
(2018) 01 GUJ CK 0061
In the Gujarat High Court
Case No : 246 of 2017

SANDIP HARSHADRAY MUNJYASARA

APPELLANT

Vs

STATE OF GUJARAT & ANR

RESPONDENT

Date of Decision : 09-01-2018

Acts Referred:

[Right Of Children To Free And Compulsory Education Act, 2009](#),
[Section 2\(n\)](#), [Seciton 12\(1\)](#)

Citation : (2018) 01 GUJ CK 0061

Hon'ble Judges : M.R. Shah, Biren Vaishnav

Bench : Division Bench

Advocate : MANISHA LAVKUMAR

Judgement

1. Present petition is filed by the petitioner - party in person in the nature of Public Interest Litigation espousing the public cause wherein the petitioner has prayed for implementation of the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as ""RTE Act"")) and the Rules framed thereunder called the Right of Children to Free and Compulsory Education Rules, 2012 (hereinafter referred to as ""RTE Rules"")) in its true spirit and fully.

2. It is the case on behalf of the petitioner that that as per Section 12(1)(c) of the RTE Act, a school specified in subclauses (iii) and (iv) of section 2(n) of the RTE Act shall admit in Std.I to the extent of atleast 25% of the strength of that class, children belonging to weaker sections and disadvantaged group in the neighborhood and provide free and compulsory elementary education till its completion. It is the case on behalf of the petitioner that all 25% of the seats in the primary schools granted recognition in the year shall be offered for admission under the RTE Act to the

students belonging to the weaker section of the society and underprivileged class. It is the case on behalf of the petitioner that for the current academic year 201718, new primary schools which were granted approval / recognition in the month of May / June 2017 onwards are not subjected to the RTE Act and 25% of the seats in those schools are not offered for admission under the RTE Act, thereby the object and purpose of the RTE Act and the RTE Rules are frustrated. It is the case on behalf of the petitioner that even according to the respondents, for the year 201718, approximately 55,000 students are enrolled under the RTE Act. However the number of applicants are much more than the students enrolled under the RTE Act. Therefore, it is the case on behalf of the petitioner that if 25% of the seats in those primary schools which are granted the recognition in the month of May / June 2017 or thereafter are offered and/or kept reserved under the RTE Act, in that case all those remaining students would have got the admission and the object and purpose of the RTE Act would be achieved. Making above submissions it is requested to direct the respondents to consider all the schools which are granted approval / recognition in the particular year for admission under the RTE Act.

3. Ms. Manisha Lavkumar, learned Government Pleader has appeared on behalf of the respondent State Authorities. An affidavit in reply is filed on behalf of the respondents more particularly on behalf of respondent No.2 affirmed by one Shri Shankerlal Chaudhary, Deputy Director, Primary Education, Gandhinagar. It is submitted that for bringing transparency in the admission process under the RTE Act, the respondent authorities for the academic year 201718 had constituted a webportal viz. www.rtegujarat.org. That the parents of the aspiring students were required to fill online application forms and select their choice of school. It is stated that for the academic year 201617, the respondent authorities have granted admission to almost 46,000 students, whereas for the year 201718, 55,000 students are enrolled on the RTE Act. It is stated that in order to facilitate parents of aspiring students a total 490 receiving centres were constituted by the respondent Authorities. It is stated that at the receiving centres, the officials of the respondent Authorities were entrusted with the task of filling online forms on behalf of the parents who were

not in a position to complete the necessary formalities. It is stated that the respondent State had issued a Government Resolution dated

23.05.2013 wherein mechanism was established for granting admission to the children of weaker and disadvantaged groups as provided under the

RTE Act. It is stated that the respondent Authorities are following the mechanism as envisaged vide Government Resolution dated 23.05.2013 for

granting admissions to the children of weaker section and disadvantaged groups. It is stated that for granting admission under the RTE Act for the

academic year 2017-18, the respondent Authorities had published advertisement in all leading newspapers across the State of Gujarat on

20.02.2017. It is submitted that in the said advertisement it was declared that the parents of the aspiring students shall be required to fill the online

application form between 21.02.2017 to 15.03.2017. It is stated that as on the date of publication of the advertisement, the respondent Authorities

had enlisted the names of all the schools holding a valid recognition from the respondent Authorities. It is submitted that therefore the submission on

behalf of the petitioner that hundreds of nongranted private primary schools are not listed on the webportal is factually incorrect.

3.1 It is further stated in the affidavit in reply that the respondent Authorities had initiated the process for giving recognition to nongranted private

primary schools between 05.01.2017 to 04.02.2017. It is stated that the time limit for submitting online application for giving recognition to new

nongranted private primary schools was renewed and the prescribed forms were once again accepted by the respondent Authorities from

05.04.2017 to 14.04.2017. It is stated that accordingly the exercise for giving recognition to new nongranted private primary school was carried

out at District level in the month of May, June and July 2017. It is stated that however in the meantime, the process for accepting applications from

aspiring students for admission under the RTE Act was initiated in the month of February, 2017. Hence, the new schools that were accorded

recognition in the month of May / June / July 2017 by no stretch of imagination could be enlisted by the respondent Authorities in the month of

February 2017. It is stated that 25% of the seats of new nongranted private primary schools that were accorded recognition shall be offered to

aspiring and deserving students for the academic year 2018-19. Therefore, as such it was the case on behalf of the respondent Authorities that the

admission under the RTE Act are granted and all the seats which were available as on 20.02.2017 were offered for admission under the RTE Act

and as such are filled in by the students belonging to weaker sections / underprivileged class.

4. Today, when the present Special Civil Application is taken up for further hearing, Ms. Manisha Lavkumar, learned Government Pleader has

stated at the Bar that from the next academic year i.e. 201819 onwards the process for grant of new recognition / approval to new primary school

shall be completed as far as possible on or before public advertisement inviting the applications from the parents of the aspiring students, for

admission under the RTE Act and under any circumstances no recognition to open new Primary School shall be granted after May of academic

year. She has stated at the Bar that in case after the public advertisement inviting the applications for admission under the RTE Act, any new

schools are granted recognition / approval, necessary amendment shall be made in the webportal and 25% of the seats of those newly recognized /

approved primary schools shall also be offered for admission under the RTE Act in the very current year. She has stated at the Bar that all those

25% seats which may be available due to grant of recognition / approval subsequent to the public advertisement inviting the applications for

admission under the RTE Act shall be filled in by offering the admission to the remaining students who could not get the admission in the first round.

5. Heard the petitioner - party in person and Ms. Manisha Lavkumar, learned Government Pleader appearing on behalf of the respondent State.

5.1 It is not in dispute that under the RTE Act and as per section 12(1)(c) of the RTE Act, a school specified in subclause (iii) and (iv) of section

2(n) of the RTE Act shall admit in Std.I to the extent of atleast 25% of the strength of that class children belonging to weaker sections and

disadvantaged group in the neighborhood and provide free and compulsory elementary education till its completion. To achieve the aforesaid goal,

the respondents released the Schedule of Online 25% Admission Policy, 201718. It also appears that for bringing transparency in the admission

process, the respondent Authorities for the academic year 201718 had constituted a webportal viz. www.rtegujarat.org. It also appears from the

affidavit in reply that for granting admission under the RTE Act for the academic year 201718, the respondent Authorities had published

advertisement in all leading newspapers across the State of Gujarat on 20.02.2017. In the said advertisement it was declared that parents of the aspiring students shall be required to fill the online application form between 21.02.2017 to 15.03.2017. However, the respondent Authorities enlisted the names of only those schools holding a valid recognition from the respondent Authorities as on the date of publication of advertisement only i.e. 20.02.2017. It is not in dispute that subsequent to the advertisement and for the academic year 201718 and/or thereafter new primary schools are granted the recognition. However, though 25% of those newly recognized schools are required to be offered for admission for the students belonging to weaker sections of the society and/or disadvantaged group, the respondent Authorities have not offered 25% of the seats of those schools which are granted recognition after 20.02.2017. The resultant effect is that for the academic year 201718, all those schools which are granted the recognition subsequently i.e. subsequent to 20.02.2017, are out of the purview of the RTE Act, which has resulted into loss to the children of weaker and disadvantaged groups for getting admission in 201718. At this stage it is required to be noted that in the year 201718 though approximately 55,000 students are enrolled under the RTE Act, and many more students of weaker sections and disadvantaged groups were left out and could not get the admissions. If all those 25% seats of the schools which are granted the recognition after 20.02.2017 would have been offered to the remaining students, in that case, more and more students of weaker sections and disadvantaged groups would have got the benefit under the RTE Act. As observed hereinabove, now from the academic year 201819 onwards the State has agreed to offer 25% of the seats of those schools which are granted the recognition after the first advertisement inviting the applications for admission under the RTE Act to be offered to the remaining students who are left out and/or who could not get the admission in the first round, however subject to fulfilling all other criterias. As such the statement is made by Ms. Manisha Lavkumar, learned Government Pleader that as far as possible, no new recognition shall be granted after the first date of advertisement inviting the applications for grant of admission under the RTE Act or after May of Academic Year. She has stated at the Bar that in case for any reason any school is granted the recognition subsequently, subsequent to the first advertisement

inviting the applications for admission under the RTE Act or after the month of May of academci year, in that case, all those schools also shall be

subjected to RTE Act for the very year and 25% seats of those schools shall also be offered and for which on the webportal name of such schools

shall be declared and all those seats shall be filled in by the remaining students of such weaker sections and disadvantaged groups which are left out

and/or who could not get the admission in the first round of admission.

6. In view of the above and more particularly now the stand taken by the State Government, recorded hereinabove, present writ petition stands

disposed of by directing the respondents to see to it that all those schools who are granted the recognition subsequently, subsequent to the date of

first advertisement inviting the applications for admission under the RTE Act shall be subjected to the RTE Act from the very first year of granting

the recognition and names of all those primary schools shall be published on the webportal immediately on granting the recognition to such schools

and the State Government is hereby directed to see that 25% of those newly recognized schools also shall be offered for admission to the children

of weaker sections and disadvantaged groups under the RTE Act and all those children of weaker sections and disadvantaged groups who could

not get the admission in the first round of admission and are left out, may be granted the admissions under the RTE Act out of 25% of the seats of

such schools which are granted recognition subsequently, subsequent to first date of advertisement inviting the applications, so that more and more

children of weaker sections and disadvantaged groups may get the admission under the RTE Act and the real object and purpose of RTE Act is

achieved which as such is the endeavor of the State Government. The aforesaid direction shall be implemented from the academic year 201819

onwards. Rule is made absolute to the aforesaid extent. Registry is directed to issue the writ of this order to the respondent Nos.1 and 2 forthwith.