



WEB COPY

W.P.Nos.17088 of 2024 etc

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.17088, 17097, 17102, 17106, 17093, 17096 and 17110 of 2024
and W.M.P.Nos.18862, 18843, 18856, 18857, 18871, 18866 and 18852
of 2024

W.P.No.17088 of 2024

Krishnaveni

.. Petitioner

VS

1.The Director (Private Schools)
Directorate of Private Schools,
College Road, Chennai – 6.

2.The District Educational Officer (Private Schools),
DEO Office, No.309, Collectorate,
Salem.

3.The Chief Educational Officer,
No.301, Collectorate, Salem 636 001.

4.The Head Master
Government Higher Secondary School,
Chinnasorakai, Mettur Taluk,
Salem District.

5.The Principal
Sri Rajendra Nursery & Primary School,
Selavadi Village, Doramangalam Pot
Omalar Taluk Salem District.
(& etc. Batch)

.. Respondents



W.P.Nos.17088 of 2024 etc

Prayer in W.P.No.17088 of 2024: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records pertaining the order passed by the 4th respondent dated 28.05.2024 and quash the same consequently directing the 5th respondent to admit the petitioner's son namely Enbarasan M.K in application No. 4935273 in L.K.G. for the academic year 2024 – 2025.

For Petitioner : Mr.T.Ganesan
(in all WPs)
For Respondents : Mr.M.Rajendiran, (for R1 to R4)
Additional Government Pleader
Ms.K.Padma Priya, (for R5)
(in all WPs)

COMMON ORDER

This batch of seven writ petitions have been filed by the parents of seven children who seek admission to lower kindergarten in R5 school i.e., Sri Rajendra Nursery and Primary School, Selavadai Village, Doramangalam Post, Omalur Taluk, Salem District.

2. When the matter had come up for hearing on 28.06.2024, the following order was passed:-

“Mr.M.Rajendiran, learned Additional Government Pleader accepts notice for R1 to R4 and seeks some time to obtain instructions and file a counter.

2. Notice through Court as well as privately to R5, returnable 08.07.2024. Proof of service be placed on file.



W.P.Nos.17088 of 2024 etc

3. Since the last date for admission of the children to LKG (!) is 30.06.2024, counter will be filed by the respondents on or before 05.07.2024 with a copy served in advance upon the petitioners.

4. The petitioners will also file affidavits indicating the actual distance from their residence to the school in question prior to 05.07.2024 with a copy served in advance upon the respondents.

5. The counters will be comprehensive and cover apart from all other relevant points, the following points:

i) The distance between the petitioners residences and the school in question.

ii) How many seats have been assigned under Right to Education Act, 2009 (in short 'RTE') in R5 School?

iii) How many applications were received for the present academic year under RTE?

iv) How many children were shortlisted and what is the method of shortlisting of the students?

v) Was a drawal of lots conducted and how many seats have been filled in?

vi) How many other Government Schools are available within one kilometer radius from the petitioners' residence.

5. List on 08.07.2024. Affidavits and counters by then with an advance copy served upon the other side."

3. The petitioner's have all filed additional affidavits dated 08.07.2024 attesting to the distance between their residence and R5 school as follows:-



W.P.Nos.17088 of 2024 etc

<i>W.P.No.</i>	<i>Distance between R5 school and their residence</i>
17088 of 2024	1.3 Kms
17097 of 2024	2 Kms
17102 of 2024	3 Kms
17106 of 2024	3 Kms
17093 of 2024	1.4 Kms
17096 of 2024	3 Kms
17110 of 2024	2.3 Kms

The petitioners also confirm that there is no Government school, or for that matter, any other school available between the petitioners' residence and R5 school.

4. Detailed counters have been filed by R2, being the District Educational Officer (Private Schools), Salem District, where the distance between the respective petitioners' residence and R5 school is set out, substantially aligning with the distance, as computed by the petitioners.

5. R2 confirms that ten seats have been assigned under the Right to Education Act, 2009 in R5 school, 31 applications have been received for the present academic year and three candidates have been short-listed. Most importantly, they confirm, at clause 6 of the tabulation that there are no other schools available within 1 kilometer radius from the petitioners'



W.P.Nos.17088 of 2024 etc

residences. The tabulations set out at paragraph 6 of counters, all dated 04.07.2024, are extracted below:-

W.P.No.17088 of 2024

(i)	<i>The distance between the petitioners residences and the school in question.</i>	<i>1.40 km</i>
(ii)	<i>How many seats have been assigned under Right to Education Act, 2009 (in short 'RTE') in R5 school?</i>	<i>10 seats</i>
(iii)	<i>How many applications were received for the present academic year under RTE?</i>	<i>31</i>
(iv)	<i>How many children were shortlisted and what is the method of shortlisting of the students?</i>	<i>3</i>
(v)	<i>Was a drawal of lots conducted and how many seats have been filled in?</i>	<i>3</i>
(vi)	<i>How many other Government Schools are available within one kilometer radius from the petitioners' residence.</i>	<i>No schools available</i>

W.P.No.17097 of 2024

(i)	<i>The distance between the petitioners residences and the school in question.</i>	<i>2.10 km</i>
(ii)	<i>How many seats have been assigned under Right to Education Act, 2009 (in short 'RTE') in R5 school?</i>	<i>10 seats</i>
(iii)	<i>How many applications were received for the present academic year under RTE?</i>	<i>31</i>
(iv)	<i>How many children were shortlisted and what is the method of shortlisting of the students?</i>	<i>3</i>
(v)	<i>Was a drawal of lots conducted and how many seats have been filled in?</i>	<i>3</i>
(vi)	<i>How many other Government Schools are available within one kilometer radius from</i>	<i>No schools</i>



W.P.Nos.17088 of 2024 etc

	<i>the petitioners' residence.</i>	<i>available</i>
--	------------------------------------	------------------

WEB COPY

W.P.No.17102 of 2024

(i)	<i>The distance between the petitioners residences and the school in question.</i>	<i>3.10 km</i>
(ii)	<i>How many seats have been assigned under Right to Education Act, 2009 (in short 'RTE') in R5 school?</i>	<i>10 seats</i>
(iii)	<i>How many applications were received for the present academic year under RTE?</i>	<i>31</i>
(iv)	<i>How many children were shortlisted and what is the method of shortlisting of the students?</i>	<i>3</i>
(v)	<i>Was a drawal of lots conducted and how many seats have been filled in?</i>	<i>3</i>
(vi)	<i>How many other Government Schools are available within one kilometer radius from the petitioners' residence.</i>	<i>No schools available</i>

W.P.No.17106 of 2024

(i)	<i>The distance between the petitioners residences and the school in question.</i>	<i>3.10 km</i>
(ii)	<i>How many seats have been assigned under Right to Education Act, 2009 (in short 'RTE') in R5 school?</i>	<i>10 seats</i>
(iii)	<i>How many applications were received for the present academic year under RTE?</i>	<i>31</i>
(iv)	<i>How many children were shortlisted and what is the method of shortlisting of the students?</i>	<i>3</i>
(v)	<i>Was a drawal of lots conducted and how many seats have been filled in?</i>	<i>3</i>
(vi)	<i>How many other Government Schools are available within one kilometer radius from the petitioners' residence.</i>	<i>No schools available</i>



W.P.Nos.17088 of 2024 etc

W.P.No.17093 of 2024

WEB COPY

(i)	<i>The distance between the petitioners residences and the school in question.</i>	<i>1.35 km</i>
(ii)	<i>How many seats have been assigned under Right to Education Act, 2009 (in short 'RTE') in R5 school?</i>	<i>10 seats</i>
(iii)	<i>How many applications were received for the present academic year under RTE?</i>	<i>31</i>
(iv)	<i>How many children were shortlisted and what is the method of shortlisting of the students?</i>	<i>3</i>
(v)	<i>Was a drawal of lots conducted and how many seats have been filled in?</i>	<i>3</i>
(vi)	<i>How many other Government Schools are available within one kilometer radius from the petitioners' residence.</i>	<i>No schools available</i>

W.P.No.17096 of 2024

(i)	<i>The distance between the petitioners residences and the school in question.</i>	<i>3.10 km</i>
(ii)	<i>How many seats have been assigned under Right to Education Act, 2009 (in short 'RTE') in R5 school?</i>	<i>10 seats</i>
(iii)	<i>How many applications were received for the present academic year under RTE?</i>	<i>31</i>
(iv)	<i>How many children were shortlisted and what is the method of shortlisting of the students?</i>	<i>3</i>
(v)	<i>Was a drawal of lots conducted and how many seats have been filled in?</i>	<i>3</i>
(vi)	<i>How many other Government Schools are available within one kilometer radius from the petitioners' residence.</i>	<i>No schools available</i>

W.P.No.17110 of 2024



W.P.Nos.17088 of 2024 etc

(i)	<i>The distance between the petitioners residences and the school in question.</i>	2.40 km
(ii)	<i>How many seats have been assigned under Right to Education Act, 2009 (in short 'RTE') in R5 school?</i>	10 seats
(iii)	<i>How many applications were received for the present academic year under RTE?</i>	31
(iv)	<i>How many children were shortlisted and what is the method of shortlisting of the students?</i>	3
(v)	<i>Was a drawal of lots conducted and how many seats have been filled in?</i>	3
(vi)	<i>How many other Government Schools are available within one kilometer radius from the petitioners' residence.</i>	No schools available

6. In light of the aforesaid factual position, the ratio of the decision of this Court in *S.Lakshmanan Vs. The Chief Educational Officer, Coimbatore District and Ors.* in W.P.No.717 of 2023 dated 07.12.2023, is applicable on all fours to the present cases. The discussion therein is extracted below in the interests of completion:-

'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, -



WEB COPY



W.P.Nos.17088 of 2024 etc

(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.

.....

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 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.'

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.



WEB COPY



W.P.Nos.17088 of 2024 etc

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.'*

7. In light of the aforesaid discussion, impugned orders dated 28.05.2024 are quashed and there is a direction to the respondents, particularly, R2 and R5 to do the needful in admitting the children in R5 school forthwith, upon payment of necessary fees by the petitioners.



W.P.Nos.17088 of 2024 etc

8. These writ petitions are allowed in the above terms. No costs.

Connected Miscellaneous Petitions are closed.

29.07.2024

Index: Yes

Speaking order: Yes

Neutral Citation: Yes

mpl

Note: Registry is directed to upload this Order on or before 30.07.2024.

To

- 1.The Director (Private Schools)
Directorate of Private Schools,
College Road, Chennai – 6.
- 2.The District Educational Officer (Private Schools),
DEO Office, No.309, Collectorate,
Salem.
- 3.The Chief Educational Officer,
No.301, Collectorate, Salem 636 001.
- 4.The Head Master
Government Higher Secondary School,
Chinnasorakai, Mettur Taluk,
Salem District.



WEB COPY



W.P.Nos.17088 of 2024 etc

DR. ANITA SUMANTH,J.

mpl

**W.P.Nos.17088, 17097, 17102,
17106, 17093, 17096 and 17110 of 2024
and W.M.P.Nos.18862, 18843, 18856,
18857, 18871, 18866 and 18852 of 2024**

29.07.2024