



17-2026

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

PUBLIC INTEREST LITIGATION NO. 17 OF 2026

[Mr Ashish Chaman Fulzele and ors. **vs.** State of Maharashtra through its Principal Secretary, School Education and Sports Department and ors.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Ms. Jayna Kothari, Senior Advocate assisted by Mr. Dipankar Kamble, Advocate (and Ms. Payal Gaikwad, Advocate through video conferencing) for petitioners

Mr. S. M. Ukey, Additional Government Pleader for respondents

Ms. Devyani Kulkarni, Advocate for intervenor

CORAM : **ANIL L. PANSARE AND**
NIVEDITA P. MEHTA, JJ.

DATE : **12-03-2026.**

Yesterday, following order was passed.

“*Heard.*”

2. *The petitioners are seeking to quash and set aside clauses (3), 5.2, 5.3, 5.4 and 5.5 of the Government Resolution dated 12.02.2026, insofar as they impose a rigid one kilometer territorial ceiling in the implementation of Section 12(1) (c) of the Right Of Children To Free and Compulsory Education Act, 2009 (“RTE Act”), being ultra vires the parent statute and violative of Articles 14, 15 (4), 21A and 46 of the Constitution of India.*

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

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

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

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

6. Section 38 of the RTE Act extends powers to the appropriate Government to make rules and accordingly the Maharashtra Right of Children to Free and Compulsory Education Rules, 2011 ("Rules") were brought into force with effect from 11.10.2011. Rule 2(m) of the Rules provides definition of "Neighbourhood school" to mean a school in respect of children in Classes I to V, to be a school established as far as possible within a distance of 1 Km. of the neighbourhood and in classes VI to VIII within a distance of 3 Km. of the neighbourhood.

7. Rule 4(5) of the Rules provides that the local authority shall designate a neighbourhood school for every settlement or area. A proviso was

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

8. *This proviso and the corresponding proviso to Rule 8(2) was challenged before this Court at Principal Seat in the case of Akhil Bharatiya Samajwadi Adhyapak Sabha & Ors. Vs. State of Maharashtra and Ors; (Public Interest Litigation No.61/2024 with connected matters). The Division Bench considered the relevant provisions of the RTE Act so also Rules made thereunder vis-a-vis the provisions of the Constitution of India, particularly Article 21A, to hold that the provisos to Rule 4(5) and Rule 8(2) are ultra vires the RTE Act and Article 21A of the Constitution of India. While doing so, the Court held that the obligation under Section 12(1)(c) of the RTE Act to reserve 25% of the seats in class I or pre-school in private unaided school for children from disadvantaged groups and weaker sections, is absolute and unconditional and that it applies to all specified categories and private unaided schools without any qualifying criteria such as proximity or availability of Government or aided schools within 1 Km. radius. The Court further held that the proviso to Rules 4(5) and 8(2) directly contradict unconditional mandate of Section 12(1)(c) and cannot limit or dilute its scope through subordinate legislation. The Court further held that by introducing a distinction based exclusion from private unaided schools, the amendment undermines the inclusive framework of the RTE Act designed to ensure neighbourhood education through a combination of Government, aided and private unaided schools, thereby defeating the rights, objects and purpose. Most importantly, the Court held that though Section 6 imposes a primary duty on the State to establish neighbourhood school within 1 Km. for classes I to V and 3 Km. for classes VI to VIII, this does not render State's obligation under Section 12(1)(c) contingent or supplemental. The Court opined that Section 12(1)(c) operates independently as mandatory measure to achieve*

universal access to education and the existence of Government or aided schools does not absolve private unaided schools of their reservation duty.

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

10. Thus, in terms of Section 12(1)(c), it is the responsibility of the schools, including the schools belonging to specific category and/or an unaided school not receiving any kind of aids or grants from the State Government to admit in Class-I at least 25% of the strength of that class, children belonging to weaker sections and disadvantaged group in neighbourhood school and provide free and compulsory elementary education. Thus, in a case where the private unaided school is not located within the limit of 1 Km. from the registered residence of a child and though the State has established neighborhood school in terms of Section 6, the child belonging to disadvantaged group or weaker section cannot be deprived of his right to take education in terms of provisions of RTE Act. It is, in this context, we had opined in our order dated 09.03.2026 that the restrictions imposed through impugned Government Resolution are contrary to the judgment in the case of *Akhil Bharatiya Samajwadi Adhyapak Sabha & Ors. supra* as also are violative of provisions of RTE Act read with Articles 14, 21 and 21A amongst other.

11. At this stage, Ms Jayna Kothari, learned Senior Counsel appearing for the petitioner, has invited our attention to Annexure-G to point out that a child named, Shivans Sachin Pote made an attempt to submit form for admission to I standard under the provisions of the RTE Act but could not succeed because no school is available within 1 Km. The residence of the child is located at Khapri Subhedar locality, Borkhedi Nagpur (Gramin). Another such student named, Prathyusha Paras Gajbhiye, r/o Kukdey Layout, Kausallya Nagar,

Nagpur. In her case also, no school is available within limit of 1 Km. Learned Senior Counsel submits that there can be many such cases where no school is available within area of 1 Km. and there can be many cases where no private unaided school is available within 1 Km. though other schools may be available.

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

13. Learned A.G.P, however, has placed reliance upon judgment in the case of *Amol Vasantrao Patil and Ors. Vs. Bhartiya Vidya Bhavan's Lloyds Vidya Niketan and Ors.*; [Writ Petition No.2303/2017 decided on 13.07.2017], to contend that the restriction of 1 Km. or 3 Km., as the case may be, is well recognized.

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

and the extent, limit/distance can only be invoked after verifying exhaustion of nearer seats.

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

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

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

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

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

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

In response, learned Additional Government Pleader submits that respondent – State has taken decision to the extend the criteria of 1 Km. to 3 Kms. The date for filing application is extended up to 18-3-2026.

In our view, if purpose of provision under Section 12(1)(c) of the Right of Children to Free and Compulsory Education Act, 2009 (for short 'RTE Act') is to be achieved, the respondents should ensure that the distance of the school from the residence of the child should be such, as to accommodate at least one private unaided school and if the number of applications for admission in private unaided school is more than 25% of the strength of that Class in a particular school, the distance should be suitably extended to accommodate another private unaided school.

Since this arrangement is practically impossible, the respondents should not put a limit of distance for admission in private unaided school. The respondents shall accordingly modify this criteria to enable the children to seek admission in terms of Section 12(1)(c), amongst other provisions of the RTE Act. The respondents shall also examine and submit before us the data about establishment of schools in terms of Section 6 of the RTE Act, which the State Government was under obligation to establish within three years of coming into force the RTE Act.

As we have noted in our order dated 11-3-2026 that at some places, there is no school available within the distance of 1 Km., which in a way,

suggest failure of respondent – State to establish school in terms of Section 6 of the RTE Act and, therefore, the criteria of 1 Km. ought not to have been imposed. Similar could be situation for 3 Kms. The State Government shall accordingly examine the situation and suitably modify the distance criteria with a rider that such restrictions should not be imposed for admission to private unaided school. Necessary steps shall be taken within two days from today and compliance report shall be filed on 16-3-2026.

At this stage, learned Additional Government Pleader has invited our attention to the documents furnished by the petitioners yesterday wherein we all were made to believe that the students seeking admission in 1st Standard are unable to get benefits of the provisions of RTE Act because at some places, there is no school available within the distance of 1 Km. The first such example, as quoted by us in our order dated 11-3-2026, is of Ms. Prathyusha Paras Gajbhiye. Learned Additional Government Pleader submits that the said child was seeking admission to Junior KG. Her age is 4 years.

Thus, it appears that petitioners have filed the documents to point out lapses at the hands of the respondents, knowing fully well that the documents could not have been relied upon. Such conduct is not acceptable.

We have condemned the respondents' action on this count. Its a different matter that the action still requires deprecation in as much as another document supports the contention of the petitioners. Nonetheless,

the attempt made by the petitioners to mislead the Court is deprecated. The petitioners shall pay costs of Rs. 25,000/-, which the petitioners shall deposit in Public Welfare Account maintained with Union Bank of India, High Court Branch, Nagpur bearing Account No. 129712010001014 and IFSC Code UBIN0812978 within one week from today.

List for compliance on 16-3-2026 at 2.30 p.m.

(JUDGE)

(JUDGE)

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