



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.06.2021

CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE S.ANANTHI**

W.P. [MD]No.10707 of 2021

and

W.M.P. [MD]No.8333 of 2021

K.R.Raja

... Petitioner

Vs.

- 1.Union of India, represented by,
The Secretary,
Department of Empowerment of persons with disabilities,
Ministry of Social Justice and Empowerment,
New Delhi - 110 003.
- 2.Union of India, represented by
The Secretary,
Department of School Education and Literacy,
Ministry of Education, Government of India,
124-C, Shastri Bhawan,
New Delhi - 110 001.
- 3.The State of Tamil Nadu,
Represented by Principal Secretary,
School Education Department,
Government of Tamil Nadu,
Chief Secretariat, St.George Fort,
Chennai - 600 009.
- 4.The Principal Secretary,
Department for the Welfare of Differently Abled Persons,
Government of Tamil Nadu,
Chief Secretariat,
St.George Fort, Chennai - 600 009.
- 5.The Director,
Directorate of Matriculation Schools,
DPI Campus, Chennai - 600 006.



6.The Director,
Directorate of Elementary Education,
DPI Complex, College Road,
Chennai - 600 006.

7.The Commissioner,
Commissionerate for the Welfare of the Differently Abled,
No.5, Kamarajar Salai,
Lady Wellington College Campus,
Chennai - 600 005.

8.The Commissioner,
Directorate of Social Defence,
Old No.153 and New No.300,
Purasawalkam High Road, Kellys,
Chennai - 600 010.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct respondents

a. To take to immediate steps to ensure the inclusion of Differently abled Children under the 25 percent reservation granted under 'Right of Children to free and Compulsory Education (RTE) Act 2009'.

b. To ensure that all the schools in the State of Tamilnadu Providing education under 25 percent reservation seats are strictly complied under Section 16 of the Rights of Persons with Disabilities Act, 2016 and making the building, campus and various facilities accessible to the Physically challenged Children.

c. To identify and take action against the list of Government, Government aided and private institutions which have failed to provide admission to the 'Differently abled Children' under the 25% reservation granted under 'Right of Children to free and Compulsory Education (RTE) Act, 2009' and failed to provide friendly campus for the 'Differently abled children' as per the Section 16 of the 'Rights of Persons with Disabilities Act, 2016' even after 5 years after the commencement of 'Rights of Persons with Disabilities Act, 2016'.

For Petitioner : Mr.R.Alagumani
For Respondents 1 & 2 : Mr.R.Vijayarajan
For Respondents 3 to 6: Mr.Veera Kathiravan,
Senior Standing Counsel for Govt.
Assisted by Mr.R.Baskaran
Standing Counsel for Govt.



O R D E R

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

With the consent on either side, the Writ Petition itself is taken up for final disposal.

2.We have heard the learned Counsel appearing on either side.

3.The petitioner seeks for the following directions upon the respondents:

"a. To take to immediate steps to ensure the inclusion of Differently abled Children under the 25 percent reservation granted under 'Right of Children to free and Compulsory Education (RTE) Act 2009'.

b. To ensure that all the schools in the State of Tamilnadu Providing education under 25 percent reservation seats are strictly complied under Section 16 of the Rights of Persons with Disabilities Act, 2016 and making the building, campus and various facilities accessible to the Physically challenged Children.

c. To identify and take action against the list of Government, Government aided and private institutions which have failed to provide admission to the 'Differently abled Children' under the 25% reservation granted under 'Right of Children to free and Compulsory Education (RTE) Act, 2009' and failed to provide friendly campus for the 'Differently abled children' as per the Section 16 of the 'Rights of Persons with Disabilities Act, 2016' even after 5 years after the commencement of 'Rights of Persons with Disabilities Act, 2016'."

4.The documents placed before us in the typed set of papers, more particularly, the reply furnished under the Right to Information Act to the petitioner and others shows that applications were not received from the differently abled children for admission. One such illustration is in respect of the school in Perambalur District.

5.Learned Counsel for the petitioner pointed out that there is a specific mandate under Section 16 of the Rights of Persons with Disabilities Act, 2016, ['the Act' for brevity], wherein the appropriate Government and the local authorities should endeavour that all educational institutions funded or recognised by them provide inclusive education to the children who are differently abled. It is pointed out that from the information secured under



RTI, the petitioner has come to know that in several districts, number of differently abled students admitted in private schools is very low and in most cases it is nil. Therefore, it is submitted that the Court should intervene and issue appropriate direction.

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6. Though we appreciate the cause and the concern shown by the petitioner to ensure strict implementation of the provisions of the Act, more particularly, Section 16 of the Act, we are unable to infer from the statistics provided in the affidavit filed in support of this writ petition that in the schools whether aided or recognized by the Government are refusing to admit students who are differently abled. Therefore, if the petitioner seeks for such relief, at least sample instances of denial of admission should be placed before this Court and more particularly, the concerned institution should be made as parties. In such circumstances, there will also be interest of the candidate involved apart from the larger interest.

7. The learned Senior Counsel for the Government has brought to our notice the Government Order in G.O.(Ms)No.66, School Education Department dated 07.04.2017, which has been issued taking note of the provisions of the Act, wherein 25% reservation was brought into effect for students belonging to disadvantaged group / weaker section in all private non-minority and unaided schools under Right of Children to Free and Compulsory Education Act, 2009. Valid applications received from children who are orphan / affected with Human Immuno Deficiency Virus / transgender / child of sanitary worker / differently abled as prescribed in the disadvantaged group category in G.O.(MS)No.174, School Education (C2) Department, dated 08.11.2011 and G.O.(Ms)No.72, School Education (C2) Department, dated 19.03.2012, shall be given admission first before starting random selection.

8. Thus, the Government has taken serious note of the mandate under Section 16 of the Act and issued guidelines and the guidelines state that before random selection is made for admission in such schools, the persons who have been identified as disadvantaged group category should be given admission first. Therefore, the endeavour of the petitioner is to focus on the aspect as to whether there has been any denial of the admission and his pursuit should be in that angle. Hence, at this juncture, we cannot issue a Writ of Mandamus, as sought for. However, we preserve the liberty to the petitioner to conduct further research in the matter for ascertaining the matter that the Government Orders are strictly implemented and whether disadvantaged group have not reaped the benefit of the Government Order or there has been any non-fulfillment of the obligation cast upon the authorities and the institutions under Section 16 of the Act.



9. With the above observation, the Writ Petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

MR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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Ministry of Social Justice and Empowerment,
New Delhi - 110 003.
2. The Secretary,
Union of India,
Department of School Education and Literacy,
Ministry of Education, Government of India,
124-C, Shastri Bhawan,
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3. The Principal Secretary,
State of Tamil Nadu,
School Education Department,
Government of Tamil Nadu,
Chief Secretariat, St. George Fort,
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+1 CC to M/s.SPL GP (SR-20763[F] dated 30/06/2021)

+1 CC to M/s.R.VIJAYARAJAN, Advocate (SR-20628[F] dated
30/06/2021)

ORDER MADE IN
W.P. [MD]No.10707 of 2021
29.06.2021

AS (06.07.2021) 6P 11C