SYNOPSIS AND LIST OF DATES

This instant Special Leave Petition is being preferred against the order and Judgement of the Hon'ble High Court of Karnataka wherein the Hon'ble High Court was pleased to dismiss the petition by passing an order without applying its mind.

The Petitioner most humbly submits that the Hon'ble High Court has erred in creating a dichotomy of freedom of religion and freedom of conscience wherein the Court has inferred that those who follow a religion can not have the right to conscience.

The Petitioner in this instant matter had approached the Hon'ble High Court for the purposes of seeking redressal for the violation of their Fundamental Rights against the **Government Order No: EP14 SHH 2022** passed by Respondent No. 1 on 05.02.2022, issued under Sections 7 and 133 of the Karnataka Education Act, 1983. The impugned Government Order directed the College Development Committees all over the State of Karnataka to prescribe a 'Student Uniform' that mandated the students to wear the official uniform and in absence of any designated uniform the students were mandated to wear an uniform that was in the essence of unity, equality and public order.

The Hon'ble High Court has failed to note that the Karnataka Education Act, 1983, and the Rules made thereunder, do not provide for any mandatory uniform to be worn by students. A perusal of the scheme of the Act reveals that it aims to regulate the institutions, rather than the students. Sections 03 and 07 of the said Act provide the State Government with the powers to *inter alia* regulate education, curriculum of study, medium of instruction, etc. However, neither of these provisions empowers the State Government to prescribe a uniform for the students.

The Petitioner herein submits that the Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995 ("1995 Rules") apply to primary education, and not pre-university colleges.

Rule 11 allows institutions to specify a uniform. The same is reproduced below:

> *"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.*
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> *(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.*
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> *(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 tailor 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."*

It is submitted that the 1995 Rules do not make it mandatory for a school / institution to prescribe a uniform. The same is left to the discretion of the school / institution. In the instant case, the respective institutions had not prescribed any uniform for their students.

The Petitioner submits that the Hon'ble High Court has failed to note that there does not exist any provision in law which prescribes any punishment for students for not wearing uniforms. Even if one were to presume that there existed a mandate to wear a particular uniform, there is no punishment prescribed in case a student does not wear the uniform. It is pertinent to note that Chapter XVII of the Act prescribes penalties for various offences, including impersonation during examinations, penalty for ragging, etc. Furthermore, Rule 15 of the 1995 Rules prescribes the penalties that can be levied for the violation of any provision of the Act or the Rules by the institutions. However, there does not exist any provision in either the Act or the Rules thereunder that prescribes a punishment for students for not wearing an institution-prescribed uniform. Therefore, it is submitted that the action of the Respondents in prohibiting the students from accessing

classrooms is devoid of any legal basis.

There is no provision in the Act or the rules allowing the formation of a 'College Development Committee'. Such a committee, even if formed, has no powers to regulate the wearing of a uniform, or any other matter in an educational institution.

The order dated 05.02.2022 issued by the State is beyond the scope of powers under Section 133 (2) of the Act. It seeks to supplant, and not supplement the provisions of the Act. It is humbly submitted that under Section 133 (2), the State Government can (a) issue directions to institutions; (b) such directions must be necessary or expedient for carrying out the purposes of the Act or to give effect to any of the provisions of the Act or the rules made thereunder.

The notification issued by the State Government does not mention the objective or provision of the Act it seeks to achieve. Further, as has already been stated, there is no provision in the Act or in the rules, mandating uniforms. This being the position, the notification is beyond the scope of the powers under Section 133 (2). In any event, the notification seeks to create a new obligation. This is not permissible in light of the Judgement of this Hon'ble Court in *Kunj Behari Lal Butail v. State of H.P.,* (2000) 3 SCC 40.

> *"13. It is very common for the legislature to provide for a general rule-making power to carry out the purpose of the Act. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the test of having been so framed as to fall within the scope of such general power confirmed. If the rule-making power is not expressed in such a usual general form then it shall have to be seen if the rules made are protected by the limits prescribed by the parent Act. 14. We are also of the opinion that a delegated power to legislate by making rules "for carrying out the purposes of the Act" is a general delegation without laying down any guidelines; it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself."*

The Hon'ble High Court has failed to note that the right to wear a Hijab comes under the ambit of the right to privacy under Article 21 of the Constitution of

India. It is submitted that the freedom of conscience forms a part of the right to privacy. Reliance is placed on the judgement of this Hon'ble Court in the case of *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, wherein it was stated

> *"372. …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."*
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> *"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 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."*

Consequently, it is submitted that any infringement of such freedom of conscience has to be tested on the touchstone of the "triple test" as laid down in the case of *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, and reiterated in the case of *K.S. Puttaswamy v. Union of India*, (2019) 1 SCC 1. The "triple test" requires that to constitute a valid infringement of privacy, there must be:

a. Existence of a Law;
b. A legitimate state interest;
c. Law must be proportionate.

In this case, neither the Act nor the Rules prescribe any uniform for students or prohibit the wearing of a Hijab. Therefore, the first requisite of the above-mentioned "triple test" – i.e., existence of a law, is not satisfied.

The Hon'ble High Court has failed to note that the right to wear a Hijab comes under the ambit of 'expression' and is thus protected under Article 19(1)(a) of the Constitution. It is submitted that clothing and appearance fall within the ambit of the right of expression guaranteed under Article 19(1)(a) of the

Constitution, as was held by this Hon'ble Court in the case of *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438. Further reliance is placed on the judgement of this Hon'ble Court in the case of *Jigya Yadav v. CBSE*, (2021) 7 SCC 535, wherein it was stated:

> *"125. Identity, therefore, is an amalgam of various internal and external including acquired characteristics of an individual and name can be regarded as one of the foremost indicators of identity. And therefore, an individual must be in complete control of her name and law must enable her to retain as well as to exercise such control freely "for all times". Such control would inevitably include the aspiration of an individual to be recognised by a different name for a just cause. Article 19(1)(a) of the Constitution provides for a guaranteed right to freedom of speech and expression. In light of Navtej Singh Johar [Navtej Singh Johar v. Union of India, (2018) 10 SCC 1: (2019) 1 SCC (Cri) 1],* ***this freedom would include the freedom to lawfully express one's identity in the manner of their liking. In other words, expression of identity is a protected element of freedom of expression under the Constitution.****"*

The Hon'ble High Court has failed to address the discrepancy on part of the Respondents to maintain conditions conducive for the practice of freedoms as guaranteed under the Constitution. Such lackadaisical behaviour of the Respondent is against what was held by this Hon'ble Court in *Indibily Creative (P) Ltd. v. State of W.B.*, (2020) 12 SCC 436, wherein it was stated:

> *"50. The freedoms which are guaranteed by Article 19 are universal. Article 19(1) stipulates that all citizens shall have the freedoms which it recognises. Political freedoms impose a restraining influence on the State by carving out an area in which the State shall not interfere. Hence, these freedoms are perceived to impose obligations of restraint on the State. But, apart from imposing "negative" restraints on the State these freedoms impose a positive mandate as well. In its capacity as a public authority enforcing the rule of law, the State must ensure that conditions in which these freedoms flourish are maintained. In the space reserved for the free exercise of speech and expression, the State cannot look*

askance when organised interests threaten the existence of freedom. The State is duty bound to ensure the prevalence of conditions in which of those freedoms can be exercised. The instruments of the State must be utilised to effectuate the exercise of freedom. When organised interests threaten the properties of theatre owners or the viewing audience with reprisals, it is the plain duty of the State to ensure that speech is not silenced by the fear of the mob. Unless we were to read a positive obligation on the State to create and maintain conditions in which the freedoms guaranteed by the Constitution can be exercised, there is a real danger that art and literature would become victims of intolerance. In the present case, we are of the view that there has been an unconstitutional attempt to invade the fundamental rights of the producers, the actors and the audience. Worse still, by making an example out of them, there has been an attempt to silence criticism and critique. Others who embark upon a similar venture would be subject to the chilling effect of "similar misadventures". This cannot be countenanced in a free society. Freedom is not a supplicant to power."

The Hon'ble High Court has failed to highlight the actions of the Respondent which have shifted the burden of maintenance of public order from the State to the public on the basis that the wearing of Hijab by the Petitioner is the sole reason for the situation. This is akin to the claim that the Petitioner is responsible for the issue because they have chosen to practice their faith publicly.

The Hon'ble High Court has failed to note that the right to wear a Hijab is protected as a part of the right to conscience under Article 25 of the Constitution. It is submitted that since the right to conscience is essentially an individual right, the 'Essential Religious Practices Test' ought not to have been applied by the Hon'ble High Court in this instant case.

It is further submitted that the judgement of this Hon'ble Court on the aspect of freedom of conscience – ***Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615**, dealt with the issue without going into the question of 'essential religious practices', considering the claim of a religious exemption on the basis

of bona fide faith. This Hon'ble Court had held in the above-mentioned Judgement that:

> *"25. 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…"*

Assuming the 'Essential Religious Practices Test' does apply, the Hon'ble High Court has failed to note that wearing of Hijab or headscarf is a practice that is essential to the practice of Islam. Reliance in this scenario is placed on a Judgement of the Hon'ble Kerala High Court in the case of ***Amna Bint Basheer & Anr. v. CBSE*, 2016 SCC OnLine Ker 41117: AIR 2016 Ker 115**, wherein it was held:

> *"30. 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."*
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> Reliance is placed on another Judgement of the Hon'ble Kerala High Court in the case of *Nadha Raheem v. CBSE*, 2015 SCC OnLine Ker 21660, wherein it was observed that *"it cannot be ignored that in our country with its varied and diverse religions and customs, it cannot be insisted that a particular dress code be followed failing which a student would be prohibited from sitting for examinations."*

Reliance is also placed on a Judgement of the Hon'ble Madras High Court in the case of *M. Ajmal Khan v. Election Commission of India,* 2006 SCC OnLine Mad 794: (2006) 4 LW 104 (Mad) (DB), wherein it was held:

> *"15. … It is, thus, seen from the reported material that there is almost unanimity amongst Muslim scholars that purdah is not essential but covering of head by scarf is obligatory.''*

The Hon'ble High Court has failed to note that the Indian legal system explicitly recognises the wearing / carrying of religious symbols. It is pertinent to note that Section 129 of the Motor Vehicles Act, 1988, exempts turban wearing Sikhs from wearing a helmet. Order IX, Rule 8 of the Supreme Court Rules makes a special provision for affidavits that are to be sworn by pardanashin women. Furthermore, under the rules made by the Ministry of Civil Aviation, Sikhs are allowed to carry kirpans onto aircraft.

This public order was passed with an indirect intent of attacking the religious minorities and specifically the followers of Islamic faith by ridiculing the female Muslim students wearing Hijab. This ridiculing attack was under the guise of attaining secularity and equality on the basis of uniform wherein the College Development Committees prohibited the students wearing Hijab from entering the premises of the educational institutions. This step-motherly behaviour of Government authorities has prevented students from practising their faith which has resulted in an unwanted law and order situation.

However, the Hon'ble High Court in its impugned order had vehemently failed to apply its mind and was unable to understand the gravity of the situation as well as the core aspect of the Essential Religious Practices enshrined under Article 25 of the Constitution of India. Further, it also misinterpreted the law in accordance with the given facts and erred heavily while granting relief to the Petitioner by taking a stand in favour of the Respondent, thus, failing to offer relief to the Petitioner for its misery.

Hence, this instant petition for Special Leave to Appeal.