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**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (PIL) No. 52 of 2017**

C. V. Bhagvant Rao S/o Late Shri C. V. Suryanarayan, Aged About 57 Years R/o  
M I G/2-39, Hudco Colony, Bhilai P S - Kotwali, District : Durg (Chhattisgarh)

**---- Petitioner****Versus**

1. Union of India Through : Secretary, School Education, Ministry of Human Resources And Development, Shastri Parliament Street, New Delhi.
2. State of Chhattisgarh, Through Chief Secretary, New Mantralaya, Mahanadi Bhavan, New Raipur (Chhattisgarh)
3. The Secretary, Department Of School Education, New Mantralaya, Mahanadi Bhavan, New Raipur (Chhattisgarh)
4. Director, Department Of Education, New Mantralaya, Indirawati Bhavan, New Raipur (Chhattisgarh)

**---- Respondents**


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For Petitioner : Shri Devershi Thakur, Advocate.  
For Respondent/State : Shri Y.S.Thakur, Additional Advocate General

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**Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice**  
**Hon'ble Shri Sharad Kumar Gupta, J.**

**Order on Board****Per Thottathil B. Radhakrishnan, Chief Justice****21/08/2017**

1. Though, this writ petition is instituted as a Public Interest Litigation only in March, 2017 in relation to the contents of Annexure P/1 dated 31.01.2013, we are inclined to take a deeper look into the problems

pointed out by the Petitioner since the matter predominantly relates to those children who are the beneficiaries of the Right of Children to Free and Compulsory Education Act, 2009; for short the 'Act'.

2. Heard the learned counsel for the Petitioner and the learned Additional Advocate General.
3. Annexure P/1, particularly paragraph 3 thereof, shows that the State Government had arrived at a decision in 2013 regarding the amount that would be eligible for reimbursement towards the cost of books, study materials and uniforms. The total amount fixed under all those heads is Rs. 650/-. But, the problem lies in the fact that the State Government has stated that such amount could be paid to the child concerned. The Petitioner has shown materials to demonstrate that such amounts are seen being released to the respective parent. The Petitioner pleads that the requirement in terms of Section 12 of the Act is to provide the text books and other materials as well as uniforms and not merely to pass on a quantum of amount in lieu of that. He further states that even the amount so distributed is wholly insufficient to meet the expenditure. Petitioner therefore seeks that Annexure P/1 be quashed and requisite directions be issued.
4. The provisions of the Act are aimed at achieving different objects, particularly the need to reach out to the disadvantaged groups and to ensure quality of learning achievements, by supporting the weaker sections in terms of the Fundamental Rights guaranteed under Article 21-A and the provisions of the Directive Principles of the State Policy in the Constitution.
5. In terms of Section 3(1) of the Act, every child of the age of six to fourteen years, including every "child belonging to disadvantaged group" or "child

belonging to weaker section" defined in Clause (d) and (e) of Section 2 respectively, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education. Sub-section (2) of Section 3 of the Act provides that, for the purpose of Sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education. The thrust of Sections 3 and 12 of the Act makes it obligatory on the schools to carry out their responsibilities to the extent prescribed therein. They are statutory obligations. Section 12(2) of the Act provides for reimbursement of expenditure incurred by the school. The measure of such reimbursement can be prescribed by the State. The manner and extent of reimbursement of such expenditure is within the enumerated and specified rule making authority of the Government in terms of sub-Section (2) of Section 38, notwithstanding the generality of the rule making power stated in Section 38(1) of the Act. The Right of Children to Free and Compulsory Education Rules, 2010; for short 'the Rules' are made in exercise of such rule making power. Those Rules, *inter alia*, lay down down the eligibility of the child to, among other things, free text books, writing materials and uniforms.

6. Chapter IV of the Act deals with different aspects of responsibilities of schools and teachers. The provisions in Section 12 of the Act state the extent of school's responsibility for free and compulsory education. The provision in Sub-section (1) of Section 12 of the Act does not provide for the payment of any amount towards expenditure by any mode, including advance or reimbursement, directly to the child or its guardian or parent. Nor do the Rules make any such provision. Hence, there is no question of making any payment to the guardian or parent in lieu of; or to support; the provision of free text-books, writing materials, uniforms etc. as referable to

Rule 9(1) of the Rules or any other provision in that regard relating to such provision. Sub-section (2) of Section 12 of the Act provides for reimbursement of expenditure incurred by an unaided school falling under Section 2(n)(iv) of the Act. Sub-section (2) of Section 12 enjoins that an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority, shall be reimbursed the expenditure so incurred. The first proviso to that Sub-section enjoins that such reimbursement shall not exceed per-child-expenditure incurred by a school established, owned or controlled by the appropriate Government or a local authority. Therefore, whatever be the category of the school in terms of Section 2(n) of the Act, the extent of reimbursement, even in case of unaided schools, is limited to the extent of per-child-expenditure incurred by a school established, owned or controlled by the appropriate Government or a local authority.

7. The learned Additional Advocate General is right in pointing out that there may be schools in the unaided sector who would have devised their own modalities of making commercial gains. That, by itself is not a challenge because of the provision in Section 12(2) of the Act in relation to such schools, as stated hereinabove and by the provision contained in Rule 11(2) of the Rules read in conjunction with Section 12 of the Act.
8. Per capita expenditure to be incurred for the children in the schools is a matter for determination by the Government applying different yardsticks which would apply when dealing with that sector. A modality has to be definitely made to ensure that the eligibility of every child to free text-books, writing materials, uniforms etc. reaches it through the school concerned, in the form of such materials and not by money/cash equivalent to be distributed to the child or its parent/guardian.

9. For the aforesaid reasons, we order this writ petition directing that the Respondents No. 2 to 4 will consider the entire gamut of issues arising out of the factors pointed out hereinabove in the light of the contents of Annexure P/1 and take appropriate decision having regard to all facts and circumstances so that the issue can be resolved by ensuring that there will be equitable and meaningful use of the financial resources of the State, to the extent possible, for the purpose of discharging its duties and obligations in terms of the provisions of the Act. The said Respondents will make every endeavour to arrive at a decision with an aim to, possibly effectuate it during the current academic year itself.
10. This petition is ordered with the aforesaid observations and directions.

Sd/-

(Thottathil B. Radhakrishnan)  
**CHIEF JUSTICE**

Sd/-

(Sharad Kumar Gupta)  
**JUDGE**