



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 11, 2026.**

Heard.

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 a 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"), being ultra vires the parent statute and violative of Articles 14, 15 (4), 21A and 46 of the Constitution of India.

3. Article 21A of the Constitution provides for free, compulsory education of all children in the age group of 6 to 14 years as a fundamental right in such manner as the State may by law determine. Consequently, the RTE Act was enacted. Section 3 of the RTE Act provides that every child of the age of 6 to 14 years including child belonging to disadvantaged group or weaker section shall have the right to free and compulsory education in neighbourhood school till completion of his/her elementary education. Section 6 of the RTE Act provides that

for carrying out provisions of this Act, the appropriate Government and the local authority shall establish, within such area or limits of neighbourhood, as may be prescribed, the school where it is not so established, within a period of three years from the commencement of this Act.

4. Chapter IV of the RTE Act provides for responsibility of school and teachers. Section 12(1)(c), which is relevant for the present, provides that a school specified in sub clauses (iii) and (iv) of clause (n) of Section 2 shall admit in class I, to the extent of at least 25% of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion. Clauses (iii) and (iv) of Section 2(n) include a school belonging to specified category and unaided school.

5. Thus, the object of the RTE Act is to provide free and compulsory education to the children in the age group of 6 to 14 years and for that purpose, appropriate Government and the local authority is under obligation to establish a school within the area or limits of the neighbourhood, as may be prescribed. This exercise was to be done within a period of three years from the commencement of the RTE Act.

6. Section 38 of the RTE Act extends powers to the appropriate Government to make rules and accordingly the Maharashtra Right of Children to Free and Compulsory Education Rules, 2011 ("Rules") were brought into force with effect from 11.10.2011. Rule 2(m) of the Rules provides

definition of “Neighbourhood school” to mean a school in respect of children in Classes I to V, to be a school established as far as possible within a distance of 1 Km. of the neighbourhood and in classes VI to VIII within a distance of 3 Km. of the neighbourhood.

7. Rule 4(5) of the Rules provides that the local authority shall designate a neighbourhood school for every settlement or area. A proviso was added to Rule 4(5) of the Rules stating that the local authority shall not identify private unaided schools under Section 2(n) (iii) (iv) of the RTE Act for 25% admissions of children from disadvantaged groups/weaker sections, if the Government or aided school exist within 1 Km. radius.

8. This proviso and the corresponding proviso to Rule 8(2) was challenged before this Court at Principal Seat in the case of *Akhil Bharatiya Samajwadi Adhyapak Sabha & Ors. Vs. State of Maharashtra and Ors; (Public Interest Litigation No.61/2024 with connected matters)*. The Division Bench considered the relevant provisions of the RTE Act so also Rules made thereunder vis-a-vis the provisions of the Constitution of India, particularly Article 21A, to hold that the provisos to Rule 4(5) and Rule 8(2) are ultra vires the RTE Act and Article 21A of the Constitution of India. While doing so, the Court held that the obligation under Section 12(1)(c) of the RTE Act to reserve 25% of the seats in class I or pre-school in private unaided school for children from disadvantaged groups and weaker sections, is absolute and unconditional and that it applies to all specified categories and private unaided schools without any qualifying criteria such as proximity or availability of Government or aided schools within 1 Km. radius. The Court further held that the

proviso to Rules 4(5) and 8(2) directly contradict unconditional mandate of Section 12(1)(c) and cannot limit or dilute its scope through subordinate legislation. The Court further held that by introducing a distinction based exclusion from private unaided schools, the amendment undermines the inclusive framework of the RTE Act designed to ensure neighbourhood education through a combination of Government, aided and private unaided schools, thereby defeating the rights, objects and purpose. Most importantly, the Court held that though Section 6 imposes a primary duty on the State to establish neighbourhood school within 1 Km. for classes I to V and 3 Km. for classes VI to VIII, this does not render State's obligation under Section 12(1)(c) contingent or supplemental. The Court opined that Section 12(1)(c) operates independently as mandatory measure to achieve universal access to education and the existence of Government or aided schools does not absolve private unaided schools of their reservation duty.

9. Accordingly, the Court held that introduction of 1 Km. proximity condition is arbitrary, lacks a rational nexus to the RTE Act, objectives and frustrates the scheme of inclusive education by segregating children based on school type rather than prioritizing neighbourhood access.

10. Thus, in terms of Section 12(1)(c), it is the responsibility of the schools, including the schools belonging to specific category and/or an unaided school not receiving any kind of aids or grants from the State Government to admit in Class-I at least 25% of the strength of that class, children belonging to weaker sections and disadvantaged group in neighbourhood school and provide free and compulsory elementary education. Thus, in a case where the private unaided school is not located within the limit of 1 Km. from the registered residence of a child and though the State has established

neighborhood school in terms of Section 6, the child belonging to disadvantaged group or weaker section cannot be deprived of his right to take education in terms of provisions of RTE Act. It is, in this context, we had opined in our order dated 09.03.2026 that the restrictions imposed through impugned Government Resolution are contrary to the judgment in the case of *Akhil Bharatiya Samajwadi Adhyapak Sabha & Ors.* supra as also are violative of provisions of RTE Act read with Articles 14, 21 and 21A amongst other.

11. At this stage, Ms Jayna Kothari, learned Senior Counsel appearing for the petitioner, has invited our attention to Annexure-G to point out that a child named, Shivans Sachin Pote made an attempt to submit form for admission to I standard under the provisions of the RTE Act but could not succeed because no school is available within 1 Km. The residence of the child is located at Khapri Subhedar locality, Borkhedi Nagpur (Gramin). Another such student named, Prathyusha Paras Gajbhiye, r/o Kukdey Layout, Kausallya Nagar, Nagpur. In her case also, no school is available within limit of 1 Km. Learned Senior Counsel submits that there can be many such cases where no school is available within area of 1 Km. and there can be many cases where no private unaided school is available within 1 Km. though other schools may be available.

12. Put all together, the restrictions as imposed, appear to us to be contrary to the judgment in the case of *Akhil Bharatiya Samajwadi Adhyapak Sabha & Ors.* supra as also violative of provisions of the RTE Act read with provisions of the Constitution of India.

13. Learned A.G.P, however, has placed reliance upon judgment in the case of *Amol Vasantrao Patil and Ors. Vs. Bhartiya Vidya Bhavan's Lloyds Vidya Niketan and Ors.; [Writ Petition*

No.2303/2017 decided on 13.07.2017], to contend that the restriction of 1 Km. or 3 Km., as the case may be, is well recognized.

14. We have gone through the said judgment to find that the facts are altogether different. The petitioners therein were guardians of the children who were seeking admission of their wards in pre-primary school of respondent No.1 – School, which was unaided school. The school refused admission on the count that the children did not reside in the neighborhood of the school. Emphasis of petitioner was on Rule 9A of the Rules, which allows allocation beyond 3 Km., if needed. The Division Bench, while interpreting provision of the RTE Act and particularly Sections 3 and 12(1)(c) read with Rule 9A of the Rules, emphasized the concept of neighbourhood school and held that the process must prioritize the schools within defined proximity and parental preferences cannot override this statutory mandate as it would frustrate the Act's object of providing accessible education near home. Accordingly, the Court held that the allocations ignoring nearer available options were invalid and the schools are not obliged to admit children from beyond the neighbourhood schools. The Court held that the priority should be given to nearer schools and the extent, limit/distance can only be invoked after verifying exhaustion of nearer seats.

15. We are of the view that the above finding will be of no help to the respondents inasmuch as the Division Bench was examining the scope of Government Resolution dated 10.01.2017 that enables the school to admit children whose residences were beyond the permissible distance, if the parents were to bear travel expenses. The Court had no occasion to examine the right of children to have education in private unaided school in terms of Section 12(1)(c) of the RTE Act.

16. We may note here that to prioritize the selection of schools at the nearest possible location from the residence of a child is one thing and his right to have education in the school including private unaided school is another. There may be or may not be private unaided schools within 1 Km. from the residence of child though aided schools or schools established by the Government under Section 6 are available within such distance. In such an eventuality, the child has option to travel beyond 1 Km. to get admission in private unaided school. The restriction imposed by the impugned Government Resolution may infringe their right to have education in the school contemplated under the provisions of the RTE Act and will thus frustrate the very object and purpose of the Act. Further, the petitioner has pointed out certain examples where there are no schools at all within the distance of 1 Km. from the residence of the child.

17. We, accordingly, call upon the respondents to take corrective steps by deleting the clause imposing such a restriction.

18. Learned A.G.P shall apprise us of the development by tomorrow i.e. 12.03.2026.

19. List at 02:30 p.m. on 12.03.2026 for further consideration.

20. All concerned shall act on uploaded copy of the order.

(JUDGE)

(JUDGE)