



W.A.(MD) No.2624 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND
THE HONOURABLE DR. JUSTICE A.D.MARIA CLETE

W.A.(MD) No.2624 of 2024
and C.M.P.(MD) No.18257 of 2024

1.The Chief Educational Officer,
Thanjavur District,
Thanjavur.

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

... Appellants

Vs.

1.Kanmani

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

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent Act, praying to set aside the order dated 28.08.2024 in W.P.(MD).No.15557 of 2024 on the file of this Court.

For Appellants : Mr.J.Ashok,



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Additional Government Pleader

JUDGMENT

(Order of the Court was made by *M.S.RAMESH, J.*)

The first respondent herein is the mother of twin children namely Haasini and Harshini, who were born on 28.01.2021. Her application seeking for admission in the second respondent/School under the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as RTE Act), for the Academic Year 2024-25 to the appellants herein was kept pending indefinitely, which prompted her to file a Writ Petition in W.P.(MD).No.15557 of 2024, praying for a direction to the appellants herein to consider her application under the RTE Act. The Writ Court, by its order dated 28.08.2024, had placed reliance on a decision of the Delhi High Court in '**Federation of Public Schools Vs. Government of NCT of Delhi**' reported in '**2012 SCC OnLine Del 613**' and rejected the plea of the appellants herein that the children residing over and above 1 Km radius of the concerned school are ineligible for admission and consequently, directed the



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appellants herein to admit the first respondent's children in the second respondent/School forthwith. The aforesaid order is assailed in the present Writ Appeal.

2. The only ground raised in this appeal is that the family of the first respondent herein are residing about 4.5 Kms away from the second respondent/School, which disqualifies them to seek for the benefits of free education under the RTE Act, in view of the guidelines issued by the Tamil Nadu Director of Private Schools dated 01.04.2024.

3. The claim of the appellants herein, as to whether the children seeking admission are residing more than 1 Km away from the School can be a disqualification for admission is no more *res integra* and this Court, in several of its decisions, has held that such a condition can only be taken as a guideline and is not mandatory in nature.

4. The learned Single Judge had placed reliance on the decision of this Court in W.P.Nos.14910 & 14913 of 2024 dated 01.07.2024 and held



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that such a stipulation of residence within 1 Km cannot be rigid, but requires to be made flexible in view of the object of the RTE Act to provide free education to all the children between the age of 6 to 14 years, who come from economically weaker section and disadvantaged groups. In the aforesaid decision relied upon by the learned Single Judge, reliance has been placed to the order of the Delhi High Court in ***Federation of Public Schools' case*** (supra) also.

5. Since the issue has been well settled, the guidelines stipulating 1 Km radius as a condition for admission, cannot be mandatory in nature.

6. As held by the Hon'ble Supreme Court in the case of ***'P.D.Aggarwal Vs. State of U.P'*** reported in ***'(1987) 3 SCC 622'***, a memorandum is nothing but an administrative order or instruction and as such, it cannot amend or supersede the statutory rules by adding something therein. In ***'Union of India Vs. Ashok Kumar Aggarwal'*** reported in ***'(2013) 16 SCC 147'***, the Hon'ble Supreme Court had held that it is a settled proposition of law that an authority cannot issue orders or office memorandum or executive instructions in contravention of the



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statutory rules and that such instructions can be issued only to supplement the statutory rules, but not to supplant it. Such instructions should be subservient to the statutory provisions. This legal position has also been reiterated in various other decisions, including *'Union of India Vs. Majji Jangamayya' [(1977) 1 SCC 606]*, *'Paluru Ramkrishnaiah Vs. Union of India' [(1989) 2 SCC 541]*, *'C.Rangaswamaiah Vs. Karnataka Lokayukta' [(1998) 6 SCC 66]*, *'Joint Action Committee of Air Line Pilots' Assn. of India Vs. DG of Civil Aviation' [(2011) 5 SCC 435]*.

7. In a recent decision in the case of *'Employees' State Insurance Corporation Vs. Union of India'* and others reported in *'(2022) 11 SCC 392'*, the Hon'ble Dr.Justice D.Y.Chandrachud had placed reliance on all the aforesaid decisions and had come to a conclusion that a statutory regulations will have precedence over an official memorandum.

8. In the light of the above observations and findings, we do not find any reason to interfere with the well considered order of the learned Single Judge. Accordingly, the Writ Appeal stands dismissed. No costs.



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Connected miscellaneous petition is closed.

[M.S.R., J] [A.D.M.C., J]

20.12.2024

Index: Yes
Internet: Yes
Neutral Citation: Yes
Speaking order

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WEB COPY

To

The Correspondent,
Sentamil Matriculation School,
Thenamanadu, Sethurayan Kudikkadu Post,
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