescribed, taking resorting to illegal disciplinary action against the Petitioners despite their earlier guidelines [constituting an express statement / representation].

4. It is submitted petitioners denied all other averments which are not specifically denied in Para 2, and reiterate all their contention raised in the petition.

PRAYER

In view of the facts and circumstances, it is most respectfully, prayed that this Hon'ble Court may grant the relief prayed for the Petitioners herein in entirety and pass any other orders as deemed fit and proper in the interests of justice.

Bangalore

25/02/2022

Counsel for petitioners

IN THE HON'BLE HIGH COURT OF KARNATAKA AT
BANGALORE

Writ Petition No - 2146/2022 (GM-EDU)

Between

Ayesha Hajeera Almas and others

Petitioners

And

Chief Secretary

Primary and Higher Education

And others

Respondents

VERIFYING AFFIDAVIT

I, Karani Sadiya Banu W/o Mupthi Mohammed Abrurul, Age about 40 years, R/at No 2-82 C, Kavrady, Opp to Urdu School, Kandlur, VTC, Kavrady, PO Kavradi, Kundapura, Udupi -576211 today at Bangalore, mother and representing Petitioner no 1 in this petitioner state and affirm also on the behalf of other petitioners and their respective representatives as under

1. I am the representing petitioner no 1 and this and conversant with the fact of this case as issue and relief of all other petitioners are uniform so I am also presenting this verification affidavit in their behalf, I am well conversant with the facts deposing hereto in petition as well as in the rejoinder as it is been personally told to me by my daughter and other petitioners/ students ,
2. I state that the other legal aspect which are incorporated in the rejoinder are explained to me by my counsel and I believe it is true

3. That the statements made in paragraphs 1 to 4 of the joinder to the Respondent no 15 objection accompanying this affidavit are true to the best of my knowledge, information, and belief and based on the narration of petitioners/ students and all the legal position of law and judgements was explained properly to me and with my consent it is incorporated

4. I state whatever I state above is true and correct
Identified by me

Advocate

Bangalore

Deponent

25-02-2022 Sworn to and signed before me at Bangalore on
this 25th day of Feb , 2022

No. of corrections

**IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)**

I. A. NO. 47578 OF 2022

IN

Special Leave Petition (Civil) No. 5690 of 2022

IN THE MATTER OF:

Shafa & Another

... **Petitioners**

Versus

Chief Secretary Primary & Higher Education Department, State
of Karnataka & Others

... **Respondents**

**AN APPLICATION FOR BRINGING ADDITIONAL
DOCUMENTS ON RECORD**

To,

The Hon'ble Chief Justice of India
and his companion Justices of the
Hon'ble Supreme Court of India.

This Special Leave Petition of
the Petitioner above named

MOST RESPECTFULLY SHOWETH:

1. The present Special Leave Petition under Article 136 of the Constitution of India is filed against the Common Impugned Final Judgment and Order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022, whereby it wrongly upheld impugned Government Order dated 05.02.2022 issued by the State of Karnataka.
2. That the following document is being filed by way of the IA for Additional Document because it does not form part of the record before the Hon'ble High Court of Karnataka at Bengaluru, while it adjudicated upon *inter alia* WP(C) No.

2146/20222. This is so because this document was issued subsequent to the Impugned Judgement passed by the Hon'ble High Court:

- a. A true copy of First PUC Annual Examination March-April 2022, issued by the Department of Pre University Education, Udupi District, Udupi annexed with the Petition as **Annexure P-19** at pages **422** to **NIL**.
3. That the said document was issued subsequent to the Impugned Judgement dated 15.03.2022. That it would be in the interest of justice to allow to bring the said document on record and allow it to be filed with the instant Special Leave Petition since it is germane for adjudication on the interim prayer.

PRAYER

It is, as such, prayed that this Hon'ble Court may be pleased to:

- a. Bring the additional document mentioned in Para 2 herein and filed with the Special Leave Petition as **Annexure P-19** on record; and
- b. Pass such other orders as may be deemed fit and necessary in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER SHALL AS IS DUTY BOUND EVER PRAY.

DRAWN BY:

Tanvi Tuhina, Adv.

Aman Naqvi, Adv.

Place: New Delhi

Drawn On: 20.03.2022

Filed On: 23.03.2022

FILED BY:

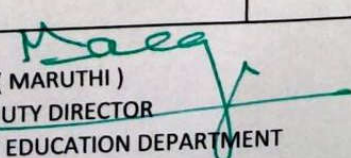


SHADAN FARASAT

Advocate for the Petitioners

DEPARTMENT OF PRE UNIVERSITY EDUCATION, UDUPI DISTRICT UDUPI
FIRST PUC ANNUAL EXAMINATION MARCH-APRIL 2022
TENTATIVE TIME TABLE

DAY AND DATE OF EXAMINATION	MORNING SESSION FROM 9:30AM TO 12:45 PM		AFTERNOON SESSION FROM 2:30PM TO 5:45 PM	
	SUBJECT NAME	SUBJECT CODE	SUBJECT NAME	SUBJECT CODE
29-03-2022 TUESDAY	PHYSICS OPT. KANNADA BUSINESS STUDIES	33 16 27		
30-03-2022 WEDNESDAY			LOGIC GEOGRAPHY	23 24
31-03-2022 THURSDAY	POLITICAL SCIENCE ELECTRONICS COMPUTER SCIENCE BIOLOGY	29 40 41 36		
01-04-2022 FRIDAY	KANNADA HINDI SANSKRIT FRENCH TAMIL TELUGU MARATI AREBIC URDU MALAYALAM	01 03 09 12 04 05 07 11 08 06		
05-04-2022 TUESDAY	HOME SCIENCE MATHEMATICS ECONOMICS	67 35 22		
06-04-2022 WEDNESDAY			INFORMATION TECHNOLOGY RETAIL AUTOMOBILE HEALTH CARE BEAUTY & WELLNESS	61 62 63 64 65
07-04-2022 THURSDAY	STATISTICS SOCIOLOGY	31 28		
08-04-2022 FRIDAY			GEOLOGY KARNATAKA MUSIC HINDUSTANI MUSIC	37 25 26
09-04-2022 SATURDAY	CHEMISTRY BASIC MATHEMATICS HISTORY	34 75 21		
12-04-2022 TUESDAY	ACCOUNTANCY PSYCHOLOGY EDUCATION	30 32 52		
13-04-2022 WEDNESDAY	ENGLISH	02		


 (MARUTHI)
 DEPUTY DIRECTOR
 PRE-UNIVERSITY EDUCATION DEPARTMENT
 UDUPI

TRUE COPY

**IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)**

I. A. NO. 47579 OF 2022

IN

Special Leave Petition (Civil) No. 5690 of 2022

IN THE MATTER OF:

Shafa & Another

... Petitioners

Versus

Chief Secretary Primary & Higher Education Department, State
of Karnataka & Others

... Respondents

AN APPLICATION FOR DIRECTIONS

To,

The Hon'ble Chief Justice of India
and his companion Justices of the
Hon'ble Supreme Court of India.

This Special Leave Petition of
the Petitioner above named

MOST RESPECTFULLY SHOWETH:

1. The present Special Leave Petition under Article 136 of the Constitution of India is filed against the Common Impugned Final Judgment and Order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022, whereby it wrongly upheld impugned Government Order dated 05.02.2022 issued by the State of Karnataka.
2. The contents of the accompanying petition may be read as part and parcel of the present application and the same are not being repeated here for sake of brevity.

3. That owing to the directions of the illegally constituted College Development Committee, the Impugned Government Order dated 05.02.2022 and the Impugned Judgement passed on 15.03.2022, Petitioners have not been allowed to sit in the classroom since December, for not fault of theirs and merely because they could not dis-robe themselves and remove their *hijab*.
4. Due to this, they have missed several internal exams, and being Science students, have also missed the internally conducted Annual Practical Examination.
5. A failure to take these exams, especially the Annual Practical Examination will affect the academic prospects of the Petitioners, making them lose an entire academic year.
6. For this purpose, it is prayed that this Hon'ble Court may issue directions upon the Respondent PUC College to conduct Annual Practical Examinations for the Petitioners and allow the Petitioners to take them while wearing the *hijab*.
7. That the present Application is being made *bona fide* and in the interest of justice.

PRAYER

In light of the afore-mentioned facts and circumstances, it is humbly prayed that this Hon'ble Court may be pleased to:

- a. Pass an order directing the Respondent PUC College to conduct Annual Practical Examinations for the Petitioners and allow the Petitioners to take them while wearing the *hijab*;

- b. Pass any such further order(s)/direction(s) as this Hon'ble Court may deem fit in the facts and circumstances of the case;

**AND FOR THIS ACT OF KINDNESS, THE APPLICANT
AS IS DUTY BOUND SHALL EVER PRAY.**

DRAWN BY:

Tanvi Tuhina, Adv.

Aman Naqvi, Adv.

Place: New Delhi

Drawn On: 20.03.2022

Filed On: 23.03.2022

FILED BY:



SHADAN FARASAT

Advocate for the Petitioners

**IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)**

I. A. NO. 47580 OF 2022

IN

Special Leave Petition (Civil) No. 5690 of 2022

IN THE MATTER OF:

Shafa & Another

... Petitioners

Versus

Chief Secretary Primary & Higher Education Department, State
of Karnataka & Others

... Respondents

**AN APPLICATION SEEKING PERMISSION FOR FILING
LENGTHY SYNOPSIS AND LIST OF DATES AND
EVENTS**

To,

The Hon'ble Chief Justice of India
and his companion Justices of the
Hon'ble Supreme Court of India.

This Special Leave Petition of
the Petitioner above named

MOST RESPECTFULLY SHOWETH:

1. The present Special Leave Petition under Article 136 of the Constitution of India is filed against the Common Impugned Final Judgment and Order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022, whereby it wrongly upheld impugned Government Order dated 05.02.2022 issued by the State of Karnataka.
2. The contents of the accompanying petition may be read as part and parcel of the present application and the same are not being repeated here for sake of brevity.

3. That the Petitioners have filed a lengthy Synopsis and List of Dates and Events in order to give a comprehensive overview of the events as and when they transpired. The facts contained in this lengthy Synopsis and List of Dates and Events are relevant and necessary for proper adjudication of the present petition. Therefore, it is submitted that this Hon'ble Court may be pleased to allow filing of the present lengthy Synopsis and List of Dates and Events.
4. The present application is made *bona fide* and in the interest of justice.

PRAYER

In light of the aforesaid facts and circumstances, it is prayed that this Hon'ble Court may be pleased to:

- a. Allow the Petitioners to file lengthy Synopsis and List of Dates and Events for the efficient briefing of this Hon'ble Court;
- b. Pass any other order as may be deemed fit.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER SHALL AS IN DUTY BOUND EVER PRAY.

DRAWN BY:

Tanvi Tuhina, Adv.

Aman Naqvi, Adv.

Place: New Delhi

Drawn On: 20.03.2022

Filed On: 23.03.2022

FILED BY:

SHADAN FARASAT

Advocate for the Petitioners

IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)

I. A. NO. 47581 OF 2022

IN

Special Leave Petition (Civil) No. 5690 of 2022

IN THE MATTER OF:

Shafa & Another

... Petitioners

Versus

Chief Secretary Primary & Higher Education Department, State
of Karnataka & Others

... Respondents

**AN APPLICATION FOR EXEMPTION FROM FILING
OFFICIAL TRANSLATION OF DOCUMENTS**

To,

The Hon'ble Chief Justice of India

and his companion Justices of the

Hon'ble Supreme Court of India.

This Special Leave Petition of

the Petitioners above named

The Petitioners respectfully submit as follows:

1. The present Special Leave Petition under Article 136 of the Constitution of India is filed against the Common Impugned

Final Judgment and Order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka at Bengaluru in Writ Petition No. 2146 of 2022, whereby it wrongly upheld impugned Government Order dated 05.02.2022 issued by the State of Karnataka.

2. The contents of the accompanying petition may be read as part and parcel of the present application and the same are not being repeated here for sake of brevity.
3. That the Petitioners have filed translated copies of the following documents, which were available in vernacular language:
 - a. A true typed translated copy of the extract of Circular No. ED 580 SHH 2013 dated 31.01.2014, issued by the Government of Karnataka is hereby attached as **ANNEXURE P-1** at pages 188 to 192.
 - b. A true typed translated copy of the relevant extracts of the Guidelines 2021-22 issued by the Department of Pre-University Education, Govt. of Karnataka, is hereby attached as **ANNEXURE P-2** at pages 193 to 217.
 - c. A true typed translated copy of the representation dated 30.12.2021 by the Students of Government Pre-University College, Udupi District before Deputy Director, Pre-University, Udupi District is hereby attached as **ANNEXURE P-3** at pages 218 to 219.

- d. A true typed translated copy of letter dated 25.01.2022 bearing No. EP 14 SHH 2022 issued by Respondent No. 1 is hereby attached as **Annexure P- 4** at pages 220 to 221.
 - e. A true typed translated copy of the College Development Committee meeting held on 31.01.2022 are hereby attached as **Annexure P-6** at pages 250 to 253.
 - f. A true typed translated copy of the Government of Karnataka Order No. EP 14 SH 2022 dated 05.02.2022 is hereby attached as **ANNEXURE P-7** at pages 254 to 257.
4. That the Petitioners herein through this application seek leave of this Hon'ble Court to place on record the translated copies of the aforesaid documents mentioned in para 3, which are not translated by an official translator.
5. Due to paucity of time and this matter being of an urgent nature, the Petitioners herein were unable to have the documents mentioned in para 3 translated by an official translator.
6. Therefore, it is submitted that this Hon'ble Court may be pleased to exempt the filing of documents translated by an official translator and allow the documents mentioned in para 3 to be brought on record.

7. That the present application is *bona fide* and is being made in the interests of justice.

PRAYER

In light of the fact and circumstances stated above, it is prayed as under:

- a) Exempt the Petitioners from filing official translations of the documents as mentioned in Para 3 and marked as Annexures P-1 to P-4 and Annexures P-6 to P-7 and filed with the Special Leave Petition; and
- b) Pass any other or further order(s)/direction(s) as may be deemed fit and proper in the interest of justice.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER SHALL AS IS DUTY BOUND EVER PRAY.

DRAWN BY:

Tanvi Tuhina, Adv.

Aman Naqvi, Adv.

Place: New Delhi

Drawn On: 20.03.2022

Filed On: 23.03.2022

FILED BY:



SHADAN FARASAT

Advocate for the Petitioners

Dated: 24.03.2022

To,

The Registrar,
Supreme Court of India,
Tilak Marg,
New Delhi

Dear Sir,

**Subject: Clarification in Shafa & Anr. v. Chief Secretary Primary & Higher Education Department, State of Karnataka & Others
SLP (Civil) Diary No. 9024 of 2022**

That the captioned SLP has been filed by me on behalf of the Petitioners.

REMOVAL OF PAGES FROM THE SLP

I am removing the following pages from the captioned Petition since they are not relevant for adjudication:

- a. Page No. **250** to **288** removed from **Annexure P-5**
- b. Page No. **339** to **419** removed from **Annexure P-8**
- c. Page No. **533** to **539** removed from **Annexure P-17**

Accordingly, the page numbers of the SLP will change. I am thus, refiling the relevant portion of the SLP which stands changed due to the removal of the abovementioned page numbers and also filing the amended index.

DIFFERENT PRAYERS SOUGHT AS INTERIM PRAYER IN THE CAPTIONED PETITION AND IN THE IA FOR DIRECTIONSThe interim prayer sought in the captioned SLP is to allow Petitioners to take the Annual PUC examination commencing from 29th March 2022 onwards. The directions sought in the IA for Directions is for the Respondent PUC College to conduct the Annual **Practical** Examination (in Science) again so that Petitioners, who have missed the exam, can take them now.

These are two different prayers being made. Since the directions sought in the IA for Directions are for conduct of exams again, typically, the relief sought would not be envisaged as an interim prayer. Hence, IA for Directions are being filed and may be allowed to be brought on record.

Thanking you

Your sincerely,



(Shadan Farasat)

Advocate for Petitioners