

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 4457 OF 2015**

1. Dr. Vikhe Patil Foundation's
Vikhe Patil Memorial School Pune,
Through its Trustee and Secretary
Dr. Manoj Narwade,
Off Senapati Bapat Road,
Pune: 411 016.
2. Dr. Vikhe Patil Foundation's
Vikhe Patil Memorial School, Lohegaon,
Through its Trustee and Secretary
Dr. Manoj Narwade,
Survey No. 44/6,
Vikhe Patil Nagar,
Lohegaon,
Pune: 411 047.
3. Vidyashilp Public School,
Through its CEO
Shri. P.D. Kulkarni,
Vidyavardhani Education &
Research Foundation,
S. No. 9/2,
Yevalewadi,
Kondhawa (Bk.),
Pune: 411 048.
4. Symbiosis International School,
Through Authorized Signatory
Shri. Jagannath Raghunath Pathare,
Symbiosis Campus,
Viman Nagar,

Pune: 411 0114.

5. Symbiosis School,
Through Authorized Signatory
Shri. Jagannath Raghunath Pathare,
N. Shravan 53, CIDCO,
Ashvin Nagar,
Nashik.
6. City International School, Aundh,
Through Chairman,
Between Rajiv Gandhi Bridge &
Bremen Chowk, Aundh,
Pune: 411 007.
7. City International School, Wanowrie,
Through Chairman,
Ganga Savera Complex,
Fatima Nagar Road,
Opp. Shivalkar Garden,
Wanowrie,
Pune: 411 040.
8. City International School, Satara Road,
Through Chairman,
Maharshi Nagar, Behind Dena Bank,
Pune-Satara Road,
Pune: 411 037.
9. Indian Model School (State Board),
Near Water Tank,
Old Solapur-4.
10. Indian Model School (CBSC Board),
Near Water Tank,
Old Solapur-4.
11. Model Public School,
Through Authority Signatory,
Shri. Amol Joshi

Subhash Shah Nagar,
Old Solapur-4.

12. The Principal
Smt. Sangita Rautji,
Tree House High School
Karve Nagar,
Pune: 411 052.

...PETITIONERS

VERSUS

1. Union of India,
[Summons to be served on the Learned
Government Pleader appearing for
Union of India under Order XXVII,
Rule 4, of the Code of Civil
Procedure, 1908].
2. State of Maharashtra
[Summons to be served on the Learned
Government Pleader appearing for
State of Maharashtra under Order XXVII,
Rule 4, of the Code of Civil
Procedure, 1908].
3. The Secretary,
School Education and Sports Department,
Government of Maharashtra,
Hutatma Rajguru Chowk,
Madam Kama Road,
Mantralay,
Mumbai 400 032.
[Summons to be served on the Learned
Government Pleader appearing for
State of Maharashtra under Order XXVII,
Rule 4, of the Code of Civil
Procedure, 1908]
4. The Director of Education, Central Building
Pune 411 001

[Summons to be served on the Learned Government Pleader appearing for State of Maharashtra under Order XXVII, Rule 4, of the Code of Civil Procedure, 1908]

5. The Education Officer
The Municipal School Board,
Pune Municipal Corporation,
Shivajinagar,
Pune 411 005.
 6. The Education Officer
Municipal School Board,
Pimpri-Chinchwad Municipal Corporation,
Pimpri,
Pune 411 038.
 7. The Education Officer Zilha Parishad
Zilha Parishad,
Pune.
Having its office at Pune 411 001.
 8. The Education Officer
Municipal School Board,
Nashik.
Having its office at Nashik.
 9. The Education Officer
Zilha Parishad
Solapur Zilha Parishad,
Solapur.
-RESPONDENTS.**

**ALONG WITH
ORIGINAL SIDE WRIT PETITION NO. 1582 OF 2015**

Unaided School Forum & Anr.	Petitioners.
Vs.	
The State of Maharashtra & Anr.	Respondents.

A. S. WRIT PETITION NO. 4654 OF 2015

Shikshan Prasarak MandaliPetitioner.
Vs.
State of Maharashtra & Ors.Respondents.

**WITH
A. S. WRIT PETITION NO. 4655 OF 2015**

Bharatiya Vidya Bhavan, Pune KendraPetitioner.
Vs.
State of Maharashtra & Ors.Respondents.

**WITH
A.S. WRIT PETITION NO. 4656 OF 2015**

Pune Sevasadan SocietyPetitioner.
Vs.
State of Maharashtra & Ors.Respondents.

**WITH
A.S. WRIT PETITION NO. 4657 OF 2015**

Jog Educational TrustPetitioner.
Vs.
State of Maharashtra & Ors.Respondents.

**WITH
A. S. WRIT PETITION NO. 4658 OF 2015**

Zeal Education SocietyPetitioner.
Vs.
State of Maharashtra & Ors.Respondents.

**WITH
A. S. WRIT PETITION NO. 4659 OF 2015**

Shri Swami Samartha DnyanapeethPetitioner.
Vs.

State of Maharashtra & Ors.Respondents.

**WITH
A. S. WRIT PETITION NO. 4660 OF 2015**

Progressive Education SocietyPetitioner.

Vs.

State of Maharashtra & Ors.Respondents.

**WITH
A. S. WRIT PETITION NO. 4661 OF 2015**

Pragatipath Educational FoundationPetitioner.

Vs.

State of Maharashtra & Ors.Respondents.

**WITH
A. S. WRIT PETITION NO. 4662 OF 2015**

Maharshi Karve Stree Shikshan Sanstha, PunePetitioner.

Vs.

State of Maharashtra & Ors.Respondents.

**WITH
A. S. PUBLIC INTEREST LITIGATION (STAMP) NO. 16769 OF 2015**

Kagad Kach Patra Kashtakari Panchayat & Ors.Petitioners.

Vs.

State of Maharashtra & Ors.Respondents.

**ALONG WITH
ORIGINAL SIDE PIL (L) NO. 64 OF 2015**

Savari Muthu Micheal Selvan ...Petitioner

Vs.

The State of Maharashtra & Ors. ...Respondents

WITH

O.S. WRIT PETITION (LODGING) NO. 1831 OF 2015

Desh Seva Samiti & Anr.

....Petitioners.

Vs.

Union of India & Ors.

....Respondents.

WITH**O. S. WRIT PETITION (STAMP) NO. 1858 OF 2015**

Akhil Bhartiya Samajwadi Adhyapak Sabha

....Petitioner.

Vs.

State of Maharashtra & Ors.

....Respondents.

Mr. A.V. Anturkar, Senior Advocate a/w Mr. S.B. Deshmukh and Mr. Prathamesh Bhargude for the Petitioners in WP No. 4457 of 2015.

Mr. K.S. Bapat, I/by M. Nilesh S. Patil for the Petitioners in WP Nos. 4654 of 2015 to 4662 of 2015.

Mr. Mihir Desai, Senior Advocate a/w Mr. Chetan Mali for the Petitioners in PIL (Stamp) No. 16769 of 2015.

Mr. R.A. Rodrigues a/w Mr. N.V. Masurkar and Mr. S.G. Thakur for Respondent No. 1 in WP No. 4457 of 2015.

Mr. D.R. More with Mr. Prashant Kamble for Respondent No. 6 in WP No. 4457 of 2015 and for Respondent No.3 in PIL (Stamp) No. 16769 of 2015.

Mr. Vishwanath Patil for Respondent No.5-PMC.

Mr. Nitin Deshpande, AGP a/w Ms. S.S. Bhende, AGP for the Respondent-State in Appellate Side matters.

Dr. Birendra Saraf with Mr. Piyush Raheja, Mr. Vishesh Malviya and Ms. Nikita Mishra I/by Federal and Rashmikant for the Petitioners in OS WP No. 1582 of 2015.

Ms. Anjali Helekar, AGP for Respondent No.1 in OS WP No. 1582 of 2015.

Mr. Y. S. Bhate with Mr. Dushyant Kumar for Respondent No. 2 WP No. 1582 of 2015.

Ms. Avisha Kulkarni for the Petitioner/s in WPL Nos. 1831 of 2015 and 1858 of 2015.

Ms. Neeta Masurkar for Respondent No.1 in WPL/1831/2015.

Mr. H. S. Venegaonkar, AGP for Respondents 2, 3, 4 and 5 in O.S. WPL/1831/2015.

Mr. Anurag Gokhale, AGP for Respondent Nos. 1 and 2 in O. S.

WPL/1858/15.

Mr. Rahul Deodhar for the Petitioner in O. S. PIL(L) 64/2015.

Mr. J. S. Saluja, AGP for respondent Nos. 1 to 3 in O.S. PIL(L) No.64/2015.

Mrs. Surekha Sonawane for respondent Nos. 4 and 5 in O.S.PIL (L)/64/2015.

Mr. Rajdeep Suresh Khadapkar for respondent No.4 in O.S. WPL/1858/15.

**CORAM: ANOOP V. MOHTA AND
V. L. ACHLIYA, JJ.**

CLOSED FOR JUDGMENT ON : August 06, 2015

PRONOUNCED ON : August 14, 2015

JUDGMENT (Per Anoop V. Mohta, J.):-

Rule, returnable forthwith. Heard finally by consent. The issues are common and interconnected and, therefore, this common judgment/order.

2 The Petitioners are imparting “pre-primary and elementary education” in their respective unaided “schools”. Some are unaided minority schools also. The Respondents/State of Maharashtra (The State) and its officers are in-charge to control the schools and take effective steps to provide and or to make arrangement for primary and

elementary school education till its completion in the State, as contemplated under the The Right of Children to Free and Compulsory Education Act, 2009 (for short, RTE Act) and The Right of Children to Free and Compulsory Education Rules, 2010 (the RTE Central Rules), The Maharashtra Right of Children to Free and Compulsory Education Rules, 2011” (for short, RTE State Rules of 2011) and Maharashtra Right of Children to Free and Compulsory Education (Manner of admission of Minimum 25% children in Class I or Pre-school at the entry level for the children belonging to disadvantaged group and weaker section) Rules, 2013 (RTE State Rules, 2013).

3 The relevant prayers in Writ Petition No. 4457/2015 dated 15 April 2015 as illustrated, are as under :

“A) That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 of the Constitution of India, 1950, directing the Respondents herein to recommend the names under the Provision of the Right of Children to the Free and Compulsory Education Act, 2009 to the Petitioners schools under the Provision of Section 12 [1] [c] of the Act. Only of those students who comply with all the three

conditions mentioned in section 12 [1] [c] viz.

[a] That the child must belong to the weaker section within the meaning of section 2 [c] of the Act, And

[b] That the child must belong to the disadvantaged group within the meaning of section 2[d] of the Act, and

[c] The child must be from the neighborhood.

AA) quashing and setting aside the Government Resolution, dated 23rd July 2015, and the Government Resolution dated 21st January 2015 as illegal, bad in law, and violative of Article 14 of the Constitution of India, being vague and without application of mind and also contrary to the provisions of Right of Children to the Free and Compulsory Education Act of 2009. (added subsequently)

(B)quashing and setting aside the Government Resolution dated 21st January 2015 bearing No. RTE-2014/PTA.KRA.174/S.D-1 issued by the Government of Maharashtra viz. Respondent No.2 and 3 and the circular issued by the Education Officer [Primary Zillha Parishad , Pune dated 13th April 2015, directing that there will be two entry points viz. the first entry points and the nursery level of the Pre-school Education and the second entry point at the first standard level as illegal and bad in law.

- (c)quashing and setting aside the Circular dated 13th April 2015 issued by the Education Officer Primary Zillha Parishad, Pune [and similar circulars issued by the Education Officer [Primary] Zillha Parishad, Solapur and Nashik] directing that the backlog of the year 2012-2013 against the 25% RTE quota for the Nursery school or KG should be came forward and satisfied by making the Provision at a second entry point, viz.: at the I standard for the current Academic Year 2015-2016.
- (D)to direct the Respondent to constitute the State Advisory Council under section 34 of the Act of 2009 and implement the Provision of the Act, only in accordance with section 34 [2] of the Act, and not by issuing any Government Resolution under Article 162 ignoring the Provision of Section 34 of the Act of 2009.”

4 The similar challenge appeare except certain more raised in other Writ Petitions also. Both the Public Interest Litigations are based only for supporting the State action. The relevant provisions of The RTE Act are as under :

“2 (a) “appropriate Government” means -

(i) in relation to a school established, owned or controlled by the Central Government, or the administrator of the Union territory, having no legislature, the Central Government;

(ii) in relation to a school, other than the

school referred to in sub-clause (I), established within the territory of -

(A) a State, the State Government's

(B) a Union territory having legislature, the Government of that Union territory;

2(d) “child belonging to disadvantaged group” means a child with disability or a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification;

2(e) “child belonging to weaker section” means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification;

2 (f) “elementary education” means the education from first class to eighth class;

2(h) “local authority” means a Municipal Corporation or Municipal Council or Zillhahaha Parishad or Nagar Panchayat or Panchayat, by whatever name called, and includes such other authority or body having administrative control over the school or empowered by or under any law for the time being in force to function as a local authority in any city, town or village;

2(n) “school” means any recognised school imparting elementary education and includes -

(i) a school established, owned or controlled by the appropriate Government or a local authority;

- (ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;
- (iii) a school belonging to specified category; and
- (iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.”

5 The RTE Act provides for children of age of 6 to 14 years the right to free and compulsory education in a neighbouring school till the completion of elementary education. Chapter III deals with the “Duties of Appropriate Government, Local Authority and Parents” - to establish school, sharing of finance and other responsibility. Section 8 describes “Duties of appropriate Government and local authorities, including to ensure that the children belonging to “weaker section” and “the children belonging to disadvantaged group” are not discriminated against and prevented from pursuing and completing “elementary education” on any grounds.

6 Section 11 of the RTE Act reads as under :-

“11 Appropriate Government to provide for pre-school education. - With a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for

all children until they complete the age of six years, the appropriate Government may make necessary arrangement for providing free pre-school education for such children.”

7 Chapter IV of the RTE Act deals with “Responsibilities of Schools and Teachers”. Section 12 reads as under :

“12 Extent of school's responsibility for free and compulsory education. - (1) For the purposes of this Act, a school -

(a) specified in sub-clause (i) of clause (n) of section 2 shall provide free and compulsory elementary education to all children admitted therein;

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

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

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

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

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

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

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

8 The RTE Central Rules 2010 are framed by Central Government in view of Section 38 of the RTE Act. Chapter V of these RTE Rules describe “Responsibilities of Schools and Teachers” with regard to the admission of children belonging to “weaker section” and “disadvantaged group[“. Rule 11(3) reads as under :

“11 Admission of children belonging to weaker section and disadvantaged group. - (1)

(2)

(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.”

It is necessary for any school and/or for every school to make self-declaration in **Form I** to the concerned District Education Officer.

Form II provides the condition, as relevant, is as under:

“3 The school shall admit in class 1 (or in pre-school class, as the case may be), to the extent of % of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion.”

9 Relevant part of the notification of dated 15 March 2013, of RTE State Rules, 2013 reads thus:-

“2 *Definitions.-*

(a) ...

(b) “*child belonging to disadvantaged group*” means , a child belonging to,-

(i) *the Scheduled Caste, the Scheduled Tribe; and*

- (ii) *Child with disability; defined in section 3 and 4 of Amended Act, 2012.*
- (c) *“child belonging to weaker section” means a child including a child belonging to the Vimukta Jatis and Nomadic Tribes (VJNT), Other Backward Classes (OBC) and Special Backward Classes (SBC) and the religious Minorities specified by the State Government, annual income of whose parent or guardian is below one lakh rupees;*
- (d) *...*
- (e) *“Elementary Education” means the education form first class to eight classes. (1st to 5th lower primary and 6th to 8th upper primary);*
- (f) *Admission Committee (for giving effect to at least 25% admission) headed by the principal of the concerned school consisting of : one representative of parents from the School Management Committee; one nominee of the management of the school; and one nominee of the Education Officer;*
- (g) *....”*

“3. Procedure to be followed by school:-

- 3.1** *Every school shall publish a notice (Form-I) accessible to the public, well before the start of the admission process of the concerned academic session for giving effect to above mentioned at least 25% admission at the entry level. This shall include:-*

- (i) *Total number of seats available in class I or pre-school at the entry level in the school;*
- (ii) *Seats available out of (i) above for disadvantaged group and weaker section (at least 25%);*
- (iii) to (viii)”

“FORM-I (Rule 3.1)

- i. *Total Number of seats at entry level
i.e. class I/pre school. Total Seats: _____*
- ii. *Seats available out of (I) above for children
belonging to disadvantaged and weaker
section (at least 25%) Total Seats: _____”*

This clear valid provisions mandate the schools to admit the children of the specified class/group/section at the fixed minimum percentage of both the entry levels- pre-primary and first standard level.

10 The parties have relied upon the following judgments:-

Petitioners counsel/advocates:-

1 State of Bihar and ors v. Project Uchcha Vidya, Sikshak Sangh and ors¹.

1 (2006) 2 SCC 545

2 Association of International Schools and Principals Foundation v. The State of Maharashtra and anr.²

The Respondent-State:-

1 State of Karnataka and anr v. Associated Management of (Government Recognised Unaided English Medium) Primary and Secondary School and ors., with other companion matters³

2 Birla Vidya Niketan School & anr v. Govt. of NCT of Delhi⁴

Respondents-

1 Social Jurist v. Govt of NCT of Delhi⁵

2 The Daly College, Indore v. State of M.P. And ors⁶.

They also relied upon clarificatory notes of the RTE Act.

12 The background of these litigations and the various orders passed by this Court including earlier circulars and the case of State

2 2010 Vol. 112 (9) Bom. L.R. 4139

3 AIR 2014 SC 2094

4 MANU/DE/2642/2013

5 Judgment dated 24 May 2012 in CM Appl.6833/2012 of High Court Delhi

6 Order dated 18.12.2014 in Writ Petition No.10546/2013 by Madhya Pradesh

are to be noted. It is relevant to note the case of the State Government as expressed in earlier notifications, which are not the subject matter of any challenge. The relevant paragraphs of State affidavit in Writ Petition No. 4457 of 2015, dated 13.06.2015 are as under:-

- 2) *I say that the provisions of Right to Education Act, 2009 were made applicable w.e.f. 01/04/2010. As per the provisions of Section 12(1)(c) of the Act, the schools covered by the Act are under a legal obligation to admit 25% of the child from disadvantaged group and weaker section. Such admissions are to be made at the pre-primary and 1st standard level. The State Government issued notification in this regard on 25/05/2012. Hereto annexed and marked as **Exhibit-1** is a copy of the said notification. This notification laid down the procedure for admitting children from disadvantaged group and weaker section.*
- 3) *I say that thereafter by notification dated 15/03/2013, the State Government made applicable the procedure for admitting 25% of the children from the stated group. This notification was made applicable to non-aided and specified schools as well. Hereto annexed and marked as **Exhibit-2** is a copy of the said notification dated 15/03/2013. Then by a further notification dated 15/05/2014, on-line procedure was introduced for giving admission to the children of the stated groups.*
- 4) *Thus, during the academic years 2012-13 and 2013-14 the schools were given liberty to admit children of the stated groups by off-line method. In the State of Maharashtra, in the year 2014-15 on-line*

admissions were given in Pune Municipal Corporation, Pimpri-Chinchwad Municipal Corporation, schools in Haveli Taluka of Pune District, Municipal Corporation of Greater Mumbai and Panvel Taluka of Raigad District. In rest of the places admissions were given by off-line method.

5) *I say that the admissions for the academic year 2015-16 for 25% quota of the RTE Act began as per the Government Resolution dated 21/01/2015. Under this Resolution, the State Government directed that*

(i) if the number of seats for pre-primary school is more than seats in the 1st standard in a single school then the school shall reserve 25% of the seats available in the 1st standard in pre-primary school.

(ii) in converse situation, the school shall admit 25% of the total number of seats available in pre-primary schools for the states categories and the difference number of seats shall be made available in the 1st standard.

(iii) if after completion of admission process, if any seats are vacant, then the said seats shall be filled in at the 1st standard level.

The clarificatory resolution dated 21 January 2015 is to make effective implementation of purpose and object of free and compulsory education policy, specifically for these schools, which are imparting education at two levels in question.

12 The State of Maharashtra in their affidavit dated

16.06.2015, again elaborated the relevant provisions of RTE Act in the following words:

“8 It is submitted that while it is no doubt true that under Section 12 (1)(c) of the 2009 Act, the entry point laid down is Class I. However, under the proviso to Section 12 (1) of the Act, where a school to which Section 12 (1)(c) applies imparts pre-school education then, the provisions of Section 12 (1) (c) applies for admission to such pre-school education. Thus, in case where a school has a facility of pre-school education then, the entry at the pre-school level is the entry point and such a school is under a legal obligation to set apart 25% of the total strength for the students belonging to weaker section and the disadvantaged group. Needless to say that in case of school not having pre-school education facility, the entry point would be Class I. The Act itself contemplates two different entry points in this manner. The hue and cry raised by the Petitioner with regard to two entry points is without any substance.”

13 To clarify the above provisions and the issue with regard to two entries i.e. pre-primary level and Standard I level in case of substantial unequal number, explained, through Resolution dated 21.01.2015 which is in question. The formula so arrived at is explained in affidavit dated as under:

“12 I state that thereafter, it was brought to the notice of the State Government that the strength of students at pre-primary level and at 1st standard level is unequal in substantial number of cases in the State of Maharashtra. Therefore, the State Government arrived at a formula to get over this problem. The

State Government passed a resolution on 21.1.2015. As per the formula so arrived at

(A) If the strength of a school at pre-primary level is more, then, the one at 1st standard level, the schools shall set apart 25% of the seats of the strength at the 1st standard level and admits the students of the stated category accordingly.

(B) If the strength of a school at pre-primary level is less than the one at the 1st standard level then, such a school shall admit 25% of the strength at pre-primary level and the difference between the 25% of the 1st standard level and 25% of the strength and the pre-primary level shall be admitted at the 1st standard level. In other words, if the school has a strength of 50 students at the pre-primary level, then, the school shall reserve 12.5% (13%) of the students at the pre-primary level and if, the strength of such school is 100 at the 1st standard level then, the school shall also reserve 12.5% students at the 1st standard level. Thus, the promoted 12.5% from pre-primary level to the 1st standard and 12.5% reserved at the 1st standard makes 25%.

(c) If after completion of the admission process the number of seats earmarked for the weaker and disadvantaged group remained vacant then, such vacancies are to be filled in at the 1st standard level. Thus, in case of school having strength of 100 students at the pre-primary level, 12 seats remain vacant after filling 13 seats strength, then, such a school is under an obligation to fill 12 seats at the 1st standard level.

13 It is therefore, emphatically submitted that from the provisions of R.T.E. Act, 2009 and the rules of 2012 and 2013, it is more than clear that the schools were aware of their obligation to set apart 25% of their strength of students at the corresponding entry level in the manner laid down under the two set of

rules referred to above. The State Government had introduced online system of admission in the year 2014.”

We find nothing wrong in issuing such clarification circulars/communications, to avoid prevailing confusion and the doubts in the minds of person concerned and so also the people at large.

14 This High Court (Anoop V. Mohta & K. R. Shriram,JJ.) in the matter of *Uran Education Society & Ors. Vs. The State of Maharashtra & Ors.*⁷ dated 28.04.2015, after hearing all the parties including the learned Advocate General and Additional Solicitor General, after noting RTE Act and its rules, has observed as under,

.....

36 It is settled that the Act/Statute and related rules need to be read as a whole, by referring to the intended object and purpose of the Act and the policy. In our view, above provisions are clear and also interpreted by the Hon'ble Supreme Court. There are materials on record to show that the State Government themselves though their agents insisted various such schools to admit students of disadvantaged groups in pre-nursery schools also. The State Government as stated, insisting by giving option to the schools to opt for such admissions of disadvantaged students either at

7 2015(4) Mh.L.J. 920

pre-school level and/or primary school level. The option itself shows that the State Government is fully aware that such restriction/insistence of admission to disadvantaged children cannot be applicable at pre-nursery level and/or at primary level. Therefore, the State Government's interpretation and/or submission now when it goes to reimbursement as prayed, in our view is not acceptable. The stand itself is self contradictory and self destructive. the impugned circulars and/or rules so interpreted by the State Government, the same is also changing from time to time. It is, therefore, necessary to settle the issue so far as the reimbursement is concerned. There is no question of denying the same to such schools. We are not dealing with which stage. The option is to be provided or school should admit such children. Neither we are concerned in this matter, the issue with regard to the rule of the State Government permitted the schools to deal with the vacant seats after the last round. The State Government to take decision and issue appropriate orders/circulars within the frame work recorded and the law. the impugned circulars therefore, even if any, by overlooking above provisions and decisions, need to be modified in accordance with law. There is no question to deny such reimbursement through rules and/or new circular dated 25th March 2015 contrary to the provisions and their own earlier stand/circular. The issue is not of other expenses. The guardian/parents of such weaker section and or disadvantaged group can not be compelled and/or directed to reimburse the amount to the school who have granted admission to children into pre-primary school, as the State now denying to reimburse the amount.

37 Therefore, taking overall view of the matter and considering the object and scheme of the Act and so also the constitutional provisions, unless appropriate Government may not in a position to take decision by following due process of law to amend the provision

and declare authoritatively in advance to the people at large that they are not bound under the provisions to admit the children of 25% and/or at what level. This cannot be against the provision of the Act specially by the State circular or resolutions. Upon plain reading of the sections and consider the total scheme of the Act but subject to verification from the record of the school and/or of the record of the institution and/or by following the due process of law, the State Government require to reimburse to the school/institution the amount so contemplated under the Acts and rules made thereunder once they impart care and education to the children aged 3 to 6 years (pre-school) level of the disadvantaged/weaker class. The petitioners have made representations with detail, requesting the State Government to reimburse the amounts, but in vain. Therefore, we are inclined to allow this petition to the extent of prayer clauses (a) and (c) and order accordingly.

15 The State on 30 April 2015 issued another circular, restricting such admission only to class I level. The Petitioners, therefore sought time and prayed for amendments in these Petitions.

On 5 May 2015, this Court passed the following common order:-

“1 Leave is granted to the petitioners to add a Circular dated 30th April 2015 which is issued after filing of this petition and the petition was filed on 15th April 2015, related challenge, if any, and the requisite prayer thereto. Amendment to be carried out by 6th May 2015.

2 Issue notice to other respondents, returnable on 7th May 2015 in view of the urgency expressed and the Circular dated 30th April 2015 is under challenge, we are inclined to grant time till 7th May 2015 as we

have to grant interim order, as insisted today itself, if the case is made out by the petitioner referring and/or dealing with the Circular dated 30th April 2015. No adjournment will be granted to the State on any ground whatsoever.

3”

16 On 7 May 2015, we have restrained the State from implementing the 30th April 2015 circular by observing as under in detail:-

“1 The petitioners are educational institutions who run school where elementary education (7 to 14 years) and pre-primary education (3 to 6 years) is imparted. Such school are covered under the provisions of the Right to Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as “the Act”) and rules made thereunder by the Union of India as well as State of Maharashtra and the circulars issued from time to time by Maharashtra Government including circulars dated 15.03.2015, 15.05.2014 and 21.01.2015. All institutions/schools, parents, and the local bodies (corporation) have acted upon these circulars and children have got admissions in respective schools in their respective classes since 2012-2013.

2 By the impugned circular dated 30.04.2015 which cancelled only the resolution dated 21.01.2015, the State of Maharashtra based upon the material available with them, decided to change the policy referring to the admission under 25% reservation contemplated under Section 12 of the Act.

The government resolution in question (English translation) as provided by the petitioners counsel in Writ Petition No.4457 of 2015 for ease of reference is reproduced below:

“To fix the norms for first entry level point for 25% reserved admissions as per the Right to Education Act.

**GOVERNMENT OF MAHARASHTRA
SCHOOL EDUCATION AND SPORTS DEPARTMENT
GOVERNMENT RESOLUTION NO: RTE-2014/C. NO:
174/S. D-1
MADAM CAMA ROAD, HUTATMA RAJGURU
CHOWK, MANTRALAYA, MUMBAI
Date: 30.04.2015**

READ:

- 1) Government of Maharashtra Gazette No: PRE-2012/C. No: 112/PE-1 dated 15.03.2013.
- 2) Government of Maharashtra Gazette No: RTE-2014/C. no: 45/S. D-1 dated 15.05.2014
- 3) Government Resolution No: RTE-2014/C. No: 174/S. D-1 dated 21.01.2015

PREAMBLE:

The Right of Children to Free and Compulsory Education Act is also applicable to the school affiliated with CBSE, IB, ICSE and IGCSE Board along with the schools affiliated with State Education Board of the State and while giving admissions under 25% reservation it is observed that admission capacity in some of the schools in 1st Standard and Pre-primary Classes is different. Similarly, as per the Government Resolution dated 21.01.2015 at 02 Entry Points have been kept and similarly the option has been kept to fill up the back log in the process of computerized admission, difficulties are being raised while implementing the procedure of 25% admission at the entry level. Taking above difficulties into consideration the issue fixing norms at the entry level was under consideration of the Government.

GOVERNMENT RESOLUTION:

The Government has taken the following decision on this issue after cancelling the resolution dated 21.01.2015, Government is passing the Resolution as

under:

2) During the implementation of Right of Children to Free and Compulsory Education Act, 2009 and while considering the difficulties which arise in the admission process of 25% reserved seats, the following steps to be taken for co-ordination.

3) The Admissions have been given in the most of the schools during the Academic Year 2015-16 as per 25% reservation for 1st Standard and similarly for Junior KG and Nursery. In all these schools admissions be given to the children in 1st Standard. Children of nursery or Junior KG will not have right to take admission. However, when the children to whom admissions have been denied in such a manner will reach the 1st standard (3 years after Nursery or 2 years after Junior KG) at that time they will be given admission in that school in 1st Standard.

4) However, when admissions will be given as above, it will be presumed that those schools have observed 25% reservation during that year. Similarly, if the admission capacity of pre-primary class is equivalent to the admission capacity of 1st Standard, then it is not necessary to give separate admission in 1st Standard. However, if the admission capacity of 1st Standard is more than pre-primary admission capacity, the institution has to give remaining admissions under 25% reservation.

5) As per the Right of Children to Free and Compulsory Education Act, 2009, educational institutions should take care that 25% admissions will be given every year in 1st standard.

6) As per Right of Children to Free and Compulsory Education Act, 2009, in case of the children to whom admissions have been given under 25% reservations, reimbursement of Educational Fee will be made as per

the rules decided by the Central Government.

7) While implementing the admission process under 25% reservations during every year, admission process be started from 15th December and 3rd round of admission should be completed till end of 10th March. After the end of 3rd round within 8 days the concerned Education Officer only after verifying that not a single admission under 25% reservations are left then only the permission should be granted to the said Institution for giving remaining admission of 25% admissions from the students of General Category.

This Government Resolution has been made available on the website of Government of Maharashtra at www.maharashtra.gov.in and its Code No: 201504301051293221. This order is being issued by certifying the same as per digital signature.

In the name and by the order of Governor of Maharashtra

Sd/-

B. R. Mali

Under Secretary, Government of Maharashtra”

Therefore, except the resolution dated 21.01.2015, all earlier circulars are intact.

3 It is indisputable that all concerned must have acted and given admission to the children in pre-primary school and primary schools based on the circular dated 21.01.2015. Statement is also made that, as on the date of and much before the impugned circular dated 30.04.2015, practically all petitioner institutions' and schools' admissions were over. Statement is also made that Government of Maharashtra by taking such policy decision, cannot

state that children of nursery or Junior KG who have taken admission, cannot be disturbed by this impugned circular and therefore the impugned circular cannot be given effect. The issuance of other earlier circulars and the action taken based thereupon by all concerned, therefore needs to be protected and/or tested after considering the reason behind issuance of this impugned circular dated 30.04.2015.

For that reason, respondent no.1 was directed to file reply as early as possible so that this confusion can be set right and/or sorted out and thereby the disturbance being caused to the education of children is also resolved.

Further, in future also, taking note of the Act/Rules and the earlier circulars issued by the Government, another issue that required to be answered is how will be this circular implemented.

5 This Court, therefore, has clearly opined that care and education of every child of age 3 years to 6 years is important and respective appropriate Government, in this case State Government, need to make appropriate arrangement for the same. We have also noted that the State Government has also rightly made arrangement by directing such institutions and basically non-aided institutions to admit students of this RTE quota/reservation. Having once done that, the submission that this policy they want to implement only for the year 2015-2016 again need to be tested. The State Government themselves have recognized the importance of pre-primary education, as by the last circular, option is also given to the institutions/schools to opt for entry level and/or second level, based on which, the respective institutions/schools have exercised that option and admitted the students.

6 Shri Anturkar, learned senior counsel appearing

for the petitioners stated that the concerned arm of the State Government has already started prosecution proceedings against his clients/its office bearers, for non-compliance of this impugned circular dated 30.04.2015 and to that extent even FIR's have been lodged.

7 Therefore, taking overall view of matter and in view of the submissions made by the respective learned counsel appearing for the parties, we are inclined to observe that it is desirable that the State Government not to act further on the basis of this impugned circular dated 30.04.2015 till they file reply and the matter is heard further.

8 The learned AGP, on instructions from officers of the Government of Maharashtra who were present in Court, stated that they will not take further action so far as the prosecutions are concerned. Though we accept this statement, we are of the view that unless the situation is clarified and unless we accept the State Government's submissions as stated to be supported by sufficient material, and, as admissions are over, it is directed that no further coercive steps be taken by the Government of Maharashtra based upon this impugned circular dated 30.04.2015, including the stated prosecution. It is also made clear that wherever, the prosecution/FIR's are lodged, it will not be acted upon by the Government officials including the Police. To avoid further complications and/or confusions and to amplify our view, the State Government is directed to maintain status-quo as of today so far as the implementation of the impugned circular dated 30.04.2015 is concerned. The order of status-quo as of today means not to implement or take action based upon the impugned circular dated 30.04.2015.

9 It is made clear and further clarified that the earlier action and/or steps taken by the respective institutions are not halted. All respective

institutions/schools, local bodies (corporation) and parents to go ahead and proceed as if all the earlier circulars/directions are in force and effect. It is also made clear that the effect of this order passed by this Court is that the right and/or entitlement of children belonging to the 25% under Section 12 of the Act and their admissions to the respective institutions/schools based upon the earlier circulars are in no way affected. In other words, the effect of this order is that the position/status that prevailed on 29.04.2015 shall prevail and the Government may also continue to act/take actions based on the circulars/policy that was in force and effect on 29.04.2015. There is no question to cancel the admission so made already based upon circulars issued earlier. There is no question to deny the admission based upon the situation that prevailed prior to issuance of the impugned circular dated 30.04.2015. This order is subject to further orders in these petitions. These are prima-facie observations and will be re-considered after reply of the State. Liberty is granted to the parties including State of Maharashtra to apply for appropriate further orders/directions. We normally do not interfere with the State policy but if case is made, then in the interest of justice, the Court needs to interfere with such impugned policy also.

10”

17 On 15 June 2015, this Court has recorded in order :

“3. It is clarified that, the issue involved in the present matter is pertaining to the pre-primary education. As per the Right of Children to Free and Compulsory Education Act, 2009 (the Act), the Government’s endeavour is always to see that the aims and objects of the said Act are implemented in full spirit and they are taking steps even to collect the relevant and material data, so that appropriate order and/or circular/clarification can be issued in the

interest of public at large. Therefore, there is no question that any institute / management of school education and/or parents would not cooperate whenever and wherever Government department wants assistance and requisite data. There is no question of not providing data and/or information so sought by the Department, merely because the petition is pending in the Court.

4. It is necessary for the State Government to deal with specifically judgment dt. 28Th April, 2015 delivered in Writ Petition No. 2800 of 2015 (Uran Education Society and ors. vs. The State of Maharashtra and ors.) and other connected matters, dealing with the aspect of pre-school education as contemplated under the Constitution and under the Act.”

18 On 8 July 2015 this Court further recorded that :

“The learned AGP, on instructions, makes statement that based upon earlier communication dated 15.05.2015 the State Government has also issued another communication dated 7.7.2015, which is taken on record and marked “X” for identification purposes, whereby it is expressed that all concerned need to follow the order passed by this Court and deal with the admissions referring to 25% RTE quota class, based upon the circular / practice prior to 30.04.2015. It is informed that such intimation is also directed to be circulated to all the concerned so that orders of this Court dated 7 May 2015 in Writ petition Nos.4457/15, along with companion matters mentioned in the cause title, except PILST/16769/15, are followed.

2 We are inclined to observe that the State Government should have some mechanism and/or method/modality whereby such individual grievances of parents and/or institutions/management can be

considered and/or noted so that the respective officers of the area/district may take necessary action and/or follow up with an intent to complete the admission process in question, as early as possible, as academic session has already started.

3 Therefore, taking overall view of the matter, at this stage, we are inclined to fix this matter in the next week for final disposal. The necessary affidavit and/or documents to be placed on record on the next date.”

19 On 22 July 2015 this Court recorded, after conclusion of Petitioner's arguments as under:

“ The learned counsel appearing for the Petitioner/s in respective Petitions have completed their arguments. The argument on behalf of the State-Government is going on.

2 Stand over to 23 July 2015, at 3.00 p.m.”

20 The State decided not to press Government Resolution dated 30.04.2015 and further decided to revive 21.01.2015 Resolution of explaining two entry levels.

21 On 23 July 2015 this Court passed the following order :

“ Learned AGP, on instructions of Mr. B. R. Mali, Under Secretary to the Government of Maharashtra, makes a statement that the Government has decided to withdraw G.R. Dated 25/1/2015 (Entry level point) will be revived. Accordingly, fresh G.R will be placed

on record by tomorrow.”

22 On 24 July 2015, this Court recorded as under :

“Mr. Deshpande, learned AGP, has placed on record Government Circular No. RTE-2014/PK.174/S.D.-1 dated 23.07.2015, referring to 25% reservation of seats at entry level point, which is taken on record and marked “X” for identification purposes, whereby the Government has withdrawn Circular No. RTE-2014/PK.174/S.D. 1 dated 30.04.2015 and revived Circular No. RTE-2014/PK.174/S.D. 1 dated 21.01.2015. The statement is also made that the State of Maharashtra is following orders passed by this Court and acting as per circular dated 21.01.2015. The instructions have already been issued accordingly.

2 The learned counsel appearing for the Petitioners sought time to consider the position and, therefore, we are inclined to keep all these matters on 27.07.2015 at 3 pm for disposal.”

23 The Petitioners challenge to the Government Resolution dated 30.04.2015, therefore, did not survive. However, the contentions revolving around Government Resolution dated 21.01.2015 and the communication dated 13.04.2015 revived. The Petitioners, therefore, sought time to take instructions to raise appropriate challenge. We have granted the time for the same.

24 On 28 July 2015 we have passed the following order :

“In continuation of earlier orders -

Leave is granted to the respective Petitioner/s to amend their respective Petition, by keeping all defence and plea available to the other side. Amendment to be carried out within 3 days from today. Additional affidavit, if any, to be filed by the Respondents within a week from today.

2 Stand over to 6 August 2015, for the final disposal.”

25 The State of Maharashtra, after the withdrawal of Circular dated 30.04.2015 and in view of the amendment carried out by the Petitioners to reiterate their challenges, to the Resolution dated 21 January 2015, by affidavit dated 3.7.2015, resisted the Petitioner's prayers and stated as under :

“2 I say that the circumstances under which the State Government issued a resolution dated 21.1.2015 has been explained in paragraph No.12 of my affidavit in reply dated 26.6.2015. The circumstances under which this resolution was issued has been set out in the introductory portion of the said Government Resolution. It was found that in some of the schools the No. of seats available for pre-primary and First standard is different therefore the said resolution raised down policy as to how admissions are to be given if the admission capacity of both the standards namely Pre-primary and First standard is different.

3 The clause No. (b) of the resolution is clear and there is no confusion in it. It deals with a situation where the capacity (seats) of pre-primary school is less than first standard then such school should allot 25% of the seats of the pre-primary school to the weaker

and disadvantage group and reminder of the seats be given at the time of 1st standard. In that context the word “Reminder” (Urvarit) has been used. It is well established that words are to be interpreted in the context in which it is used. The Government Resolution deals with a situation where the seats available in the pre-primary and those available at the primary level in the same school is different. Clause (b) deals with a situation where the seats of the pre-primary is less than the seats in primary. This Government Resolution has to be read in the light of Section 12 (1)(c) of the RTE Act.

4 I say from the above provision it is clear that in case of the schools covered by clause (c), the school must admit 25% of the strength of pre-primary as well as 1st standard students belonging to weaker section and disadvantage group. It means the obligation to keep 25% of the strength of the total seats applies to both the pre-primary and the 1st standard. In that context the resolution of 21.1.2015 lays down that if the strength of the pre-primary schools is 100 than such a school (if covered by clauses (3)(and (4) of section 2(n) of the RTE Act) must admit 25 students belonging to the stated category. At the same time, if the strength of the 1st standard is 200 then those 25 students will automatically admitted in the 1st standard. Since the school is under obligation to admit 50 student of the stated category for class I the reminder (i.e. those remaining of the 25% of the quota after admitting students promoted from pre-primary class) 25 students shall be freshly admitted against the said quota. In that context the word “Reminder” (Urvarit) has been used. It is therefore submitted that there is no confusion created by the word Urvarit.

In any case as per RTE those, schools which have pre-school education and are making fresh admission in pre-primary and class-I will have to conform to 25% reservation at all levels wherever fresh admission are

there.”

26 The Petitioners have raised various challenges. Some of the prayers are reproduced above. A challenge is raised to the Government Resolution dated 21.01.2015 and Circular issued by Education Officer (Primary, Zilla Parishad, Pune) dated 13 April 2015 referring to the two entry points – The first entry point, as stated, is Nursery level of pre-school education and the second entry point at the First standard level. The challenge is also raised referring to Circular dated 13 April 2015 thereby directing the backlog of 2012-2013 against 25% RTE quota for the Nursery school and/or KG by making the provision of second entry point at First standard for the Academic Year 2015-16 also.

27 Pending the present Writ Petition No.4457/15 along with other similar petitions, the State-Government issued an another Government Resolution dated 30 April 2015, after the judgment dated 28.04.2015, (*Uran supra*) directing them to reimburse the amount to the unaided schools who admitted 25% quota children in their respective classes.

28 Interim relief was also sought of the said circular, whereby directions were issued to cancel the admission already given against 25% RTE quota in the pre-primary classes (Nursery/Jr. KG) before the Government Resolution dated 30 April 2015. The interim prayers were also made to protect the admission of the students made prior to 30.04.2015 in the First standard. Submission was also made to restrain the Respondents from taking any coercive action.

29 This Court by reasoned order dated 7 May 2015 (supra) has granted the protection as recorded earlier. As the amendment was granted, the Respondents/State Government by its reply affidavits dated 13.06.2015, 26.06.2015, 03.07.2015 and 15.07.2015 resisted it in all respects.

30 All these matters were listed on board from time to time for various directions and orders as quoted above. This Court ultimately, in view of urgency expressed, heard the matters finally on 15 June 2015. Again on 8 July 2015, by taking on record the Government communications dated 15 May 2015 and 7 July 2015 whereby directions were issued to all concerned that orders of this

Court dated 7 May 2015 in Writ Petition No.4457/2015 along with other connected matters be complied with and followed. We have also observed to have some mechanism and modality, whereby individual grievances of parents and/or institution/management could be considered and/or noted so that respective officers of the area/District would be able to take action and/or follow up with an intent to complete the admission process as early as possible as and within the period so prescribed for the academic session.

31 The Respondents, in pursuance of the same, have placed on record affidavit along with the mechanism which they have proposed, in view of the order dated 8 July 2015. The affidavit is taken on record along with the proposals. The statement is made that it is under process for finalisation.

32 The matters were ultimately heard finally on 22 July 2015. The learned senior counsel appearing for the Petitioners completed their arguments referring to their challenge so raised and specifically of Resolution dated 30.04.2015 and 23.07.2015.

33 The learned AGP, on instructions of Mr. B. R. Mali, Under Secretary to the Government of Maharashtra, made a statement on 23.07.2015, that the State has decided to withdraw Government Resolution dated 30.04.2015 and G. R. 21.01.2015 would be revived. The matters were accordingly placed for hearing on next date.

34 On 24 July 2015, this Court noted that the Government Circular dated 23.07.2015 whereby the State withdraw Circular dated 30.04.2015 and has re-enforced/revived Circular dated 21.01.2015. We permitted to do so, as there was no reason to prevent the State from changing the policy or revive the earlier circular, in the interest of justice. The State is always at liberty to bring in or take out policy or such circular/resolution, in the interest of people at large.

35 The Petitioners, therefore, sought time to challenge the same. Leave granted to the respective Petitioner/s to amend their respective Petitions on 28.07.2015. The Respondents have filed reply affidavit to the amended Petitions also, as the respective amendments were carried out. In reply, the State Government has expressed the reasons for withdrawal of Resolution dated 30.04.2015 and the reason

for revival of Circular dated 21.01.2015 as recorded above.

36 Therefore, the basic challenge mainly restricted to Resolution dated 21.01.2015 and a communication dated 13.04.2015 of Education Officer and Resolution of 23 July 2015, whereby Resolution dated 30 April 2015 was withdrawn by reviving Circular dated 21.01.2015.

37 The Petitioners have submitted that :

(1) That the provision of Section 12 (1)(c) (proviso) of the Right of Children to Free and Compulsory Education Act, 2009, is absolutely clear.

As per that proviso, where the school specified in Section 2(b) [viz. Non-aided Private School] imparts pre-school education [viz. Nursery, Junior KG or by whatever name called], then the provision of clause (a) to (c) shall apply to admission in such pre-school education.

(2) This would mean, that in case of such school, which imparts pre-school education, the entry point will be either at Junior KG or at Nursery as the case may be.

In that case the entry point will not be at the First Standard.

It is only if the school viz., school mentioned in Section 2(n) is not imparting pre-school education, then only the entry point, will be in the First Standard.

(3) In other words, although there are two entry points, which are permitted by law, viz.,: entry point at Nursery level and entry point at the First Standard, both this entry points are disjunctive of each other viz.: either the entry point will be at Nursery Level or the entry point will be at the First Standard. There cannot be entry point at Nursery and the First Standard level, simultaneously.

(4) Further while considering, 25% what is required to be taken into consideration is “25% of the strength

of that class”. The expression “that class” used in Section 12(1)(c) would mean either the First Standard, where the school is not running the Preschool classes or 25% of strength of Nursery Classes, where the school is running nursery class, by virtue of the provision of the proviso to Section 12 (1) (c).

38 The Apex Court in *Society For Unaided Private Schools of Rajasthan v. Union of India and anr.*⁸ has upheld the validity of the RTE Act except the stated applicability to the unaided minority educational institution. The following are the conclusions as referred in paragraph 169.

“169 Learned Attorney General for India has favoured the setting up of an Adjudicatory/Regulatory Authority to determine the question of whether compliance with Section 12 (1)(b) and Section 12(1)(c) will have an adverse impact on the financial viability of the school, and if so, to suggest remedies and to deal with issues like expulsion etc. Learned Attorney General indicated the necessity of a statutory amendment if the Regulatory/adjudicatory body has to be set up under the Act. Proper adjudication mechanism may also pave the way for a successful and effective public-private partnership for setting up educational institutions of

8 AIR 2012 SC 3445

best quality so that our children will get quality education. I am sure that the Government will give serious attention to the above aspect of the matter which are of prime importance since we are dealing with the future of the children of this country.

PART VI

CONCLUSION :

(1) Article 21A casts an obligation on the State to provide free and compulsory education to children of the age of 6 to 14 years and not on unaided non-minority and minority educational institutions.

(2) Rights of children to free and compulsory education guaranteed under Article 21A and RTE Act can be enforced against the schools defined under Section 2 (n) of the Act, except unaided minority and non-minority schools not receiving any kind of aid or grants to meet their expenses from the appropriate governments or local authorities.

(3) Section 12 (1)(c) is read down so far as unaided non-minority and minority educational institutions are concerned, holding that it can be given effect to only on the principles of voluntariness, autonomy and consenses and not on compulsion or threat of non-recognition or non-affiliation.

(4) No distinction or difference can be drawn between unaided minority and non-minority schools with regard to appropriation of quota by the State or its reservation policy under Section 12 (1)(c) of the Act. Such an appropriation of seats can also not be held to be a regulatory measure in the interest of the minority within the meaning of Article 30(1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution.

(5) The Appropriate Government and local authority have to establish neighbourhood schools as provided in Section 6 read with Sections 8 and 9, within the time limit prescribed in the Statute.

(6) Duty imposed on parents or guardians under Section 10 is directory in nature and it is open to them to admit their children in the schools of their choice, not invariably in the neighbourhood schools, subject to availability of seats and meeting their own expenses.

(7) Sections 4, 10, 14, 15 and 16 are held to be directory in their content and application. The concerned authorities shall exercise such powers in consonance with the directions/guidelines laid down by the Central Government in that behalf.

(8) The provisions of Section 21 of the Act, as provided would not be applicable to the schools covered under sub-section (iv) of clause (n) of Section 2.

They shall also not be applicable to minority institutions, whether aided or unaided.

(9) In exercise of the powers conferred upon the appropriate Government under Section 38 of the RTE Act, the Government shall frame rules for carrying out the purposes of this Act and in particular, the matters stated under sub-section (2) of Section 38 of the RTE Act.

(10) The directions, guidelines and rules shall be framed by the Central Government, appropriate Government and/or such other competent authority under the provisions of the RTE Act, as expeditiously as possible and, in any case, not later than six months from the date of pronouncement of this judgment.

(11) All the State Governments which have not constituted the State Advisory Council in terms of

Section 34 of the RTE Act shall so constitute the Council within three months from today. The Council so constituted shall undertake its requisite functions in accordance with the provisions of Section 34 of the Act and advise the Government in terms of clauses (6), (7) and (8) of this order immediately thereafter.

(12) Central Government and State Governments may set up a proper Regulatory Authority for supervision and effective functioning of the Act and its implementation.

(13) Madrasas, Vedic Pathshalas etc which predominantly provide religious instructions and do not provide for secular education stand outside the purview of the Act.”

39 The Apex Court in State of Karnataka (supra) dealt with aspect that all schools whether established or aided by Government or unaided though have a right to establish, but still require recognition from the authority and also deal with facets of Article 21-A read with Articles 29, 30, 226, 350-A, apart from 19(1)(g) of the Constitution of India.

40 “Right to free and compulsory education” is a concept, apart from the constitutional provision, is the foundation of the RTE Act. This is an important right in favour of the children and specifically of children belonging to “dis-advantage class” and “weaker

section” (Special class). To achieve this object, specific provision is made, whereby its is compulsory/obligatory for all private aided and/or unaided, including local body schools and/or specified category schools to admit and provide free compulsory education in class I to students belonging to the special class to the extent at least 25% (quoted percentage) as provided in Section 12 (1)(a), (b) and ©. This is also reflected in the statement of objects and reasons (clause 4) which reads as under :

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

41 This Court has in *Uran (Supra)* dealt with importance of provisions of RTE Act referring to these provisions and entitlement of reimbursement by the schools which have admitted the stated 25% of the strength of the total seats in view of the scheme, so referred above, are entitled for the reimbursement.

42 There is no issue even raised by the counsel appearing for the Petitioners with regard to the school's obligation as provided above. However, submission is that there cannot be two entry level for calculating 25% each class of entry level.

43 The concept “entry level” is not specifically defined. A plain reading of Section 12(1)(c) made it compulsory for the schools to admit in class I, to the extent of at least 25% of the strength of that class, children belonging to “weaker section” and “dis-advantage group” in the neighbourhood and provides free and compulsory elementary education till its completion. The words “The strength of that class” refer to class I of the school. The entry level, in view of the above, is class I. The school, therefore, required to take into account the strength of class I students to arrive at the calculations fixed quota/percentage. For example, as illustrated by the State government in the affidavit, if the strength of the pre-primary school is 100, then such school, requires to admit 25 children belonging to the stated class/group/section.

44 The plain reading of proviso further provides that where a

school as specified in clause (ii) (of Section 2, imparts pre-school education covering, the provision of clauses (a) to (c) of Section 12 shall apply for admission to such pre-school education also. It is clear that such schools are also under obligation to admit 25% students of the strength of the pre-primary school/class. The provisions which are applicable to class I as referred in Section 12, are also applicable to the pre-school. All these admission of students, based upon the strength of that class is subject to the reimbursement and all other obligation under the RTE Act. [Uran (supra)].

45 The State Government and its officers so also the local authorities/bodies and/or appropriate authority as provided under Section 11 of the RTE Act are under obligation to take care of children and make arrangement for the children who are in the age group of 3 to 6 years. We have already observed in Uran (supra) as under :

“14 The learned Advocate General appearing for the State of Maharashtra submitted that the proviso to Section 12(1) of the Act provides for compulsory pre-school education whereas sub-section (2) of Section 12 provides for reimbursement only for elementary education and elementary education is defined to mean education from Ist standard to 8th standard and therefore there is lacuna in the Act. Having considered the entire provisions of the Act, in our view, there is no lacuna at all. Chapters II and III deal with providing

free and compulsory education to every child of the age of 6 to 14 years. In Chapter III of the Act, Section 11 provides for preparing children above age of 3 years for elementary education. It also states that the appropriate Government may make necessary arrangements for providing free pre-school education and early childhood care for all children until they complete the age of 6 years.

15 Section 12 which is in Chapter IV of the Act deals with the responsibilities of the school for free and compulsory education. As the petitioners are private unaided school which fall under sub-clause (4) of clause (n) of Section 2, we are restricting our comments to only Section 12(1)(c). Under Section 12(1)(c), a school, which is an unaided school not receiving any kind of aid or grant to meet its expenses from the appropriate Government or the local authorities, shall admit in class I to the extent of at least 25% of the strength of that class children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion. The Proviso to sub-section 12(1), provides further that where a school specified in clause (n) of Section (2) imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education. Therefore, it is quite clear that whether schools impart only pre-school but not elementary education like for e.g., a Montessori, then such schools do not have the responsibilities as required under Section 12 of the Chapter IV of the said Act.

Sub-section (2) of Section 12 deals with reimbursement of the expenditure incurred by an unaided school not receiving any kind of aid or grants to meet the expenses. It provides that such a school, i.e., an unaided school not receiving any kind of aid or grant to meet its expenses from the appropriate Government or the local authorities which imparts

elementary education shall be reimbursed expenditure so incurred by it and the quantum of reimbursement. Sub-section (2) cannot be read to mean that reimbursement will be only for providing free and compulsory elementary education. The expression “.....specified in sub-clause (iv) of clause (n) of Section (2) providing free and compulsory education as specified in clause (c) of Sub-section 1” shall identifies the school and not the education for which reimbursement will be given.

When one reads Section 11, it is quite clear that the responsibility is thrust upon the appropriate Government which in the present case will be the Government of Maharashtra, for providing free pre-school education for children between age group of 3 to 6 years to prepare them for elementary education and to provide early childhood care. The moment, the appropriate Government, i.e., the State of Maharashtra makes arrangements for free pre-school education for such children and directs the schools including schools specified in sub-clause (iv) of clause (n) of Section 2, it is the responsibility and obligation of the State Government to reimburse such schools. In this case, the State Government has issued a directive to all schools imparting elementary education and pre-school education to admit in pre-school to the extent of at least 25% of the strength of that class, children belonging to weaker section and the disadvantaged group in the neighbourhood and provide free and compulsory education. Therefore, the State Government is bound and liable to reimburse such schools to the extent of the amount mentioned in sub-section (2) of Section 12 of the Act.

20 In *Society for Unaided Private Schools of Rajasthan Vs. Union of India & Anr.*⁹, the Apex Court has already interpreted Section 12(1)(c) and (b) read with Section 2(n)(i) to (iv) read with Section 18(3)

9 (2012) 6 SCC

along with constitutional provision as under covering the pre-school education by the school as under :

“14 Chapter IV of the 2009 Act deals with responsibilities of schools and teachers. Section 12(1)(c) Sections (2(n)(iii) mandates that every recognised school imparting elementary education, even if it is an unaided school, not receiving any kind of aid or grant to meet its expenses from the appropriate Government or the local authority, is obligated to admit in Class I, to the extent at least 25% of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion. As per the proviso to Section 12(1)(c), if the school is imparting pre-school education, the same regime would apply.

15 By virtue of Section 12(2) the unaided school which has not received any land, building, equipment or other facilities, either free of cost or at concessional rate, would be entitled for reimbursement of the expenditure 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. Such reimbursement shall not exceed per child expenditure incurred by a school established, owned or controlled by the appropriate Government or a local authority.”

22 In view of the above clear provisions, there is no issue that these Acts and rules made thereunder made mandatory for the appropriate Government, local authorities to make elementary education compulsory and provide all facilities. Section 12 as referred above and the respective rules made thereunder, deals with the aspect of reimbursement whenever there is a question and/or direction issued to admit the students to the extent of at least 25% of the strength of the class, children belonging to weaker section and

disadvantaged group and provide free and compulsory education. The free and compulsory education therefore needs to be within the ambit of provisions of this Act. All concerned are bound by the same including the guardian/parent. Apart from the constitutional articles so referred above, this Act, itself has taken care of the important duties of appropriate Government, local authorities and parents about the child who is of age 3 to 6 years. From six years onwards, as recorded above, the elementary education commenced and there is no provision made of child care aspect of children below three years. It is necessary to note that the Central and the State Government have already announced from time to time various child care and education policies/schemes whereby the respective Governments provided and even made various arrangements to take care of child/children of every age. We are concerned with the concept of free pre-school education for children between 3 to 6 years.

27 The issue of reimbursement for providing education to such children from age 3 to 6 years also cannot be read in isolation by distinguishing it from Section 11. Section 12 itself contemplates and provides so far as the elementary education is concerned to admit students at least to the extent of 25% as recorded above. The said provisions along with the rules definitely contemplates the entitlement of reimbursement of such schools/institutions which provide such education by admitting such 25% children. In our view, the moment such school/institution admits such students of aged 3 to 6 years, their entitlement of reimbursement should follow. The appropriate Government is even otherwise providing only a limited reimbursement amount as per the policy so declared. The schools/institutions have been left to bear balance amount so spent for imparting such free education of all levels. At this stage, we are not dealing with the fact as to what extent the

reimbursement should be granted and/or amount is less or more. However, we are inclined to observe that the Supreme Court's decision in ***Pramati Educational and Cultural Trust*** (supra) so referred above, while dealing with the aspect of constitutional validity of the Act has confirmed the issue of reimbursement.

30 All the schools which are admitting the children for pre-school education in view of provision to sub-section (1)(c) of Section 12 of the Act, it is difficult to accept the contention that the provisions of reimbursement is not be applicable to such schools and/or institutions. To interpret otherwise means we are creating two classes : the institutions/schools which admit the students of 25% for providing elementary education, they are entitled for the reimbursement, but the institution and/or schools which are also admitting the children for pre-primary education, they are disentitled for such reimbursement. The appropriate Government itself permitted them to select the entry level. The whole submission and circulars of the State Government are, therefore, inconsistent and self destructive. Such two classes, in our view, cannot be created when the provisions are so clear and are read together with the constitutional provisions. Once 25% children belong to the weaker section- disadvantaged class admitted in elementary and/or in pre-school education, such schools/institutions are entitled for the reimbursement as per the law.”

46 We are concerned with the situation where the schools, like the Petitioners, who are imparting “pre-school education” as well as “elementary education” in their respective schools/institutions. The submission, therefore, is made by referring to provisions including the RTE State Rules and by submitting their interpretation to Section

12 (c) and proviso that the State Government's circular of creating two entry level, pre-school level, as well as, class I level is contrary to law. According to their submission, the State Government cannot compel them by Resolution and specifically of 21.01.2015 and/or 13.04.2015 to admit the students in pre-primary and class I level to the extent of 25% of strength of both the classes. The two entry points, therefore, according to the Petitioners, who have such schools of two levels, primary and elementary, contrary to the scheme of the RTE Act and so also to Section 12 read with other provisions. According to them this would also infringe their rights as contemplated under Article 19(1)(g) of the Constitution.

The clarificatory circular dated 21 January 2015 has taken note of situation where quota seats remained vacant, in either of the classes.

47 The purpose and object and specifically of Section 12 (1) (c) with proviso is crystal clear, positive affirmation for the “school” to admit children of 25% of the schools strength of every class of entry level. Therefore, the “schools” in question and/or which runs both classes of pre-primary school and elementary school, they are under

obligation to have reservations of 25%, based upon the strength of the respective first entry classes. There is no specific intention expressed and/or no such choice and/or option is provided to such schools to select one out of these two entry classes, for providing admission and reservation in question. The mandate is to provide reservation irrespective of the classes i.e. pre-primary, at both levels.

48 The expression “25% of the strength of that class” [Section 12 (1)(c)] means and includes pre-primary school (3 to 6 year), first entry level and also of first standard of elementary (primary school), both the entry level classes to select one out of two levels is impermissible. At every entry level, it is obligation of the school to admit the fixed percentage of children, belonging to the described class. The schools, therefore, who are imparting the education at two levels pre-primary and primary, at both the entry level, they have to admit prescribed percentage of children/students to achieve the purpose and object of the RTE Act.

49 The plain reading of Section 12 (1) (c) including proviso of RTE Act and RTE Rules made thereunder, made it mandatory to

admit the reserved children at both the entry levels. Such reservation, at both entry levels, is within the framework of law. There is no specific provision of any option either of these two. There is no bar and/or prohibition for the school, not to admit such children in the respective entry level classes. Both the entries are available for the respective schools, irrespective of nature of the schools. There is no exemption and/or concession contemplated and/or provided. Therefore, the circular dated 21 January 2015 and related communications providing two levels and clarification of certain area cannot be stated to be contrary to the RTE Act and/or any other provisions. It is legal and valid.

50 The RTE Rules so referred and appears to be made to address the situation where the schools run either pre-school and/or elementary school, then one level entry would be sufficient. But the situation like the present one, in our view, as the provisions are clear, therefore, the State Government Circulars including 21.01.2015 and such other communications and earlier action to insist upon 25% quota at both levels is correct reading of Sections in the background of purpose and object of providing free education and related

benefits/facilities to children of “disadvantage group” and/or “weaker section”. The submission and the propositions so made by the counsel appearing for the Petitioners are unacceptable as are contrary to the provisions of law and, therefore, the same are rejected.

51 The State Government is under obligation to frame Rules, Regulations and issue necessary circulars and to take policy decision with an object to achieve the purpose and object of RTE Act. Apart from the provisions of the RTE Act, Article 162 of the Constitution of India, if necessary need to be invoked to implement and/or enforce the scheme and purpose of the RTE Act to fill in the gap, if any. This also may be with a view to achieve central education policy, as well as, of the State. The Circulars and the communications, therefore so issued are well within the State power and jurisdiction. The validity of individual circular needs to be tested from the point of view of the provisions of the RTE Act and the policy. Circular dated 30.04.2015 as withdrawn, the challenge related to it is, therefore, rendered infructuous.

52 The schools have been following such practice since 2012-

13 upto 2015-16. Earlier, the practice and circulars and communications and admissions of such schools to the children in question, both in primary school and elementary school need no disturbance. The mandate of 30 April 2015, as withdrawn by the State, the children's admissions based upon the earlier circulars and the orders passed by this Court irrespective of the admissions either in pre-primary and/or primary schools, in the circumstances, and in the interest of justice need not be disturbed. All have acted bonafidely, in accordance with the then existing provisions of law, apart from the instructions so issued by the Respondents.

53 The appropriate government, local authority or concerned officials are under obligation to follow the mandate of the RTE Act and to implement it to its fullest extent without further delay and are under obligation to take steps to make it effective and fruitful.

54 Having noted, the respective obligations by all the concerned admission to quota children, merely because some schools are imparting both the level education, that itself cannot be the reason to interpret the provisions of Section 12(1)(c), contrary to the

intention and the object of the RTE Act. The purpose and object is clear, so also the provisions. There is no vagueness/ambiguity. The clarificatory circulars/communications, including 21 January 2015 cannot be stated to be contrary and/or illegal. The interpretation and the submission that the entry point should be either at junior K.G. and/or at nursery and the same is for first entry level for pre-school and entry point for class one student, should also be the entry for elementary education is unacceptable. It is unacceptable that these two entries are disjunctive of each other. All the interpretations and the submissions are rejected as main provisions are clear. It is settled that the question of interpretation comes only when the provisions are unclear or vague.

55 Some students/children might have been admitted in respective classes in the mid of the session and/or the classes, therefore, in view of Section 4 and the RTE Rules made thereunder and/or otherwise, noway be read to obstruct the scheme of Section 12(1)(c) so recorded above. Both are independent provisions. The factual situation needs to be handled by the State, Local Bodies and concerned authorities. The subsequent class like 2nd, 3rd to 8th

Standard cannot be read to mean entry level for each classes as contemplated under Section 12(1)(c) as rightly contended by the Petitioner's counsel. At the time of recognition and immediately after receipt of the forms by the School, the Respondents required to assess and decide the basic entry level for extending quota reservation and proceed accordingly while allotting the students, based upon the availability of students in their respective first entry level by noting the strength of the class to arrive in the particular year.

56 The State and all its officials to initiate and take action to implement the provisions, if necessary by issuing the related circulars and guidelines, apart from the RTE Rules as contemplated under Section 38. The State is also empowered, as noted to invoke Article 162 of the Constitution of India to fill in the gap to avoid practical confusion and to remove the doubts, if any.

57 So far as the communication dated 13 April 2015 is concerned, the State Government and/or its officials, in view of the reasons so provided in the present Judgment, need to take necessary steps and resolved the issue by all possible way in implementing the

provisions of the RTE Act. The RTE Act is of the year 2009. The State RTE Rules have been framed in the year 2010/2013. The circulars are issued in restrictive manners from time to time, to resolve the confusion and doubts. Therefore, taking overall view of the matter, it is for the Government to take decision for proper implementation of the RTE Act, also by giving the protection and/or concession to the concerned schools for non compliance of the scheme in strict sense. This is also because of various circulars issued by the State Government, including circular dated 30 April 2015, though now withdrawn.

58 There are various authorities and commission/council are required to be constituted to facilitate effective implementation of RTE Act and Rules framed thereunder. The statements are made that they have initiated process to appoint such council and the authorities.

59 In view of the order passed by this Court, the State Government has placed on record the Government Resolution dated 30.04.2015 providing mechanism/redressal authorities to consider and settle, resolve the disputes with regard to such admissions and

various complaints of parents and/or schools in this regard. The affidavit dated 15/07/2015 to that effect has been placed on record. It must be given due publicity.

60 Rule 3.3 of the Rule 2013, prohibit the diversion of reserved quota seats to general quota. The mandate of reservation at both levels, needs to be followed by all, so also the continuity to be made till completion of elementary education. The earlier education background, therefore, may not affect the purpose and object of the RTE Act. The State needs to consider and to tackle the situation of reserved vacant seats taking note of interest of all the children of open category and also the reserved quota and the schools, and also taking note of the right of educations of general category students, covering lower and upper middle class and above, the children of open category other than quota class.

61 The State has withdrawn Circular dated 30.04.2015 and brought back prior position, including 21.01.2015 circular of recognising two levels entry of admission and related issues. This Court on 7 May 2015 has directed, by staying Circular dated

30.04.2015, to proceed with the earlier practice and policy of admission. From time to time statements have been made that the State is following earlier circulars and admission practice. Such statements and communication and directions so issued by the State to officers/officials to implement the earlier circulars, therefore, remained and maintained, as stated by the State also. Therefore, there is no question not to follow the earlier policy including Circular dated 21.01.2015. The State must have been following the same. The non-compliance, if any, it would be by the State to take action in accordance with law, but at the same time, the confusion so created by bringing 30.04.2015, circular cannot be overlooked. The State is free to frame/bring in policy but it is desirable to note the basic principles and the effect of such new circulars and/or policy, on existing situation. Everything must be in a phase-wise manner. The abrupt change in policy, unless circumstances compel or very essential, needs to be avoided, as it causes confusion and disturbs the running policy and practical part of all the concerned.

62 Having once decided the issue of reimbursement by this Court in Uran (Supra), which is part and parcel of Sections 11 and 12

and other provisions and rules made thereunder, the State Government needs to follow the same. Even if Special Leave Petition filed by the State against the Judgment in Uran (Supra), no way sufficient to overlook in view of above reasons to uphold the action of the State and its authorities covering the aspect of two entry level admission to the quoted class/group/section.

63 Resultantly, the following order:-

ORDER

- a) We hold and declare that the compulsory admission of minimum 25% in class I and/or pre-school at both entry level for the children belonging to specific class/group/section is within the framework of the RTE Act/Rules. The simultaneous two or both entry levels is also permissible.
- b) Circulars dated 23 July 2015 and 21 January 2015 and other related communications in view of above reasons, are valid and within the framework of law.
- c) In view of above, circular dated 13 April 2015 and related communications be implemented as per the

provisions of RTE Act and the Rules.

- d) Due publicity be given at all level, at the earliest, to the duly approved mechanism/provisions, to resolve the grievances/disputes as referred in GR dated 30 April 2015.
- e) The State to constitute advisory council and/or appoint and/or form the other authorities as contemplated under the RTE Act, at the earliest, if not already appointed and/or constituted.
- f) The State Government to consider and decide the issue of providing reimbursement for the vacant reserved seats and issue appropriate Govt. Resolution/circular accordingly.
- g) All Writ Petitions are accordingly disposed of, except Original Side PILST No. 64 of 2015 and Appellate Side PILST No. 16769 of 2015. All the other contentions are kept open.
- h) Original Side PILST No. 64 of 2015 and Appellate Side PILST No. 16769 of 2015 be placed on board on 28 August 2015, for further hearing.

- i) There shall be no order as to costs.

64 The learned counsel appearing for the Petitioners makes oral application to stay the effect and operation of this Judgment. Considering the reasons so already recorded, we see no case is made out to stay the effect and operation of this Judgment, which is pronounced in the open Court. The oral prayer is accordingly rejected.

(V. L. ACHLIYA, J.)

(ANOOP V. MOHTA, J.)