

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Public Interest Litigation No.37 of 2021

- 1. Shri Yogesh Ramchandra Pathre,**
Aged about 40 years,
Occupation Business,
Plot No.39, Shiv-Abhilasha Apartment,
Flat No.101, N.I.T. Layout,
Trimurti Nagar, Nagpur.
- 2. Shri Kailash Dinkar Choudhari,**
Aged about 48 years,
Occupation Business,
R/o 406, Honey-Archana Complex,
Untkhana, Nagpur.
- 3. Shri Madan Shamraoji Kohale,**
Aged about 49 years,
Occupation Business,
R/o 15, Jairam Towers,
Revati Nagar, Nagpur.
- 4. Smt. Trupti Tushar Deshpande,**
Aged about 44 years,
Occupation Legal Practitioner,
R/o Ramaji Wadi,
New Shukrawari, Nagpur.
- 5. Shri Dhananjay Neelkanthrao Choudhari,**
Aged about 50 years,
Occupation Legal Practitioner,
R/o 89, Sudarshan Nagar,
New Narsala Road, Nagpur.

6. Shri Ishwar Anand Kolhe,

Aged about 47 years,
Occupation Business,
R/o Jawahar Nagar,
Manewada, Nagpur.

7. Smt. Ratna Jayant Kulkarni,

Aged about 49 years,
Occupation Service,
R/o Hanuman Nagar,
Nagpur.

8. Shri Vishal Chandrashekhar Doifode,

Aged about 45 years,
Occupation Business,
R/o Manewada, Nagpur.

9. Jagrut Palak Samiti (un-registered)

(Under Order 1 Rule 8 representative
petition through the same),
through Vide President Yogesh R. Patre,
R/o Plot No.39, Flat No.101,
N.I.T. Layout, Trimurti Nagar, Nagpur.

... **Petitioners**

Versus

1. The Deputy Director of Education,

Nagpur Division, Nagpur.

2. The Collector, Office at Civil Lines, Nagpur.

3. Government of Maharashtra,

through its Secretary, Education Department,
Mantralaya, Mumbai-400 032.

4. School of Scholars,

Atre Layout, Khamla,

Nagpur,

through its Director.

... **Respondents**

Shri K.B. Ambilwade, Counsel for Petitioner.

Shri D.P. Thakare, Additional Government Pleader for Respondent Nos.1 to 3.

Shri P.D. Meghe, Counsel for Respondent No.4.

CORAM : A.S. CHANDURKAR & MRS. VRUSHALI V. JOSHI, JJ.

Date when arguments were heard : 26th July, 2023

Date when the order was pronounced : 19th August, 2023

P. C. :

1. By the present proceedings initiated in public interest, the petitioners seek to raise a grievance with regard to discrimination in the fee structure from one school to another school and pray that such fee structure should be as per the fee structure prevalent in Government schools. It is further prayed that there should be uniformity of the fee structure from Kindergarten to the College level.

2. According to the petitioners, they have formed an Association under the name and style of 'Jagruk Palak Samiti' to raise grievances in the matter of increase in fees in each academic year from Kindergarten to XIIth Standard- H.S.C. The Association has entered into various communications with the Authorities including the Deputy Director of Education as well as the Collector, Nagpur. It is stated that imparting of education and receiving the same being a fundamental right of the students, there ought to be no discrimination in the fee structure of

the private schools on par with the Government schools. Instances of increase in the fee structure especially at the school run by the respondent No.4-Society is sought to be highlighted.

3. In the reply filed by the Collector, it has been stated that the matter falls within the purview of the Deputy Director of Education, Nagpur Division, Nagpur and the said Authority is competent to look into the grievances raised by the petitioners. The Deputy Director of Education, Nagpur Division, Nagpur has also filed her affidavit making a reference to the provisions of the Maharashtra Educational Institutions (Regulation of Fee) Act, 2011 (for short, 'the Act of 2011') to submit that the said legislation has been brought into force to regulate the collection of fee by the educational institutions in the State of Maharashtra and to provide for matters connected thereto. The provisions of the said Act are comprehensive and insofar as the private unaided schools and the colleges are concerned, they have autonomy in the matter of administration of such schools including the admission of students and the fee to be charged. The grievances of the petitioners could be considered under the Act of 2011. Reference has been made to the judgment of the Hon'ble Supreme Court in *T.M.A. Pai Foundation and others Versus State of Karnataka and others* [(2002) 8 SCC 481].

Affidavit has also been filed by the respondent No.4-Society denying all adverse allegations made by the petitioners. It is stated that it is governed by the provisions of the Act of 2011 and that the fee

as well as revision in the amount of fee are undertaken in accordance therewith.

4. We have heard the learned counsel for the parties and we have perused the material on record. We have also gone through the decisions in (i) *Society for Un-Aided P. School of Rajasthan Versus Union of India and another* [AIR 2012 SC 3445], (ii) *Arun Digambar Joshi Versus State of Maharashtra and others* [2013(5) Mh.L.J. 419], (iii) *Arun Shivaji Chavare Versus Padmakar Rama Chavare and others* [2015(1) Mh.L.J. 728], (iv) *Uran Education Society and others Versus State of Maharashtra and others* [2015(4) Mh.L.J. 920] and (v) *Nitin Ravindra Bansod and others Versus Government of India and others* [2017(5) Mh.L.J. 954]. We find that the Act of 2011 has been enacted with a view to provide for the regulation of collection of fees by educational institutions in the State of Maharashtra and also to provide for matters connected therewith and incidental thereto. The Act of 2011 seeks to regulate fees in Government schools, aided schools, private unaided schools as well as permanently unaided schools. The Act is comprehensive in nature and is a Code in itself. It provides for constitution of a Divisional Fee Regulatory Committee that is empowered to consider various grievances pertaining to imposition of fees including excess fees. The Act contemplates formation of Parent-Teachers Association in an educational institution and also prohibits collection of fees in excess of what has been fixed or approved under the Act of 2011. After a Parent-Teachers Association

is formed, an Executive Committee is thereafter constituted. The Executive Committee can consider the issue of fixation of the fee structure. An appeal from the decision of the Executive Committee on increase in the fee by the Management can be preferred before the Divisional Fee Regulatory Committee. The factors to be considered while deciding the fee structure including the provision of instalment in paying the same has been provided. The Act of 2011 is thus a Code in itself and it also contains penal provisions for breach of the same. Since the Act is made applicable to all educational institutions in the State of Maharashtra, we find that the recourse can be had to the said Act in the matter of regulation of fee structure and grievances in that regard.

5. The autonomy in the matter of fixation of fee structure has been recognized by the Hon'ble Supreme Court in *T.M.A. Pai Foundation and others* (supra). Such autonomy however is required to be exercised in the light of the Act of 2011 which requires involvement of the Parent-Teachers Association even on the aspect of determination of the fee structure. The over-all control in this regard vests with the State Government or the Central Government, as the case may be, in view of Section 5 of the Act of 2011. The facilities and standard of imparting instructions are likely to differ from school to school. It is also likely that the amenities provided by one school may be distinct from the amenities provided by another school. For this reason, it is possible that the fee structure in one school may be at

variance with the fee structure of another school. Various factors are required to be taken into consideration while determining the fee structure of a school. It is for this reason that the provisions of the Act of 2011 would be liable to be taken recourse to in case there is a dispute with regard to imposition of fees. The modality for resolution of such issue has been provided in the Act of 2011. The grievance in that regard is therefore required to be raised and adjudicated in the manner prescribed therein. We are therefore of the view that there cannot be uniformity of the fee structure as sought by the petitioners in all schools for classes from Kindergarten to Junior College. The same is likely to differ from school to school for various reasons.

6. Hence for the aforesaid reasons, though no direction for having uniformity in the fee structure of all schools at par with Government schools as sought by the petitioners cannot be granted, we may only observe that in case of any grievance in the matter of application of fee structure, the provisions of the Act of 2011 being comprehensive in nature, the same provides for the mode of the resolution of such issues. The petitioners would be free to take recourse to the Act of 2011 in this regard.

7. The present proceedings are disposed of with the aforesaid observations.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)