

THE HIGH COURT OF TRIPURA AGARTALA

WP(C) (PIL) 11 of 2015

Court on own motion

Versus

1. State of Tripura through the Principal Secretary, Education, Govt. of Tripura, Agartala;
2. The Director, Education(Higher), Govt. of Tripura, Agartala;
3. The Director, Education(School), Govt. of Tripura, Agartala;
4. The Principal, Bhavan's Tripura Vidya Mandir, P.O. Bimangarh (Narsingarh), Agartala-799015, West Tripura;
5. The Principal, Don Bosco School, Nandannagar, Agartala-799006, West Tripura.
6. The Principal, Auxilium Girls' School, Nandannagar, Agartala, West Tripura;
7. The principal, Don Bosco School, Dhajanagar, Gokulpur, Udaipur, Gomati District-799114;
8. The Principal, Holy Cross School, Durjoynagar, P.O. Agartala Aerodrome, Agartala-799009, West Tripura.
9. The Principal, Holy Cross Convent School, Sakaibari Road, Dharmanagar, North Tripura.
- 10.The Principal, Pranavananda Vidya Mandir, Kanchan Palli, Badharghat, Agartala, West Tripura-799014.
- 11.The Principal, Ramkrishna Mission Vidyalaya, Vivek Nagar, P.O. Amtali, West Tripura-799130.

- 12.The Principal, Sri Krishna Mission School,
Bholananda Palli, Airport Road,
Agartala, West Tripura.
- 13.The Principal, Sri Sri Ravishankar Vidya
Mandir, Ujjyanta Palance Annexe,
North Gate, Palace Compound,
Agartala, West Tripura-799001;
- 14.The Principal, St. Paul's School,
Arundhutinagar, P.O.Arundhutinagar,
Agartala, West Tripura-799003;
- 15.The Principal, Tripureswari
Vidyamandir, Gandhigram, P.S.
Airport, West Tripura-799012;
16. The Principal, Ma Anandamayee
Vidyapeeth, Ratanmani Sarani,
Palace Compound, Agartala, West
Tripura-799001;
- 17.The Principal, Montfort Higher
Secondary School, Champaknagar,
West Tripura-799045;
- 18.The Principal, Swami Dhananjoy Das
Kathiya Baba Mission School, 10, Jail
Road, Math Chowmuhani, Dhaleswar,
Agartala, West Tripura-799007.
- 19.The Principal,
Kendriya Vidyalaya, Agartala.

..... Respondents

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE UB SAHA

Court on own motion

: Mr. SM Chkaraborty, Amicus Curiae
Ms P Sen, Advocate

For the respondents

: Mr. BC Das, Advocate General
Mr. A Roy Barman, CGC
Mr. S Chakraborty, Addl. GA
Mr. D Chakraborty, Sr. Advocate
Mr. H Laskar, Advocate
Mr. DK Biswas, Advocate

Date of hearing and
delivery of Judgment
& Order

: **03.09.2015.**

Whether fit for reporting : **Yes**

JUDGMENT AND ORDER (ORAL)

(Deepak Gupta, CJ)

This writ petition was registered as a *suo motu* writ petition keeping in view a letter addressed to one of us (Chief Justice) by one Sri Biswanath Bhattacharya.

2. In the letter it was complained that the State of Tripura may hold the dubious record where highest number of school students are attending private tuitions. It was also alleged that these tuitions are being imparted by school teachers outside the schools. In this letter, it was also alleged that as far as the urban areas are concerned the percentage of students receiving tuition may be as high as 90%. The petitioner referred to the provisions of the Right to Education Act and to the right of the students, especially up to the age of 14 years, to have free education.

3. After taking up this *suo motu* petition, this Court had, on 11.06.2015, passed a detailed order, which reads as follows:

“The role of teachers who teach children is extremely important. Teachers are the role models for the students. A student accepts anything said by the teacher as the gospel truth. In the Indian context, the “Guru Shishya Parampara” is very relevant and the teacher is treated as a “Guru”. Teachers at all levels must be competent in their subjects. The values of life, the ethical and moral standards are taught by the teachers. We are aware that majority of the teachers are performing their duties in accordance with the highest traditions of the teaching profession but because of the greed of a few unscrupulous teachers the image of the entire teaching community is being tarnished.

The allegations made by the petitioner are that in the State of Tripura the practice of imparting tuitions by teachers employed both by the State Government and in private institutions is rampant. These teachers day in and day out are engaging in tuitions, charging huge fees. It is alleged that these teachers do not spend sufficient time teaching in school but virtually coerce the students to attend the tuition classes.

Article 21A of the Constitution of India has granted a fundamental right to every child between the ages of 6 to 14 to get free education. This right of getting free education means the right to get quality free education and when the State Government employs teachers, pays them salaries, provides them housing, provides them benefits such as pension etc., it is expected that these teachers would do their duty and carry out teaching properly in the schools and their students are not forced to go for private tuitions.

The Right of Children to Free and Compulsory Education Act, 2009 was enacted by the Parliament and Section 3 also provides that every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education. The Apex Court has clearly held that this Act is applicable not only to Government institutions but also to all private institutions except minority institutions. Section 28 of the Act reads as follows:-

“28. Prohibition of private tuition by teacher.— No teacher shall engage himself or herself in private tuition or private teaching activity.”

Thus, the mandate of law is that no teacher whether engaged in a Government school or in a Private School can engage in private teaching activity. We are prima facie of the view that as far as Section 28 is concerned, it may even apply to minority institutions because Section 28 does not, in any way, affect the right of the minority institutions to run their schools in accordance with the principles governing their minority status.

Even the Government of Tripura issued circulars in this regard, one of which was issued in April, 2011 prohibiting tuitions but unfortunately this circular limits itself to primary school teachers. We would like the State to clearly inform us whether this means that they are encouraging middle school and high school teachers to engage in private tuitions or not.

Therefore, the Principal Secretary, Education, shall respond and clearly file a reply in this behalf, otherwise we hope and expect that the State before the next date of hearing shall issue a circular clearly banning all Government teachers from engaging in private tuitions.

The Principal Secretary, Education in his affidavit shall also inform this Court what action, if any, has been taken pursuant to the said circular earlier issued by it banning private tuitions by Government teachers.

The Principal Secretary, Education shall also inform this Court whether there are any other circulars issued in this regard and what action has been taken in this regard.”

We had also directed that public notice of the petition be issued in two widely circulated newspapers of the State and in the public notice it was clearly stated that anybody wanting to oppose or support the petition may file his/her affidavit by 31.07.2015. We had also issued notice to a number of schools and on 20.08.2015 we had also issued notice to the Principal, Kendriya Vidyalaya, Agartala.

4. We shall first deal with the submission of the State. We are extremely happy to note that the stand of the State Government is that teachers who are employed by the State Government are not permitted to engage in private tuitions and according to the State Government, it will ensure that the directions issued in this behalf are scrupulously followed. Therefore, it is more than obvious that those teachers who are employed by the State of Tripura are by the rules governing their appointment not permitted to impart private education.

5. Out of the Private Schools, we have received responses from a few schools. The first response on the file is by Fr. Benny Mushahary, Principal, Don Bosco School, Nandannagar. In the affidavit, it is clearly stated that the school does not support the concept of private tuitions and at the time of recruitment of the teaching staff both in the primary and secondary sections, the staff

is cautioned against private tuitions. It is also mentioned in the affidavit that the school has been issuing notices time to time prohibiting the teachers from indulging in private tuitions.

6. The next affidavit on record has been filed on behalf of the Ramakrishna Mission Vidyalaya. The affidavit has been supported by the Principal, Swami Sanmatrananda who in his affidavit clearly stated that keeping in view the long term interest of the students, the management of the institution was of the considered opinion that there should be a ban on providing private tuitions by teachers in exchange of monetary consideration.

7. The next affidavit is filed on behalf of the Auxilium Girls' School by the Principal, Sr. Celine D'Cunha and in this affidavit it is again mentioned that the school imparts value based education and is clearly of the view that private tuition is a menace and because of that children are deprived of actual and real education.

8. St. Paul's School has filed an affidavit through its Principal, Mrs. Lalthanzuali Hauhnar and it is stated that the school administration dissuades the teachers of their school from involving themselves in private tuitions. It has further been stated that on 30.07.2015, the school authorities have issued notice to all the school teachers informing that St. Paul's School has decided to ban private tuitions by teachers of the school.

9. The Principal of Sri Krishna Mission School, Sri Prafulla Rn. Datta has filed an affidavit in which it is stated that the school authority discourages the teachers of the school from engaging themselves in private tuitions and after receiving the order of this Court, the authority has taken a decision to support banning of private tuitions by the school teachers.

10. The Holy Cross School has presented its views through the affidavit filed by the Principal, Fr. Kanikkai and in the affidavit it is again stated that the school administration does not favour private tuitions and after receiving the order of the Court the school management has taken a unanimous decision to support ban of private tuitions by school teachers.

11. Similar is the affidavit of the Holy Cross Convent School, Dharmanagar filed through its Principal, Sister Amritha BS.

12. The Pranavananda Vidyamandir, Kanchanpalli, Badharghat, Agartala has submitted its views through its Principal, Sri Dipankar Sen who has stated that on 18.08.2014, i.e. before this writ petition was even entertained, the school had already taken a decision that no teacher/staff of the institution would be permitted to involve in private tuition w.e.f. 31.03.2015. Therefore, the school even before the institution of this petition had already taken a decision that its teachers and members of the staff would not engage in private tuition.

13. Sri A Roy Barman, learned CGC appearing on behalf of the Kendriya Vidyalaya, submits on instructions received by him that in the Kendriya Vidyalayas also the teachers are not permitted to engage in private tuitions and the school authorities discourage the practice of private tuitions.

14. One Sri. Gouranga Sutradhar has addressed a letter to this Court in response to the public notice and he has given a different point of view. According to him, the teachers may be permitted to engage in private tuitions subject to the condition that the teachers do not teach the students of their own institutions, whether it be a School or College. He has submitted that a high percentage of marks are now given on the basis of the assessment made by the Class Teacher and if Class Teachers/school teachers are permitted to impart tuitions to the students of their own schools then there will be an unholy nexus whereby marks will be given to students who are paying money to get tuitions and those who cannot afford to pay such tuitions fees will be the sufferers and will be awarded lower marks.

15. Another communication has been received from one Sri Niloy Sarkar and he has supported a complete ban of private tuitions and his main ground is that private tuitions create inequality amongst the students in a democratic society. He has, in his communication, submitted that poor and underprivileged sections of the society cannot afford the huge monthly expenditure tuitions and, therefore, tuitions should be banned totally.

16. Another communication by e-mail has been received from Sri Uddayan Debbarma, who has stated that not only the concept of tuition is bad but the result is that the students, who are forced by their parents to go for tuitions, have no time for other activities such as physical activities and extracurricular activities. He has also complained that some teachers, especially in government schools, purposely do not complete the syllabus in the classroom so that the students are forced to go for private tuitions. He has also submitted that those who are financially well-off can get the benefit of private tuitions and the poorer sections of the society suffer when teachers engage in private tuitions. He has raised certain other questions with regard to the quality of education but we are not concerned with those in this petition.

17. There was another communication sent by one Sri Suman Chakraborty in which details were given as to how tuitions are carried out and this Court had treated this communication to be CM Application No.228/2015 and copy of this was supplied to the learned counsel who are appearing in this case.

18. There is one party who has appeared before us formally and that is the Students' Guardian Forum which has made certain very pertinent submissions. It is urged that private tuitions or supplementary coaching for Higher Secondary students have become a phenomenon and it is necessary in the backdrop of the highly competitive admission tests to Engineering and Medical courses especially. According to this Forum, it is an unavoidable

necessity. In support of their submissions the Forum has submitted that:

- a) Available teachers especially in government schools are not equipped to provide quality education.
- b) The meritorious students do not receive proper attention in school and they have to go for supplementary teaching by means of tuition.
- c) It is further urged that only a few meritorious teachers are engaged in private tuitions because they only are competent to impart the required knowledge and training for the competitive exams.
- d) It is urged that in government schools out of the 240 working days, students hardly get 120 days of classroom teaching and this is less than the minimum period required for completing the course.
- e) It is also urged that in government schools or government aided schools, there is not even the minimum infrastructure of average teaching and in the absence of such infrastructure the guardians have no other option but to send their students for private tuitions.

19. Some references have been given with regard to certain schools and it is urged that in those schools the teacher-student ratio is very poor. The guardians have complained against the quality of teaching in Shishu Bihar Higher Secondary School both of

the Bengali Medium and English Medium School. This Court can take judicial notice of the fact that probably these are the most prestigious government run schools in the entire State of Tripura. On the judicial side we have had to deal with litigations where the parties have claimed that they are entitled for admission to these schools and if the situation in these schools is not good then obviously there is something lacking in the education system. The guardians have also stated that the issue regarding private tuitions is relatable only to meritorious students. It has been urged as follows :

“2. The issue regarding private tuition is relatable only to meritorious students. The mediocre not being in the race for career building, private tuition means tuition for those who are above the mediocrity. It is the students who understand where the shoe pinches. They realize the deficiency prevailing in the class room teaching and force the guardians to take the assistance of quality supplemental teaching. Without this supplemental teaching, the ambitious students naturally become disappointed and lose all inspirations which the guardians have to guard against.

Private tutors who attract students are obviously qualitatively superior, many of them are not in any regular employment. True some of them are money suckers, yet students throng to them because of their competence and without them, the meritorious students cannot fulfill their aspirations.

Side by side the teachers under Government employment has adopted private tuition not always for their personal gain, but also to meet the necessity arising due to paucity of quality teachers for class room teaching. Obviously they are superior in quality and competence. Many of them are found to be compassionate to the cause of the students; compared to the unemployed private teachers, they are generous, helping and affording free tutoring to poor and meritorious children. This aspect of the private tuitions also cannot be ignored.”

20. We are not at all in agreement with this submission. Before this Court all students are equal, whether meritorious or otherwise. Meritorious students, as we understand from the affidavit of the Forum, would mean those students who are good in studies. Merely because a person is good in studies does not make him a more meritorious student. There are students who are good in sports; there are students who are good in extracurricular activities; there are students who are better human beings but may not be as good in studies. We are of the considered view that it is these students who normally cannot cope up with the education system who should be given supplementary teaching, if any. If the students and their guardians claim that they are so meritorious that they are the best in the school then what is the need for imparting private tuitions to them?

21. It has also been urged that private tutors who attract students are obviously qualitatively superior. We are not sure if this is correct. We are not commenting on the quality of all private tutors. We are sure that some of the private tutors must be excellent teachers and that is why their tuition classes are thronged by the students. However, we are also of the considered view that a large percentage of students are attending tuition classes for totally different reasons and one of the main reasons is that these teachers have a big role of awarding as many as 30% marks on class assessment basis and some of these teachers award high percentage of marks in the practical examinations. Many teachers

force their students to attend tuitions or at least pay for tuitions by virtually threatening them that if they do not attend classes, they will not get proper marks in the evaluation made by the teacher. This practice is unfortunately rampant in the State of Tripura. Such unholy nexus between teachers and rich parents has to come to an end. The result of this unholy nexus is that only those students whose parents can afford to send their wards to attend tuitions to 4/5 different teachers are getting good marks in the internal assessment. Therefore, it is necessary to lay down certain directions in this regard. We are clearly of the view that the teachers are imparting tuitions only for a commercial purpose and not for any altruistic purpose. We are, therefore, not satisfied with this submission.

22. Another submission of the Forum with which we totally disagree, is that government employed teachers are not imparting private tuitions for personal gain but only with a view to impart quality education to the children, since these teachers are compassionate to the cause of the students, they are generous and help the children by giving free tuitions to poor and meritorious children. If this be true, we are not at all against this type of help being imparted by the teachers to the students. If any teacher, outside his duty hours, whether he is a government school teacher or a Private School teacher, wants to help his/her students by imparting quality education without charging any remuneration, obviously nobody can have any objection.

23. The issue before us is, whether the teachers working in schools, government or private, should be permitted to engage in the commercial activity of imparting tuitions outside the school working hours. We have in our earlier order already pointed out that this is not an adversarial litigation. We are not against the interest of the students. We also want that students from a backward State like Tripura compete and do well on the national level and they can compete for admission in all sorts of competitive examinations at the pan India level. While we have the benefit and interest of the students in mind, we also cannot ignore the rights of the not so well-off students belonging to the poorer sections of the society who cannot afford to send their children for private tuitions.

24. Teaching is an extremely noble avocation. It should not be a commercial endeavour. A teacher is a guide, philosopher and friend to the students. Children are more influenced by their teachers than by their parents. What is taught by the guru is imbibed for life and can never be forgotten. Teachers have a very important role to build the nation. If they work honestly and fairly we have no doubt in our minds that the children will turn out to be good human beings and exemplary citizens which will help in developing the country. However, we are also of the view that if teachers act in a crass commercial manner, opening teaching shops only to supplement their income and not for purposes of imparting education then these students who study at these teaching shops can never be expected to be good human beings

or citizens. They may become Doctors or Engineers but they will never be good citizens. Education is imparted not only to teach the three R's but the most important goal of any educational system is to ensure that the person who is imparted education turns out to be a good human being. It is more important to be a good human being than to be a rich person or successful person. A good human being who may not be commercially successful is a much better asset to the society than a corrupt successful person. These are the goals of education which educational institutions should never forget.

25. We are extremely happy to note that all the schools who have filed affidavits in response to the notice have clearly indicated that they are not in the avocation of making money but they are in the field of imparting knowledge and that is their principal goal. All the Principals who have filed the affidavits have not supported the concept of private tuition. As noted by us earlier, the State has also clearly indicated in its reply that it is against private tuition being imparted by the school teachers.

26. When the government as well as the Private Schools have unanimously taken a view that teachers employed by the government or by the private schools are not permitted to impart tuitions, this Court cannot give any direction against their decision. When the employer has entered into a contract with the employee whereby the employee is not permitted to impart tuition, can this

Court at the behest of the Student's Guardian Forum direct that tuition be imparted? The obvious answer is 'no'.

27. In view of the commendable stand taken by the State as well as by the Schools which have appeared before us, the petition has virtually become infructuous. We have passed a detailed order only because of certain issues raised by the Student's Guardian Forum. We, therefore, dispose of this writ petition with the following directions:

- i. That, as is apparent from the stand of the government the teachers employed by the State of Tripura are not permitted to impart private tuition and, therefore, they cannot be permitted to do so. The State shall ensure that its directions are scrupulously obeyed in *letter and spirit*. It is also made clear that this order shall apply not only to school teachers but to all teachers who are in government employment, whether at school or college level.
- ii. Those Private Schools and the Kendriya Vidyalaya which have appeared before us and have taken a stand that they do not permit tuitions will also be governed by the same direction as regards the government teachers.
- iii. In case any Private School permits its teachers to engage in private tuitions then it shall lay down a condition that no private tuition shall be imparted to any student below the age of 14 years because private tuition is prohibited under the Right to

Education Act up to age of 14 years. In such cases, it shall also be mandated that the teacher does not impart tuition to students of his/her own school/institution.

- iv. We also request the Government to consider framing some policy or law for regulating coaching institutions and private tuition centres where the law may provide what is the basic infrastructure which should be available and at what level tuitions should be imparted. These tuitions can only be imparted to students who are above 14 years of age.
- v. We also request the State Government as well as the Private Schools to consider whether the students who need extra coaching or help can be given this help after school hours in the school itself. In case, the guardians and the students agree then a nominal fees may be charged for this purpose but such tuition should be run under the auspices of the School and not privately by the teachers and the payment should be made to the school which may further distribute it amongst the teachers who impart education. In such an eventuality, the teachers of the school can impart tuitions to their own students. In such cases, it should also be ensured that at least 25% of the students, who belong to the poorer sections of the society, are not charged any fees by the school authorities for these extra classes.

- vi. We are making it clear that if any retired teacher or an employed person who is not teaching in any school wants to set up a tuition centre this order will not come in his way and such centres can continue to impart education to the students. To make it clear, if a retired person or an unemployed person wants to run a tuition centre, he is free to do so.
- vii. One of the issues raised is that teachers in Private Schools are not properly paid and, therefore, they have no other option but to engage in private tuition. We leave it to the wisdom of the State Government to decide whether there should be some minimum salary payable to such teachers or not.
- viii. We also direct the Secretary, Education Department (Director, Higher Education/School Education), Government of Tripura and the management of the Private Schools to ensure that the students are taught for at least 240 days a year. It shall also be ensured by the government that the services of the teachers are not utilized for any other purpose which may adversely affect the teaching for 240 days a year.
- ix. We also direct that the State shall ensure that Schools are not used for any non-educational purposes during school hours. Even if the schools are to be used for some purpose not connected with teaching after school hours, it shall be the responsibility of the State to ensure that the classes in the schools are held for 240 days in a year.

The writ petition is disposed of in terms of the observations and directions hereinabove. No order as to costs. The Court places on record its appreciation for the valuable assistance rendered by Mr. SM Chakraborty, learned senior advocate.

JUDGE

CHIEF JUSTICE

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