



W.P.(MD)No.15557 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.15557 of 2024

Kanmani

... Petitioner

Vs.

1.The Chief Educational Officer,
Thanjavur District,
Thanjavur

2.The District Educational Officer (Private Schools),
Thanjavur District,
Thanjavur.

3.The Correspondent,
Sentamil Matriculation School,
Thenamanadu,
Sethurayan Kudikkadu Post,
Orathanadu Taluk,
Thanjavur District.

.... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, to direct the 1st and 2nd respondent to consider the petitioner's children application for the education under the RTE Act 2009 and direct the 3rd respondent to admit petitioner's children namely Haasini and Harshini for L.K.G to the Academic year of 2024-2025.



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For Petitioner : Mr.S.Balaji
For Respondents : Mr.T.Amjadkhan,
Government Advocate for R1 & R2
Mr.N.Mariappan for R3

ORDER

This Writ Petition has been filed seeking direction to the respondents 1 and 2 to consider the petitioner's children application for the education under the RTE Act 2009 and direct the 3rd respondent to admit the petitioner's children namely Haasini and Harshini for L.K.G to the Academic year 2024-2025.

2. Heard the learned counsel for the petitioner, the learned Government Advocate for respondents 1 and 2 and the learned counsel appearing for the third respondent.

3. It is the case of the petitioner that the petitioner is the mother of twin children viz., Haasini and Harshini. They born on 28.01.2021. The petitioner applied for the education of her children under the “Right of Children to Free and Compulsory Education Act, 2009” (hereinafter referred to as “RTE Act, 2009”)



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for the academic year 2024-2025 in the third respondent school. However, the third respondent denied the admission on the ground that the petitioner is residing the above ratio of 1 Km from the school premises. The third respondent school is situated in Thenamanadu Village. The petitioner is also residing at Thenamanadu Village, Orathanadu Taluk. Therefore, the petitioner made a representation to the third respondent to admit her children under the RTE Act, 2009. On receipt of the said representation, the third respondent replied that there are almost 24 seats are vacant as per the RTE Act, 2009 and they are ready to admit the children, if the official respondents are approved the application of the petitioner's children. Thereafter, the petitioner approached the official respondents to approve her children's application for admission in the third respondent school. However, the official respondents did not consider the petitioner's request. Hence, the petitioner has filed this Writ Petition.

4. The second respondent has filed a counter affidavit admitting that as per Section 12(1)(c) of the RTE Act, 2009, all the private schools to reserve 25% of their seats for children belonging to economically weaker Sections and disadvantaged group. The Tamil Nadu Director of Private Schools vide proceedings in Na.Ka.No.1872/C1/2024, dated 01.04.2024, issued guidelines for



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admission of children belonging to economically weaker sections and disadvantage group in the private schools, wherein it is stated that the parents can apply through the website rte.tnschools.gov.in for seeking admission in private schools under Section 12(1)(c) of the RTE Act, 2009. As per the guidelines issued by the Tamil Nadu Director of Private schools for admission of children, the first respondent allotted 25% of seats in private schools in Thanjavur District and appointed the team members for verification of the applications and admissions. The third respondent school has been allotted 24 seats for admission and 41 applications have been received. The said applications were carefully scrutinized by the officer appointed by the respondents 1 and 2. Out of 41 applications, no applicants were eligible in respect of the radius mentioned in Section 12(1)(c) of the RTE Act, 2009 and Section 4(1) of the “Right of Children to Free and Compulsory Education Tamilnadu Rules, 2011” (hereinafter referred to as “the Rules”). The guidelines issued by the Tamil Nadu Director of Private Schools specified that the applications received within one-kilometer radius of the school from the applicant's place of residence will be considered. By following the aforementioned guidelines, the petitioner's application was rejected, since her residence is 4.5 kilometers from the third respondent's school. Hence, opposed this Writ Petition.



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5. The learned counsel appearing for the petitioner would submit that the petitioner belongs to Backward Community and her husband is an agricultural coolie worker. This fact is not disputed. The petitioner is also residing at Thenamanadu Village, Orathanadu Taluk, where the school is situated and only citing the distance, the admission of petitioner's children has been denied. According to the petitioner, 24 seats were allotted to the third respondent school. 41 applications were received by the third respondent school and all the applications were rejected citing the distance by relying upon the circular issued by the Tamil Nadu Director of Private Schools dated 01.04.2004. Hence, it is the contention of the petitioner that once the students within 1 Km radius are not applied, the seats can be allotted to the children from the distance of more than 1 Km radius. In this aspect, this Court has already passed an order in ***Deepak Vs. The Chief Educational Officer & others in W.P.Nos.14910 and 14913 of 2024, dated 01.07.2024.*** Following the same, the petitioner seeks for a direction to the respondents 1 and 2 to direct the third respondent to admit the petitioner's children under the RTE Act, 2009.

6. Whereas, the learned counsel appearing for the third respondent would submit that admission to the petitioner's children has been denied by following the



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guidelines issued by the Tamil Nadu Director of Private Schools dated 01.04.2004.

Therefore, this Writ Petition is liable to be dismissed.

7. The learned Government Advocate appearing for the respondents 1 and 2 would submit that the guidelines issued by the Tamil Nadu Director of Private Schools dated 01.04.2004, has to be followed strictly, otherwise it leads complications to admit the students from the other areas. Hence, opposed the Writ Petition.

8. Heard the submissions made by the learned counsel appearing on either side and perused the materials available on record.

9. No doubt, the guidelines issued by the Tamil Nadu Director of Private Schools dated 01.04.2004, has to be followed strictly. According to the third respondent, 24 seats fell vacant in their school and none of the students were selected under RTE Act, 2009 citing the distance. It is relevant to note that the very object of the RTE Act, 2009 is to provide education for children belonging to the economically weaker sections and disadvantaged group. However, the applications have been denied only on citing the distance. According to the



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respondents, the petitioner is residing beyond 1Km radius from the third respondent school. Whereas, the fact that the petitioner is residing in the same village, where the school is situated, is not disputed. When the children residing within 1Km radius are not applied and selected, all the sheets reserved under RTE Act, 2009 go unutilized and the very object of the Act will be defeated. The guidelines issued by the Tamil Nadu Director of Private Schools relating to the distance cannot be rigid and it can be relaxed depending upon the number of the applications filed by the parents of the children, who are residing within 1Km radius. If more children are available and residing within 1Km of radius, the first preference has to be given only to the children who are residing within 1Km radius as per the guidelines issued by the Tamil Nadu Director of Private Schools. In this regard, this Court in W.P.No.14910 and 14913 of 2024, dated 01.07.2024, has held as follows:

“12. I now advert to the second objection raised, that the petitioners reside beyond one kilometre from R4 schools. The provisions of Section 2(n) of the RTE Act define 'school' and Sections 3, 6, 8 and 10 of the RTE Act use the word 'school' in tandem with the word 'neighbourhood'. Rule 6 of the TN Rules as well as Rule 8 of the Rules reveal that the school selected is expected to be within one kilometre from the residence of the applicant.

13. However, the distance parameter is not inflexible and I have had occasion to consider a similar objection in in W.P.No.717 of 2022,



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and vide order dated 07.12.2023, have held as follows:

“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 kilometre 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



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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.'

14. Thus the mere fact that the petitioners are residing beyond one kilometre from R4 school will not, by itself, come in the way of accepting their applications. That apart, an argument is also put forth on the ground that there are two Panchayat Union Primary Schools in the vicinity in respect of W.P.No.14910 of 2024 and one Panchayat Union Primary School in the vicinity in respect of W.P.No.14913 of 2024, all within the stipulated one kilometre. That may well be so."



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10. Therefore, when this Court has already elaborately dealt that the Rule is not inflexible and there is no school within 1Km for LKG to 8th Std, such Rule can be relaxed. Admittedly, none of the children were selected citing the Rule relating to the distance. If the strict interpretation of the Rule is given, no children will be in a position to avail the benefit under the statute. As long as no children within 1 Km radius are applied, this Court is of the view that the Rule can be very well relaxed and the free education can be given to the other students, who are residing beyond 1 Km radius. The Delhi High Court, in the case of ***Federation of Public Schools Vs. Government of NCT of Delhi*** reported in ***2012 SCC Online Del 613***, has held that admission shall first be offered to eligible students belonging to EWS and disadvantaged group residing within 1 Km of the specific schools and also held that in case the vacancies remain unfilled, students residing within 3 Kms, of the schools shall be admitted and further held that if there are still vacancies, then the admission shall be offered to other students residing within 6 kms of the institutions.

11. In such view of the matter, as the vacancies has not been filled and no children, within 1Km, have been applied, this Court is of the view that by citing the Rule, relating to the distance, denying the admission to the petitioner's



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children, who are admittedly from EWS and disadvantaged group, is unfair.

Hence, the respondents are directed to admit the children of the petitioner in the third respondent school forthwith.

12. With the above direction, this Writ Petition is allowed. There shall be no order as to costs.

28.08.2024

NCC : Yes/No
Index : Yes/No
vsm

To

1.The Chief Educational Officer,
Thanjavur District,
Thanjavur

2.The District Educational Officer (Private Schools),
Thanjavur District,
Thanjavur.



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N.SATHISH KUMAR, J.

vsm

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