



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writ (PIL) Petition No. 9887/2020

Smile For All Society (NGO)

----Petitioner

Versus

Elementary Education Rajasthan & Anr.

----Respondents

Connected With

D.B. Civil Writ (PIL) Petition No. 7361/2020

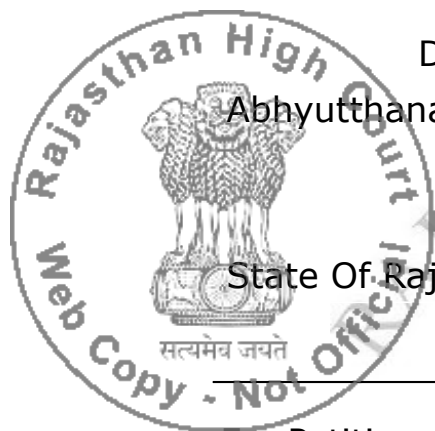
Abhyutthanam Society

----Petitioner

Versus

State Of Rajasthan & Ors.

----Respondents



For Petitioner(s) : Mr. Vikas Jakhar, Advocate
Mr. Abhinav Sharma, Advocate
For Respondent(s) : Mr. Chiranji Lal Saini, Additional
Advocate General
Mr. Akshay Bhardwaj, Advocate
through video conferencing on behalf
of Mr. R.D. Rastogi, Additional
Solicitor General

HON'BLE MR. JUSTICE MANINDRA MOHAN SHRIVASTAVA

HON'BLE MR. JUSTICE FARJAND ALI

Order

23/10/2021

In this PIL, challenge has been made to the policy of the State insofar as direction has been issued by the State Authorities that admission to pre-school classes in educational Session 2020-21 shall not be governed by The Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the 'RTE Act').

During the pendency of this petition, the aforesaid direction has been reiterated for the purposes of admission to be made in



the Educational Session 2021-22, copy of which has already been placed on record.

Learned counsel for the petitioners would contend that the State's directions to prohibit admission to pre-classes under RTE Act is contrary to the statutory scheme of Section 12 of the RTE Act and the State has illegally absolved the private schools from complying with the statutory obligation enjoined under Section 12(1)(c) in relation to pre-educational classes, in ignorance of scheme under Proviso to that provision.

On the other hand, learned State Counsel would submit that in view of definition of 'child' as provided in Clause (c) of Section 2 and that of 'elementary education' under Clause (f), the petitions are misconceived as the statutory obligations under the Act cannot be fastened where the education is being provided in pre-school to children under the age of six years which, otherwise, is not a part of the elementary education.

In the alternative, State Government would submit that the applicability of the provisions to pre-school would essentially depend upon proper reimbursement to be made to the State by the Central Government under the scheme of Section 7 of the Act and, therefore, unless such scheme is properly worked out and implemented, no direction could be sought in the garb of PIL by the petitioners.

At this stage, learned counsel for the petitioners has submitted that as the process of admission has been initiated and the last date of submitting application is 24.10.2021, an appropriate interim order may be made, so that at least for the present ongoing session, the petitions may not be rendered infunctuous.



We have been apprised that a notification on 08.10.2021 has been issued by the office of the Director of Elementary Education Rajasthan, Bikaner, which shows that the schedule of admission procedure provides last date as 24.10.2021 for submission of online applications and uploading of necessary documents.

On *prima-facie* consideration, we find that proviso to Sub-section (1) of Section 12 provides that where a school specified in Clause (n) of Section 2 imparts pre-school education, the provisions of Clauses (a) to (c) shall apply for admission to such pre-school education. Thus, Proviso creates an obligation on the schools specified in Sub-clauses (iii) and (iv) of Clause (n) of Section 2 to admit, to the extent of at least twenty five percent of the class, Children belonging to weaker section and disadvantaged group.

The direction issued by the State Government, on a *prima-facie* consideration, seeks to absolve the schools of the aforesaid specified category from the statutory obligation as stated under proviso of Sub-Section 2 of Section 12.

Therefore, we are inclined, at this stage, to pass an interim order to the effect that the direction of the State shall not come in the way of performance of statutory obligation by the schools specified in Sub-clauses (iii) and (iv) of Clause (n) of Section 2 of the RTE Act and Proviso as referred to above shall oblige them to make admission under the RTE Act. Such admission, however, would be provisional in nature and to be governed by the final order that may be passed by this Court in the writ petitions.

Considering the nature of litigation, we deem it proper to list these petitions for final hearing on 17.11.2021.



Central Government, if so advised, may file its return on or before 10.11.2021. Rejoinder, if any, may be filed by the petitioners to the reply of the Central Government, if filed, and the reply which has already been filed.

Certified copy of the order be supplied today itself.

(FARJAND ALI),J

(MANINDRA MOHAN SHRIVASTAVA),J

Mohita/63-64



सत्यमेव जयते