

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1003 OF 2021

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Mast. Zillurrahman Shaikh
s/o. Abdul Rab Shaikh
Aged – 5 years, minor,
occupation – student, having
address at 629, Rabia Bi Compound,
M.P.Marg, Kurla-W, Mumbai – 70,
through his father
Abdul Rab Shaikh,
Age – 38 yrs.,
..... Petitioner

Versus

State of Maharashtra,
through School Education
and Sports Department,
Mantralaya, Mumbai
..... Respondent

Mr. Abdul Rab Shaikh, Petitioner in-person
Mr. Kedar Dighe, AGP for the State

**CORAM: R.D.DHANUKA &
ABHAY AHUJA, JJ.**

**CLOSED FOR ORDERS ON : DECEMBER 4, 2021
PRONOUNCED ON : DECEMBER 23, 2021**

JUDGMENT : (PER : ABHAY AHUJA,J.)

1 Heard father of the minor Petitioner, party in person,
and the learned AGP for the Respondent-State. On
23.03.2021, when this matter was heard for the first time,
the following order was passed:

. *“The Petitioner has applied for admission to the first standard. However, his application is considered for Senior K.G. as the age of the Petitioner as of 31 December 2020 was not 6+as stated in the Government Resolution dated 18 September 2020. The Petitioner relies upon the Government Resolution dated 25 July 2019, which is tendered across the bar and contends that the power of the Head Master of granting relaxation of 15 days in minimum age is not taken away by the Government Resolution dated 18 September 2020. The Government Resolution dated 18 September 2020 refers to the Government Resolution dated 25 July 2019 and provides for cutoff date of 31 December 2020. There is no specific reference in this Government Resolution regarding power of relaxation. 2.This position will have to be made clear by the State by filing reply as to whether the Government Resolution dated 18 September 2019 envisaged retention of power of relaxation to the head of the school of 15 days. 3.As regard the cut off date is concerned, the Petitioner has already made application and if it is found that the power of relaxation exists, and cut off date stands extended to 15 January 2021, then necessary directions can always be issued since the Petitioner has submitted an application before 15 January 2021.4. Stand over to 30 March 2021.”*

2 Thereafter, when the matter was listed on 31.03.2021, the following order came to be passed:

“None for the Petitioner. Yesterday, when the matter was called out, none had appeared for the Petitioner. The matter is kept today.

2. *On 23 March 2021, we had heard the Petitioner in person, the father of the Petitioner-student and the learned AGP and we had adjourned the matter to 30 March 2021 to ascertain whether the Petitioner is eligible to be admitted to the First Standard in school and what are the implications of power of relaxation*

given to the head of the School for 15 days and whether the Petitioner would stand benefited if the power of relaxation is exercised.

3. Reply affidavit is filed by the Deputy Secretary, School Education and Sports Department, Mantralaya where in para Nos. 7, 8 and 9, it is stated as under.

7) I say that by GR dated 25 July 2019 the State Government had granted permission / authority to all School Principals to relax the age of a child seeking admission in their School by a period of 15 days beyond the deemed date of 31 December of every academic year as a special case. Thus every child born on or before 15 January 2016 can opt for admission to class 1st in the academic year 2021-2022.

8) I say that the Petitioner is seeking for admissions to 1st Standard under RTE for the academic year 2021-2022. I say that the date of birth of the Petitioner child is admittedly 16 January 2016. I say that as per GR dated 18 September 2020 read with GR dated 25 July 2019 the cut off date for admission to 1st standard is 15th January of every academic year. In this particular case it is 15 January 2022 to complete 6 years for the Petitioner child. The Petitioner child will be less than 6 years as on 15 January. His exact age on the cut off date will be 5 years 11 months 29 days. I say that hence he cannot be admitted to 1st standard for this academic year. I say that the Petitioner child can seek admission to Sr. K.G. Class (Pre-primary) for this academic year, as per his age. This should not be treated or counted as waste of one year, as a child can learn the basics equally well in Senior K.G.

9) I say that any relaxation in this particular case will create a problem as State Government has till date received 2,00,546 applications for admissions under RTE and all have followed the

same cut off date of 15 January 2016 as the minimum age for applying for admissions for the academic year 2021-2022. If we relax this date by 1 day, other parents may seek relaxation for 2 days, 3 days and so on. It will be impossible to decide to what extent relaxation should be given. Already a relaxation of 15 days has been given vide G.R. dated 25 July 2019. There will be a never-ending demand of parents to increase this to 16 days, 17 days and soon.

4. *Therefore, it appears that even after granting relaxation of 15 days, the Petitioner is following short by one day. The learned AGP rightly submits that once relaxation is granted of a particular period, thereafter it cannot be relaxed further even for a day as there would be no manageable standards for further relaxations. That being the position, the Petitioner will have to take admission to Senior K.G.*

5. *In light of the reply, no relief can be granted in this Petition. The Writ Petition is rejected.”*

3 On 20.04.2021, this court passed the following order:

“Heard.

2. *The learned AGP and the Petitioner-in-person agree that the relevant date to be considered is 15 January 2022 and the age of the child on that date would be the relevant factor. According to the learned AGP, the child would complete the age of six on 16 January 2022, while it is contention of the Petitioner that the child will complete 6 years on 15 January 2022.*

3. *The learned AGP and the Petitioner-in-person seek time to prepare a note in respect of their submission along with reference to case law. At the joint of the learned AGP, stand over to 27 April 2021.*

4. *We make it clear that if the Petitioner succeeds, the Respondent will not raise a ground that the*

classes have already started.

5. Before the next hearing, it would be fruitful, if the Petitioner-in-person and the concerned officer from the Education Department hold a joint meeting, to clarify the factual position. The learned AGP states that he will inform the Petitioner-in-person the date and time of the meeting.

4 Thereafter, on 29.04.2021 the following order came to be passed:

“ The core issue raised in this petition is whether the Petitioner would be considered as completing six years on the relevant date.

2. We have perused the provisions of the Right to Education Act, 2009 and the Rules framed by the State of Maharashtra thereunder. Parties have filed their written submissions. We have perused the judgments placed on record. The issue raised by the Petitioner is arguable.

3 The Petition first appeared on 23 March 2021 and thereafter various orders have been passed. We are informed that the classes would commence from 15 June 2021. Considering the fact that the court is only taking up petitions that are extremely urgent in view of the SOP issued, it is not possible to take up the petition for final hearing. However, to avoid an eventuality that even after we hold that the Petitioner is eligible, on the ground that the admission process is closed the Petitioner should not lose out, we direct that the Petitioner be taken on the list provisionally and further steps be taken in respect of such inclusion, subject to the outcome of this petition.

4. List the Petition on 7 June 2021 under the caption "For Directions".

5 When the matter was listed on 15.06.2021, none

appeared for the Petitioner. The learned AGP informed the Court that when on 03.06.2021 the Petitioner was given option to select from a list of 106 schools, there had been no response from Petitioner's side. Accordingly, the matter was posted for 23.06.2021. Again on 23.06.2021, none appeared for the Petitioner and since Rule had already been issued, the petition was directed to be kept for hearing in regular course.

6 On 18.11.2021, when the matter was called out, the learned AGP stated that Petitioner had been offered provisional admission in compliance with the ad-interim order passed by this Court and was to select one school out of a list of 106 schools on 03.06.2021, but admittedly there was delay on Petitioner's side to avail of this offer and he was not informed about the said admission. On 07.07.2021 the Petitioner informed the Education Officer requesting to arrange for a provisional admission of his son in Safa High School listed at Sr.No.53. Thereafter, this Court, on 18.11.2021 has directed that if the State Government has not cancelled the said admission till date, the State Government to permit the child to attend the school from 22.11.2021, without prejudice to the rights and contentions

of the parties and subject to further orders of this Court.

7 Today at the request and with consent of the counsel / party-in-person, the Petition is heard finally.

8 This Petition has been filed under Article 226 of the Constitution of India by the father on behalf of his minor son, the Petitioner, urging that the Petitioner being born on 16.01.2016 completes the age of 6 years on 15.01.2022 and seeks a direction of this Court to the Respondent State to correct and alter the date of birth from 15.01.2016 to 16.01.2016 in all its on-line application systems so as to enable the Applicants who are born on 16.01.2016 and complete their age of 6 years on 15.01.2022 to be eligible for making their application on-line through the official website of the Respondent under the Right to Education admission process for the year 2021-2022.

9 Brief facts leading upto the filing of this petition by the father of the minor Petitioner are set out as under.

10 The on-line application process for admission as per the Right of Children to Free and Compulsory Education

Act, 2009 (the “RTE Act”) for the year 2021-2022 has commenced on 03.03.2021.

11 As per the Government Resolution dated 18.09.2020, the minimum age fixed for admission of a student for the academic year 2020-2021 is 6+ years as on 31.12.2021. As per Government Resolution dated 25.07.2019, the Principal of a particular school is allowed to relax a further period of 15 days in age.

12 It is the case of Petitioner that in view of the above two Government Resolutions, a candidate who completes the age of 6 years as on 15.01.2022 is eligible for admission to the 1st Standard of any primary school as per the RTE Act through application process 2021-2022. Mr. Shaikh, father of Petitioner would also submit that the Respondents have correctly allowed extension of the period of eligibility to 1st standard upto 15.01.2022 for a child of six years in accordance with the above two Government Resolutions. However, the Respondent State has committed an error while deciding the date of birth of a child who can apply, to be 15.01.2016, as that would exclude the child born on 16.01.2016, inasmuch as the said child would complete the

age of 6 years on 15.01.2022 and become eligible to make an application in view of the above two Government Resolutions.

13 It is further submitted that the schools run by the Central Government are having a cut of date of 31.03.2021 and therefore a child who completes an age of 6 years on 31.03.2021 is eligible for admission to 1st standard and that a child who completes 6 years on the subsequent day i.e. 01.04.2021 is also eligible.

14 It is submitted on behalf of the Petitioner that as the yearly calendar begins from 1st January and ends on 31st December of any particular year, the interpretation of the Respondent by fixing the date of birth of the Applicant to be six years as on 15.01.2022 is erroneous as that would take away the right of the eligible candidates who are born on 16.01.2016. The Petitioner is aggrieved that the said interpretation would frustrate the legitimate right of candidates born on 16.01.2016 and the entire academic year would get wasted for no fault of theirs.

15 It is also submitted that, time and again, he has sent

various emails to the Respondent but has not received any positive response. Finally he sent an e-mail on 17.03.2021 and having failed to get any response, he has been constrained to file this petition.

16 Mr. Abdul Rab Shaikh, father of the Petitioner draws attention of this Court to Article 21-A of the Constitution of India to submit that the said Article provides for Right to Education of Children of the age of 6 to 14 years. He further submits that Section 2(c) of the Right to Education Act defines "child" to mean "a male or female child of the age of 6 to 14 years" and Section 2(f) defines "elementary education" to mean education from 1st class to 8th class". He submits that as per Section 3 of the RTE Act, every child of the age of 6 to 14 years shall have the right to free and compulsory education in neighborhood school till completion of his/ her elementary education.

17 It is submitted that the aforementioned provisions of the Constitution of India and the RTE Act clearly state that the age of the child of 6 years is eligible to be admitted in a primary school viz in the 1st standard. He submits that the Government Resolution referred to above fixes the

minimum age for admission to the 1st standard of a primary school to be 6+ years and to that extent the said Government Resolution is against the constitutional mandate as well as the provisions of Section 2(c), 2(f) and Section 3 of the RTE Act which fixes the minimum age to be 6 years and not 6+ years.

18 It is further submitted that in view of the aforesaid provisions, Petitioner though born on 16th January 2016, completes the age of 6 years on 15.01.2022 and would be eligible for admission to 1st standard on 15.01.2022. He refers to the Majority Act of 1875 and submits that while computing majority of a person there is a reference as to the computation of date of birth of a person which should be counted as a whole day as per Section 3(2) of the said Act. He submits that the Respondents have wrongly calculated the age of the Petitioner.

19 Mr. Shaikh submits that the RTE Act being a beneficent legislation, the provisions of the said Legislation as well as the Government Resolutions have to be read in a liberal manner so as to enable a person to take benefit of the said legislation. The manner in which the Government

Resolution is being read and applied deprives his child who completes the age of 6 years on 15th January 2022 to school admission in the 1st standard if the date of attaining the age of 6 is taken as 16.01.2022. The Government Resolution, therefore, needs to be set aside or read down to be beneficial to the Petitioner's case.

20 On behalf of Petitioner, his father, in person has relied upon the decision of the Supreme Court in the case of **Prabhu Dayal Sesma Vs. State of Rajasthan & Anr. 1986 SCC (4) 59** to submit that in view of the ratio laid down in the said decision Petitioner would enter the age of 6 years on 15.01.2022 and complete the age of 6 years at the end of 15.01.2022 as a legal day commences at 12 O' Clock midnight and continues until the same hour the following night viz. 12 O' Clock . He submitted that this principle was in conformity with the Majority Act 1875.

21 Learned Counsel also relies upon the decision in the case of **Eerati Laxman Vs. State of Andhra Pradesh 2009 (3) SCC 337**. He submits that the RTE Act is a beneficent Legislation and in the absence of any express provision, while calculating a person's age, the day of his

birth must be counted as a whole day and the specified age in law is to be computed as having been attained on the date preceding the anniversary of the birthday. It is submitted that in view of the above Petitioner born on 16.01.2016 completes the age of 6 years on 15.01.2022. He would submit that the petition be allowed as prayed for.

22 On the other hand, the learned AGP Mr.Kedar Dighe submits that the dispute in the matter pertains to date of birth of the petitioner Child and its computation. Date of birth of the Petitioner is 16-01-2016 and the 6th Anniversary of his birth would be on 16-01-2022. The Petitioner Child attains his age of 6 yrs at the beginning of the sixth anniversary of that day. He referred to section 3 of the Majority Act 1875 to submit that the interpretation mentioned in the said Act will be applicable to the present case as well and Petitioner child attains the age of 6 at the beginning hours of 16-01-2022 which is 6th anniversary of his birth.

23 Learned AGP submits that Section Section 2 (c) of the RTE Act defines child to mean a male or female child of the age of six to fourteen years. Therefore, as on 15.01.2022,

Petitioner is not a child as is defined under the provisions of Section 2 of the RTE Act, as he is less than 6 years of age and the RTE Act takes into consideration only children in the age group of years 6 to 14. Therefore, in the next academic year 2022-2023 beginning from June 2022 and not in the academic year 2021-2022, the Petitioner child can be admitted to 1st Standard under RTE Act.

24 It is submitted that claim of the Petitioner child in the petition that he completes the age of 6 yrs on 15.01.2021 and hence his application under RTE be accepted cannot be granted as the child will attain age of 6 yrs only on 16-01-2022 and hence can not be admitted under RTE admissions to 1st standard.

25 Learned AGP submits that 6+ years referred to in the Government Resolution means 6 years and not less than 6 and therefore neither the Government Resolution requires to be struck down nor read down.

26 Learned AGP further submits that even private schools did not admit the child to the 1st standard and presently Petitioner is taking his education in private school for class Sr. KG. (as purportedly submitted by Petitioner's

father in his arguments on 18-11-2021). He submits that, this supports the contention of the Respondents that the age of Petitioner child is less than 6 years and hence cannot be admitted to 1st standard in the present academic year 2021-2022 and is fit to attend Sr. KG class.

27 In support of the submissions made above Learned AGP also relies upon paragraph 14 of the judgment in the case of Eerati Laxman V/s. State of A.P. (2009) 3 SCC 337 and paragraph 14 in the case of Achhaibar V/s. State of UP (2008) 2 SCC 639.

28 We have heard the minor Petitioner's father in-person as well as Mr.Kedar Dighe, the learned AGP and with their able assistance we have perused the papers and proceedings, the written submissions filed by them and also given our anxious consideration to the controversy involved keeping in mind the education and future of the minor Petitioner.

29 It is not disputed that Petitioner was born on 16.01.2016. Pursuant to the Government Resolution dated 18.09.2021 (Annexed at Exhibit-A to the Petition), the cut

off date for admission to the 1st standard was 31.12.2021. Pursuant to the Government Resolution dated 21.07.2019 (Annexed at Exhibit-1 to the reply dated 30.03.2021), after applying 15 days' grace period, the cut off date was 15.01.2022. The question that has arisen is whether as per the Government Resolution dated 18.09.2020 read with Government Resolution dated 25.07.2019, the Petitioner has attained the minimum age of 6 years, which is the minimum age for admission to the first standard on 15.01.2022 or on 16.01.2022.

30 As noted above, it is the Petitioner's case that the Petitioner has attained the said age on 15.01.2022, whereas, according to the learned AGP, the 6th birthday of the Petitioner would be on 16.01.2022.

31 Deciding the cut off date is a policy decision of the Government and to relax the same by 15 days also falls under the same category where the charge has been with the Principal of each school to make the said relaxation. After applying the grace period of 15 days which falls on 15.01.2022, on a first glance, it would appear that the child fails to comply with the minimum requirement of age of 6

years on the cut off date. But let's not rush.

32 Before we deal with the facts of the case at hand, a brief discussion on the decisions cited on behalf of the parties would be useful.

33 The decision of the Supreme Court in the case of **Prabhu Dayal Sesma (supra)** has very aptly elucidated the law on the subject of attaining a particular age on a particular date. Paragraph 14 of the said decision is quoted as under :-

"It is in recognition of the difference between how a person's age is legally construed how it is understood in common parlance. The Legislature has expressly provided in Section 4 of the Indian Majority Act, 1875 that how the age of majority is to be computed. It reads:

"4. Age of majority how computed- In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of Section 3, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of Section 3, at the beginning of the 18th anniversary of that day."

The Section embodies that in computing the age of any person, the day on which he was born is to be included as a whole day and he must be deemed to have attained majority at the

beginning of the eighteenth anniversary of that day. As already stated, a legal day commences at 12 o'clock midnight and continues until the same hour the following night. It would therefore appear that the appellant having been born on January 2, 1956, he had not only attained the age of 28 years but also completed the same at 12 o'clock on the midnight of January 1, 1984. On the next day i.e. on January 2, 1984, the appellant would be one day more than 28 years. The learned Judges were therefore right in holding that the appellant was disqualified for direct recruitment to the Rajasthan Administrative Service and as such was not entitled to appear at the examination held by the Rajasthan Public Service Commission in 1983. We affirm the view taken by the learned Judges as also the decisions in G. Vatsala Rani's case, (supra)."

34 Also the decision of the High Court of Jharkhand in the case of **Ajay Kumar Mandal (supra)** also reiterates the above point as under :-

"The cut-off date was fixed for calculating the age as on 01.01.2016. The date of birth of the petitioner is 01.01.1974. On calculation of date of birth of petitioner, it transpires that the petitioner has completed 42 years of age on 31.12.2015. It is well settled precedent that if a person born on 1st of a month is said to complete on entire year in terms of age on the last date of the previous month of next year. In the advertisement, in clear terms, it has been substantiated that maximum age is 42 years. The petitioner has already completed 42 years on 31.12.2015. He has entered in 43rd years on 01.01.2016, In the light of advertisement, the

Court under Article 226 of Constitution of India, will not deviate from the advertisement. The age of petitioner has been rightly calculated and as such no relief can be extended to the petitioner.”

35 Paragraphs 12 to 14 in the case of **Eerati Laxman Vs. State of Andhra Pradesh; (2009) 3 SCC 337** are also relevant and are quoted as under :-

“12. Section 3 of the Majority Act, 1875 provides for age of majority of persons domiciled in India and the criteria for computation of age of majority. It reads as under:

*"3. Age of majority of persons domiciled in India.-
(1) Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.*

(2) In computing the age of any person, the day on which he was born is to be included as a whole day and he shall be deemed to have attained majority at the beginning of the eighteenth anniversary of that day."

13. *In Prabhu Dayal Sesma vs. State of Rajasthan & Anr.[(1986) 4 SCC 59], this Court categorically held that :*

“In absence of any express provision, while calculating a person's age, the day of his birth must be counted as a whole day and any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birthday. A legal day commences at 12 o'clock midnight and continues until the same hour the following night.”

14. *The appellant, therefore, having been born on 10-5-1978, the said day was to be counted as a whole day and, thus, he had not attained the age of 16 years before 12 o'clock in the midnight of the previous day i.e. 9-5-1978 (sic 9-5-1994). This aspect of the matter has recently been considered in Achhaibar Maurya v. State of U. P. & Ors. [(2008) 2 SCC 639], wherein it was held:*

"14. It is interesting to note, however, that the common law rule stated in Shurey, Re, Savory, (1918) 1 Ch 263, in respect of anniversaries has been abrogated by virtue of the Family Law Reform Act, 1969. The effect of the change is that, in respect of anniversaries falling after 1-1-1970, the time at which a person attains a particular age expressed in years is the commencement of relevant anniversary of the date of his birth. (See Halsbury's Laws of England, 4th Edn., Reissue, p. 209.) We do not have such statute. We have, therefore, to determine the cases on the touchstone of statute operating in the field and in absence thereof by common law principle."

36 No doubt, the provisions / policies / Government Resolutions with respect to admission of school children are pieces of beneficent legislation. The said decision in the case of Eerati Laxman (supra) of the Hon'ble Supreme Court had the occasion to consider Section 3 of the Majority Act 1875 which deals with the majority of persons domiciled in India and the criteria for computation of the age of majority. Section 3(2) of the said Act indicates the manner for

computing age of a person. The day on which a person is born is to be included as a whole day and he would be deemed to have attained that age at the beginning of the anniversary of that day.

37 In the case of Prabhu Dayal Sesma (supra), the Hon'ble Supreme Court has held that in the absence of any express provision while calculating a person's age, the date of his birth must be counted as a whole day and any specified age in law is to be computed as having been completed on the day/date preceding the anniversary of the birth day. It has been further held in that case that the legal day commences at 12'O Clock mid night and continues until the same hour the following night.

38 Also in the case of *Achhaibar Maurya Vs. State of Uttar Pradesh & Ors. 2008(2) SCC 639*, while quoting a common law rule stated in Shurey, Re, Savory LR (1918) 1 Ch 263 in respect of anniversaries the Hon'ble Supreme Court has observed that the time at which a person attains a particular age expressed in years is the commencement of relevant anniversary of the date of his birth. The Hon'ble Supreme Court held that since we do not have such statute

as a Family Law Reform Act of 1969, we have to determine the case on the touchstone of the statute operating in the field and in the absence thereof by common law principles.

39 It would also be pertinent here to refer to the definition of “year” as provided in Section 3(66) of the General Clauses Act, 1897, which is quoted as under:

“year” shall mean a year reckoned according to the British calendar.

A year has been construed to have 365 days.

40 In this case, the date of birth of Petitioner is 16.01.2016. The cut-off date for admission to 1st standard as per Government Resolution dated 18.09.2020 is 31.12.2021. The cut-off date after applying 15 days grace period as per the Government Resolution dated 25.07.2019 is 15.01.2022. If we apply the legal principles enunciated above, it would appear that Petitioner having been born on 16.01.2016, he would not only attain the age of 6 years, but also would complete the same at 12 O’clock on the midnight of 15.01.2022. On the next day, i.e., 16.01.2022, the Petitioner would be one day more than 6 years.

41 Therefore, in our view, if Petitioner is born on 16.01.2016, he would attain the age of 6 on 15.01.2016.

42 The aforesaid discussion and the law settled in the aforementioned cases and in the absence of any specific law / provision to the contrary and considering the beneficent nature of the Government Resolutions, we are of the view that 6th birth anniversary of the Petitioner child would be on 15th January 2022 as 6th anniversary falls on 16.01.2022 and the day preceding the anniversary would be 15.01.2022. Thus, the Petitioner would be entitled to participate in the on-line admission process for academic year 2021-2022.

43 In view of what we have held above, the arguments of learned AGP that even the private Schools did not admit the child to the 1st Standard and he is presently taking education in Senior K.G. as even the private Schools do not consider the child to be of the age of 6 years, would not hold water, as the child has to be 6 years on 15th January, 2022 and he would be 6 years only on that date.

44 The Constitution of India was amended by the Constitution(Eighty-Sixth Amendment) Act, 2002 pursuant

to which Article 21-A making education a fundamental right came to be inserted in the Constitution.

Article 21-A is set forth as under:-

“21-A . Right to education- The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”

45 As can be seen from a plain reading of the said Article that it is the duty of the State to provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine.

46 Pursuant to the aforesaid Article, the Right of Children to Free and Compulsory Education Bill, 2008 was proposed to be enacted to provide

(a) that every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.

(b) ‘compulsory education’ casts an obligation on the appropriate Government to provide and ensure admission, attendance and completion of elementary education;

(c) ‘free education’ means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education.

(d) the duties and responsibilities of the appropriate Government local authorities, parents , schools and teachers in providing free and compulsory education;

and

(e) a system for protection of the right of children and a decentralized grievance redressal mechanism.

47 The crucial role of universal elementary education for strengthening the social fabric of democracy through provision of equal opportunities to all has been accepted since inception of our Republic. The Directive Principles of State Policy enumerated in our Constitution lays down that the State shall provide free and compulsory education to all children up to the age of fourteen years. But despite the growth of avenues for higher education by electronic as well as physical mode, the goal of hundred percent elementary education continues to elude us. The peculiar instances that came to the light was the school drop out rate before completion of elementary education and what was observed that the significant percentage of this was of children from disadvantaged groups and weaker sections of the society, aside from the fact that the quality of education was always wanting in some way or the other.

48 The RTE Bill as per the statement of objects and reasons is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and

human 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 aided schools but also of private institutions.

49 With the above laudable objects, the Right of Children to Free and Compulsory Education Act, 2009, came to be enacted on 26th August 2009.

50 Section 2(c) of the Act defines “child” as under:-

“child” means a male or female child of the age of six to fourteen years.”

51 Section 2(f) of the Act defines “elementary education” as under:-

“elementary education” means the education from first class to eighth class.”

52 Section 3(1) of the RTE Act provides as under:-

“Every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of

his or her elementary education.”

53 The two Government Resolutions referred to hereinabove providing for admission process for academic year 2021-2022, in our view are towards implementation of the aforesaid provisions and cannot in any manner be read de hors the Constitution of India or the RTE Act which has been held to be constitutionally valid by the **Supreme Court in the case of Society for Unaided Private School of Rajasthan Vs. Government of India**, AIR 2012, Supreme Court 3445.

54 With respect to the learned AGP’s submission under Section 2(c) of Right of Children to Free and Compulsory Education Act, that child would mean a male or a female child of the age of 6 to 14 years, in our view, neither the father of the Petitioner nor this Court can have any dispute or any difference of opinion on the same in view of what we have stated above.

55 In view of the above discussion and the law settled by the Hon’ble Supreme Court as enunciated above and considering the beneficent nature of the Government Resolutions, as well as the absence of any contrary

provision, we are inclined to accept the arguments of the learned counsel for the Petitioner in – person, father of petitioner. Our view, in no way would militate against what is stated in the Government Resolutions that the child should be 6+ years on the cut of date viz. 15.01.2022 admittedly and rightly so the expression 6+ years would mean at least 6 years or not less than 6 years. We are, therefore, inclined to allow this petition.

56 We declare that the Petitioner child will be 6 years old/6+ years on 15.01.2022.

57 The Respondent is directed to consider Petitioner as an applicant eligible for making on-line application for the 1st standard under the Right to Education admission process for the year 2021-2022. The Respondent is also directed to make correction in the forms already uploaded / to be uploaded in accordance with the above discussion.

58 Since we have as an interim measure, allowed Petitioner's child to join the school, the Respondents are directed to regularize Petitioner's admission in the first standard in Safa High School.

59 Rule is made absolute in the above terms.

60 Writ Petition accordingly stands disposed.

61 There shall be no order as to costs. All to act on an authenticated copy of this decision.

(ABHAY AHUJA, J.)

(R.D.DHANUKA, J.)