

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2800 OF 2015

- | | | |
|----|--|-------------------|
| 1] | Uran Education Society |] |
| | a Registered Public Charitable Trust, |] |
| | under the provisions of Bombay Public |] |
| | Trust Act, having its Registered Office at |] |
| | Palak Maidan, Bori, Uran, Dist. Raigad, |] |
| | Uran 400 702. |] |
| 2] | The Hon. General Secretary, |] |
| | Uran Education Society |] |
| | a Registered Public Charitable Trust, |] |
| | under the provisions of Bombay Public |] |
| | Trust Act, having its Registered Office at |] |
| | Palak Maidan, Bori, Uran, Dist. Raigad, |] |
| | Uran 400 702. |] |
| 3] | Unaided Schools Forum, a Society |] |
| | registered under the Societies |] |
| | Registration Act, 1860, which has |] |
| | its registered office at |] |
| | Hiranandani Foundation, 17, |] |
| | Saraswati Road, Santacruz (West), |] |
| | Mumbai, 400 054 and having an |] |
| | office for correspondence at |] |
| | Gujarat Research Society, Dr. |] |
| | Madhuri Shah Campus, R.K. Mission |] |
| | Road, Khar (West), Mumbai – 400 052 |] ... Petitioners |

Versus

- | | | |
|----|---------------------------------|---|
| 1] | The State of Maharashtra, |] |
| | Through the Secretary, |] |
| | for School Education and Sports |] |
| | Department, having its address |] |

- at Mantralaya, Mumbai 400 032.]
]
 2] The Director of Education (Primary),]
 Maharashtra State, Pune.]
]
]
 3] Education Officer (Primary)]
 Raigad Zilla Parishad, Alibag]
]
]
 4] Education Officer]
 Panchayat Samiti, Uran,]
 District Raigad.]
]
]
 5] Union of India,]
 Ayakar Bhavan,]
 Opp, Churchgate Station,]
 Mumbai – 400 032.] ... Respondents

Dr.Birendra Saraf a/w. Mr.Piyush Raheja, Mr.Vishesh Malviya, Ms.Nikita Mishra i/b M/s. Federal & Rashmikant for petitioners.

Mr.Sunil Manohar, Advocate General a/w. Ms.S.S.Bhende, AGP for respondent no.1-State.

Mr.Anil Singh, A.S.G. a/w Mr.R.A. Rodrigues, Mr.Rajiv Chavan, Mr.D.A.Dube, Mr.Ajay Patil, Mr.D.P. Singh and Mr.N.R.Prajapati for respondent no.4.

**CORAM : ANOOP V. MOHTA,
 K.R.SHRIRAM, JJ.**

DATE : 28TH APRIL, 2015

ORAL JUDGMENT (PER ANNOP V. MOHTA, J.) :

Rule. Rule is made returnable forthwith. Heard finally by consent of parties in view of the urgency expressed and the issues raised.

2 The petitioners, an unaided private school, imparting education in pre-school and elementary school, have filed this writ petition referring to the provisions of Articles 14, 19(1)(g), 21, 21A and 226 of the Constitution of India and Section 11, 12 of the Right to Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as “the Act”) and Rule 12(b) of 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 group and weaker section) Rules 2013 (The Rules 2013).

Rule 12 of the Rules 2013 read as under :

12 Procedure for reimbursement.— (a) Schools shall provide free education to all children admitted under these rules till the completion of their elementary education ;

(b) Such schools as provide admission as per these Rules shall only be eligible for reimbursement of their expenses as per Section 12(2) of the Act. No other reimbursement shall be eligible including admission in any pre-school classes ;

(c) Schools shall submit their claims for reimbursement (Form-V) to the concerned Education Officer in two installments :—

(i) 1st installment.— After the start of the academic year (once the admission procedure is over) but latest by September 30th. Claim for 1st installment must be accompanied with a declaration by the school that (a) full, proper , and transparent procedure (as per the Act and Rules) was followed in the presence of the

members of the Admission Committee including nominee of the Education Officer, and (b) these children would have not got admission but for the provisions of the Act ;

(ii) 2nd installment: After the completion of the academic year say by 30th May. Claim for the 2nd installment must be accompanied with a declaration from the school that all children admitted under these Rules have completed the academic year successfully and have been promoted and given admission to the next higher class in the same school.

(d) Education Officer on his satisfaction about the correctness of the information submitted by the school and the fulfillment of the conditions of the Act and Rules there under shall submit the claim of eligible amount for the eligible period as per the Act etc. within one month of the receipt of the respective claims to the Director of Education (Primary) for further action.

(e) Schools not following due procedure laid down in these rules will not be eligible for reimbursement besides other actions as per the Act.

(f) If the claim for reimbursement is found to be fraudulent, incorrect, or improper etc. police case will be registered against the school.

3 The Act was brought into force with effect from 1st April 2010 vide order dated 16th February 2010 issued by the Government of India. The Rules 2012 are notified on 15th March 2013. Rule 12(b) of these Rules is also impugned. The Circular No.Ra/Zipa/Education/Sashia/3227/2013 dated 30th March 2013 issued by the Raigad Zilla Parishad, Alibag under the 'Sarva Shiksha Abhiyan' is also impugned in this Petition.

4 Basic prayers clauses (a) and (c) read as under :

“(a) That this Hon'ble Court be pleased to declare under the provisions of the Right of Children to Free and Compulsory Education Act, 2009 the respondents are bound to reimburse the expenses of an unaided school in respect of children admitted under the RTE Quota in pre-school section under the proviso to section 12(1) of the Act.

“(c) That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or discretion to respondent nos.1 to 4 to forthwith release the amounts due to the petitioner no.1's school for granting admission to children admitted under the RTE Quota under said Act as per the Petitioner No.1's applications including dated 18th September 2013 (Exhibit 'G' hereto) and for all subsequent periods.”

5 Petitioner no.1, a registered society, established an unaided Primary English Medium School at Uran in the name of “Uran Education Society's English Medium School” (hereinafter referred to as “the School”). Most students studying in the school are from project affected families. As on date, the total strength of the School is 2220 students across pre-primary, primary and secondary sections.

6 Petitioner no.3, is a society of unaided schools registered under the provisions of the Societies Registration Act, 1860. It has about 200 members, which are all unaided schools. Its objects include educational

development in the area of unaided schools/institutions of education such as to create a representative forum for the managements of Unaided Schools/Institutions in Greater Mumbai/ Maharashtra State, to interact with the Boards of Education, Schools/ Colleges/ Universities, to upgrade the school system, to interact with the Government and other authorities, to improve the quality of education at all levels and obtain support for the financial viability of Unaided Schools/Institutions.

7 In accordance with the provisions of the Act, petitioner no.1 provided for admissions in the Mini KG level in the academic year 2013-14 to 50 students being 25% of the class strength under the RTE quota. The School followed the procedure as set out in the rules and the Circulars by putting up notices in the School and distributing forms for admission, drawing lots for selection of children. After the process was completed, the School granted admission to 49 children in the Mini KG section with one seat remaining vacant.

The Head Mistress of the school by her letter dated 5th July 2013 submitted the information in the prescribed format to respondent no.4.

The Head Mistress of the School by letter dated 2nd September 2013,

forwarded to respondent no.4 details of the children admitted. The school by its letter dated 18th September 2013 also submitted an application claiming reimbursement of expenses as provided under the Act and the approved fee structure of the school. The school also filed the necessary forms showing compliances by letter dated 20th September 2013.

The school did not receive any response to the aforesaid applications/forms for reimbursement. The school therefore addressed reminders dated 24th October 2013, 6th November 2013, 7th January 2014 and submitted the information so sought for reimbursement.

8 Respondent no.4 in a meeting with school officials, on 8th February 2014, informed the school that no reimbursement would be granted for children admitted in pre-primary section and that the school ought to collect fees from these children as per the general category. It was further informed that the reimbursement would be given under the Act only from Standard I onwards. Since respondent no.4's instructions given in the meeting held on 8th February 2014 appeared contrary to the Act, the school by its letter dated 21st February 2014 sought written instructions to collect fees from the students under the RTE quota under the pre-primary section.

Despite many reminders sent, the authorities have failed to process the applications of the school for grant of reimbursement. Petitioner no.1 has been deprived of over 25% fees, which amounts to over Rs.18 lakhs till date. It stands to lose at least further Rs.21 lakhs every year from 2015-16 onwards as the students will be progressing from Mini KG to Junior KG and from Junior KG to Senior KG-pre to primary school. Hence this petition.

9 Heard the learned Additional Solicitor General Mr.Anil Singh for Union of India, Advocate General Mr.Sunil Manohar for respondent no.1-State, Dr.Birendra Saraf for the petitioner in this petition and Mr.V.M.Thorat, Ms.Salgaonkar and the respective counsels in other petitions also. The learned counsel for the petitioners relied upon Article 21A and 45 of the Constitution of India, which read as under :

21A. Right to education.—*The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”.*

*“45. Provision for early childhood care and education to children below the age of six years.—
The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.”.*

Relevant provisions of the Act are :

2(a) “appropriate Government” means -

- (i) in relation to a school established, owned or controlled by the Central Government, or the administrator of the Union territory, having no legislature, the Central Government;
- (ii) in relation to a school, other than the school referred to in sub-clause (i), established within the territory of -
 - (A) a State, the State Government;
 - (B) a Union territory having legislature, the Government of that Union territory;

2(c) “Child” means a male or female child of the age of six to fourteen years;”

2(f) Elementary education means the education from first class to eighth class;

2(n) School means any recognized school imparting elementary education and includes –

- (i) a school established, owned or controlled by the appropriate Government or local authority;

- (ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

- (iii) a school belonging to specified category; and

- (iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.”

Chapter II deals with Right to Free and Compulsory Education. Chapter III deals with duties and appropriate Government, local authority and parents.

Section 7 falls within the ambit of this chapter.

7. Sharing of financial and other responsibilities: (1) The Central Government and the State Governments shall have concurrent responsibility for providing funds for carrying out the provisions of this Act.

(2) The Central Government shall prepare the estimates of capital and recurring expenditure for the implementation of

the provisions of the Act.

(3) The Central Government shall provide to the State Governments, as grants-in-aid of revenues, such percentage of expenditure referred to in sub-section (2) as it may determine, from time to time, in consultation with the State Governments.

(4) The Central Government may make a request to the President to make a reference to the Finance Commission under sub-clause (d) of clause (3) of article 280 to examine the need for additional resources to be provided to any State Government so that the said State Government may provide its share of funds for carrying out the provisions of the Act.

(5) Notwithstanding anything contained in sub-section (4), the State Government shall, taking into consideration the sums provided by the Central Government to a State Government under sub-section (3), and its other resources, be responsible to provide funds for implementation of the provisions of the Act.

(6)

10 Duties of appropriate Government and of local authorities to ensure that it provides free and compulsory elementary education to every child are covered under Sections 8 and 9. So also duties of parents and guardian in Section 10. The important section for the purpose of present issue is section 11 which deals with appropriate Government 's obligation and/or duty to provide for free pre-school education. Section 11 reads as under :

Section 11 : appropriate Government to provide for pre-school education – *With a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children*

until they complete the age of six years, the appropriate Government may take necessary arrangement for providing free pre-school education for such children. (emphasis supplied)

There is no definition provided elsewhere in the Act of this term 'pre-school education'.

11 Chapter IV deals with responsibilities of school and teachers.

12. *Extent of schools' responsibility for free and compulsory education – (1) For the purpose of this Act, a school ---*

(a) specified in sub-clause (I) of clause (n) of section 2 shall provide free and compulsory elementary education to all children admitted therein;

(b) specified in sub-clause (ii) of clause (n) of section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent;

(c) specified in sub-clauses (iii) and (iv) of clause (n) of section 2 shall admit in class I, to the extent of at least twenty-five per cent 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:

Provided further that where a school specified in clause (n) of section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education.

(2) The school specified in sub-clause (iv) of clause (n) of section 2 providing free and compulsory elementary education as specified in clause (c) of sub-section (1) shall be reimbursed expenditure so incurred by the State, or the Actual amount charged from the child, whichever is less, in such manner as may be prescribed:

Provided that such reimbursement shall not exceed per-child-expenditure incurred by a school specified in sub-clause (i) of clause (n) of section 2:

Provided further that where such school is already under obligation to provide free education to a specified number of children on account of it having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation.

(3) Every school shall provide such information as may be required by the appropriate Government or the local authority, as the case may be.

12 Section 38 gives power to the appropriate Government, by notification, to make rules, for carrying out the provisions of this Act, which includes, under sub-section (2) (d), the manner and extent of reimbursement of expenditure, under sub-section (2) of section 12.

13 The learned Additional Solicitor General appearing for Union of India stated that in view of Article 21A of the Constitution, the responsibility is that of the Central Government to provide free and compulsory education to all children of the age 6 to 14 years only. The learned Additional Solicitor

General also referred to a Chapter III, where duties of appropriate Government, local authorities and parents are referred to. Referring to Section 11 in Chapter III, he submitted that as provided in Section 11 of the Act, the provision for early childhood care and education for all children from age of 3 to 6 years is that of the State Government and Central Government will not reimburse.

14 The learned Advocate General appearing for the State of Maharashtra submitted that the proviso to Section 12(1) of the Act provides for compulsory pre-school education whereas sub-section (2) of Section 12 provides for reimbursement only for elementary education and elementary education is defined to mean education from Ist standard to 8th standard and therefore there is lacuna in the Act. Having considered the entire provisions of the Act, in our view, there is no lacuna at all. Chapters II and III deal with providing free and compulsory education to every child of the age of 6 to 14 years. In Chapter III of the Act, Section 11 provides for preparing children above age of 3 years for elementary education. It also states that the appropriate Government may make necessary arrangements for providing free pre-school education and early childhood care for all children until they complete the age of 6 years.

15 Section 12 which is in Chapter IV of the Act deals with the responsibilities of the school for free and compulsory education. As the petitioners are private unaided school which fall under sub-clause (4) of clause (n) of Section 2, we are restricting our comments to only Section 12(1)(c). Under Section 12(1)(c), a school, which is an unaided school not receiving any kind of aid or grant to meet its expenses from the appropriate Government or the local authorities, 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. The Proviso to sub-section 12(1), provides further that where a school specified in clause (n) of Section (2) imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education. Therefore, it is quite clear that whether schools impart only pre-school but not elementary education like for e.g., a Montessori, then such schools do not have the responsibilities as required under Section 12 of the Chapter IV of the said Act.

Sub-section (2) of Section 12 deals with reimbursement of the expenditure incurred by an unaided school not receiving any kind of aid or grants to meet the expenses. It provides that such a school, i.e., an unaided school not receiving any kind of aid or grant to meet its expenses from the

appropriate Government or the local authorities which imparts elementary education shall be reimbursed expenditure so incurred by it and the quantum of reimbursement. Sub-section (2) cannot be read to mean that reimbursement will be only for providing free and compulsory elementary education. The expression “.....specified in sub-clause (iv) of clause (n) of Section (2) providing free and compulsory education as specified in clause (c) of Sub-section 1” shall identifies the school and not the education for which reimbursement will be given.

When one reads Section 11, it is quite clear that the responsibility is thrust upon the appropriate Government which in the present case will be the Government of Maharashtra, for providing free pre-school education for children between age group of 3 to 6 years to prepare them for elementary education and to provide early childhood care. The moment, the appropriate Government, i.e., the State of Maharashtra makes arrangements for free pre-school education for such children and directs the schools including schools specified in sub-clause (iv) of clause (n) of Section 2, it is the responsibility and obligation of the State Government to reimburse such schools. In this case, the State Government has issued a directive to all schools imparting elementary education and pre-school education to admit in pre-school to the extent of at least 25% of the strength of that class, children belonging to weaker section and the disadvantaged group in the neighbourhood and

provide free and compulsory education. Therefore, the State Government is bound and liable to reimburse such schools to the extent of the amount mentioned in sub-section (2) of Section 12 of the Act.

16 The Maharashtra Right of Children to Free and Compulsory Education Rules, 2011, that came into effect on 1st April 2010 (the State Rules) in Form 2 referred in sub-rule (4) of Rule 11 provides for reimbursement even for pre-school class. Clauses 3 and 4 of Form II are as under :

3. The school shall give admit in class I, to the extent of 25% of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide to them free and compulsory education till its completion. Provided further that in case of pre-primary classes also, this form shall be followed.

4. For the children referred to in paragraph 3, the School shall be reimbursed as per Section 12(2) of the Act. To receive such reimbursement school shall provide a separate bank account.

The same provisions are in Andhra Pradesh Rules/form so also in Arunachal Pradesh Rules and other States also. There is no specific contra stand in any of the Rule/Form except the State of Maharashtra.

17 The learned counsel appearing for the petitioners has placed on record

various rules of other States whereby the respective Governments have specifically made rules to provide fixed reimbursement amount. Clause 3 of the Notification issued by the Government of Karnataka reads as under :

“.....

3 Further, it is also notified that the upper limit of the per student expenditure to be reimbursed to those unaided educational institutes which impart pre school education towards the children admitted to pre school class shall be Rs.5,924/- (Rupees Five thousand nine hundred and twenty four only) per annum per student.”

18 Rule 12 of the Right to Children to Free and Compulsory Education Rules, 2010 (framed in exercise of powers conferred by Section 38 of the said Act) that came into effect on 9th April 2010 deals with the reimbursement of the per child- expenditure by the appropriate Government.

It reads as under :

12. **Reimbursement of per-child-expenditure by the appropriate Government** :-- (1) The total annual recurring expenditure incurred by the appropriate Government , from its own funds, and funds provided by the Central Government and by any other authority, on elementary education in respect of all schools referred to in sub-clause (I) of clause (n) of section 2, divided by the total number of children enrolled in all such schools, shall be the per-child-expenditure incurred by the appropriate Government .

Explanation – For the purpose of determining the per-child-expenditure, the expenditure incurred by the appropriate Government or local authority on schools referred to in sub0clause (ii) of clause (n) of section 2 and the children enrolled in such schools shall not be included.

(2) Every school referred in clauses (iii) and (iv) of clause (n) of section 2 shall remain a separate bank account in respect of the amount received by it as reimbursement under sub-section (2) of Section 12.

19 The Supreme Court in ***Pramati Educational and Cultural Trust (Registered) and Others Vs. Union of India & Ors.***¹, maintained validity of the Act and held as under :

52 To give an idea of the goals Parliament intended to achieve by enacting the 2009 Act, we extract paragraphs 4, 5 and 6 of the Statement of Objects and Reasons of the Bill which was enacted as the 2009 Act hereinbelow:

“4. The proposed legislation is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of schools run or supported by the appropriate Government s, but also of schools which are not dependent on Government funds. It is, therefore, expedient and necessary to enact a suitable legislation as envisaged in Article 21A of the Constitution.

5. The Bill seeks to achieve this objective.”

It will be clear from the aforesaid extract that the 2009 Act intended to achieve the constitutional goal of equality of opportunity through inclusive elementary education to all and also intended that private schools which did not receive Government aid should also take the responsibility of providing free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections.

53 When we examine the 2009 Act, we find that under Section 12(1)(c) read with Section 2(n)(iv) of the Act, an unaided school not receiving any kind of aid or grants to

¹ (2014) 8 SCC 1

meet its expenses from the appropriate Government or the local authority is required to admit in class I, to the extent of at least twenty-five per cent 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. We further find that under Section 12(2) of the 2009 Act such a school shall be reimbursed expenditure so incurred by it to the extent of per-child expenditure incurred by the State, or the Actual amount charged from the child, whichever is less, in such manner as may be prescribed. Thus, ultimately it is the State which is funding the expenses of free and compulsory education of the children belonging to weaker sections and several groups in the neighbourhood, which are admitted to a private unaided school. These provisions of the 2009 Act, in our view, are for the purpose of providing free and compulsory education to children between the age group of 6 to 14 years and are consistent with the right under Article 19(1)(g) of the Constitution, as interpreted by this Court in *T.M.A. Pai Foundation (supra)* and are meant to achieve the constitutional goals of equality of opportunity in elementary education to children of weaker sections and disadvantaged groups in our society. We, therefore, do not find any merit in the submissions made on behalf of the non-minority private schools that Article 21A of the Constitution and the 2009 Act violate their right under Article 19(1)(g) of the Constitution.

...

55 When we look at the 2009 Act, we find that Section 12(1)(b) read with Section 2(n) (iii) provides that an aided school receiving aid and grants, whole or part, of its expenses from the appropriate Government or the local authority has to provide free and compulsory education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent. Thus, a minority aided school is put under a legal obligation to provide free and compulsory elementary education to children who need not be children of members of the minority community which has established the

school.”

20 In *Society for Unaided Private Schools of Rajasthan Vs. Union of India & Anr.*², the Apex Court has already interpreted Section 12(1)(c) and (b) read with Section 2(n)(i) to (iv) read with Section 18(3) along with constitutional provision as under covering the pre-school education by the school as under :

“14 Chapter IV of the 2009 Act deals with responsibilities of schools and teachers. Section 12(1)(c) Sections (2(n)(iii) mandates that every recognised school imparting elementary education, even if it is an unaided school, not receiving any kind of aid or grant to meet its expenses from the appropriate Government or the local authority, is obligated to admit in Class I, to the extent 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. As per the proviso to Section 12(1)(c), if the school is imparting pre-school education, the same regime would apply.”

15 By virtue of Section 12(2) the unaided school which has not received any land, building, equipment or other facilities, either free of cost or at concessional rate, would be entitled for reimbursement of the expenditure incurred by it to the extent of per child expenditure incurred by the State, or the Actual amount charged from the child, whichever is less, in such manner as may be prescribed. Such reimbursement shall not exceed per child expenditure incurred by a school established, owned or controlled by the appropriate Government or a local authority.”

2 (2012) 6 SCC

21 In view of Section 11, the appropriate Government made arrangement through private unaided schools to provide free pre-school education to such disadvantaged children by directing the school to provide care and education to such disadvantaged children between the age 3 to 6 years in their pre-school. There is no other provision or steps taken by which the appropriate Government is taking such care and providing education. The appropriate Government therefore bound to continue with such obligation/duty in the interest of people at large. It is well within law and the declared child care/education policy. In view of clear provision, no question to change the reimbursement policy for the unaided school who have admitted RTI quota children in pre-school level as stated as an entry level.

22 In view of the above clear provisions, there is no issue that these Acts and rules made thereunder made mandatory for the appropriate Government, local authorities to make elementary education compulsory and provide all facilities. Section 12 as referred above and the respective rules made thereunder, deals with the aspect of reimbursement whenever there is a question and/or direction issued to admit the students to the extent of at least 25% of the strength of the class, children belonging to weaker section and disadvantaged group and provide free and compulsory education. The free and compulsory education therefore needs to be within

the ambit of provisions of this Act. All concerned are bound by the same including the guardian/parent. Apart from the constitutional articles so referred above, this Act, itself has taken care of the important duties of appropriate Government, local authorities and parents about the child who is of age 3 to 6 years. From six years onwards, as recorded above, the elementary education commenced and there is no provision made of child care aspect of children below three years. It is necessary to note that the Central and the State Government have already announced from time to time various child care and education policies/schemes whereby the respective Governments provided and even made various arrangements to take care of child/children of every age. We are concerned with the concept of free pre-school education for children between 3 to 6 years.

23 The Supreme Court referred Articles 41 to 45 in ***Ganapathi National Middle School, Vs. M.Durai Kannan (dead) by L.Rs., & Ors.***³ and observed as under :

“.....
Article 45 of the Constitution enjoins the State to provide free and compulsory education to all children upto age of 14 years. It is the constitutional mandate of the State to provide compulsory education. It is now settled law of this Court that right of education is a fundamental right to every child. The State cannot impart education by itself. Therefore, the agency through which it organises imparting education is recognised

³ AIR 1996 Supreme Court 2803

private institutions according to its procedure.....”

24 We are inclined to interpret the provisions of the Act to advance the constitutional goal. The appropriate Government can not read the provisions by overlooking Article 45 read with Article 21A of the Constitution of India.

25 Appropriate Government, as defined in S. 2 (a) of this Act, includes Central Government in relation to a school established, owned or controlled by the Central Government or the Administrator of the Union Territory, having no legislature; and in relation to other schools in Union Territory having legislature, the government of that Union Territory and the State Government in their respective State, and they may make necessary arrangements for providing free pre-school education for such children. Section 11 of the Act contemplates the necessary arrangement for providing free pre-school education for children in the age group of 3-6 years.

Whether it is mandatory and/or compulsory for this Act to make the pre-school education free is the discussion. Once we have taken note of the constitutional provisions and the child care and education policy so declared by the Central Government, the role of the State Government to deal with the care and education for all children, just cannot be overlooked while

dealing with the provisions of the Act in question. Ultimately, it is an overall question of development of new generation. For any child and/or children, development, the State Government and/or appropriate Government need to perform their part. It is difficult to accept their submissions that they are not bound to provide free pre-school education for children at pre-school (3 to 6 years) belong to weaker section and disadvantaged group under the Act. The State itself, in fact, insisted to admit such children by treating and defining it into two entry level. This itself means, under the Act itself the State has permitted to admit such children in pre-school section. Having provided option for the school to select the school level, itself means that there is no issue that all provisions of the Act/rules are applicable to the pre-school education and so also for the "reimbursement".

26 Section 11 and Section 12 of the Act, in our view deal with the aspect of imparting education to pre-school children, though Section 12(2) is silent so far as the word 'free' is concerned. Once we have taken note of Section 11, Section 12 also cannot be read in isolation where there is reference made of free pre-school education for such children. If we read section 11 together with section 12, the concept of free pre-school education for such children appears. The State/Central Government duties and obligations are difficult to dissect as per the Act apart from the constitutional provisions.

27 The issue of reimbursement for providing education to such children from age 3 to 6 years also cannot be read in isolation by distinguishing it from Section 11. Section 12 itself contemplates and provides so far as the elementary education is concerned to admit students at least to the extent of 25% as recorded above. The said provisions along with the rules definitely contemplates the entitlement of reimbursement of such schools/institutions which provide such education by admitting such 25% children. In our view, the moment such school/institution admits such students of aged 3 to 6 years, their entitlement of reimbursement should follow. The appropriate Government is even otherwise providing only a limited reimbursement amount as per the policy so declared. The schools/institutions have been left to bear balance amount so spent for imparting such free education of all levels. At this stage, we are not dealing with the fact as to what extent the reimbursement should be granted and/or amount is less or more. However, we are inclined to observe that the Supreme Court's decision in ***Pramati Educational and Cultural Trust*** (supra) so referred above, while dealing with the aspect of constitutional validity of the Act has confirmed the issue of reimbursement.

28 Early childhood care and education is an essential foundation for a

future of all group specially of disadvantaged and poor, weaker part of society, no one can overlook it. It is the appropriate Government's duty to make arrangement to fulfill their social obligations which includes sharing financial burden with private institutions, Central Government, school and parents. The reimbursement is one of the issue. It is essential to make pre-school education arrangement for weaker section and disadvantaged group. The State must provide public pre-school or make arrangement for the same. It is straight obligation to read inequality. Even in this regard for extending limited fund.

29 The reimbursement issue is between the appropriate Government and the management of school. The State can shift the burden and obligation by directing such schools to admit any State Government run primary school if available in near area with facilities and infrastructure.

30 All the schools which are admitting the children for pre-school education in view of provision to sub-section (1)(c) of Section 12 of the Act, it is difficult to accept the contention that the provisions of reimbursement is not be applicable to such schools and/or institutions. To interpret otherwise means we are creating two classes : the institutions/schools which admit the students of 25% for providing elementary education, they are entitled for the

reimbursement, but the institution and/or schools which are also admitting the children for pre-primary education, they are not disentitled for such reimbursement. The appropriate Government itself permitted them to select the entry level. The whole submission and circulars of the State Government are, therefore, inconsistent and self destructive. Such two classes, in our view, cannot be created when the provisions are so clear and are read together with the constitutional provisions. Once 25% children belong to the weaker section- disadvantaged class admitted in elementary and/or in pre-school education, such schools/institutions are entitled for the reimbursement as per the law.

31 The circular of the State of Maharashtra cannot be read and/or interpreted contrary to the provisions so referred above and also the rules made thereunder. The Act is clear and so also the other provisions. To achieve the object and as per the policy declared by the Central Government and the State Government from time to time, all need to act accordingly once a disadvantaged class children are accommodated and/or directed to give admission, the reimbursement should follow. Even otherwise, the reimbursement amount is the full expenses incurred by such not aided institutions and/or schools but it is only fixed amount decided by the State Government. In this way, as per the arrangement those

institutions/schools and the State of Maharashtra both are fulfilling their respective roles to impart child care and education for these children of age 3 to 6 years (pre-school).

32 There are instruction circular insisted for such admission in pre-schools as mentioned and relied by the petitioners also in writ petition No.6644 of 2014. The State circular and guidelines in view of above, need to be corrected in all respect. The clear provisions ought to have been interpreted and used for the benefits of children care and education specifically when there is no issue that State itself as stated, given option to select the entry level, Pre-school education and /or primary/elementary education. This itself means that State in no way deny in their obligation and duty. Therefore, the 25% entry itself contemplates the requisite reimbursement. The submission that the reimbursement applies only to and from primary education level for I standard is self destructive and unacceptable.

33 A statement is made earlier also that respondent no.1 and 2 have not filed an undertaking as ordered in writ petition no.2199 of 2013 (Aurangabad Bench). Petitioners in that case also have admitted the students. Now the question of reimbursement require consideration, even in

view of order passed by this court (Coram : Anoop V. Mohta & F.M. Reis, JJ.) on 12th September 2014 by this court in writ petition No.6644 of 2014 **(Dr.Vikhe Patil Foundation's Vikhe Memorial School (English Medium) & Ors. State of Maharashtra)**. There is no question of giving direction to give any undertaking by respondent-Union of India and/or State in view of above reasons in other paragraph as we have decided the issue of reimbursement finally now. The portion of order dated 12th September 2014 is as under :

“12 In the present facts and circumstances, we are inclined to observe that this controversy, even if any, which we will decide after the reply affidavit from the State Government, but such students of pre-school classes cannot be denied their right of education, pending the writ petitions and/or the institute of the management for the assurances/undertaking so recorded in a Division Bench order reproduced above. The interest of students should prevail and the dispute between the management and State Government, if any, should not be the reason to follow the interim order so recorded above in this peculiar facts and circumstances. We normally follow even such interim order, but considering the Civil Application and the right of education of such students, we are inclined to pass order. The same shall be subject to further and final order of this Court. We direct the Petitioner/management/school to admit the applicant's children in the Junior KG classes, as early as possible, preferably within a week.”

34 The Government circular cannot be read in contravention of provisions of the Act/rules so read above, apart from constitution mandate.

The interpretation of Constitution and Act taking into overall policy of Government based upon the Constitution of India should prevail, in case of conflict, if any. The issue of reimbursement therefore, in our view, be read in consonance with the Act/rule and cannot be isolated only for the pre-primary education.

35 The State Government from time to time, as per the averments so made in the petition, issued circulars from time to time directing them to admit such children in pre-school so also in primary school but, at what stage the reimbursement should be given was the issue. Later on, even denied the reimbursement also. The entry level is also announced. But denied the reimbursement to the school who admitted the children in pre-school level. Such fluctuating stands and circulars are not in the interest of people at large and the policy so declared.

36 It is settled that the Act/Statute and related rules need to be read as a whole, by referring to the intended object and purpose of the Act and the policy. In our view, above provisions are clear and also interpreted by the Hon'ble Supreme Court. There are materials on record to show that the State Government themselves though their agents insisted various such schools to admit students of disadvantaged groups in pre-nursery schools

also. The State Government as stated, insisting by giving option to the schools to opt for such admissions of disadvantaged students either at pre-school level and/or primary school level. The option itself shows that the State Government is fully aware that such restriction/insistence of admission to disadvantaged children cannot be applicable at pre-nursery level and/or at primary level. Therefore, the State Government's interpretation and/or submission now when it goes to reimbursement as prayed, in our view is not acceptable. The stand itself is self contradictory and self destructive. The circulars and/or rules so interpreted by the State Government, the same is also changing from time to time. It is, therefore, necessary to settle the issue so far as the reimbursement is concerned. There is no question of denying the same to such schools. We are not dealing with which stage. The option is to be provided or school should admit such children. Neither we are concerned in this matter, the issue with regard to the rule of the State Government permitted the schools to deal with the vacant seats after the last round. The State Government to take decision and issue appropriate orders/circulars within the frame work recorded and the law. The circulars therefore, even if any, by overlooking above provisions and decisions, need to be modified in accordance with law. There is no question to deny such reimbursement through rules and/or new circular dated 25th March 2015 contrary to the provisions and their own earlier stand/circular. The issue is

not of other expenses. The guardian/parents of such weaker section and or disadvantaged group can not be compelled and/or directed to reimburse the amount to the school who have granted admission to children into pre-primary school, as the State now denying to reimburse the amount.

37 Therefore, taking overall view of the matter and considering the object and scheme of the Act and so also the constitutional provisions, unless appropriate Government may not in a position to take decision by following due process of law to amend the provision and declare authoritatively in advance to the people at large that they are not bound under the provisions to admit the children of 25% and/or at what level. This cannot be against the provision of the Act specially by the State circular or resolutions. Upon plain reading of the sections and consider the total scheme of the Act but subject to verification from the record of the school and/or of the record of the institution and/or by following the due process of law, the State Government require to reimburse to the school/institution the amount so contemplated under the Acts and rules made thereunder once they impart care and education to the children aged 3 to 6 years (pre-school) level of the disadvantaged/weaker class. The petitioners have made representations with detail, requesting the State Government to reimburse the amounts, but in vain. Therefore, we are inclined to allow this petition to

the extent of prayer clauses (a) and (c) and order accordingly.

38 The writ petition stands disposed of accordingly.

39 Rule is made absolute accordingly.

40 No costs.

41 Parties to act on the basis of an authenticated copy of this order.

(K.R. SHRIRAM, J.)

(ANOOP V MOHTA, J.)