



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**PUBLIC INTEREST LITIGATION NO. 17/2026**

Ashish Chaman Fulzele and Ors. .VS. State of Maharashtra and Ors.

Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders

Court's or Judge's orders

Ms Jayna Kothari, Senior Advocate assisted by Ms Payal Gaikwad and  
Mr. Dipankar Kamble, Advocates for petitioners.  
Mr. Shishir M. Uike, Additional Government Pleader for respondents.

**CORAM : ANIL L. PANSARE AND NIVEDITA P. MEHTA, JJ.**

**DATE : MARCH 9, 2026.**

Heard.

2. Issue notice to the respondents, forthwith.

3. Learned Addl.G.P. to take instructions as to why  
Government Resolution dated 12.02.2026 under question, to the  
extent, it is contrary to order dated 19.07.2024 passed in *Akhil  
Bharatiya Samajwadi Adhyapak Sabha & Ors. Vs. State of  
Maharashtra and Ors; (Public Interest Litigation No.61/2024 with  
connected matters)*, should not be stayed.

4. Kept back.

(JUDGE)

(JUDGE)

**Later On:**

Learned Addl.G.P. submits that despite efforts, he  
could not get instructions.

2. The petitioners are seeking to quash and set aside  
clauses (3), 5.2, 5.3, 5.4 and 5.5 of the Government Resolution  
dated 12.02.2026, insofar as they impose rigid one kilometer  
territorial ceiling in the implementation of Section 12(1) (c) of  
the Right Of Children To Free and Compulsory Education Act,

2009 (“RTE Act”). The petitioners also seek a declaration that imposition of a fixed 1 kilometer radial limitation in the implementation of Section 12(1)(c) is ultra vires the parent status and Articles 14, 15(4), 21A and 46 of the Constitution of India.

3. Our attention is invited to judgment dated 19.07.2024, passed by Division Bench of this Court at Principal Seat in *Akhil Bharatiya Samajwadi Adhyapak Sabha & Ors. Supra*, wherein challenge was to proviso to Rule 4(5) of the Maharashtra Right of Children To Free and Compulsory Education Rules, 2011 (“Rules of 2011”). By way of proviso, it was provided that local authority shall not identify the private unaided schools where Government schools and aided schools are situated within a radius of 1 Kilometer of that school for the purpose of providing 25% admission to the children belonging to disadvantaged groups and weaker sections 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 Groups And Weaker Section) Rules, 2013. The Division Bench referred to various provisions of the RTE Act as also provisions of the Constitution of India coupled with the authorities on the point and held thus:

*“57. Considering the involvement of different actors in the process of education, the Parliament, while enacting the RTE Act, has specifically provided in Section 12(1)(c) that the school defined in Section 2(n)(iv) of the RTE Act will also be liable for making admission in Class-I to the extent of 25% of their strength, of the children belonging to disadvantaged groups and weaker sections of the society. If Section 12(1)(c)*

*of the RTE Act consciously does not provide for any condition of distance, putting such a condition by making rules under the rule making powers of the State Government, cannot be approved of for the simple reason that the settled legal proposition of law is that any delegated legislation cannot overreach the provision of the parent Act under which it is made; neither can it supplant something which is clearly absent in the Act.*

58. ...

59. *Thus, the submission that Section 12(1)(c) of the RTE Act will operate only in absence of Government or aided schools in the neighbourhood area was repelled by the Allahabad High Court in the case of Ajay Kumar Patel (supra) and it was clearly held that the operation of the mandate of Section 12 is not conditional, that is to say that the contention that Section 12 will operate only in absence of Government/aided schools, was not found to be correct.*

60. ...

61. *Thus, creating a condition of distance of 1 km of a private unaided school from Government/aided school for application of Section 12(1)(c) on such private unaided school is clearly in infringement of Section 12(1)(c) of the RTE Act for the reason that the said provision of the RTE Act does not provide for any condition. Its operation is; rather unconditional and hence, in our opinion, it is mandatory for all private unaided schools in the neighbourhood to follow the mandate of Section 12(1)(c) of the RTE Act.*

62 to 70. ...

71. *For the aforesaid reasons the submission made on behalf of the private unaided schools that the statutory responsibility under Section 12(1)(c) on them will operate only*

*till sufficient number of schools are not established by the Government/local authority under Section 6, is not tenable.*

*72 to 75. ...*

*76. For the discussion made and reasons given above, it is held that the impugned proviso appended to rule 4(5) of Principal Rules 2011 vide impugned Notification, dated 9th February 2024 is ultra vires the RTE Act 2009 and Article 21-A of the Constitution of India and, accordingly, the impugned proviso is declared to be void. Consequently, the proviso appended to Rule 8(2) of the Principal Rules 2011 is held to be inoperative. The communication, dated 6th March 2024 and the Circular, dated 3rd April 2024 issued by the Director of Education (Primary), State of Maharashtra are also hereby quashed.”*

4. Grievance of the petitioner is that by way of aforesaid circular, two such conditions are made, which violate the provisions of the RTE Act, as also mandate of the Court. First condition is Clause 4(E)(3), which reads thus:

*“4(E) Instructions to NIC regarding Online 25% Admission system.*

*(1)&(2) ...*

*(3) While parents indicate their place of residence on Google maps, the system shall provide for displaying the GPS location within a limit of 1 kilometer from the selected landmark.”*

And other provisions is 5.2, which is as under:

*“5.2 While filling the online application under the RTE 25 percent quota, parents shall be permitted to a maximum of any 10 schools for admission of their child. The portal shall provide for displaying only those schools which are situated within 1 kilometre from the registered residence of the child.”*

5. Thus, by way of these provisions, criteria of 1 Kilometer is restored and further, restriction to 10 schools is provided. The learned Senior Counsel submits that these clauses run contrary to the law laid down by this Court in *Akhil Bharatiya Samajwadi Adhyapak Sabha & Ors. Supra*

6. We find substance in the submissions so made.

7. The the restrictions imposed appear to us to be contrary to the judgment of this Court as also violative of provisions of the RTE Act read with Articles 14, 21 and 21A, amongst other of the Constitution of India. Accordingly, we stay aforesaid two clauses of the Government Resolution dated 12.02.2026.

8. Necessary arrangements shall be made by the respondents in the system to ensure that the admissions to the course will be available in terms of provisions of the RTE Act, particularly Rule 12 (1) (c) and the law laid down by this Court in *Akhil Bharatiya Samajwadi Adhyapak Sabha & Ors..*

9. All concerned shall act on authenticated/uploaded copy of this order.

10. Stand over tomorrow i.e. 10.03.2026.

(JUDGE)

(JUDGE)