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W.A.No.1819 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2024

CORAM

THE HON'BLE Mr. JUSTICE S.S.SUNDAR
AND
THE HON'BLE Ms. JUSTICE R.N.MANJULA

W.A.No.1819 of 2023
AND
C.M.P.No.16016 of 2023

1.The Director of Matriculation Schools
Office of the Director of the Matriculation Schools
College Road, DPI Compound
Chennai 600 006

2.The District Educational Officer
Vellore District
Vellore

3.The Secretary to Government
School Education Department
Government of Tamil Nadu
Fort St. George, Chennai 9

.. Appellants

Vs.

1.M.Suveathan
Minor rep. by his father P.Maharaja

2.The State Commission for Protection of Child Rights
183/1, EVR Periyar Salai
Poonamallee High Road
Kilpauk, Chennai 600 010



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3.The Principal
Little Flower Matriculation School
No.22, New Balavinayagar Street
Bhuvaneswaripet
Gudiyattam 632 602
Vellore District

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order dated 18.04.2023 passed by the learned Single Judge in W.P.No.4615 of 2022.

For Appellants	: Mr.J.Ravindran Additional Advocate General Assisted by Mr.R.Neethi Perumal Government Advocate
For R1	: Mr.R.Sankarasubbu
For R2	: No appearance
For R3	: Mr.R.Natarajan

J U D G M E N T

(Delivered by S.S.SUNDAR, J.)

This writ appeal is directed against the order dated 18.04.2023 passed by the learned Single Judge in W.P.No.4615 of 2022.

2. The only submission of the learned Additional Advocate General appearing for the appellants against the order of the learned Single Judge is that the appellants are aggrieved by the portion of order of the learned Single Judge



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permitting the 3rd respondent school to make a claim for the actual amount spent by the school for providing uniform, textbooks, etc. and directing the appellants to reimburse the amount spent by the 3rd respondent school towards providing uniform, notebooks, textbooks and tuition fee, etc.

3. The writ petition was filed for issuance of a writ of mandamus for a direction to the State Commission for Protection of Child Rights, the 2nd respondent herein to pass appropriate orders on the petitioner's representation dated 27.08.2021. The learned Single Judge, by order dated 18.04.2023, allowed the said writ petition and issued directions in terms of the provisions of Right of Children to Free and Compulsory Education Act, 2009 (in short “the Act”). In paragraph 36 of the order, the learned Single Judge issued directions to the school and the official respondents in the following lines :

“36. The writ petition is allowed with the aforesaid observations and directions. The 4th respondent is directed to provide all the materials, including uniform, notebooks, textbooks and all other reading materials to the petitioner forthwith without insisting on any payment from the petitioner and the 4th respondent shall make a claim on the state towards the amount payable under the aforesaid heads by the petitioner and the respondents 2, 3 and 5 shall reimburse the amount to be



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4th respondent upon satisfaction and submission of relevant documents. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.”

4. Under Section 12(2) of the Act, the responsibility of schools providing free and compulsory education to children is given. For ready reference, Section 12(2) of the Act reads as under :

12. Extent of school's responsibility for free and compulsory education :

(1)

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

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

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

Rules 9, 11 and 12 of the Act are also extracted hereunder :

“9. Responsibilities of the appropriate Government and local authority



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(1) A child attending a school of the appropriate Government or local authority referred to in sub-clause (i) of clause (n) of Section 2, a child attending a school referred to in sub-clause (ii) of clause (n) of Section 2 in accordance with clause (b) of sub-section (1) of Section 12, and a child attending a school referred to in sub-clauses (iii) and (iv) of clause (n) of Section 2 in accordance with clause (c) of sub-section (1) of Section 12 shall be entitled to free education as provided for in sub-section (2) of Section 3 of the Act, and in particular to free text-books, writing materials and uniforms:

Provided that a child with disability shall be entitled also for free special learning and support material.

Explanation - For the purposes of sub-rule (1), it may be stated that in respect of the child admitted in accordance with clause (b) of sub-section (1) of Section 12 and a child admitted in accordance with clause (c) of sub-section (1) of Section 12, the responsibility of providing the free entitlement shall be of the school referred to in sub-clause (ii) of clause (n) of Section 2 and of sub-clauses (iii) and (iv) of clause (n) of Section 2, respectively.

(2) For the purpose of determining and for establishing neighbourhood schools, the appropriate Government or the local authority shall undertake school mapping, and identify all children, including children in remote areas, children with disability, children belonging to disadvantaged group, children belonging to weaker section and children referred to in Section 4, within a period of one year from the appointed date, and every year thereafter.

(3) The appropriate Government or the local authority shall ensure that no child is subjected to caste, class, religious or gender abuse in the school.

(4) For the purposes of clause (c) of Section 8 and clause (c) of Section 9, the appropriate Government and the local authority shall ensure that a child belonging to a weaker section and a child belonging to disadvantaged group is not segregated or discriminated against in the classroom, during mid-day meals, in the playgrounds, in the use of common drinking water and toilet facilities, and in the cleaning of toilets or classrooms.



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11. Admission of children belonging to weaker section and disadvantaged group

(1) The school referred to in clauses (iii) and (iv) of clause (n) of Section 2 shall ensure that children admitted in accordance with clause (c) of sub-section (1) of Section 12 shall not be segregated from the other children in the classrooms nor shall their classes be held at places and timings different from the classes held for the other children.

(2) The school referred to in clauses (iii) and (iv) of clause (n) of Section 2 shall ensure that children admitted in accordance with clause (c) of sub-section (1) of Section 12 shall not be discriminated from the rest of the children in any manner pertaining to entitlements and facilities such as textbooks, uniforms, library and Information, Communication and Technology (ICT) facilities, extra-curricular and sports.

(3) The area or limits of neighbourhood specified in sub-rule (1) of Rule 6 shall apply to admissions made in accordance with clause (c) of sub-section (1) of Section 12:

Provided that the school may, for the purposes of filling up the requisite percentage of seats for children referred to in clause (c) of sub-section (1) of Section 12, extend these areas or limits with the prior approval of the appropriate Government.

12. Reimbursement of per-child expenditure by the appropriate Government

(1) The total annual recurring expenditure incurred by the appropriate Government, from its own funds, and funds provided by the Central Government and by any other authority, on elementary education in respect of all schools referred to in sub-clause (i) of clause (n) of Section 2, divided by the total number of children enrolled in all such schools, shall be the per-child expenditure incurred by the appropriate Government.

Explanation - For the purpose of determining the per-child expenditure, the expenditure incurred by the appropriate Government or local authority on schools referred to in sub-clause (ii) of clause (n) of Section 2 and the children enrolled in such schools shall not be included.



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(2) Every school referred to in clauses (iii) and (iv) of clause (n) of Section 2 shall maintain a separate bank account in respect of the amount received by it as reimbursement under sub-section (2) of Section 12.”

Under Section 12(2) of the Act, every school providing free and compulsory elementary education to children is entitled to reimbursement of the expenses so incurred by it to the extent of per-child expenditure incurred by the State or the actual amount charged from the child, whichever is less.

5. Relying on Section 12(2) of the Act, the learned Additional Advocate General submitted that the Government's responsibility to reimburse the expenditure met by school is not the actual amount incurred by the individual schools in every case, but, either the actual amount charged from the child or the expenditure incurred by the State per-child, whichever is less. Hence, direction in paragraph 36 of the order of the learned Single Judge is contrary to Section 12(2) read with Rule 12 of the rules framed under the Act.

6. In view of the above, this Court modify the order of the learned Single Judge limiting the liability of the Government strictly in terms of Section 12(2) read with Rule 12 of the Act. In other words, the 3rd respondent school, which is directed to provide uniform, notebooks, textbooks as contemplated under the



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Act to students admitted as per Section 12 of the Act, is entitled to claim for reimbursement to the extent of per-child expenditure incurred by the State or the actual amount charged from other children, whichever is less.

Only to the extent indicated above, the order of the learned Single Judge is modified and this writ appeal is partly allowed. No costs. Connected C.M.P. is closed.

[S.S.S.R.,J.] [R.N.M., J.]
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