

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

(ORIGINAL JURISDICTION)

W. P. No. _____/ 2020 (PIL)

BETWEEN:

1. A. A. Sanjeev Narrain

...PETITIONERS

AND:

1. State of Karnataka
Represented by its Chief
Secretary
Department of Primary and
Secondary Education,
Vikasa Soudha

Bengaluru-560 001.

2. Union of India

Department of School
Education
and Literacy
Represented by the Secretary
No.217-C, Shastri Bhawan,
New Delhi-110 001.

**3. Department of Public
Instructions**

Represented by its
Commissioner, Office of the
Commissioner of Public
Instruction, Nrupathunga
Road, Bengaluru-560 020.

**4. Bruhath Bengaluru
Mahangara Palike**

Represented by its
Commissioner,
Corporation Building,
N R Road,
Bengaluru-560 002.

...RESPONDENTS

**MEMORANDUM OF WRIT PETITION UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA**

The Petitioners above named respectfully submits as follows:

1. The address of the Petitioners for the purpose of service of notice, summons and other court processes is as shown in the cause-title or through their counsel, Mr. Harish B. Narasappa and Ms. Poornima Hatti, Samvad Partners
2. The address of the Respondents for similar purposes is as shown in the cause-title above.

BRIEF DESCRIPTION OF THE PARTIES

3. The Petitioner No.1 is a trained lawyer and a graduate of the National Law School of India University, Bengaluru. He has also been a visiting lecturer who has designed and taught courses for the final year undergraduate students at the National Law School of India University. He is deeply involved in the field of public education as the Trustee and Secretary of Rai Bahadur Arcot Narrainswamy Mudaliar's (RBANM's) Educational Charities. RBANM's Educational Charities runs several institutions starting from Primary Schools and High Schools to First Grade Colleges in Ulsoor, Bengaluru. RBANM's Educational Charities is a 147-year-old public charitable trust, founded in 1873, catering to underprivileged children and children of parents belonging to marginalised sections of our society. The Petitioner No.2 is a trained lawyer and writer and is a founding member of the Alternative Law Forum which has been involved in human rights research and practise since its founding in the year 2000. The Petitioner No.2 is also a graduate of the National Law School of India University and also worked at the National Law School at the Center for Child and the Law , wherein the Petitioner No.2 had extensive involvement with the rights of children who were marginalized by mainstream society. The petitioner no. 2 is also working very closely on the issue of constitutional literacy and has recently co-authored a book titled, '*The Preamble: A Short Introduction*'.
4. The Petitioner No.3 is a practising physician and pulmonologist and has been working as a Senior Consultant, Department of Internal Medicine and Pulmonology, Narayana Hrudayalaya Hospitals-

Mazumdar Shaw Medical Center-Bengaluru. The Petitioner No.3 also heads the Nightingales Lifesaving Service, which has, till date, trained over 30,000 persons to perform life-saving Cardiopulmonary Resuscitation (CPR) in Bengaluru.

5. The Respondent No.1 is the State of Karnataka through the Chief Secretary, Department of Primary and Secondary Education. The Respondent No.1 is responsible, *inter alia*, for the overall planning, regulating, monitoring, and facilitating the development of primary and secondary education in the State of Karnataka. The Respondent No.2 is the Union of India, through the Chief Secretary, Department of School Education and Literacy. The Respondent No.2 is responsible for promoting school education and improving the overall literacy by framing educational policies and welfare programmes. The Respondent No.3 is the Department of Public Instructions, responsible for supervising, guiding, co-ordinating and monitoring of, primarily, school education in the State of Karnataka. Respondent No.4 is the Bruhath Bengaluru Mahanagara Palike (“**BBMP**”). The BBMP’s roles and responsibilities include the orderly development of Bengaluru City as well as zoning and building regulations, health, hygiene, licensing, trade, and education, as well as quality of life issues such as lung spaces, water bodies, parks, and greenery.

I. Article 21-A, Right to Education Act, 2009 and the Right to Education Rules:

6. The Petitioners have filed this writ petition, in public interest, against the actions of the Respondents in not providing adequate online resources to school children

prior to resumption of online classes, therefore violating Article 21-A read with the provisions of the Right of Children to Free and Compulsory Education, 2009 (“**RTE Act**”) read with the Right of Children to Free and Compulsory Education Rules, 2010 (“**RTE Rules**”) read with the Karnataka Right of Children to Free and Compulsory Education Rules, 2012 (“**Karnataka RTE Rules**”).

7. India is a signatory to the Convention on the Rights of the Child (“**CRC**”) which came into force on September 02, 1990. India ratified the same on December 11, 1992. Article 28(1) of the CRC reads as follows:

“States parties recognize the right of the child to education, and with a view to achieve this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) ***Make primary education compulsory and available free for all;***
- (b) ***Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;***
- (c) ***Make higher education accessible to all and on the basis of capacity by every appropriate means;***
- (d) ***Make educational and vocational information and guidance available and accessible to all children;***
- (e) ***Take measures to encourage regular attendance at schools and the reduction of drop-out rates;***
(emphasis supplied)

8. Pursuant to the ratification of the CRC and in order to achieve the goals and objectives of the CRC, Article 21-A was inserted into the Constitution vide the Constitution of India (Eighty-Sixth) Amendment Act, 2002. Article 21-A states that “*The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner, as the State may, by law, determine*”. Article 21-A expanded the rights which were earlier provided under Part IV i.e. the Directive Principles of State Policy, specifically, Article 45 of the Constitution. Article 45 of the Constitution reads as follows: “*The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years*”. Article 45 only existed as Directive Principle which the State was free to follow or ignore. In contrast, the insertion of Article 21-A under Part III of the Constitution made it a fundamental right to avail free and compulsory elementary education under the Constitution.
9. Pursuant to the insertion of Article 21-A of the Constitution, the RTE Act and the RTE Rules were enacted to implement Article 21-A throughout all schools in India. Article 21-A, the RTE Act and the RTE Rules came into force in the month of April 2010. The Karnataka RTE Rules came into force in the month of April 2012.

Important Provisions under the RTE Act and the RTE Rules:

10. The RTE Act, in Section 2(n), defines a ‘school’ as follows:
‘School’ means any recognised school imparting elementary education and includes-

- (i) *A school established, owned or controlled by the appropriate Government or a local authority;*
- (ii) *An aided school receiving aids or grants to meet whole or part of its expenses from the appropriate government or the local authority;*
- (iii) *a school belonging to the specified category; and*
- (iv) *an unaided school not receiving any kind of grants or aid to meet its expenses from appropriate Government or the local authority.*

11. Section 2(a) of the RTE Act defines appropriate government to mean as follows:

‘Appropriate government’ means-

- (i) *in relation to a school established, owned or controlled by the Central Government, or the administrator of the Union territory, having no legislature, the Central Government;*
- (ii) *in relation to a school, other than the school referred to in sub-clause (i), established within the territory of-*
 - (A) **a State, the State Government;**
(emphasis supplied)
 - (B) *a Union territory having legislature, the Government of that Union Territory;*

12. The RTE Act read with the RTE Rules identifies the key stakeholders and outlines the roles and responsibilities of each stakeholder to further the aims of Article 21-A of the Constitution. Regarding the financials required to implement the provisions of the RTE Act, Section 7(1) of the RTE Act clearly states that it is the concurrent

responsibility of both the Central and State Governments to provide funds in order to carry out the provisions of the Act. The Central Government is to prepare the capital and expenditure estimates for the implementation of the provisions of the Act under Section 7(2) of the RTE Act and the Central Government, as per Section 7(3) of the RTE Act, is also required to provide as grants-in-aid of revenues to the State Governments, the said percentage of expenditures specified under Section 7(2).

13. Section 8(a) of the RTE Act states that the appropriate government, which is in this case, the Respondent No.1 herein, is to provide free and compulsory elementary education to every child. Section 8(c) of the RTE Act states that the appropriate government has to “*ensure that the child belonging to weaker section and the child belonging to the disadvantaged group are not discriminated against and prevented **from pursuing or completing elementary education on any grounds***” (emphasis supplied). Further, Section 8(d) of the RTE Act states that the appropriate government is to “*provide infrastructure including school building, teaching staff and **learning equipment***” (emphasis supplied). Similarly, Rule 4(9) of the Karnataka RTE Rules states that the local authority or the Commissioner of Public Instruction i.e. the Respondent 3 herein, is to ensure that “*access of children to the **school is not hindered on account of social and cultural factors.***” (emphasis supplied)
14. Therefore, it is clear from the aforesaid rules and provisions that the Respondents 1 and 2 are to firstly, provide free and compulsory elementary education, as envisaged under Article 21-A of the Constitution read with the RTE Act and the rules framed thereunder; second, that requisite resources, such as digital learning

equipment, are sufficiently provided to implement free and compulsory elementary education and third, that is it the responsibility of the Respondent 3 herein to also ensure that access to school is not denied to school children due to extraneous circumstances.

II. **Order Banning Online Classes and Resumption of Online Classes**

15. Due to the outbreak of the COVID-19 pandemic, various orders were issued by the Ministry of Home Affairs (“**MHA**”) under the National Disaster Management Act, 2005 which has resulted in the closing of schools and the stoppage of physical classes for school children. The shutting down of physical classrooms and the extended school closures has resulted in many schools conducting classes online for school children in the State of Karnataka.
16. The MHA *vide* Order dated April 15, 2020 issued the consolidated revised guidelines on the measures to be undertaken by Ministries/Departments of Government of India, State/UT Governments and State/UT Authorities for containment of COVID-19 in India. In the said Order, the MHA, certain activities, including the educational, training, coaching institutions etc. were to remain closed. However, the said Order also stated that the said establishments were expected to “***maintain the academic schedule through online teaching***”.
17. Based on the aforesaid guidelines, several schools resumed their academic schedule by starting online classes. The Respondent No.1 issued an Order dated June 15, 2020 under Section 7 of the Karnataka Education Act, 1983 directing schools following state syllabus and other syllabus including CBSE/ICSE and

other international curricula to not conduct online classes from LKG to Class-V till further guidelines were issued by the Respondent No.1. The said Government Order is produced herewith as **Annexure-A**.

18. The said Government Order came to be challenged in WP No.8168/2020 along with a batch of writ petitions before this Hon'ble Court. This Hon'ble Court *vide* Interim Order dated July 08, 2020 directed the State Government to withdraw the Order banning online classes and held that schools could resume online classes. However, the Hon'ble High Court also observed as follows:

“In fact, the State Government will ***have to take appropriate steps to create an infrastructure by which the facility of online education can be extended even to students in rural areas.***” (emphasis supplied)

The said interim order dated July 08, 2020 has been produced herewith as **Annexure-B**.

19. Despite the aforesaid observation by this Hon'ble Court, the Respondent No.1 has not provided adequate facilities to school children to ensure that they are able to participate in these online classes.
20. The National Statistical Office (NSO) of the Ministry of Statistics and Programme Implementation recently released a survey report on the household social consumption on education in India for the period July 2017-June 2018. Chapter Seven of the said report has outlined the percentage of rural and urban households who have access to computers and internet facilities and has detailed tables giving the break-up of the households for each State that have access to computers and internet

facilities. For the said survey, computers were defined to include “**devices like desktop computer, laptop computer, notebook, netbook, palmtop, tablet (or similar handheld devices)**” (emphasis supplied). An extract of Chapter Seven is produced herewith as **Annexure-C.**

21. Statement 7.1.1 of the aforesaid report shows that in Karnataka, for rural households, only a dismal 2% of households have access to a computer and only 8.3% of households have access to internet facilities. For urban households, only 22.9% of households have access to a computer and 33.5% of households have access to internet facilities.
22. Further, Statement 7.1.2 and Statement 7.1.3 of the aforesaid report outlines the percentage of households with computers and internet facilities for each age group for all States. As per the said Statements 7.1.2 and 7.1.3, in Karnataka, for the age group of 0-20, only 1.7% of the population have access to computers and only 5.4% of the population have access to internet facilities.
23. It is submitted that even though the aforesaid report was for the year 2017-18, the increase in access to computers and internet facilities would not have been substantial in the past two years. Further, the COVID-19 pandemic has resulted in several job losses and severe loss of opportunities in both rural and urban households and school children belonging to these households would not have any means to access classes held online.
24. It is reiterated that as per Article 21-A and the provisions of the RTE Act and the relevant RTE Rules, it is the responsibility of the Central and State Governments to ensure that adequate financial resources are in place in

order to enable school children, especially disadvantaged school children and school children belonging to the economically weaker section. However, the Respondent 2, with the exception of issuing certain guidelines, has not outlined any measures it has taken to ensure digital access to school children continues seamlessly with the start of online classes. The Respondent 2 has also not increased the financial outlay for primary and secondary education which is a pressing need especially since government and aided schools require additional facilities in order to enable the children attending these schools to have digital access to online classes.

25. As has been stated previously, Section 7 of the RTE Act clearly lays the onus on the Respondents to ensure that there are adequate funds to ensure the implementation of free and compulsory elementary education. Section 8(a) of the RTE Act also puts the onus on the Respondent No.1 to ensure that children belonging to underprivileged and disadvantaged groups are not prevented and discriminated from pursuing or completing their elementary education under any circumstances and Section 8(d) of the RTE Act lays the onus on the Respondent No.1 to provide adequate infrastructure including learning equipment, which in this case, implies the necessary digital resources to ensure school children are able to attend online classes.
26. In addition, Section 34 of the RTE Act directs the State Government to constitute a State Advisory Council comprising members not exceeding fifteen in number, whose role is to advise the State Government on the implementation of the provisions of RTE Act in an effective manner. As per Rule 22 of the Karnataka RTE Rules, the Karnataka State Advisory Council for

Elementary Education has been constituted. As per Rule 22(3)(c) of the Karnataka RTE Rules, the Advisory Council is to “meet regularly at least twice in a year to review the status of elementary education in the State. The Council shall also monitor implementation of the Act and these rules and make recommendations to the Government from time to time”. However, since the beginning of this year, no record exists of the number of times the State Council has met and the various recommendations made by the State Council, particularly, with respect to the recommendations made on providing digital resources to disadvantaged and economically weaker school children.

27. Furthermore, Section 24(1) of the RTE Act lays down duties and responsibilities of teachers that are to be undertaken by the teachers. Section 24(1) reads as follows:

“A teacher appointed under sub-section (1) of section 23 shall perform the following duties, namely:

- (a) maintain regularity and punctuality in attending school;
- (b) conduct and complete the curriculum in accordance with the provisions of sub-section (2) of section 29;
- (c) complete entire curriculum within specified time;
- (d) assess the learning ability of each child and accordingly supplement additional instructions, if any, as required;
- (e) hold regular meetings with parents and guardians and apprise them about the regularity in attendance, ability to learn, progress made in

learning and any other relevant information about the child; and

(f) perform such other duties as may be prescribed.”

28. The aforesaid duties that are expected to be undertaken by the teachers are for the ultimate benefit of the children and the non-performance of the aforesaid duties would have detrimental effects on the school children, particularly school children belonging to economically weaker sections and disadvantaged backgrounds.
29. However, since the onset of COVID-19 pandemic, teachers belonging to government and aided schools have been mandatorily directed to help in controlling the spread of COVID-19. Teachers have been made to attend training sessions and have been compulsorily asked to report for duties in order to control the spread of COVID-19. This is in addition to the regular coursework and teaching duties that teachers are expected to comply with under the terms of the RTE Act and other provisions and rules.
30. The Respondent No.4 has issued a direction to all Block Education Officers directing teachers to report for duties pertaining to the control of COVID-19. A letter dated July 28, 2020 was issued at the behest of Respondent No.4 to the schoolteachers belonging to schools situated in the BBMP North Division-3 to compulsory report for Geo Watching duties. Teachers who have failed to report for these duties have also had criminal complaints filed against them. Teachers have been prevented from effectively discharging their duties due to the actions of Respondent No.4. The letter dated July 28, 2020 is produced herewith as Annexure-D.

31. Pursuant to the resumption of online classes, the Petitioner No.1 addressed a letter dated September 09, 2020 to Respondent No.1 outlining the observations passed by this Hon'ble Court in WP No.8168/2020 as well as outlining measures that can be undertaken by the Respondent No.1 such as providing low-cost tablets and laptops to disadvantaged and underprivileged school children to ensure that they are able to attend online classes. However, despite sending the said letter, no response has been forthcoming from the Respondent No.1 and no steps have been undertaken by the Respondents to ensure disadvantaged and underprivileged school children are provided resources to attend online classes. The letter dated September 09, 2020 is produced herewith as **Annexure-E**.
32. It is in this background that the Petitioners have moved this Hon'ble Court for the reliefs claimed here under, being aggrieved by the actions or the lack thereof, by the Respondents in allowing the resumption of online classes and not providing for adequate resources to ensure that a vast majority of school children are able to attend these classes. It is submitted that the Petitioners have not filed a case before any other Court arising from the same cause of action. It is further submitted that the Petitioners do not have any other alternative remedy in the present instance. Therefore, the Petitioners have approached this Hon'ble Court to seek necessary relief.

GROUND

33. The actions of the Respondents in not providing adequate resources to school children who are unable to attend online classes are violative of Article 21-A of the Constitution of India since the right of these school

children to have free and compulsory education have been deprived.

34. The actions of the Respondents in not providing sufficient resources to disadvantaged and economically weaker school children amounts to a discrimination in access to education which is a denial of the equal protection of laws under Article 14 of the Constitution of India.
35. The actions of the Respondents in allowing the resumption of online classes and simultaneously not providing sufficient resources to disadvantaged and economically weaker school children creates an unreasonable classification whereby only a small percentage of school children are able to attend these online classes and a vast majority of school children are unable to attend the same thereby violating Article 14 of the Constitution of India.
36. The actions of the Respondent No.1 in not providing sufficient resources to enable children to attend online classes is violative of its duties specified under Section 8 (c) of the RTE Act as the actions of the Respondent No.1 have prevented children belonging to disadvantaged and economically weaker sections from pursuing free and compulsory education, contrary to Section 8(c) of the RTE Act.
37. The actions of the Respondent No.1 in not providing sufficient resources to enable children to attend online classes is violative of Section 8(d) of the RTE Act as it is the responsibility of the Respondent No.1 to provide infrastructure including “*school building, teaching staff and **learning equipment***” (emphasis supplied).
38. The Hon’ble High Court of Delhi in its judgment dated September 18, 2020 in the case of *W.P.No.3004/2020*,

Justice for All v. Government of Delhi & Others, (“**Justice for All case**”) has observed as follows:

“153. Section 8(c) of the RTE Act, 2009 **casts an obligation on the State to ensure that no child belonging to the Economically Weaker Section/Disadvantaged (EWS/DG) group is discriminated against and prevented from pursuing and completing elementary education.** Section 8(d) of the RTE Act, 2009 specifically casts an obligation on the State to provide infrastructure including learning equipment to the children. In the opinion of this Court, **the expression “learning equipment” would include gadgets required for accessing and availing online education, if imparted by the school.**” (emphasis supplied)

39. The Hon’ble Delhi High Court in the aforesaid case further observes:

“..... Rule 11 of the Right of Children to Free and Compulsory Education Rules, 2010 places an obligation upon the schools (referred to in Sub-Clauses (iii) and (iv) of Clause (n) of Section 2 of the RTE Act) to ensure that children admitted in accordance with Clause (c) of Sub-Section (1) of section 12 of the Act “shall not be segregated from the other children in the classrooms nor shall their classes be held at places and timings different from the classes held for the other children” and further, they “shall not be discriminated from the rest of the children in any manner pertaining to entitlements and

facilities such as textbooks, uniforms, library and Information, Communications and Technology (ICT) facilities, extra-curricular and sports”. Therefore, **both the Act as well as the Rules, read together place obligation upon the State as well as the schools to ensure that there is no discrimination faced by any student in a classroom on any ground whatsoever. Section 12 (1)(c) is well designed and cannot be restricted in its application, to not apply to a situation when the schools have adopted technology as a medium to impart education.**” (emphasis supplied).

40. The actions of the Respondent No.1 in not providing sufficient resources to enable children to attend online classes is also violative of Section 8(f) of the RTE Act since Respondent No.1 has to ensure and monitor the admission, attendance and completion of elementary education by every child whereas non provision of resources has resulted in several school children unable to attend and complete their elementary education.
41. The Hon’ble Delhi High Court in the *Justice for All* case also stated:

“170. However, this Court is of the view that the Union of India must seriously consider increasing its Education budget from the current 4.43% of GDP and investing in digital literacy and infrastructure in order to strengthen and enable the education system to respond promptly to future crisis.”

42. The actions of the Respondent No.4 in directing all teachers from government and aided schools to report for COVID-19 duty is violative of Article 14 of the Constitution since the classification of teachers who are being deployed for the said duties is not reasonable.
43. The actions of the Respondent No.4 in directing all teachers from government and aided schools to report for COVID-19 duty is violative of Article 21-A of the Constitution as well as the aims and objectives of the RTE Act since teachers have been prevented from effectively teaching students.
44. The actions of the Respondent No.4 in directing all teachers from government and aided schools to report for COVID-19 duty is violative of Section 24 of the RTE Act since it increases the duties and responsibilities over and above what has been provided under Section 24 of the RTE Act.
45. That the above grounds are urged without prejudice to one another. The Petitioners crave leave of this Hon'ble Court to urge additional grounds at the time of hearing.

GROUND FOR INTERIM PRAYER

46. That if urgent interim reliefs and / or measures are not passed, it would result in irreversible damage to a vast majority of school children, particularly disadvantaged school children and children belonging to the economically weaker sections in the State of Karnataka.
47. Further, there is an urgent need to ensure immediate resources are provided to disadvantaged school children and children belonging to economically weaker sections in the State of Karnataka in order to ensure that many school children do not drop out of attending school

permanently. If urgent measures sought for in the reliefs are not undertaken by the Respondents, many of these reliefs will be rendered infructuous.

48. The Petitioners crave leave to raise additional grounds at the time of hearing and submit that the aforesaid grounds are raised without prejudice to one another.
49. No writ or other proceedings have been initiated by the Petitioners on the same cause of action before this Hon'ble Court or any other Court, Forum or Tribunal.
50. Court fees of Rs.100/- has been paid on this Petition.
51. That this Hon'ble High Court has the necessary jurisdiction to entertain the writ petition.
52. The Petitioners submit that for the reliefs sought in the instant Petition, the Petitioners do not have any alternative, efficacious remedy apart from this Petition.

PRAYER

WHEREFORE, it is humbly prayed that this Hon'ble Court may be pleased to pass:

- a. An appropriate writ, order or direction to respondents to ensure that free laptops, tablets, computers and high speed internet or any other equipment required for online classes be provided free of cost to every child defined under Section 2(c) of the RTE Act except fee paying children with immediate effect;
- b. An appropriate writ, order or direction to respondents to ensure that disadvantaged children and children belonging to the economically weaker section as defined under the RTE Act, studying in private schools not face any barrier in terms of accessing and attending online classes;

- c. Pass an appropriate order directing the Respondent No.4 to withdraw letter dated July 29, 2020 issued by Respondent No.4 and published by Respondent No.2 and any other circulars and letters issued by Respondent No.4 directing the compulsory deployment of school teachers for COVID-19 duties;
- d. Pass any other necessary writ, order or direction as may be deemed necessary in the facts and circumstances of the case.

INTERIM PRAYER

WHEREFORE, pending adjudication of this petition, it is humbly prayed that this Hon'ble Court may be pleased to pass an Order:

Directing the Respondent No.1 to immediately formulate a plan of action to ensure the procurement and disbursement of low-cost laptops, tablets, and any other digital resources to school children belonging to the disadvantaged and economically weaker sections during the pendency of this writ petition.

PLACE: BENGALURU

DATE: .09.2020

ADVOCATE FOR PETITIONERS

Address for Service

Samvād: Partners