

**IN THE SUPREME COURT OF INDIA
[S.C.R., Order XXI Rule 3(1) (a)]
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION**

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (C) No. OF 2019

**(A SPECIAL LEAVE TO APPEAL AGAINST THE IMPUGNED FINAL
ORDER PASSED BY THE HON'BLE HIGH COURT OF JUDICATURE
AT BOMBAY DATED 10.06.2019 IN WRIT PETITION (L) NO. 1743
OF 2019)**

WITH A PRAYER FOR INTERIM RELIEF

In the High
Court

In this Hon'ble
Court

BETWEEN

Master Rajpurohit Ridham Devichand,
Aged 11 years, represented
by his father/guardian,
Devichand Jograji Rajpurohit,
Aged 48 years, residing at 05, 2nd floor,
Ambaji Dham Society, Shimpoli Road,
Opp. Gokhale High School, Factory Lane,
Borivali West S.O., Borivali West, Mumbai,
Maharashtra – 400 092

Petitioner

Petitioner

VERSUS

1. Union of India,
Through its Secretary,
Ministry of Human Resource Development,
Department of High Education,
Shastri Bhavan,
New Delhi – 110115

Respondent No. 1 Respondent No. 1

2. State of Maharashtra
Through its Secretary,
School Education and Sports Department,
1st Floor, Room No. 108, Mantralaya Annex.,
Madam Cama Road, Mantralaya,
Mumbai – 400 032

Respondent No. 2 Respondent No. 2

3. Ajmera Global School,

Represented by the Principal,
Eksar Road, Yogi Nagar,
Borival West, Mumbai – 400 092,
Maharashtra

Respondent No. 3 Respondent No. 3

(All Respondents are Contesting Respondents)

TO

**THE HON'BLE THE CHIEF
JUSTICE OF INDIA AND HIS
COMPANION JUDGES OF THE
HON'BLE SUPREME COURT OF
INDIA**

**THE HUMBLE PETITION
OF THE PETITIONER
ABOVENAMED**

MOST RESPECTFULLY SHOWETH:

1. The present Special Leave Petition is filed against the impugned judgment and final order dated 10.06.2019 in Writ Petition (L) No. 1734 of 2019 whereby the Hon'ble High Court has erroneously dismissed the writ petition filed by the Petitioner.

1A. The Petitioners have not preferred any Writ Appeal or Letters Patent Appeal from the impugned order as the impugned order has been passed by the Ld. Division Bench of the Hon'ble High Court. Therefore, the Petitioners are approaching this Hon'ble Court under Article 136 of the Constitution of India.

2. QUESTIONS OF LAW

A. Whether the provisions Right of Children to Free and Compulsory Education Act, 2009 ('the Act') would apply to a School affiliated to Cambridge Assessment International Education (CIE).

B. Whether, the 'No Detention Policy' (NDP) introduced by the Central Government under the Right to Education Act, 2009 covers the case of the Petitioner?

C. Whether it is open for an educational institution situated in India but affiliated to an International Board to give a go by to express provisions of the Act?

3. DECLARATION IN TERMS OF RULE 3(2)

The Petitioner states that no other petition seeking leave to appeal has been filed against the Impugned Judgment and final orders.

4. DECLARATION IN TERMS OF RULE 5

The Annexures P-1 to P-4 produced along with the present SLP are true copies of the pleadings / documents which formed part of the records of the case in the Court below against whose order the leave to appeal is sought for in this petition.

5. GROUNDS

The Petitioner begs to prefer this instant Special Leave Petition, inter-alia, on the following grounds taken without prejudice to each other; the Petitioner craves leave of this Hon'ble Court to raise any other grounds at the time of hearing:

(A) Because, the Hon'ble High Court has failed to appreciate the complete disregard of the provisions of the Right to Education Act by the Respondent No. 3 in as much as the Respondent No. 3 has refused to issue promotion certificate to Class VIIth, along with the School Leaving Certificate owing to the fact that the Petitioner has been detained by the Respondent No. 3 in VIth

class due to failure in securing the required aggregate as stipulated in the final term report card. The Respondent No. 3 has further made remarks that undermine the dignity and self esteem of the Petitioner.

(B) Because, the Hon'ble High Court has completely failed to appreciate that the provisions of the Right to Education Act are aimed at ensuring that every child between the age of six to fourteen years, shall have the right to free and compulsory education. Moreover, Section 16 of the Act clearly stipulates that no child can be held back till the completion of elementary education.

(C) Because, once the statute clearly provides for a "no detention policy", the Respondent No. 3 had no authority to detain the Petitioner. That the Respondent No. 3, with purely selfish and commercial motives, has completely ignored the object of the Act and held back the Petitioner in the same class.

(D) Because, though Section 16 has been amended by way of the Right of Children to Free and Compulsory Education (Amendment) Act, 2019 (hereinafter referred to as 'Amendment Act'), the format of examination and re-examination in case of failure has been made mandatory only for Class V and Class VIII students.

(E) Because, though the amendment does not apply to the Petitioner, the Respondent No. 3 did not even give the Petitioner an opportunity to appear for re-examination held by the Respondent No. 3 for other similarly placed students of Class VI.

(F) Because, the Hon'ble High Court has erroneously observed that as the Respondent No. 3 being a school affiliated to the Cambridge International Education (CIE) and following the International General Certificate of Secondary Education (IGCSE) syllabus from 6th to 10th standard, it has set certain standards and norms and therefore, the school has not arbitrarily or malafidely held back the Petitioner. Under Section 2(n) of the Act, the term 'school' means any recognized school imparting elementary education and does not distinguish on the basis of any particular Board of education and thus, includes the Respondent No. 3, as well.

(G) Because, it is not out of place to mention that the Petitioner's parents have only completed primary education and therefore, it is not possible to cultivate reading and writing skills or provide training at home. Therefore, the Hon'ble High Court ought not to have held the parents of the Petitioner responsible for the detention of the Petitioner.

(H) Because, the parents of the Petitioner have already taken admission in another school and are only praying that the Respondent No. 3 be directed to issue a promotion certificate to Class VIIth, in accordance with the provisions of the Act.

(I) Because the Hon'ble High Court failed appreciate the rationale behind Section 16 of the Act. Section 16 prohibits holding back and expulsion of a child from school till the attainment of elementary education. There have been some misgivings on the provisions relating to 'no detention' and 'no expulsion'. The 'no detention' provision is made because examinations are often

used for eliminating children who obtain poor marks. Once declared 'fail', children either repeat grade or leave the school altogether. Compelling a child to repeat a class is demotivating and discouraging. Repeating a class does not give the child any special resources to deal with the same syllabus requirements for yet another year. Parents and friends of such children also tend to view them as being 'fit for failure', thereby reinforcing the perception which the school has already used for declaring a child 'fail'.

(J) Because, the Hon'ble High Court has failed to appreciate the decision of the Hon'ble High Courts of Madras (in Ka. Kalaikottuthayam v. The State Of Tamil Nadu .,W.P.No.11168 of 2010), Calcutta (in Master Arkaprava Basu and Anr. v. Patha Bhavan & Ors., W. P. No. 8355(W) of 2011)and Chhattisgarh (in Master Vatsal Khakhariya vs State Of Chhattisgarh, W.P. (C) No.1209 of 2018) wherein it has been held that even though the conduct of examination is not prohibited under Section 16, getting pass marks in number of subjects is not required for giving promotion to higher class.

(K) Because, the Petitioner stands to lose out on one academic year, thus affecting his future in as much as a repeat of one year leaves a life-long stigma in future academic and job prospects.

(L) Any other grounds that may be raised with the permission of this Hon'ble Court.

6. GROUND FOR INTERIM RELIEF

a) It is submitted that the Impugned Order has been passed in disregard of the law laid down by this Hon'ble Court and the facts on record. It is respectfully reiterated that the Impugned Order has been passed without a proper appreciation of the relevant facts and law. If the operation of the Impugned Order of the Hon'ble High Court is not stayed during the pendency of this Special Leave Petition, it will result in grave injustice to the Petitioners in as much as the judgment in disregard of the law declared by this Hon'ble Court as well as in disregard of the factual position would be allowed to prevail. Hence the Impugned Order passed contrary to the factual position and the settled legal position deserves to be ex-parte stayed.

b) It is submitted that the Petitioner has a prima facie good case on merits and the balance of convenience is in favour of the Petitioner and against the Respondents.

7. MAIN PRAYER:

In the facts and Circumstances and in the interest of justice, it is therefore, most respectfully prayed that this Hon'ble court may be pleased to:

a. Grant special leave to appeal against the impugned judgment and final order dated 10.06.2019 passed by the Hon'ble High Court of Judicature at Bombay in Writ Petition (L) No. 1743 of 2019;

- b. Pass such other and further order or orders as this Hon'ble court may deem fit and proper in the fact and circumstances of the present case.

8. **INTERIM RELIEFS:**

In the facts and circumstances above mentioned the Petitioner most respectfully prays that this Hon'ble Court may be graciously pleased to:-

- a) Grant ex-parte ad interim stay of the impugned judgment and final order dated 10.06.2019 passed by the Hon'ble High Court of Judicature at Bombay in Writ Petition No. (L) 1743 of 2019;
- b) Pass such other order or further order(s) as this Hon'ble Court may deem fit in the facts and circumstances of the case.

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

DRAWN & FILED BY

New Delhi
Drawn on: 27.06.2019
Filed on: 24.07.2019

(PURNIMA KRISHNA)
ADVOCATE FOR PETITIONER