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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.366 OF 2009

All Goa Unaided Schools Parents Association **...Petitioner**
(AGUSPA) through Chairman Nissar Dias

Versus

Directorate of Education through Director And **...Respondents**
Anr.

Mr John A Lobo, Advocate for the Petitioner.

Mr Deep D. Shirodkar, Additional Government Advocate
for Respondents No.1 and 2.

Mr Parag S. Rao, Advocate for Respondent No.3.

**CORAM: G. S. KULKARNI &
BHARAT P. DESHPANDE, JJ**

Date: 2 December 2022

P.C.

This petition under Article 226 of the Constitution of India is filed raising an issue in regard to the regulation on increase in tuition fees charged by unaided recognized private schools, affiliated to the Goa Education Board.

2. The concern of the petitioners primarily is to the effect that there needs to be a regulation in the schools fixing/enhancing the tuition fees, so that there is no arbitrariness and/or a prejudice

being caused to the students paying exorbitant fees. The prayers in the writ petition are required to be noted, which read thus:

- a) That this Hon'ble court be pleased to issue any appropriate writ, order or direction directing the Respondents to ensure that no unaided recognized private school is allowed to increase fees and other charges without first examining the financial records of the school;*
- b) That this Hon'ble Court be pleased to issue any appropriate writ, order or direction directing the Respondents to constitute a Committee or experts in financial matters and prepare a report on whether the sixth pay salary scale can be paid in these schools without enhancement of the fee structure and other charges;*
- c) that this Hon'ble court be pleased to issue an appropriate writ, order or direction directing the Respondents to examine the accounts of the past five years of all recognised unaided schools in Goa by the auditors and inspecting officers authorized by the Comptroller and Auditor General of India as per Rule 139 of the Goa School Education Rules, 1986.*
- d) That this Hon'ble court be pleased to issue any appropriate writ, order or direction directing the Respondents to strictly enforce the scheme of management and Rule 46(b) (ii) & (5) of the Goa Schools Education Rules, 1986.*

3. This petition was filed on 19 June 2009 and was pending final hearing. We note that from time to time orders were passed by the coordinate Benches, which we would intend to refer. On 2 March 2010 a coordinate Bench of this Court passed an order recording the contention as urged on behalf of the State Government. The said order reads thus:

'Heard.

2. We have perused provisions of Section 19(3) of the Goa School Education Act, 1984 and Rule 139 of the Goa School Education Rules, 1986. Section 19(3) reads as under;

"The manager of every unaided recognised school shall, before the commencement of each academic session, file with the Director a full statement of the fees and the charges to be levied by such school with the approval of the Director during the ensuing academic session, and except with the prior approval of the Director, no such school shall charge during the academic session, any fee in excess of the fee specified by its manager in the said statement."

3. The learned Advocate General, during the course of hearing, informed that the private unaided schools did not seek approval from the competent authority before finalisation of the fees to be charged from the students.

4. The Government of Goa constituted a committee in this regard. According to the learned Advocate General, the report is pending consideration of the Government of Goa. We find that it is necessary to pay urgent attention to the issue involved in the matter and the Government to take final decision.

5. Considering the provisions of Section 19(3), it is clear that the Government and its competent authorities are empowered to take action against the management of respective schools, if they violate provisions of law. The Government shall also intimate this position and the provisions of law as envisaged under Section 19(3) and Rule 139 to such private schools.

6. The learned Advocate General submits that after filing of the present petition, about 90% of the unaided schools have sought for approval of the fees to be charged to the students from the State of Goa.

7. The learned Advocate General submits that the Government would require four weeks time to take final decision on the recommendations of the Committee. On the next date of hearing, the learned Advocate General shall intimate further progress made in the matter. We expect the Government and its competent authority to take appropriate steps before the next academic year starts. S.O. 5/04/2010.'

4. Thereafter, on 10.08.2010 a statement came to be made by the learned Advocate General that as per the suggestion made by the Court, a "Fee-Structure Committee" has been re-constituted by appointing four additional members. Also by such order, the

petition was admitted.

5. On 04.10.2019 the proceedings were adjourned at the request of the learned Additional Government Advocate who sought time to file affidavit, setting out the status of the action taken by the Government on the report of the Committee which was constituted in September 2009. On 15.11.2019 a coordinate bench of this Court passed a further order recording the statement of the learned Additional Government Advocate, that the State Government by an order dated 14.11.2019 had accepted to examine the grievance of the parents in the matter of hike in fees by the unaided recognized private schools in Goa.

6. In the further order dated 22.11.2019, the Court recorded that an affidavit on behalf of the Directorate of Education was taken on record which annexed a Government order dated 15.11.2019 recording that the Government had constituted a ten member Member Committee to look into the grievance of the parents in the matter of hike in fees by the private recognized unaided schools in Goa. The terms of the reference of Committee were set out therein. It was stated that the Committee as constituted submits its report within 4 months. It was also observed that the grievances of the petitioner would be

taken up by the Committee and that with the constitution of such Committee, the grievances of the petitioner in the present proceedings would stand substantially redressed. As the Committee was examining the issue, proceedings were adjourned to 06.12.2019.

6. Thereafter, a coordinate Bench of this Court passed a further order dated 18.02.2021 recording that the said Committee as constituted by the State Government had made its report. As the petitioners intended to take instructions and, if necessary file their objections, the proceedings were adjourned. The objections on behalf the petitioners as also on behalf of respondent no.3, to the said report were thereafter placed on record.

7. It is on the above backdrop the proceedings are listed before us today.

8. With the assistance of the learned counsel for the parties, we have perused the record.

9. As noted above, it is seen that by an order dated 14.11.2019 passed by the Director of Education & Ex-Officio Joint Secretary, Government of Goa, a ten member committee was constituted to examine the grievances of the parents in the matter of hike in fees

by private recognized unaided schools in Goa. The terms of reference were set out in the said order which recorded that the Committee shall hear the members of private unaided School Managements, unaided School Parents Association, aggrieved parents and other educationist and submit their report within a period 4 months to the Government on the following issues:

- 'i. Whether in terms of section 13 of the Goa School Education Act 1984, the hike of fees by private unaided schools is necessary to implement seventh pay commission scales to their staff to bring them on par with the employees of the corresponding status in schools run by the Government.*
- ii. Whether the hike of fees by some of the private unaided schools for the year 2019-20 is justifiable.*
- iii. Whether the schools by charging exorbitant fees provide better infrastructure facility and quality education for personal development of a child as claimed by some of the schools.*
- iv. The committee may also make suggestions relating to filling of audited accounts by private schools to promote transparency.*
- v. The Committee may examine and explore the scope for making further provisions with regard to fee structure in unaided schools in the Goa School Education Act and Rules made there under and to recommend accordingly.*
- vi. Any other matter to be referred by the Education Minister.'*

10. The said committee as constituted, proceeded with the reference and made its report which is annexed to the affidavit dated 22.11.2019 of the Director of Education. The Committee considering the decision of the Supreme Court in ***Islamic Academy of Education and another v/s. State of Karnataka and others*** made the following four recommendations alongwith its

submissions:-

'1. There should be a minimum of five components for charging fee from the students:

- a. Tuition fee.*
- b. Admission fee (applicable to only new admissions).*
- c. Term fee.*
- d. Development fee.*
- e. Refundable deposit.*

The board heads of the fee structure would help in year to year comparison of the fee levied by the school. Further they are in consonance with Rule 143, 144. If the school management is desirous of including more heads for in the basic fee structure, the same can be decided in consultation with P.T.A.). In case of new admissions other than entry level there shouldn't be disparity/difference in fee structure of the students belonging to one particular class. However, a one-time admission fee can be chargeable to new students. Further, admission fee should be same for new entrants in any of the classes.

2. Considering the fact that the private unaided education institutions should be able to generate surplus for use of that educational institution, the maximum annual hike fee should be in the range of 10-15% of the total fee charged in the previous year and it is to be decided by the managing Committee in consultation with the P.T.A. Representatives.

3. For handling complaints regarding the fee hike, a Grievance Redressal Committee at the school level is to be constitute. The grievances are to be referred first to the Head of School. In case the complainant is unsatisfied by the solution, he/she may approach the Grievance Redressal Committee. The committee is to consist of following three members:

- (i) Chairperson of PTA*
- (ii) Chairperson of SMC*
- (iii) Departmental representative.*

The decisions should be taken by majority. In case the grievances are not settled by the committee, the complainant may approach the Director of Education.

4. Approval for fee structure is to be obtained by 31st January for the next academic year. While applying for the approval of the Director under Section 19 of the Goa, Daman and Diu School Education Act, 1984 (the Act) the School should submit the following documents at least three weeks before 31st January:

Audited statement of the year previous to the one whose Fee structure is sought to be approved as per Rules 139.

Scheme of Management as per section 6 of the Act and School Managing Committee constituted as per Rule 46.

Resolution of the School Managing Committee approving the fee structure proposed Approved fee structure of the previous academic year.

Proof of Constitution of Grievance Redressal Committee.

Summation:

Although the Supreme Court has dealt the issue of fee structure in details, it is evident as has been pointed out by the apex court itself, that the findings are not exhaustive in nature. The basic notion that has to borne in mind while forming any statute or while imposing any regulation on such institutions is that education is a charitable occupation, in which the private players are allowed to earn profits but not to profiteer, i.e. to make unreasonable or excessive profits.

A harmonious balance has to be struck between the conflicting interests of the autonomy of private unaided educational institutions in fixing a reasonable fee structure on one side, ensuring that they earn a reasonable surplus, while the students are not compelled to pay exorbitant or unjustified fees, on the other hand. The objective is not only to fix a reasonable fee structure vis-a-vis educational institutions, but that the students get commensurate facilities and quality education in exchange of the fee paid by them.

Therefore, it is enjoined on the unaided educational institutions to follow various provisions of the Act specifically but not limited to, Section 5, 13, rule 37, 74 and 78, 132-137 of the Goa, Daman and Diu School Education rules 1986 (the Rules).'

11. Having perused and deliberated on the recommendations of the Committee, prima facie we find that these recommendations and the mechanism arrived thereunder needs to be accepted as sufficient redressal of the grievance of the petitioner or persons similarly situated against any illegal or

arbitrary increase in fees by any unaided recognized private schools, affiliated to the Goa Education Board. We are informed by Mr Deep D. Shirodkar learned Additional Government Advocate, that on 27.05.2020 the Government of Goa has also accepted the report/recommendations of the said Committee.

12. The obvious consequence of the Government of Goa accepting such report would be now to issue consequential directions/orders to the respective recognised unaided private schools to have a permanent grievance redressal mechanism as set out in the recommendations, so that after a complaint is received from any parent or any other interested person, of an arbitrary or illegal hike in fees which is prejudicial to the interest of the students, the same can be immediately taken up and redressed in a manner set out in the mechanism and as per law.

13. We may observe that certainly there is much substance in the cause which was brought by the petitioner before the Court that it was imperative and vital to have an appropriate mechanism in the interest of the students, against any arbitrary hike in fees by the private managements, and if at all there is any increase in fees by any such schools, such increase was required to be within the permissible parameters and ought not to become prohibitive and

beyond the reasonable paying capacity and means of the parents in sending their children to such schools. Any increase in fees necessarily is required to be of such nature and standard that it would not unjustly enrich the institution at the cost of the students and/or result into any undue exploitation of students. In other words, the increase in fees if any needs to be fair which ought not to result in profiteering by the school so as to be within the permissible parameters of a reasonable surplus to be generated and not amounting to commercialization of education. Thus, necessarily the endeavour of a private school management would be to balance its financial needs by adopting a fair fee structure commensurate with the facilities being provided which would generate a reasonable surplus without unwarrantedly taxing the school children and their parents.

14. In the aforesaid circumstances, we dispose of this petition by the following order:-

O R D E R

- (i) The State Government is directed to issue appropriate/consequential orders to implement the recommendations of the Committee so that a grievance redressal mechanism on any complaint in regard to the increase in fees by private recognized

unaided schools, affiliated to the Goa Education Board, could be resorted. Let such order be issued in three weeks from today, unless already issued.

- (ii) The Director of Education shall look into any grievances/complaint, if the grievances subsist, after the grievance redressal committee passes an appropriate order on any representation received from any parent or any other interested person.
- (iii) Such representation/complaint as may be received by the Director of Education be decided within a period of one month of its receipt, after an opportunity of a hearing is granted to the affected parties. The Director of Education shall also fix the responsibility and accountability of compliance of the Fee Structure, as per the timelines as recommended by the Committee.
- (iv) The Petition stands disposed of in the above terms, keeping open all contentions of the petitioner and of the management, in the event, any further grievances subsist to be redressed.
- (v) Needless to observe that in taking appropriate decisions the concerned authorities shall have due regard to the provisions of Section 10(7) of the Goa

School Education Act, 1984 and Rule 139 of the
Goa Education Rules, 1986.

15. Disposed of. No costs.

BHARAT P. DESHPANDE, J

G. S. KULKARNI, J.

MARIA SUZANA
REBELLO

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