IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5367 OF 2005
WITH
CIVIL APPLICATION NO.1217 OF 2014
WITH
CIVIL APPLICATION NO.2036 OF 2014
IN
CIVIL APPLICATION NO.1217 OF 2014

Parent & Teachers Association for
St.Xavier's High School, Navi Mumbai
and others Petitioners

versus

The State of Maharashtra and others Respondents

Mr.Pravin Samdani, Sr.Advocate with Mr.Darshit Jain, Chetan Kapadia and Nupur Desai i/by Markand Gandhi & Co. for respondent nos.9 to 12.

Smt.Manisha Mohan Andhansare, Applicant in person in CAW No.2036 of 2014.

Mr.V.B.Thadani, AGP for State.

Mr.G.S.Hegde for CIDCO.

Mr.A.A.Garge for Respondent no.6.

CORAM : MOHIT S. SHAH, C.J. AND
G.S.KULKARNI, J.

DATE : 08 April 2015

PC :

The Parents & Teachers Association (`PTA') for St.Xavier's High School at Nerul, Navi Mumbai and others had filed this petition under Article 226 of the Constitution of India in the year 2005 praying for various reliefs. The petitioners have prayed for a direction to the State Government to hold an inquiry in respect of the alleged mal-administration, mismanagement, misappropriation of school funds and alleged illegal activities committed by respondent nos.8 and 12 and for a direction to the State Government to take over the management of St.Xavier's High School and also to take action against the persons responsible for such alleged lapses. The petitioners had also prayed for a direction to respondent nos.8 to 12 to refund the deposits received by them from the parents of wards collected at the time of admission and to deposit appropriate amounts in this Court which are allegedly misappropriated/misused by respondent nos.8 to 12 for their personal use from the accounts of school as well as trust.

2. Smt.Manisha Mohan Andhansare who is the Principal of St.Xavier High School at Nerul, Navi Mumbai (`Principal') had moved Civil Application No.2036 of 2014 for intervention and this Court has been hearing the said applicant for last about three years on the issues sought to be raised by the PTA.

3. At the hearing today, the Principal has tendered copy of communication dated 3 March 2015 issued by Joint Secretary of the School Education and Sports Department of Government of Maharashtra. The communication is taken on record and marked "X" for identification.

4. Having gone through the contents of the said communication, it appears that nothing further would survive in this petition as far as prayer clause (a) of the petition is concerned. However, learned counsel for respondent Nos.8 to 12 states that his clients have not received such communication and they would like to challenge the same, in case the same is adverse to respondent Nos.8 to 12. We leave it open to respondent Nos.8 to 12 and/or the concerned parties to challenge the same and express no opinion either way. As far as prayer clause (b)(i) is concerned, Mr.Samdani, learned Senior Advocate appearing for respondents 8 to 12 states that the school management has been refunding the amounts of deposits received from parents of wards collected at the time of admission, at the time of students leaving the school or thereafter. In view of the above, the said prayer clause 14(b)(i) also does not survive. As regards the question whether any amount is misappropriated or misused by the school management/respondent nos.8 to 12 for their personal use, nothing is brought on record of this petition to indicate any alleged misappropriation or misuse of funds by the school management/respondent nos.8 to 12 for their personal use. According to the learned counsel for respondent nos.8 to 12,

since the school is being run by a public trust registered under the Bombay Public Trusts Act, 1950, the Charity Commissioner has already looked into the allegations and that the Charity Commissioner has not found any substance in the allegations made against the trustees. However, the Principal does not agree with these submissions of learned counsel for respondent nos.8 to 12 and submits that the auditors appointed by the Charity Commissioner have audited the accounts of public trust and not the accounts of St.Xavier High School. We do not intend to go into the above controversy as the competent authority in the State Government will look into any such allegation.

5. However, before closing the proceedings and disposing of the petition, we would like to refer to certain developments which have taken place during pendency of this petition.

6. The PTA had submitted that since the teaching and non-teaching staff in the school was not being paid the salaries and allowances as per relevant regulations and since the school management was of the view that fees being collected from the students is not adequate to pay the salaries and allowances to the teaching and non-teaching staff as per relevant regulations and Government orders, the PTA had agreed in the year 2010 to raise the fees for Marathi Medium classes from Rs.399/- per month to Rs.750/- per month and for English Medium classes from Rs.508/- per month to Rs.811/- per month from the

academic year 2011-12. It appears that subsequently, as recorded in the order dated 9 July 2012, the fees were fixed at Rs.800/- per month for Marathi medium students and Rs.900/- per month for English medium students. However, the teaching as well as non-teaching staff had made a grievance that they were not paid the salaries and allowances in the scales as recommended by the 6th Pay Commission, which were applicable from the academic year 2011-12 onwards.

7. In view of the stand of the respondent nos.8 to 12 that the school management did not have adequate funds to pay the salaries of teaching and non-teaching staff in the scales recommended by 6th Pay Commission, an interim order was passed by this Court on 11 May 2012 directing the school management to pay the teaching and non-teaching staff the salaries and allowances as per the 6th Pay Commission recommendations and thereafter by order dated 9 July 2012 recorded the statement made on behalf of the school management that it would not be possible to pay the dearness allowance at the rate of 65%, which was then the prevailing rate. However, the Court directed the school management to pay the dearness allowance at the rate of 45% of the salary as per 6th Pay Commission recommendations. In the said order, this Court recorded the statement of PTA that students will pay fees for English medium at the rate of Rs.900/- per month and for Marathi medium at the rate of Rs.800/- per month with effect from June 2012.

8. Subsequently, after hearing learned counsel for the parties, this Court by an order dated 6 January 2015 directed the school management to pay the teaching and non-teaching staff the salaries in the scales recommended by Sixth Pay Commission and the dearness allowance at the rate of 100% per month with effect from December 2014 (i.e. salary for December-2014 payable in January-2015) to May-2015. It was further directed that this was to be done without raising the fees for the academic year 2014-15. The Court further observed as under :

> "As far as academic year 2015-16 is concerned, we leave it open to the school management to resort to the machinery provided under the Maharashtra Educational Institutions (Regulation of Fee) Act, 2011 which has been brought into force w.e.f. 1 December 2014, as per the Notification dated 29 November 2014 of the School Education and Sports Department, Government of Maharashtra."

We also clarified that as regards the claim of the teaching as well as non-teaching staff for the arrears of difference of salary as per the 6th Pay Commission recommendations for the academic year 2011-2012 and for the arrears of Dearness Allowance for the subsequent years i.e. for the years 2012-2013 and 2013-2014 as well as for the period up to November-2014, the Court will pass appropriate orders after hearing the parties.

9. We may further indicate that during the course of these proceedings, there was some dispute whether 34 teaching/non-teaching staff members were excess staff, as contended by the Government authorities. Though the school management was also inclined to take the same stand, this Court succeeded in persuading the school management to accept the said 34 teaching/ non-teaching staff as part of regular establishment of the school management. Therefore, that controversy is already concluded and is not to be re-opened either by the school management or by the Government authorities.

10. At the hearing today, the learned counsel for respondent nos.8 to 12/school management has tendered the affidavit dated 25 March 2015 of one of the trustees of St.Xavier's Education Trust, Navi Mumbai. Along with the said affidavit, various statements are produced on record indicating the amounts received from the students, salary expenses, non-salary expenses, development reserve for the academic years 2011-12, 2012-13, 2013-14 and 2014-15 (with break up for the period from June 2014 to November 2014 and December 2014 to May 2015). We may particularly note that the school management has placed before us the financial position as under :

Financial year	Financial summary with Development Reserve (Surplus/ Deficit) (in Rs.)	Financial summary without Development Reserve (Surplus/ Deficit) (in Rs.)	Difference of payment payable for the respective years
1	2	3	4
2011-12	1,18,24,495	1,64,68,059	2,47,48,458
2012-13	(-)41,73,388	32,31,412	90,16,982
2013-14	(-)1,12,33,613	(-)30,75,588	1,07,96,110
2014-15	(-)1,46,90,677	(-)66,62,361	1,12,72,360

11. On the other hand, the Principal has relied upon another statement to contend that respondent nos.8 to 12/ school management has substantial fixed deposits and bank balance and is in a position to clear the entire arrears from 2011-12 onwards. She submitted that the school management had fixed deposits of Rs.5,47,79,817/- and bank balance of Rs.1,76,84,704/- as on 23 February 2015.

Learned counsel for the school management has submitted that figures given by the Principal are without taking into account the non-salary expenditure and entitlement of the school management to have development funds and development reserves, to which the Principal would submit that development fund and the development reserves are not calculated correctly by the school management.

12. We do not propose to decide these controversies as these issues will be considered at the time of fixation of fees for the academic year 2015-16 onwards. It appears that the school management would propose the fee structure to PTA. If the PTA approves such fee structure, there would be no further controversy. If the PTA raises objection, the matter will go before the Executive Committee constituted under Section 6 of the Maharashtra Educational Institutions (Regulation of Fee) Act, 2011 (published vide Maharashtra Act No.VII of 2014), which has come into force with effect from December-2014.

13. In response to a query from the Court about the fixed deposits which the school management had before commencement of the academic year 2011-12, the learned counsel for respondent nos.8 to 12 stated that before the academic year 2011-12, the fixed deposits were Rs.3 crores and in the course of academic year 2011-12, fixed deposits of Rs.2 crores were added. It is submitted that the school management is entitled to have development fund and development reserve, which would inter alia be required for capital expenses but on account of additional financial burden towards salaries and non-salary expenditure, the school management has not been able to add anything to the development fund/ development reserve.

14. Having heard the learned counsel for the parties, we find that a sum of Rs.2 crores was added to the funds of the school management by way of fixed deposit of Rs.2 crores in the

academic year 2011-12. Therefore, it will be just and proper to direct, and **we accordingly direct, the respondent nos.8 to 12/school management to disburse a sum of Rs.2 crores towards its liability to the teaching/non-teaching staff for payment of salaries and allowances for the academic year 2011-12, which as per Exhibit-11 to the affidavit-in-reply is shown as Rs.2,47,48,458/-. For this purpose, if necessary, the school management shall encash a part of the fixed deposits and pay the sum of Rs. 2 crores (Rupees two crores) to the teaching and non-teaching staff within four weeks from today. The amounts will be paid in proportion against the arrears of salaries and dearness allowance payable to the teaching and non-teaching staff.**

15. The balance amount of arrears for the academic years 2011-12 and the arrears for the subsequent years, shall be paid by the school management to the teaching/non-teaching staff over a period of three years. It will be open to the school management to contend before the appropriate authority, if advised, that the school management is entitled to factor in the arrears to be paid to the teaching/non-teaching staff and also the requirement of the school management for development fund/development reserve in the proposal for enhancement of the fees from the academic year 2015-16 onwards.

16. We may not be treated to have expressed any opinion on the above contention but it will be open to the school management to raise such contentions which are available to them in law.

17. The writ petition is disposed of with above directions and observations in paras 14 to 16 hereinabove and also after granting liberty to the school management to challenge the communication dated 3 March 2015 referred to in paras 3 and 4 hereinabove. We may not be treated to have expressed any opinion on the said communication. In view of disposal of writ petition itself, Civil Application Nos.1217 of 2014 and 2036 of 2014 do not survive and stand disposed of as such.

(CHIEF JUSTICE)

(G.S.KULKARNI, J.)

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