IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2019

[Against the impugned Judgment and Final Order dated 31.05.2019 passed by the Hon'ble High Court of Karnataka at Bengaluru in W.P. No.7889 of 2019]

With prayer for interim relief

IN THE MATTER OF:

RTE Students & Parents Association (R) ... Petitioner

versus

The State of Karnataka and Ors. ... Respondents

PAPER BOOKS

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ADVOCATE FOR THE PETITIONER: RAHUL NARAYAN

SYNOPSIS

The Petitioner impugns the judgment and order of the Hon'ble High Court of Karnataka, dated 31 May 2019, in Writ Petition No. 7889/2019 ["Impugned Judgment"]. Through this judgment, the Hon'ble High Court upheld the constitutional validity of the amendment to Rule 4 ["Impugned amendment"] of the Karnataka Right of Children to Free and Compulsory Education Rules, 2012 ["Karnataka RTE Rules"]. The impugned amendment provided that "*no unaided school falling under sub clause (iv) of clause (n) of Section 2* [of the Right of Children to Free and Compulsory Education Act, 2019 ("RTE Act")] *shall be identified for the purpose of admission of disadvantaged group or weaker section, where government school and aided schools are available within the neighbourhood*."

The effect of the impugned Amendment, therefore, was that where a government or aided school existed in a particular neighbourhood, private, un-aided schools would be exempted from their obligation, under Section 12(1)(c) of the RTE Act, to admit, in class I, to the extent of at least 25% of the strength of the class, children from weaker sections and disadvantaged groups. That obligation, upon

private, un-aided schools, would exist only where there was no government or aided school in that neighbourhood.

Herein, the Petitioner – an association of students and parents that avail the provisions of the RTE Act – respectfully submit that the Hon'ble High Court of Karnataka grievously erred in its interpretation of the RTE Act.

(A) By making the obligation of providing education to children from weaker sections and disadvantaged groups *contingent* upon the absence of government schools, the Hon'ble High Court ignored the clear language of the RTE Act, which states, in certain terms, that private and unaided schools "shall" admit the required number each year, with the obligation being absolute and not subject to any future proposed expansion of government schools.

(B) Without any statutory warrant, the Hon'ble High Court held that the obligation under Section 12(1)(c) of the RTE Act was only conditional upon the government failing to perform its obligations, under Section 6 of the RTE, of establishing a public school in each neighbourhood within three years of the passage of the RTE Act. However, there is nothing in the language of the RTE Act that suggests such a relationship exists between Sections 6 and 12(1)(c),

and nothing in the language that indicates that the RTE only intended for private schools to step-in only in extreme scenarios where government schools didn't even exist. There is nothing in the text or legislative history or purpose of the RTE Act to suggest that section 12(1)(c) is a transitory one.

(C) Further, the Petitioner respectfully submits that the Impugned Judgment is not only contrary to the text of the RTE, but also to the statutory purpose. The Statement of Objects and Reasons to the RTE Act, and the legislative debates in both the Lok Sabha and the Rajya Sabha make it abundantly clear that the RTE Act was a piece of social justice legislation, enacted to fulfill the mandate of Article 21A of the Constitution. To fulfill this goal, the RTE Act imagined – and mandated – the *joint cooperation* of the public and the private sectors. The obligation under Section 12(1)(c) upon private schools was an example of how this public/private partnership was meant to work in practice, by requiring private schools to share a part of the load when it came to educating the most vulnerable and marginalised segments of society. The 25% requirement, therefore, was not a temporary fix that could be erased the moment a government school was established in the

neighbourhood; rather, it was a free-standing, *independent* legal obligation upon private schools, calling upon them to play their part in fulfilling the mandate of Article 21A.

(D) Moreover, there was a second, crucial purpose to the 25% obligation under Section 12(1)(c) of the RTE. In a Section-Wise Rationale/Clarification to the RTE, issued by the Ministry of Human Resource Development in 2012, it was made clear that an integral purpose of Section 12(1)(c) – and the 25% obligation – was to achieve socio-economic justice by *integrating* classrooms upon an economic basis. It was found that over time, the existence of government and private schools had created a two-tier, segregated system of education, where the economically well-off would send their children to study in private schools where education is usually conducted in the English language, while those from the weaker sections and disadvantaged groups would have no choice but to go to government schools, where instruction is frequently in vernacular. They are separate although alleged to be equal. In this regard, a similar unfortunate parallel can be drawn from the American scenario prior to the landmark case of *Brown v. Board of Education of Topeka*, 347 U.S. 483, where segregation was enshrined in law and the schools were

separate though allegedly equal. In *Brown* the US Supreme Court ruled that American state laws establishing racial segregation in public schools are unconstitutional, even if the segregated schools are otherwise equal in quality. Section 12(1)(c) was meant to break this *de facto* system of educational apartheid by integrating classrooms, and aiming to achieve social justice by guaranteeing diversity in the educational sphere from a very young age. Far from being a conditional or contingent obligation dependent upon whether or not the government had set up its own schools in a neighbourhood or not, therefore, the 25% obligation was at the heart and soul of the vision of the RTE Act.

(E) The Petitioner respectfully submits that the above considerations make out a clear case that impugned amendment in the RTE Rules– which effectively render the obligation under Section 12(1)(c) nugatory altogether in many cases by turning it into a conditional obligation – is *ultra vires* the RTE Act. The RTE Act contemplated a strong, independent obligation upon private schools, to serve the goals of social justice, diversity, and classroom integration, an obligation that was evident from the clear and unambiguous character of the statutory test. Watering

down the scope of this obligation through subordinate legislation clearly contravenes the text and purpose of the RTE Act itself, and is therefore *ultra vires* and illegal.

(F) The Hon'ble High Court on the other hand, apart from its flawed reading of the statutory text, also relied upon considerations such as the potential burden upon the public exchequer caused by the requirement – also under Section 12 – to reimburse (a part of) the costs borne by private schools in discharging their obligations under Section 12. It is respectfully submitted, however, that these are pure questions of policy, which ought not to be invoked for the purposes of legal reasoning in a judicial decision.

(G) The amendment to the Karnataka RTE Rules has had an immediate and negative impact on the efficacy of the RTE Act. As per newspaper reports, applications under the RTE Act have dropped by an astounding 92% which further proves that far from being transitory section 12(1)(c) was the heart and soul of the RTE Act. By rendering section 12(1)(c) redundant, the Impugned Judgment practically negates the whole statute.

(H) This impugned amendment completely dilutes the obligations of private aided/unaided schools, as affirmed

by a three judge bench of this Hon'ble Court in the case of *Society for Unaided Private Schools of Rajasthan v. Union of India,* (2012) 6 SCC 1 and later affirmed by a Constitution Bench of this Hon'ble Court in *Pramati Educational and Cultural Trust (Registered) and Others v. Union of India and Others,* (2014) 8 SCC 1.

The Petitioner respectfully prays, therefore, that the judgment of the Hon'ble High Court be set aside, and the impugned amendment struck down by this Hon'ble Court as being *ultra vires* the RTE Act, and therefore illegal.

Hence, the present Special Leave Petition.

LIST OF DATES AND EVENTS

13.12.2002	The 86th (Constitutional Amendment) Act, 2002 added Article 21A to the Constitution, which makes it mandatory for the State to provide free and compulsory education to all children from the age of six to 14 years. A true typed copy of the 86th (Constitutional Amendment) Act, 2002 dated 13.2.2002 is annexed herewith & marked as **Annexure "P-1"** (Page no).

27.08.2009	The Parliament enacted the RTE Act with the objective of providing free and compulsory education to all children of the age of six to fourteen years.
12.04.2012	A 3 judge bench of this Hon'ble Court in *Society for Unaided Private Schools of Rajasthan v. Union of India,* (2012) 6 SCC 1, upheld the constitutional validity of the provision in the RTE Act that makes it mandatory for all schools (government and private) except private, unaided minority schools to reserve 25% of their seats for children belonging to "weaker section and disadvantaged group.
28.04.2012	In exercise of the powers conferred by sub-section (1) of section 38 of RTE Act, the Government of Karnataka enacted the Karnataka RTE Rules. A true typed copy of the RTE Rules dated 28.01.2012 enacted by the Respondent No.1 is annexed herewith & marked as **Annexure "P-2"** (Page no).

S.12(2) of these rules envisages reimbursement by the appropriate Government towards RTE quota seats in private aided schools and such reimbursement amount is notified by the Government from time to time.

22.05.2014 The Petitioner was registered as an association bearing number SOR/RJR/S-65/2014-15. The Petitioner is a non political organization, which works on no profit and no loss basis. Its primary objective is to assist students applying under the RTE and to fight against any injustice caused to them.

30.01.2019 The Government of Karnataka in exercise of powers conferred by sub-section (1) of Section 38 of the RTE Act amended the Karnataka RTE Rules. In particular, there was an Amendment to Rule 4 of the Karnataka RTE Rules, by which after sub-rule (7) the following proviso was inserted, namely:-

"provided that no un-aided school falling under sub-clause (iv) of clause (n) of section 2 shall be identified for the purpose of admission of disadvantaged group or weaker section where there are Government Schools and aided schools are available within the neighborhood." A true typed copy of the amendment dated 30.01.2019 made in the Karnataka RTE Rules is annexed herewith & marked as **Annexure "P-3"** (Page no).

2019 The Petitioner aggrieved by the said notification preferred Writ Petition No. No.7889/2019 under Article 226 of the Constitution of India to the Hon'ble High Court of Karnataka at Bengaluru, praying that the said Amendment to Rule 4 of the Karnataka RTE Rules should be declared *null and void* on the ground that the same is in violation of fundamental rights of children, granted under Article 21-A of the Constitution. A true typed copy of the W.P. No.7889/2019 dated NIL filed by the

Petitioner before the Hon'ble High Court of Karnataka at Bengaluru is annexed herewith & marked as **Annexure "P-4"** (Page no).

22.03.2019 The Respondent No.1 filed its Statement of Objections in the W.P. No. 7889/2019. A true typed copy of the Statement of Objections dated 22.03.2019 filed by Respondent No.1 in W.P. No.7889/2019 is annexed herewith & marked as **Annexure "P-5"** (Page no).

04.04.2019 The Writ Petition filed by the Petitioner was heard along with other petitions raising the same issues and reserved for orders.

31.05.2019 The impugned judgment and final order was passed by the Hon'ble High Court of Karnataka at Bengaluru disposing of the Writ Petition No. 8028/2019 C/W No.7889/2019, W.P No. 13729/2019 (EDN-RES) PIL as:

"27. In the light of the judgments of the Hon'ble Supreme Court, the case of the petitioners has been examined, and it is

found that they have failed to show arbitrariness, mala fides or violation of law etc., as pointed out in the judgment of the Hon'ble Supreme Court. Education under Article 21A of the Constitution is a fundamental right but the petitioners or such students have no right of admission to private schools only, as long as the government schools, local authorities' schools or aided schools are available in the neighborhood. Under these circumstances, as it is contended by the petitioners that the impugned action of the respondents in bringing the amendment, is neither unconstitutional nor arbitrary nor it contravenes any right envisaged."

"28. In the circumstances, we are of the view that the prayer sought for by the petitioners cannot be granted. If that is granted, the functioning of such schools established by the government, local authorities and the aided schools, would be at stake, as rightly contended by the

respondents. Accordingly, the writ petitions are rejected."

.07.2019 Hence the present Special Leave Petition to Appeal.

IN THE SUPREME COURT OF INDIA

(Order XXI Rule 3(1) (a))

CIVIL APPELLATE JURISDICTION

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (C) NO. OF 2019

WITH PRAYER FOR INTERIM RELIEF

BETWEEN:

POSITION OF PARTIES

		High Court	**Supreme Court**
RTE Students & Parents Association (R) Represented by its General Secretary, B.N. Yogananda No.80/1, 13th Cross, 1st Block, Rajajinagar, Near Navaranga Circle, Bangalore- 560010, Karnataka.		Petitioner	Petitioner
AND			
1. The State of Karnataka by its Under Secretary, Vidhana Soudha, Bangalore-560010, Karnataka.		Respondent No.1	Respondent No.1

2. Under Secretary to Government (Primary Education) Education Department, M.S. Building Bangalore-560010, Karnataka,		Respondent No.2	Respondent No.2
3. Sri Lalbahadur Sastry Memorial Kannada Primary School , Represented by its Secretary, P.M. Sathyanarayana, Aged about 67 Years, Residing at NO. 617, 64th Cross, 5th Block, Rajajinagar, Bangalore-560010, Karnataka		Respondent No.3	Respondent No.3
4. Kannada Development Authority, No. 263, 2nd Floor, Vidhana Soudha, Bangalore- 560010, Karnataka. Represented by its Secretary Dr. K Muralidhara.		Respondent No.4	Respondent No.4
5. Sri Ashwini Kumar , S/o. K.S.Krishnamurty, Aged about 42 Years, Occupation : Agriculture and Working President School Development and Monitoring Committee		Respondent No.5	Respondent No.5

Legislator Modal Government Higher Primary School , Hosanagara Taluk Hosanagara, District Shivamogga -577418 , Karnataka .			

All are contesting Respondents

SPECIAL LEAVE PETITION UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA

To,

The Hon'ble The Chief Justice of India
And his Companion Justices of the
Hon'ble Supreme Court of India.

The Special Leave Petition of the Petitioner above named.

MOST RESPECTFULLY SHOWETH:

1. The Petitioner above named respectfully submits the present petition seeking Special Leave to Appeal against the impugned Judgment and Final Order dated 31.05.2019 passed by the Hon'ble High Court of Karnataka at Bengaluru whereby the Writ Petition No.7889/2019, preferred by the Petitioner was dismissed.

1A. The Petitioner states that no letters patent appeal lies against the impugned order and hence the same has not been availed.

2. QUESTIONS OF LAW:

The following questions of law arise for the consideration of this Hon'ble Court:

A. Whether the Notification dated 30th January, 2019 in No. ED 36 PGC 2018 amending Rule 4 of Karnataka Right of Children to Free and Compulsory Education Rules, 2012 is contrary and *ultra vires* the Right of Children to Free and Compulsory Education Act, 2009 (Central Act 35 of 2009)?

B. Whether Section 12(1)(c) of the RTE – that provides for admission in private unaided schools – is only a transitory provision i.e. effective only for a period of 3 years?

C. Whether the aforementioned amendment violates the fundamental rights of children, guaranteed under Article 21-A of the Constitution of India?

3. DECLARATION IN TERMS OF RULE 3(2)

The Petitioner states that no other Petition seeking leave to appeal has been filed by them against the impugned judgment and order dated 31.05.2019 passed by the Hon'ble High Court of Karnataka at Bengaluru in Writ Petition No. 7889/2019.

4. DECLARATION IN TERMS OF RULE 5:

The Annexures **P-1**- **P-5** produced along with the Special Leave Petition are true typed copies of the pleadings / documents which formed part of the records of the case in the Court below against whose order the leave to appeal is sought for in this Petition.

5. GROUNDS:

A. Because the impugned Judgment and Final Order dated 31.05.2019 passed by the Hon'ble High Court of Karnataka at Bengaluru is erroneous and cannot be maintained in the facts and circumstances of the present case.

B. Because the impugned judgment misreads the plain text of the RTE Act. Section 6 of the RTE Act requires

the appropriate government or the local authority to establish a school within the limits of the neighbourhood within three years of the commencement of the Act. Section 12(1)(c) requires that private, unaided schools "*shall admit in class I, to the extent of at least twenty-five percent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood*." There is nothing in the text – or the context – of the RTE Act that suggests that the obligation under Section 12(1)(c) exists only as long as the obligation under Section 6 has not been discharged. It is a well-established rule of statutory interpretation that a Court cannot *"rewrite, recast, or reframe legislation" Union of India* v *Deoki Nandan Aggarwal, (1992) SCC Supp. (1) 323*. By converting an absolute obligation into a temporary and conditional one, however, it is respectfully submitted that the Hon'ble High Court of Karnataka has done exactly that, in the impugned judgment.

C. Because the impugned judgment provides no *legal* reason for departing from the plain, statutory text of the RTE Act. The only substantive reason provided by

the impugned judgment in para 21 is that *"if petitioner's contention is to be accepted, the State government will be compelled to reimburse astronomical figures*". It is respectfully submitted, however, that it is not open to the Court to invoke potential financial or budgetary consequences in order to depart from the plain meaning of a statute. These are pure questions of policy, and, as has been clearly held by this Hon'ble Court, the judiciary *"does not interfere in matters of economic policy." (Peerless General Finance and Investment Co* v *Reserve Bank of India, 1992 SCC (2) 343.)*

D. Because the impugned judgment departs from the cardinal principle – consistently upheld by this Hon'ble Court from 1950 onwards – that "*hardship or inconvenience cannot alter the meaning employed by the legislature if such meaning is clear on the face of the statute or the rules*." (*Commissioner of Agricultural Income Tax, Bengal* v *Shri Keshab Chandra Mandal, 1950 SCR 435*). The Hon'ble High Court of Karnataka at Bengaluru, it is submitted with respect, has impermissibly based its decision on possible financial inconvenience that the government might be put to.

E. Because, even on its own terms, the impugned judgment is wrong to suggest that the government will be put to significant financial hardship, as the RTE Act itself limits the extent to which private schools are to be reimbursed. Section 12(2) makes it clear that reimbursement will be to the extent of "*per child expenditure incurred by the State, or the actual amount charged from the child, whichever is* <u>*less*</u>."

F. Because, a reading of Section 12(2) therefore makes it clear that the reimbursement made to the private unaided school is <u>equal</u> to what the State would *itself* have spent on each child (or less). What Section 12 does, therefore, is to maintain – at par – the State's financial obligation to educate every child (under Article 21A), while merely authorising the State to pay private schools to discharge a part of that obligation, *at the same cost*. The constitutional validity of this legislative choice was upheld by this Hon'ble Court in *Society for Un-Aided Private Schools of Rajasthan* v *Union of India,* (2012) 6 SCC 1). It is therefore respectfully submitted that the Hon'ble High Court's reasoning fails on its own terms.

G. Because, in addition to the plain text of the RTE Act, the legislative object and legislative scheme unambiguously support the interpretation of the Petitioner. Clause 4 of the Statement of Objects and Reasons ["**SOR**"] of the RTE states that:

> *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 Governments, but also of schools which are not dependent on Government funds.*

It is respectfully submitted that the SOR makes it clear that the obligations upon private un-aided schools flow from the constitutional vision of achieving equality, social justice, and democracy through *inclusive education*. These obligations are not simply transitory or temporary, until the State establishes a school in the neighbourhood. The Hon'ble High Court's interpretation, it is respectfully

submitted, destroys the RTE's vision of the State and private schools serving a *co-equal* role in the national goal of providing inclusive and universal education.

H. Because the position is made even more clear in a "Section-Wise Rationale/Clarification" dated 31t January 2012, issued by the implementing ministry As this document states:

> *The idea that schooling should act as a means of social cohesion and inclusion is not new; it has been oft repeated. Inequitable and disparate schooling reinforces existing social and economic hierarchies, and promotes in the educated sections of society an indifference towards the plight of the poor.*
>
> *The currently used term 'inclusive' education implies, as did earlier terms like 'common' and 'neighbourhood' schools, that children from different backgrounds and with varying interests and ability will achieve their highest potential if they study in a shared classroom environment. The idea of inclusive schooling is also consistent with Constitutional values and ideals, especially with the ideals of fraternity, social justice and equality of opportunity.*

For children of socio-economically weaker backgrounds to feel at home in private schools, it is necessary that they form a substantial proportion or critical mass in the class they join. The relevant universe in which the proportion needs to be considered is the class/section. It is for this reason that the RTE Act provides for admission of 25% children from disadvantaged groups and weaker sections in class I only. This implies that these children cannot be pooled together in a separate section or afternoon shift. Any arrangement which segregates, or treats these children in a differentiated manner vis-à-vis the fee-paying children will be counter-productive.

Admission of 25% children from disadvantaged groups and weaker sections in the neighbourhood is not merely to provide avenues of quality education to poor and disadvantaged children. The larger objective is to provide a common place where children sit, eat and live together for at least eight years of their lives across caste, class and gender divides in order that it narrows down such divisions in our society. The other objective is that the 75% children who have been lucky to come from better endowed families, learn through their interaction with the children from families who haven't had similar opportunities, but are rich in knowledge systems allied to trade, craft, farming and other

services, and that the pedagogic enrichment of the 75% children is provided by such intermingling.

It is respectfully submitted that this explanation leaves absolutely nothing to doubt. The obligation under Section 12(1)(c) is founded in the idea of *integration*: to bring together children from disparate socio-economic backgrounds into the same classroom, with a view to achieving better social cohesion and fulfilling constitutional goals of equality and fraternity. In light of this, it is respectfully submitted that to read the obligation under Section 12(1)(c) as *vanishing* the moment there exists a government school in the neighbourhood – as the Hon'ble High Court did – is to defeat the entire purpose of the Act, and allow state governments to re-establish the two-track, educational apartheid system that the RTE was designed to abolish.

I. Because, in light of the above, it is clear that Section 12 carries forward a long Indian tradition of integration, whereby social barriers are sought to be broken down through a process of intermingling and sharing of space and activities. Section 12 is part of a

centuries-old history of social reform activities such as inter-caste marriage and inter-caste dining, that even pre-dates the Indian Constitution. Indian thinkers and social reformers have always understood that society's tendency to ghettoize itself into the fortunate and the non-fortunate must be actively combated by creating spaces where individuals from different classes are brought into contact with each other, and that this is the only way to minimize prejudice and unify a disparate society. It is respectfully submitted that the impugned judgment impermissibly disregards this legislative policy.

J. Because the above submissions are supported by the Parliamentary debates leading up to the passage of the RTE. While the requirement of the 25% rule was debated fiercely – with some members claiming it was too burdensome on private schools, and other claiming it did not go far enough – neither in the Rajya Sabha, nor in the Lok Sabha, and nor in the Standing Committee Report was it ever mentioned – or hinted at – that the 25% rule was a mere conditional obligation. In fact, members – such as, for example, Shri Tathagata Satpathy specifically referred

to the 25% rule as a "reservation" Even more explicitly, Shri Ijyaraj Singh observed that the 25% rule was in the interests of "national integration", to give a "choice to the parents" (a rationale rejected by the Hon'ble High Court in its impugned judgment), and for "upward mobility" Most pertinently, Shri Kapil Sibal, the mover of the Bill in Parliament, observed that:

> *The point number six is in the context of social responsibility. That is where I come to the issue of reservation. What is the social responsibility of civil society? It is the Government's responsibility to ensure universalisation of elementary education. But the fact of the matter is that -- no matter what we do, no matter how much of finance we have – it is very difficult to implement that on the ground. We need to take the support of all stakeholders in the system including the private sector. But the private sector cannot run amok; nor we will allow it run amok. The private sector must understand that imparting education is an enterprise, which must conform to the values, we wish to inculcate in our children. Therefore, we have provided in this legislation that every private school in this country must reserve 25 per cent of the seats for the disadvantaged.*

It is therefore clear that the intent of the framers of the RTE Act themselves – as well as the expressed intent during the debates in Parliament – was for the obligation under Section 12 to be a mandatory obligation in service of important social goals. Furthermore, the understanding that Section 12(1)(c) was, in effect, providing a "reservation" was understood – and agreed – by multiple members of the Rajya Sabha during the debate on the Bill, whatever side they took.

It is respectfully submitted that the above materials make clear the legislative scheme and the object underlying Section 12(1)(c), and the RTE as a whole, and that both the impugned Amendment and the impugned Judgment run contrary to this scheme and object.

K. Because it is well-established in the jurisprudence of this Hon'ble Court that subordinate legislation – or, for that matter, any act of executive power – suffers from the vice of being *ultra vires* if it is contrary to the object, purpose, and policy of the parent statute *(P.J. Irani v The State of Madras,* 1962 SCR (2) 169*; M/s*

Punjab Tin Supply Co., Chandigarh v The Central Government, 1984 SCC (1) 206. In *Bombay Dyeing & Manufacturing Co. Ltd. v Bombay Environmental Action Group,* 2006 (3) SCC 434, *this* Hon'ble Court set out the position of law as follows:

> *By reason of any legislation whether enacted by the legislature or by way of subordinate legislation, the State gives effect to its legislative policy. Such legislation, however, must not be ultra vires the Constitution. A subordinate legislation apart from being intra vires the Constitution, should not also be ultra vires the parent Act under which it has been made. A subordinate legislation, it is trite, must be reasonable and in consonance with the legislative policy as also give effect to the purport and object of the Act and in good faith.*

In *Union of India v. S. Srinivasan,* (2012) 7 SCC 683 this Hon'ble Court held that:

> *"21. At this stage, it is apposite to state about the rule-making powers of a delegating authority. If a rule goes beyond the rule-making power conferred by the statute, the same has to be declared ultra vires. If a rule supplants any provision for which power has not been*

conferred, it becomes ultra vires. The basic test is to determine and consider the source of power which is relatable to the rule. Similarly, a rule must be in accord with the parent statute as it cannot travel beyond it."

"32. *Keeping in view the aforesaid enunciation of law, we think it appropriate to consider the nature, object and scheme of the enabling Act, the power conferred under the Rule, the concept of purposive construction and the discretion vested in the delegated bodies."*

The legislative policy of the RTE, as respectfully submitted above, is a joint obligation upon the public and the private educational sectors, and not a conditional one upon the latter; furthermore, the legislative policy underlying Section 12(1)(c) is that of social and national integration. It is respectfully submitted, therefore, that as subordinate legislation, the impugned Amendment is self-evidently *ultra vires* the RTE, and ought to be struck down.

L. Because the present petition is *bona fide*, in the public interest, and seeks enforcement of

fundamental rights under Part III of the Constitution of India.

M. Because the Hon'ble High Court erred in holding that there is no arbitrariness, *mala fides* or violation of law in the impugned notification, when a bare perusal of the amendment makes it clear that its fundamentally against the ethos of the parent statute.

N. Because this Hon'ble Court in *Supreme Court Employees' Welfare Assn.* v. *Union of India* [(1989) 4 SCC 187, held that the validity of a subordinate legislation is open to question if it is *ultra vires* the Constitution or the governing Act or repugnant to the general principles of the laws of the land or is so arbitrary or unreasonable that no fair-minded authority could ever have made it. It was further held that the Rules are liable to be declared invalid if they are so manifestly unjust or oppressive or outrageous or directed to be unauthorised and/or in violation of the general principles of law of the land or so vague that it cannot be predicted with certainty as to what it prohibited or so unreasonable that they cannot be attributed to the power delegated or otherwise disclose bad faith.

Further, a Constitutional bench of this Hon'ble Court in *Shri Sitaram Sugar Co. Ltd.* v. *Union of India* [(1990) 3 SCC 223] reiterated that:

> *"47. Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterised as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be 'reasonably related to the purposes of the enabling legislation'. See Leila Mourning v. Family Publications Service [411 US 356 : 36 L Ed 2d 318 (1973)] . If they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or do not tend in some degree to the accomplishment of the objects of delegation, court might well say, 'Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires': per Lord Russel of Killowen, C.J. in Krusev. Johnson [(1898) 2 QB 91 : (1895-99) All ER Rep 105] ."*

O. Because Section 12(1)(c) of the RTE Act cannot be held to be a transitory provision under any rule of statutory interpretation. In *Shailesh Dhairyawan v. Mohan Balkrishna Lulla,* (2016) 3 SCC 619, this Hon'ble Court observed that:

> *"31… The principle of "purposive interpretation" or "purposive construction" is based on the understanding that the court is supposed to attach that meaning to the provisions which serve the "purpose" behind such a provision. The basic approach is to ascertain what is it designed to accomplish? To put it otherwise, by interpretative process the court is supposed to realise the goal that the legal text is designed to realise. As Aharon Barak puts it:*
>
> > *"Purposive interpretation is based on three components: language, purpose, and discretion. Language shapes the range of semantic possibilities within which the interpreter acts as a linguist. Once the interpreter defines the range, he or she chooses the legal meaning of the text from among the (express or implied) semantic possibilities. The semantic component thus sets*

the limits of interpretation by restricting the interpreter to a legal meaning that the text can bear in its (public or private) language." [Aharon Barak, Purposive Interpretation in Law (Princeton University Press, 2005).]

"32. Of the aforesaid three components, namely, language, purpose and discretion "of the court", insofar as purposive component is concerned, this is the ratio juris, the purpose at the core of the text. This purpose is the values, goals, interests, policies and aims that the text is designed to actualise. It is the function that the text is designed to fulfil."

"33. We may also emphasise that the statutory interpretation of a provision is never static but is always dynamic. Though the literal rule of interpretation, till some time ago, was treated as the "golden rule", it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that

cannot be countenanced. Not only legal process thinkers such as Hart and Sacks rejected intentionalism as a grand strategy for statutory interpretation, and in its place they offered purposivism, this principle is now widely applied by the courts not only in this country but in many other legal systems as well."

As is abundantly clear from the text of the RTE Act and its legislative record, there is nothing to indicate that the provisions of section 12(1)(c) were meant to be transitory.

P. Because a three judge bench of this Hon'ble Court in its *Society for Unaided Private Schools of Rajasthan v. Union of India,* (2012) 6 SCC 1 upheld the constitutional validity of RTE Act on April 12, 2012 and upheld the requirement that every school, including privately-run ones, was to give immediately free education to students from socially and economically backward classes from class-I till they reach the age of 14 years. This Hon'ble Court threw out the challenge by private unaided schools to Section 12(1)(c) of the Act, that says every recognized school imparting elementary education, even if it is

an unaided school not receiving any kind of aid or grant to meet its expenses, is obliged to admit disadvantaged boys and girls from their neighborhood. This matter was again considered by a five judge bench of this Hon'ble Court in the case of *Pramati Educational and Cultural Trust (Registered) and Others v. Union of India and Others,* (2014) 8 SCC 1, wherein it affirmed its previous judgment in the case of *Society for Unaided Private Schools of Rajasthan* (supra). Here, the court held that the latter judgment was consistent with regard to fundamental rights under Art.19(1)(g) of the Constitution, primarily concerning private unaided educational institutions.

Q. Because, as a social justice legislation, the RTE provides a platform to reach the marginalised segments of society, and specifically, disadvantaged groups such as child labourers, migrants, children with special needs, or those who are disadvantaged owing to cultural, economic, social, geographical, gender-based or other factors. The RTE focuses on providing the quality of teaching that will allow for accelerated progress, and a mitigation of these disadvantages. It is for this reason that the 25% rule

operates in Class I itself. The impugned amendment, it is respectfully submitted, has set this at nought.

R. Because the Notification has had an enormously deleterious impact on the functioning of the RTE Act in Karnataka and applications under the RTE Act have fallen by over 92 %. This clearly indicates, if anything was required in addition to statutory materials, that far from being transitory the obligation under Section 12(1)(c) was the heart and soul of the RTE Act and that by rendering the same toothless the Notification has in effect rendered the entire RTE Act redundant in Karnataka.

S. Because the Impugned Judgment errs in holding in para 28 that, "*28. In the circumstances, we are of the view that the prayer sought for by the petitioners cannot be granted. If that is granted, the functioning of such schools established by the government, local authorities and the aided schools, would be at stake, as rightly contended by the respondents. Accordingly, the writ petitions are rejected.*"

Firstly, the Court falls into legal error by using the (incorrect) perceptions of the Respondent to interpret

the clear provisions of the RTE Act. It is respectfully submitted that the policy preference of the legislature is writ large in the RTE Act and the legislative materials before Parliament. The policy decision ought not to be overturned in the absence of any ground known to administrative law merely because the Respondent believes (wrongly) that this policy decision would have consequences that are unfavorable. If the Respondent believed the RTE Act to be damaging to its schools, its remedy would lie in approaching Parliament and persuade legislators to amend the law, not try to take away in the Rules what was given by the Act. The clear words of a statute that clearly reflect the purpose of the legislature cannot be interpreted in a way contrary to the same merely because of the perceived impact of such interpretation may be regarded by some as unfavorable.

Secondly, even as a matter of fact, as stated above, nothing in Section 12(1)(c) is remotely damaging to public schools. The Petitioners respectfully submit that the findings in Para 28 are erroneous and ought to be struck down by this Hon'ble Court.

6. GROUNDS FOR INTERIM RELIEF:

A. Because the Hon'ble High Court of Karnataka at Bengaluru *vide* its impugned judgment dismissed the Writ Petition preferred by the Petitioners and upheld the amendment to the Karnataka RTE Rules. As a consequence thereof private schools in Karnataka are no longer obligated to offer education to the children of the weaker sections and disadvantaged groups under section 12(1)(c),despite the fact that the statute itself has not been amended and remains good law today. This is detrimental and unfair to the students in Karnataka who belong to the weaker section and disadvantaged groups, whose rights have been adversely impacted, and has resulted in a 92% decline in RTE Applications, as reported by newspapers.

B. Because the Petitioners have a good *prima facie* case and are likely to succeed in the case. Balance of convenience lies in favour of the Petitioner and against the Respondent. In case the interim reliefs prayed for hereunder are not

granted, the Petitioners shall suffer irreparable harm and injury.

7. MAIN PRAYER:

In the facts and circumstances stated hereinabove, it is most respectfully prayed that this Hon'ble Court may be pleased to:

(a) grant Special Leave to Appeal against the Judgment and Final Order dated 31.05.2019 passed by the Hon'ble High Court of Karnataka at Bengaluru in Writ Petition No.7889/2019; and

(b) pass any other order which this Hon'ble Court deems fit in the facts and circumstances of the present case.

8. INTERIM RELIEF:

A. *Ex parte* stay the operation of the Judgment and Final Order dated 31.05.2019 passed by the Hon'ble High Court of Judicature of Karnataka at Bengaluru in Writ Petition No.7889/2019;

B. Pass any other order which this Hon'ble Court deems fit in the facts and circumstances of the present case.

Drawn by

(GAUTAM BHATIA)
Advocate

Filed by

(RAHUL NARAYAN)
Advocate for the Petitioner

Drawn on: 12.07.2019
Filed on:

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2019

IN THE MATTER OF:

RTE Students & Parents Association (R) ... Petitioner

versus

The State of Karnataka and Ors. ... Respondents

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the Court whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the special leave petition.

It is further certified that the copies of the documents/annexures attached to the Special Leave Petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the special leave petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the Petitioner whose affidavit is filed in support of the Special Leave Petition.

Filed by

New Delhi
Filed on:

(RAHUL NARAYAN)
Advocate for the Petitioner

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2019

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RTE Students & Parents Association (R) ... Petitioner

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OFFICE REPORT ON LIMITATION

1. The Petition is/are within time.

2. The Petition is barred by time and there is delay of _____ days in filing the same against order dated _____ and petition for condonation of _____ days delay has been filed.

3. There is delay of _____ days in refilling the petition and petition for condonation of _____ days delay in refilling has been filed.

NEW DELHI **BRANCH OFFICE**

Dated: