IN THE HIGH COURT OF JUDICATUE AT MADRAS

Dated : 28.08.2018

CORAM

THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.No.40261 of 2015
AND
M.P.Nos.1 & 2 of 2015 and W.M.P.No.27059 of 2017

St.George Anglo Indian
Higher Secondary School,
rep. by its Correspondent,
738, Periyar E.V.R.Salai,
Shenoy Nagar, Chennai-600 030. ...Petitioner

Vs.

1.The Government of Tamil nadu,
rep. by its Secretary,
Department of School Education,
St.George Fort, Secretariat,
Chennai-600 009.

2.Private Schools Fee Determination Committee,
rep. by its Chairman,
DPI Compus, College Road,
Chennai-600 006.

3.The Director of School Education,
DPI Compus, College Road,
Chennai-600 006.

4.The Inspector of Anglo Indian Schools,
DPI Complex, College Road,
Chennai-600 006.

5.Mr.V.P.Garden Raja,
Founder President,
Tamil Nadu Anglo Indian Schools,
Parents Students Welfare Association,
No.34/65, 1st Floor, Nelsonmanickam Salai,
Amainthakarai,
Chennai-600 029. ... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call for the records pertaining to the impugned order dated 06.07.2015 on the file of the 2nd respondent and to quash the same in respect of St.George Anglo India Hr.Sec. School, 738, Periyar E.V.R.Salai, Shenoy Nagar, Chennai-30.

For Petitioner : Dr.FR.A.Xavier Arulraj, Senior Counsel for Mrs.Arul Mary
For Respondents: Mr.S.T.S.Murthi, AAG-V assisted by Mr.C.Munusamy Spl GP (Education) for R1 to R4.

ORDER

(Order of the Court was made by R.SUBBIAH, J.,)

This writ petition has been filed by the petitioner-school praying for issuance of a Writ of Certiorari to call for the records pertaining to the impugned order dated 06.07.2015 on the file of the 2nd respondent and to quash the same in respect of the petitioner-school.

2.In the affidavit it has been averred by the petitioner that the petitioner-school is run by the Educational Agency of a registered Society bearing Reg.No.226/2006 in the name and style of 'St.George School and Orphanage'. The Bishop of the CSI Diocese is the president of the said Society. The petitioner-School is a minority institution. The petitioner-school is a partly aided school. The Government gives only a deficit grant as stipulated U/A 141 of the Code of Regulations of Anglo-Indian Schools. Every year, the management of the school has to submit the financial statement, which will be audited by the Departmental Auditors, who will clear the bill. Apart from the teaching grant, there are different grants to be released in respect of buildings, equipments, boarding, medical inspection etc. But, the Government has virtually stopped all other grants, except a deficit grant in respect of only teaching grant for sanctioned posts. Therefore, the teaching grant does not cover the entire expenditure incurred on all the teaching and non-teaching staff. The teaching grant is paid only as a supplement to the income from the tuition fees collected from the students. The school has 39 teaching staff and 28 non-teaching staff. Among the 39 teaching staff, 23 are working in the sanctioned post and 16 are working as the management staff. Among the 28 non-teaching staff, only 7 are working in the sanctioned post and 21 are working as the management staff. The Government, while calculating the deficit grant, is taking into consideration only the salary paid to the staff working in the 30 (23+7) sanctioned posts. The Management of the School incurs exorbitant expenditure on the salary of the teaching and non-teaching staff working as management staff, who number around 37 (16+21). Thus, there are more management staff, rather than aided staff in the petitioner-school. Apart from the payment of salary to the staff, the Management incurs expenditure on administration and maintenance such as electricity, sanitary materials, maintenance of the buildings and campus maintenance and the maintenance of the infrastructure, including replacement of fixtures, equipments and furnitures, replacement of equipments and chemicals in the laboratory, additional purchase of books for library and on the administrative cost and other expenses etc. For the academic year 2013-2014, the total income of the school by way of collection from the students was only an amount of Rs.1,16,03,700/-. But, the School had incurred an expenditure of Rs.1,89,89,507/- towards salary, maintenance and for other regular expenses. For the academic year 2013-2014 alone, the school has incurred a deficit of Rs.73,35,807/-. Out of this Rs.36,06,202/- is yet to be paid to the school by the Government as deficit grant on sanctioned posts. The deficit grant paid to the school is mostly in a belated manner. As such, no deficit grant has been sanctioned yet, for the academic years 2012-2013 to 2014-2015 totalling an amount of Rs.1,74,34,809/-. Since the Government has not sanctioned deficit grant for many academic years, the school is forced to borrow huge amount of money to give salary and to meet out other expenses. That apart, the Management has spent from its resources an amount of Rs.1,71,18,135/- for the academic years 2013-2014 to 2014-2015. The petitioner-school is sinking under the burden of huge loans and is virtually in a financial crisis. The Government has not sanctioned any new post after 01.06.1991, as no grant is payable u/s 14A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1993. Whatever be the short-fall in the sanctioned post and the additional expenses on management posts, the expenditure on maintenance becomes the financial liability of the management.

3.While so, on 28.08.2013, the 4th respondent has approved the Tuition fee under Clause 69 of the Code in respect of the petitioner-school with effect from 01.06.2013 as mentioned hereunder_

Standards	Enhancement of Fees
I-V	Rs.775x12 =9300/-
VI-VIII	Rs.800x12=9600/-
IX-X	Rs.850x12=10200/-
XI-XII	Rs.900x12=10800

The petitioner-school has published the fee details to all the parents by its Circular dated 29.04.2013. This fee-structure includes tuition fee, the text books, stationary items, Computer fees and miscellaneous. The fee includes 13 kinds of materials supplied to each student along with the expenditure involved in the academic and extra-curricular activities. Every rupee collected from the student is spent on the students. There is no element of profiteering the entire administration of the school, rather the school has been incurring heavy financial loss, in all these years. The mode of payment is only through the bank and everything is accountable.

4.While so, the Tamil Nadu Anglo Indian Schools Parents Students Welfare Association represented by one Mr.V.P.Garden Raja has filed a writ petition in W.P.No.16926 of 2012 for a direction forbearing the school from demanding fees as and above the fees fixed by the Inspector of Anglo-Indian Schools. There are no interim orders in the said writ petitions. The said writ petition is still pending. According to the petitioner, the said petition has been filed only to harass the school, because the complainant has got personal vendetta against the school. Subsequently, based on the report of the 4th respondent dated 22.05.2015, the 2nd respondent has issued the impugned order dated 06.07.2015 recommending the 4th respondent to see that the excess fee amount collected to be returned to the parents concerned with the period of two months. Challenging the same, the petitioner has filed the present writ petition.

5.When the matter came up before this Court on 21.09.2017, based on the submissions made on either side, this Court directed the 4th respondent to have a re-look into the different areas of income and expenditure with an holistic perspective, including the grant received, the fee received, on maintenance, administration, computer education, miscellaneous and the materials supplied to the students and submit a fresh report for the Academic Years 2013-2014 and 2014-2015 on the next hearing.

6.Subsequently, on direction issued by this Court, the Inspector of Anglo Indian Schools was present before this Court on 05.04.2018 and this Court after hearing both sides directed the Inspector of Anglo Indian Schools to file a revised report by taking into consideration the principles laid down by the Division Bench of this Court reported in 2012 Law Weekly Reporter 489 (Lakshmi Matriculation School, etc., Vs. State of Tamil Nadu & others), with regard to all expenses, including maintenance incurring by the petitioner-School as well as about the excess staff, as to whether the excess staff appointed by the school are in proportion to the strength of the students or not. The petitioner-school was also permitted to produce all the relevant particulars to the Inspector of Anglo Indian Schools.

7.Now, the revised report dated 23.08.2018 has been filed by the Inspector of Anglo Indian Schools stating that there is no profiteering in the petitioner-school. The relevant portion in the said revised report reads as follows:-

> "3.Regarding the following other areas of expenditure, the school follows its own method of collection and expenditure.
>
> a)Payment of salary to the un-approaved staff.
>
> b)Payment of salary to the management staff including computer staff
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> c)Maintenance on administration and infrastructure
>
> d)Material supplied to the students
>
> 4.All the receipts from the student are only through the bank. For this purpose they have the following accounts.
>
> i)General Fund Tuition fee account (Collection of Fee)
>
> ii)Special Fee accountable
>
> iii)Computer Education account (for maintenance of the Staff and Computer network).
>
> iv)Stationery account (for purchase and supply of 23 materials to the students)
>
> 5.In a close scrutiny of all these accounts there is no profiteering, on the other hand there is a contribution by the management. However, it should be mentioned that they have not applied for any prior permission for collection these amounts."

From the report of the Inspector of Anglo Indian Schools, it is seen that in the petitioner-school there is no profiteering. In an identical case in W.P.Nos.23670 of 2014 & W.P.No.12475 of 2015 [Don Bosco Higher Secondary School and another Vs. The government of Tamil Nadu rep. by its Secretary and others), this Court has passed a detailed order dated 27.102.2015, setting aside the similar impugned order therein passed by the Committee. The relevant portions in the said order read as follows:-

> "31.In addition to the above, the report of the Chief Educational Officer takes note of the fact that the petitioner School had incurred lot of expenditure. After having perused the

relevant records and registers, the Chief Educational Officer has failed to record the total expenditure incurred by the School, to find out as to whether the fee collected from all the students was in excess of or equivalent to or fell short of the total expenditure incurred by the School. The petitioner has claimed that the School is run on non-profit basis. Moreover, the pupil strength in Tamil Medium has started dwindling so rapidly even in the other Schools that many Schools have closed down Tamil Medium sections. But, braving the adverse climate in Society, the petitioner School has been able to continue to run Tamil Medium Sections. Therefore, without taking note of the actual expenditure incurred by the petitioner School, the Chief Educational Officer ought not to have submitted the report. Hence, on the face of it, the report of the Chief Educational Officer dated 30.6.2014 is flawed. As a consequence, the order of the Fee Determination Committee, which proceeds solely on the basis of the Chief Educational Officer's report is also flawed.

32. Though the above finding is sufficient to set at naught the impugned proceedings, we would also examine the question from the legal perspective.

33. Tamil Nadu Act 22 of 2009 was enacted with the object of regulating the collection of fees by Schools in the State of Tamil Nadu. The Act divides the Schools existing in the State of Tamil Nadu into the following categories: (i) Government Schools, (ii) Aided Schools, (iii) Private Schools other than aided Schools, and (iv) Schools providing or imparting religious instructions alone, but not any other instructions.

34. The Act seeks to cover only the Government Schools, Aided Schools and Private Schools other than Aided Schools. While Sub-section (1) of Section 3 seeks to prohibit the collection of excess fees by Government Schools and aided Schools, Sub-section (2) of Section 3 seeks to prohibit the collection of excess fees by private Schools other than aided Schools. The power of fixation of appropriate fee is vested with the State Government, under Section 4 of the Act, insofar as the Government Schools and Aided Schools are concerned. Similarly, the

power of fixation of the appropriate fee is vested with the Fee Determination Committee, insofar as private Schools other than the aided Schools are concerned.

35. In other words, the Fee Determination Committee is not empowered to determine the fee leviable by a Government School or Aided School. Section 4 confers power only upon the State Government to fix the fee for admission of pupils to any standard or course of study in Government Schools and Aided Schools. It is only in respect of private Schools other than Aided Schools that the Fee Determination Committee is vested with the power under Section 6, to determine the fee, based upon the location of the School, available infrastructure, expenditure on administration and maintenance, reasonable surplus referred for the growth and development of the private Schools and any other factors.

36. A careful look at the Scheme of the Act would also indicate one more aspect. Under Section 6 of the Act, a detailed procedure is prescribed for the Fee Determination Committee to determine the fee leviable by a private School. There are inbuilt safeguards, such as an opportunity of hearing to the School concerned, a revision of the fee so fixed once in three years etc. But, insofar as Government Schools and Aided Schools are concerned, no such procedure is prescribed in Section 4 and no opportunity of hearing is provided to an aided School.

37. As a matter of fact, the expression "aided School" is defined in Section 2(b) of the Act, to mean a School receiving any sum of money as aid out of the State funds. There is no dispute about the fact that after insertion of Section 14-A into the Tamil Nadu Recognised Private Schools Regulation Act, by Act 11 of 1999, the Government has completely stopped the Maintenance Grant and has also curtailed the quantum of Teaching Grant. Nevertheless, a School generating its own funds to sustain even the sections or courses which do not receive any grant-in-aid, would come within the definition of the expression "aided School" under Section 2 (b), in view of the expanded meaning given to the expression. As a consequence, the petitioner School would come within the purview of the

expression "aided School" under Section 2(b) of the Act. Therefore, the Fee Determination Committee cannot fix the fee leviable by the petitioner School. This is why the Fee Determination Committee has relied upon the report of the Chief Educational Officer.

38. But, it is doubtful if the Fee Determination Committee, which does not have the power to determine the fee leviable by a Government School or an aided School, would still have the power to oversee the functioning of the Government Schools and aided Schools. This can be well understood by having a look at Sections 6 and 7 of the Act.

39. While Section 6 deals with the procedure to be followed by the Fee Determination Committee for fixing the fee leviable by a private School, Section 7 deals with the powers and functions of the Fee Fixation Committee. Sub-sections (1) to (4) of Section 7 divides the powers and functions of the Fee Determination Committee into four categories. Sub-section (4) of Section 7 empowers the Committee to regulate its own procedures and it confers upon the Committee all the powers of the Civil Code under the Code of Civil Procedure. Since it is not relevant for our discussion, we do not deal with Sub-section (4). Similarly, Sub-section (3) relates to the power of the Committee to hear complaints against the Schools affiliated to the Central Board of Secondary Education and hence, we do not propose to deal with Sub-section (3). This leaves us with Sub-sections (1) and (2) of Section 7. The power conferred upon the Fee Determination Committee under Sub-sections (1) and (2) of Section 7 can be summarised s follows:

(i) to determine the fee to be collected by private Schools;

(ii) to hear complaints with regard to the collection of excess fee by a private School, aided School or Government School and to recommend appropriate action against such School by the competent authority;

(iii) to call upon private Schools to place the proposed fee structure with all relevant documents and books of accounts; and

(iv) to verify and approve the fee structure proposed by a private School.

40. Therefore, it is clear that though the Fee Determination Committee has no role to play in the matter of fixation of fee in respect of a Government School or an aided School, the Committee is conferred with a limited jurisdiction to hear complaints with regard to the collection of excess fees by Government Schools and aided Schools, under Clause (b) of Sub-section (1) of Section 7, which reads as follows:

> "Section 7(1)_ The powers and functions of the Committee shall be_
>
> (a)...
>
> (b)to hear complaints with regard to collection of fee in excess of the fee determined by it or fixed by the Government, as the case may be. If the committee, after obtaining the evidence an explanation from the management of the private school, comes to the conclusion that the private school or the Government school or aided school has collected fee in excess of the fee determined by the committee or fixed by the Government, as the case may be, it shall recommend to the appropriate competent authority for the cancellation of the recognition or approval, as the case may be, of the private school or aided school or for any other course of action as it deems fit in respect of the private school or Government school or aided school."

41. But, it is seen from the impugned order of the Fee Determination Committee that the Committee did not follow the procedure prescribed by Section 7(1)(b). Therefore, we are of the considered view that the impugned order of the Fee Determination Committee is liable to be set aside.

42. Though Dr.Fr.A.Xavier Arulraj made elaborate submissions on the applicability of the very provisions of the Tamil Nadu Recognised Private Schools Regulation Act to minority educational institutions, we do not think that we need to examine the same in this writ petition. However, three Government Orders that have some bearing upon the fee that could be

levied by an aided School, need be taken note of. By the first order in G.O.Ms.No.110, School Education dated 29.5.2008, which was issued more than a year before the date of commencement of Tamil Nadu Act 22 of 2009, the

Government cancelled the Special Fee payable under different heads by students studying in Tamil Medium or English Medium in standards 6 to 12. The various heads of Special Fee that were cancelled by the said Government Order are given in paragraph 2(i) of the said Government Order. In other words, G.O.Ms.No.110 dated 29.5.2008 did not prescribe the fee that could be levied by an aided School. It merely gave the items of Special Fee under 14 different heads, that were levied till then as special fees and sought to cancel the same.

43.Under the next Government Order G.O.Ms.No.218, School Education dated 08.11.2008, the Government allotted an amount of Rs.21.40 Crores to the School Education Department, to compensate the Government Schools for the loss that they suffered on account of the cancellation of Special Fees under G.O.Ms.No.110. This Government Order did not take note of the aided Schools and the aided Schools were not compensated.

44.By the next Government Order G.O.Ms.No.203, School Education dated 23.7.2010, the Government permitted aided Schools to fill up vacancies in non-teaching posts, such as watchman, gardener, waterman, scavenger, etc. by outsourcing the tasks. Other than these three Orders, no other Order is brought to our notice, whereby the fee to be levied by an aided School was fixed by the Government.

45.As we have indicated earlier, the provisions of Section 7(1)(b) will come into operation, for the purpose of hearing complaints against an aided School, only after the Government had fixed the fee under Section 4. A Government Order, such as the one in G.O.Ms.No.110, which merely cancelled the levy of special fees in respect of 14 different heads, is not an order under Section 4 of the Act, so as to enable the Committee to invoke Section 7(1)(b).

46. Therefore, we are of the considered view that neither the jurisdiction assumed by

> the Committee, nor the procedure followed by the Committee is in accordance with law. Hence, W.P.No.23670 of 2014 is allowed, setting aside the order of the Committee."

The above decision is squarely applicable to the present facts of the case. Hence, following the same, the present writ petition is allowed setting aside the impugned order dated 06.07.2015 in respect of the petitioner-school. The report of the Inspector of Anglo Indian Schools dated 23.08.2018 shall form part of this order.

Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To,

1.The Secretary,
Government of Tamil nadu,
Department of School Education,
St.George Fort, Secretariat,
Chennai-600 009.

2.The Chairman,
Private Schools Fee Determination Committee,
DPI Compus, College Road,
Chennai-600 006.

3.The Director of School Education,
DPI Compus, College Road,
Chennai-600 006.

4.The Inspector of Anglo Indian Schools,
DPI Complex, College Road,
Chennai-600 006.

+1cc to the Government Pleader Sr.59779

W.P.No.40261 of 2015
and
M.P.Nos.1 & 2 of 2015 and
W.M.P.No.27059 of 2017

ad[co]
srg 24/09/2018