

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2018

CORAM

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.14064 OF 2016
AND CONNECTED MISCELLANEOUS PETITIONS

Parents Students Welfare Association
(Regn. No.140/2015)
Asan Memorial Senior Secondary School
Represented by its Secretary
No.9, Samy Street, Egmore,
Chennai - 600 008. ... Petitioner

VS.

1. General Secretary
Asan Memorial Association
Asan Memorial Senior Secondary School
1, Anderson Road,
Cochin House,
Chennai - 600 006.
2. The Chairperson
Central Board of Secondary Education (CBSE)
Skiksha Kendra, 2,
Community Centre,
Preet Vihar, Delhi - 100 092.
3. The Regional Officer
Central Board of Secondary Education (CBSE)
New No.3, Old No.1630 A, "J" Block,
16th Main Road, Anna Nagar West,
Chennai - 600 040.
4. The Principal Secretary
Department of School Education
Government of Tamil Nadu
Fort St. George,
Chennai - 600 009.

5. The Special Officer
TN State Private School Fees
Determination Committee
DPI Complex,
Chennai - 600 006.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Mandamus directing the second, third and fourth respondents to ensure that the first respondent School abides by the fee fixed by the fifth respondent Fee Committee by order dated 03.08.2015 until the fee structure for the year 2016-17 is approved by the fifth respondent Fee Committee and to consequently refund fee collected in excess of the amount fixed by the fifth respondent for the academic year 2013-2014, 2014-2015 and 2015-2016 as directed by a combined reading of orders dated 11.06.2015, 29.06.2015 and 03.08.2015.

For Petitioner : Ms.Nagasaila
for Mr.N.G.R. Prasad

For Respondent-1: Mr.P.S.Raman
Senior Counsel
for M/s.OJAS Law Firm

For Respondent-3: Mr.G.Nagarajan

(O R D E R)

(ORDER OF THE COURT WAS MADE BY M.GOVINDARAJ, J.)

This writ petition is preferred by the Parents Students Welfare Association, Asan Memorial Senior Secondary School, for a direction to ensure that the first respondent School abides by the fee fixed by the Fee Fixation Committee by its order dated 03.08.2015 and to refund the fee collected in excess of the amount fixed by the Fee Fixation Committee for the years 2013-2014, 2014-2015 and 2015-2016.

2. The grievance of the writ petitioner is that the fifth respondent Fee Determination Committee has fixed fee for the academic years 2013-2014, 2014-2015 and 2015-2016, but the first respondent School is collecting over and above the fee fixed by the Committee and there has been exorbitant demand by the School. Pursuant to which, they made representations to the Chief Educational Officer and the Fee Fixation Committee. The Chief Educational Officer has conducted an enquiry and in his report dated 19.06.2015 to the Director of School Education has said that the first respondent School collected fee in excess of the one which is determined by the Fee Committee. Even though

the representatives of the writ petitioner association tried to meet the school officials, they were not given audience. Subsequent to their representation dated 17.07.2015, the writ petitioner and few other parents of the students could meet the Executive Director and that they were informed that money is needed for developing Asan Memorial Dental College and Hospital and therefore, they are collecting excess fee and diverting the same to develop the above said institution. Even though the first respondent School is directed to refund the excess amount, School has not obeyed the orders of the Fee Committee and continued to collect excess fee. Therefore, the writ petitioner has filed the above writ petition.

3. Further, by a letter dated 21.03.2016, the third respondent communicated the letter of the Principal of the School dated 16.03.2016. In that letter, it was stated that in view of the interim order passed by the Hon'ble Supreme Court, the School is collecting the fee approved by the School Management Committee at its meeting held on 05.02.2015. According to the writ petitioner, the School Management Committee shall have the parent representatives. None of their members are called to the meeting nor the writ petitioner association was consulted in choosing the parent representative. The two parent representatives, who were part of the School Management Committee neither elected by the larger parent body nor in consultation with the writ petitioner association. The fee collected is in scant regard and respect of the School Management to CBSE guidelines or to any sense of reasonableness in fixing the school fees, which amounts to unbridled profit generation. The Fee Committee can continue to exercise the powers under Section 7(3) of the Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009 and it is not stayed by the Hon'ble Supreme Court and therefore, a direction to the respondents 2 to 4 ensuring compliance of law by the first respondent School shall be issued. Further, the excess fee collected by the School in excess of Fee Committee orders dated 11.06.2015, 29.06.2015 and 03.08.2015, shall be refunded to the students.

4. The School has filed a typed set consisting of various judgments of the Hon'ble Supreme Court and this Court among other communications.

5. The learned Senior Counsel for the first respondent would contend that in view of the Constitutional Bench judgment of the Hon'ble Supreme Court in T.M.A.PAI FOUNDATION AND OTHERS VS. STATE OF KARNATAKA AND OTHERS [2002 (8) SCC 481] and in view of the interim order passed by the Hon'ble Supreme Court in Special Leave to Appeal (C) No.16 of 2013 filed against the order of the Division Bench of this Court in W.P.21310 of 2011 dated 21.09.2012, the Hon'ble Supreme Court has limited the

application of Section 7(3) of the Tamil Nadu Schools (Regulation of Collection of Fees) Act, 2009 with respect to ICSC and CBSE schools. Further, following the interim order of the Hon'ble Supreme Court, a Hon'ble Division Bench of this Court in W.P.(MD) No.623 of 2015 dated 04.02.2016 has dismissed the writ petition filed for a relief to regulate or determine the fee structure of the schools in respect of CBSE and ICSC schools. Therefore, the learned Senior Counsel would submit that the relief claimed by the writ petitioner in the writ petition itself is not maintainable and the relief claimed by the writ petitioner cannot be granted.

6. Per contra, Ms.Nagasaila, learned counsel appearing for the writ petitioner / respondent would vehemently contend that the order passed by the Hon'ble Division Bench of this Court in LAKSHMI SCHOOL VS. STATE OF TAMIL NADU [2012 (6) CTC 8] has not been stayed by the Hon'ble Supreme Court and hence, it is binding. The interim order of the Hon'ble Supreme Court dated 28.01.2016 limiting the power of the Committee under Section 7 (3) of the Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009, does not in any way water down the powers of the Committee to verify if the fees collected is commensurate to facilitate and to determine the fee structure that the fee collected by the School was in excess of the facilities provided. The interim order of the Supreme Court has to be read in the context of Section 9 whether the Act provides for imprisonment and fine for any violation of the Act. The interim order merely protects the School against criminal prosecution. When the power under Section 7(3) to recommend disaffiliation of the School by the Committee should be read along with the judgment of the Supreme Court in MODERN SCHOOL VS. UNION OF INDIA AND OTHERS [2004 (5) SCC 583]. Instead of disaffiliating the School, the authorities may give additional opportunity to school to comply with the Fee Committee's decision before taking the extreme action of withdrawal of recognition. Therefore, a direction shall be issued to respondent nos.2 to 4 for enforcement of compliance of the orders passed by the fifth respondent.

7. We have given our anxious consideration to the arguments advanced by the learned counsel on either side.

8. The first respondent is an unaided minority school. The Hon'ble Supreme Court in T.M.A.PAI FOUNDATION AND OTHERS VS. STATE OF KARNATAKA AND OTHERS [2002 (8) SCC 481] the Hon'ble Supreme Court while framing and deciding the larger issues has answered question No.5(c) with regard to regulation of fees as under:

"Q5(c) Whether the statutory provisions which regulate the facets of administration like

control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and Principal including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to an university or board have to be complied with, but in the matter of day-to-day management like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a Judicial Officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the state, without interfering with the overall administrative control of the management over the staff.

Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee."

9. Following the judgment of the Constitutional Bench of the Hon'ble Supreme Court in ISLAMIC ACADEMY OF EDUCATION AND ANOTHER VS. STATE OF KARNATAKA AND OTHERS [2003(6) SCC 697] and in P.A.INAMDAR AND OTHERS VS. STATE OF MAHARASHTRA AND OTHERS [2005 (6) SCC 537] the Hon'ble Supreme Court held that there can

be no interference by the Executive body. In paragraph 121 of the said judgment, it has been observed as under: -

" Minority unaided educational institutions asking for affiliation or recognition Affiliation or recognition by the State or the Board or the University competent to do so, cannot be denied solely on the ground that the institution is a minority educational institution. However, the urge or need for affiliation or recognition brings in the concept of regulation by way of laying down conditions consistent with the requirement of ensuring merit, excellence of education and preventing mal-administration. For example, provisions can be made indicating the quality of the teachers by prescribing the minimum qualifications that they must possess and the courses of studies and curricula. The existence of infrastructure sufficient for its growth can be stipulated as a pre-requisite to the grant of recognition or affiliation. However, there cannot be interference in the day-to-day administration. The essential ingredients of the management, including admission of students, recruiting of staff and the quantum of fee to be charged, cannot be regulated. (para 55, Pai Foundation) "

10. The Hon'ble Full Bench of this Court in THE CORRESPONDENT / PRINCIPAL AROKIAMADA MATRICULATION HIGHER SECONDARY SCHOOL VS. TMT.T. SORUBARANI AND OTHERS [W.A.NO.1307 OF 2009 DECIDED ON 15.10.2015] has reiterated the dictum of the Hon'ble Supreme Court in the above referred cases and refused to interfere with the right of administration of minority schools.

11. Powers and functions of the Committee under Section 7(3) of the Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009, reads as under:

"7. Powers and functions of the Committee.
(1)....

(3) The Committee shall have power to,-

(i) verify whether the fee collected by the School affiliated to the Central Board of Secondary Education commensurate with the facilities provided by the school ;

(ii) to hear complaints with regard to collection of excess fee by a school affiliated to the Central Board of Secondary Education;

and

(iii) to recommend to the Central Board of Secondary Education for disaffiliation of the school, if it comes to a conclusion that the school has collected excess fee."

12. As per the above provision, the Committee has a power only to verify the fee collected by the School affiliated to CBSE. If the Committee comes to a conclusion that the School is collecting excess fee, it can only recommend to the CBSE for disaffiliation of the School. In the instant case, even though there is an allegation that the School has collected excess fee, we do not find any material that the Fee Committee has heard the compliants raised by any one and it come to a conclusion that the first respondent school has collected excess fee. Even assuming such hearing was done following the principles of natural justice, in view of the judgment referred above, it is clear that there could not be interference in the day today administration of the minority institution and the fee to be charged by an unaided institution cannot be regulated as held in T.M.PAI's case (cited supra). Further, there is a specific order by the Hon'ble Supreme Court limiting the powers of the Fee Committee with respect to ICSE and CBSE Schools with regard to Section 7(3) of the Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009.

13. The interim order passed by the Hon'ble Supreme Court in Special Leave to Appeal (C) No.16 of 2013 dated 28.01.2016 reads as under:

"Leave granted.

In modification and suppression of our interim order dated 15.01.2015, we direct that for I.C.S.C. and C.B.S.C. Schools, the regulatory mechanism of the Fee Committee shall be limited, during the pendency of the present controversy, to the one contemplated under Section 7(3) of the Tamil Nadu Schools (Regulation of Collection of Fees) Act, 2009. "

14. Further, in a similar circumstance, in T.RAJA SINGH VS. THE STATE OF TAMIL NADU REP. BY ITS SECRETARY, DEPARTMENT OF SCHOOL EDUCATION AND ANOTHER [W.P.(MD) No.623 of 2015, dated 04.02.2016] in which, one of us (Hon'ble Mr.Justice S.Manikumar) dismissed the prayer to regulate the collection of fee in respect of CBSE and ICSE Schools in view of the interim order granted by the Hon'ble Supreme Court in Special Leave to Appeal (C) No.16 of 2013 dated 28.01.2016.

15. Therefore, the contention of the learned counsel for the petitioner that the order of the Hon'ble Supreme Court does not

in any way water down the powers of the Committee and it annulled the powers prescribed under Section 9 of the Act, cannot be accepted. The Hon'ble Supreme Court has specifically limited powers of the Fee Committee with regard to ICSC and CBSE Schools. More so, the first respondent School is a minority institution. Therefore, the contention of the learned counsel for the writ petitioner is not maintainable.

16. In so far as the contention raised by the learned Senior Counsel for the first respondent with respect to maintainability of the writ petition is concerned, the writ petitioner is a registered body of students and parents.

17. According to the writ petitioner, the School Management Committee shall have representatives of body of the parents. When the Act recognized a Nominee of the Parent Teacher Association, it shall be construed that the Parent Teacher Association is a statutorily recognized body and it would suffice that any one of the representatives of the Parent Teacher Association is in the School Management Committee.

18. In the instant case, the President and Vice President of the Parent Teacher Association represented the Parents in the School Management Committee and signed in the meeting held on 17.02.2016. In such a situation, this Court is of the considered opinion that the Parent Teacher Association is the recognized body. If at all the parents have any grievance that can be put forward to the School Management through Parent Teacher Association. As contended by the learned Senior Counsel for the first respondent, a self-styled association like the writ petitioner cannot maintain any writ petition without there being any recognition.

19. In PARENTS TEACHERS ASSOCIATION AND OTHERS VS. CHAIRMAN, KENDRIYA SANGATHAN AND OTHERS, reported in AIR 2001 RAJASTHAN Page 35, at paragraph 12, The Rajasthan High Court has held as follows:-

"12.The appellant-petitioners have not placed before this Court any document to show that the Parents-Teachers Association is a registered and recognised association. The writ petition has been allegedly filed in public interest and the alleged large interest of the students. It is evident that the so-called Parents- Teachers Association is an unregistered and unrecognised association and, therefore, in our view, has no fundamental right to approach this Court under Article 226 of the Constitution. This point has been concluded by the decision of the Apex Court in the case of

Mahendra Kumar Gupta (1994 AIR SCW 5139) (supra) and by the decision of Full Bench of this Court in the case of RSEB Accountant's Association (1995 (3) WLC1) (supra). A reply to the preliminary objection raised by the respondents was also made by the appellants. It is stated that the Parents-Teachers Association has been recognised by the KVS and that the Principal is the Vice Chairman of the said Association and hence, the Association is competent to file the writ petition on behalf of the students. In our view, the above reason cannot be considered as a valid reason for maintaining the writ petition. It is not in dispute that the Association is not a registered body and recognised Association. Thus, after examining this point of law in detail and placing reliance on various judgments delivered by the Apex Court from time to time, the Full Bench of this Court in the case of RSEB Accountant's Association (supra) held as under:-

"It may also be observed that an unregistered association has no fundamental right to approach this Court under Art. 226 of the Constitution."

20. Though the petitioner's association is registered, it is not a recognised association. In such view of the matter, we agree with the contention of the learned counsel for the first respondent that the writ petitioner association has no locus to maintain a writ petition for a direction to the official respondents to enforce the order of the Fee Committee and without any specific power for refund of excess fee alleged to have been collected by the first respondent School. Therefore, we are also of the considered opinion that the writ petitioner has no locus to maintain the writ petition.

21. In the light of the above discussions and in view of the interim order granted by the Hon'ble Supreme Court in Special Leave to Appeal (C) No.16 of 2013 dated 28.01.2016, we are not inclined to entertain the above writ petition and accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

TK

To

- 1.The Chairperson
Central Board of Secondary Education (CBSE)
Skiksha Kendra, 2,
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+1 CC to Mr.NGR. Prasad, Advocate sr 23775.
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