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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. NOS.16581 & 18275 OF 2021

AND

WMP.NO.19511 OF 2021

W.P. No.16581 of 2021

All India Private Schools Legal Protection Society
No.9, North Jeganatha Nagar 1st Street,
Villivakkam,
Chennai - 600 049.
Rep. by its Chairman,
I. Manoharan Jeyakumar,
S/o.Issac

Petitioner

-Vs-

1. The State of Tamil Nadu
Rep. by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort. St. George,
Chennai - 600 009.
2. The Commissioner of School Education,
DPI Campus, College Road,
Chennai - 600 006.
3. The Director of Matriculation School,
DPI Campus, College Road,
Chennai - 600 006.
4. The Director of Elementary Education,
DPI Campus, College Road,
Chennai - 600 006.

Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to implement the mandatory requirement of obtaining



Transfer Certificate by a student from the school where he studied, on getting admission to another school for any reason and to forbear the Officials of the Education Department altering or modifying the data of Private Unaided institutions relates to the details of the student entered in EMIS Portal without consent of the School Management, by considering the representation submitted by the petitioner Society dated 14.09.2020, within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran
For Respondents : Mr.A.Selvendran
Government Advocate

W.P. No.18275 of 2021

The Tamil Nadu Nursery Primary Matriculation
Higher Secondary Schools Association,
Rep. by its State Secretary,
Mr.K.R.Nandakumar, S/o.K.Ramachandran
Having Office at No.6, Egambaram Street,
Pammal, Chennai - 600 075.

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 filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the Respondents 1 to 3 to issue guidelines after thorough assessment of the pandemic situation as to the categories of students who can shift schools without a transfer certificate being obtained from the previous school and the categories of students who are



expected to take a transfer certificate from the school in which they were studying if they choose to shift school and correspondingly guidelines to Management schools of the petitioner association as to from whom they can issue transfer certificate without insisting upon the payment of arrears of fees for the year 2019-2020, 2020-2021 and 2021-2022 and specify the period for which such guidelines should apply.

For Petitioner : M/s.Kaavya for
Kaavya Silambanan Associates

For Respondents : Mr.A.Selvendran
Government Advocate

O R D E R

Both these writ petitions were filed by Associations consisting of Matriculation Schools as their members, for a direction to the respondents to insist for obtaining Transfer Certificate by the students who leave the School for any reason and for providing some safeguards to recover the fees due and payable by the students when he/she leaves the School.

2.On an earlier occasion, a writ petition came to be filed in W.P.No.16376 of 2021 before this Court, wherein, an Association had sought for the issuance of a writ of mandamus forbearing the official respondents from admitting students in any class in a different school without applying or getting the Transfer Certificate. This Court took into consideration the facts and circumstances of the case and the prevailing pandemic situation and certain directions were issued by this Court while disposing of the writ petition by an order dated 06.08.2021. For proper appreciation, the directions issued by this Court are extracted hereunder:

1. 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



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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.

3. Pursuant to the above order, a Circular came to be issued providing for guidelines for issuance of Transfer Certificate in line with the directions issued by this Court. The Circular was issued through the proceedings of the Commissioner of School Education, Tamil Nadu in R.C.No.042193/G2/S3/2021, dated 16.08.2021.



4. When the matter was taken up for hearing on 20.10.2021, this Court took into consideration the actual grievance expressed by the petitioners and passed the following order:

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The learned counsel appearing on behalf of the petitioners relied upon the synopsis filed before this Court. Annexure V which provides for the Form of transfer certificate under the Code of Regulations for Matriculation schools was also brought to the notice of this Court. The sum and substance of the submission was that there must be some assurance / certainty to settle the tuition fees due and payable to a school since transfer certificate cannot be withheld on the ground of non payment of the fees.

2. The learned Government Counsel shall take specific instructions in this regard and report before this Court.

3. Post this case on 25.10.2021.

5. When the matter was taken up for hearing today, the learned counsel appearing on behalf of the petitioners submitted that issuance of Transfer Certificate to the students becomes necessary since each student is provided with an EMIS ID Number. This EMIS ID Number is transferred to the common pool and it continues to attach itself with the student even if he/she gets transferred to some other schools. Therefore, unless and otherwise the consent is obtained from the transferor school, by way of a Transfer Certificate, the transferee school can never retrieve the EMIS ID Number of the student from the portal and this will go against the interest of the student. It was further submitted that Annexure-V provides for the Form of Transfer Certificate under the Code of Regulations for Matriculation Schools in Tamil Nadu. The learned Counsel specifically brought to the notice of this Court Serial No.8 in the Form of Transfer Certificate which provides as follows:

8. Whether the pupil has paid all the fees due to the School

6. By bringing to the notice of this Court, the above Clause in the Transfer Certificate, it was submitted that it will always be open to the transferor school to indicate the tuition fees that is due and payable from the student at the time when he/she leaves the school. The learned counsel further submitted that unless and otherwise there is some indication with regard to the fees that is due and payable by the student, it will almost become impossible for the concerned school to recover the



fees. This is more so in view of the fact that the Schools cannot retain the Transfer Certificate on the ground of non-payment of the fees. Therefore, the learned counsel urged this Court to provide sufficient safeguards to the Matriculation Schools since these Schools are wholly dependent upon the fees paid by the students to run the educational Institution and these schools utilize the same to make payments for the teaching and non-teaching staff and for the maintenance of the Schools.

7. Per contra, the learned Government Counsel appearing on behalf of the official respondents submitted that this Court has provided sufficient safeguards while passing orders in the earlier writ petition in W.P.No.16376 of 2021. The learned counsel submitted that this Court directed the students/parents to obtain the Transfer Certificate from the transferor School and hence the apprehension raised by the petitioners as if the students will continue to shift from one School to another without a Transfer Certificate is not sustainable. The learned Government Counsel further submitted that the Schools cannot retain the Transfer Certificate by insisting for the payment of the fees and if such a leverage is given to the Schools, the same will go against the interest of the students. It was further submitted that the Commissioner of School Education, Tamil Nadu has already issued proceedings dated 16.08.2021 and the same is in effect and as a consequence of the same, the students who shift from one school to another are now able to get the Transfer Certificate from the transferor school and submit the same to the transferee school and thereby there is accountability when the students are shifting from one school to another. In view of the same, the apprehension raised by the petitioners as if the EMIS ID Number of the students cannot be retrieved by the transferee school is again not sustainable. The learned Government Counsel therefore submitted that no further orders are required to be passed by this Court in these writ petitions and these writ petitions should be dismissed.

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

9. Insofar as the issue regarding insistence of Transfer Certificate is concerned, this Court has already issued directions in the earlier order passed in W.P.No.16376 of 2021. Proceedings have also been issued by the Commissioner of School Education on 16.08.2021 in this regard and the directions issued by this Court have been implemented.

10. The only other issue that requires the consideration of this Court is with regard to the some safeguard to be provided for the Matriculation Schools when it comes to recovery of the fees due and payable by the students. This Court has already



held that the Transfer Certificate cannot be retained on the ground of non-payment of fees and the institution can only proceed against the students for recovery of the fees in accordance with law. When such is the case, there must be some indication somewhere with regard to the arrears of fees that is payable by the student when the students leaves the School. For this purpose, the answer is available in the Form of Transfer Certificate that is provided under Annexure-V of the Code of Regulations for Matriculation Schools. Serial Number 8 of the Transfer Certificate has also been extracted supra. As against Serial Number 8, the School has to make a mention as to whether the pupil has paid all the fees due to the school. If it has been paid, the concerned School will indicate that it has paid and in cases where it has not been paid, the concerned School can always indicate that it has not been paid and can mention the arrears of fees that is payable by the concerned student. By doing so, there will be a clear understanding between the school and the student with regard to the arrears of fees that is payable.

11. In the considered view of this Court, this safeguard is enough for the Matriculation School. If and when any school decides to initiate proceedings for the recovery of arrears of fees, apart from the other records maintained in the school, the Transfer Certificate can also form the basis for the recovery of the amount.

12. At this juncture, this Court has to hasten to add that the amount that is mentioned against Clause 8 as the arrears of fees payable by the student, is a fact that is provided by the school. That does not automatically result in the liability being accepted by the concerned student/parent. As and when any proceedings are initiated by the School, it will always be left open to the student/parent to defend the claim on the grounds that are available to them in accordance with law. Therefore, the mere indication of the arrears of fees payable by the student, does not have any negative connotation/impact against the student/parent.

13. This arrangement will sufficiently safeguard the interest of the Schools with regard the arrears of fees payable by the pupil at the time of leaving the school and the time when Transfer Certificate is issued by the transferor school. It goes without saying that this direction is applicable only for the Matriculation Schools since such a stipulation has been provided in the Form of Transfer Certificate under the Regulations for Matriculation Schools in Tamil Nadu.

14. These writ petitions are disposed of with a direction to the respondents to incorporate Clause 8 in the Transfer



Certificate available in EMIS portal. This process shall be completed by the respondents, within a period of two weeks from the date of receipt of copy of this order. No Costs.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The Principal Secretary to Government,
School Education Department,
Secretariat, Fort. St. George,
Chennai - 600 009.
2. The Commissioner of School Education,
DPI Campus, College Road,
Chennai - 600 006.
3. The Director of Matriculation School,
DPI Campus, College Road,
Chennai - 600 006.
4. The Director of Elementary Education,
DPI Campus, College Road,
Chennai - 600 006.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.56032
+1cc to Kaavya Silambanan Associates, Advocate, S.R.No.56575
+1cc to the Government Pleader, S.R.No.56182,56181

W.P. Nos.16581 & 18275 of 2021

BR(CO)
PM/24/11/2021