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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No.1040 of 2020**

Bilaspur Private School Management Association Society Registered Under The Societies Registration Act 1973, Bearing Reg. No. 1222201936676, Having Office At Brilliant Public School, Mission Hospital Road, Bilaspur, District Bilaspur, Chhattisgarh. Through Its President Praveen Agrawal.

---- Petitioner**Versus**

1. State of Chhattisgarh Through The Secretary, Department of School Education, Mantralaya, Mahanadi Bhawan, Naya Raipur, Atal Nagar, Raipur, Chhattisgarh.
2. Director (Public Instructions) Directorate of Public Instructions, Mantralaya, Indravati Bhawan, Naya Raipur, Atal Nagar. Chhattisgarh.
3. District Education Officer Bilaspur, Chhattisgarh.
4. Central Board fo Secondary Education Shiksha Kendra 2, Community Centre, Preet Vihar, Vikas Marg, Delhi 110092, Through Its Joint Secretary.

---- Respondents

For Petitioner	:	Shri Ashish Shrivastava, Advocate.
For State	:	Shri Vivek Ranjan Tiwari, Addl. Advocate General
For Intervenors	:	Shri Kshitiz Sharma, Shri Anand Mohan Tiwari and Shri Abhijeet Sarkar, Advocates.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****09.07.2020**

1. The present writ petition has been filed challenging the validity of the circular dated 01.04.2020 and 22.04.2020, Annexure P/1 & P/2 respectively issued by the respondent No.2.
2. That in addition to the challenge to the aforesaid two annexures, the relief sought for by the petitioner in the present writ petition primarily is for an appropriate direction or permission to all the private unaided educational institutions associated with the petitioner for atleast collecting tuition fees from the students studying in their respective institutions. During the course

of argument, the counsel for the petitioner confined his claim permitting them to collect tuition fees.

3. The brief facts of the case is that, the petitioner is a society registered under the Chhattisgarh Societies Registration Act consisting of majority of the private unaided schools operating in district Bilaspur. The list of the members associated to the petitioner establishment is also enclosed alongwith the writ petition as Annexure P/3. The petitioner in the present writ petition have challenged Annexure P/1 dated 01.04.2020 whereby the Director, Public Instructions Govt. of Chhattisgarh has issued an order asking all the private educational institutions staying collection of the school fees and also not to put coercion for recovery of the same. Challenge is also to Annexure P/2 again issued by the same authority dated 22.04.2020 directing all the District Education Officers to call for a certificate/undertaking from all the private educational institutions undertaking that they have not demanded payment of tuition fees from any of the students coupled with the challenge to Annexure P/1. The relief sought for by the petitioner, as an alternative, is for a direction permitting the members of the petitioner association to collect tuition fees outstanding as well as regular tuition fees.
4. According to the petitioner, the members of the educational institutions who are the members of the petitioner society are located at different places in the district Bilaspur. That these are some of the prominent institutions in the district having all sorts of modern infrastructure facilities and atmosphere required for a good educational institution. According to the petitioner, all these schools also have got large infrastructure like school campus, with huge playgrounds, likewise they also do have vast facilities like modern laboratories, libraries, computer lab. etc. Many of the schools also have boarding facilities. Many of the schools also have their own

transport facilities having a fleet of vehicles and the support staff required to operate these vehicles. Each of the educational institutions associated with the petitioner also have large number of teaching, non teaching and other staff and their respective families who are, if not totally, substantially are dependent upon the salary/wages that these teaching and non teaching staffs in these private institutions are paid. According to the petitioner, there are large number of students who have not cleared their school fees for the previous academic session 2019-20 also. Likewise, there are large number of students who have yet not paid their school fees for the current academic session 2020-21.

5. The primary contention of the petitioner is that for the proper maintenance of the schools and the infrastructure available in the schools and also for timely payment of salary to the teaching and non teaching staffs and other employees engaged by the school, it is necessary that the schools be permitted to collect tuition fees from each of the students who are undertaking education in their respective schools. According to the petitioner, the substantial portion of the expenses incurred by the educational institutions is recovered from the school fees/tuition fees collected from the students. It was also the contention of the petitioner that many of the schools had resolved for the revision of the fees for the new session 2020-21, but the same could not notified as a result of lock down imposed by the Government on account of Pandemic COVID-19. That, because of the peculiar circumstances that has arisen in between on account of the lock down and the closure of the educational institution from the month of March, 2020 onwards till date the educational institutions have not been able to collect school fees/tuition fees from the students. Thereby the petitioners are finding it difficult to meet their daily needs, daily expenses incurred and also the expenses towards payment of salary of the

teaching, non teaching and other employees engaged in these educational institution. That under these circumstances Annexure P/1 and P/2 issued by the Resp.No.2 are bad in law, arbitrary and liable to be quashed.

6. According to the petitioners the action of the Respondents in the issuance of the impugned orders are without any authority of law. The two orders are also without any basis, logic or justification.
7. It has been categorically contended by the petitioner that all the educational institutions associated to the petitioner are making all efforts in ensuring that the students do not miss their education and courses and are providing continuous online classes on daily basis ensuring that the students are not put to loss during this lock down period when the educational institution have not been permitted to open.
8. It is also the contention of the petitioner that the Respondent No.2 has also issued on 16-04-2020 (P/5) that all the private schools should ensure that the salary of the staffs in the school should be paid uninterruptedly and that it should also not been reduced in any manner. Now at the same time the Resp. No.2 wants that these schools should not collect their school fees from their students. According to the petitioners without collecting the fees the petitioners would not be in a position to make the salaries to their staff, as school fees is their only source of income.
9. From the plain reading of the two Annexures under challenge, it reveals that need for the issuance of such order arose on account of some alleged complaint received by the authorities in respect of some unknown educational institution resorting coercive steps for recovery of the school fees. It also appears that the reason for issuance of such instructions was on account of some anonymous complaint of the parents not being in a position to pay the fees because of the hardship and difficulties faced by the parents during the lockdown. The contention of the petitioners are that

none of the schools who are members of the Petitioner association have received any such request from any of the students or their parents in this regard.

10. During the course of hearing the counsel for the petitioner fairly concedes of the fact that the members of the petitioner's association are well aware of the devastation wrought by COVID-19 pandemic. They are also aware of the fact that because of the lock down many persons having faced great hardship including situations like loosing of employment, loosing of livelihood etc. At the same time, the counsel for the petitioner also submitted that the majority of the students studying in the institutions run by the members of the petitioner establishment are from a background where they are in position to pay the school fees and in many of the cases the students are from good and strong financial background and all of whom would be more than willing to pay the school fees.
11. Great concern was raised by the petitioner on the situation that would arise in case if the school fees are not being permitted to collect. The apprehension of the petitioner is that in the event if tuition fees are not collected, the petitioner would find it difficult in releasing the salary of the teaching, non teaching and other employees of the school and at the same time also would find it difficult in proper maintainance of the facilities that are available in the school and which could prove detrimental in the long run after the situation normalizes later on. The petitioners thus, prayed for permission of this court to permit them to collect the fees and for quashment of the instructions issued by the respondent No.2 vide Annexure P/1 and P/2.
12. There are few intervenors representing the parents opposing the petition on the ground that because of the prevailing situation the institutions should not be permitted to collect fees and that the institutions should

make their own arrangements or they should meet the present situation from the funds available with them and under no circumstances should the petitioners be permitted to forcefully collect fees from the parents. The intervenors also submitted that there could be a situation where in a given case because of the impact of the lock down the parents would be not in a position to pay the school fees as of now. Likewise, it was also the apprehension of the intervenors that there could also be a situation where even though the schools are providing online classes but some students would not be in a position to access to the online education facilities being provided by the schools and therefore some measures should be evolved by the respective educational institutions catering to the need of such students who are faced with such unforeseen situation.

- 13.** The State counsel also opposing the petition submits that because of the unforeseen situation that arose on account of Covid-19 pandemic large majority of people have been put to hardship and realizing the situation the State Govt. had issued Annexures P/1 and P/2. According to the State counsel, most of the members of the petitioner association are all large educational institutions having huge corpus of fund which should be used by them at this juncture to mitigate the situation. In support of his contention, the State counsel referred to a recent judgment of Uttarakhand High Court in Public Interest Litigation decided on 10.06.2020 in a bunch of writ petitions leading among which being WP(PIL) No.59 of 2020.
- 14.** Having heard the contentions put forth on either side and on perusal of records, it is noteworthy to mention at this juncture that recently there have been writ petitions of similar nature which came up for hearing before different High Courts in the country like High Court of Delhi, High Court of Punjab and Haryana and the High Court of Kerala etc. and all these High Courts have taken a consistent stand and have reached to the conclusion

that the demand made by the petitioners that no fees should be collected during the lock down period cannot be accepted. That all the aforesaid High Courts in the course of deciding these writ petitions have also accepted the contention of the educational institutions that for the purpose of sustaining teaching, non teaching and other employees engaged in the schools which are totally unaided, depend substantially on the tuition fees that is collected.

15. The courts have also taken into consideration the fact that in addition to the payment of salary to the teaching, non teaching and other employees there is also a great amount of daily expenditure incurred in the maintenance of the school infrastructure and the facilities available like payment of electricity charges and also to the security agencies etc.
16. In addition to the judgments of Delhi High Court, Punjab & Haryana High Court as well Kerala High Court on the subject matter dismissing all the petitions and permitting the schools to collect the fees, it is noteworthy to also consider the aspect that even if the situation improves and the schools are opened, these institutions will have to take steps and measures towards regular sanitizing of the premises, maintaining distance between the students while attending classes, maintaining social distancing norms etc. That extra efforts would also have to be taken to improve the technology for providing online classes during this period when the educational institutions are closed.
17. Expecting the educational institutions to undertake all such requirement and formalities and also ensuring all such safety measures without collecting fees whatsoever from the students does not in the opinion of this court seems to be justified, nor is it logical under any circumstances.
18. True it is that because of the unforeseen and unprecedented situation which has arisen, there could be some individual cases where a person or

the parent is not in a position to pay the fees for his/her ward. There can also be a situation as was apprehended by the intervenors that some students would not be in a position to have proper access to the online education system adopted by the schools during this period when the schools are closed. However, such situation may be very few and would not be in large number.

19. The Punjab and Haryana High Court in CWP-7409-2020 (Independent School's Association Chandigarh (Regd.) & Others Vs. State of Punjab & Others has held as under:

“It is not disputed that even if schools do not provide online education, the schools are still required to meet the expenses, i.e. Full salary of the teachers and non-teaching staff as well as building, electricity expenses etc.. The schools that are not giving online classes are not exempted from paying the salary of its teaching and non-teaching staff. Hence, there is no rational in laying down such a classification especially when the obligations and basic expenses of all private un-aided schools remain the same irrespective of whether they are conducting online classes or not. In these circumstances, there cannot be a separate direction for the schools who are not offering online classes. Therefore, direction to the privately unaided Institutions who are not giving online classes not to charge tuition fee for the concerned period is definitely discriminatory and arbitrary.

The grievance of the parents that they should not be made to pay for the services which have not been rendered, especially when either some schools did not offer online services or because they reside in remote areas, where the online facility is not available, may be a reasonable complaint but while making the said complaint, the parents have forgotten the fact, as already noted above, that the staff and teachers have to be 36 of 51 CWP No.7409-2020 and other connected cases continuously paid the salary during this lockdown period. The maintenance of the infrastructure will have to be

maintained during this period so that when the children return to schools, the basic amenities to the students in the form of qualified and competent teachers as well as the infrastructure is intact. It is the own stand of the parents that the grant of recognition to a private school depends upon fulfilment of various requirements including financial status and infrastructure but under no circumstances, the private schools can indulge in profiteering or business. If it is so, then the schools require the basic tuition fee in order to continue to maintain and fulfil their various requirements of financial status and infrastructure lest the schools are forced to close down which will be neither in the interest of the State, or the parents or the children. Even otherwise, this Court has no doubt that the schools shall make endeavour to make up the loss in the studies as suffered by the students during this lockdown period on its re-opening. Hence, there cannot be two set of rules between same class.”

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The apprehension of the State that some of the schools do not show the break up under various heads and charges are inclusive under one head and are, therefore, able to recover most of the expenses over and above the tuition fee may or may not be correct and no verdict can be given without evidence. The example of the Vivek High School has been cited which only has two heads, i.e. Admission fee and quaterly fee mentioned in their prospectus. The said example or apprehension is totally misconceived inasmuch as the parents who admitted their children in these schools like the Vivek High School, admitted their children with open eyes knowing fully well the fee structure. These affluent schools are catering to children of affluent parents, who are in sound financial position to pay.

The second apprehension that some of the schools have changed their fee structures after the order dated 14.05.2020 to recover more money from the parents by increasing the component of fee charge under the head of 'Tuition Fee' while

proportionately decreasing their annual charges, other administrative charges would definitely amount to unfair practice and cannot be accepted. However, the provisions under Section 7 of the Punjab Regulation of Fee of Unaided Educational Institutions Act, 2016 reproduced in the later part of the judgment are sufficient to take care of any such complaint or violation.

20. A similar stand has been taken by the Division Bench of the Kerala High Court while deciding Public Interest Litigation of similar nature WPC No.10867 of 2020 decided on 30.06.2020 wherein the writ petition was dismissed.
21. The Delhi High Court also while hearing a petition of similar nature in WPC No.2977 of 2020, Rajat Vats Vs. Govt. of NCT of Delhi & Another, in paragraphs 7 to 9 has held as under:

“7. Insofar as the tuition fee is concerned, the charging of the same would be justified in view of the fact that almost all the schools are conducting online classes and the teachers are discharging their functions by imparting course work over online platforms, checking project work online, correcting papers wherein students have already given examinations, preparing questions on lessons taught and supervising students to complete the work given etc. There is also a burden on the schools to pay their staff during these months.

8. The authorities having taken cognizance of the issue and further the matter being one in the policy domain, this Court is not inclined to interfere.

9. At this stage, Mr. Vats submits that some schools are demanding a consolidated fee, without distinguishing the various heads i.e., tuition fee, co-curricular activities fee etc., If there is any specific complaint against any particular school, the parents concerned would be entitled to bring the same to the notice of the Directorate of Education, which shall take steps in accordance with law.”

22. This judgment of the Single Bench of the High Court of Delhi was further

affirmed by the Division Bench of Delhi High Court in WPC No.2993 of 2020, Naresh Kumar Vs. Director of Education and Another, wherein in paragraph 25 after referring to the aforesaid paragraph 7,8 and 9 of the Single Bench order, the Division Bench held as under:

“25. We endorse, in its entirety, the above view of the learned Single Judge.”

- 23.** The Division Bench in addition in paragraph 21 of the aforesaid judgment held as under:

“21. No direction therefore, in our view, can be issued, to unaided/private schools, not to charge tuition fees during the period of the lock down consequent on the COVID pandemic, and to source the funds, for meeting expenses relatable to salaries of their staff, maintenance of their establishment, and providing of online education, from the monies available with their parent trusts/societies. This submission of Dr. Sharma, too, therefore, does not commend acceptance.”

- 24.** From all the aforesaid judicial pronouncements and the stand taken by the aforementioned High Courts, this court is of the opinion that the present writ petition deserves to be and is accordingly allowed to the extent of the petitioner, as has been claimed by them, being permitted to collect tuition fees from the students by the respective schools as of now, which includes the outstanding fees of the previous academic session.

- 25.** For the aforesaid reasons the impugned order issued by the Resp.No.2. Annexure P/1 and P/2 are not sustainable and deserves to be set aside/quashed. The said order also deserves to be quashed for the reason the same has not been issued in exercise of any statutory powers conferred on the Resp. No. 2. That the State also cannot issue such blanket orders not collect fees by these private schools which otherwise would adversely affect their right to carry any occupation, trade or business guaranteed under art.19 of the Constitution of India.

- 26.** This court at this juncture however would like to direct the petitioner and the members of the petitioner association to evolve some mechanism to cater to exceptional situations where a parent is not able to pay the fees for some genuine reasons. Accordingly, it is directed that in the event if any of the parent is facing any acute financial crisis whereby there being no means whatsoever to pay the school fees, let such parent/parents approach the respective school authorities, who in turn shall consider the same and if required can also get it duly verified or scrutinized on their own asking the parent to provide such necessary informations with which it could be assessed, whether he is in a position to pay the fees or not, by seeking such information like financial status of the parents, the income details of the parents so also the assets in the name of the parents etc. and thereafter pass a suitable order. It is also directed that each of the members of the petitioner association should also evolve and develop a mechanism to ensure that online education facilities reaches to every students in the school. This in other word means that in a given situation where a candidate is not in a position to have an access to the online education facility, the institutions should evolve a system of providing such study materials to the students with which the students can continue with his/her studies uninterrupted.
- 27.** During the course of hearing it was also highlighted by the learned State Counsel that there could be a situation where these private educational institutions may revise the school fees and in the garb of collecting tuition fees may collect large amounts of fees which would further be detrimental to the interest of parents at large. To this apprehension of the State counsel, this court also is of the opinion that considering the peculiar circumstances that is faced by the country as on date or the world as a whole, where the whole mankind is struggling and fighting against the

Corona Virus, it is expected that the educational institutions do not enhance or revise their tuition fees as of now until the situation normalizes and improves. It is ordered accordingly.

28. It is also ordered that until the situation normalize the schools must ensure that they would collect only tuition fees and not any other fees in addition to the tuition fees. This observation of this court was acceptable to the learned counsel for the petitioner.
29. Since this court has already passed an order not to revise or enhance tuition fees, this court permits the petitioner and the educational institutions associated to the petitioner to collect the tuition fees outstanding of the previous academic session and also for the tuition fees for the current academic session. The tuition fees must be the same that was charged for the previous academic session. The respective schools shall also permit payment of fees monthly, bimonthly or quarterly whichever is convenient to the parents and with all options also open for the parents.
30. This court is conscious of the fact that permitting the schools to collect only tuition fees would still be putting the schools to certain amount of difficult situation, but in the wake of the global situation prevailing there is a certain amount of sacrifice which has to be made by each one of us. It is also made clear that all the schools associated to the petitioner association must ensure that online platform of education which includes submission of project works and assignment etc. should not hamper in any manner and all efforts should be made in improving the same with the passage of time and the need of the hour. It is also expected that the schools would not compromise on the academic front in any manner.
31. Likewise, it is also directed that the educational institutions do not enhance or revise their tuition fees as of now until the situation normalizes. The educational institutions should also evolve and develop a mechanism to

ensure that online education facilities reaches to every students in their school. In a given situation where a candidate is not in a position to have an access to the online education facility, the institutions should evolve a system of providing such study materials in this regard to the students with which he can continue with his studies uninterrupted.

- 32.** Last but not the least with the fees that the respective institutions shall collect the salary of the staff, both teaching and non teaching must be met first. No institution shall be permitted to withhold the salary part nor shall the schools reduce the salary of any of their existing staff from what these staff were drawing prior to the lockdown period.
- 33.** With the aforesaid direction, the writ petition accordingly stands allowed and the impugned order annex. P/1 and P/2 also stands set-aside/quashed.

Sd/-
(P. Sam Koshy)
Judge

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