

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD***

WRIT PETITION NO.10369 OF 2023

Fransalian School of Excellence
Through its Administrator .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Cedric D. Fernandes, Advocate for the Petitioner.
Shri S.B.Yawalkar, , Addl. G.P. for the Respondent/State.
Shri V.D.Sapkal, Senior Adv. i/by Shri Pritam Arun Madhukar,
Adv for Respondent no. 5.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.
DATE : 22 AUGUST 2023.**

FINAL ORDER (Per Shailesh P. Brahme, J.) :-

1. Heard learned counsel for the respective sides finally.

2. The petitioner, an educational institution, is challenging an order dated 14.08.2023 passed by the Divisional Fee Regulatory Committee (hereinafter referred to as “DFRC” for the sake of brevity and convenience) in Appeal No. 05 of 2023. Impugned order is an interlocutory

one. A substantive appeal is still pending with DFRC/ respondent No. 2.

3. The petitioner/school is an un-aided school imparting education for primary and secondary standards. It declared revised fee structure for the academic year 2023-2024, thereby increasing fees by 45% to 50 %. A group of parents, respondent No. 5, raised grievance against illegal hike in the fees by making an application on 06.02.2023 which is registered as Appeal No. 05/2023. It is urged that there was non-compliance of provisions of Section 2, Section 4, Section 5 and Section 6 of the Act of 2011.

4. The petitioner/management contested appeal as well as interim application. The application of the respondent no. 5 was stated to be non entertainable. The parent-teacher association was stated to have raised no objection for hike in the fees. Due procedure was followed for increasing fees.

5. By order dated 14.08.2023, interim application Exhibit-5 dated 28.03.2023 was partly allowed by DFRC.

6. The learned counsel for the petitioner submits that DFRC has no jurisdiction to entertain the appeal and application. The impugned order was stated to be perverse and based upon extraneous considerations. Learned counsel would submit that the orders passed by this Court in Writ Petition No. 3774 of 2023 and Writ Petition No. 4747 of 2023 were wrongly interpreted.

7. Learned counsel for the respondent no. 5 has filed affidavit-in- reply which is taken on record today itself. The submissions of the petitioner are refuted by learned senior counsel for the respondent no. 5. The respondent No. 5 supports impugned order. He would submit that near about 375 well identified parents have approached before DFRC. A reliance is placed upon an enquiry conducted by education officer. A report to that effect is placed on record. The learned senior counsel would submit that there is non

compliance of mandatory statutory provisions of Section 5 and Section 6 of the Act of 2011. It is submitted that learned member of DFRC is justified in passing impugned order.

8. We have considered rival submissions canvassed by the parties. The challenge before us is interim direction issued by DFRC on 14.08.2023. A substantive appeal is still pending and yet to be adjudicated finally. We are of the considered view that contentious issues are awaiting the adjudication. This is not a fit case to exercise writ jurisdiction for interfering with the impugned order.

9. The observation of the committee regarding transfer certificates and orders passed in Writ Petition No. 3774 of 2023 and Writ Petition No. 4747 of 2023 are misplaced. The imposition of the cost is liable to be quashed.

10. The learned counsel for the petitioner has relied upon the judgment of this in the matter of Euro School Education Trust and others Vs. Divisional Fee Regulatory Committee, Pune and others reported in

MANU/MH/1622/2017. It can be considered at the time of hearing of the appeal by the DFRC.

11. The ends of justice would be met by directing the DFRC to decide Appeal No. 05 of 2023 on its own merits and after hearing all the stakeholders. All the points are kept open. The cost of Rs. 5000/- imposed by clause no. (3) of the operative part of the impugned order is quashed and set aside. The petition is disposed of in above terms.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

bsb/Aug. 23