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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.12153 & 12472 of 2022

In WP(MD)No.12153 of 2022 : -

A.Gopal

... Petitioner

v.

1.The District Educational Officer,
Tallakulam, Madurai – 625 002.

2.Mahatma Montessori Matric Higher
Secondary School,
Rep.by its Principal,
Baba building, Gopala Krishna Nagar,
Surveyor Colony, Madurai – 625 007.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the first respondent to direct the second respondent to comply with the provisions of the Right of Children to Free and Compulsory Education Act, 2009 and consequently direct the second respondent to admit the petitioner's son Shri.Aathi Krithik by considering the petitioner's representation dated 31.05.2022.



In WP(MD)No.12153 of 2022 : -

D.Saravanan

... Petitioner

v.

- 1.The State of Tamil Nadu,
Rep.by its Secretary to Government,
School Education Department,
Fort.St.George, Secretariat,
Chennai.
- 2.The Commissioner of School Education,
Directorate of School Education,
DPI Campus, College Road,
Chennai.
- 3.The Chief State Nodal Officer/
the Director of Matriculation School,
Directorate of Matriculation Schools,
Chennai – 600 006.
- 4.The District Collector, Madurai District.
- 5.The Chief Educational Officer, Madurai District.
- 6.Mahatma Montessori Matric Higher
Secondary School,
Rep.by its Correspondent,
Surveyor Colony, K.Pudhur,
Madurai – 625 007.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondents to admit the petitioner's son, namely, S.SabariRaj vide Application No.98052363 in the sixth respondent school in the existing



vacancy under the Right of Children to Free and Compulsory Education Act, 2009.

For Petitioner
in WP(MD)No.12153 of 2022 : Mr.M.Jerin Mathew

in WP(MD)No.12472 of 2022 : Mr.F.Deepak

For Respondents : Mr.V.Om.Prakash,
in both cases Government Advocate for R1

Mr.P.Jeyaraman for R2

COMMON ORDER

"All animals are equal but some animals are more equal than others" - George Orwell in "Animal Farm".

2."Mahatma Montessori Matric Higher Secondary School" being a non-minority institution cannot escape from the clutches of the Central Act 35 of 2009 (known better as RTE Act). When the constitutional validity of the said Act was challenged, it was held by the Hon'ble Supreme Court that the 2009 Act insofar as it applies to minority schools, aided or unaided, covered under Clause (1) of Article 30 of the Constitution of India is ultra vires the Constitution (***Pramati Educational & Cultural Trust v. UOI (2014) 8 SCC 1***).



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3.The petitioners herein want their sons to be admitted in the respondent school under RTE category. The school management has taken the stand that both the petitioners are residing beyond the one kilometer radius and hence not eligible for admission under RTE quota. The petitioners originally asserted that they do not fall foul of the distance rule. On being nudged by the Court to undertake a physical verification, the learned counsel fairly conceded that they do not reside within aforesaid distance. Now, the only question that arises for consideration is whether on this ground, the petitioners deserve to be non-suited.

4.The school management fairly stated that the 25% quota has not been filled up. They have admitted only 15 children this year as they alone fulfilled the relevant criteria. When the quota has not been exhausted, the school management is obliged to relax the distance rule and continue the process till the quota is filled up. The Hon'ble Delhi High Court in the decision reported in **2012 SCC Online Del 613 (Federation of Public Schools v. Government of NCT of Delhi)** held as follows :



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"(i) Admission shall first be offered to eligible students belonging to EWS and disadvantaged group residing within 1 Km. of the specific schools;

(ii) In case the vacancies remain unfilled, students residing within 3 kms. of the schools shall be admitted;

(iii) If there are still vacancies, then the admission shall be offered to other students residing within 6 kms. of the institutions;."

The decision of the Bombay High Court reported in **2017 SCC Online Bom 6752 (Amol Vasantrao Patil and ors v. Bhartiya Vidya Bhavan'S Lloyds Vidya Niketan, Bhugaon and ors)** is also on the same lines.

5.It is true that as per Rule 6 of the 2010 Rules in respect of children in classes from 1 to 5, the neighbourhood school shall be within a distance of one kilometer. The State Rule is also on the same lines (Rule 4 of the 2011 Rules). That does not mean that if eligible candidates are not available within the one kilometer radius, the school management need not fill up the RTE quota. Rule 8 of the Tamil Nadu Rules is as under :



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"8. Admission of children belonging to weaker section and disadvantaged group.-

(1) The school referred to in sub-clause (iv) of clause (n) of section 2 shall ensure that children admitted in pursuance of clause (c) of sub-section (1) of section 12 shall not be segregated from the other children in the classrooms nor shall their classes be held at places and timings different from the classes held for other children.

(2) The school referred to in sub-clause (iv) of clause (n) of section 2 shall ensure that children admitted in pursuance of clause (c) of sub-section (1) of section 12 shall not be discriminated from the rest of the children in any manner pertaining to entitlements and facilities such as textbooks, uniforms, library and Information, Communication and Technology facilities, extra-curricular and sports.

(3) The areas or limits of neighbourhood specified in sub-rule (1) of rule 4 shall apply to admissions made in pursuance of clause (c) of sub-section (1) of section 12:

Provided that the school may, for the purpose of filling up the requisite percentage of seats for children referred to in clause (c) of subsection (1) of section 12 extend these areas or limits with the prior approval of the State Government."

A mere look at sub-rule 3 of Rule 8 would indicate that the one kilometer distance rule is not inflexible. Children residing within the said walking distance will have priority. But if sufficient candidates are not



available, the circle will have to be expanded. The object is to fill the RTE quota. The management cannot be permitted to take shelter behind the non-availability of sufficient candidates within the aforesaid radius. Adopting the approach laid down by the Hon'ble Delhi High Court alone would effectuate the constitutional vision of catering to the educational needs of the disadvantaged children.

6.The school management will bear in mind the aforesaid directions and endeavour to fill up the RTE quota. Since the writ petitioners alone approached the court, their children shall be admitted forthwith subject to fulfillment of the usual formalities. The writ petitions are allowed. No costs.

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Index : Yes / No,
Internet : Yes/ No
skm



To

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- 1.The Secretary to Government, School Education Department,
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- 2.The Commissioner of School Education,
Directorate of School Education, DPI Campus, College Road,
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- 3.The Chief State Nodal Officer/the Director of Matriculation School,
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- 4.The District Collector, Madurai District.
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- 6.The District Educational Officer,
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G.R.SWAMINATHAN, J.

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