

AFR



2025:AHC-LKO:57720

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 8327 of 2025

Huzaifa Khan Thru. Their Father QuayumPetitioners(s)
Khan And Another

Versus

State Of U.P. Thru. Prin. Secy. Deptt. BasicRespondents(s)
Edu. Lko. And 3 Others

Counsel for Petitioners(s) : Manish Jauhari, Ambuj Kumar Bajpai

Counsel for Respondent(s) : C.S.C., P K Sinha

Reserved : 15.09.2025

Delivered : 19.09.2025

Court No. - 6

HON'BLE PANKAJ BHATIA, J

1. Heard the counsel for the petitioner, learned Standing Counsel and Sri P. K. Sinha the counsel for the respondents no. 3 and 4.
2. The present petition has been filed by the petitioners, who are two in number through their father and natural guardian, stating that the petitioner no.1 aged about 11 years is studying at the respondent no.4 school, in Class V and the petitioner no.2 who is aged about 14 years is studying in Class IX. It is stated that both the children are outstanding sportsman and besides pursuing their studies with the

respondent no.4 are also pursuing the skills in cricket and they have joined a Cricket Academy at Lucknow. It is stated that, although the petitioners have never been detained in past, have now been detained in the examination held for the session 2024-2025, in respect of the petitioner no.1 and vide progress report of the petitioner no.2 for the examination 2024-2025.

3. The contention of the counsel for the petitioner is that in terms of the prescriptions contained in the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred as 'RTE Act'), the detention of the petitioner no.1 as well as the petitioner no.2 is contrary to the prescriptions contained in the RTE Act and also violates their rights under Article 21-A of the Constitution of India. It is stated that the respondents authorities were unhappy with the petitioners as, they were pursuing their hobby in Cricket and on account of the said grievance, they are not being permitted to undergo examination afresh, even if the respondent no.4 was of the view that, the petitioners needed improvement in their academic performance they ought to have been given a chance to appear in re- examination. It is further argued that the detention of the petitioners was contrary to the prescriptions contained in the RTE Act.

4. The respondent no 4 school has filed counter affidavit stating that although the petitioners have a right of free and compulsory education, guaranteed by Article 21-A read with the Act, however, it is emphasized that both the students were not having the requisite attendance and also did not qualify the examination and not detaining, students similar to the petitioners, affects the academic schedule and reputation of the school in question. It is further argued that, in terms of the prescriptions contained under the Act in question, the respondents, being unaided private school, are not amenable to all the provisions of the RTE Act and their obligations in terms of the Act, is confined only to the prescriptions contained

under section 12 of the Act. It is further argued that Section 16 of the Act cannot be interpreted to apply to the general students in the same fashion as to the students who get benefits of Section 12(1)(c) so as to reduce their competence and excellence by giving them freedom of not to work towards excellence, not to learn, become ruffians of the school so as to disturb the entire atmosphere of the school in question. It is further argued that if, the school is not allowed to fail/detain students, the teachers would also stop paying attention to the children and in that case, even the teachers cannot be evaluated by the Management appropriately. In the light of the said, it is argued that both the petitioners, do not have the necessary minimum attendance also.

5. With regard to the petitioner no.1, it is stated that he had secured only 41.67% marks and the student's attendance was 57.8% and despite being made aware that 75% attendance is compulsory, he did not take any steps for avoiding the shortage of attendance while the student was in Class III and despite the same, he was promoted. In the academic session 2023-2024, his attendance percentage was down to 36% and attendance to 55.24% which is less than 75% attendance, which is made compulsory by the ICSE Rules, to which the respondent no.4 institution is affiliated. Similarly with regard to petitioner no.2, it is stated that his performance was below par and the attendance was also less. It is stated that in terms of the 'Discipline Rules' of school, minimum attendance is required 90%, failing which, the child is not permitted to undergo the examination.

6. It is also stated that the petitioner no.2 was given warning which was signed by the father of the petitioner no.2 himself. It is also stated that the father of the petitioner no.2 gave in writing that the petitioner no.2 would not be in a position to attend the remedial classes and the result will be his responsibility. It is also stated that the result of the petitioner no.2 has already been sent to the ICSE

Board. In the light of the said, it is stated that the writ petition is liable to be dismissed.

7. Reliance is placed upon the judgment of the Supreme Court in the case of **Society for Unaided Private Schools of Rajasthan vs. Union of India and another; (2012) 6 SCC 1** with emphasis on paragraphs 37 to 48 as well as paragraph 64, which are quoted herein below:

"37. Thus, from the scheme of Article 21-A and the 2009 Act, it is clear that the primary obligation is of the State to provide for free and compulsory education to children between the age 6 to 14 years and, particularly, to children who are likely to be prevented from pursuing and completing the elementary education due to inability to afford fees or charges. Correspondingly, every citizen has a right to establish and administer educational institution under Article 19(1)(g) so long as the activity remains charitable. Such an activity undertaken by the private institutions supplements the primary obligation of the State. Thus, the State can regulate by law the activities of the private institutions by imposing reasonable restrictions under Article 19(6).

38. The 2009 Act not only encompasses the aspects of right of children to free and compulsory education but to carry out the provisions of the 2009 Act, it also deals with the matters pertaining to establishment of school(s) as also grant of recognition (see Section 18). Thus, after the commencement of the 2009 Act, the private management intending to establish the school has to make an application to the appropriate authority and till the certificate is granted by that authority, it cannot establish or run the school. The matters relevant for the grant of recognition are also provided for in Sections 19, 25 read with the Schedule to the Act. Thus, after the commencement of the 2009 Act, by virtue of Section 12(1)(c) read with Section 2(n)(iv), the State, while granting recognition to the private unaided non-minority school, may specify permissible percentage of the seats to be earmarked for children who may not be in a position to pay their fees or charges.

39. In T.M.A. Pai Foundation [(2002) 8 SCC 481] , this Court vide para 53 has observed that the State while prescribing qualifications for admission in a private unaided institution may provide for condition of giving admission to small percentage of students belonging to weaker sections of the society by giving them freeships, if not granted by the Government. Applying the said law, such a condition in Section 12(1)(c) imposed while granting recognition to the private unaided non-minority school cannot be termed as

unreasonable. Such a condition would come within the principle of reasonableness in Article 19(6).

40. Indeed, by virtue of Section 12(2) read with Section 2(n)(iv), a private unaided school would be entitled to be reimbursed with the expenditure incurred by it in providing free and compulsory education to children belonging to the above category to the extent of per child expenditure incurred by the State in a school specified in Section 2(n)(i) or the actual amount charged from the child, whichever is less. Such a restriction is in the interest of the general public. It is also a reasonable restriction. Such measures address two aspects viz. upholding the fundamental right of the private management to establish an unaided educational institution of their choice and, at the same time, securing the interests of the children in the locality, in particular, those who may not be able to pursue education due to inability to pay fees or charges of the private unaided schools.

41. We also do not see any merit in the contention that Section 12(1)(c) violates Article 14. As stated, Section 12(1)(c) inter alia provides for admission to Class I, to the extent of 25% of the strength of the class, of the children belonging to weaker sections and disadvantaged group in the neighbourhood and provide free and compulsory elementary education to them till its completion. The emphasis is on “free and compulsory education”. Earmarking of seats for children belonging to a specified category who face financial barrier in the matter of accessing education satisfies the test of classification in Article 14. Further, Section 12(1)(c) provides for a level playing field in the matter of right to education to children who are prevented from accessing education because they do not have the means or their parents do not have the means to pay for their fees.

42. As stated above, education is an activity in which we have several participants. There are number of stakeholders including those who want to establish and administer educational institutions as these supplement the primary obligation of the State to provide for free and compulsory education to the specified category of children. Hence, Section 12(1)(c) also satisfies the test of reasonableness, apart from the test of classification in Article 14.

43. The last question which we have to answer under this head is whether Section 12(1)(c) runs counter to the judgments of this Court in T.M.A. Pai Foundation [(2002) 8 SCC 481] and P.A. Inamdar [(2005) 6 SCC 537] or principles laid down therein?

44. According to the petitioners, T.M.A. Pai Foundation [(2002) 8 SCC 481] defines various rights and has held vide para 50 that right to establish and administer educational institutions broadly comprises the following: (i) right to admit students, (ii) right to set up a reasonable fee structure, etc. (the rest are not important for

discussion under this head). That, *T.M.A. Pai Foundation* [(2002) 8 SCC 481] lays down the essence and structure of rights in Article 19(1)(g) insofar as they relate to educational institutions in compliance with (a) the charity principle, (b) the autonomy principle, (c) the voluntariness principle, (d) anti-nationalisation, (e) co-optation principle. In support, reliance is placed by the petitioners on a number of paragraphs from the above two judgments.

45. At the outset, we may reiterate that Article 21-A of the Constitution provides that the State shall provide free and compulsory education to all children of the specified age in such manner as the State may, by law, determine. Thus, the primary obligation to provide free and compulsory education to all children of the specified age is on the State. However, the manner in which this obligation will be discharged by the State has been left to the State to determine by law. The State may do so through its own schools or through aided schools or through private schools, so long as the law made in this regard does not transgress any other constitutional limitation. This is because Article 21-A vests the power in the State to decide the manner in which it will provide free and compulsory education to the specified category of children. As stated, the 2009 Act has been enacted pursuant to Article 21-A.

46. In this case, we are concerned with the interplay of Article 21, Article 21-A, on the one hand, and the right to establish and administer educational institution under Article 19(1)(g) read with Article 19(6). That was not the issue in *T.M.A. Pai Foundation* [(2002) 8 SCC 481] nor in *P.A. Inamdar* [(2005) 6 SCC 537]. In this case, we are concerned with the validity of Section 12(1)(c) of the 2009 Act. Hence, we are concerned with the validity of the law enacted pursuant to Article 21-A placing restrictions on the right to establish and administer educational institutions (including schools) and not the validity of the scheme evolved in *Unni Krishnan, J.P. v. State of A.P.* [(1993) 1 SCC 645]

47. The above judgments in *T.M.A. Pai Foundation* [(2002) 8 SCC 481] and *P.A. Inamdar* [(2005) 6 SCC 537] were not concerned with interpretation of Article 21-A and the 2009 Act. It is true that the above two judgments have held that all citizens have a right to establish and administer educational institutions under Article 19(1)(g), however, the question as to whether the provisions of the 2009 Act constituted a restriction on that right and if so whether that restriction was a reasonable restriction under Article 19(6) was not in issue.

48. Moreover, the controversy in *T.M.A. Pai Foundation* [(2002) 8 SCC 481] arose in the light of the scheme framed in *Unni Krishnan case* [(1993) 1 SCC 645] and the judgment in *P.A. Inamdar* [(2005) 6 SCC 537] was almost a sequel to the directions in *Islamic Academy of Education v. State of Karnataka* [(2003) 6 SCC 697] in which the

entire focus was institution-centric and not child-centric and that too in the context of higher education and professional education where the level of merit and excellence have to be given a different weightage than the one we have to give in the case of Universal Elementary Education for strengthening social fabric of democracy through the provision of equal opportunities to all and for children of weaker sections and disadvantaged group who seek admission not to higher education or professional courses but to Class I.

64. *Accordingly, we hold that the Right of Children to Free and Compulsory Education Act, 2009 is constitutionally valid and shall apply to the following:*

- (i) a school established, owned or controlled by the appropriate Government or a local authority;*
- (ii) an aided school including aided minority school(s) 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 non-minority school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority."***

8. The counsel for the respondents has argued that, paragraph 64 of the judgment cannot be read in isolation and the directions given by the Supreme Court are only in respect of the obligations cast upon the private schools and recorded in para 37 onwards. Thus, it is said to be argued that the entire RTE Act is not applicable to an unaided non-minority schools not receiving any kind of aid or grants to meet its expenses.

9. In the light of the said, it is essential to notice the mandate of the Right of Children to Free and Compulsory Education Act, 2009. The RTE Act in question was framed in pursuance to, the Right of Education included in the Constitution by virtue of Article 21-A. The RTE Act, was enacted to provide for free and compulsory education to all the children. Section 2(n) of the Act defines 'school' as under :

"2. Definitions- *In this Act, unless the context otherwise requires, -*

- (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 is the salutary promise flowing from the Act of ensuring free and compulsory education to every child of the age of six to fourteen years. Section 12 provides for responsibilities of the schools and teachers for providing free and compulsory education, which is as under :

"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 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 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:

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."

Section 16 of the Act, which is the bone of contention of interpretation in the present case, provides for examination and holding back of the students in certain cases, which is as under :

"16. Examination and holding back in certain cases - (1) There shall be a regular examination in the fifth class and in the eighth class at the end of every academic year.

(2) If a child fails in the examination referred to in sub-section (1), he shall be given additional instruction and granted opportunity for re-examination within a period of two months from the date of declaration of the result.

(3) The appropriate Government may allow schools to hold back a child in the fifth class or in the eighth class or in both classes, in such manner and subject to such conditions as may be prescribed, if he fails in the re-examination referred to in sub-section (2):

Provided that the appropriate Government may decide not to hold back a child in any class till the completion of elementary education.

(4) No child shall be expelled from a school till the completion of elementary education."

10. In the present case, the petitioner no.1 was declared as failed and is aged about 11 years whereas the petitioner no.2 was declared as failed and is aged about 14 years. The said two students were detained on account of their poor academic performance as well as they not achieving the requisite attendance.

11. In the present case, the first issue to be decided is whether, the private unaided schools are liable to the mandate of Section 16 or not. Paragraph 64 of the judgment of the Hon'ble Supreme Court in the case of **Society for Unaided Private Schools of Rajasthan (supra)** is clear that the Act in whole, is applicable to all the schools

as defined under section 2(n) of the RTE Act. The distinction as sought to be interpreted by the counsel for the respondents that the private unaided school, are only to follow the mandate of Section 12 and not the other provisions, merits rejection solely on the ground of interpretation of the Act and its applicability to the private aided schools by virtue of the judgment of the Supreme Court in the case of **Society for Unaided Private Schools of Rajasthan (supra)**.

12. The argument of the counsel for the respondents, based upon the provisions of para 37 onwards of the said judgment, also merits rejection as the Supreme Court although was dealing with the validity of Section 12(1)(c) of the RTE Act has categorically held in para 64, as recorded above, and it is not open for this Court, to adopt any other interpretation, as is being argued by the counsel for the respondents. Thus, it is categorically held that all the provisions of the Act including Section 16 of the RTE Act are applicable to the respondents school also. In the present case, there is a clear violation of the mandate of Section 16(2) of the RTE Act.

13. It is also necessary to refer that, no prescription has been issued in terms of the mandate of Section 16(3) in the State of U.P. Thus, there being a clear violation of rights of the children flowing from Section 16 (2) of the Act. The action of the respondents school in expelling the students is also violative of Section 16 (4) of the Act.

14. It is also essential to notice that the action against the two students is founded on the internal discipline guidelines of the school as well as guidelines of minimum attendance issued by the affiliating board that is ICSE, however as the appropriate Government ,in the present case the State of UP, has not issued any prescriptions under Section 16 of the RTE Act the said internal guidelines and guidelines of the affiliating Board will have to yield

to the mandate of the Act and cannot be given precedence over the Act.

15. Thus, for all the reasons recorded above, the writ petition is liable to be allowed with directions to the respondents to readmit the petitioner no.1 and permit him to pursue the studies in Class VIth after granting him an opportunity of re-examination within a period of two months. Similarly the petitioner no.2 shall also be readmitted to Class IXth as the requisite records of students passing Class IXth have already been uploaded on the website of ICSE and it may not be possible for the petitioner no.2 to take examination in Class Xth for this academic year and keeping in view his performance on the academic side, the respondent no.4 shall permit the petitioner no.2 to undergo the studies for Class IXth.

16. The writ petition stands *allowed* in terms of the said directions.

(Pankaj Bhatia, J.)

September 19, 2025

VNP/-