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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.16376 of 2021
and W.M.P.No.17347 of 2021

The United District Self Financing Schools Association
Rep.by its President Mr.S.Prince Babu Rajendran
S/o Mr.M.Samuel, having Office at No.141
Radha Nagar Main Road, Chromepet,
Chennai 600 044. ..Petitioner

-Vs-

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

2.The Director of School Education
DPI Campus, College Road
Chennai 600 006.

3.The Director of Matriculation Schools
DPI Campus, College Road
Chennai - 600 006. ..Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus forbearing the respondents, their men and agents from permitting the schools in admitting the students in any class without applying or getting transfer certificate from the members of the petitioner association where the students previously studied.

For Petitioner : Mr.P.Ebenezer Paul

For Respondents: Mr.A.Selvendran, Government Advocate

O R D E R

This writ petition has been filed for the issue of a Writ of Mandamus forbearing the respondents from admitting students in any class in a different school without applying or getting a Transfer Certificate from the Schools which are members of the petitioner Association.



2. The petitioner Association claims to have nearly 297 schools as members and this includes both minority and non-minority schools.

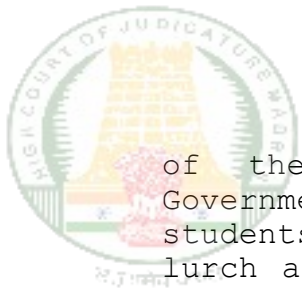
3. It is stated that due to the pandemic situation, the State Government was forced to impose a lock down from March 2020 onwards. Even though for a very brief period the situation improved and attempts were made to conduct physical classes, once again the situation became worse and therefore, the State Government was left with no other option except to continue the lock down and as a result of the same, all the schools in the State have been functioning for more than 1½ years only through on-line mode. The State Government was not even able to conduct the examinations and hence was left with no other option except to pass Government Orders and declare all students as passed, by issuing certain guidelines.

4. It is also a fact that there was a dispute with regard to payment of fees and this Court had to intervene and issue directions during the academic year 2020-21. Once again, the payment of fees became an issue this year also and ultimately the State Government has come up with a solution for the payment of fees for the academic year 2021-22 and this Court has also passed orders in that regard.

5. Insofar as the present case is concerned, the main grievance that has been expressed by the Association is that the students are moving from one school to another or leaving the schools even without applying or getting a Transfer Certificate from the concerned school. It is stated that the self financing schools will have to manage the school and pay the salary only out of the fees paid by the students studying in the school. Therefore, they should know the total number of students who are going to study in the school and the ones who are going to leave. Thereby, the schools will be able to properly budget for their expenses.

6. The regulations for the Matriculation Schools in Tamil Nadu is governed by the Code of Regulations and it specifically provides that the students can be admitted in another school after the students get Transfer Certificate from the earlier school where the student was undergoing the education. According to the petitioner, there are instructions issued by the educational authorities to the effect that the schools can admit students even without Transfer Certificate. This according to the petitioner Association runs contrary to the relevant regulations. It is also stated that it is contrary to the relevant provisions under the Right to Education Act, 2009.

7. The petitioner Association has therefore approached this Court seeking for a direction that the students should not be admitted in a different school without applying or getting a

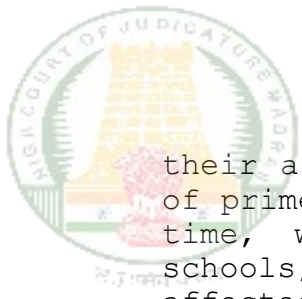


of the students are properly safeguarded by the State Government. In the guise of safeguarding the interests of the students, the self financing institutions must not be left in lurch and such a situation will not be conducive to maintain a proper education structure in the State. The learned counsel therefore submitted that there must be a mechanism whereby the schools are intimated as and when a student leaves the school and joins in another institution.

12. This Court has carefully considered the submissions made on either side and perused the materials available on record.

13. The transfer of students from one school to another is governed by the relevant regulations and enactments and they govern such transfers during the normal functioning of schools. The Government is facing an extraordinary situation at present. From March 2020 onwards, there has been repeated lock downs in order to handle the deadly COVID-19 virus. One important area where the Government is focusing more is the field of education. The Government wants to ensure that the education of the students is not affected during this pandemic situation and it is continued at least through on-line mode. Therefore, the Government is exercising a lot of flexibility when it comes to conducting classes or payment of fees or transfer of students from one institution to another. There are many cases where the parents are not able to afford to pay the fees and therefore they are not able to continue the education of their children in a particular school and therefore want to shift their children to some other school, which collects fees within their affordability. There are also cases where students who were studying in the private school are now shifting to Government Schools and the State Government has ensured that such students are admitted in the Government Schools without showing any rigour on the formalities to be completed for transferring those students and admitting them in the Government schools. It is true that the transfer of a student is governed by regulations. However, when an extraordinary situation arises, some leverage has to be given to the State Government to manage the affairs and to take policy decisions in the overall interest of the students. The Court cannot poke its nose into every decision taken by the Government and such interference will become counter productive and will prevent the Government from freely executing its decisions.

14. In the present case, there is another dimension that has been projected before this Court. The petitioner Association consists of self financing schools. These schools are wholly dependent upon the fees collected from the students, to run the schools and pay the salary for the teaching and non-teaching staff. Therefore, these schools must be in a position to reasonably ascertain the number of students who are going to continue their education in the school and accordingly manage



their affairs. It is true that the interest of the students is of prime importance and it can never be sacrificed. At the same time, without the proper functioning of the self financing schools, the education of the students will be adversely affected. In short, if the interest of the self financing schools is not safeguarded, that will also, in a way affect the education of the students. The self financing schools cannot be left in lurch and their interest must also be taken into account during this pandemic situation. Therefore, a balance must be struck to ensure that the interest of both the students as well as the self financing schools are taken care of.

16. In view of the above discussion, this Court is inclined to dispose of this writ petition with the following directions.

- (a) The students / parents must have the absolute freedom to take a decision regarding the continuation of the education in the existing school or to get transfer to any other school.
- (b) Any student / parent, who wants to continue the education in a different school should submit an application in that regard to the concerned transferor school.
- (c) Immediately after the application is submitted by the student / parent, the transferor school shall issue the Transfer Certificate within a period of one week from the date of receipt of the application.
- (d) If there are any existing disputes between the student / parent and the concerned school, which also includes dispute with regard to payment of fees, the same should be independently worked out in the manner known to law and that can never be a reason to deny issuance of Transfer Certificate to the student, who has already made an application seeking for Transfer Certificate.
- (e) If any school refuses to issue the Transfer Certificate as directed in Clause (c) of this order, a complaint can be made to the concerned Chief Educational Officer (CEO) and immediate action shall be taken for violation of this order and it shall be ensured that the Transfer Certificate is issued to the student. If any such violation is brought to the notice of this Court, this Court will also initiate suo motu Contempt Proceedings against the concerned School for violation of the directions issued by this Court.
- (f) These directions are issued taking into consideration the pandemic situation and as and when the normalcy is restored, the relevant



enactments and regulations will take care of the transfer of students from one school to another, and

(g) There shall be a direction to the Commissioner of School Education, DPI Campus, College Road, Chennai 600 006 to issue a circular in this regard to all the schools within a period of two weeks from the date of receipt of a copy of this order.

16. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

KST

s/d-
Assistant Registrar (CS VII)

True Copy

Sub-Assistant Registrar

To

1. The Principal Secretary, School Education Department
Fort St. George, Chennai - 600 009.
 2. The Director of School Education, DPI Campus, College Road
Chennai 600 006.
 3. The Director of Matriculation Schools, DPI Campus, College
Road, Chennai - 600 006.
 4. The Commissioner of School Education, DPI Campus, College
Road, Chennai - 600 006.
- 1 cc to Mr. P. Ebenezerpaul, Advocate Sr. 38674

W.P.No.16376 of 2021

GJ(CO)
EU 6.8.2021