IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11310 OF 2026

Karuna Sumit Kamble
Age 38 Years,
Room No. 66, Building No. 64, BDD Chawl,
Near Jambori Maidan, Bhagoji Waghmare
Road, ...Petitioner
Worli, Mumbai – 400 018.

Versus

1) The Deputy Director of Education,
Mumbai Region, Mumbai.
Having its Office at:
Building of Mittal Foundation Trust
Ayurvedic Hospital, Eight Floor,
Netaji Subhash Road,
Near Charni Road Station, Marine Drive,
Mumbai – 400 002.

2) Balmohan Vidyamandir,
Through Is Principal,
Having its office at:
59/56, Dr Madhukar B Raut Marg,
Dadar West, Shivaji Park,
Mumbai – 400 028.

3) Education Officer (Primary)
Greater Mumbai, South Zone,
Having Office at:
E-Vita Empress Building, 3rd Floor,
G. D. Ambekar Road, Parel,
Mumbai – 400 012.

4) State of Maharashtra
Through its Secretary,
Department of School Education and

Sports,
Having its Office at:
Mantralaya (Extension Building),
Hutatma Rajguru Chowk,
Madam Cama Road,
Mumbai – 400 032. ...Respondents

Mr. S. S. Bedekar, with Swapnil Shanbhag, for the Petitioner.
Smt. Savita Prabhune, AGP, for the Respondents-State.
Ms. Deepa Chavan, Senior Advocate, with R Nathani and Siddhi Dawane, i/b Divekar and Co, for Respondent No.2.

CORAM : N. J. JAMADAR, J.
RESERVED ON : 12th OCTOBER 2026
PRONOUNCED ON : 19th OCTOBER 2026

JUDGMENT:

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. By this Petition under Articles 226 and 227 of the Constitution of India, the Petitioner, who is the mother of Krishika, a six year old girl child, has assailed an order dated 14th August 2026 passed by the Deputy Director of Education (R1) whereby the admission of the Petitioner's daughter granted under the 25% quota for the weaker section and disadvantaged group in the Balmohan Vidyamandir School (R2) has been cancelled on the ground that the distance between the residence

of the Petitioner and Respondent No.2-school exceeds the prescribed limit.

3. The Petition arises in the backdrop of the following facts:

3.1 In accordance with the provisions of the Right of Children to Free and Compulsory Education Act, 2009 ("the RTE Act, 2009"), enacted to operationalize the fundamental right to free and compulsory education of children between the age group of 6 to 14 years, and the rules framed thereunder, the Petitioner had filed an application for the admission of the Petitioner's daughter in a private unaided school.

3.2 The Petitioner's daughter fulfilled the criteria of a child belonging to a disadvantaged group as she is a member of the Scheduled Caste. The Petitioner claimed to have furnished all the necessary particulars and documents in support of the claim for admission. Three preferences were given by the Petitioner. Respondent No.2-school was the third in the order of preferences.

3.3 By a communication dated 10th April 2026, Respondent No.3 allotted, Respondent No.2-school for the admission of the Petitioner's daughter, under the 25% quota. Respondent No.2, the Petitioner asserts, blatantly and brazenly refused to admit the Petitioner's daughter. No reason was ascribed. In fact

Respondent No.2 had declined to admit as many as 12 students who were allotted admission in Respondent No.2-school. Many complaints were lodged with the authorities.

3.4 On 16th June 2026, the Education Officer (R3) called upon Respondent No.2 to appear for a hearing as, by that time, four students were not admitted by Respondent No.2. It appears that, Respondent No.2, thereafter preferred an Appeal against the order of allotment before the Deputy Director of Education (R1), questioning the eligibility of the students to be admitted in Respondent No.2-school on various grounds. Qua the Petitioner's daughter, it was contended that, the residence of the child was not within the radius of 1 km from Respondent No.2-school and incorrect information as to the location on the Google Map was filled in the Application form with a view to secure admission in Respondent No.2-school.

3.5 By the impugned order, the Deputy Director of Education (R1) was persuaded to direct Respondent No.2 to admit two students whose residence was within the radius of 1 km to 3 km from Respondent No.2-school. However, based on the report of the Education Inspector that, the residence of the Petitioner was at a distance of 4 km from Respondent No.2-school, Respondent

No.1 proceeded to cancel the allotment of the seat in the Respondent No.2-school to the Petitioner's daughter.

3.6 Being aggrieved, the Petitioner has invoked writ jurisdiction.

3.7 The substance of the challenge is that, there was no deliberate misrepresentation on the part of the Petitioner. The correct residential address was mentioned in the application form. Even the copies of the documents annexed to the application reveal that the Petitioner resides at the same address that was mentioned in the form. More importantly, in view of the Division Bench judgment of this Court in **Ashish Chaman Fulzele and Ors. Vs State of Maharashtra and Ors,**[1] whereby this Court has quashed and set aside the conditions in the GR dated 12th February 2026 in regard to the distance between the school and the residence of the child, and the statement made on behalf of the State Government before the Court that the State would not prescribe area restrictions for the purpose of ascertainment of the "neighbourhood school", the impugned order passed on the sole ground that the distance between Respondent No.2-school and the Petitioner's residence exceeds the prescribed limit, cannot be sustained. Furthermore,

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1 Nagpur Bench Public Interest Litigation No. 17 of 2026, decided on 11th March 2026.

since Respondent No.2 unjustifiably cancelled the admission of the Petitioner's daughter belatedly, she would lose a precious academic year.

3.8 The grounds of breach of principles of natural justice and fundamental principles of judicial process in the decision making process are also urged.

4. Respondent No.1 has resisted the Petition by filing an Affidavit in Reply. The impugned action is justified on the ground that the Petitioner had deliberately mentioned wrong distance between Respondent No.2-school and the Petitioner's residence. The impugned action is thus in conformity with the rules which govern the admission under the RTE quota. The Petitioner furnished wrong and incorrect information and that misled the authorities to allot Respondent No.2-school. Under the rules, it was the responsibility of the parents to furnish correct and truthful information. Even an undertaking was filed by the Petitioner that, in the event, the information furnished in the application was found to be untrue, the admission was liable to be cancelled and the Petitioner was also liable for action. It was denied that Respondent No.1 has not adhered to the principles of natural justice in passing the impugned order.

5. In the wake of the aforesaid pleadings and material on record, I have heard Mr. Sudhanva Bedekar, the learned Counsel for the Petitioner, Smt. Savita Prabhune, the learned AGP, for the Respondent-State, and Ms. Deepa Chavan, the learned Senior Advocate, for Respondent No.2-school, at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record.

6. Mr. Sudhanva Bedekar, the learned Counsel for the Petitioner, submitted that the very foundation of the impugned order is flawed. The only reason ascribed by Respondent No.1 for cancelling the admission was the excess distance. Banking heavily upon the orders passed by the Division Bench of this Court in **Ashish Chaman Fulzele (supra),** Mr. Bedekar urged that, as the State Government has withdrawn the distance criteria, Respondent No.1 could not have cancelled the admission on the ground that the distance between the Petitioner's residence and Respondent No.2-school, was in excess of one km.

7. Mr. Bedekar urged that, in the aforesaid case, the Division Bench has laid emphasis on the fundamental right of the children to free and compulsory education. The restrictions imposed by the State Government vide GR dated 12th February

2026, might infringe the right of the child to have education in the school contemplated under the provisions of the RTE Act, 2009, and will frustrate the very object and purpose of that Act.

8. Mr. Bedekar would urge that, when it was submitted on behalf of the State Government that the distance to determine a "neighbourhood school" would be extended to 3 km from 1 km, the Division Bench, in terms, directed that the State Government should modify the distance criteria with a rider that such restriction should not be imposed for admission to a private unaided school. The said Public Interest Litigation was disposed of by noting the compliance that the State has taken steps to remove the restriction of distance for school admission in private unaided schools under the RTE Act, 2009.

9. In the face of the aforesaid directions and compliance thereof by the State Government, it was not open to Respondent No.1 to cancel the admission and that too after almost five months, on the basis of the distance criteria.

10. As a second limb of this submission, Mr Bedekar would urge that, the question that is required to be adjudicated is whether the right of the child to free and compulsory education is being violated and not whether there was some inadvertent or technical error on the part of the parents. The cancellation of

admission after almost five months, has caused grave prejudice to the educational prospects of the child. Under a legitimate expectation that, the child would be admitted in Respondent No.2-school, the Petitioner did not make any efforts to secure admission in any other school. To deny admission to the child, at this juncture, would cause her grave prejudice as her entire academic year would be lost.

11. Mr. Bedekar further submitted that, the adversarial approach of Respondent No.2-school was completely uncalled for. Respondent No.2-school preferred an appeal only after grievances were made before the authorities regarding its deliberate failure to admit the children belonging to weaker sections and disadvantaged groups. The stand of Respondent No.2, in the circumstances of the case, according to Mr. Bedekar, is not in consonance with the role of a school expected to perform under the RTE Act, 2009.

12. Lastly, invoking the beneficial object of the RTE Act, 2009 and the overriding objective of securing the fundamental right of free and compulsory education, Mr. Bedekar would urge, in a situation of this nature, the Court ought to adopt an interpretation which advances the constitutional guarantee sought to be enforced through the RTE Act, 2009.

13. Smt. Savita Prabhune, the learned AGP for the Respondent-State, stoutly supported the impugned order. It was submitted that, the Petitioner was entitled to give as many as 10 preferences. Under the scheme of the RTE Act, the admission is to be secured in "neighbourhood schools". It was not the case of the Petitioner that there were no schools in the neighbourhood of her residence. The Petitioner deliberately chose the schools which were far off and beyond the distance criteria prescribed under the Rules. What exacerbates the situation, according to Smt. Prabhune, was incorrect information in the online application form regarding the aerial distance between the Petitioner's residence and Respondent No.2-school. In a case of the present nature where a party deliberately furnishes incorrect and misleading information, she cannot be granted any discretionary relief, submitted Smt. Prabhune.

14. Ms. Deepa Chavan, the learned Senior Advocate, for Respondent No.2, endeavoured her best to dispel the impression sought to be created by the Petitioner that Respondent No.2-school has adopted an adversarial approach. Ms. Chavan urged that, Respondent No.2 reckons the instant matter as a non contentious case. At the same time, Ms. Chavan emphasized, it is the obligation of not only Respondent No.2-

school but also the Petitioner to ensure that the admission under the RTE quota is in accordance with the provisions of the RTE Act and statutory Rules and Regulations. Once, the field is governed by a statutory framework, Ms. Chavan would urge, it is not open to press into service submissions premised on equity and prejudice.

15. Taking the Court through the provisions of the RTE Act, 2009 and the Maharashtra Right of Children to Free and Compulsory Education Rules, 2011 ("the Rules, 2011") and the Maharashtra Right of Children to Free and Compulsory Education (Manner of admission of Minimum 25% children in Class I or Pre-school at the Entry level for Children belonging to Disadvantaged Group and Weaker Section) Rules, 2013 ("the Rules, 2013"), Ms. Chavan would urge that, the entire emphasis of the constitutional guarantee and the object of the RTE Act, 2009 is to secure the schooling of children belonging to weaker sections and disadvantaged groups along with the other children in the same area in neighbourhood schools. The repeated use of the expression "neighbourhood school" under the provisions of Section 3 and Section 12(1)(c) of the RTE Act, 2009 is with a definite purpose. No word in a statute, Ms Chavan submitted, can be construed as superfluous or

redundant. An interpretation, which renders the words in a statute redundant cannot be adopted. To this end, Ms. Chavan placed reliance on the decision in the case of **Union of India And Anr Vs Hansoli Devi and Ors.**[2]

16. Ms. Chavan further submitted that, under the Right of Children to Free and Compulsory Education Rules, 2010 ("the Rules, 2010") framed by the Central Government, the areas or limits of the neighbourhood have been specified. Under the Rules, 2011 also, "neighbourhood school" in respect of a children in Classes I to V, has been defined to mean a school to be established, as far as possible, within a distance of one km of the neighbourhood. The Rules 2013, prescribe an elaborate procedure for admission of the children under the 25% quota. Therefore, the submission on behalf of the Petitioner that, in view of the decision in the case of **Ashish Chaman Fulzele (supra),** area restrictions cannot be insisted upon cannot be countenanced as the Rules have a binding force. To buttress this submission, reliance placed by Ms. Chavan on the judgment in the case of **PTC India Limited Vs Central Electricity Regulatory Commission.**[3]

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2 (2002) 7 SCC 273.

3 (2010) 4 SCC 603.

17. Ms.Chavan further submitted that, in a series of decisions this Court has upheld the area restriction criteria for admission under the RTE quota as the children are to be admitted in the neighbourhood schools. Reliance was placed on the judgments in the cases of **Amol Vasantrao Patil and Ors Vs Bhartiya Vidya Bhavan's Lloyds Viday Niketan, Bhugaon and Ors**[4] and **Murugan Arunanchalam Nadar Vs Balmohan Vidya Mandir English Medium School Through Headmaster and Ors.**[5]

18. Ms. Chavan made a strenuous effort to distinguish the orders passed in **Ashish Chaman Fulzele (Supra),** on the premise that those orders were passed in the matter of securing admission in private unaided schools, where no other private unaided school was available within the prescribed limit. It was submitted that, those orders do not displace the statutory framework, nor can the decision in the case of **Amol Vasantrao Patil and Ors (supra)** be said to have been deviated from by the Division Bench in the case of **Ashish Chaman Fulzele (supra).**

19. Lastly Ms. Chavan would urge that, since the Petitioner has deliberately submitted incorrect information, the Petition deserves to be dismissed. However, in order to ensure that the

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4 2018 (1) Mh LJ 54.

5 Appellate Side Writ Petition No. 6828 of 2019, decided on 19th June 2019.

academic year of the child is not lost, as ordered in the case of **Amol Vasantrao Patil and Ors (supra)** and **Murugan Arunanchalam Nadar (supra)**, Respondent Nos. 1 and 3 should be directed to assist the Petitioner in securing the admission of the child in a neighbourhood school.

20. I have given anxious consideration to the submissions canvassed across the bar.

21. To start with, it may be apposite to note that on facts, there is not much controversy that in the application form filled in by the Petitioner, the correct residential address of the Petitioner was mentioned. The documents annexed to the application form, namely, Aadhaar Card and the Electricity Consumption Bill do reveal the same address of the Petitioner. In fact in the allotment letter, Respondent No.3 records the same address of the Petitioner. The controversy between the parties revolves around the distance between the Petitioner's residence and Respondent No.2 school. In the admission form, it was mentioned that the aerial distance was 0.417 km.

22. Incontrovertibly, the distance between the Petitioner's residence and Respondent No.2-school is about 4 km. The only reason ascribed by Respondent No.1 to cancel the admission was that, the said distance was in excess of the prescribed limit.

It is also imperative to note that the allotment of the school was made vide letter dated 10th April 2026 and the admission came to be cancelled by the impugned order dated 14th August 2026. In the backdrop of the aforesaid facts, the pivotal question that crops up for consideration is, whether the impugned action of cancellation of the admission, on the ground that the child did not fulfill the distance criteria to seek admission in a private school, is sustainable?

RIGHT TO EDUCATION - The Evolution

23. The 86th Constitution (Amendment) Act, 2002, heralded a paradigm shift in the constitutional goal of securing children's elementary educational rights. A new Article 21A, guaranteeing the Right to Education, came to be inserted in Part III of the Constitution. Simultaneously, Article 45, which declared the governing policy of the State to provide early childhood care and education for all children between the age of 6 to 14 years, came to be substituted to provide that, the State shall endeavor to provide early childhood care and education until they complete the age of six years. A fundamental duty was also cast on the parent or guardian to provide opportunities for education to his or her child or ward between the age of 6 and 14 years, by introducing clause (k) in Article 51A.

24. Article 21A reads as under:

> "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."

25. The Right of Children to Free and Compulsory Education Act, 2009 came to be enacted to operationalize and enforce the right to free and compulsory education guaranteed under Article 21A.

Legislative Framework :

26. A brief reference to the provisions of the RTE Act, 2009, would be advantageous. Section 3(1) of the RTE Act, 2009 declares that, every child of the age of six to fourteen years, including a child belonging to a weaker section or disadvantaged group, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education. Section 6 imposes a duty on the Government and local authorities to carry out the provisions of the RTE Act. Section 6, in terms, declares that, for carrying out the provisions of that Act, the appropriate Government and local authority shall establish, <u>within such areas or limits of neighbourhood</u> as may be prescribed, a school, where it is not so established, within a period of three years from the

commencement of that Act. In addition to the duties imposed on the Government and the local authority, a responsibility is also cast to provide free and compulsory education on the schools, defined under Section 2(n) of the said Act.

27. Section 2(n), reads as under:

> "2(n) "School" means any recognised school imparting elementary education and includes-
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> (i) a school established, owned or controlled by the appropriate Government or a 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;
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> (iii) a school belonging to specified category; and(iv)an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;in turn, defines a school to mean any recognised school imparting elementary education and includes an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority."

28. Section 12(1)(c) reads as under:

> "12. Extent of school's responsibility for free and compulsory education. -
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> (1) For the purposes of this Act, a school,-
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> .....
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> (c) specified in sub-clauses (iii) and (iv) of clause (n) of section 2 shall admit in class I, to the extent of at least twenty-five per cent. of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion."

29. A cumulative reading of the aforesaid provisions would indicate that, apart from the schools established, owned or

controlled by the appropriate Government or a local authority, or an aided school, a school belonging to a specified category and even an unaided school not receiving any kind of aid or grant to meet its expenses from the appropriate Government or the local authority are enjoined to admit children in Class I to the extent of at least 25% of the strength of that class, the children belonging to weaker sections and disadvantaged groups in the neighbourhood, and provide free and compulsory elementary education to those children.

Legislative object :

30. The salience of the aforesaid provisions and the laudable object was expounded by the Supreme Court in the case of ***Dinesh Biwaji Ashtikar vs. State of Maharashtra and Others***[6], on which a very strong reliance was placed by Ms. Chavan in the opening paragraph of the judgment as under:

> "1. The obligation of a "neighbourhood school" to admit children belonging to weaker and disadvantaged sections of our society, to the extent of twenty- five percent of the class strength, under Section 12 of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as "the Act") has the extraordinary capacity to transform the social structure of our society. Earnest implementation can truly be transformative. It is not only a step towards educating young India, but also a substantive measure in securing the preambular objective of 'equality of status'."
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> (emphasis supplied)

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6 (2026) 7 Supreme Court Cases 267.

31. The legislative object in promoting the education of the children belonging to weaker sections and disadvantaged groups through the neighbourhood schools was emphasised by the Supreme Court in the said judgment in the following words:

> "9. The legislative choice to implement the right to free and compulsory education through neighbourhood schools is not merely administrative; it is a deliberate constitutional strategy to operationalise equality of status, dignity, and social integration among children in their formative years. In sustaining Section 12, the Supreme Court has recognised that the rights of children carry corresponding obligations on the State to "respect, protect and fulfill" those rights and to regulate private educational institutions so that children's rights are not violated even in non-State spheres.
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> .....
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> 12. The emphasis on "neighbourhood schools" is rooted in the National System of Education, as elaborated in the Kothari Commission Report, which recommended a Common School System whereby all children, irrespective of social or economic background, would attend the same neighbourhood schools and learn together in an integrated, non-segregated environment. This model envisages the school as a common civic space that breaks down barriers of caste, class and gender, and thereby advances substantive equality and social justice. The neighbourhood common school system under the RTE Act envisages that each child must have access to a neighbourhood school and such a system is central to the project of democratising schooling and reducing entrenched social inequalities."
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> (emphasis supplied)

Neighbourhood School :

32. What is the connotation of the term 'Neighbourhood School'? In the case at hand, Respondent No. 2, as is evident, resisted the admission of the petitioner's daughter on the ground that, though it is not averse to the admission of the

children under the statutory mandate contained in Section 12(1)(c), it is not a neighbourhood school, vis-a-vis the child in question and the petitioner must thus enforce her remedies against the schools in her neighbourhood. The thrust of the submission on behalf of the State and respondent No. 2 was that the obligation is that of neighbourhood schools and not of any school as per the choice of the parents of the child. As support is sought to be drawn from the Rules, reference to the relevant Rules may be apposite.

33. In the Central Right of Children to Free and Compulsory Education Rules, 2010, Rule 6(1) provides for the area or limits of the neighbourhood within which a school has to be established.

34. Under the Maharashtra Rules, 2011, framed in exercise of the powers under Section 38 of the RTE Act, 2009 "Neighbourhood School" is defined as under:

> "(m) "Neighbourhood school" means a school in respect of children in classes I – V a school shall be established as far as possible within a distance of one km of the neighbourhood and has a minimum of 20 children in the age group of 6 to 11 years available and willing for enrollment in that school and in classes VI – VII, a school shall be established as far as possible within a distance of 3 kms of the neighbourhood and which has not less than 20 children in class 5th of the feeding primary schools, taken together, available and willing for enrollment in that school."

35. Rule 4 prescribes the areas or the limits for the purposes

of Section 6 as under:

> "4(1) The State Government or the Local Authority, as the case may be, shall establish neighbourhood schools within the areas or limits to meet the following criteria, namely:--
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> (a) In respect of children in classes I-V, a school shall be established as far as possible within a distance of one kilometer of the neighbourhood and has a minimum of 20 children in the age group of 6 to 11 years available and willing for enrollment in that school; and
>
> (b) In respect of children in classes VI-VIII, a school shall be established as far as possible within a distance of three kilometers of the neighbourhood and which has not less than 20 children in class 5th of. the feeding primary schools, taken together, available and willing for enrollment in that school."

36. Sub-Rule (2) of Rule 4 empowers the State Government to suitably alter the minimum distance specified in sub-rule (1) in cases of hilly areas or areas that are not easily accessible and make available the schools run by the Government or local authority for children having no facility of further elementary education in their schools in such areas. Sub-Rule (5) of Rule 4 casts an obligation on the local authority to designate a neighbourhood school for every settlement or area and make that information known to the public.

37. Rule 7(3) provides that the areas or limits of neighbourhood schools specified in sub-rule (1) of Rule 4 shall apply to admissions made in pursuance of clause (c) of sub-section (1) of Section 12. The proviso thereto, however, enables a school, if necessary for the purposes of filling up the requisite

percentage of seats, to extend those limits with the prior approval of the State Government.

38. The Maharashtra Rules, 2013, contain fasciculus of provisions to regulate the admissions under the RTE quota, including the procedure to be followed by the schools, institutionalising the online admission process, and the certificates to be accompanied to an application seeking admission thereunder.

39. To begin with, it is necessary to note that the Parliament, did not define what constitutes, "a neighbourhood school", while mandating that every child of the age of 6 to 14 years shall have a right to free and compulsory education therein. The obligation on the State and the local authority to establish the neighbourhood schools was also not defined in a straitjacket. Under Section 38(1) and (2) of the RTE Act, the appropriate Government was conferred the power to make Rules to provide the areas or limits for the establishment of a neighbourhood school under Section 6 of the RTE Act. The necessity of conferring the power to define the limits by framing the Rules arose on account of the varying factors which bear upon the determination of the area or limits, in view of the vast and varied differences in the geographical conditions, density of

population, level of literacy, and requirement of the schools. Different Governments have prescribed different areas and limits to cater to their specific requirements. There is, thus, an element of flexibility in the concept of neighbourhood. The term “neighbourhood” cannot be defined in rigid terms, with clinical precision or mathematical exactitude. Ordinarily, the term 'neighbourhood' signifies a contiguous area or locality.

40. It is in the aforesaid context that, both the Central Rules, 2010, as well as the Maharashtra Rules, 2011, qualify the prescribed limits of area with the expression "as far as possible". The area prescribed in the Maharashtra Rules, 2011, though cannot be said to be wholly insignificant or irrelevant for the purpose of the obligation of the State under Section 6 or the school under Section 12(1)(c), yet, is required to be appreciated keeping in view of the aforesaid element and necessity of flexibility and the object of admission in a neighbourhood school.

41. A very rigid view of the limits of area to the point that deviation therefrom is impermissible would, in a given case, impinge upon the constitutional right of free and compulsory education. Undoubtedly, the constitutional guarantee is to be enforced in accordance with the law made by the State.

However, the prescription as to the area and limits to ascertain what constitutes a neighbourhood school ought to be construed as a mean for achieving the object of securing the right to free and compulsory education to the child and not an end in itself.

42. In the light of the aforesaid legislative regime, that holds the field, reference to the decisions of this Court may be necessary. In the case of **Amol Vasantrao Patil** (supra), the petitioners therein claimed admission in a school under the RTE quota which was situated at a distance of more than 11 kms. In that context, after referring to a previous decision, the Division Bench observed as under:

> "25. The perusal of 2009 Act shows that Section 3 thereof provides and protects right of a child to a free and compulsory education in a "neighbourhood school". This right of an elementary WP.2303.17 education, therefore, can be enforced against the neighbourhood school. The provisions in Section 2(n) define "School" and 2009 Act, therefore, applies to schools run by Government or local authority or also to private schools receiving grant-in-aid or other assistance from Government or local authority. It also applies to unaided school not receiving any kind of aid or grants. Section 8 casts a duty on appropriate Government to provide free and compulsory elementary education to every child and to ensure availability of a neighbourhood school as specified in Section 6. The Maharashtra Right of Children to Free and Compulsory Education Rules, 2011 in Rule 2(m) defines "Neighbourhood school". In respect of children in classes I-V, school within distance of one km. and in classes VI to VIII, a school within distance of 3 km. from residence has been envisaged as neighbourhood school if minimum 20 children in age groups specified therein are available and willing for enrollment in that school. The fact that such schools are available in present matter is not in dispute. Object of Parliament behind mandating the State to establish or provide such a school in neighbourhood cannot be lost sight of.
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> ....
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> 33. Petitioners before us have not urged and demonstrated that

> parents of such a student can restrict their choice to few schools and indirectly attempt to secure admission in a coveted school. They have not demonstrated that when a school is available in neighbourhood or extended neighbourhood, petitioners can ignore those schools and vie for a distant school. They have also not urged and demonstrated that admission process cannot include all such schools, whether aided or unaided. Contention of respondent Nos. 1 and 2 that all schools ought to have been registered and subjected to on-line exercise, has remained unrebutted. We find that respondent nos. 3 & 4 cannot force petitioners on respondent nos. 1 & 2."

43. In the case of **Murugan Nadar** (supra), another Division Bench of this Court, declined to accede to the prayer of the petitioner therein to admit his daughter in respondent No. 2 school, as the distance criterion was not met. In the case of **Akhil Bharatiya Samajwadi Adhyapak Sabha and others vs. State of Maharashtra and others**[7], the challenge was to the 2024 Amendment to the Maharashtra Rules, 2011, whereby a proviso had been added to Rule 4(5) to the effect that the local authority shall not identify the private unaided schools where Government schools and aided schools were situated within a radius of one km of that school, for the purpose of providing 25% quota admission to the children belonging to disadvantaged groups and weaker sections under the Rules, 2013.

44. A Division Bench of this Court, struck down the said proviso introduced by the said amendment as the operation of Section 12(1)(c) qua the unaided schools had been made

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7 2024 SCC Online Bom 2263.

conditional, in the sense that, the said provision would become applicable only in case an unaided school was situated outside a radius of one km from the Government/aided school. This Court found that such a condition was conspicuous by its absence in the text of Section 12(1)(c) of the RTE Act, 2009, and, accordingly, any rule of subordinate legislation which introduces a distance condition of a private unaided schools vis-a-vis the Government/aided school clearly ran contrary to what Section 12(1)(c) provided for. Neither can delegated legislation override the provisions of the Parent Act under which it was made, nor can it supply something which was clearly absent from that Act.

45. At this juncture, the orders passed by this Court in the case of **Ashish Chaman Fulzele (supra)** deserve to be noted. The challenge in the said case was to clauses 3(5)(2) and 3(5)(3) of the Government Resolution dated 12th February 2026, which *inter alia* provided that, on the online portal only those schools should be displayed which were situated within the radius of 1 km from the residence of the parent of the child. The Division Bench, by an interim order dated 11th March 2026, directed the State Government to take corrective steps to delete the restrictive clauses in the Government Resolution dated 12th February 2026. The Division Bench, *inter alia,* observed as

under:

> "10. Thus, in terms of Section 12(1)(c), it is the responsibility of the schools, including the schools belonging to specific category and/or an unaided school not receiving any kind of aids or grants from the State Government to admit in Class:I at least 25% of the strength of that class, children belonging to weaker sections and compulsory elementary education. Thus, in a case where the private unaided school is not located within the limit of 1 Km. from the registered residence of a child and though the State has established neighborhood school in terms of Section 6, the child belonging to disadvantaged group or weaker section cannot be deprived or his right to take education in terms of provisions of RTE Act. It is, in this context, we had opined in our order dated 09.03.2026 that the restrictions imposed through impugned Government Resolution are contrary to the judgment in the case of *Akhil Bharatiya Samgjwadi Adhyapak Sabha & Ors*. supra as also are violative of provisions of RTE Act read with Articles 14, 21 and 21A amongst other.
>
> 11. At this stage, Ms Jayna Kothari, learned Senior Counsel appearing for the petitioner, has invited our attention to Annexure-G to point out that a child named, Shivans Sachin Pote made an attempt to submit form for admission to I standard under the provisions of the RTE Act but could not succeed because no school is available within 1 Km. The residence of the child is located at Khapri Subhedar locality, Borkhedi Nagpur (Gramin). Another such student named, Prathyusha Paras Gajbhiye, r/o Kukdey Layout, Kausallya Nagar, Nagpur. In her case also, no school is available within limit of 1 Km. Learned Senior Counsel submits that there can be many such cases where no school is available within area of 1 Km. and there can be many cases where no private unaided school is available within 1 Km. though other schools may be available.
>
> 12, Put all together, the restrictions as imposed, appear to us to be contrary to the judgment in the case of *Akhil Bharatiya Samajwadi Adhyapak Sabha & Ors* supra as also violative of provisions of the RTE Act read with provisions of the Constitution of India.
>
> .....
>
> 16. <u>We may note here that to prioritize the selection of schools at the nearest possible location from the residence of a child is one thing and his right to have education in the school including private unaided school is another There may be or may not be private unaided schools within 1 Km. from the residence of child though aided schools or schools established by the Government under Section 6 are available</u>

> within such distance. In such an eventuality,the child has option to travel beyond 1 Km. to get admission in private unaided school. The restriction imposed by the impugned Government Resolution may infringe their right to have education in the school contemplated under the provisions of the RTE Act and will thus frustrate the very object and purpose of the Act. Further, the petitioner has pointed out certain examples where there are no schools at all within the distance of 1 Km. from the residence of the child."
>
> (emphasis supplied)

46. It is imperative to note that, the attention of the Division Bench was drawn to the decision of another Division Bench of this Court in the case of **Amol Patil** (supra). The Division Bench in **Ashish Chaman Fulzele (supra),** found the aforesaid decision was of no assistance to the State in supporting the area restrictions. The observations in paragraphs 13 to 15 read as under:

> "13. Learned A.G.P., however, has placed reliance upon judgment in the case of ***Amol Vasantrao Patil and ors. Vs. Bhartiya Vidya Bhavan's Lloyds Vidya Niketan and ors; [Writ Petition No,2303/2017 decided on 13.07.20171***, to contend that the restriction of 1 Km. or 3 Km., as the case may be, is well recognized.14.
>
> 14. We have gone through the said judgment to find that the factis are altogether different. The petitioners therein were guardians of the children who were seeking admission of their wards in pre-primary school of respondent No.1 - School, which was unaided school. The school refused admission on the count that the children did not reside in the neighborhood of the school. Emphasis of petitioner was on Rule 9A of the Rules, which allows allocation beyond 3 Km, if needed. The Division Bench, while interpreting provision of the RTE Act and particularly Sections 3 and 12(1)(c)read with Rule 9A of the Rules, emphasized the concept of neighbourhood school and held that the process must prioritize the schools within defined proximity and parental preferences cannot override this statutory mandate as it would frustrate the Act's object of providing accessible education near home. Accordingly, the Court held that the

allocations ignoring nearer available options were invalid and the schools are not obliged to admit children from beyond the neighbourhood schools. The Court held that the priority should be given to nearer schools and the extent, limit/distance can only be invoked after verifying exhaustion of nearer seats.

15. We are of the view that the above finding will be of no help to the respondents inasmuch as the Division Bench was examining the scope of Government Resolution dated 10.01.2017 that enables the school to admit children whose residences were beyond the permissible distance, if the parents were to bear travel expenses, The Court had no occasion to examine the right of children have education in private unaided school in terms of Section 12(1)(c) of the RTE Act." (emphasis supplied)

47. In the subsequent order dated 12th March 2026, the Division Bench even did not approve of the stand of the State Government that it had taken a decision to extend the criteria of one km to three km. The observations in paragraph read as under:

"In response, learned Additional Government Pleader submits that respondent - State has taken decision to the extend the criteria of 1 Km. to 3 Kms. The date for fling application is extended up to 18-3-2026.

In our view, if purpose of provision under Section 12(1)(e) of the Right of Children to Free and Compulsory Education Act, 2009 (for short 'RTE Act) is to be achieved, the respondents should ensure that the distance of the school from the residence of the' child should be such, as to accommodate at least one private unaided school and if the number of applications for admission in private unaided school is more than 25% of the strength of that Class in a particular school, the distance should be suitably extended to accommodate another private unaided school.

Since this arrangement is practically impossible, the respondents should not put a limit. of distance for admission in private unaided school. The respondents shall accordingly modify this criteria to enable the children to seek admission in terms of Section 12(1)(c), amongst. other provisions of the RTE Act. The respondents shall also examine and submit before us the data about establishment of schools in terms of

> Section 6of the RTE Act, which the State Government was under obligation to establish within three years of coming into force the RTE Act.
>
> As we have noted in our order dated 11-3-2026 that at some places, there is no school available within the distance of 1 Km., which in a way, suggest failure of respondent – State to establish school in terms of Section 6 of the RTE Act and, therefore, the criteria of 1 Km. ought not to have been imposed. Similar could be situation for 3 Kms. The State Government shall accordingly examine the situation and suitably modify the distance criteria with a rider that such restrictions should not be imposed for admission to private unaided school. Necessary steps shall be taken within two days from today and compliance report shall be filed on 16-3-2026."

48. Finally on 17th March 2026 the said PIL came to be disposed with the following order:

> "Learned Additional Government Pleader submits that in response to previous order dated 16.03.2026 and other such orders, the respondents have taken necessary steps to remove the restriction of distance for seeking admission in private unaided schools in terms of the provisions of the Right of Children To Free and Compulsory Education Act, 2009. The time to submit applications is extended up to 25.03.2026. A communication made to that effect by Director of Education (Primary), Maharashtra State, Pune, is tendered across the bar. Taken on record and marked 'Y" for identification.
>
> 2. The petitioners are satisfied with the development. Thus, the purpose of filing petition is served.
>
> 3. The Public Interest Litigation is disposed of accordingly."

49. The aforesaid orders constituted the linchpin of the submission on behalf of the petitioner. It was urged by Mr. Bedekar with a degree of vehemence that in the face of the aforesaid orders, and the categorical stand of the State Government that it had taken steps to remove the restriction of

distance for seeking admission in private unaided schools in terms of the provisions of the RTE Act, 2009, it was impermissible for the authorities of the State to turn around and reject the admission of the petitioner's daughter on the very count of distance.

50. As noted above, Ms. Chavan made a strenuous effort to submit that the aforesaid orders are required to be read in the backdrop of the facts of the case and, at best, the area restriction would not apply in terms of the aforesaid judgments, if there is no private unaided school within the prescribed limit from the residence of the child. Lest the entire scheme of the RTE Act, 2009, and the Rules framed thereunder of providing admission to the children belonging to the weaker sections and disadvantaged groups in the neighbourhood schools, would be rendered nugatory.

51. In a matter of the present nature, in the considered view of this Court, the Court cannot adopt a technical and doctrinaire approach as to the precedential value of the aforesaid decisions and the purported conflict therein. Rather the Court would be guided by the constitutional guarantee of securing the right to free and compulsory education as an overarching objective. Indeed, the Rules do provide area restrictions in the matter of

the determination of the neighbourhood school. Yet, as noted above, those area restrictions cannot be construed as rigid, sacrosanct and impregnable. The Rules themselves use the qualifying expression "as far as possible". In the light of the great diversity, with which our nation is endowed, and diverse situations in different areas of the same State, nay, varying conditions of different localities in a metropolis like Mumbai, the criterion to determine a neighbourhood school, by the sheer force of attendant circumstances, needs to be applied with requisite flexibility.

52. An interpretation which completely discounts the distance requirement might not be in consonance with the principles of statutory interpretation and the object sought to be achieved by the RTE Act. As noted above, Section 3(1) of the RTE Act, recognizes the Right to Free and Compulsory Education in a neighbourhood school till completion of the elementary education. It would be contextually relevant to note that, the duty of the Government and Local Authorities to establish schools for carrying out the provisions of the RTE Act, is not completely open ended. The obligation is cast on the appropriate Government and Local Authorities to establish school, “within such area or limits of neighbourhood”, as may be prescribed.

The responsibility cast on the schools under Section 12(1)(c) of the RTE Act, to admit in Class I children belonging to weaker and disadvantaged groups is again, qualified by the expression, "in the neighbourhood".

53. What constitutes a "neighbourhood" may be debatable. Yet the interpretative process must take into account the legislative object behind the use of the expressions "neighbourhood school" in Section 3; "within such area or limits of neighbourhood" in Section 6 and "in the neighbourhood", in Section 12(1)(c). The RTE Act, 2009, thus, envisages "neighbourhood" as an area circumscribed by some limits, in contradistinction to an infinite area. It is well recognized that, the legislature does not use words as surplusage. Every word in the edict of the legislature is used with a definite object. An interpretation which renders the words in a section redundant is required to be avoided.

54. There is another formidable reason for conferring rights on the children to have free and compulsory education in a "neighbourhood school" and corresponding duties on the Government and Local Authority to establish the schools in the neighbourhood and responsibility on the schools to admit at least 25% students from the weaker sections and disadvantaged

groups in the "neighbourhood". The object is to inculcate the virtue of equality and fraternity among the children in the formative days.

55. In the case of ***Dinesh Ashtikar (supra)***, the Supreme Court has emphasized the spirit of fraternity which the provision contained in Section 12(1)(c) of the RTE Act, has the potential to promote. The Supreme Court has, in terms, observed that, the 25% inclusion under Section 12 in unaided neighbourhood schools, is not an isolated welfare measure but a vehicle through which the constitutional commitment to fraternity and the "development of the child" as recognized in Articles 21A and 39(f) of the Constitution, is sought to be realized. The neighbourhood common school system under the RTE Act envisages that each child must have access to neighbourhood school and such a system is central to the project of democratizing the schooling and reducing entrenched social inequalities.

56. At the same time, very rigid restrictions in the matter of prescribing the limits or areas which constitute a neighbourhood may not be sustainable. As noted above, an element of flexibility must be present in understanding what constitutes a neighbourhood school. Distance is a relative

concept. In an era of time-space compression, the distance ceases to be an absolute inhibiting factor. Time is said to be the greatest distance between two places. In a metropolis like Mumbai, the concept of distance becomes even more relative. A number of variables come into play. The means of transport and easy accessibility become critical.

57. Keeping the aforesaid legal and social construct in view, reverting to the facts of the case, it is imperative to note that, the petitioner had not furnished an incorrect address, nor did the petitioner suppress any certificate or document which was required to be submitted alongwith the application. The petitioner had, however, incorrectly mentioned the aerial distance between her place of residence and the Respondent No.2 – school. It could be urged that, lesser distance was deliberately furnished. However, the Court cannot lose sight of the fact that, the petitioner had not made any false or incorrect statement as to her actual residence. The error in furnishing lesser aerial distance could be inadvertent and *bona fide* as well.

58. The fact that the petitioner had not given preference to other schools in the vicinity of her residence, in the considered view of this Court, cannot be arrayed against her. The petitioner had selected schools in the order of preference in exercise of

options given to a parent. In hindsight, it could be urged that, had the petitioner selected the schools in the vicinity of her residence she would have got admission for her daughter in any of those schools, but that cannot be the basis for the determination of the controversy.

59. The hard facts which emerge are that, the Authorities had allotted the Respondent No.2 – school for the petitioner's daughter in the month of April, 2026. Despite persuasion the Respondent No.2 did not admit the petitioner's daughter. Grievances were made before the Education Officer. An explanation was called from Respondent No.2 in the month of July, 2026. Thereupon, the Respondent No. 2 preferred an appeal before the Education Officer. Admission of two other students were also withheld by the Respondent No. 2 – school, on the ground of the distance criteria. By the impugned order, the Respondent No.1 directed that, those two children be admitted as the distance between their residence and the school was within the range of 1 km to 3 kms. The claim of the petitioner's daughter was negatived on the ground that, the distance appeared to be 4 kms. By the time the impugned order was passed, a period of more than 4 months had elapsed.

Resultantly, the prospect of securing admission for the petitioner's daughter in other schools became bleak.

60. It must be noted that, during the course of hearing of this petition, the learned AGP was requested to take instructions as to whether the petitioner's daughter could be accommodated in any other private school. Upon instructions, the learned AGP made a statement that, it was not practicable to accommodate the petitioner's daughter in any other private unaided school. The situation which thus obtains is that, two other children whose residences were within the range of 3 kms from the Respondent No. 2 – school, were directed to be admitted in the said school. The petitioner's daughter was denied the same dispensation as the distance appeared to be 4 kms.

61. At this juncture, the consideration emphasized above that, while construing a "neighbourhood school" with reference to an area or geographical limit, it cannot be construed in rigid and pedantic manner, becomes relevant. It would be taking too rigid and unrealistic view of the matter to hold that, a distance of 100 meters more or less denudes the contagious area the characteristics of a "neighbourhood". In the totality of the circumstances, especially having regard to the situation in a metropolis like Mumbai, the Respondent No.1 could not have

applied the barometer of distance i.e. within the range of 3 kms and beyond 3 kms with exactitude, particularly when, by the time the decision was taken, the prospect of the petitioner's daughter securing admission in any other private unaided school considerably diminished. The last consideration of the petitioner's daughter losing an academic year, in the peculiar facts of the case, is of critical salience.

62. In these circumstances, this Court is persuaded to prioritize the rights of the daughter of the petitioner to have free and compulsory education guaranteed under Article 21A of the Constitution of India over the considerations of inadvertence on the part of the authorities of the state in initially allotting the Respondent No. 2 – school for the petitioner's daughter, or for that matter, the error on the part of the petitioner in furnishing an incorrect aerial distance between the petitioner's residence and Respondent No.2 – school.

63. This Court appreciates the submission of Ms. Chavan that, the Respondent No. 2 insisted for the compliance of the statutory requirements in declining to admit the petitioner's daughter. However, the fact remains that, the immediacy of purpose was lost by the Respondent No. 2 not reporting to the authorities its objections immediately and filing the appeal in

the month of July, 2026. In any event, this Court does not find that, the admission of petitioner's daughter in the Respondent No.2 – school would impede the salutary object of Section 12(1)(c) of the RTE Act, 2009. Therefore, this Court is inclined to exercise the discretion in favour of the petitioner's daughter as that would advance the object of the RTE Act, 2009.

64. Hence, the following order :-

: : O R D E R : :

i) The Writ Petition stands allowed.

ii) The impugned order stands quashed and set aside.

iii) The respondents, including the respondent No. 2 – School, are directed to take requisite steps to admit the petitioner's daughter in the 1st standard in Respondent No. 2 – School, within a period of one week from today.

iv) Rule made absolute in the aforesaid terms.

v) No costs.

[N. J. JAMADAR, J.]

Signed by: S.S.Phadke
Designation: PS To Honourable Judge
Date: 21/10/2026 23:20:12