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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

PUBLIC INTEREST LITIGATION (L) NO. 14887 OF 2024

Aswini Jitendra Kamble & Anr. .. Petitioners

Versus

State of Maharashtra & Ors. .. Respondents

**WITH
APPELLATE SIDE
PUBLIC INTEREST LITIGATION NO. 61 OF 2024**

**Akhil Bharatiya Samajwadi
Adhyapak Sabha & Ors. .. Petitioners**

Versus

State of Maharashtra & Ors. .. Respondents

**WITH
ORIGINAL SIDE
WRIT PETITION (L) NO. 14334 OF 2024**

Shabbir Gulamgaus Deshmukh & Ors. .. Petitioners

Versus

Union of India & Anr. .. Respondents

Ms. Jayana Kothari, Senior Advocate a/w Ms. Payal Gaikwad,
Mr. Raj Kamble i/by Vasudha for petitioners in
PILL/14887/2024.

Ms. Gayatri Singh, Senior Advocate a/w Ms. Shreya
Mohapatra a/w Sanjot Shirsath for petitioners in
WPL/14334/20204.

Mr. Mihir Desai, Senior Advocate i/by Devyani Kulkarni for
petitioners in PIL/61/2024.

Smt. Jyoti Chavan, Additional Government Pleader a/w Smt. Rita Joshi, AGP for State in PILL/14887/2024.

Smt. Rita Joshi, AGP for State in WPL/14334/2024.

Mr. P. P. Kakade, Government Pleader with Mr. O. A. Chandurkar, Addl. Govt. Pleader and Mrs. G. R. Raghuwanshi, AGP for respondent nos.1 and 2 – State in PIL/61/2024.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE: 6th MAY, 2024

P.C.:

PILL NO. 14887 OF 2024:

- 1.** Issue notice to the respondents.
- 2.** Learned Additional Government Pleader has put in appearance on behalf of the State-respondents and waives service of notice.
- 3.** Let affidavit-in-reply be filed by the respondents within four weeks. Petitioners to file rejoinder-affidavit, if any, by the next date of listing.
- 4.** Stand over to **12th June, 2024**.
- 5.** Learned counsel for the petitioners has urged that having regard to the urgency in the matter, which has arisen because impending admissions to be made in Class-I are to commence from 10th May, 2024, the prayer for interim relief may be considered.
- 6.** Challenge in this Public Interest Litigation petition has been made to the Maharashtra Right of Children to Free and Compulsory Education (Amendment) Rules, 2024, whereby a proviso has been appended to Rule 4 of the Maharashtra Right

of Children to Free and Compulsory Education Rules, 2011 (hereinafter referred to as "the Principal Rules") by notification dated 9th February, 2024. The newly inserted proviso to Rule 4 is extracted herein-below: -

" Provided that, the Local Authority shall not identify the private un-aided school, for the purposes of 25 per cent. admission of disadvantaged group and weaker section under the Maharashtra Right of Children to Free and Compulsory Education (Manner of admission of Minimum 25% children in Class-I or Pre-school at the entry level for the children belonging to disadvantaged group and weaker section) Rules, 2013, where Government Schools and aided schools are situated within radius of one kilometer of that school."

7. Challenge is also made to the proviso added to Rule 8(2), which reads as under: -

" Provided that, no private un-aided school which is identified under the proviso to sub-rule (5) of rule 4 shall be eligible for reimbursement under sub-section (2) of section 12."

8. Submission of the learned counsel for the petitioners, while impeaching the amendments incorporated by way of issuing the notification dated 9th February, 2024, is that the said amendments in the Rules are not only unconstitutional, being violative of Articles 14, 21 and 21-A of the Constitution of India, but are *ultra vires* the provisions of the Principal Act, namely, the Right of Children to Free and Compulsory Education Act, 2009. Various judgments have been brought to our notice where similar amendments made in the Rules have been struck down by other High Courts. The said judgments are, (i) **Ajay Kumar Patel vs. State of U.P. & Ors., reported in 2016 SCC OnLine ALL 3434** and (ii) **Smt. Namita Maniktala vs. State of H.P. & Ors., reported in**

2017 SCC OnLine HP 3285.

9. It has been argued on behalf of the petitioners that Section 12(1)(c) of the Principal Act clearly mandates that every school, as defined in sub-clauses (iii) and (iv) of Section 2(n) of the Principal Act, shall admit to the extent of at least 25% of the strength of Class-I, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion.

10. The submission, thus, is that the newly added proviso to Rule 4 excludes the private un-aided schools from such mandate in view of the definition of the word "school" occurring in Section 2(n)(iv) of the Principal Act, according to which school also means any recognized school imparting elementary education which is un-aided and does not receive any kind of aid or grants to meet its expenses from the State Government or a Local Authority. Submission, therefore, is that such exclusion of un-aided and privately managed schools from operation of Section 12(1)(c) of the Principal Act is not permissible.

11. On the other hand, learned Additional Government Pleader representing the State-respondents, has submitted that the exclusion in terms of the amended proviso appended to Rule 4 is not absolute, rather the exclusion applies only to un-aided private schools situated in an area where government schools or aided schools are situated within a radius of one kilometer from the said school. She has also argued that Section 6 of the Principal Act provides that every appropriate Government and the Local Authority shall

establish a school within such area or limits of neighbourhood, as may be prescribed, where a school is not so established and since in the State of Maharashtra, the Government or the Local Authorities have already established schools within the prescribed area as such exclusion of privately managed un-aided institutions from operation of Section 12(1)(c) of the Principal Act has been provided for by the proviso for the reason that burden has, ultimately, to be borne by the State even if the students are admitted in un-aided privately managed schools.

12. Having considered the submissions made by the parties, we are of the *prima facie* opinion that the impugned provisos as appended to Rule 4 as also appended to Rule 8 are *ultra vires* the provisions contained in the Principal Act. Section 12 (1)(c) clearly provides for and mandates that the schools defined in Section 2(n)(iii) and (iv) shall provide at least 25% of reservation in admission in Class-I to children belonging to weaker sections and disadvantaged groups. Said provision does not provide that such a mandate will operate only in case of the absence of school in the neighbourhood and accordingly the submission made by the learned Addl. Government Pleader does not appear to be *prima facie* tenable.

13. It is well settled legal principle that any piece of subordinate legislation cannot be made in contravention of the Principal Legislation itself. Even otherwise, by appending the impugned provisos to Rule 4 and Rule 8 as above, the right of children to get free elementary education is being hampered which is otherwise guaranteed under Article 21-A of the

Constitution of India.

14. Thus, having regard to the overwhelming public interest in the matter, we provide that till further orders, the amendment incorporated in the Maharashtra Right of Children to Free and Compulsory Education Rules, 2011 vide notification dated 9th February, 2024, shall remain stayed.

15. This order shall be communicated by the learned Additional Government Pleader to all concerned forthwith.

**APPELLATE SIDE PIL NO. 61 OF 2024 AND
ORIGINAL SIDE WPL NO. 14334 OF 2024:**

16. To be tagged along with OS PIL(L) No. 14887 of 2024.

PRAVIN
DASHARATH
PANDIT

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DASHARATH
PANDIT
Date: 2024.05.06
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(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)