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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) No. 1706 OF 2016

Indian Education Society & Anr. ... Petitioners
Vs.
The State of Maharashtra & Ors. ... Respondents

Mr. A. G. Kothari a/w Ms. Nandini G. Menon, for the Petitioners.
Mr. B. B. Sharma, for the Respondent - UOI.

CORAM : V. M. KANADE, &
M. S. SONAK, JJ.

DATE : JULY 1, 2016

PC.

1. The Petitioners are aggrieved by an order dated 16th June, 2016 passed by the Dy. Director of Education. The grievance of the Petitioners is that the said order is passed without giving them hearing. It is submitted that as per provisions of Section 6, sub-clause (3), the Executive Committee which is constituted by the School has to approve the fees for the academic year and the said fee is binding for two academic years. The contention of the learned counsel appearing

on behalf of the Petitioners is that the said expression does not mean that the same fees are to be paid for two academic years.

2. The Petitioners have also challenged the constitutional validity of some of the provisions viz. Sections 4, 6 and 9 of the Maharashtra Educational Institutions (Regulation of Fees) Act, 2011. It is also submitted that the impugned order has been passed without giving hearing to the Petitioners, and it was passed after a complaint was made by some of the members of the PTA Executive Committee. On the other hand, the learned counsel appearing for the State submits that the Petitioners have an alternate remedy of filing an appeal against the order passed by the Dy. Director of Education.

3. In our view, since admittedly the impugned order is passed without giving hearing to the Petitioners, this Court can always entertain a petition where allegation of violation of principles of natural justice are made against the Respondents. The Apex Court in the case of ___ ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Ors.*** [AIR 199 SC 22] has in terms observed in paragraph 15 that:

“15. Under Article 226 of the Constitution, the High

Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

4. This petition, in our view, is maintainable. In our view, petition can be conveniently disposed of by directing the Dy. Director to give a hearing to the Petitioners, to the Executive Committee and to the complainants, and thereafter decide the issue and take a decision on merits and in accordance with law, in any case within a period of four weeks. Since the impugned order is set aside, we do not propose to examine the issue constitutional validity of the provisions of

Sections 4, 6 and 9 of the Maharashtra Educational Institutions (Regulation of Fees) Act, 2011. We, therefore, reserve right of the Petitioners to file a fresh petition in the event any adverse order is passed by the Dy. Director of Education, and challenge the validity of the provisions of Sections 4, 6 and 9 of the Maharashtra Educational Institutions (Regulation of Fees) Act, 2011. All contentions raised by both the parties in this petition are kept open.

Writ petition is disposed of in the aforesaid terms.

Sd/-
[M. S. SONAK, J.]

Sd/-
[V. M. KANADE, J.]

Vinayak Halemth