

Corrected copy : corrections have been carried out in view of the speaking to
the minutes of the order dated 19.08.2024

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3085 OF 2020

Izak English Medium School, Bhalvani
Ta. Parner, Dist. Ahmednagar,
Established and run by Alfa Social and
Education Foundation, Dhanwantary
Campus, Datrange Mala, Nalegaon,
Ahmednagar, through it's Secretary,
Mr. Rehan Shafi Ahmed Kazi

... PETITIONER

VERSUS

1. State of Maharashtra
(through it's Secretary, the Department
of School Education & Sports), Mantralaya,
Bombay – 32
2. Director of Education (Primary),
Maharashtra State,
Office of Directorate of Primary Education
Dr. Ani Bezant Marg, Central Govt. Building,
Pune – 1.
3. Regional Deputy Director of Education,
Pune Region, 17, Dr. Ambedkar Marg,
Opp. Lal Deual, Pune 411001
Maharashtra State, Pune -1
4. The Education Officer (Primary),
Zilla Parishad, Ahmednagar
Dist. Ahmednagar
5. Block Education Officers
Panchyat Samiti Parner,
Tal. Parner, Dist. Ahmednagar

... RESPONDENTS

...
Advocate for petitioner : Mr. A.B. Gatne
Addl.G.P for respondent Nos.1 to 3 : Mr. A.R. Kale
Advocate for Respondent Nos.4 and 5 : Mr. A.D. Aghav

...

**WITH
WRIT PETITION NO.3115 OF 2020**

Anand Medical and Education Foundation
Parner, Tq. Parner, Dist. Ahmednagar,
through its Secretary,
Sadik S/o Bal Raje

... PETITIONER

VERSUS

1. The State of Maharashtra
through its Secretary,
School Education and Sports Department
Mantralaya, Mumbai – 32
2. The Commissioner (Education),
Maharashtra State Pune
3. The Director of Education,
Maharashtra State, Pune
4. Deputy Director of Education
Pune
5. Education Officer,
Primary Zilla Parishad,
Ahmednagar
6. The Block Education Officer,
Parner, Tq. Parner,
Dist. Ahmednagar

... RESPONDENTS

...

Advocate for petitioner : Mr. G.R. Syed
Addl.G.P. for respondent Nos.1 to 4 : Mr. A.R. Kale
Advocate for Respondent No.6 : Mr. A.D. Aghav

...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

**Reserved on : 06.08.2024
Pronounced on : 14.08.2024**

ORDER (MANGESH S. PATIL, J.) :

Though these are separate writ petitions, as the relief being claimed by the petitioners is identical, we are disposing of these writ petitions by this common order.

2. Heard.

3. Rule in both these petitions. It is made returnable forthwith. Learned AGP waives service for respondents who are the State functionaries and Mr. Aghav waives service for the respondents - Education Officer (Primary) Zilla Parishad and Block Education Officer Panchayat Samiti, Parner. At the joint request of the parties, the matters are heard at the stage of admission finally.

4. The petitioners are minority institutes running English Primary Schools on self finance basis. It is their stand that till the academic year 2019-2020 they were allowed to admit students from the weaker and disadvantaged class of the society to the extent of 25% as per the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act). The respondent – Block Education Officer issued the impugned letter dated 13.02.2020 informing these petitioners that names of their schools were being removed from the RTE portal provided for admission to the school under the 25% quota by virtue of the Government Resolution dated 15.03.2013.

5. It is the petitioners' stand that being minority institutes they cannot be compelled to admit 25% of the category students under the RTE Act, however, if they are voluntarily coming forward to admit the students, it would be unconstitutional not to allow them to do so. Hence, both the petitioners challenge the impugned communication of the Block Education Officer. In Writ Petition No.3115/2020 the petitioner has

challenged Clause 1.1(a) of the Notification dated 15.03.2013. In writ petition No.3085/2020 the petitioner has been challenging even Rule 12(b) of the Rules 2011 framed under the RTE Act, as violative of Articles 14, 19(1) and 30 and even Section 1 (n)(iv) of the RTE Act. Both the petitioners have also sought a writ of mandamus directing the respondents to take appropriate steps for admitting the students in their English Primary Schools under the provisions of RTE Act.

6. In Writ Petition No.3085/2020 the petitioner has also claimed that since it was already allowed to admit 25% weaker section students under the RTE Act for the previous years, 75% of its dues for the academic year 2017-18 and 100% dues for the academic year 2018-2019 and 2019-2020 shall be reimbursed.

7. The learned advocates for the respective petitioners would take us through the provisions of law and in consonance with the stand being taken in the petitions submitted that even if being minority institutes they cannot be compelled to admit 25% students from the weaker sections as contemplated under the provisions of the RTE Act, if they are voluntarily coming forward to admit such students, which is in the interest of the society at large and particularly the children from weaker sections, the object and purpose of the Act would be served better. If the whole purpose of the enactment is to provide free and compulsory education to the children from downtrodden class of the society, such institute like the petitioners should be allowed to admit the

students under the RTE Act.

8. Mr. Gatne the learned advocate for the petitioner from Writ Petition No.3085/2020 would also refer to the constitutional bench judgment in the matter of **Pramati Educational and Cultural Trust (Registered) and Ors. Vs. Union of India and Ors.; (2014) 8 Supreme Court Cases 1**. He would advert our attention to paragraph No.50 and would submit that the observations would be demonstrative of the fact that the institutes like petitioners which are voluntarily coming forward to admit the students in 25% category under RTE Act, it would be in consonance with the freedom under Article 19(1) of the Constitution. Consequently, Clause 1.1(a) of the Government Resolution dated 15.03.2013 and Rule 12.1(c) would be violative of Articles 14, 19(1) and 30 and even the Rule 12 of the Rule 2011.

9. Per contra, the learned AGP and the learned advocate for the Education Officer (Primary) and the Block Education Officer, by referring to the affidavits-in-reply would submit that by virtue of Section 12(1)(c) of the RTE Act, it is only the schools specified in Sub-clauses (iii) and (iv) of Clause (n) of Section 2 are mandated to admit students to the extent of 25% of the strength of the class, of weaker section and disadvantaged group. Rule 1.1 of the Rules 2013 it has been provided that the schools which are required to admit the students under Section 12 (1)(c) of the RTE Act expressly excludes aided or unaided minority schools, Madrasas, Vedic Pathshalas and Educational Institutions primarily imparting

religious instruction. Since the petitioners are running minority schools with permission granted on self finance basis they cannot as of right claim to admit students under Section 12. Rules 12 or 1.1 which is under challenged cannot be said to be either violative of Section 12 of the provision of the RTE or violative of Article 14, 19(1) and 30 of the Constitution.

10. We have considered the rival submissions and perused the papers. At the first blush, the stand being taken by the petitioners seem to be innocuous, rather would be demonstrative of the fact that even the minority institutes like the petitioners seek to come forward in educating children from weaker section and disadvantaged class. Even the submission made by the learned advocates for the petitioners is attractive.

11. The issue is not as simple as it looks. Section 1(5) of the RTE Act expressly excludes minority institutes from applicability of the RTE Act. Rule 1.1 and Rule 12 which seek to exclude minority institutes or the institutes imparting religious instructions is clearly in consonance with Section 1(5). Apparently, the petitioners are seeking to subject themselves to the provisions of the RTE Act by coming forward voluntarily to admit the students under 25% quota which claim itself would be inconsistent with Section 1(5).

12. Besides, by virtue of decision in **Pramati Educational and Cultural Trust** (supra) the RTE Act itself has been declared to be ultra

vires, the Article 30(1) of the Constitution of India to the extent of minority schools, aided or unaided, covered under that Article. If the petitioners being minority institutions are allowed to subject themselves to the provisions of the RTE Act, it would be in stark violation of Section 1(5) as also **Pramati Education and Cultural Trust's** decision (supra). Once the constitutional bench of the Supreme Court has held the RTE Act itself being ultra vires Article 30(1) of the Constitution, this Court in exercise of the powers under Article 226 of the Constitution cannot permit the minority institutes like the petitioners to subject themselves to the provisions of the RTE Act. Even if they are ready and willing. Allowing them to do so could be only by making the provisions of the RTE Act applicable to them which in itself is prohibited by virtue of the declaration in **Pramati Educational and Cultural Trust** (supra).

13. The submission of Mr. Gatne merely seeking to refer to para No.50 in **Pramati Educational and Cultural Trust** (supra) would be a misplaced argument in the light of the conclusion and the declaration contained in paragraph No.56. It would be apposite to reproduce these paragraphs. Paragraph Nos.50 and 56 read as under :

“50. While discussing the validity of clause (5) of Article 15 of the Constitution, we have already noticed that in paragraphs 53 and 68 of the judgment in T.M.A. Pai Foundation Vs. State of Karnataka; (2002) 8 SCC 481, this Court has held that admission of a small percentage of students belonging to weaker sections of the society by granting them freeships or scholarships, if not granted by the Government and the admission to some of the seats to take care of poorer and backward sections of the society may be permissible and

would not be inconsistent with the rights under Articles 19(1) (g) of the Constitution. In *P.A. Inamdar Vs. State of Maharashtra*; (2005) 6 SCC 537, however, this Court explained that there was nothing in this Court's judgment in *T.M.A. Pai Foundation (supra)* to say that such admission of students from amongst weaker, backward and poorer sections of the society in private unaided institutions can be done by the State because the power vested on the State in clause (6) of Article 19 of the Constitution is to make only regulatory provisions and this power could not be used by the State to force admissions from amongst weaker, backward and poorer sections of the society on private unaided educational institutions. While discussing the validity of clause (5) of Article 15, we have also held that there is an element of voluntariness of all the freedoms under Article 19(1) of the Constitution, but the voluntariness in these freedoms can be subjected to law made under the powers available to the State under clause (2) to (6) of Article 19 of the Constitution.

56. In the result, we hold that the Constitution (Ninety-third Amendment) Act, 2005 inserting clause (5) of Article 15 of the Constitution and the Constitution (Eighty-Sixth Amendment) Act, 2002 inserting Article 21A of the Constitution do not alter the basic structure or framework of the Constitution and are constitutionally valid. We also hold that the 2009 Act is not ultra vires Article 19(1)(g) of the Constitution. We, however, hold that the 2009 Act insofar as it applies to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is ultra vires the Constitution. Accordingly, Writ Petition (C) No.1081 of 2013 filed on behalf of Muslim Minority Schools Managers' Association is allowed and Writ Petition (C) Nos.416 of 2012, 152 of 2013, 60, 95, 106, 128, 144-45, 160 and 136 of 2014 filed on behalf of non-minority private unaided educational institutions are dismissed. All IAs stand disposed of. The parties, however, shall bear their own costs."

14. In view of such state of law, neither the petitioners can be allowed to put up a challenge to the validity of the provisions of the RTE Act or the Rules framed thereunder.

15. However, there is no dispute about the fact that the

petitioner institutes were earlier allowed to admit the students under 25% quota of RTE Act. The stand of the petitioner in Writ Petition No.3085/2020 is also about having not been reimbursed for the students admitted in the academic year 2017-18 till academic year 2019-2020. The fact has not been controverted. Admittedly, till the impugned communication these institutes were allowed to admit the students and would be entitled to be reimbursed when it is not their fault as the students were sent to their schools under the assumption that the provision of the RTE Act are applicable to them.

16. Consequently, the petitioners in writ petition No.3085/2020 and Writ Petition No.3115/2020 would be entitled to have the reimbursement.

17. The Writ petitions are dismissed and the Rule is discharged.

18. However, the respondents shall undertake scrutiny of the claim of petitioners from writ petition No.3085/2020 and Writ Petition No.3115/2020 regarding reimbursement in respect of the students sent to them either voluntarily or by virtue of ad-interim orders of this Court. The exercise shall be concluded within six weeks and the petitioners be reimbursed to the extent they are found entitled to, within six weeks thereafter.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE