

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF MAY, 2019

PRESENT

**THE HON'BLE MR.JUSTICE L.NARAYANA SWAMY,
AND**

THE HON'BLE MR. JUSTICE P.S.DINESH KUMAR

W.P. NO.8028 OF 2019

C/W

W.P. NO.7889 OF 2019,

W P No.13729/2019 (EDN-RES) PIL

IN W.P. NO.8028 OF 2019

BETWEEN:

1. EDUCATION RIGHTS TRUST
REPRESENTED BY ITS TRUSTEE,
C. SURESH KUMAR,
HAVING REGISTERED OFFICE AT:
NO.19, 12TH MAIN ROAD,
J.C.NAGAR, KURABARAHALLI,
BANGALORE-560086
2. UMESH N.G.
S/O GANGADHAR SHETTY,
AGED ABOUT 32 YEARS,
RESIDING AT NO.23, 9TH CROSS,
NAGARAHOLE, H.G.HALLI,
NEAR NAGARHOLE BUS STOP
VISHWANEDAM POST,
BANGALORE-560091
3. GEETHA A
W/O GIRISH B N
AGED ABOUT 33 YEARS
RESIDING AT NO.33/12
11TH MAIN ROAD, SHIVANAGAR,
RAJAJINAGAR,
BANGALORE-560010

4. AYESHA A
W/O SYED ADAM SHARIFF,
AGED ABOUT 29 YEARS,
RESIDING AT NO.446
SRIRAMA TENT ROAD,
KUSHALNAGAR,
AMANI BYRATHIKHANE, ARABIC COLLEGE,
BANGALORE-560045
5. NOOR JAHAN
W/O SYED DAWOOD,
AGED ABOUT 26 YEARS,
RESIDING AT NO.446
SRIRAMA TENT ROAD,
NEAR SAYEEDIA MASJID ROAD,
VENKATESHPURAM,
BANGALORE-45

... PETITIONERS

(BY SMT. MANASI SHARMA, ADVOCATE FOR
SMT.NIMISHA KUMAR, ADVOCATE)

AND:

1. GOVERNMENT OF KARNATAKA
REPRESENTED BY PRINCIPAL SECRETARY,
PRIMARY EDUCATION DEPT.,
GOVT. OF KARNATAKA,
M.S.BUILDING,
BANGALORE-560001
2. COMMISSIONER OF PUBLIC INSTRUCTIONS
EDUCATION DEPARTMENT,
NRUPATUNGA ROAD
BANGALORE-560001

... RESPONDENTS

(BY SRI UDAYA HOLLA, ADVOCATE GENERAL A/W
SRI D. NAGARAJ, ADDL. ADVOCATE GENERAL FOR R1 & R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
QUASH THE IMPUGNED NOTIFICATION ISSUED BY THE

RESPONDENT NO.1 BEARING ED 36 PGC 2018, DATED
30.1.2019 AS PER ANNEXURE-B AND ETC.

IN W.P. NO.7889 OF 2019

BETWEEN:

RTE STUDENTS & PARENTS ASSOCIATION (R)
REPRESENTED BY ITS GENERAL SECRETARY,
B.N. YOGANANDA
NO.80/1, 13TH CROSS, 1ST K BLOCK,
RAJAJINAGAR, NEAR NAVARANGA CIRCLE,
BANGALORE - 560010.

... PETITIONER

(BY SMT. SUMAN HEGDE, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY ITS UNDER SECRETARY
VIDHANA SOUDHA
BANGALORE 560 001.
2. UNDER SECRETARY TO GOVERNMENT
(PRIMARY EDUCATION) EDUCATION DEPARTMENT,
M.S. BUILDING,
BANGALORE 560 001.
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 - 560 010.
4. KANNADA DEVELOPMENT AUTHORITY
NO.263, 2ND FLOOR, VIDHANA SOUDHA,
BENGALURU - 560 001,
REPRESENTED BY ITS SECRETARY
DR. K. MURALIDHARA.
5. SRI ASHWINI KUMAR,

S/O. K.S. KRISHNAMURTY,
 AGED ABOUT 42 YEARS,
 OCCUPATION: AGRICULTURE AND WORKING
 PRESIDENT
 SCHOOL DEVELOPMENT AND MONITORING COMMITTEE
 LEGISLATOR MODAL GOVERNMENT
 HIGHER PRIMARY SCHOOL, HOSANAGARA
 TALUK HOSANAGARA
 DISTRICT SHIVAMOGGA – 577 418.

... RESPONDENTS

(BY SRI UDAYA HOLLA, ADVOCATE GENERAL A/W
 SRI D. NAGARAJ, ADDL. ADVOCATE GENERAL FOR R1 & R2
 SRI S. BASAVARAJ, ADVOCATE FOR PROPOSED R3 ON IA
 1/19,
 SRI D.R. RAVISHANKAR, ADVOCATE FOR
 INTERVENER ON IA 3/19,
 SRI ASHWINI KUMAR, ADV., FOR SRI SIDDHARTH BABU RAO,
 ADVOCATE FOR IA 2/19 FOR IMPLEADING)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT THE AMENDMENT OF RULE 4 OF KARNATAKA RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION RULES, 2012 TO THE EFFECT THAT "PROVIDED THAT NO UNAIDED SCHOOL FALLING UNDER SUCH 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 NEIGHBOURHOOD" THE NOTIFICATION DATED 30TH JANUARY 2019 ISSUED BY THE R-2, AT ANNEXURE-A IS NULL AND VOID ON THE GROUND THAT THE SAME IS VIOLATION OF FUNDAMENTAL RIGHTS OF CHILDREN GRANTED UNDER THE PROVISIONS OF ARTICLE 21-A OF THE CONSTITUTION OF INDIA AND ETC.

IN W P No.13729/2019:

BETWEEN :

1. SMT JANAKAI DEVI G
 AGED ABOUT 32 YEARS

C/O GOPAL KRISHNA L
R/O NO.240, 10TH MAIN ROAD,
R.P.C.LAYOUT, BANGALORE NORTH
VIJAYNAGAR,
BANGALORE-560040

2. SMT ASHA K
AGED ABOUT 30 YEARS
C/O SURESH S
R/O 84, 25TH CROSS, 3RD MAIN ROAD,
HAMPINAGAR, R.P.C.LAYOUT,
VIJAYANAGAR,
BANGALORE-560040
3. SMT. SWATHI P
AGED ABOUT 26 YEARS
W/O KOLATAM NARASIMHA MURTHY,
R/O NO.75, 4TH CROSS,
1ST MAIN, JJR NAGAR,
BANGALORE SOUTH, CHAMRAJPET,
BANGALORE-560018
4. SMT. AMARAVATHI
AGED ABOUT 40 YEARS
C/O SRINIVAS,
R/O NO.54, 2ND MAIN ROAD,
RPC LAYOUT, BANGALORE NORTH,
VIJAYANAGAR,
BANGALORE-560040
5. SMT. LAKSHMI
AGED ABOUT 27 YEARS
W/O SRINIVAS,
R/O NO.28/1, 17TH CROSS,
10TH MAIN, PADARAYANAPURA,
BANGALORE SOUTH,
BENGALURU-560026

... PETITIONERS

(BY SRI CHETHAN B ADV.,)

AND :

1. THE GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA,
BANGALORE-560 001

REP BY ITS PRINCIPAL SECRETARY

2. THE EDUCATION DEPARTMENT
(PRIMARY EDUCATION)
M.S.BUILDING,

BANGALORE-560001
REP BY ITS UNDER SECRETARY TO
GOVERNMENT(I/C)

3. THE COMMISSIONER OF PUBLIC INSTRUCTIONS
EDUCATION DEPARTMENT,
NRUPATUNGA ROAD,
BANGALORE-560 001

... RESPONDENTS

(By BY SRI UDAYA HOLLA, ADVOCATE GENERAL A/W
SRI D. NAGARAJ, ADDL. ADVOCATE GENERAL FOR
RESPONDENTS)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO
QUASH THE SAID NOTIFICATION DATED 30.01.2019 ISSUED
BY THE RESPONDENT NO.2 AS PER ANNEXURE-A AND ETC.,

THESE WRIT PETITIONS HAVING BEEN HEARD AND
RESERVED FOR ORDERS ON 04.04.2019 AND COMING ON
FOR PRONOUNCEMENT OF ORDER THIS DAY,
NARAYANASWAMY J., MADE THE FOLLOWING:-

ORDER

All these writ petitions are filed in the form of public
interest litigation to declare the amendment of Rule 4 of
Karnataka Right of Children to Free & Compulsory
Education Rules, 2012, issued by means of notification
dated 30.01.2019 by the Respondent No.2, as null and void
on the ground that the same is in violation of fundamental

rights of children guaranteed under Article 21-A of the Constitution of India.

2. The provision challenged in these proceedings reads as follows:

“provided that no unaided school falling under such clause (iv) of clause (n) of Section 2 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”.

3. The petitioners herein consist of an organization, parents of the children seeking admission under provisions of Right to Education Act and a RTE Students & Parents Association (R). The aforementioned amendment, in substance, precludes identification of schools under the RTE Act wherever there exists a Government School or an aided school. If the amendment is declared *ultra vires* the Constitution of India, children entitled under the RTE Act may seek admission in any school in the locality. 86th Amendment to the Constitution of India has been brought in force by way of insertion of Article 21-A. As a

result, myriad number of children got an opportunity to attend school for elementary education. The Parliament enacted the Right of Children to Free and Compulsory Education Act, 2009, hereinafter referred to as 'Central Act, 2009' for the purpose of providing free and compulsory education to all children between six to fourteen years of age. By powers conferred under Section 38(1) of the Central Act of 2009, the Government of Karnataka vide Official Gazette dated 28/4/2012, enacted Karnataka Right of Children to Free & Compulsory Education Rules, 2012, hereinafter referred to as 'State Rules, 2012'.

4. Section 12(2) of State Rules, 2012 and definition of 'school' as per Section 2(n) of Central Act, 2009 envisage 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. Rule 8 of 2012 Rules seeks to compensate private-unaided schools for filling 25% seats [as per Section 12(1)(b) of Central Act, 2009] in their institution. The said provision provides equal opportunity to students

to avail free and compulsory education within the vicinity of their place of residence.

5. On 30.01.2019, the Government of Karnataka in order to dilute the spirit and object of the said legislation, vide notification No.ED 36 PGC 2018 brought about amendment to Karnataka Rules, 2012 in gross violation of spirit of the statute and the parent legislation. As per the amendment, unaided schools are not required to provide admission to disadvantaged children where there are government schools and aided schools in the neighbourhood, and that such unidentified unaided/private schools will not receive reimbursement for filling of 25% RTE quota seats.

6. It is stated in W P No.7889/2019 that Government schools are not preferred choice by parents. Majority of the Government schools do not have L.K.G. The 1st respondent cannot compel the parents to admit their children in the Government schools which do not have English medium. An opportunity to get admission in private schools, is taken away by way of amendment,

affecting the fundamental rights of children as well as parents.

7. Petitioners have presented these petitions contending that provisions of Section 6 and Section 12(1)(c) of RTE Act 2009 indicate where there are no neighbourhood schools, the State Government and Local Authorities are required to establish schools in such neighbourhood within three years and till such time, the children belonging to weaker section and disadvantaged group ought to be admitted to such neighbourhood private Aided/Unaided school. Where there are Government Schools established by Local Authority and Aided Schools available, no private unaided schools can be identified for the purpose of admissions of children belonging to weaker section and disadvantaged group. Section 38 of RTE Act empowers the Government by notification to make Rules for carrying out objectives of the Act. In pursuance of the said provision, the Government of Karnataka, framed Rules 2012 and Rule 4 thereof defines areas or limits of neighbourhood throughout the State except City

Corporations for establishment of Schools by Government and local Authority. If Government schools or schools established by the local authority are available in neighbourhood, the unaided schools referred to in sub-clause (iv) of Section (n) of Section 2 cannot compel the Government to sponsor children to their schools. The provisions for admission in private unaided schools as per Section 12(1)(c) of the RTE Act, 2009 appears to be only transitory and for a temporary period of 3 years, and once a school is established in the neighbourhood, there cannot be any admission to private unaided schools and this is, in sum and substance the purpose of the said Act. The children belonging to weaker section and disadvantaged group are entitled to be admitted to the schools referred to in sub-clause (iv) of Clause (n) of Section 2, only when there are no Government Schools; Schools established by the local bodies; and Aided Schools are available. Admission to unaided private schools is not free since they are not under obligation to provide free education. State Government needs to reimburse cost of education of those children admitted to private unaided schools. Otherwise,

the Government schools, local authorities' schools and aided schools, may not get sufficient number of children. Hence the Government of Karnataka having realized the objectives of the Act, brought an amendment to the Rules providing identification of unaided schools where the government schools and schools established by the local authority and aided schools are not available, which is strictly in consonance with the objectives of the Act. It is stated, no right much less fundamental right as enshrined under Article 21-A of the Constitution of India has been taken away by the impugned amendment Rules nor there is infringement of fundamental right. Section 10 of RTE Act 2009 obligates parents or guardian to admit or cause to admit his or her child or ward, to an elementary education in the neighbourhood school. Proviso to Section 8(a) of the Act, disentitles the parents or guardians from claiming any reimbursement of expenditure incurred on elementary education admitted to a school other than a school established, owned, controlled or substantially financed by funds provided directly by the appropriate

government or a local authority. Thus, the respondents pray for dismissal of the writ petitions.

8. Ms.Suman Hedge, Smt.Manasi Sharma, and Shri Chethan B, learned advocates for the petitioners contended that the Amendment is against the Central Act of 2009 so far as it tries to force children to get admission in undeveloped Government schools against their choice. Article 21-A in the Constitution is under the umbrella of Fundamental Rights. The parents of even poor children do not admit their children to Government schools because Government schools do not provide kindergarten education. Thus, even if the poor parents want to send their children to Government Schools, they have no option but to send their children to private schools where there is 25% RTE quota and send children for pre-elementary education. Section 12(1) of the Central Act provides freedom to the underprivileged children to join a school of their choice. However, the impugned notification has curtailed this right of the children by amending Rule 4 of the RTE Rules. The said Notification provides that within 1

km of the locality of the poor children, if there is no private primary school and within 3 Km if there is no Higher Secondary School, such students should compulsorily be admitted to Government schools of their locality. Such an amendment is bad in law.

9. It is further submitted, the Hon'ble Apex Court has given directions in 2012 that the Private schools, even if they don't get any kinds of aid from the Government, should provide free education to the children of underprivileged class, if they wish to join their school. Thus, it becomes, more of a choice of the children and parents, in which school they want to join. The Respondents have not even called for application for the new academic year. They are depriving of the children of their fundamental rights. The Government Schools don't even have English Medium schools established as of today. The Respondent Government should not think that the reimbursement that they give to private unaided schools for education of 25% of RTE students in their schools, is a burden upon the Government, because, the total budget of

the Karnataka Government, is less than the national average of the educational budget. Moreover, the RTE Act itself was intended to provide free education to the underprivileged children.

10. On the other hand, the learned Advocate General for the respondents submits, that due to the RTE and the reservation that RTE allows, the government schools across the State have been closed (Lower Primary Schools in 2012-13 were 653 in number and in 2018-19 they are 433 in total and Higher Primary School in the year 2012-13 were 44 in number and now accounts to 71) and there has been a steady increase in the number of private schools over the years (Unaided schools in the year 2011-12 under the category Lower Primary Schools were 2951 in number and now account to 4206, and Higher Primary Schools were 8009 and now account to 9845 in number.

11. The State also contends that since the enactment of the Act, there has been a heavy burden on the exchequer. Over the years, the total expenditure incurred by the State till now is Rs.1300 crores and for the

academic year 2018-19, the cost of reimbursement was Rs.700 Crores. RTE and the reservation through the act affects the psychology of the children. The reading of section 6 and 12(1) allows the Government of Karnataka to bring in an amendment through Rule 4 as the 'neighbourhood principle' postulates that if there is a Government School in a certain specified area, children cannot avail the option to choose a private school. No fault can be found in the amendment, neither it takes away the right or infringes the fundamental right.

12. We have given our anxious considerations to the submissions made by the respective parties.

13. It is necessary to mention here, independence left the Government of India seeking answers for some important problems in the education sector. The problem was of two-fold: 1) To fight illiteracy, by providing facilities for giving elementary basic education to 85% of our population who could not read and write; and 2) To nationalize our entire system of education so as to train, equip and direct the youth of the country to take their

proper share in building a progressive State. To solve this two-fold problem, the Government had to contend from the very outset with three main difficulties – restricted finance, paucity of trained teacher and controversial problem of the medium of instruction. The aspect of right to education was deliberated extensively during drafting of the Constitution.

14. Under the Chairmanship of B.G. Kher, the then Chief Minister of Bombay in 1950 accepted the universal program of compulsory and free basic education as proposed in the Plan itself but reduced the time span from 40 (1944-84) to 16 years (1944-60). It was that recommendation that formed the basis of Article 45 of the Directive Principles of the Indian Constitution and since then, efforts were made to fulfill the provision of free and compulsory education for all children in the country through successive five-year plans and a host of Central and State Governments' sponsored programs.

15. The Supreme Court in *Mohin Jain v. State of Karnataka*, (AIR 1982 KAR. 1858) after mentioning that

“Right to Education” as such has not been guaranteed as a fundamental right under Part III of the Constitution, held that reading Articles 21, 38(a) & (b), Articles 39, 41 and 45 cumulatively, it becomes clear that the framers of the Constitution made it obligatory for the State to provide education to its citizens. Relying on the preamble, which promises to secure justice 'social, economic and political' for the citizens and assures the dignity of individual, the court observed: "An individual cannot be assured of human dignity unless his personality is developed and the only way to do that is to educate him." It is further held, right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by a right to education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizen.

16. The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21-A,

means that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards. Article 21-A and the RTE Act came into effect on 1st April 2010. The title of the RTE Act incorporates the words 'free and compulsory'. 'Free education' means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education.

17. Section 2(f) defines Elementary Education means education from 1st Class to VIII class and Section 2(n) school means, any recognized school imparting elementary education and includes-

- (i) a school established, owned or controlled by the appropriate Government or 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 grants to meet its expenses from the appropriate Government or the local authority.

18. Section 3 of the Act specifies, every child of age 6 to 14 shall have the right to free and compulsory education in a neighbourhood school. Section 6 says, appropriate government and the local authority to establish schools within the area or limits of neighbourhood. Section 8 imposes a duty on the appropriate Government to provide free and compulsory elementary education to every child. It further specifies that if the parent or guardian of a child admits his/her child to a school other than a school established/owned/controlled/substantially financed by funds provided by the Government or local authority, such child or his parent/guardian shall not be entitled to reimbursement of expenditure incurred on the elementary education of a child. Elementary education is defined to mean 1st to 8th Class. Section 9, imposes a duty on the local authority to provide free and compulsory elementary

education to every child admitted and further specifies that if the parent or guardian of a child admits the child to a school other than a school established/owned/controlled/substantially financed to by funds provided by the Government or local authority, such child or his parent/guardian shall not be entitled to reimbursement of expenditure incurred on the elementary education of a child.

19. In substance, the core issue is, whether unaided schools should also be identified under the RTE Act. Under Section 38 of the RTE Act, the State Government may frame rules to carry out the objects of the Act. In pursuance thereof, Rules have been framed. Rule 4 defines the area or the limit of neighbourhood. If the schools run by the Government or aided by the Government are available in the neighbourhood, parents of children entitled for admission to the schools under the RTE Act shall be entitled to seek admission in the said schools.

20. Shri Udaya Holla, learned Advocate General brought out a startling figure that the State have reimbursed ₹1300 Crores for the academic years from 2012-13 till March 2019 to the unaided schools. He urged that Section 6 of the RTE Act requires the appropriate Government and the local authority to establish schools in the neighbourhood. Section 2(n) defines a 'School'. It includes a school established by the Government or local authority, an aided school, a school belonging to a specified category and an unaided school. Section 12(1)(c) provides for admission of children belonging to the weaker section in the schools defined under Sub Clause (iii) and (iv) of Section 2(n). He contended that a combined reading of Section 6 and Section 12(1)(c) leads to an unambiguous inference that where there are no schools in the neighbourhood, the State Government and the local authorities are required to establish schools within three years; and till such time, the children belonging to the weaker section must be admitted in other schools specified in Section 2(n) of the Act which include private unaided schools. He further pointed out that if private schools are

identified in localities where Government or Government aided schools are already in existence, State exchequer will be burdened with an estimated sum of ₹700 Crores towards reimbursement.

21. The learned Advocate General is right in his submission that the State Government or the local authorities are under the obligation to identify schools defined under Section 2(n)(iii) & (iv) only if there are no schools in the neighbourhood. The case of the petitioners is that notwithstanding the existence of Government or Government aided schools in the neighbourhood, unaided schools must also be identified to ensure that parent and the child get admission in schools of their choice. If petitioner's contention is to be accepted, the State Government will be compelled to reimburse astronomical figures. The argument on behalf of the petitioners that children entitled for seat under the RTE Act may choose an unaided school in the neighbourhood though there exist Government and aided schools, is fallacious.

22. The term 'legal limitation' alludes to a conviction that judges should restrain the utilization of their energy to strike down laws, or to pronounce them unjustifiable or illegal, unless there is an unmistakable clash with the Constitution. This idea depends vigorously on the uniform adherence to case law, which envelops choices rendered by different judges on earlier, comparable cases. The Constitution of India did not accommodate the Courts to be a super lawmaking body or a substitute for the disappointment of the other two organs. Hence, the need emerges for the Courts to set out its own impediments. One of the cases of legal restriction is the situation of *State of Rajasthan v. Union of India*, A.I.R. 1977 S.C. 1361, in which the court dismisses the appeal on the ground that it included a political inquiry and in this way the court would not go into the matter. In *S.R. Bommai v. Union of India*, AIR 1994 SC 1918, the judges said that there are sure circumstances where the political component rules and no legal survey is conceivable. The activity of energy under Art. 356 was a political inquiry and in this manner the court ought not meddle. Ahmadi J. (as he then was) said

that it was hard to advance judicially sensible standards to investigate the political choices and if the courts do it, then it would be entering the political brush and scrutinizing the political knowledge, which the court must evade. Therefore, the Courts must be discrete while exercising their power under judicial review.

23. As it has been held in Mohin Jain's case, it has been observed that an individual cannot be assured of human dignity unless his personality is developed and the only way to do that is to educate him. In Unnikrishnan's case [(1993) SCC (1) 645] it has been held that right to education is subject to the limits of its economic capacity and development of the State. In this background, the Government felt that there is a need for bringing education from Part IV to Part III for which under 86th amendment, 21-A was brought into being. From the said provision, right to education, the State shall provide free and compulsory education to all the children of 6 to 14 years of age. The Act defines elementary education in Section 2(f) of the Act. Once these schools have been established, Rule 4 of the Rules is amended to the extent that

reimbursement of expenditure incurred on elementary education of a child permissible only in case where Government or aided schools are not available. This amendment is neither arbitrary nor unconstitutional nor in violation of Article 21 of the Constitution. Article 21A which made compulsory education and it is a fundamental right of a child and Article 45 of the Constitution, which under Part IV of the Constitution, provides that the State was entitled to provide early child hood care and education for all children until they complete age of 6 years. Article 21-A though provides for compulsory education for elementary education but in view of Part IV under Article 45 read with Section 11, which provide education even to the pre-elementary school. When these schools have been established, then the Government need not reimburse the cost or expenditure on the elementary education of a child. If at all, if the parents want to admit their children to private schools, it is out of their decisions for which the Government is not liable or accountable.

24. The judicial review on administration or legislative actions is permissible to interfere only in case where policy can be faulted on the ground of unreasonableness or it being arbitrary. The Supreme Court has cautioned in *Ugar Sugar Works Ltd., v. Delhi Admn.* (2001) 3 SCC 635 Para-18, as follows:

“18. The challenge, thus, in effect, is to the executive policy regulating trade in liquor in Delhi. It is well settled that the courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, does not justify invalidating the policy. In tax and economic regulation cases, there are good reasons for judicial restraint, if not judicial deference, to judgment of the executive. The courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should

have been adopted or not. It is best left to the discretion of the State.”

25. In *Chairman & Md. BPL Ltd. v. S P Gururaja & others*, (2003) 8 SCC 567 Para-20 it is held “...Once the Court finds that the power exercised by the statutory authorities can be traced to a provision of a statute, unless and until violation of mandatory provisions thereof is found out and/or it is held that a decision is taken for an unauthorized or illegal purpose, the court will not ordinarily interfere either with the policy decision or any decision taken by the executive authorities pursuant to or in furtherance thereof.”

26. The respondents retain the power as provided under the provisions of the Act to amend Rules. Since the provisions enable the Government to amend Rule, Rule 4 is amended. Unless and until there is arbitrariness, mala fides etc., are found, it is impermissible for the Court to interfere in such matters. In this regard, it is pertinent to refer to the judgment of the Supreme Court reported in

Krishnan Kakkanth v. Government of Kerala & others,
(1987) 9 SCC 495 Para-36, which reads as follows:

“36. To ascertain unreasonableness and arbitrariness in the context Article 14 of the Constitution, it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the State Government. It is immaterial whether a better or more comprehensive policy decision could have been taken. It is equally immaterial if it can be demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. Unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, courts should avoid “embarking on uncharted ocean of public policy”.

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 neighbourhood. 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, writ petitions are rejected.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

akd*

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