

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.08.2018
Pronounced on : 04.06.2019

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.Nos.13204 to 13206 of 2018
and
M.P.Nos.15547 to 15552 of 2018

S.Lakshana Shree
Rep. by her father and Natural Guardian
E.Sridhar Babu ... Petitioner in W.P.13204/2018

F.Sameera
Re. by her father and Natural Guardian
Y.Fakrudeen Ali ... Petitioner in W.P.13205/2018

V.Mahisha
Rep. by her father and Natural Guardian
M.Veerannan ... Petitioner in W.P.13206/2018

Vs.

1. The Government of Tamil Nadu
Rep. by its Secretary,
Department of School Education,
St.George Fort, Secretariat,
Chennai - 600 002.
2. Director of School Education
DPI Complex, College Road,
Chennai - 600 006.
3. The Inspector of Anglo Indian Schools,
DPI Complex College Road,
Chennai - 600 006.
4. The Correspondent,
Doveton Girls Higher Secondary School,
Veppery, Chennai - 600 007.

5. Tamil Nadu Private Schools,
Fee Determination Committee,
Represented by its Chairman,
DPI Campus, Chennai - 600 006.

...Respondents in all the Wps

Prayer in all the WPs: Writ Petitions are filed under Article 226 of the Constitution of India for issuance a Writ of Certiorarified Mandamus calling for the letters dated 18.04.2018 and 24.05.2018 and quash the same and consequently direct the 4th respondent to allow the petitioner respectively to continue in the 4th respondent School after taking back their Transfer Certificates sent through Post forthwith by the respondent without demanding the alleged arrears of fees as it is over and above the fee fixed by the 3rd respondent.

For Petitioner : Mr.P.B.Sureshbabu in all WPs

For Respondents : Mr.C.Munusamy, Special Govt.
Pleader (Education) for R1 to R3

: Mr.N.D.Bahety for R4

: R5 - No Appearance

COMMON ORDER

All the writ petitioners are students of 4th respondent School. It is the grievance of the petitioners that 4th respondent School, which is Anglo Indian School, had demanded fee which is over and above than the fee fixed by the authorities and the writ petitioners refused to pay the same saying that they can only collect fee fixed by the Fee Fixation Committee viz., 5th respondent and 3rd respondent and because of the same, 4th respondent school refused to allow the petitioners to attend the class. Therefore, as no other option the writ petitioners along with other parents, who are similarly placed, had earlier filed Writ Petition Nos.16426 to 16648 of 2013, 14910 to 14920 of 2014, 17707 to 17712 of 2015, 21860 to 21865 of 2016 and 15306 to 15310 of 2017 and got an interim order by directing the petitioners to pay 50% of the Management fee, which included the admission fee, term fee, games fee, stationery fee and library fee and did not include the fee for optional subjects like music, dance, etc., The petitioners also paid the same and at last, since the academic year has been over, all the above writ petitions were closed leaving it open to the writ petitioners to challenge any such demand, if made by the 4th respondent School in future.

2 Pursuant to the above order, 4th respondent School has sent a letter dated 18.04.2018 stating that since the writ petitions were dismissed, the petitioners must pay the so called arrears of fee from the academic years 2010-2011 to 2017-2018 which comes to Rs.48,125/-, failing which, Transfer Certificate of the students would be issued moving their names from the rolls of the School and the writ petitioners have sent reply for the same stating that they cannot claim the fee stated in the letter. Despite the reply sent by the petitioners, 4th respondent School, has sent a letter dated 24.05.2018 stating that as the petitioners had not paid the so called arrears, their names were removed from the rolls of the School and Transfer Certificates were also enclosed. Challenging the action of the 4th respondent School, the petitioners have approached this Court to issue Writ of Certiorarified Mandamus to quash the impugned letters dated 18.04.2018 and 24.05.2018 and quash the same and allow the petitioners to continue their education in 4th respondent School.

3 Since the issue involved in all the above writ petitions is one and same, all the writ petitions are taken up and disposed by this common order.

4 According to the learned counsel appearing for the writ petitioners, the petitioners are students of 4th respondent School, which is Anglo Indian School. The School was granted aid from the Government and had collecting fee over and above the fee fixed by the Fee Fixing Committee viz. 3rd and 5th respondents. Therefore the petitioners approached this Court and got interim order and this Court directed the petitioners to pay 50% of management fee. Subsequently, the prayer in that writ petitions have become infructuous, all the writ petitions were closed and thereafter the 4th respondent School demand arrears of fee and threatened the petitioners that they will be removed from the School. Even though, the writ petitions were closed without touching the merits of the case, this Court had given liberty to the petitioners to challenge the demand, if any, made by the 4th respondent School over and above the fee fixed by the committee, in order to safeguard the rights of the writ petitioners. Despite the above order of this Court, the management of 4th respondent School, had sent impugned letters and removed the writ petitioners from the School, which act should be punished. The writ petitioners have been paying the fee fixed by the committee, but 4th respondent has been collecting fee over and above the fee fixed by the Committee, for which they are not entitled. Each year petitioner's parents insisted that they will pay only the fee fixed by the Government and each year the children were not admitted into the School. Petitions were filed every year and interim orders were passed on which the children were admitted into the School, but, each time the School insisted the parents to pay arrears of the excess fee in the preceding year, which should be regulated.

5 The Inspector of Anglo Indian Schools and 3rd respondent herein have fixed fee for the 4th respondent School under Clause 69 of the Anglo Indian Code of Regulation. The parents of the petitioners herein have paid the fee so fixed. Apart from the fee fixed by the Inspector of Anglo Indian Schools, the management is demanding a separate fee higher than the fee fixed by the Committee. The fee is collected in two parts, one is under the School bill, which as determined by the state and the other is collected in the name of a Trust of the School, in order to escape from prosecution under Section 7 of Tamilnadu Educational Institutions (Prohibition of collection of Capitation Fee), Act, 1992 and they have admitted before this Court that such payment is part of the School fee. Therefore, the letters dated 18.04.2018 and 24.05.2018 should be quashed and allow the petitioners to continue their education by paying fee fixed by the Committee.

6 While parting with the case, this Court granted interim order and directed the respondents 1 to 3 to submit a report stating that to what extent the Government is giving aid to the fourth respondent School with full particulars.

7 Accordingly respondents 1 to 3 have submitted their report and the learned counsel for the respondents 1 to 3 had argued that 4th respondent School is an Aided Minority School, which receives grant from the Government as the Code of Anglo Indian Schools. The correspondents of School have requested the Government to re-fix the fee structure. Based on the Government order and proceedings of the Joint Director of School Education (Vocational), the 4th respondent School was being fixed with the fee list vide proceedings in Na.Ka.No.2510/Aa/2017 dated 16.05.2018 and the same was communicated to 4th respondent School. But, the fee claimed by the 4th respondent School from the writ petitioners is exorbitant and also against the fee structure fixed by the 3rd and 5th respondents. The writ petitioners have not challenged any order passed by the respondents 1 to 3 and letters impugned in these writ petitions are passed by the 4th respondent School. The Government is giving sufficient grant and deficit grant to the 4th respondent School, still they are collecting excess fee. The fourth respondent School has not submitted the details of expenditure stipulated in appendix 24 & 25 of code of Regulations of Anglo-Indian School Tamil Nadu. Neither the 4th respondent Management allowed the department officials to audit the records of the 4th respondent School nor the 4th respondent School submitted its Financial Statement (Expenditure) to the authorities concerned. The School Education Department Audit Wing officials were denied permission to peruse the records pertaining to receipts and admissible expenditure of the 4th respondent School from 2011-2012 to till date. Therefore this respondents are ready to obey any order passed by this Court.

8 According to learned counsel for 4th respondent, the 4th respondent School is an Aided Minority School and they are protected under Article 26 and 30 the Constitution of India and they are entitled to collect fee besides the fee fixed by the Committee. 4th respondent is empowered to fix additional fees apart from the fee fixed by the Committee and the students of the School cannot refuse to pay the same. The fee fixed by the 3rd respondent is only a tuition fee, but the 4th respondent School has fixed management fee and as per the direction of this Court, while granting interim order, 50% of the management fee has been paid and the petitioners are liable to pay remaining 50% of fee. Since the academic year has been completed, all the writ petitions were closed without giving any answer as to whether 4th respondent School is empowered to fix fee other than the fee fixed by the Committee. The Court has not declared that the fee fixed by the management is invalid and hence the petitioners are liable to pay the arrears of fee as claimed by the 4th respondent. The petitioners instead of paying the amount, has sent Advocate Notice. All other students of the School have paid the fee fixed by the Management of the School and the petitioners also bound to follow the Rules of 4th respondent School. 4th respondent School, being an Aided Minority School, has empowered to collect fee for its development and to provide extra facilities, which cannot be construed as profiteering. The learned counsel has placed his reliance on the decision of the Hon'ble Supreme Court reported in (2002) 8 Supreme Court Cases 481 (T.M.A.Pai Foundation and others vs. State of Karnataka and others) and also the decision rendered by the Hon'ble Supreme Court reported in (2004) 5 Supreme Court Cases 583 (Modern School Vs. Union of India and others). Therefore, the 4th respondent is justified in its action removing the writ petitioners, who have not paid the arrears of fee.

9 Heard the learned counsel appearing on either side and perused the materials placed on record.

10 It is not in dispute that the writ petitioners have paid the fee fixed by the 3rd respondent and only dispute is the management of 4th respondent School is collecting fee over and above the fee fixed by the Committee and the petitioners are not liable to pay the same. According to 4th respondent, they are being a minority Anglo Indian School, protected under Article 30 of the Constitution of India, and they are entitled to fix additional fee for its development and to provide extra facilities to the students of the School, which cannot be questioned by the writ petitioners. On reading of the status report filed the respondents 1 to 3, 4th respondent School is governed by the new Act and it cannot fix fee arbitrarily. No doubt, 4th respondent School is minority Anglo Indian School and is protected under Article 30 of the Constitution of India. It is seen that 4th respondent School is governed by the statutory

committee. Even though, 4th respondent School is entitled to fix management fee, there should be transparent method in fixing management fee. In this case, on reading of the status report filed by the respondents 1 to 3, it is seen that the fourth respondent has not adopted any transparent method in fixing the management fee and the same may not be a reasonable one. Even though, 4th respondent School is empowered to fix management fee for its development, there should be auditing and monitoring. The 4th respondent School is not able to show how they are fixing management fees and how it has been arrived. Further, it is seen that they are not submitted any Expenditure details and are not allowed the officials to audit and inspect the 4th respondent School.

11 The writ petitioners have already paid 50% of the management fee as directed by this Court, which has been admitted by 4th respondent School and hence if the petitioners are allowed to continue their studies in the 4th respondent, there is no loss for 4th respondent School. This Court is of the view that the management fee is arbitrary, unless it has been subjected for auditing and inspection. In fine, this Court issues following directions:

1. All the writ petitioners are allowed to continue their studies in 4th respondent School for all the academic years by paying the fee fixed by the Committee and 50% of the management fee.
2. 4th respondent School is directed to submit the details as required by the authorities concerned, and if the authorities find, the fixed by the management of 4th respondent is fair and good and not profiteering, then 4th respondent School is empowered to collect the management fee. Till then, 4th respondent School should not harass the parents of the petitioners and 4th respondent School is not entitled to demand any arrears of fee.
3. The authorities concerned are directed to audit and inspect the fourth respondent School and report as to whether the management fee fixed by the 4th respondent School is fair and good not profiteering.
4. If the management of 4th respondent School is not submitting any Financial Statement (Expenditure) as required by the authorities concerned and the 4th respondent School still is not allowing the officials to audit the records of the 4th respondent School, the management of 4th respondent School is not entitled to claim management fee for any of its students from the academic year 2018-2019 onwards.

12 With the above observations and directions, the impugned letters dated 18.04.2018 and 24.05.2018 issued by 4th respondent is hereby quashed and all the writ petitions are disposed of accordingly. Consequently connected miscellaneous petitions are closed. No cost.

Sd/-
Assistant Registrar(CS V)

//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 - 600 002.
2. Director of School Education
DPI Complex, College Road,
Chennai - 600 006.
3. The Inspector of Anglo Indian Schools,
DPI Complex College Road,
Chennai - 600 006.

+4ccs to Mr.P.B.Suresh Babu, Advocate, S.R.No.44926
+1cc to the Government Pleader, S.R.No.45397
+3ccs to M/s.Baherty Advocates, S.R.Nos.45098 to 45100

W.P.Nos.13204 to 13206 of 2018

RSI (CO)

RRS (04/07/2019)

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