

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2017

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.14498 of 2016

&

W.M.P.Nos.12673 & 12674 of 2016

Punjab Association,
rep.by its General Secretary,
Mr. Ramesh Lamba,
New NO. 97, Old No. 46,
V.M. Street, Royapettah,
Chennai 600 014.

... Petitioner

Vs.

Director of Matriculation Schools,
Directorate of Matriculation Schools,
DPI Campus, College Road,
Chennai 600 006.

... Respondent

Prayer: Petition under Article 226 of the Constitution of India
praying for issue of a Writ of Certiorari to call for the records
of the respondent dated 31.07.2013 in Na.Ka.No. 4595/A1/2012 and
Na.Ka.No. 6776/A1/2013 dated 30.10.2013 and quash the same.

For Petitioner : Mr.J. Abishek

For Respondent : Mr.V. Anandhamoorthy,
Additional Government Pleader

सत्यमेव जयते
O R D E R

Numbers play an important role in Democracy. Similarly, in this case, the number of students to be admitted in a class as well as in the school is the subject matter of the writ petition.

2. The petitioner is an association running four matriculation schools in Chennai right from 1937. Apart from that, the petitioner association also runs several other training institutions, free dispensaries and sponsors several social service organizations and charitable institutions for the benefit of the society. In the petitioner run schools, they have classes from Pre K.G till 12th standard.

3. The Matriculations Schools are governed by the Code of Regulations for Matriculations Schools. In the year 2009, the Right of Children to Free and Compulsory Education Act, 2009 ('RTE' Act, in short), was brought into effect with an intention to provide free and compulsory education to all children of the age of 6 to 14 years. In accordance with Section 38(1) of the Act, the Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011, were also brought into effect. As per the Act and Rules, it is mandatory for the petitioner schools and similar schools to admit, in Class I or at Pre-School Level, to an extent of atleast 25% of the strength of that class, children belonging to weaker sections and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion and the expenditure incurred would be reimbursed by the State Government. Though there is no problem with regard to implementation of RTE Act, the dispute has been raised with regard to number of students to be admitted in classes and the number of teachers to be appointed and the number of sections in a school in respect of each class. With regard to the number of students in a section and the number of sections in a standard and the pupil teacher ratio, two circulars have been issued by the respondents, which are impugned before this Court.

4. Mr.J.Abhishek, learned counsel for the petitioner would submit that the Matriculation Schools were governed earlier by the Tamil Nadu Code of Regulations for Matriculation Schools. As per Regulation 14(iii) of the Code, 50 students could be admitted in a section and one teacher would be appointed for each section. There should not be more than 4 sections in a class and to open a fifth section, for a standard, permission should be obtained from the Inspector. As per the Code, student-teacher ratio is 50:1 and the upper ceiling for sections in a Standard is five and consequently, the total strength would be 250. Further, even as per the RTE Act, which came into force in 2009, there is no upper limit fixed for students's strength for either LKG or VI standard. As per the schedule annexed to the Act, only teacher-student ratio has been given and there is no upper ceiling fixed regarding the permissible strength of students per class. When the RTE Act came into force in 2009, the petitioner is bound to follow the same. However, contrary to the RTE Act and the Rules made thereunder, the impugned circulars have been issued restricting the strength of the students in a section to 30 from LKG to V standard and 35 students in each section for Classes VI to VIII. Moreover, the maximum number of sections in a class has been fixed as five, consequently, restricting the students' strength to 150, in respect of each standard, which according to the petitioner is in violation of the statute, particularly, Sections 12, 25 and Schedule of the Act. Hence, he seeks to quash the impugned circulars.

5. On the other hand, Mr.V. Anandhamoorthy, learned Additional Government Pleader would submit that RTE Act, is applicable only to Elementary Education. The number of students, teachers and sections have been rightly prescribed in the impugned circulars in consonance with the provisions of Code of Regulations for Matriculation Schools, Tamil Nadu. Further, he would submit that a combined reading of Sections 19, 25 and Schedule of the RTE Act would show that the number of students, teachers and sections in a standard have been restricted and therefore, there is no violation and seeks dismissal of the writ petition.

6. This Court has paid its best attention to the various contentions made by both parties.

7. The matter relates to interpretation of the Right of Children to Free and Compulsory Education Act, 2009, which has been enacted pursuant to the amendment made in Article 21 of the Constitution of India inserting Article 21A making elementary education as a fundamental right, which came into force on 26th August, 2009. The avowed object of the legislation is to translate constitutional intent into action. The prime objective of the Act is to provide for free and compulsory education to all children of the age group of 6 to 14 years. It is not as if the Government, on its own, has enacted the said Act and it was only pursuant to the recognition granted by the Honourable Supreme Court, as regards right to education, making it a component of right to life guaranteed under Article 21 of the Constitution of India, in the judgment rendered in Bandhu Mukthy Morcha V. Union of India reported in AIR 1984 SC 802. Similarly, in the judgment rendered in Mohini Jain V. State of Karnataka reported in AIR 1992 SC 1858, the Honourable Apex Court has held that without making right to education under Article 41 of the Constitution of India, a reality, the fundamental rights under Chapter III shall remain beyond the reach of large majority which is illiterate. Further, it is held that right to education flows directly from the right to life and therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution. It has also been held in the said judgment that the State is under a constitutional mandate to provide educational institutions at all levels for the benefit of the citizens and the educational institutions must function to the best advantage of the citizens. Though the Honourable Supreme Court in the judgment reported in AIR 1992 SC 1858 has recognised the obligation of the State to provide educational institutions, at all levels, for the benefit of the citizens. The Constitutional Bench of the Honourable Supreme Court in the judgment rendered in Unnikrishnan J.P. V. State of A.P. reported in AIR 1993 SC 2178 held that every child/citizen of this country has a right to

free education until he completes the age of 14 years. Similar views were expressed in T.M.A. Pai Foundation case, P.A. Inamthar case, etc.

8. Taking note of these developments only, the Government has come up with the Act, whose validity was challenged before the Honourable Apex Court in Society for Unaided Private Schools of Rajasthan V. Union of India reported in 2012 (3) MLJ 993 (SC) and Honourable Apex Court, by majority decision, upheld the validity of the Act, but excluded Sections 12(1)(c) and 18(3) to Unaided Minority Schools.

9. The Act gains importance in the background that majority of citizens are illiterate and it is aimed at removing illiteracy so as to make the citizens well-informed. Section 2 of the Act contains various definitions and Section 2(f) defines "elementary education" as "education from first class to eighth class" and Section 2(n) defines "school" as "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 the 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." The petitioner school comes under Section 2(n) and therefore, the Act applies to the petitioner school.

10. Section 12 of the Act speaks about the "Extent of school's responsibility for free and compulsory education" and it is usefully extracted as follows:

"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 percent;

(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 belong to weaker sections and disadvantaged groups in the neighbourhood and provide

free and compulsory elementary education till its completion;

Provided 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.

(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 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."

Therefore, from the above, it is clear that all the schools are under a mandatory obligation to admit atleast 25% of children in Class I belonging to weaker sections and disadvantaged groups in the neighbourhood and provide for compulsory elementary education till its completion. Therefore, upto VIII standard, the schools are under an obligation to reserve 25% for weaker sections of the society and the expenditure incurred for those students would be reimbursed by the State Government concerned.

11. The problem starts only with regard to application of Section 25 of the RTE Act. Section 25 of the said Act is as follows:

"Pupil-Teacher Ratio :- (1) Within six months from the date of commencement of this Act, the appropriate Government and the local authority shall ensure that the Pupil-Teacher Ratio, as specified in the Schedule, is maintained in each school."

Likewise, Serial No.1 of the Schedule, which prescribes the norms and standards for a school, is important to decide the issue in this case and the same is extracted as follows:

Sl.No	Item	Norms and Standards	
1.	Number of Teachers: (a) For first class to fifth class	Admitted children	No. of teachers
		Upto Sixty	Two
		Between sixty-one to ninety	Three
		Between Ninety-one to one hundred and twenty	Four
		Between One hundred and twenty-one to two hundred	Five
		Above one hundred and fifty children	Five plus one Head-teacher
		Above Two hundred children	Pupil-Teacher Ratio (excluding Head-teacher) shall not exceed forty
	(b) For sixth class to eighth class	(1) At least one teacher per class so that there shall be at least one teacher each for -	
		(i) Science and Mathematics;	
		(ii) Social Studies;	
		(iii) Languages.	
		(2) At least one teacher for every thirty-five children.	
		(3) Where admission of children is above one hundred -	
		(i) a full time head-teacher;	
		(ii) part time instructors for -	
		(A) Art Education;	
		(B) Health and Physical Education;	
		(C) Work Education.	

From the above, it is evident that pupil-teacher ratio would be as specified in the schedule. The Schedule speaks about two teachers for 60 students for classes I to V, which would make 30 students per teacher compulsorily. As per Serial No.1 of the above schedule, for 30 to 200 children and above, the pupil-teacher ratio should not exceed 40. Therefore, from Serial No.1 of the schedule, it is seen that there is no particular ceiling with regard to number of students to be admitted in Classes I to V. The pupil-teacher ratio should not exceed forty. As far as classes VI to VIII are concerned, atleast, one teacher per class and there shall also be at least one teacher each for Science and Maths, Social Studies and Languages, which would make atleast one teacher for every 35 children. Serial No.1(b) speaks about admission of children above one hundred and what is the requirement has also been given, namely, a full time head-teacher, part time instructors for Art Education, Health and Physical Education and Work Education. Even as per Serial 1(b) of the Schedule, covering Classes VI to VIII, there is no ceiling with regard to number of students to be admitted. When that is the mandate of the Act enacted by the Parliament, today, the Government, relying upon the Code of Regulations for Matriculation Schools, Tamil Nadu, cannot restrict the number of students to be 30 in respect of Classes I to V and 35 in respect of Classes VI to VIII and the number of sections to be five and correspondingly, the number of teachers.

12. Mr.V. Anandhamoorthy, learned Additional Government Pleader, relying upon Regulation 14(iii) advanced his arguments stating that 50 students in a standard should have one teacher and the same has been reduced by the Act to one teacher for every 30 students. Further, as per the Code, there cannot be more than four sections and therefore, the ceiling of 5 sections has been rightly prescribed as per the impugned circulars. The Code of Regulations comes to an end after the enactment of the Act by the Parliament as Education has been included in the Concurrent List as per 42nd amendment in 1976. Once the Parliament passes an Act, that Act alone would be applicable and all other existing Acts and Rules, enacted by the State, which were in force, at the time when the Central Act came into force, the provisions/regulations, which are in conflict or contrary to the Act shall be deemed to have been overruled or superseded. Therefore, Section 14 of the Code is no more applicable and only Sections 19 and 25 and the Schedule to the Central Act alone would be applicable.

13. The maximum number of 50 students per class was contemplated, as per Regulation 14(iii) and it got automatically reduced to 30 students per class. As per the Schedule to the RTE Act, there can be upto 5 teachers for Classes I to V upto 200 children and for above 150 children, apart from 5 teachers, one

Headmaster is mandatory and for above 200 children, pupil-teacher ratio excluding the Headmaster should not exceed forty. Discretion has been conferred on the school either to follow 30 pupil per class or 40 and there is no upper ceiling either for the class or for the number of students. Hence, the prescription, as made in the Code, is of no effect. Similarly, for classes VI to VIII, one teacher for every 35 children is necessary, apart from one teacher, each for Science and Maths and Social Studies and Language. For classes VI to VIII, if admission of children exceeds 100, apart from above mentioned teachers, a full-time teacher, a part-time instructors for (A) Art Education; (B) Health and Physical Education and (C) Work Education are compulsory. Therefore, it is evident from clause (b) of Serial No.1 of the Schedule of the Act, there is no restriction regarding the number of students admitted in the school and the number of sections in respect of each class.

14. Only the teacher ratio has been explained in the schedule to the RTE Act and therefore, conditions/restrictions made in the impugned circulars need to be quashed and accordingly, they are quashed as the circulars are in contravention of the Act.

15. One more point, which was stressed by the learned counsel for the petitioner is that the action of the respondent in reducing the number of students to be admitted to the classes more specifically LKG and 6th standard, in order to ensure filling up of all the seats reserved under the RTE act is contrary to the object and scope of the RTE Act. By reducing the number of students to be admitted in a class/section, the respondent is indirectly reducing the number of seats that can be allotted for children from the weaker section under the RTE Act, which would frustrate the very object of the Act. The object of the Act is only to enable the neglected or weaker sections of the society to get the benefit by the implementation of the Act and by implementation of the Act, in letter and spirit, it will not only do good to the Society, but also for the weaker sections of the Society and the goals of the Act would be achieved at the earliest.

16. Probably, the Government would have thought of the consequences of not limiting the admission. As the petitioner aided schools would be happy enough to seek approval of appointments, which are invariably made by the petitioner institution. In this regard, many complaints are received by the Government that the private managements are appointing people after getting huge money. Only to deprecate that practice, probably, the impugned circulars have been issued. In any event, though the intention of the authorities may be a good one, it cannot be sustained in view of the Act.

17. In the result, the writ petition is allowed. Consequently, the respondent is directed to issue suitable circular in consonance with the Act as per the order passed by this Court within a period of eight weeks from the date of receipt of a copy of this order. No costs. Connected W.M.Ps are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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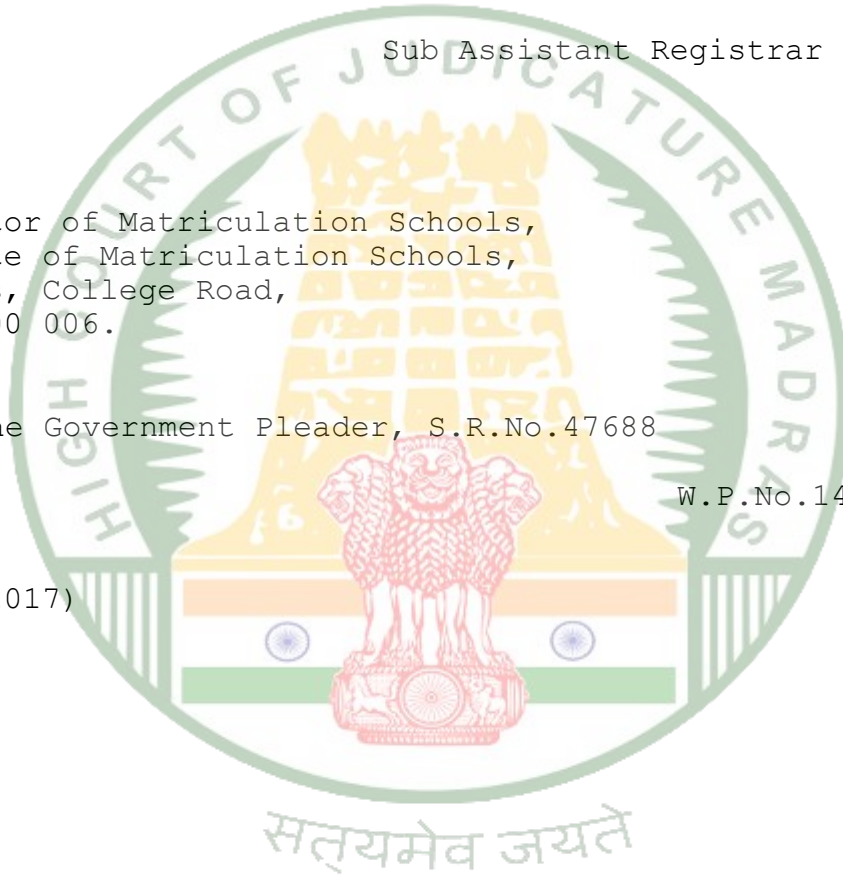
To

The Director of Matriculation Schools,
Directorate of Matriculation Schools,
DPI Campus, College Road,
Chennai 600 006.

+1cc to the Government Pleader, S.R.No.47688

W.P.No.14498 of 2016

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