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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.05.2025

PRONOUNCED ON :10.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.No.18427 of 2025

V.Eswaran

... Petitioner

Vs.

1.Government of Tamil Nadu,
Rep.by its Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Secretariat, Fort.St.George,
Chennai – 600 009.

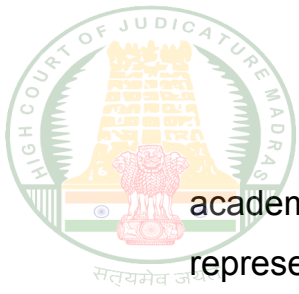
2.The Director of Private Schools,
Government of Tamil Nadu,
DPI Campus, College Road,
Chennai - 600 006.

3.The Secretary to Government,
Union of India, Department of School,
Education and Literacy,
Ministry of Education,
New Delhi – 110 001.

... Respondents

(R3 suo motu impleaded as per
order dated 22.05.2025)

PRAYER: Writ Petition under Article 226 of the Constitution of India
praying to issue a Writ of Mandamus, directing the respondents to initiate
the admission process under Right to Education Act, 2009 for the



academic year 2025-26 immediately by considering petitioner's representations dated 22.04.2025, 30.04.2025 and 08.05.2025.

WEB COPY For Petitioner : Mr.N.Ponraj

For R-1 & R-2 : Mr.J.Ravindran, Additional Government Pleader
assisted by Mr.U.M.Ravichandran
Special Government Pleader

For R-3 : Mr.AR.L.Sundaresan,
Additional Solicitor General of India
assisted by Dr.G.Babu, Senior Panel Counsel

ORDER

(By G.R.SWAMINATHAN, J.)

"Today, education is perhaps the most important function of state... It is the very foundation of good citizenship. Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." - Earl Warren, CJ in **Brown v. Board of Education, 98 Lawyers Ed. 873.**

2.This writ petition has been filed in public interest. The issue flagged by the petitioner is that the process of admission under Right of Children to Free and Compulsory Education Act, 2009 does not commence in time. He points out that though the admission of children must take

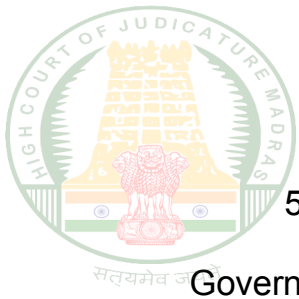


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place before the very commencement of the academic year, till the second week of May, 2025, steps have not been taken to receive applications online for admissions under the Act.

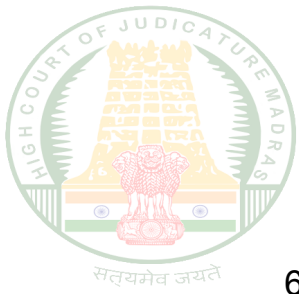
3.The prayer in the writ petition is only for directing the authorities to initiate the admission process for the academic year 2024-25. This being a public interest litigation, we cannot confine ourselves to the writ prayer alone. We have to necessarily address all the attendant aspects. The writ court dealing with issues of public importance can mould the reliefs and issue appropriate directions to do complete justice. Courts of equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go where only private interests are involved (**vide *Shiv Shankar Dal Mills v. State of Haryana*, (1980) 2 SCC 437**).

4.We have to widen the scope of this writ petition to deal with the issue of reimbursement of expenditure incurred by the private school managements. We take judicial notice of the fact that the Education Department does not make the reimbursements in time. In fact, one of us (G.R.S, J.) had occasion to consider this aspect in ***The Correspondent, Krishnamal Ramasubbaiyer School v. The State of Tamil Nadu*** (WP(MD)No.10952 of 2021 dated 14.07.2022).



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5.The learned Additional Advocate General appearing for the State Government, while conceding that the private school managements are entitled to reimbursement, contended that this responsibility has to be shared between the Central and the State Governments. He added that unfortunately, the State has not been paid its legitimate dues and as a result, the State Government is not able to reimburse the school managements in time. He informed us that the Principal Secretary to Government, School Education Department had convened a meeting of the officials in this regard. He later circulated the minutes of the meeting. His stand is that due to non-release of funds by the Union Government, the expenditure towards RTE reimbursement to the schools under Section 12(1)(c) of the Act to the tune of Rs.188.99 crores for the year 2022-23 was borne in entirety by the Government of Tamil Nadu. The Government of Tamil Nadu has since approached the Hon'ble Supreme Court by filing a suit under Article 131 of the Constitution of India in O.S Diary No.28793 of 2025 against the Union Government. The State has sought direction against the Union Government to pay a sum of Rs.2151.59 crores being its 60% share towards Samagra Shiksha Scheme as approved by Project Approval Board for the financial year 2024-25. The Tamil Nadu Government proposes to make a further representation to Union Government to immediately release the funds at least towards the RTE entitlement. The learned Additional Advocate General also fairly conceded that for the last two years reimbursements have not been made.



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6. Since the role and duty of the Union Government was highlighted by the learned Additional Advocate General, we suo motu impleaded the Union Government. The learned Additional Solicitor General of India, even while reiterating the Union Government's commitment to ensuring that every child has access to education, submitted that Samagra Shiksha Scheme is an integrated scheme that envisages education as a continuum from pre-school to class 12, and that the scheme is aligned with the provisions of NEP 2020. Since the State Government has not agreed to implement NEP 2020, there are issues regarding disbursement of funds. He pointed out that in view of Section 7(5) of the Act, it is the State Government that is primarily responsible for implementing the RTE Act.

7. We carefully considered the rival contentions and went through the materials on record.

8. The Parliament enacted Act 35 of 2009 to ensure that all the children of the age of six to fourteen years are provided free and compulsory education. The Act thus fulfils and effectuates the constitutional objective set out in Article 45 of the Constitution r/w. Article 21A. Some of the relevant provisions of the Act are extracted below. Section 2(a) of the Act reads as follows :



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“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...”*

Section 2(n) of the Act reads as follows :

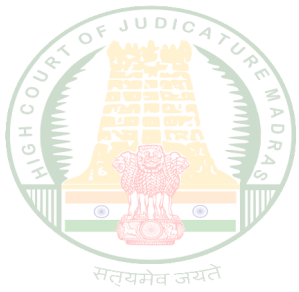
“(n) “school” means any recognised school imparting elementary education and includes—

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

Section 3(1) and (2) of the Act is as follows :

“3. Right of child to free and compulsory education.—

- (1) Every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education.]*
- (2) For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which*



may prevent him or her from pursuing and completing the elementary education.”

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Chapter III of the Act catalogues the duties of appropriate governments and the local authorities. Section 12 occurring in Chapter IV of the Act casts certain responsibilities on schools. Section 12(1) reads as follows :

“12.Extent of school's responsibility for free and compulsory education.—

(1) For the purposes 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 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.

Sub-section 2 of Section 12 of the Act provides for reimbursement of the expenditure incurred by the school. It reads as follows :



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“(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 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:

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.”

9. In view of the mandate set out in Section 12(1)(c) of the Act, private school managements have been admitting children from economically weaker sections and disadvantaged groups and are providing education to them to the extent of 25% of the strength in entry level classes without charging fees. As per the mandate of Section 12(2) of the Act, the State Government is obliged to reimburse them. Though the quantum of reimbursement has to be as per the formula set out in Section 12(2) of the Act, the State Government has been fixing a certain sum as reimbursement amount.

10. Section 7 of the Act reads as follows :

“7. Sharing of financial and other responsibilities.—

(1) The Central Government and the State Governments shall have concurrent responsibility for providing funds



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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...”

11.The issue about the duty of the state government was dealt with by a learned Single Judge of this Court in ***M.Suveathan v. State***



Commission in **WP No.4615 of 2022** dated 18.04.2023. The learned

Judge has held as follows :

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“23. From a careful perusal of Section 12 (2) coupled with the duty of the State and the Local Authorities to provide compulsory education as prescribed u/s 8 and 9, it is evident that the expenditure incurred by the school in respect of a child admitted under the 25% quota shall be reimbursed to the school to the extent of per-child expenditure incurred by the State or the actual amount charged from the child, whichever is less.

24....Such being the case, it is the duty of the State in coordination with the Central Government to share the expenditure for the purpose of providing compulsory education to the children belonging to weaker sections of the society and disadvantaged groups...”

The order of the learned Single Judge was put to challenge before a Division Bench in **WA No.1819 of 2023**. The Hon'ble Division Bench vide order dated 06.11.2024 slightly modified the order of the learned Single Judge in the following terms :

“5. Relying on Section 12(2) of the Act, the learned Additional Advocate General submitted that the Government's responsibility to reimburse the expenditure met by school is not the actual amount incurred by the individual schools in every case, but, either the actual amount charged from the child or the expenditure incurred by the State per-child, whichever is less. Hence, direction in paragraph 36 of the order of the learned Single Judge is contrary to Section 12(2) read with Rule 12 of the rules



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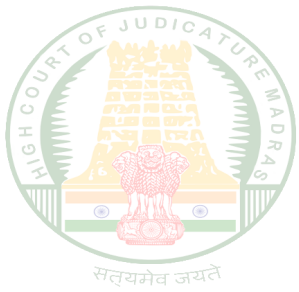


framed under the Act.

6. In view of the above, this Court modify the order of the learned Single Judge limiting the liability of the Government strictly in terms of Section 12(2) read with Rule 12 of the Act. In other words, the 3rd respondent school, which is directed to provide uniform, notebooks, textbooks as contemplated under the Act to students admitted as per Section 12 of the Act, is entitled to claim for reimbursement to the extent of per-child expenditure incurred by the State or the actual amount charged from other children, whichever is less...”

12.The moot question that we have to consider is whether the State Government can default in fulfilling its statutory and constitutional obligation by citing non-receipt of funds from the Union Government. This issue is no longer res integra. In ***Justice for All v. Government of NCT of Delhi (AIR Online 2020 Del 1282)***, the Hon'ble Division Bench of the Delhi High Court held as follows :

“166.Though it is the stand of the respondent no.1 - GNCTD that despite it spending 26% of its budget on education, it has not been able to fully discharge its obligations under the [RTE Act, 2009](#) for want of additional funds/financial support from the Central Government under [Section 7](#) of the RTE Act, 2009 as the Central Government spends only 4.43% of GDP on education, yet this Court is of the view that [Section 7\(5\)](#) of the RTE Act, 2009 provides that the right of children shall not suffer



due to any delay in sharing of financial responsibilities and the State/GNCTD shall be responsible to provide funds.

The court refused to adjudicate upon the dispute with regard to finances between the Centre and the State.

13.In Minor ***P.N.Kavin Nilavan vs. UOI (WP No.15437 of 2018)***

dated 04.02.2022, the learned Single Judge held as follows :

“9. Therefore, since a legal obligation casts upon the State Government to implement the fundamental child right as enshrined in the [Article 21 A](#) of the Constitution in accordance with the provisions of the [RTE Act](#), **it is bounden duty of the State Government to discharge its obligation by letter and spirit by making reimbursement in time and any delay in reimbursement or any breach of such obligation, would frustrate and defeat the very purpose of scheme itself.** This is more so when [Section 7\(5\)](#) of the RTE Act, 2009 clearly stipulates that irrespective of a finance dispute between the Centre and State, in the first instance the State shall be responsible to provide funds for implementation of the said Act and accordingly, they must provide sufficient provision in the budget, so that this type of delay in reimbursement can be avoided. Therefore, it is for the State to provide funds/reimbursement in the first instance.”

14.In ***The Correspondent, Krishnamal Ramasubbaiyer School v. The State of Tamil Nadu (WP(MD)No.10952 of 2021 dated 14.07.2022)***,

it was held as follows :



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“9....whatever be the Board Of Education to which the school is affiliated the State Government bears the responsibility of reimbursement... Obligation that is statutorily assumed by the State Government under the aforesaid statutory scheme cannot be passed on. ... under the [RTE Act](#), a social obligation has been imposed on the school Managements. While the school managements have to necessarily discharge this social obligation, they cannot be expected to do it free. I take judicial notice of the fact that reimbursement made by the State Government is hardly commensurate with the expenditure that is actually incurred by the School Managements..

12...Either the petitioner school should be relieved from discharging the obligation under the [RTE Act](#) or the respondents must bear the responsibility reimbursing the expenditure incurred per child. After insisting that the RTE obligation should be fulfilled, the State cannot refuse to reimburse. Such a stand would be patently unreasonable and unfair and violative of [Article 14](#) of the Constitution of India. Duty of the schools to admit students under the RTE quota and the duty of the State to make reimbursement are like Siamese twins. One cannot be divorced from the other. They necessarily go together. It is not open to the authority to upset this arrangement that has been put in place by the statute.



The above decision was rendered in the context of the department declining to make the reimbursement by citing the change of affiliation and the school becoming a CBSE institution.

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15. Rule 9 of the Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011 is as follows:

9. Reimbursement of per-child expenditure by the State Government for the purpose of sub-section (2) of section 12.-

(1) The per-child expenditure shall be the expenditure incurred by the State Government for a child in the Government School or the fee fixed by the Committee constituted under the Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009 (Tamil Nadu Act 22 of 2009) in respect of the school where the child is admitted whichever is less.

(2) (a) The school specified in sub-clause (iv) of clause (n) of section 2 shall, in the month of July, submit to the local authority, a list of students admitted in the school, who are provided free and compulsory elementary education for reimbursement of per-child expenditure by the State Government. (b) If any child leaves or absents himself for a period exceeding thirty days or leaves the school in the middle of the academic year, the same has to be intimated to the local authority and claim has to be made accordingly.

(3) The local authority shall sanction the reimbursement amount for each academic year in two installments, namely in the months of September and March after verifying or



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cause to be verified the enrollment of those students in the school.

(4) Every school referred to in sub-clause (iv) of clause (n) of section 2 shall maintain a separate bank account in respect of the amount received by it as reimbursement under sub-section (2) of section 12.

(5) Subject to the provisions contained in the proviso to clause (a) of section 8 and clause (a) of section 9, the reimbursement shall be made through electronic clearance system in the separate bank account maintained by the school for the purpose.

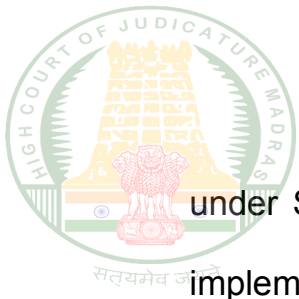
16. Section 15 of the RTE Act reads as follows :

“15.No denial of admission.—A child shall be admitted in a school at the commencement of the academic year or within such extended period as may be prescribed:

Provided that no child shall be denied admission if such admission is sought subsequent to the extended period:

Provided further that any child admitted after the extended period shall complete his studies in such manner as may be prescribed by the appropriate Government.”

A careful reading of the statutory provisions in the light of the various precedents leads us to the irresistible conclusion that the State Government is obliged to commence the admission process under the RTE Act well in time so that the children admitted under this quota are able to join the respective neighbourhood schools at the very commencement of the academic year. The State government has the primary responsibility



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under Section 7(5) of the Act to be responsible to provide funds for the implementation of the provisions of the Act. Therefore, the State Government is directed to make reimbursements by adhering to the timeline laid down in the statute. The quantum of reimbursement cannot be arbitrary. It has to be as per Section 12(2) of the Act r/w. Rule 9 of the Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011. The State Government has a non-derogable obligation to reimburse private unaided schools. Non-receipt of funds from the Union Government cannot be cited as a reason to wriggle out of this statutory obligation.

17. Having issued the aforesaid directions to the State Government, we call upon the Central Government to discharge its obligations under the Act. It is true that implementation of the Samagra Shiksha Scheme is aligned to NEP 2020. But then, obligation under RTE Act is independent by itself. Section 7 of the Act states that the Central Government and the State Governments have concurrent responsibility for providing funds for carrying out the provisions of the Act. Section 7(3) of the Act mandates that the Central Government shall provide to the State Government as grant in aid of revenues such percentage of expenditure referred in sub-section 2 as it may determine from time to time in consultation of the State Governments. Therefore, funds payable to the State Government representing the Central Government's share towards discharging the RTE obligations need not be linked to NEP 2020. Since the State Government



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had already filed a suit before the Hon'ble Supreme Court, we are not in a position to issue any binding direction in this regard. The total sum for the financial year 2024-25 towards SSS is Rs.3585.99 crores. The share of the Central Government is said to be Rs.2151.59 crores. The RTE component must be less than Rs.200.00 crores. There cannot be any difficulty in releasing the Central Government's share under this head. We, therefore, direct the Central Government to **consider** de-linking the RTE component of SSS and disburse the funds accordingly.

18.This writ petition is disposed of accordingly. No costs.

(G.R.S.,J) & (V.L.N,J)

10.06.2025

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To:

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G.R.SWAMINATHAN, J.
AND
V.LAKSHMINARAYANAN, J.

SKM/KST

W.P.No.18387 of 2025

10.06.2025