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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.12.2023

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.717 of 2023

S.Lakshmanan

... Petitioner

Vs

1. The Chief Educational Officer,
Coimbatore District,
Coimbatore.
2. The District Education Officer,
Coimbatore District,
Coimbatore.
3. The Block Educational Officer,
Valparai,
Coimbatore District.
4. Beula Matric Higher Secondary School,
Rep. by its Correspondent,
Post Box No.9,
Valparai-642 127.
Coimbatore District.
5. The District Educational Officer (Private Schools)
Coimbatore -16
(R5 is impleaded suo motu vide this order)



... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent Nos.1 to 4 to admit the petitioner's son L.Sai Pransih under The Right of Children to Free and Compulsory Education Act, 2009 by considering petitioner representation dated 17.10.2022 and pass orders on merits and in accordance with law within the period that may be stipulated by this Hon'ble Court.

For Petitioner : Mr.R.Esakki Raja

For Respondents : Mr.KMD.Muhilan (R1 to R3)

Additional Government Pleader

Mr.B.Manimaran (R4)

ORDER

The petitioner has sought a mandamus directing respondents 1 to 4 to admit his son L.Sai Pranish under the Right of Children to Free and Compulsory Education Act, 2009 (in short 'RTE Act') by considering his representation dated 17.10.2022, wherein, he has reiterated the prayer now under consideration by the Court.

2. The facts are that the petitioner, belonging to Scheduled Caste Community had sought admission of his child, since he satisfies the requirement of '*child*



belonging to disadvantaged group' as per Section 2(d) of the RTE Act. An application bearing No.9419995 dated 06.05.2022 was made in R4 school and the address mentioned was Vellamalai Estate, where the petitioner was working at that relevant point in time.

3. That application had come to be rejected on the ground that the address set out therein fell beyond the stipulated distance of one kilometer from the school as prescribed under Rule 6 of the Right of Children to Free and Compulsory Education Rules, 2010 (in short 'Central Rules, 2010'), which is in pari materia with Rule 8 of the Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011 (in short 'State Rules, 2011).

4. The petitioner contacted the school and was advised to make another application mentioning the correct address where the family including the child reside and hence a second application bearing No.61886416 dated 16.05.2022 has been made which reflects the address as 10/122-1, VazhaiThottam, Valparai, Coimbatore District.

5. As far as the second application is concerned, no orders have been passed, but as the petitioner's son was not granted admission with the benefit of the RTE Act, the petitioner was constrained to admit the child in LKG as a regular candidate.



It is to be noted that though the counter states that the second application was rejected, no copy of any such order rejecting the application has been produced.

6. The petitioner has reiterated his request for the next academic year by way of his representation dated 17.10.2022 and has filed the present Writ Petition since there was no action taken in that regard. Importantly, he points out that there are several vacancies in the RTE quota and hence, and also for the reason that his address falls within the stipulated distance parameter, there is no justification for denying his son the benefit of admission in the RTE quota.

7. The petitioner has relied upon a decision of the Madurai Bench of the Madras High Court in the case of *A.Gopal V. The District Educational Officer and another* (W.P.(MD) Nos.12153 & 12472 of 2022 order dated 26.07.2022), wherein the issue is identical to the present case.

8. Mr.Muhilan, on instructions, accedes fairly to the position that the aforesaid decision dated 26.07.2022 has attained finality and the State has accepted the same. Thus, the position is clear to the effect that the distance rule is not mandatory but rather directory, particularly when the school has sufficient quota to accommodate children who reside beyond the stipulated distance as well.



9. For the sake of completion, Rule 4 of the State Rules, 2011, which stipulates the distance and Rule 8 of the State Rules, 2011, which makes the same applicable for admissions under the Act, to the extent to which it is relevant, are extracted below:

'PART – III

DUTIES OF STATE GOVERNMENT, LOCAL AUTHORITY

4. Area or limits of neighbourhoodl.- (1) *The area or limits of neighbourhood within which a school shall be established by the State Government is, -*

(a) a distance of one kilometre in respect of children in classes I to V;

(b) a distance of three kilometres in respect of children in classes VI to VIII:

Provided that where it is not possible to establish a school within such area or limits, the State Government or the local authority shall make adequate arrangements, such as free transportation and residential facilities, for providing elementary education to the children in that area:

Provided further that in places with high population density, the State Government shall establish more than one school having regard to the number of children in the age group of 6-14 years in such places based on the child census conducted by Sarva Shiksha Abhiyan or the local authority.



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

(1)

(2)

(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 subsection (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.'

10. The Rule makes it clear that the one kilometer distance between the student's residence and the school is not inflexible. Though the focus is to accord priority to children residing within that distance, the idea is not to deny admission to children residing beyond that distance, particularly when the school in question has available quota that lies vacant.

11. A tabulation circulated by the State counsel reveals the details of the number of seats ear-marked and number of children admitted under RTE quota in R4 school. The total number of seats for LKG for Academic Years 2022-23 and 2023-24 is 75 and 66 and the RTE intake capacity is 16 and 16 respectively. The



total number of applications received for the aforesaid academic years is 14 and 12 and the number of students admitted under the RTE quota are 3 and 8 respectively.

12. In such circumstances the school may well admit children residing beyond the distance of one kilometer also. This is necessary bearing in mind the object of the RTE Act which is '*to provide for free and compulsory education to all children of the age of six to fourteen years*'. There cannot be any gainsaying that keeping a significant number of seats vacant merely on the basis of a procedural Rule would be anathema to the spirit and object of the Act.

13. The decision of the Delhi High Court in the case of *Federation of Public Schools V. Government of NCT of Delhi* (2012 SCC Online Del 613) has held likewise stating as follows:

'(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;.'



14. The Bombay High Court in the case of *Amol Vasantrao Patil and ors V. Bhartiya Vidya Bhavan's Lloyds Vidya Niketan, Bhugaon and ors.* (2017 SCC Online Bom 6752) considered the issue of admission of students under RTE in non-aided pre-primary schools. In that case, the petitioners were, admittedly, not residing within the requisite distances from the concerned schools unlike the present where the residential address of the petitioner is within the stipulated distance.

15. The Court took note of the applications made in each of the schools, and that a lottery was conducted in those cases, where the number of applications far exceeded the number seats. In the present case, the question of lottery does not arise, since the number of applications made is less than the number of seats.

16. The stand of the respondents before me, both in counter or orally, is not that there were specific schools in the neighbourhood where the petitioner's ward could have applied for admission, and that the petitioner had restricted his choice to R4 school alone in an indirect attempt to secure admission in that school. This court thus proceeds on the admitted basis that the application of the petitioner to R4 school was appropriate in all respects for consideration, and the only question that arose related to the distance factor.



17. The Division Bench also agreed with the conclusions of the Delhi High

Court in this respect, holding as follows:

'However, we cannot ignore right guaranteed to children by 2009 Act. We also find that the said right must be honoured and preserved. It cannot be allowed to be defeated by invoking distance equation, if school is not available in neighbourhood or extended neighbourhood. The exercise therefor in tune with observations contained in this judgment or as pointed out by Delhi High Court in its judgment need to be completed afresh.'

18. In light of the aforesaid discussion, I am of the categorical view that the petitioner must succeed. The limited question that remains is as to whether the admission of the petitioner's son must be considered under RTE Act from LKG onwards or only from the present year.

19. Mr. Muhilan would suggest that the petitioner make a fresh application seeking the same relief. However, I do not see why the petitioner must be put through the same procedure yet again. It is not the case of the State either that the address given originally was incorrect or that the present address is not where the family resides presently. The address given originally related to the Petitioner's workplace and this position is also one that the State accepts.



20. Thus, on these admitted facts, that is, that the present address of the petitioner is within one kilometre from R4 school, the petitioner succeeds. Alternatively, even assuming that it is the address in the first application is to be taken into account, the petitioner would still succeed as there are sufficient vacancies under RTE for the academic years in question, and based on the ratio of the decisions cited supra. In fine, and in both eventualities, the petitioner's son must be accommodated in R4 school under RTE quota with all benefits thereof.

21. Mr.Muhilan points out incidentally, that the certificate of the Tahsildar confirming the residence of the petitioner and that the distance to R4 school was less than a kilometer was not produced before the Selection Committee on 31.05.2022. This has been remedied with the passing of the present order. He would also point out that the decision of the Madurai High Court in re. *A.Gopal* has been passed in July, 2022 is distinguishable for the same reason. Nothing turns on the point as the decisions of the Delhi and Bombay High Courts are far prior to the date of sitting of the Committee and in any event, it is a question of law as to how Rules 4 and 8 are to be interpreted. Once interpreted and that interpretation having attained finality, the State should apply the same in the cases of all eligible students.



22. The District Educational Officer (Private Schools), Coimbatore – 16, who, as per counter, (paragraph 3), is the special officer to administer Private Matriculation Schools in Coimbatore District, is suo motu impleaded as R5 in this Writ Petition and Mr.Muhilan, learned Additional Government Pleader accepts notice for newly impleaded R5.

23. In light of the aforesaid, the following directions are issued:

i) R1, R3 and R5 will ensure that necessary orders are passed to implement this order admitting the petitioner's son, L.Sai Pranish, to the benefits of the RTE Act from LKG, within a period of three (3) weeks from date of receipt of a copy of this order.

ii) R4 shall refund the fee paid by the petitioner for LKG within two (2) weeks from date of receipt of orders as per point (i) above.

24. This Writ Petition is disposed in the aforesaid terms. No costs.

07.12.2023

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Index : Yes

Speaking Order: Yes

Neutral Citation: Yes



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DR.ANITA SUMANTH, J.

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