



W.P. No.4615 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. NO. 4615 OF 2022

AND

W.M.P. NO. 19637 OF 2022

M. Suveathan

Minor Rep. By his father

P. Maharaja

.. Petitioner

- Vs -

1. The State Commission
for Protection of Child Rights
183/1, EVR Periyar Salai
Poonamalle High Road
Kilpauk, Chennai – 600 010.

2. The Director of Matriculation Schools
Office of the Director of Matriculation Schools
College Road, DPI Compound
Nungambakkam, Chennai – 6.

3. The District Education Officer
Vellore District, Vellore.

4. The Principal
Little Flower Matriculation School
No.11, New Balavinayagar Street
Bhuvaneswaripet
Gudiyattam – 632 602, Vellore District.



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5. The Secretary to Government
School Education Department
Government of Tamil Nadu
Fort St. George, Chennai.
(R5 – Suo Motu impleaded
Vide order of Court dt. 25.11.2022)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the State Commission for Protection of Child Rights, the first respondent herein to pass appropriate orders on the petitioner's representation dated 27.08.2021.

For Petitioner : Mr. R. Sankarasubbu
For Respondents : Mr.S. Balamurugan, GA for R-1
Mr.V. Arun, AAG, assisted by
Mr.R.Kumaravel for RR-2, 3 & 5
Mr.R. Natarajan for R-4

ORDER

Though this writ petition has been filed for a mandamus simpliciter for a direction to consider the representation submitted to the 1st respondent, however, the issue which befalls through this writ petition before this Court covers a wider spectrum of the Indian citizenry, more especially, the future generation of this country, more especially with regard to the education of the children belonging to the weaker strata of the society to free education, a deeper analysis of the case is required.



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2. It is the case of the petitioner, a minor, belonging to the weaker section of the society, who aspires to get himself educated, represented through his father, that he had been admitted in the 4th respondent school in the academic year 2017-2018. The admission of the petitioner is under the quota earmarked for children of weaker section and disadvantaged group in private Non-Minority and Un-Aided Schools as per the mandate contained in the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as “the Act”). It is the further case of the petitioner that upon his admission, he was directed to pay the fees amounting to Rs.5,340/- and 6,437/- for the academic year 2017-2018 and 2018-2019 by the 4th respondent School, which was complied with by the petitioner. However, the 4th respondent, thereafter, demanded a sum of Rs.11,977/- as fee for the academic year 2019-2020. Upon such enquiry, no information was given to the petitioner, inspite of his application under Section 7 (1) of the Right to Information Act with regard to the fee structure of the students, who have been admitted under the abovesaid quote. Later in point of time, upon the petitioner approaching the District Collector, directions were issued to the 4th respondent to permit the petitioner to continue his classes without paying any fees. In spite of the aforesaid directions, the petitioner, though was permitted to continue in the school, however, was not provided with



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uniform, books and notes, whereas other students, not admitted under the abovesaid quota, were provided with uniform, books and notes. Despite the attempts of the petitioner to get the aforesaid materials for continuance of his education, the 4th respondent did not provide the petitioner with the aforesaid materials, despite the undertaking given by the 4th respondent to the 1st respondent. The attitude of the 4th respondent is a clear discrimination and also a high-handed act, which is in total contravention of the provisions of the Act. In spite of the fact that the petitioner submitted representation dated 27.8.2021 to the 1st respondent bringing to his notice the discriminatory act of the 4th respondent, no affirmative action having been taken till date, which has put in jeopardy the education of the petitioner, the petitioner has knocked the doors of this Court for justice through this writ petition.

3. Learned counsel appearing for the petitioner submits that the objects of the Act is to ensure the free education to children belonging to weaker sections, by recognizing the fundamental right of the children to compulsory primary education. However, giving a go-by to the provisions of the Act, which have been enacted for safeguarding the rights of the children belonging to weaker sections and disadvantaged groups, the act of the 4th respondent in not providing the uniforms, notebooks and other study materials necessary materials is a direct



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affront to the provisions of the Act. Attention of this Court was drawn to circular dated 29.11.2021 passed by the Private Schools Fee Determination Committee in the above regard. It is the further submission of the learned counsel that a student, who is admitted under the 25% quota is entitled to free education and such education would include not only the tuition fees, but all other fees that would go along with the tuition fees, as all the aforesaid fees, viz., fees for uniform, notebooks and study materials, would have a direct nexus to the education and, therefore, would squarely fall within Section 3 of the Act. Attention of this Court was also drawn to the proceedings of the 3rd respondent dated 02.03.2021, wherein instructions were issued to the 4th respondent/School to ensure admittance of students under the 25% quota prescribed under the Act and further, provision to be made for providing facilities, such as textbooks, Uniforms, library and Information, Communication and Technology facilities, extra – Curricular and sports, without any discrimination. Learned counsel also relied on the reply of the 4th respondent/School to the 3rd respondent insisting that they are not showing any discrimination between the children admitted under the 25% quota and the other children admitted normally. In spite of the assurance of the 4th respondent, in direct contrast to their admission, fees for uniforms, notebooks and study materials is demanded from the petitioner, which



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is in stark violation of the provisions of the Act. Therefore, it is prayed that the 1st respondent should be directed to give suitable instructions to all the schools and in particular to the 4th respondent, on the basis of the representation made by the petitioner with regard to collection of fees in respect of the students admitted under the 25% quota.

4. Learned Additional Advocate General appearing for respondents 2, 3 and 5 submits that only tuition fees, which is necessary for imparting education to the students of the weaker sections of the society is reimbursed by the State Government, which is what is mandated under the Act. Emphasis is laid by the learned Addl. Advocate General that reimbursement is only with regard to the tuition fees as fixed by the Fee Determination Committee is reimbursable to the school towards the students admitted under the 25% quota, as provided for u/s 12(1)(c) of the Act. Any other fees, not falling within the fees determined by the Fee Determination Committee is not payable by the Government but is to be borne by the students and, therefore, the fee demanded for uniform, notebooks and study materials is to be paid by the petitioner and the State cannot be directed to pay the fees that are not determined by the Fee Determination Committee. It is the further submission of the learned Addl. Advocate General



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that in the absence of any express provision under the Act for the purpose of payment of fees other than tuition fees, the Government is reimbursing the tuition fees, which cannot be found fault with. Accordingly, he prays that the writ petition deserves to be dismissed.

5. Relying upon the counter filed, learned Government Advocate appearing for the 1st respondent submits that already directions were issued by this Court, vide order dated 10.01.2020 in W.P. No.6005 of 2020 directing the 1st respondent to consider the representation of the petitioner pursuant to which an enquiry was conducted by the 1st respondent in which opportunity of personal hearing was afforded to the petitioner as well as respondents 3 and 4 for inquiry. In continuation of the enquiry, the 1st respondent, vide its communication dated 17.8.2021 had called upon the 4th respondent to implement, in sum and substance, the mandate contained in the Act. Once the representation of the petitioner has been considered pursuant to the directions passed by this Court in W.P. No.6005 of 2020, the present writ petition, filed for the very same relief, is barred by *res judicata* and, accordingly, the same deserves to be dismissed *in limine*.



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6. Learned counsel appearing for the 4th respondent/School submitted that the 4th respondent, as per the mandate contained in the Act, is providing reservation of 25% seats for the students belonging to weaker sections of the society. It is further submitted that upon reimbursement made by the Government towards the tuition fees, as fixed by the Fee Determination Committee, the balance of the amount for the purpose of imparting education, in the form of fees for uniform, notebooks and study materials, not being paid by the Government, the 4th respondent is bound to collect the same from the students. It is the further submission of the learned counsel that if at all the mandate of the Act is to be followed, it is for the State or the Centre to bear the cost of the other fees, in addition to the tuition fees and the State Government cannot shriek its responsibility to bear the said cost and fasten it on the 4th respondent, which is not the intention of the provision. It is the further submission of the learned counsel that it is the duty of the duty of the State Government/Local Authority to provide learning material to the children, which is provided for u/s 8 and 9 of the Act and towards the same, if any fees is charged by the 4th respondent, it is for the State Government to bear the said expenses and it cannot be put against the school.



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7. This Court paid its undivided attention to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the various provisions of the Act to which this Court's attention was drawn.

8. Right of Children to Free and Compulsory Education Act was enacted keeping in mind the crucial role of universal elementary education, which strengthens the social fabric of democracy through affording equal opportunities. The objects and reasons, which led to the enactment of the Act reveals that the Directive Principles of State Policy, which is enumerated in the Constitution mandates all the States to provide free and compulsory education to all children upto the age of fourteen years. The vision with which the Act has been enacted is evident from the fact that the drop outs from the schools primarily pertained to children from weaker sections and disadvantaged grounds and only to achieve learning for them, the said Act has been enacted. Therefore, it is but clear that the above Act is a benevolent piece of legislation aimed at arming all the children with education, so that it would be beneficial to them in their life at a later point of time.

9. '*Elementary Education*' is defined u/s 2 (f) of the Act, which means education from first class to eighth class.

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10. Section 2 (d) defines a '*child belonging to disadvantaged group*' to mean a child belonging to Scheduled Caste, Scheduled Tribe, socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification.

11. Section 2 (e) defines a '*child belonging to weaker section*' to mean a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification.

12. Section 3 prescribes the right of a child to free and compulsory education and for better appreciation, the same is quoted hereunder :-

"3. Right of child to free and compulsory education.- (1) Every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of Section 2 shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education.

(2) For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education."

(Emphasis Supplied)



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13. From the abovesaid provision, it is manifestly clear that a child, falling u/s 2 (d) and (e) and who is between the age of six to fourteen years is entitled to free a compulsory education.

14. Section 8 prescribes the duties of the appropriate Government, which is pivotal for determining the issue in the present case and the same is quoted hereunder :-

"8. Duties of appropriate Government.-

The appropriate Government shall--

a. provide free and compulsory elementary education to every child:

Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school.

Explanation-- The term "compulsory education" means obligation of the appropriate Government to--

i. provide free elementary education to every child of the age of six to fourteen years; and



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- ii. *ensure compulsory admission, attendance and completion of elementary education by every child of the age of six to fourteen years; and*
 - b. *ensure availability of a neighbourhood school as specified in section 6;*
 - c. *ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;*
 - d. *provide infrastructure including school building, teaching staff and learning equipment;*
 - e. *provide special training facility specified in section 4;*
 - f. *ensure and monitor admission, attendance and completion of elementary education by every child;*
 - g. *ensure good quality elementary education conforming to the standards and norms specified in the Schedule;*
 - h. *ensure timely prescribing of curriculum and courses of study for elementary education; and*
 - i. *provide training facility for teachers."*

(Emphasis Supplied)

15. A conjoint reading of Section 3 (1) and 8 clearly reveals that not only the State Government is bound provide free and compulsory education to the children prescribed u/s 2 (d) and (e), but equally it is the duty of the State



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Government to provide the infrastructure, teaching staff and learning equipment.

Pari materia provision is there u/s 9 with regard to the duties of the Local Authority.

16. Section 12 prescribes the extent of school's responsibility to free and compulsory education and the relevant portion is quoted hereunder :-

"12. Extent of school's responsibility for free and compulsory education.-

1. For the purposes of this Act, a school,--

a. specified in sub-clause (i) of clause (n) of section 2 shall provide free and compulsory elementary education to all children admitted therein;

b. specified in sub-clause (ii) of clause (n) of section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent.;

c. specified in sub-clauses (iii) and (iv) of clause (n) of section 2 shall admit in class I, to the extent of at least twenty-five per cent. of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion:

Provided further that where a school specified in clause (n) of



section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school 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:

Provided that such reimbursement shall not exceed per-child-expenditure incurred by a school specified in sub-clause (i) of clause (n) of section 2:

Provided further that where such school is already under obligation to provide free education to a specified number of children on account of it having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation.

3. Every school shall provide such information as may be required by the appropriate Government or the local authority, as the case may be.

17. It is evident from Section 12 that where the school is receiving grants-in-aid from the Government, such school is not entitled for reimbursement, while in



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respect of other schools, reimbursement is permissible to the extent of per-child expenditure incurred by the State in relation to the school run by the State or the actual amount charged from the child, whichever is less.

18. From a reading of the aforesaid provisions in tandem, it transpires that it is the duty of the Government to provide free and compulsory education to a child belonging to weaker sections of the society or disadvantaged groups, as provided for in Section 2 (d) and (e) and that further it is the duty of the Government to provide all the infrastructure and learning equipment to the child, which is provided education under the Act.

19. It is the undisputed case of the parties that the tuition fees charged by the 4th respondent has been reimbursed. The amount which has not been reimbursed relates to the fees charged towards uniform, notebooks and reading materials, for which the 4th respondent has called upon the petitioner to pay the said amount. The petitioner not having paid the said fees towards uniform, notebooks and study materials, the same have not been provided to the petitioner and merely the petitioner is allowed to sit in the class.

20. Whether the fees towards uniform, notebooks and study materials is reimbursable in respect of a child, which is admitted in a school under the 25%



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quota, which school falls u/s 2 (n) (iv) of the Act is the moot question that falls for consideration in the present petition.

21. The 4th respondent school is a private unaided school, which is recognized by the State and is providing compulsory education to the children belonging to weaker sections of the society or disadvantaged groups as provided for u/s 2 (d) and (e). Therefore, to the extent of per-child expenditure incurred by the State, is to be reimbursed to the school by the State in respect of the children who have been provided education under the 25% quota.

22. In this regard, Section 3 (1) and (2) of the Act assumes significance, wherein there is a clear mandate that the child, who is provided with free and compulsory education under the Act is not liable to pay any kind of fee or charges or expenses, meaning thereby, that it is the duty of the State to bear all expenses, which is incurred by the child towards pursuing his/her education. Therefore, the contention of the learned Addl. Advocate General that there is no express provision available under the Act which prescribes the State to bear all the expenses towards the compulsory education of the child is wholly misconceived. It is also to be pointed out that the duty of the State in providing compulsory education as prescribed u/s 8 also takes within its fold the necessity of the State to provide the learning equipment. In effect, the learning equipment would go to



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mean the equipments, which are used by the school as well as the students to enrich their knowledge through imparting of education by the school.

23. From a careful perusal of Section 12 (2) coupled with the duty of the State and the Local Authorities to provide compulsory education as prescribed u/s 8 and 9, it is evident that the expenditure incurred by the school in respect of a child admitted under the 25% quota shall be reimbursed to the school to the extent of per-child expenditure incurred by the State or the actual amount charged from the child, whichever is less.

24. As aforesaid, it is not the case of the respondents 2, 3 and 5 that the amount charged by the 4th respondent is over and above the per-child expenditure incurred by the State. Such being the case, it is the duty of the State in coordination with the Central Government to share the expenditure for the purpose of providing compulsory education to the children belonging to weaker sections of the society and disadvantaged groups. The State cannot, as an after-thought, after coming into force of the Act, claim that only the tuition fees is reimbursable and other fees are not to be put on the head of the State.

25. In this regard, this Court in *St. Annes Girls Higher Secondary School – Vs – The Secretary (2012 (3) MLJ 257 (Mad))* has categorically held that any fee or any kind of charges levied on a child would be nothing but preventing the



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child from pursuing the education, which is against the intendment of the enactment and would only frustrate the enactment.

26. Only to achieve the object of the Act, it has been mandated that Government should establish schools in all the neighbourhood so that the intention of the Parliament in achieving the education of every child would fructify. However, it should not be lost sight of that a parent, belonging to the weaker section or a disadvantaged group, cannot equally force the State to pay fees by putting his child in a private institution under the 25% quota, which charges fees over and above the per-child expenditure incurred by the State in State run schools and to that extent the Act carries a clear mandate that reimbursement would be only to the extent of per-child expenditure incurred by the State.

27. In the case on hand, it is not the case of respondents 2, 3 and 5 that the amount charged by the 4th respondent school is over and above the per-child expenditure incurred by the State and, therefore, to that extent, the amount incurred in respect of a child admitted in a school run by the State would alone be entitled to be reimbursed to the 4th respondent school. The specific case projected by the learned Addl. Advocate General is that only the tuition fees is



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reimbursable and no other fees is reimbursable and such fees is to be borne by the parents of the child.

28. Further, the most important aspect, which this Court would like to stress is the fact that providing of compulsory education by giving admittance to a student through provision of a quota under the Act is not to the extent of reimbursing tuition fee alone. Education of a child is not limited to the attendance in the class, but education is a continuing process, which is carried home by the child through works, which are given to the child by the teachers, to enrich the understanding capabilities of the child. The learning of the child at home requires the aid of notebooks and text books and other study materials, which would fall within the domain of learning equipment, which are just and necessary for every child to enrich its knowledge. If the contention of the learned Addl. Advocate General that the reimbursement by the State is only to the extent of tuition fees alone, is to be accepted by this Court, the only inference that could be taken is that it not only undermines the provisions of the Act, but in fact, it frustrates many of the provisions of the Act and the benevolent nature of the Act pales into insignificance.

29. Further, it should also not be lost sight of that mere reimbursement of tuition fees alone to the School would not fall within the four corners of



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imparting education to a child as envisioned under the Act. The education, which is envisaged under the Act is a wholesome education, which would uplift the child from the clutches of ignorance and raise in the economic status, so that the future of the child would be bright. If the tuition fee alone is reimbursable, as contended by the learned Addl. Advocate General, most of the children, who come from weaker sections of the society and who have been admitted on the basis of the provisions of the Act, would not be in a position to continue their studies and, thereby, the Act itself would be unimplementable and would stand frustrated.

30. The State, being a welfare State, is bound to carry out its duties and responsibilities to its citizens in a manner which would elevate the standard of knowledge and living of its citizens and the welfare State must not only be on paper, but it should be achieved by the acts, which are done by the State to lift its citizens from slumber to being educated and responsible citizens. The welfare index of a State would increase only if the future generation are educated in such a manner that they are able to stand on their own legs, which would not retrograde the wisdom of the Parliament in enacting the Act for the upliftment of the weaker sections and disadvantaged groups.



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31. In the case on hand, there is no quarrel that the State has reimbursed the 4th respondent the tuition fee towards the education of the petitioner.

However, the other fees, which would fall within Section 3 (2) of the Act have not been reimbursed to the school, which has left the petitioner in lurch, not being able to continue the education in the school for want of uniform, notebooks and other reading materials. As held by this Court above, uniform, notebooks, other reading materials and all other necessary ingredients would form an integral part of education that is imparted to the petitioner under the Act and in such a backdrop, it is for the 1st respondent to reimburse the entire amount, that is due and payable for the education of a child, be that of the petitioner or any other child, who has been admitted under the 25% quota, so far as it is within the per-child expenditure incurred by the State, which would include the tuition fees and all other fees, which are chargeable from the child so admitted, so that the child gets the free elementary education as mandated under the Act without any bottlenecks.

32. The limitation and scope of the school to provide education to a child under the 25% quota is provided u/s 12 with which there can be no quarrel. In the case on hand, the school is a private school, which falls u/s 2 (n) (iv) and, therefore, the per-child expenditure incurred for providing free and compulsory



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elementary education as specified in clause (c) of sub-section (1) shall be reimbursed the 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. Such being the case, it is for the respondents 1 to 3 and 5 to provide the necessary reimbursement towards the education of the petitioner and the respondents 1 to 3 and 5 cannot abdicate its responsibility by taking shelter under Section 12, by transferring the burden on the 4th respondent, which is an institution, which does not receive any grants-in-aid from the State so long as the amount charged by the 4th respondent is within the per-child expenditure incurred by the State.

33. In fact, it would not be out of context for this Court to note that even the 3rd respondent has already issued proceedings dated 02.03.2021, wherein instructions were issued to the 4th respondent/School to ensure admittance of students under the 25% quota prescribed under the Act and further, provision to be made for providing facilities, such as textbooks, uniforms, library and Information, Communication and Technology facilities, extra-curricular and sports, without any discrimination. The said communication has not been disputed by the learned Addl. Advocate General. This clearly shows that the 3rd respondent has given a categorical direction for providing all the facilities to the



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petitioner, which clearly shows that the reimbursement towards the same would be provided by the State, which could only be the inference that could be drawn from the said communication. Such being the case, the contention of the learned Addl. Advocate General that reimbursement is only to the extent of tuition fees, is wholly erroneous and misconceived and the said argument deserves outright rejection so far as the charged amount is within the per-child expenditure incurred by the State.

34. In the background of the undisputed position, as is evident from the materials available on record, this Court is of the considered opinion that it is the duty of the State to provide free and compulsory education to the children specified u/s 2 (d) and (e) of the Act by absorbing all the fees that would be payable for the child on its head and it is not for the child, admitted under the aforesaid quota to pay even a penny to get itself educated, as it is the bounden duty of the State under the Directive Principles of State Policy to provide free and compulsory education to children of weaker sections and disadvantaged groups as enumerated under the Constitution but within the framework of Section 12 (2) of the Act.

35. In the above circumstances, there arises no necessity for this Court to give a direction to the respondents 1 to 3 and 5 to consider and pass orders on



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the representation of the petitioner, but to issue an affirmative direction to the 5th respondent to reimburse all the expenses due and payable by the petitioner and all other children, similarly placed, who have been admitted under the 25% quota provided under the Act without insisting for any payment from the said children. It is further directed that necessary instructions in this regard be issued not only to the officials of the Education Department, but also to all the schools not to claim any amount from the children so admitted but to lay a claim on the State and the State shall defray all the expenses towards the education of the children admitted under the 25% quota. The 5th respondent is directed to issue necessary instructions in this regard to all its subordinates and also the respective schools within a period of two weeks from the date of receipt of a copy of this order.

36. The writ petition is allowed with the aforesaid observations and directions. The 4th respondent is directed to provide all the materials, including uniform, notebooks, text books and all other reading materials to the petitioner forthwith without insisting on any payment from the petitioner and the 4th respondent shall make a claim on the State towards the amount payable under the aforesaid heads by the petitioner and the respondents 2, 3 and 5 shall



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reimburse the amount to the 4th respondent upon satisfaction and submission of relevant documents. Consequently, connected miscellaneous petition is closed.

There shall be no order as to costs.

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Index : Yes/ No

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To

1. The State Commission
for Protection of Child Rights
183/1, EVR Periyar Salai,
Poonamalle High Road,
Kilpauk, Chennai – 600 010.

2. The Director of Matriculation Schools,
Office of the Director of Matriculation Schools,
College Road, DPI Compound,
Nungambakkam, Chennai – 6.

3. The District Education Officer,
Vellore District, Vellore.

4. The Principal
Little Flower Matriculation School,
No.11, New Balavinayagar Street,
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Gudiyattam – 632 602
Vellore District.

5. The Secretary to Government,
School Education Department,
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