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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2022

C O R A M

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.15437 of 2018
and W.M.P.No.8330 of 2018

Minor P.N.Kavin Nilavan
represented by his Father

...Petitioner

Vs

1. Union of India,
Rep. by the Secretary to Government,
Ministry of Human Resources,
Government of India,
New Delhi.
2. Central Board of Secretary Education,
Rep. by its Chairman,
"Shiksha Kendra",
2, Community Centre,
Preet Vihar, New Delhi 110 092
3. The State of Tamil Nadu,
Rep. by its Secretary,
School Education Department,
For St.George,
Chennai - 600 009.
4. P.S.Senior Secondary School,
Rep. by its Secretary & Correspondent,
No.33, Alamelangapuram,
Mylapore, Chennai - 600 004.

...Respondents

Prayer:Writ Petition filed under Section 226 of the Constitution of India, prayed for the issuance of Writ of Mandamus, directing the fourth respondent restraining from demanding any fees or other expenses towards petitioner's Elementary School Education till the petitioner completes the same and also to refund the entire amounts including deposit collected for the petitioner's school admission in the last five years together with the interest at the rate of 12% per annum and an award exemplary costs.



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For Petitioner : Mr.J.Narayanaswamy

For R1 : Mr.K.Jeya Ganeshan

For R2 : Mr.G.Nagarajan

For R3 : Mr.P.Raja Rajeswari
Government Advocate

For R4 : Mr.K.Harishankar

ORDER

This Writ Petition has been filed seeking for the issuance of Writ of Mandamus, directing the fourth respondent restraining from demanding any fees or other expenses towards petitioner's Elementary School Education till the petitioner completes the same and also to refund the entire amounts including deposit collected for the petitioner's school admission in the last five years together with the interest at the rate of 12% per annum and an award exemplary costs.

2.The case of the Writ Petitioner is that, the fourth respondent school, which is a non-minority school, admitted the petitioner under Section 12(1)(c) of the Right of Children to Free and Compulsory Education Act (RTE Act), 2009. (hereinafter referred as "the Act"). Therefore, the petitioner is entitled for free education and the fourth respondent can get reimbursement of the fees from the Government of Tamil Nadu as per the terms of Section 12 (2) of the Act by making appropriate application. Since the third respondent failed to reimburse the school fees of the petitioner to the fourth respondent, the fourth is compelled to demand the payment of the fees from the parents of the students. Hence, the present Writ Petition has been filed seeking a direction to the fourth respondent not to demand any fees and also to refund the fees collected from the petitioner.

3.When the matter is taken up for hearing today, the learned counsel for the petitioner submitted that subsequent to the filing of the present Writ Petition, no demand for payment of fees has been made by the fourth respondent, however, no refund towards fees already paid on behalf of the petitioner, has been made.

4.However, the learned counsel appearing for the fourth respondent submitted that as on now, the petitioner's fees and other expenses towards petitioner's elementary school education were borne by a private donor. Further, for the reimbursement,



the fourth respondent has made an application to the third respondent for reimbursement as per Section 12(1)(c) of the Act and the same is pending. Till now no such reimbursement was made by the third respondent.

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5. Ms. Raja Rajeswari, learned Government Advocate appearing for the 3rd respondent, while reiterating the averments made in the counter affidavit filed on behalf of the 3rd respondent, would submit that on receipt of the proposal from the 4th respondent school, claiming reimbursement of school fees to the petitioner, the Director of Matriculation Schools and passed orders for re-imbursement of Rs.56,802 towards the fees paid by the petitioner from LKG to I standard vide proceedings in Na.Ka.No.4748/E2/2018, dated 29.01.2019 and the same has also been served to the 4th respondent school. However, as regards the reimbursement of fees claimed by the unaided private schools for children admitted under 25% reservation as per section 12(1)(c) of the Act during the academic year 2017-18 is under consideration of the Government and after issuance of orders, the 4th respondent school shall be reimbursed, the fees paid for II standard in the academic year 2017-18.

6. At this juncture, the learned counsel for the petitioner submitted that unless and otherwise the third respondent reimburse the fees to the fourth respondent for the students those who were admitted under Section 12(1)(c) of the Act, the demand from the fourth respondent to the students will be recurring in nature, and it would be a hardship for the parents of the students. Therefore, he prayed to issue a direction to the third respondent to reimburse the expenses of the students those who were admitted under Section 12(1)(c) of the Act.

7. Heard the learned counsel for the petitioner and the learned Government Advocate for respondents and perused the entire materials available on record.

8. Children of the socially and economically weaker sections are normally unable to secure an admission in private schools due to their unaffordable fees. The RTE Act seeks to address this gap via section 12(1)(c) which mandates all private schools to reserve 25 per cent of their seats for children belonging to economically weaker sections and disadvantaged group. The very title of the RTE Act incorporates the words 'free and compulsory'. '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. 'Compulsory education' casts an obligation on the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-18 age group. In fact, Article 21A of the Constitution imposes an enforceable / justiciable obligation upon the State to provide free and compulsory elementary education to each and every child between the age of six and fourteen in a manner as determined by law.

The expression "expenditure incurred by the State" in the Section 12(2) of RTE Act, 2009 would have to be read as "expenditure incurred or would have been incurred by the State", to give effect to the legislative intent of reimbursing reasonable costs to private schools on account of their imparting education to children belonging to Economically Weaker Sections or Disadvantaged Groups in accordance with the mandate of RTE Act, 2009.

9. Therefore, since a legal obligation casts upon the State Government to implement the fundamental child right as enshrined in the Article 21 A of the Constitution in accordance with the provisions of the RTE Act, it is bounden duty of the State Government to discharge its obligation by letter and spirit by making reimbursement in time and any delay in reimbursement or any breach of such obligation, would frustrate and defeat the very purpose of scheme itself. This is more so when Section 7(5) of the RTE Act, 2009 clearly stipulates that irrespective of a finance dispute between the Centre and State, in the first instance the State shall be responsible to provide funds for implementation of the said Act and accordingly, they must provide sufficient provision in the budget, so that this type of delay in reimbursement can be avoided. Therefore, it is for the State to provide funds/reimbursement in the first instance.

10. In the present case, though the fourth respondent school is not demanding the petitioner for payment of fees, but admittedly, the reimbursement to the petitioner towards school fees from II standard for the academic 2017-18 is still pending and the issue regarding to reimbursement of fees claimed by the unaided private schools for the children admitted under 25% reservation as per Section 12(1)(c) of the Act during the academic year 2017-18 is pending for consideration before the Government.



11. In the light of the above and in order to avoid making demands for payment of school fees and other expenses by the fourth respondent School and other similarly placed schools in the State till reimbursements are made by the Government and in order to safeguard the interest of the students admitted under RTE Act, this Court feels it appropriate to issue the following directions:-

i) The fourth respondent-School or other similarly placed Schools, which provided the admission of the students under RTE Act, shall forward proposals claiming reimbursement of school fees and other expenses to the State Government, but, at any cost, shall not make any demand to the parents of the students for payment of school fees and other expenses taking advantage of the delay on the part of the State Government in reimbursing the fees and shall not subject the students to any kind of discrimination in any form for non-payment of fees;

ii) The 3rd respondent/State Government owing to the statutory obligation cast upon it under the provisions of the RTE Act, shall expedite the proposals sent by the Schools for reimbursement of schools fees and other expenses at the earliest possible, preferably, within a period of three months from the date of receipt of proposals from the schools.

iii) The fourth respondent shall refund the fees already paid by the petitioner for the past five years along with interest 6% per annum, if it is not already refunded to the petitioner, within a period of 30 days from the date of receipt of this order copy, to the petitioner.

12. With the above directions, this Writ Petition is disposed of. No costs. Connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:

1. The Secretary to Government,
Union of India, Ministry of Human Resources,
Government of India, New Delhi.



2.The Chairman,
Central Board of Secretary Education,
"Shiksha Kendra",
2, Community Centre,
Preet Vihar,
New Delhi 110 092.

3.The Secretary,
State of Tamil Nadu,
School Education Department,
Fort St.George,
Chennai - 600 009.

4.The Secretary & Correspondent,
P.S.Senior Secondary School,
No.33, Alamelangapuram,
Mylapore,
Chennai - 600 004.

+2 Ccs to Mr.K.Harishankar, Advocate sr 7154
+1 CC to Mr.J.Narayanaswamy, Advocate sr 7786
+1 CC to The Government Pleader sr 7732.

W.P.No.15437 of 2018
and
W.M.P.No.8330 of 2018

PMK(CO)
SP(08/03/2022)