

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.696 OF 2015**

St. Xavier's Education Trust & Ors. .. Petitioners

Vs

The State of Maharashtra & Ors. .. Respondents

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Mr. R.S. Apte, senior counsel i/b Sheetal Kohad for the petitioners.

Mr. K.S. Thorat, A.G.P. for Respondent Nos.1, 5 and 8 to 10.

Mr. S.V. Marne for Respondent No.4.

Ms. Manisha Jagtap i/b J. Shekhar & Co. for Respondent No.3.

**CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.**

DATED : 14th AUGUST, 2019.

JUDGMENT:- [Per: Smt. Bharati Dangre, J.]

1. The present writ petition poses a challenge to various communications issued by the Respondent-Authorities addressed to the Schools run by Petitioner No.1, which is a Public Trust and Petitioner No.2, which is a Society registered under the Societies Registration Act.
2. Petitioner No.1-Trust was conferred with the Minority status

(Religious), being an institution run and managed by Christian community with effect from the Academic Year 2008-09.

3. The case of the Petitioners is that Petitioner Nos.1 and 2 manage the Petitioner Nos.3 to 6 schools and, it is the contention of the Petitioners that the schools cater to quality education and have secured 100% results year-after-year and have received acclaims in excellency and overall development of the students taking education in the said Institutions. According to the Petitioners, in order to achieve and maintain the standard of education, the management took a decision to hike the fees and through the Board Meetings of Petitioner Nos.1 and 2, it was resolved that the Principals of respective schools be authorized to increase the fees in order to meet the hike in costs and expenses incurred. According to the Petitioners, this hike was met with opposition from a small section of parents and it led to several agitations and filing of complaints by parents with the Education Officer. On the persistent demands, Respondent No.3 directed Petitioner Nos.3 and 4 to cancel the fee hike and to adhere to the Government Resolution dated 15/07/2010 and also comply with the provisions of the Right of Children to Free and Compulsory Education Act, 2009. The Petitioners were also issued with a Show Cause Notice by Respondent No.3 which was duly replied by the Petitioners and the correct factual position was brought to the notice of the Education Officer. It was the specific case of the Petitioners that certain political party was instrumental in bringing the entire action and the alleged violation of the provisions of Maharashtra

Educational Institution (Prohibition of Capitation Fees) Act, 1987 resulted into lodging of FIR under the relevant provisions of the said enactment. However, in the present matter, we are not concerned with the said aspect of the matter but according to Mr. Apte, learned senior counsel appearing for the petitioners, the impugned orders issued by the Respondent-Authorities are not sustainable as the schools have been set up by Petitioner Nos.1 and 2 in exercise of their fundamental right guaranteed by Article 19(1)(g) of the Constitution and that if such restrictions are to be imposed on the Petitioners, it can only be done through a piece of legislation and not on the basis of an Executive Instructions issued under Article 162 of the Constitution. Mr. Apte, learned senior counsel has invited our attention to the judgment of the Apex Court in the case of **Pramati Educational & Cultural Trust & Ors. v. Union of India** reported in **(2014) 8 SCC 1** wherein the Constitution Bench has held that the Act of 2009 and the provisions contained therein cannot be forced upon a minority institution because, that may destroy its minority character and if the Act is made applicable to such institutions, their right guaranteed under Article 30(1) of the Constitution would be abrogated. Learned counsel has also placed reliance on a judgment dated 01/09/2010 of the Division Bench of this Court in the case of **Association of International Schools and Principals Foundation, Thane v. State of Maharashtra in Writ Petition (L) No.1876 of 2010** where the challenge to the Government Resolutions issued in exercise of the powers under Maharashtra Educational Institutions (Prevention of Capitation Fees) Act, 1987 had succeeded and the

Division Bench had quashed and set aside the impugned Government Resolutions by holding that they are not referable to the provisions of the enactment and, since it imposed restrictions on the right of the private educational institutions to charge fees, which could be done only by a legislation, the Government Resolutions came to be quashed.

4. In response to the petition, the Education Officer of the Navi Mumbai Municipal Corporation has placed an affidavit on record, which is affirmed on 19/05/2016. In the said affidavit, the Respondents have set forth the course of action adopted by the Educational Authorities when they received complaints against the schools run by the Petitioners alleging exorbitant hike in the fees. The Affidavit proceeds to state that directions were given to the Petitioner-schools not to deprive any children of their education on the pretext of non-payment of fees to which the schools have responded by stating that not a single student has been deprived of their opportunity to appear for the exam. The Affidavit further proceeds to state that after perusal of the PTA Register maintained by the school, it was found that the fee hike implemented by the school for the Academic Year 2014-15 was not in accordance with the prescribed procedure under Government Resolution dated 24/08/2014 and, therefore, the implementation of the same came to be stayed by the Education Officer.

A reference is also made to the interim order passed by this Court and it is then stated that the Maharashtra Educational Institution

(Regulation of Fees) Act, 2011 has been brought into effect from 31/03/2014 and the schools have placed the agenda for increase fees for the Academic Year 2014-15 in the PTA meeting convened on 25/01/2014 and, at the relevant time, Government Resolution dated 24/08/2010 was in force. The Affidavit then proceeds to state that in terms of the said Government Resolution, it was mandatory to place proposal for fee hike before the Executive Committee of PTA and after the Maharashtra Educational Institution (Regulation of Fees) Act, 2011 came into effect, the procedure set out in the enactment has to be mandatorily followed.

We have heard learned senior counsel Mr. Apte, who has invited our attention to the provisions of the relevant statutes and the impugned communications. He has also canvassed before us that the approach of Respondent-Authorities is actuated by the political interference and he would submit that the Maharashtra Educational Institutions (Regulation of Fee) Act, 2011 was implemented in the State of Maharashtra with effect from 01/12/2014 when the State Government notified the date of its implementation in the Government Gazettee on 29/11/2014. In short, the submission of Mr. Apte is to the effect that prior to coming into force of the said enactment, Petitioner Nos.1 and 2 and the schools run by them cannot be subjected to the regime of the Act of 2011.

In support of the stand of the Respondents, we have also heard Mr. Marne, learned counsel appearing for Respondent No.4, Mr. Thorat,

learned A.G.P. for Respondent Nos.1, 5, 8 to 10.

5. On perusal of the writ petition along with its annexures and on consideration of the submissions advanced on behalf of the parties, it is not in dispute that the Petitioners are the minority institutions and in the light of the Apex Court judgment in the case of **Pramati Educational & Cultural Trust** (supra), they cannot be subjected to the provisions of the Rights of Children to Free and Compulsory Education Act, 2009. The petition challenges several communications and we have perused the impugned communications. The communications at Ex-D and Ex-E are the directions issued by the Deputy Director of Education, Nashik Division, Nashik to all the Principals, Head Masters of the aided, non-aided, permanently non-aided and self-financed primary, secondary, higher secondary schools and junior colleges intimating that the Institutions should charge the students only the approved fees and other charges. The said communication makes a reference to the Maharashtra Educational Institution (Prohibition of Capitation Fees) Act, 1987 and it mentioned that inspite of the said enactment in force, complaints are being received from the parents that certain Institutions have been charging fees more than the approved fees and by the said communication, all such Institutions are put on notice that strict action would be initiated against them. It also contains a mandatory direction prohibiting receipt of any donation by the schools other than the tuition fees and other fees which are admissible. The said communication directs the schools to collect the fees in terms of the Government

Resolution dated 15/07/2010. It further directs that since the Maharashtra Educational Institutions (Regulations of Fees) Act, 2011 has come into effect from 21/03/2014 for the Academic Year 2015-16 and the subsequent years the fees would be collected by following the procedure and the calendar set out in the said enactment. Attention is also invited to Section 23 of the said enactment which sets out that the Act of 2011 is in addition to, and not in derogation of, the provisions of any other Act for the time being in force. The said directions which are placed on record at Ex-D to the petition are the general directives issued by the Deputy Director of Education to be followed by all the schools within his jurisdiction.

6. On perusal of the petition, we have noted that there are several communications issued by the Administrator of the Municipal Council Education Board, Nashik addressed to the Petitioners which revolve around the action taken by the schools against the students for non-payment of the hiked fees and certain other ancillary directions. In short, by the said communication, the Petitioner-schools have been reminded by the Educational Authority not to charge the fees which they had hiked without complying with the policy decision of the Government contained in its Resolution.

7. Mr. Apte, learned senior counsel for the Petitioners do not dispute that since the date on which the Maharashtra Educational Institution (Regulation of Fee) Act, 2011 has come into effect, the entire regime of

fee collection is governed by the said enactment and his only limited grievance is that the provisions of the said enactment cannot be made applicable prior to 01/12/2014. We find sufficient justification in the said submission of learned senior counsel since in accordance with Section 1(3) of the Maharashtra Educational Institutions (Regulations of Fee) Act, 2011, the Act was to come into force on such date as the State Government may, by notification in the Official Gazette, appoint and the Government has notified the said date to be '01/12/2014'. The Maharashtra Educational Institutions (Regulation of Fee) Act, 2011 is an Act to provide for the regulation of collection of fee by Educational Institutions in the State of Maharashtra and it aimed at curbing commercialization of the education and profiteering by the Educational Institutions and the said enactment is a step towards curbing the practice of charging exorbitant fees which results in frustration among meritorious and indigent students and, therefore, the enactment aims at regulating collection of fees by the Educational Institutions so as to maintain excellence in the standard of education. The State has notified the date on which the enactment has come into force and resultantly by the impugned communication, it is informed to all the Educational Institutions which also include the Petitioners that from the year 2015-16 and the subsequent years, the procedure prescribed in the said enactment would be strictly adhered to. The Act of 2011 sets out an entire mechanism for regulating the collection of fees by the Government schools, aided schools and also in case of private unaided and permanently unaided schools. The said enactment provides for

constitution of Divisional Fee Regulatory Committee for each of the Educational Division and it also sets out the factors to be considered while deciding the fees to be collected by the schools. The Divisional Fee Regulatory Committee is authorized to adjudicate the dispute between the School management and PTA regarding the fees to be charged by the School management from the students. The Act also contemplates constitution of a Revision Committee in the State, whose decision shall be final, conclusive and binding upon the parties for two academic years. The salient features of the said enactment is PTA constituted under Section 4.

It can thus be seen that the said Act is a complete code in itself and it prescribes the manner in which the fee will be first determined by the management and thereafter approved by the Executive Committee, to be constituted as per the provisions of the said Act of 2011. The field of charging of fees by the aided and non-aided schools as well as aided and non-aided Government schools and private unaided schools is thus governed by the Maharashtra Educational Institutions (Regulation of Fee) Act, 2011. In such circumstances, it is rather imperative for the Petitioners to abide by the provisions of the Act of 2011 from the Academic Year 2015-16 and for the subsequent years. Since the Act has come into effect from 01/12/2014, the Respondents are not justified in insisting that the Petitioners to abide by the procedure prescribed in the said enactment prior to the said date and since the next Academic Year is 2015-16, the Petitioners are duty bound to comply with the provisions of

the said Act from the said Academic Year and also for the subsequent years. As far as the Government Resolutions are concerned, after the Act of 2011 has come into effect, the Respondents are restrained from initiating any action against the Petitioners on the basis of the said Government Resolutions.

In the light of the aforesaid observations, we dispose of the writ petition by restraining the Respondents from taking any coercive steps against the Petitioners for the Academic Year 2014-15 based on the Maharashtra Educational Institutions (Regulation of Fee) Act, 2011. The Writ Petition is partly allowed in the aforesaid terms. No order as to costs.

(SMT. BHARATI DANGRE, J.)

(CHIEF JUSTICE)