

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.07.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.14910 and 14913 of 2024

Deepak

... Petitioner in W.P.No.14910 of 2024

Elango

... Petitioner in W.P.No.14913 of 2024

Vs

1. The Chief Educational Officer,
Office of the Chief Educational Officer,
No.500, Raja St., Near Five Corner,
Town Hall, Coimbatore – 641 001.

2. The District Education Officer,
Office of the District Education Officer,
Coimbatore – 641 001.

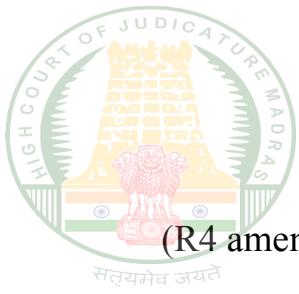
3. The District Educational Officer (Private Schools)
Office of the District Educational Officer (Private Schools)
Ondiputhur, Coimbatore -641 016

... Respondents in both W.Ps

4. N.G.R.A. Nursery and Primary School,
Rep. by its Correspondent,
Coimbatore Mahalingapuram,
Vellalur, Coimbatore – 641 111.

... Respondent in W.P.No.14910 of 2024

4. Kalaivani Matriculation School
rep. by its Correspondent,
Senthil Nagar, Ranganathapuram, Sular,
Coimbatore – 641 402



W.P.Nos.14910 and 14913 of 2024

(R4 amended vide order dated 07.06.2024)

.... Respondent in W.P.No.14913 of

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COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to admit the petitioners' daughter D.Lidharshana (W.P.No.14910 of 2024) and SinamikaElango (W.P.No.14913 of 2024) under The Right of Children to Free and Compulsory Education Act, 2009 by considering the petitioners' representations dated 28.05.2024 and 29.05.2024 and pass orders on merits and in accordance with law within the period that may be stipulated by this Hon'ble Court.

In both W.Ps.

For Petitioner : Mr.S.Lakshmi Narayanan

For Respondents : Mr.M.Rajendiran

Additional Government Pleader – R1 to R3

No appearance - R4

COMMON ORDER

The petitioner in W.P.No.14910 of 2024 is the father of one D.Lidharshana and the petitioner in W.P.No.14913 of 2024 is the father of one Sinamika Elango. Lidharshana and Sinamika are referred to as 'child' or collectively, as 'children'. They seek a mandamus directing the respondents, being the authorities of the Education Department of the State of Tamil Nadu/R1 to R3, and R4, being N.G.R.A. Nursery and Primary School, Coimbatore (W.P.No.14910 of 2024) and Kalaivani Matriculation School, Coimbatore (W.P.No.14913 of 2024) to admit the children to Lower



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Kindergarten under the Right to Children to Free and Compulsory Education

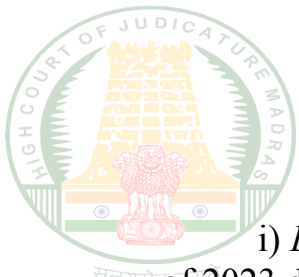
Act, 2009 (in short 'RTE Act').

2. Both the children belong to the Scheduled Caste (Arunthathiyar) Community and come under the category of '*child belonging to disadvantaged group*'. The petitioners had applied for admission in R4 school online on 04.05.2024 vide application No.1727589 (W.P.No.14910 of 2024) and 8702905 (W.P.No.14913 of 2024) seeking benefit under Section 2(d) of the RTE Act.

3. Both the applications have come to be rejected by respective R4 schools on the ground that their residences were situated beyond one kilometre from the schools. The rejection was reflected in lists that was put up on 28.05.2024 (W.P.No.14910 of 2024) and 29.05.2024 (W.P.No.14913 of 2024). The petitioners have not challenged the same, but, in the facts and circumstances of the case, this Court believes that the prayer for mandamus would suffice to espouse the relief sought.

4. The petitioners state that 25% of the total seat capacity to be filled under RTE is 14 seats in R4 school in W.P.No.14910 of 2024 and 15 seats in R4 school in W.P.No.14913 of 2024. Hence there are sufficient vacancies in the respective schools for the present academic year under RTE quota.

5. Mr.Lakshmi Narayan, learned counsel for the petitioners relies on the following decisions in support of their prayer.



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i) *Lakshmanan V. The Chief Educational Officer and others* (W.P.No.717 of 2023 dated 07.12.2023) ;

ii) *A.Gopal V. The District Educational Officer and another* (W.P.(MD) Nos.12153 & 12472 of 2022 order dated 26.07.2022);

iii) *Federation of Public Schools V. Government of NCT of Delhi* (2012 SCC Online Del 613) and

iv) *Amol Vasantryao Patil and ors V. Bhartiya Vidya Bhavan's Lloyds Vidya Niketan, Bhugaon and ors.* (2017 SCC Online Bom 6752).

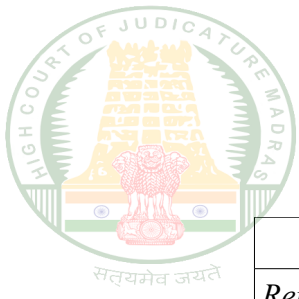
6. At the hearing on 14.06.2024, the submissions of both parties as well as the relevant facts have been captured as follows:

Read this order in conjunction with and in continuation of order dated 07.06.2024, wherein I have directed learned counsel for R1 to R3 to obtain the details of the seats filled under the Right to Education Act, 2009 (in short 'RTE Act') by R4 schools for the last two years as well as the present year.

2. *The following details have been supplied by learned counsel for R1 to R3.*

Details submitted regarding admissions made under 25 of in RTE Act 2009 in 4th respondent school for the period 2022 – 2024.

	W.P.No.14910 of 2024	14913 of 2024
<u>2022 – 2023</u>		
<i>Intake capacity</i>	08	15
<i>Total No. of application</i>	06	19
<i>Selection list</i>	05	15
<i>Reject Application (Reason)</i>	01 (1 Candidate above 1 Km)	04 (4 Candidate above 1 Km)
<u>2023 – 2024</u>		
<i>Intake capacity</i>	17	15
<i>Total No. of application</i>	16	9
<i>Selection list</i>	10	9



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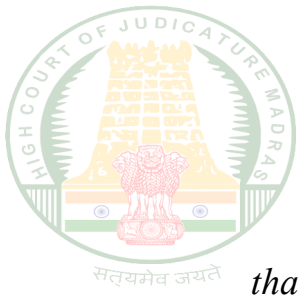
	W.P.No.14910 of 2024	14913 of 2024
<i>Reject Application (Reason)</i>	06 (4 Candidate above 1 Km) (2 Candidate admitted other school)	--
2024 – 2025		
<i>Intake capacity</i>	14	15
<i>Total No. of application</i>	19	14
<i>Selection list</i>	10	11
<i>Reject Application (Reason)</i>	09 (5 Candidate above 1 Km) (2 Candidate date of Birth mismatch) (2 Candidate admitted other school)	03 (1 Candidate above 1 Km) (1 Candidate not produced income certificate) (1 Candidate admitted other school)

3. For the purpose of the present Writ Petitions, it is clear that R4 schools have vacancies for academic year 2024-25 to consider the applications of the children. The applications have, admittedly, been submitted before the school authorities (placed at page 39 in both Writ Petitions) on 04.05.2024.

4. Though R4 schools have been served and description printed, there is no appearance on their behalf. There is a direction to R4 schools to consider the applications of the petitioners' children in line with the prescriptions under the RTE Act and the directions in the case of S.Lakshmanan V. The Chief Educational Officer and others (order dated 07.12.2023 passed in W.P.No.717 of 2023).

5. The petitioners will meet the concerned Correspondents/Principals of R4 schools on 20.06.2024 at 11.00 a.m. along with a copy of order dated 07.12.2023 passed in W.P.No.717 of 2023 and the present order, without awaiting any further notice in this regard.

6. Let the needful be done by the respective Correspondents/Principals in terms of admitting the children if they satisfy all the required criteria.



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7. The aforesaid process shall be monitored by R3 to ensure that the spirit and object of the RTE Act is implemented by the schools strictly.

8. List on 01.07.2024 in the same position.

7. Today (01.07.2024), a status report is filed by R3/District Educational Officer (Private Schools), represented by Mr.M.Rajendiran, learned Additional Government Pleader and the salient feature of that status report are as follows:

i) The residences of the petitioners are situated beyond 1 kilometre from respective R4 schools.

ii) The petitioners are expected to have made an application under a single ID, for upto 5 schools. However, the petitioner in W.P.No.14910 of 2024 has filed two applications by creating two IDs, i.e., 1697861 and 1727589 and the petitioner in W.P.No.14913 of 2024 has filed five applications by creating three IDs, i.e., 8234886 (three applications), 8702905 and 9263272.

iii) In both the matters, though the name of the father, child and address are same, the mobile numbers are different. Hence, according to R3 there has been suppression of facts.

iv) The cases relied on by the petitioners are distinguishable on facts.

v) There are two Panchayat Union Primary Schools, viz., Vellalalayam No.1 and Vellalalayam No.2 as well as Angawadis close to the residence of the petitioner in W.P.No.14910 of 2024 and one Panchayat Union Primary



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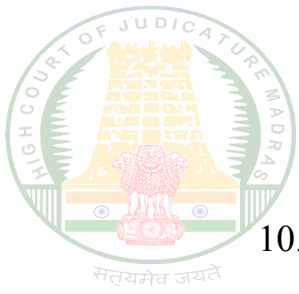
School at Kalangal Village close to the residence of the petitioner in

W.P.No.14913 of 2024.

vi) All welfare schemes are available in those schools and the petitioners could well have applied for admission there. The respondents prayed for rejection of the petitioners' prayer based on the aforesaid contentions.

8. I have heard both learned and perused the material papers placed on record. The RTE Act was instituted by virtue of sufficient educational opportunities not being available to all sections of society. The interpretation of that Act has thus to be made in a purposive manner so as to pursue that laudable object rather than to frustrate it. This is not to say that the interpretation may be expansive, and undoubtedly the stipulations contained therein must be adhered to, though bearing in mind the spirit of the Act.

9. The respondents are right in contending that two applications have been made by the petitioner in W.P.No.14910 of 2024 and five applications by the petitioner in W.P.No.14913 of 2024. The mobile numbers referred to therein are also different. However, admittedly, the Act, the Tamil Nadu Right to Children to Free and Compulsory Education Rules, 2011 (in short 'TN Rules') and Right to Children to Free and Compulsory Education Rules, 2010 (in short 'Rules') enable the parents/guardian to opt for/make, upto five applications under the RTE Act based on one registration.

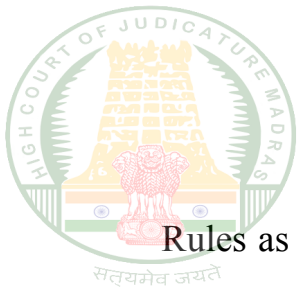


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10. In the present case, the petitioners state that after registering on the **WEB** website, they were able to select only one option of school and it was for this reason that multiple IDs were created and applications submitted. The respondents do not deny the aforesaid facts. Perhaps there was a glitch in the software that prevented the applicants from submitting more than one application pursuant to a registration necessitating more than one registration to be made. In any event, neither of the petitioners have submitted more than the maximum number of applications.

11. The mere fact that two applications have been made by the petitioner in W.P.No.14910 of 2024 and five applications by the petitioner in W.P.No.14913 of 2024 is hardly of any consequence when the overall number of applications is well within the total number of options that could be exercised for choice of school. That apart, it is also common that persons use multiple mobile numbers and this too is of no consequence. Hence, this objection is misconceived and I find nothing untoward in the procedure followed by the petitioners.

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



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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, 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;



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(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;'*

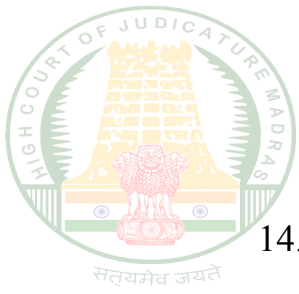
14. *The Bombay High Court in the case of Amol Vasantrya Patil and ors V. Bhartiya Vidya Bhavan's Lloyds Vidya Niketan, Bhugaon and ors. (2017 SCC Online Bom 6752) considered the issue of admission of students under RTE in non-aided pre-primary schools. In that case, the petitioners were, admittedly, 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.'



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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.

15. However, there is no lower or upper kindergarten in those schools and the applications filed by these petitioners are for these classes. Thus, while this argument may be considered in an appropriate case where a Government School is available in proximity to the applicant's residence, it has no application in the facts and circumstances arising in the present case.

16. Mr.Rajendiran points out that the application of the RTE Act is only for children aged 6 to 14 years and children in kindergarten would be below that age limit. However, the State Government has, over the years and since the implementation of the Act, been reimbursing expenditure for all classes commencing from the LKG, upto class VIII.

17. The most recent Government order is G.O.Ms.No.99 dated 02.06.2023 and the operative portion of the Order reads thus:

SCHOOL EDUCATION DEPARTMENT



W.P.Nos.14910 and 14913 of 2024

Notification for per child expenditure incurred on education by the State for the year 2022-2023, 2023-2024, 2024-2025 and 2025-2026 under the Right of Children to Free and Compulsory Education Act.

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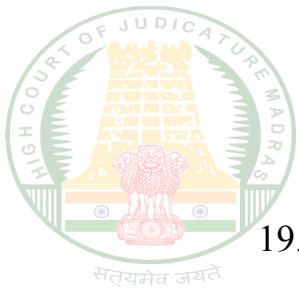
[G.O. Ms. No. 99, School Education (MS), 2nd June 2023, வைகாசி 19, சோபகிருது, திருவள்ளூர் ஆண்டு-2054]

Under sub-section 2 of Section 12 of the Right of Children to Free and Compulsory Education Act, 2009 (Central Act 35 of 2009), the Governor of Tamil Nadu hereby specifies the per child expenditure incurred on education by the State of Tamil Nadu for the year 2022-2023, 2023-2024, 2024-2025 and 2025-2026 for classes from LKG to VIII as stated below for the purpose of reimbursement to private schools:-

		Per child expenditure for the year 2022-2023 (Rupees)							
Class	LKG & UKG	1 std	2 std	3 std	4 std	5 std	6 std	7 std	8 std
Per child expenditure	6000	12076.85	12076.85	12076.85	12076.85	12076.85	15711.31	15711.31	15711.31

		Per child expenditure for the year 2023-2024, 2024 – 2025 and 2025 - 2026 (Rupees)							
Class	LKG & UKG	1 std	2 std	3 std	4 std	5 std	6 std	7 std	8 std
Per child expenditure	6000	12659.57	12659.57	12659.57	12659.57	12659.57	16477.81	16477.81	16477.81

18. Hence the State has suo motu, and appropriately, treated children who are below 6 years as well, as being entitled to the benefit of the Act. This, in fact, finds support from the proviso to Section 12(1) of the RTE Act, *Extent of school's responsibility for free and compulsory education*, coming under Chapter IV, dealing with *Responsibilities of Schools and Teachers* which makes reference to '*pre-school education*', thus, implying that the benefit of the Act is to extend to education from kindergarten to 8th standard. It is thus this stipulation that would apply, irrespective of the age of the child.

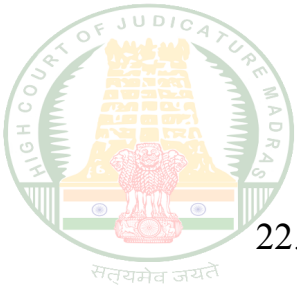


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19. This is all the more for the reason that the RTE Act is a Central enactment and different States have prescribed different ages for commencement of school education. The objection of the respondents thus has no legs to stand as the re-imbursements are, admittedly, being made, year on year for all classes from Lower kindergarten to 8th Standard. Since the Panchayat Union Primary Schools do not have lower kindergarten, the option of those schools is unavailable to the petitioners. Learned counsel for the respondent would then submit that the Anganwadi Centres would serve as substitutes for a kindergarten.

20. While this may well be so, this submission is not supported by any details or statistics to demonstrate whether the Anganwadi centres have thus far, been treated as part of the RTE scheme in the State. On the other hand, the State is regularly reimbursing the expenditure incurred by the LKG and UKG classes (pre-school education) in schools and hence is treating these classes as part of the RTE scheme.

21. Since the categoric object of the Act is to make available education for children from pre-school to 8th standard, it is this parameter that is paramount in understanding the application of the Act. The object of providing education for the children upto 8th standard will override any technical concerns relating to the ages of the students itself.



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22. In line with the above observations and the fact that R4 school in both

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Writ Petitions has, admittedly, vacancies as on date, I am of the considered view that both the children are entitled for admission to lower kindergarten in R4 school. Hence, mandamus is issued to respondents to take immediate action to admit the wards of the petitioners in LKG in R4 school, viz., N.G.R.A. Nursery and Primary School, Coimbatore (W.P.No.14910 of 2024) and Kalaivani Matriculation School, Coimbatore (W.P.No.14913 of 2024) with all the benefits of the RTE Act, after collecting necessary fee, forthwith.

23. These Writ Petitions are allowed. No costs.

01.07.2024

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Index : Yes/No

Speaking Order:Yes

Neutral Citation:Yes

To

1. The Chief Educational Officer,
Office of the Chief Educational Officer,
No.500, Raja St., Near Five Corner,
Town Hall, Coimbatore – 641 001.

DR.ANITA SUMANTH, J.

Sl

2. The District Education Officer,
Office of the District Education Officer,
Coimbatore – 641 001.



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3. The District Educational Officer (Private Schools)

Office of the District Educational Officer (Private Schools)

WEB COM Ondiputhur, Coimbatore -641 016

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