

HIGH COURT FOR THE STATE OF TELANGANA : HYDERABAD

MAIN CASE NO: W.P.(PIL)No.38 of 2020

PROCEEDING SHEET

SL. NO	DATE	ORDER	OFFICE NOTE
27.	11.04.2025	<u>HACJ (SP,J) & RY,J</u> Sri Sunil B. Ganu, learned <i>Amicus Curiae</i>; Sri S. Rahul Reddy, learned Special Government Pleader attached to the office of learned Additional Advocate General for the State, for respondent Nos.1 to 3 and Sri B. Narasimha Sharma, learned Additional Solicitor General of India, for respondent No.4. With the consent, hearing commenced. Learned <i>Amicus Curiae</i>, at the outset, submits that Section 12(1)(c) of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) became subject matter of adjudication twice before the Supreme Court. Initially, a Three-judge Bench of Supreme Court in Society for Unaided Private Schools of Rajasthan v. Union of India and another {(2012) 6 SCC 1} considered the provisions and gave its conclusions in Part VI: Conclusions in paragraph No.311. This judgment was again considered by a Constitutional Bench of Supreme Court in Pramati Educational and Cultural Trust (Registered) and others v. Union of India and others {(2014) 8 SCC 1}. Reliance is placed on paragraph No.55 of this judgment which reads thus: “55. When we look at the 2009 Act, we find that Section 12(1)(b) read with Section 2(n)(ii) provides that an aided school receiving aid and	Transferred to IO Folder before corrections.

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		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. We also find that under Section 12(1)(c) read with Section 2(n)(iv), an unaided school has to admit into twenty-five per cent of the strength of Class I children belonging to weaker sections and disadvantaged groups in the neighbourhood. Hence, unaided minority schools will have a legal obligation to admit children belonging to weaker sections and disadvantaged groups in the neighbourhood who need not be children of the members of the minority community which has established the school. While discussing the validity of clause (5) of Article 15 of the Constitution, we have held that members of communities other than the minority community which has established the school cannot be forced upon a minority institution because that may destroy the minority character of the school. In our view, if the 2009 Act is made applicable to minority schools, aided or unaided, the right of the minorities under Article 30(1) of the Constitution will be abrogated. Therefore, the 2009 Act insofar it is made applicable to minority schools referred in clause (1) of Article 30 of the Constitution is ultra vires the Constitution. We are thus of the view that the majority judgment of this Court in <i>Society for Unaided Private Schools of Rajasthan v. Union</i>	

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		<i>of India</i> [(2012) 6 SCC 1] insofar as it holds that the 2009 Act is applicable to aided minority schools is not correct.” Learned <i>Amicus Curiae</i> further submits that the memo dated 07.06.2024 shows that a Standard Operating Procedures (SOP) prepared by the National Commission for Protection of Children Rights (National Commission). Relevant portion of the SOP reads thus: “3. Centralized Online System a. To fulfil its responsibility for ensuring that the children belonging to weaker section and the children belonging to disadvantaged group are not prevented from pursuing and completing elementary education on any grounds, the Appropriate Government (section 8, RTE Act, 2009) shall develop a centralized online portal for admissions under section 12 (1) (c). All the District Education Departments shall be connected to the centralized portal. b. The online portal shall be universally accessible especially to people in remote areas and to CWSN/PwDs as per guidelines for Indian Government website issued by NIC and Department of Administrative Reforms and Public Grievances (D/o AR&PG), Government of India, available at https://darpg.gov.in/sites/default/files/Guidelines for Government websites_0_0.pdf c. The online portal shall have all the necessary information regarding the admissions under section 12 (1) (c). This must include the following information (but not limited to) i. the notified State Rules and guidelines;	

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		ii. notify the definition of children belonging to disadvantaged groups and children belonging to weaker section. iii. admission of children with special needs (CWSN) should be prioritized. iv. defining the neighbourhood criteria; however, as per MoE's Guidelines under section 35(1) of the RTE Act, 2009, there is no compulsion on child to seek admission only in the school in his/her neighbourhood; v. per child expenditure to be reimbursed by the State/UT. vi. entitlements of children admitted under the DG/EWS category; vii. medium of instruction in school; viii. instruction manual for filling up the form; ix. list of documents required; x. details of helpdesks for facilitating the application process; xi. toll-free helpline number for redressing the issues during and after the admission process; xii. details of timeline for call of applications from eligible children; xiii. deadline for submission of application forms; xiv. date of list of eligible children after verification of documents; xv. date of draw of lots and display of list of children getting admission along with a waiting-list; xvi. date of admission in schools and beginning of the academic session; xvii. the Block and District Education departments shall have separate login links for the portal. d. The online portal should provide real-time information on i. Location and details of schools Geographic Information System (GIS) mapping of all schools in the neighbourhood; ii. class-wise total number of seats; iii. class-wise number of seats for admissions under DG/EWS category; iv. class-wise number of seats for admissions of CWSN under DG/EWS category;	

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		v. school-wise; class-wise and category-wise number of seats vacant under DG/EWS category. vi. School-wise detail of the entry-level class i.e. whether the school has preprimary classes or the entry level class in a particular school is class I. e. Based on the State's/UT's 'fee regulatory mechanism/guidelines/Act', the school-wise fee structure of the school in the current session; estimate fee structure for next five years; co-curricular activities offered by the school should also be included in the portal. 4. Defining children belonging to disadvantaged group and the children belonging to weaker section a. The children belonging to disadvantaged group shall include the children from i. the Scheduled Caste ii. the Scheduled Tribe iii. Other Backward Class (non-creamy layer) iv. the Denotified Tribes (DNTs) and Nomadic Tribes (NTs) v. Children with disabilities/special needs (CWSN) as per the section 2 (zc) and The Schedule of the Rights of Persons with Disabilities (RPwD) Act, 2016 vi. Children suffering from HIV/AIDS vii. Children eligible for sponsorship under section 45 of the Juvenile Justice Act, 2015 viii. Children of martyred soldiers/ Central Armed Police Forces (CAPFs) or those killed in line of duty. ix. Children of deprived communities such as traditional sex workers b. The children belonging to weaker section shall include (in order of preference) i. Children belonging to such families/households that are registered under <i>Antodaya Anna</i>	

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		<i>Yojna;</i> ii. Other families/households included in the Below Poverty Line (BPL) list prepared by the Department of Rural Development and Urban Development of the State/UT iii. Children belonging to such parents/guardian whose annual income is lower than the minimum limit prescribed by the Appropriate Government, by notification. iv. If a child is studying in private school under non-DG/EWS category and due to death of father/mother/guardian, who is the earning member of the family, the child comes under the EWS category, that child shall, upon submission of requisite eligibility certificate, be automatically be eligible for free education under section 12 (1) (c). Section 12 (1) (c) does not limit the number of admissions under this section and only mentions the minimum percentage share w.r.t total seats.” He submits that although the Department issued a Memo No.6142/SE.Prog.I/A2/2024 dated 19.10.2024, the said memo has not been translated into reality. Faced with this, learned Special Government Pleader submits that it is incorrect to state that either the State has no intention to implement its own memo dated 19.10.2024 or steps have not been taken to implement the same. On the contrary, steps are being taken on war footing to implement the said memo. We have heard learned counsel for the parties on this aspect. The Government of Telangana, School	

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		Education (Prog.I) Department Memo dated 19.10.2024 reads thus: GOVERNMENT OF TELANGANA SCHOOL EDUCATION (Prog. I) DEPARTMENT <u>Memo No.6142/St.Pros.1/A2/2024 Dated 19-10-2024</u> Sub: School Education-WP(PIL)No.38/2020 filed by Thandava Yogesh for implementation of Rule 12 (1) (c) of RTE Act, 2009-Certain guidelines-Issued-Reg. Ref:-1. G.O.Ms.No.44, School Education (PE PROG.1) Dept, Dt. 30.07.2010. 2. G.O.Ms.No.20, School Education (PE PROG.1) Dept, Dt:03.03.2011. 3. Orders of the Hon'ble High Court, dt. 28.08, 2024 in W.P. (PIL) No. 38/2020 filed by Thandava Yogesh, 4. From the DSE, Hyd, Lr Re No.563/PS3/2019, dated: 26.06.2024 804.09.2024. 5. Discussion held with the Director of School Education, Telangana, Hyderabad dt.19-10-2024. <<<>>> Government have Issued orders to implement the provision of 25% of reservation of seats for admission to Class I in Private Un-aided schools for Disadvantaged groups and weaker sections in the State vide reference 1" cited. 2. Further, Government have also issued orders for implementation of Right of Children to Free and Compulsory Education Rules 2010 in the reference 2nd cited. 3. In compliance to the orders dt. 28.08.2024, issued by the Hon'ble High Court in W.P. (PIL) No. 38/2020, it is decided to inplement the Section 12 (1) (c) of RTE Act, 2009 in the State from the Academic year 2025-2026 duly considering the SOP 2020-2021 suggested by National Commission for Protection of Child Rights, New Delhi.	

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		4. The Director of School Education, Telangana, Hyderabad, is requested to take action in the matter, accordingly. B.VENKATESHAM, PRINCIPAL SECRETARY TO GOVERNMENT A plain reading of the aforesaid memo and contentions of both sides makes it clear that there is no cavil of doubt that the State of Telangana has already decided to implement Section 12(1) (c) of the RTE Act in the State for the academic year 2025-26. Learned <i>Amicus Curiae</i> raised serious doubts whether in this academic year 2025-26, this decision can be translated into reality. Faced with this, learned Special Government Pleader prays for and granted time to file affidavit of an Officer of Education Department at the level of Principal Secretary/Director which shall indicate-i) what steps have been taken to implement the memo of Government of Telangana dated 19.10.2024 till date and ii) as agreed, an undertaking that the memo dated 19.10.2024 shall be implemented in letter and spirit in this academic year 2025-26. Such affidavit must be filed on or before 21.04.2025. List on 22.04.2025. _____ HACJ (SP,J) _____ RY,J myk/tsr	