

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.2.2019

CORAM

THE HONOURABLE Mr.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE Mr.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.4051, 4056, 4064 and 4067 of 2019
and W.M.P. Nos.4499, 4502, 4510, 4513,
4521, 4523, 4526 and 4531 of 2019

- 1.D.A.V. Girls Senior Secondary School,
Mogappair, Administered & run by
Tamil Nadu Arya Samaj Educational Society
Rep. by its Secretary Smt.Parmila Gauhar
R-40B, 120 Feet Road
Mogappair, Chennai - 600 037... Petitioner in W.P. No.4051
of 2019
- 2.D.A.V. Boys Senior Secondary
School, Gopalapuram,
Administered & run by
Tamil Nadu Arya Samaj Educational
Society, Rep. by its Secretary
Smt.Parmila Gauhar
182, Lloyds Road, Gopalapuram,
Chennai - 600 086 ... Petitioner in W.P. No.4056
of 2019
- 3.D.A.V. Boys Senior Secondary School,
Mogappair, Administered & run by
Tamil Nadu Arya Samaj Educational Society
Rep. by its Secretary Smt.Parmila Gauhar
R-45, 120 Feet Road
Mogappair, Chennai - 600 050... Petitioner in W.P. No.4064
of 2019
- 4.D.A.V. Girls Senior Secondary
School, Gopalapuram,
Administered & run by
Tamil Nadu Arya Samaj Educational
Society, Rep. by its Secretary
Smt.Parmila Gauhar
182, Lloyds Road, Gopalapuram,
Chennai - 600 086 ... Petitioner in W.P. No.4067
of 2019

Vs.

1.State of Tamil Nadu

Rep. by the Principal Secretary to Government
Department of School Education
Secretariat, Chennai - 600 009

2.Director of School Education

Government of Tamil Nadu
DPI Campus, College Road
Chennai - 600 006

3.The Chief State Nodal Officer

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

... Respondents in all WPs

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the entire records leading to the issue of G.O. (Ms) No.66 dated 7.4.2017 issued by the 1st respondent and quash the same as having been issued without authority and ultra vires the Constitution, Right to Children to Free and Compulsory Education Act, 2009 and Right of Children to Free and Compulsory Education Rules, 2011.

For Petitioner in : Mr.R.Venkatavaradhan

all WPs

for M/s.Chandramouli Prabhakar

COMMON ORDER

(Order of the Court was made by Subramonium Prasad, J.)

D.A.V. Girls Senior Secondary Schools and D.A.V. Boys Senior Secondary Schools, located at various places in Chennai, by this batch of writ petitions, have challenged G.O. (Ms) No.66 School Education (PL2) Department dated 7.4.2017, issued by the School Education (PL2) Department. The said Government Order and Annexures 1 and 2, which are subject matter of challenge in these writ petitions, are extracted hereunder:

Government of Tamil Nadu

ABSTRACT

School Education - Right of Children to Free and Compulsory Education Act, 2009 - 25% Reservation for students belonging to Disadvantaged Group and Weaker Section in all private Non-Minority Un-Aided Schools - Additional Guidelines Orders - Issued.

SCHOOL EDUCATION (PL2) DEPARTMENT

G.O. (Ms) No.66
07.04.2017

Dated:

Thiruvalluvar Aandu 2048
Panguni - 25

Read:

1. G.O.(Ms) No.60, School Education (X2) Department,
dated 01.04.2013.
2. G.O. (Ms) No.59, School Education (PL2) Department, dated 12.05.2014.
3. From the Director of Matriculation Schools, letter
R.C.No.1451/A1/2017, dated 05.04.2017.

ORDER:-

As per Section 12 (1) (c) of the Right of Children to Free and Compulsory Education Act, 2009 and as per rules 8 and 9 of the Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011, it is mandatory to reserve 25% of seats for admission at entry level class to the children belonging to Disadvantaged Group / Weaker Sections following the norms of neighbourhood schooling. According to this provision, Children belonging to the above groups whose residence is within 1 km or 3km for Primary and Upper Primary classes respectively from the school in which the children to be admitted are eligible for 25% reservation.

2. In the Government Order first read above, among others, the Government issued certain guidelines for effective implementation of 25% reservation for Disadvantaged Group / Weaker Sections as per the Right of Children to Free and Compulsory Education Act 2009.

3. In the Government Order second read above amendment was issued for the existing Annexure-I of the Government Order first read above.

4. In the letter third read above, the Director Matriculation Schools has sent the proposal for additional guidelines and steps for implementation of 25% Reservation for admission to children belonging to disadvantaged group and weaker section, in private non-minority un-aided schools under Right of Children to Free Compulsory Education Act, 2009.

5. The Government after careful

consideration accept the proposal of the Director of Matriculation Schools to ensure transparency and approve the following additional guidelines and modification to the steps for implementation of 25% Reservation for admission to children belonging to disadvantaged group / weaker section in private Non-Minority Un-Aided/ /schools under Right of Children to Free and Compulsory Education Act 2009 as Annexed (Annexure-I & II) to this Government Order along with Guidelines already issued in the Government orders 1st and 2nd read above.

(By Order of the Governor)

T.UDHAYACHANDRAN

Secretary to Government

To

The Director of School Education,
Chennai-6.

The Director of Elementary Education,
Chennai-6.

The Chief State Nodal Officer /
Director of Matriculation Schools,
Chennai-6.

The State Project Director,
Sarva Shiksha Abhiyan, Chennai-6.

Copy to

The Special Personal Assistant to Hon'ble Minister
for School Education, Sports and Youth Welfare,
Chennai-9.

//Forwarded By Order //

Section Officer

Annexure 1

Additional Guidelines for effective implementation of 25% Reservation of for disadvantaged group/weaker section as per the Right of Children to Free and Compulsory Education Act. 2009.

1. The areas or limits of neighbourhood specified in sub-rule (1) of rule 4 of Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011 is a distance of one kilometer for classes LKG or I for the admissions made in pursuance of clause (c) of sub-section (1) of section 12 of the Act.

2. For the purpose of filling up the requisite percentage of seats for children referred

to in clause (c) of sub-section (1) of section 12 of the Act, the areas or limits of neighbourhood shall be extended to the nearest habitations.

3. (a) Parents seeking admission for their children under clause (c) of sub-section (1) of section 12 of the Act shall submit the application online, through the link for the same published in the website of the Department of School Education.

(b) Application can be filled by the applicants from anywhere through online mode. In addition necessary arrangements shall be made in the Office of the Chief Education Officer/Inspector of Matriculation Schools/ District Elementary Educational Officer/ District Educational Officer/ Assistant Elementary Educational Officer/Block Resource Centre to make online entry of application for admission under clause(c) of sub-section (1) of section 12 of the Act. Parents may be advised to utilize the services more than 10,000 Government e-Seva Centers across the State for this purpose.

(c) The successful submission of application through online shall be confirmed by giving Short Message Service (SMS) to the registered mobile phone of the parent.

4. If the eligible applications are more than the intake capacity of a school, random selection method shall be adopted. The list of selected children shall be published in the web site as well as in the school notice board with intimation to the parents through SMS.

5. Valid applications received from children who are orphan/affected with Human Immuno Deficiency Virus/ transgender/ child of scavenger/differently abled as prescribed in the Disadvantaged Group category in the Government Order (Ms) No. 174, School Education (C2) Department, Dated 08.11.2011 and Government Order (Ms) No.72, School Education (C2) Department, Dated 19.03.2012 shall be given admission first before starting random selection.

6. A wait list of 5 eligible applicants per section can be prepared through which vacant seats will be filled up.

7. Random selection shall be done in the presence of a monitoring officer not below the rank of Assistant Elementary Educational Officer/ Block Resource Teacher Educator or an authority designated by the Chief Educational Officer.

T.UDHAYACHANDRAN
Secretary to Government
//Forwarded By Order //
Section Officer

Annexure II

Steps for implementation of 25% Reservation for admission to children belonging to disadvantaged group and weaker section in private non-minority un-aided schools under Right of Children to Free and Compulsory Education Act, 2009.

S.No.	Events	Tentative Date
1.	Every School shall prepare the details of Entry level class and intake capacity.	2nd April of every year
2.	The 25% of intake as per notification No.G.O.(Ms)No.9 School Education (C2) Department dated 18.01.2011 to be entered in a separate Register and submit to the District Committee prescribed in Form-I.	2nd April of every year.
3.	This 25% of intake seats shall be displayed at the School Notice Board and uploaded in the website of Department of School Education.	10th April of every year.
4.	School Shall notify calling for Application Forms under 25% in the School Notice Board and notification published in the website of Department of School Education.	15th April of every year.
5.	Applying through online for admission.	20th April to 18th May of every year.

S.No.	Events	Tentative Date
6.	Names of Eligible applicants shall be displayed/Names of ineligible applicants shall also be displayed separately with reason for rejection in the School Notice Board and in the website of the Department of School Education.	By 5.00 pm on 21st May of every year.
7.	If the eligible applicants are more than 25% of intake capacity, random selection method shall be adopted.	23rd May of every year.
8.	Names of Selected applications, with application numbers shall be displayed immediately in the Notice Board and in the website of the School Education Department with a wait list of 5 seats per section.	24th May of every year.
9.	The Schools shall submit Return Statement to the concerned district level authority after completion of admission process as prescribed in Form-V.	On or before 29th May of every year.

(Note: Where the dates mentioned in Column (3) happens to be a Government Holiday, the following day shall be taken into account)

T.UDHAYACHANDRAN
Secretary to Government

// Forwarded By Order//

Section Officer

2. The grounds of challenge to the Government Order is that, it takes away the right of the schools, to select students who are entitled to the benefit of Section 12 of the Right of Children to Free and Compulsory Education Act, 2009, hereinafter referred to as Act, 2009. 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 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 belonging to weaker section and disadvantaged group 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 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.

3. A perusal of Section 12(1)(c) of Act, 2009, is that a school specified in sub-clause (ii) of clause (n) of section 2, shall admit in Class 1 to the extent of at least 25% of the strength of that class, children belonging to weaker sections and disadvantaged in the labour group and provide free and

compulsory elementary education to such students.

4. According to the petitioner in these writ petitions, in G.O.(Ms) No.66 School Education (PL2) Department dated 7.4.2017, schools have no say on the students who are to be given the benefit under Section 12(1)(c) of the Right of Children to Free and Compulsory Education Act, 2009. The petitioner schools would submit that unless and until there is a proper school mapping, G.O. (Ms) No.66, cannot be implemented. It is contended that the method of admission of such students, which is now sought to be introduced under G.O. (Ms) No.66 is arbitrary, unreasonable, unsustainable and is contrary to the provisions of the neighbourhood principle enunciated under Act, 2009. The petitioner has also contended that the State Government does not have competence to bring out the said Government Order and is in gross exercise of power conferred under the Act.

5. The petitioner would contend that G.O. (Ms) No.66 School Education (PL2) Department dated 7.4.2017, which provides for additional guidelines for admission is contrary to Right of Children to Free and Compulsory Education Rules, 2011 or the scheme under Right of Children to Free and Compulsory Education Act, 2009 and which only requires the private institutions to fill in 25% of the seats in the weaker sections and disadvantaged group of society.

6. According to the petitioner, it is for the schools to decide as to how they are going to fill in the students, who are entitled to benefit under Section 12 of the Act, 2009.

7. Heard the counsel for the petitioner in all these writ petitions and perused the materials available on record.

8. Learned counsel for the petitioner in all these writ petitions, would contend that before G.O. (Ms) No.66 dated 7.4.2017 was introduced, the schools had the opportunity of selecting students from among the applications keeping in mind the neighbourhood guidelines. The learned counsel, would further contend that, before a proper mapping of schools is conducted, the method of random selection cannot be applied. The petitioner would state that under the new guidelines, the parent seeking admission for their children under clause (c) of sub-section (1) of Section (12) of the Act, shall submit the application on-line, through the link for the same published in the website of the Department of School Education. Application can be filled by the applicants from anywhere through on-line mode. The successful completion of application through on-line shall be confirmed by giving Short Message Service (SMS) to the

registered mobile phone of the parent. Schools are allotted on the basis of the on-line applications.

9. According to the learned counsel for the petitioner, this mode of admission is contrary to the Right of Children to Free and Compulsory Education Rules, 2011. The Right of Children to Free and Compulsory Education Act, 2009, was brought in to ensure free and compulsory education to all children of the age 6 to 14 years. This Act, is in furtherance to Article 21-A of the Constitution of India, which was inserted by the Eighty Sixth Amendment Act, 2002. The Act recognizes that every child has a right to be provided full time elementary education, satisfactory and equitable and quality in a formal school, which specifies certain essential norms and standards. Under this Act, no child, which is supported by the Government, shall be liable to pay any kind of fee, charge or expense, which may prevent him from pursuing and completing elementary education.

10. A reading of G.O. (Ms) No.66 has only brought in additional guidelines and steps for implementation of the Right of Children to Free and Compulsory Education Act, 2009.

11. A perusal of the Government Order also shows that these guidelines have been brought in to ensure transparency in the mode of admission. A perusal of Annexure 1 of the Government Order only says that the application has to be made on-line and random selection is done in presence of a Monitoring Officer not below the rank of Assistant Educational Officer/Block Resource Teacher Educator or an authority designated by the Chief Educational Officer. The fact that the schools do not have a say in the selection of the students, does not in any manner infringe any constitutional right or legal right of the schools. Under the Right of Children to Free and Compulsory Education Act, 2009, schools are obliged to impart education to 25% of the seats to children, who belong to disadvantaged group and weaker sections of the society.

12. The petitioner has not made out any case as to how the guidelines are contrary or in excess of the Right of Children to Free and Compulsory Education Rules, 2011. The process of automatic allotment of children to various schools by on-line method cannot be said to be arbitrary or irrational, which offends Article 14 of the Constitution of India. The allotment is made in accordance with the distance factor. The children belonging to the disadvantaged group and weaker sections of the society are allotted a school, which is within 1 Km for primary classes or 3 Kms for the upper primary classes. In view of the fact that the learned counsel for the petitioner is not able to pinpoint any provision under the Right of Children to Free and Compulsory Education Act, 2009 or its

Rules, 2011, we are not able to persuade ourselves to strike down G.O. (Ms) No.66 School Education (PL2) Department dated 7.4.2017 and thus writ petition deserves to be dismissed in limine.

Accordingly, all the writ petitions are dismissed. However, there shall be no order as to cost. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

Asr

To

- 1.State of Tamil Nadu
Rep. by the Principal Secretary to Government
Department of School Education
Secretariat, Chennai - 600 009
- 2.Director of School Education
Government of Tamil Nadu
DPI Campus, College Road
Chennai - 600 006
- 3.The Chief State Nodal Officer
Director of Matriculation Schools
DPI Campus, College Road
Chennai - 600 006

+1cc to Government Pleader SR.No.14126

W.P.Nos.4051, 4056, 4064 and 4067 of 2019
and W.M.P. Nos.4499, 4502, 4510, 4513,
4521, 4523, 4526 and 4531 of 2019

NRL(CO)
GMY(07/06/2019)