

Dinesh Biwaji Ashtikar
v.
State of Maharashtra & Ors.

(Special Leave Petition (Civil) No. 10105 of 2017)

13 January 2026

**[Pamidighantam Sri Narasimha and
Atul S. Chandurkar, JJ.]**

Issue for Consideration

Effective implementation of the mandate of s.12, Right of Children to Free and Compulsory Education Act, 2009 ensuring admission of at least twenty-five percent of class strength in unaided schools with children of weaker and disadvantaged groups for free education.

Headnotes[†]

Constitution of India – Article 21A – Right to Education – Right of Children to Free and Compulsory Education Act, 2009 – s.12– Directions by Supreme Court for effective implementation of s.12 and its mandate – Inaccessibility of twenty-five percent of class strength in a neighbourhood school to children belonging to weaker and disadvantaged groups u/s.12 for multifarious reasons viz. online application process, language barrier and lack of help desks to assist the parents/guardians, lack of information about the availability of seats, absence of transparency in the admission process – Suggestions made by the *amicus curiae* and the Ld. Additional Solicitor General highlighting the concerns and identifying areas requiring improvement viz. implementation of s.12 by the States/UTs and providing online portal for admission; language; information and assistance; transparency; establishment of help-desks and pro-active assistance during the application stage etc. – National and State Commissions for Protection of Child Rights (NCPCR) assigned with the task of reviewing, monitoring and redressing the grievances arising under the Act, issued Standard Operating Procedure (SOP) for implementation of s.12(1)(c), structured in three stages, (i) the preparatory stage, (ii) processing applications,

Dinesh Biwaji Ashtikar v. State of Maharashtra & Ors.**selection and admission and (iii) procedure after completion of admission:**

Held: The obligation of a “neighbourhood school” to admit children belonging to weaker and disadvantaged sections of the society, to the extent of twenty five percent of the class strength, u/s.12 has the extraordinary capacity to transform the social structure of the society – Ensuring admission of such students must be a national mission and an obligation of the appropriate government and the local authority – To ensure a smooth and transparent admission process and in order to enable eligible children to access the right of admission u/s.12(1)(c), the steps to be taken as regards the Preparatory Stage (Finalization of seats, Advertisement, Schedule of admission, Centralized online system, Criteria, Documents, Information about the school, Dispute settlement); Processing Applications, Selection and Admission (Help-desks; Selection criteria; Scrutiny of applications, Window for correction of defects, Dispute resolution); After Completion of Admission Process (Speaking order, Admission process, Initiation of inquiry, Post-admission, Reimbursement, Finality of selection), enumerated – Appropriate authorities to prepare and issue, in consultation with the NCPCR and SCPCRs, as the case may be, as well as the National and State Advisory Councils, necessary rules and regulations u/s.38 of the Act for implementing the mandate of s.12(1)(c) of the Act – NCPCR, New Delhi to be impleaded as a party respondent – The copy of the order be sent to the Commission for compliance and monitoring – Commission to collate information about the issuance of rules and regulations by the appropriate Governments of the States and Union Territories and file an affidavit before this Court by 31st of March, 2026 – Commission for Protection of Child Rights Act, 2005 – ss.3, 17. [Paras 1, 6.3]

Constitution of India – Article 21A – Right to Education – Right of Children to Free and Compulsory Education Act, 2009 – s.12 – Extent of school’s responsibility for free and compulsory education – ‘neighbourhood school’ denied admission to petitioner’s children for free and compulsory elementary education in 2016 – Petitioner filing writ petition, High Court turned back the petitioner on the ground that he

Supreme Court Reports

had failed to take up appropriate steps to admit his kids in the free education quota – SLP thereagainst pending in Supreme Court for a long time:

Held: Unfortunately, the matter has become infructuous – However, in order to ensure that this situation shall not revisit parents like the petitioner again and again, case taken up for precedent making and to examine the efficiency and effectiveness of the procedures for complying with the mandate of s.12 – *Amicus curiae* appointed. [Para 3]

Right of Children to Free and Compulsory Education Act, 2009 – ss.12, 6, 9, 2(h), 10 – Extent of school’s responsibility for free and compulsory education – Duty of appropriate Government and local authority to establish school – Duties of local authority – Fundamental duties – Duty of parents and guardian – Constitution of India – Arts.21A, 51A(k) – Right to Education:

Held: Constitution declares elementary education as a fundamental right, as against many other liberties, which are in the nature of fundamental freedoms – The consequence of identifying the right to elementary education as a positive right is the recognition of co-relative duties and identification of five duty bearers, being (i) the appropriate government, (ii) the local authority, (iii) the neighbourhood schools, (iv) the parents/guardians, and (v) the primary school teachers – Obligations and duties of the duty bearers, highlighted. [Paras 6-6.5]

Right of Children to Free and Compulsory Education Act, 2009 – s.12 – Extent of school’s responsibility for free and compulsory education – Constitutional philosophy & mandate of s.12 – Two foundational constitutional values:

Held: Not less than twenty-five percent of the strength of an entry-level class shall be reserved for and filled by children belonging to “weaker sections” and “disadvantaged groups”, who are thereby guaranteed access to free elementary education – Such children are to be admitted to unaided schools in their neighbourhood, thereby embedding within the statutory framework the principle that the constitutional promise of education under Article 21A is to be realised through common local schools rather than segregated or

Dinesh Biwaji Ashtikar v. State of Maharashtra & Ors.

parallel systems – 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 s.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. [Para 7]

Constitution of India – Article 21A – Right to Education – Right of Children to Free and Compulsory Education Act, 2009 – Scheme of the Act:

Held: Statutory design is normatively ambitious – It envisages elementary education for all children, across the spectrum of class, caste, gender and economic position, in a shared institutional space – s.12 seeks to concretise the constitutional principle of fraternity alongside equality and liberty – The 25% inclusion u/s.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 recognised in Article 21A and Article 39(f) is sought to be realized. [Para 8]

Right of Children to Free and Compulsory Education Act, 2009 – s.12 – Extent of school’s responsibility for free and compulsory education – “neighbourhood schools” – 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:

Held: 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 – Policy rationale underlying s.12, stated. [Para 9]

Supreme Court Reports

Constitution of India – Article 21A – Right to Education – Right of Children to Free and Compulsory Education Act, 2009 – s.12 – Role of judiciary:

Held: Ensuring admission of at least twenty-five percent of class strength in unaided schools with children of weaker and disadvantaged groups is certainly a national mission – Effective implementation of the statutory policy will be transformative and, in this regard, each one, be it the institution or an individual, be it the Central or the State Governments, Advisory Councils or Commissions are duty bearers – The most important role is of the neighbourhood schools and its teachers – In this mission, the judiciary also bears the burden to ensure that the process of admission is easily accessible, effective and efficient – Court must also ensure that judicial remedies against inaction or inefficiency are redressed effectively and expeditiously. [Para 10]

List of Acts

Right of Children to Free and Compulsory Education Act, 2009; Commissions for Protection of Child Rights Act, 2005; Constitution of India.

List of Keywords

Right under Article 21A, Constitution of India; Right to Education; Section 12, Right of Children to Free and Compulsory Education Act, 2009; Free and compulsory elementary education; “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; National and State Commissions for Protection of Child Rights; “neighbourhood schools”; Appropriate Government; Local authority to establish school; National System of Education; Kothari Commission Report.

Case Arising From

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 10105 of 2017

From the Judgment and Order dated 20.12.2016 of the High Court of Judicature at Bombay at Nagpur in WP No. 6415 of 2016

Dinesh Biwaji Ashtikar v. State of Maharashtra & Ors.**Appearances for Parties**

Advs. for the Appellant(s):

Varinder Kumar Sharma.

Advs. for the Respondent(s):

Ms. Aishwarya Bhati, A.S.G., Omkar Deshpande, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Shrirang B. Varma, Bhuvan Kapoor, Mili Baxi, Rajesh Singh Chauhan, Padmesh Mishra, Ms. Neelakshi Bhadauria, Sudarshan Lamba, Amit Gupta, Ms. Muskan Nagpal, Prannv Dhawan, M/s Mitter & Mitter Co.

Judgment / Order of the Supreme Court**Judgment**

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, 2009¹ 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’. The *constitutional declaration* of the right under Article 21A, followed by the *statutory mandate* under Section 3 of the Act for free and compulsory elementary education can be realised only with effective implementation of the provisions of the Act. We have held that ensuring admission of such students must be a national mission and an obligation of the appropriate government and the local authority. Equally, Courts, be it constitutional or civil, must walk that extra mile to provide easy access and efficient relief to parents who complain of denial of the right.
2. We need not refer to the detailed facts of the case as by the time our attention was drawn to this special leave petition, the time within which effective relief could be granted to the petitioner had long passed. The petitioner had approached a ‘neighbourhood school’ for admitting his children for free and compulsory elementary education

¹ Hereinafter referred to as the Act.

Supreme Court Reports

way back in 2016. It is his case that, even though information through RTI indicated that seats were available, the neighbourhood school did not respond. Therefore, he was compelled to approach the High Court by filing a writ petition under Article 226 of the Constitution. However, by the order impugned before us, the High Court turned back the petitioner on the ground that, “*the petitioner had failed to take up appropriate steps to admit his kids in the free education quota, the petitioner must blame himself.*” The “appropriate steps” that the High Court was referring to pertained to the alleged failure to apply as per the *online procedure* for filling up the twenty-five percent seats for children of weaker and disadvantaged sections. This is despite the fact that the primary education officer of the Zila Parishad, Gondia had addressed a letter to the Deputy Education Officer to admit petitioner’s children, though online procedure had not been followed, as his house is within 3 kms of the neighbourhood school and also that he comes from a very poor family. Further, the petitioner had also placed before the authorities RTI information that 648 seats are still lying vacant.

3. Unfortunately, the Special Leave Petition against the High Court’s order has been pending in this Court for a long time without appropriate orders and many years have passed by. The standard submission that we hear at the Bar, when such unfortunate cases are called for hearing is that– “*the matter has become infructuous*”. Sadly, this is true for the purpose of decision making on the facts of this case. However, in order to ensure that this situation shall not revisit parents like the petitioner again and again, we considered it appropriate to take up the case for precedent making and decided to examine the efficiency and effectiveness of the procedures for complying with the mandate of Section 12. We, therefore, appointed Shri Senthil Jagadeesan, learned senior counsel, as the amicus curiae to assist the Court.
4. The learned amicus curiae has brought to our notice the inaccessibility of twenty-five percent of class strength in a neighbourhood school to children belonging to weaker and disadvantaged groups under Section 12 for multifarious reasons. He would submit that the online application process to access the Right under Section 12 ignores the *prevalent digital illiteracy*. Apart from that, he also highlighted the *language barrier* and *lack of help-desks* to assist the parents/

Dinesh Biwaji Ashtikar v. State of Maharashtra & Ors.

guardians. In addition to this, lack of information about the availability of seats, absence of transparency in the admission process and uncertainty about the forums for redressal of grievances are some of the issues highlighted by the learned amicus curiae. Before we deal with the text of Section 12, which we will in due course, it is also necessary to examine the context in which it is located in the scheme of the Act and the constitutional mandate.

A True Understanding of the Fundamental Right to Education.

5. Article 21A declares the fundamental right to free and compulsory education of all children of the age of 6 to 14 years.

“Article 21A. Right to Education – 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.”

The obligation that the, “*State shall provide free and compulsory education in such manner as maybe determined by law*”, translates into the 2009 legislation, the Right of Children to Free and Compulsory Education Act.

“Section 3. Right of child to free and compulsory education –

(1) Every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education.”

6. It is important to recognize that the Constitution declares elementary education as a fundamental right, as against many other *liberties*, which are in the nature of fundamental freedoms. The consequence of identifying the right to elementary education as a *positive right* is the recognition of *co-relative duties* and identification of five *duty bearers*, being (i) the appropriate government, (ii) the local authority, (iii) the neighbourhood schools, (iv) the parents/guardians, and (v) the primary school teachers. It is important to highlight the obligations and duties of these duty bearers in detail not only for accountability, but also to ensure that they have sufficient support from the Government and the society.

Supreme Court Reports

- 6.1 *The first duty bearer*, is the “appropriate Government”. The duty of the appropriate Government to establish neighbourhood schools is prescribed in Section 6.

“Section 6. Duty of appropriate Government and local authority to establish school - *For carrying out the provisions of this Act, the appropriate Government and the local authority shall establish, within such area or limits of neighbourhood, as may be prescribed, a school, where it is not so established, within a period of three years from the commencement of this Act.”*

The financial responsibilities under the Act are shared between the Central and the State Governments under Section 7. Further duties upon establishing the neighbourhood schools are prescribed in Section 8, which inter alia mandate that the appropriate government shall, “ensure availability of a neighbourhood school as specified in Section 6”.

- 6.2 *The second duty bearer*, is the “local authority”². To ensure implementation of the right at the grassroot level, Section 9 obligates the local authority to ensure availability of a neighbourhood school as specified in Section 6 (Section 9(b)), maintain records of children up to the age of fourteen years (Section 9(d)) and also ensure and monitor admission, attendance and completion of elementary education by every child residing within its jurisdiction (Section 9(e)). The relevant part of Section 9 is as follows -

“Section 9. Duties of local authority. - *Every local authority shall—*

(b) ensure availability of a neighbourhood school as specified in section 6;

(d) maintain records of children up to the age of fourteen years residing within its jurisdiction, in such manner as may be prescribed;

² Section 2(h) - “local authority” means a Municipal Corporation or Municipal Council or Zila Parishad or Nagar Panchayat or Panchayat, by whatever name called, and includes such other authority or body having administrative control over the school or empowered by or under any law for the time being in force to function as a local authority in any city, town or village;

Dinesh Biwaji Ashtikar v. State of Maharashtra & Ors.

(e) ensure and monitor admission, attendance and completion of elementary education by every child residing within its jurisdiction.”

- 6.3 *The third duty bearer*, is the neighbourhood school. Under Section 12, a neighbourhood school is impressed with the responsibility of providing free and compulsory education. Section 12 articulates the responsibility of a neighbourhood school in the following terms -

“Section 12. Extent of school’s responsibility for free and compulsory education.-

(1) *For the purposes of this Act, a school,—*

(a) specified in sub-clause (i) of clause (n) of section 2 shall provide free and compulsory elementary education to all children admitted therein;

(b) specified in sub-clause (ii) of clause (n) of section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent.;

(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 percent 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:

Provided further 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.

(2) *The school specified in sub-clause (iv) of clause (n) of section 2 providing free and compulsory elementary*

Supreme Court Reports

education as specified in clause (c) of sub-section (1) shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed:

Provided that such reimbursement shall not exceed per-child-expenditure incurred by a school specified in sub-clause (i) of clause (n) of section 2:

Provided further that where such school is already under obligation to provide free education to a specified number of children on account of it having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation.

(3) Every school shall provide such information as may be required by the appropriate Government or the local authority, as the case may be."

The definition of 'School' takes within its fold any recognised school imparting education and includes (i) governmental school, (ii) aided school receiving grants, (iii) schools belonging to specified categories such as the Kendriya Vidyalaya etc. and most importantly, (iv) unaided school not receiving any grants. With respect to the specified and unaided schools not receiving any grants, Section 12 mandates that the "neighborhood schools" shall admit in Class I, to the extent of at least twenty-five percent of the strength of that class, children belonging to weaker section and disadvantaged group for free and compulsory education. We will be examining this obligation of the school under Section 12(1)(c) in detail.

- 6.4 *The fourth duty bearer*; is the Parent. This duty is now constitutionally recognised in Article 51A(k) of the Constitution.

"51A. Fundamental duties.- *It shall be the duty of every citizen of India-*

Dinesh Biwaji Ashtikar v. State of Maharashtra & Ors.

(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years”.

Following the constitutional mandate, Section 10 of the Act mandates every parent to perform this pious duty.

“10. Duty of parents and guardian - *It shall be the duty of every parent or guardian to admit or cause to be admitted his or her child or ward, as the case may be, to an elementary education in the neighbourhood school.”*

- 6.5 *The fifth duty bearer*, is the elementary school teacher. There is no human resource or value higher than development of a student’s mind and character. Therefore, the elementary school teachers have the most important role in nation building and as such, they have to be treated with utmost respect and care. A society that does not take care of its elementary school teachers is bound to fail in securing the constitutional objective.

The Constitutional Philosophy & Mandate of Section 12.

7. It is necessary to underscore two foundational constitutional values that Section 12 of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) is designed to articulate and secure. The first, in unequivocal terms, mandates that not less than twenty-five percent of the strength of an entry-level class shall be reserved for and filled by children belonging to “weaker sections” and “disadvantaged groups”, who are thereby guaranteed access to free elementary education. The second is that such children are to be admitted to unaided schools in their neighbourhood, thereby embedding within the statutory framework the principle that the constitutional promise of education under Article 21A is to be realised through common local schools rather than segregated or parallel systems. 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.

Supreme Court Reports

8. Properly understood, this statutory design is normatively ambitious. It envisages elementary education for all children, across the spectrum of class, caste, gender and economic position, in a shared institutional space. It makes it possible, normatively and structurally, for the child of a multi-millionaire or even of a Judge of the Supreme Court of India to sit in the same classroom and at the same bench as the child of an autorickshaw driver or a street vendor. This is the manner in which Section 12 seeks to concretise the constitutional principle of fraternity alongside equality and liberty. A correct appreciation of fraternity must displace the traditional but mistaken view, often repeated in constitutional discourse, that it is not an enforceable value. Our constitutional jurisprudence compels us to read *fraternity* as a value requiring the State to structure institutions that nurture co-existence, mutual respect, and a sense of common membership. Unlike *equality* and *liberty*, which are frequently framed as individual rights-claims, fraternity is relational; it operates through institutional arrangements that enable individuals to “lose suspect identities” based on caste, class or other hierarchies and to form solidaristic bonds. In this sense, 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 recognised in Article 21A and Article 39(f) is sought to be realised.
9. 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. The policy rationale underlying Section 12 of the RTE Act is evident from the following statement of the Ministry of Human Resource Development;

“The idea that schooling should act as a means of social cohesion and inclusion is not new; it has been oft repeated.

Dinesh Biwaji Ashtikar v. State of Maharashtra & Ors.

Inequitable and disparate schooling reinforces existing social and economic hierarchies, and promotes in the educated sections of society an indifference towards the plight of the poor.

The currently used term 'inclusive' education implies, as did earlier terms like 'common' and 'neighbourhood' schools, that children from different backgrounds and with varying interests and ability will achieve their highest potential if they study in a shared classroom environment. The idea of inclusive schooling is also consistent with Constitutional values and ideals, especially with the ideals of fraternity, social justice and equality of opportunity.

For children of socio-economically weaker backgrounds to feel at home in private schools, it is necessary that they form a substantial proportion or critical mass in the class they join. The relevant universe in which the proportion needs to be considered is the class/section. It is for this reason that the RTE Act provides for admission of 25% children from disadvantaged groups and weaker sections in class I only. This implies that these children cannot be pooled together in a separate section or afternoon shift. Any arrangement which segregates, or treats these children in a differentiated manner vis-à-vis the fee-paying children will be counter-productive.

The rationale for 25% lies in the fact that the composition of caste/class indicated in the Census is fairly representative of the composition of children who are seeking admission under this provision. As per Census 2001, SCs constitute 16.2%, and STs constitute 8.2% (total 24.4%) of the population. Further, the Tendulkar Committee, set up by the Planning Commission to measure poverty, has estimated the below poverty line (BPL) population to be 37.2%. It is a fact that much of the population that suffers economic deprivation also suffers from social disadvantage. Thus, taken together, the figure of 25% for admission of children from disadvantaged groups and weaker sections is considered reasonable. Any lower proportion would jeopardize the long-term goal of the policy which is to

Supreme Court Reports

strengthen social cohesion and bring out the best human resource potential inherent in our society as a whole. A smaller proportion would serve only a token purpose, and it will run the serious risk of creating the feeling of alienation among the children belonging to disadvantaged groups and weaker sections. Their participation in classroom interaction will be neither strong nor sufficiently manifest to enrich the overall experiential learning taking place in any given subject area. Only a critical mass can play such a role.

The RTE Act provides for admission of 25% children from disadvantaged groups and weaker sections in Class I, not across the whole school. As children admitted to class I move to class II, new children will be admitted to class I, and so on till completion of 8 years of elementary education. The rationale for admission in class I only must be appreciated in human terms. Teachers who are used to a selective, homogeneous classroom environment cannot be expected to develop the required positive attitude and professional skills to deal with a diversified class overnight. The same applies to children. Children who have grown up to an age of nine or ten in a homogeneous or segregated environment have been socialized into a structure of norms and behaviour. They cannot be transformed on demand. Also, the overall school ethos cannot be expected to respond to a new policy in a positive manner all of a sudden. Education is indeed an act of faith and social engineering - but not quick-fix social engineering. In view of the fact that children take time to socialize and teachers take time to develop new attitudes and pedagogic skills, the RTE Act provides for admission of disadvantaged and poor children at the entry level, covering pre-school and Class I. With these children moving up, and a new cohort of children entering pre-school and Class I in each successive year, the school will gradually have a more diverse population spread across all classes. Progression at this pace will allow children the opportunity to grow up together and create bonds: bonds that can survive social walls. Progression at this pace can allow the school to develop the professional capacity to respond to the intellectual and emotional needs

Dinesh Biwaji Ashtikar v. State of Maharashtra & Ors.

of children from diverse backgrounds. Children who are younger than eight years of age are yet to develop a stable social identity. Their values are still forming, and their motivation to derive meaning from experience, both concrete and social is very strong. Therefore, it is a valid argument that the policy of mixing children from different socio-economic strata has the best chance of succeeding if it starts from the formative years of nursery/kindergarten and Class I. Diversity enhances learning and development, while segregation impoverishes the classroom environment of all schools, private or government.

Admission of 25% children from disadvantaged groups and weaker sections in the neighbourhood is not merely to provide avenues of quality education to poor and disadvantaged children. The larger objective is to provide a common place where children sit, eat and live together for at least eight years of their lives across caste, class and gender divides in order that it narrows down such divisions in our society. The other objective is that the 75% children who have been lucky to come from better endowed families, learn through their interaction with the children from families who haven't had similar opportunities, but are rich in knowledge systems allied to trade, craft, farming and other services, and that the pedagogic enrichment of the 75% children is provided by such intermingling. This will of course require classroom practices, teacher training, etc. to constantly bring out these pedagogic practices, rather than merely make children from these two sections sit together. The often voiced concern about how the 25% children from disadvantaged groups and weaker sections can cope in an environment where rich children exist can be resolved when the teaching learning process and teachers use these children as sources of knowledge so that their esteem and recognition goes up and they begin to be treated as equals."

10. Our concern is about the effective, rather, the ineffective implementation of the mandate under Section 12 of the Act. We have to ensure admission of at least twenty-five percent of class strength in unaided schools with children of weaker and disadvantaged groups. This is

Supreme Court Reports

certainly a national mission. Effective implementation of the statutory policy will be transformative and, in this regard, each one of us, be it the institution or an individual, be it the Central or the State Governments, Advisory Councils or Commissions are duty bearers. The most important role is of the neighbourhood schools and its teachers. In this mission, the judiciary also bears the burden to ensure that the process of admission is easily accessible, effective and efficient. Court must also ensure that judicial remedies against inaction or inefficiency are redressed effectively and expeditiously. It is in this context that we have examined the procedure and practice for implementing Section 12 of the Act.

11. Considering the importance of implementing the purpose and object of the Act, Parliament has assigned the task of reviewing, monitoring and redressing the grievances arising under the Act to the National and State Commissions for Protection of Child Rights³ under Section 31 of the Act.

“Section 31. Monitoring of child’s right to education. —

(1) The National Commission for Protection of Child Rights constituted under section 3, or, as the case may be, the State Commission for Protection of Child Rights constituted under section 17, of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006), shall, in addition to the functions assigned to them under that Act, also perform the following functions, namely:—

(a) examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation;

(b) inquire into complaints relating to child’s right to free and compulsory education; and

(c) take necessary steps as provided under sections 15 and 24 of the said Commissions for Protection of Child Rights Act.

(2) The said Commissions shall, while inquiring into any matters relating to child’s right to free and compulsory

3 Hereinafter referred to as “the NCPCR” and “the SCPCRs”.

Dinesh Biwaji Ashtikar v. State of Maharashtra & Ors.

education under clause (c) of sub-section (1), have the same powers as assigned to them respectively under sections 14 and 24 of the said Commissions for Protection of Child Rights Act.

(3) Where the State Commission for Protection of Child Rights has not been constituted in a State, the appropriate Government may, for the purpose of performing the functions specified in clauses (a) to (c) of sub-section (1), constitute such authority, in such manner and subject to such terms and conditions, as may be prescribed.”

12. The Commissions are established under Sections 3 and 17 of the Commission for Protection of Child Rights Act, 2005. In exercise of its statutory duty, NCPCR issued Standard Operating Procedure (SOP) for implementation of Section 12(1)(c) of the Act. The preamble of the SOP is as follows:

“Through the redressal of grievances and feedback during different formal and informal meetings/consultations, it came to NCPCR’s notice that different mechanism and modalities are being followed by the States/UTs based on their interpretation of the said provision. To examine the compliance of the above-mentioned clause in true spirit and to understand ground reality NCPCR undertook a study on implementation of the provision in private unaided schools of Delhi. The findings of the study revealed challenges faced by all stakeholders involved specially the children and parents. Most importantly, it helped to discover the issues right from the process of admission to the inclusion of children admitted under this section in the school. Consequently, the Standard Operating Procedure (SOP) for Implementation of Section 12(1)(c) of the RTE Act, 2009 has been developed to present a systematic mechanism/ procedure to be followed by the State Governments in making the entire process streamlined and transparent.”

13. Learned amicus curiae also brought to our notice SOP for Delhi and the relevant rules for the State of Maharashtra. He has also placed on record certain other material having a direct bearing on the issue under consideration. A statement of joint suggestions made by the amicus curiae and the learned Additional Solicitor General (ASG) is

Supreme Court Reports

also placed before us, highlighting the concerns and identifying areas requiring improvement. The issues and suggestions are as follows:

- (i) *Implementation of Section 12 by the States/UTs and providing online portal for admission:* Presently, all States and Union Territories have neither implemented the mandate of Section 12, nor established a portal dedicated to ensuring a transparent admission process.
- (ii) *Language:* It is suggested that all States and Union Territories should provide information in at least three languages – two being the official languages (Hindi and English) and the third being the local language of the area concerned.
- (iii) *Information and assistance:* Information regarding the admission process has to be made available to parents and guardians.
- (iv) *Transparency:* Schools should be directed to publish the number of available seats for children belonging to disadvantaged groups and weaker sections much in advance and before the application stage commences.
- (v) *Establishment of help-desks and pro-active assistance during the application stage:* Either the designated school staff, the District Education Officer, the Block Officer, the Block Committee Office or the Jan Sewa Kendras must set up help-desks to assist parents for completing the application process.
- (vi) *Window for clearance of defects:* Instead of simpliciter rejection of a defective application, a defect clearance window should be established with an assistant to clear mistakes.
- (vii) *Complaints:* A redressal mechanism for complaints by parents/guardians should be set up and the grievances must be resolved within strict timelines.
- (viii) *Transparency in denial of admissions:* Denial of admissions should be recorded and uploaded with reasons and the same should be reviewed by the Block Education Officer within 72 hours.
- (ix) *Training:* Training must be imparted to prevent discrimination of children belonging to disadvantaged groups and weaker sections.

Dinesh Biwaji Ashtikar v. State of Maharashtra & Ors.

14. The suggestions of the learned amicus curiae and the learned ASG, seen in the context of SOP issued by NCPCR may be restated. In fact, NCPCR's SOP is structured in three stages, (i) the first relates to the preparatory stage, (ii) the second stage relates to processing applications, selection and admission and (iii) the third stage relates to procedure after completion of admission. To ensure a smooth and transparent admission process and in order to enable eligible children to access the right of admission under Section 12(1)(c), the following steps should be taken –

14.1 Preparatory Stage

- (i) *Finalization of seats*: The schools should be given 20 working days to submit the requisite data of the declared strength for purpose of Section 12(1)(c).
- (ii) *Advertisement*: Appropriate Government and local authority should advertise the schedule of admission under Section 12(1)(c) in print and electronic media as well as locally used medium of broadcasting/publicising important announcements, especially in rural areas. This shall contain all the essential information regarding the admission process.
- (iii) *Schedule of admission*: A calendar for admission under Section 12(1)(c) shall be scheduled in such a manner that the admission process is completed before beginning of admission of children under DG/EWS category. This is to be done at least two months from the commencement of the next academic year.
- (iv) *Centralized online system*: The appropriate Government shall develop centralized online portal for admission under Section 12(1)(c). The joint suggestions recognize the existence of digital illiteracy and have suggested that the process must be accessible with the aid of help-desks etc., to bridge the gap of digital divide.
- (v) *Criteria*: for determining children belonging to disadvantaged groups and weaker sections must have clarity and simplicity.

Supreme Court Reports

- (vi) *Documents:* The requirement of documents necessary for processing the application for admission must be clearly mentioned.
- (vii) *Information about the school:* It is necessary to ensure that the school is fully prepared and ready to undertake the process of admission effectively and efficiently. Public awareness in the local area about the admission process is necessary. The school as well as local authority have an obligation to disseminate this information.
- (viii) *Dispute settlement:* Dispute Settlements Committees must be set up and their availability must be made known.

14.2 Processing Applications, Selection and Admission

- (i) *Help-desks:* The local authority, respective neighbourhood schools and non-governmental organisations shall set up help-desks for free of cost facilitation of parents/guardian in filling the form on the online portal and other connected steps. For this purpose, assistance under the Common Service Centres Scheme shall also be made readily available.
- (ii) *Selection criteria:* The criteria employed for giving preference to one applicant over the another and the process of draw of lots shall be laid out in simple and clear terms, and it must be widely published.
- (iii) *Scrutiny of applications:* Scrutiny of applications shall be carried out by zonal/local teams, as directed to be constituted as per SOP notified by the GNCTD of Delhi dated 02.01.2025, instead of private unaided recognized schools.
- (iv) *Window for correction of defects:* No application shall be summarily rejected on the ground of deficiency of required documents without first giving an opportunity for correction. For this purpose, a set timeline and procedure for providing window of correction shall be prescribed, taking specific guidance from the NCPCR's SOP in this regard.

Dinesh Biwaji Ashtikar v. State of Maharashtra & Ors.

- (v) *Dispute resolution*: Easy and effective mechanism for dispute resolution under Section 32 or by the Dispute Settlement Committee must be formulated.

14.3 After Completion of Admission Process

- (i) *Speaking order*: The outcome of selection must be published through a speaking order.
- (ii) *Admission process*: The online portal shall notify school-wise list of children selected. An updated record of the children taking admission must be maintained.
- (iii) *Initiation of inquiry*: The authorities must monitor and keep a constant watch. In case there is a trend noticed with respect to reserved seats going vacant in a specific school, the causes must be enquired into.
- (iv) *Post-admission*: The basic essentials for effective inclusion post admission must be undertaken.
- (v) *Reimbursement*: Per-Child Expenditure reimbursement must be done without delay.
- (vi) *Finality of selection*: The admitted children shall not be subjected to any further scrutiny by the respective schools.

15. The above referred procedure, as indicated in the SOP issued by NCPCR, is only in the nature of guidelines. These guidelines do not partake the character of enforceable rules, violation of which would render the duty bearers answerable to the reviewing or controlling authority. Uncertainty about the obligation to comply with the requirements would also make judicial review complicated. We are of the opinion that it is necessary and compelling to formulate subordinate legislation by issuing necessary rules and regulations, prescribing the method and manner by which children of weaker and disadvantaged sections are to be admitted in neighbourhood schools. Without such enforceable rules and regulations, the object of Article 21A and the statutory policy under Section 12(1)(c) would be a dead letter.
16. In view of the above, we direct the appropriate authorities to prepare and issue, in consultation with the NCPCR and SCPCRs, as the

Supreme Court Reports

case may be, as well as the National and State Advisory Councils, necessary rules and regulations under Section 38 of the Act for implementing the mandate of Section 12(1)(c) of the Act.

- 16.1 We direct that the NCPCR, New Delhi shall be impleaded as a party respondent. The copy of our order shall be sent to the Commission for compliance and monitoring.
- 16.2 We further direct the Commission to collate information about the issuance of rules and regulations by the appropriate Governments of the States and Union Territories and file an affidavit before this Court by 31st of March, 2026.
- 16.3 List this Special Leave Petition for further hearing on 6th of April, 2026.

Result of the case: Special Leave Petition to be listed for further hearing.

†Headnotes prepared by: Divya Pandey