



WEB COPY

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.07.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.10952 of 2021

and

W.M.P. (MD)No.8593 of 2021

The Correspondent
Krishnamal Ramasubbaiyer School
TVS Nagar, Aruppukottai Road,
Madurai-625022.

... Petitioner

Vs.

- 1.The State of Tamil Nadu
Rep. by its Secretary,
Department of School Education,
Fort St.George, Chennai-600 009.
2. The Director of School Education,
College Road, Chennai-600 006.
3. The Director of Matriculation Schools
College Road, Chennai-600 006.
4. The Secretary,
Office of Central Board of
Secondary Education (CBSE)
Shiksha Kendra 2, Community Centre,
Preet Vihar, Delhi-110 092.
5. The Chief Educational Officer,
Tallakulam, Madurai-625 002,
Madurai District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents herein to continue to reimburse the fee towards the student admitted under RTE Quota, with arrears within a reasonable time.

For Petitioner	: Mr.T.Cibi Chakaraborthy
For R1 to R3 & R5	: Mr.V.OM.Prakash Government Advocate
For R4	: Mr.P.Karthick CGSC



O R D E R

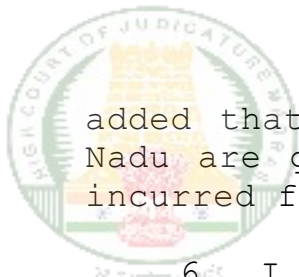
Heard the learned counsel on either side.

2. Krishnammal Ramasubbaiyar School was started in the year 1995 as a Matriculation School. The Management decided to embrace CBSE stream from the academic year 2020-2021. Before approaching the Central Board of Secondary Education, New Delhi, the petitioner had to obtain permission for closure of the Matriculation School. They approached the Director of Matriculation School, Chennai. Proceedings in K.Dis.No.3121/B5/2019, dated 11.10.2019 were issued. Thereafter, the petitioner obtained "No Objection" from the Director of School Education, Chennai also. Armed with these proceedings, they approached the Central Board of Secondary Education and obtained formal affiliation. Thus, from the academic year 2020-2021, Krishnammal Ramasubbaiyar School ceased to be a Matriculation School and became a Central Board of Secondary School.

3. To effectuate Article 21 A of the Constitution of India and the directive principles of the State Policy, Parliament brought in Right of Children to Free and Compulsory Education Act, 2009. The statute contemplated that every school in the neighborhood should admit students from the disadvantaged and the weaker sections upto 25% of the total sanctioned intake. Rule 9 of the Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011 mandates the State Government to reimburse per child expenditure in terms of the statutory provision. The grievance of the petitioner is that after the conversion of the school into a CBSE school, the State Government had ceased to reimburse expenditure of the children admitted under RTE quota. That led to filing of the present writ petition.

4. The learned Government Advocate appearing for R1 to R3 & R5 opposed the writ prayer. A detailed counter affidavit has been filed. The learned counsel drew my attention to the proceedings dated 11.10.2019 issued by the Director of Matriculation School, Chennai, in which, it had been stipulated that the school Management shall take responsibility of continuing the studies of the children admitted under the provisions of Section 12 (1) (C) of Right of Children to Free and Compulsory Education Act, 2009 in the school proposed to be opened by the Management under Affiliation to the Central Board of Secondary Education. According to the learned Government Advocate, the petitioner is squarely bound by this condition. He therefore called for dismissal of this writ petition.

5. The learned standing counsel appearing for CBSE endorsed the stand of the learned counsel appearing for the petitioner. He



added that none of the CBSE schools all over the State of Tamil Nadu are getting any reimbursement in respect of the expenditure incurred for children admitted under RTE quota.

6. I carefully considered the rival contentions and went through the materials on record.

7. The statutory scheme is quite clear. Section 2(n) of the Right of Children to Free and Compulsory Education Act, 2009, defines 'school' in the following terms:-

"School" means 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 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.

8. Once can therefore safely conclude that a CBSE school would also fall within the aforesaid definition. Section 12(2) of the Right of Children to Free and Compulsory Education Act, 2009 is as follows:-

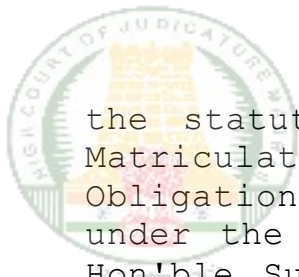
Section 12(2). Extent of school's responsibility for free and compulsory education

(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.

Rule 8 of the Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011 is as follows:-

Reimbursement under sub-section (2) of section 12 read with sub-section (2) of Section 7 shall be made at the end academic session of every year, in March, as decided by the State Government from time to time. For this purpose the first academic session shall be 2011-12.

9. A careful reading of the aforesaid three statutory provisions leads one to the irresistible conclusion that whatever be the Board Of Education to which the school is affiliated the State Government bears the responsibility of reimbursement. When



the statute is so clear, it is not open to the Director of Matriculation School, Chennai to impose any contrary condition. Obligation that is statutorily assumed by the State Government under the aforesaid statutory scheme cannot be passed on. The Hon'ble Supreme Court in the decision reported in **(2002) 8 SCC 481 (T.M.A.Pai Foundation Vs. State of Karnataka)** has held that right to run an educational institution is a fundamental right guaranteed under Article 19(1)(g) of the Constitution of India. It has also been held that while there cannot be any profiteering, the management can always collect reasonable fees from the students. Of-course, under the RTE Act, a social obligation has been imposed on the school Managements. While the school managements have to necessarily discharge this social obligation, they cannot be expected to do it free. I take judicial notice of the fact that reimbursement made by the State Government is hardly commensurate with the expenditure that is actually incurred by the School Managements. It is too much for the State to now say that once the school has become a CBSE School, they will cease to assume responsibility for reimbursement of per-child expenditure. Even though the CBSE school managements cannot demand fees arbitrarily, they have to necessarily collect the amount that has been fixed by the Fee Determination Committee.

10. Condition No.5 of the proceedings dated 11.10.2019 reads as follows:-

(v) The school management shall take the responsibility of continuing the studies of the children admitted under the provisions of Section 12(1)(c) of the Right of Children to free and Compulsory Education Act, 2009 in the school proposed to be opened by the Management under Affiliation to the Central Board of Secondary Education.

11. It does not anywhere state that the State will no longer reimburse the amount. If such a stand had been categorically taken, then, the petitioner would have probably questioned the same then and there. The condition has been deliberately couched in such terms so as to misdirect the Management.

12. In these circumstances, the stand taken by the writ petitioner is very much justifiable. Either the petitioner school should be relieved from discharging the obligation under the RTE Act or the respondents must bear the responsibility reimbursing the expenditure incurred per child. After insisting that the RTE obligation should be fulfilled, the State cannot refuse to reimburse. Such a stand would be patently unreasonable and unfair and violative of Article 14 of the Constitution of India. Duty of the schools to admit students under the RTE quota and the duty of the State to make reimbursement are like Siamese



twins. One cannot be divorced from the other. They need to go together. It is not open to the authority to upset this arrangement that has been put in place by the statute.

13. The Writ Petition is allowed as prayed for. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar (CS)

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To

1. The Secretary to Government of Tamilnadu,
Department of School Education,
Fort St.George, Chennai-600 009.
2. The Director of School Education,
College Road, Chennai-600 006.
3. The Director of Matriculation Schools
College Road, Chennai-600 006.
4. The Secretary,
Office of Central Board of
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Shiksha Kendra 2, Community Centre,
Preet Vihar, Delhi-110 092.
5. The Chief Educational Officer,
Tallakulam, Madurai-625 002,
Madurai District.

+1 CC to M/s.T.CIBI CHAKRABORTHY, Advocate (SR-31867[F] dated 15/07/2022)

+1 CC to M/s.SPL.GP (SR-32260[F] dated 18/07/2022)

W.P. (MD) No.10952 of 2021

and

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USK/19.10.2022/5P/8C