IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2024

CORAM

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

W.P.Nos.8833/2020, 5149/22, 18269/21, 7211/2022, 9306/2020, 5063/22, 28583/2023, 21045, 34233, 32738/2023, 5629, 5655, 5634, 5636, 5653, 5658, 5664, 5668, 5671, 5673, 7401, 9688, 9692, 9785, 9693 of 2024
&
WMP.Nos.5246, 5249, 7239, 5245, 7240, 5186, 5188, of 2022, 19506/2021, 28135, 20414, 28134, 32347, 32348, 34115, 34116, / 2023 & 6219, 6248, 6225, 6227, 6220, 6249, 6224, 6253, 6254, 6228, 6269, 6270, 6271, 6262, 6263, 6274, 6267, 6275, 6272 & 6273 /2024

W.P.No.8833 of 2020

The Tamil Nadu Nursery Primary Matriculation
Higher Secondary Schools Association,
represented by its State Secretary
Mr.K.R.Nandakumar,
having office at No.6, Egambaram Street,
Pammal, Chennai 600 009. ... Petitioner

Vs.

1. The Chief Secretary to Government,
 Revenue and Disaster Management
 Department, Fort St. George,
 Chennai 600 009.
2. The Principal Secretary to Government,
 School Education Department,
 Fort St. George, Chennai 600 009.
3. The Director of School Education,

DPI, College Road, Chennai 600 006.
4. The Director of Matriculation Schools, College Road, Chennai 600 006.
5. The Director, Office of the Directorate of Elementary Education, DPI, College Road, Chennai 600 006.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the 1st respondent to re-fix the per-child expenditure as per the children's Right to Free and Compulsory Education Act and Rules made thereunder for the academic year 2017-2018, 2018-2019 and fix the same afresh for the academic year 2019-2020 in a fair and transparent manner as per the statistics and norms within a period as may be fixed by this Court and consequently direct the respondent to reimburse the future payments from 2020-2021 onwards in 3 stages being 50% of 1st payment be paid in June of every year, 25% be paid in December and the final balance of 25% be reimbursed by end of April of the next year.

For petitioner in WP.Nos.8833/2020, 5149/22 & 18269/2021	Mr.M.V.Swaroop
For petitioner in WP.7211/2022	Mr.Godson Swaminathan for Isaac Chamber
For petitioner in WP.9306/2020, 5063/2022	Mr.P.Ebenezer Paul
For petitioner in WP.28583/2023	Mr.N.Umapathi
For petitioner in WP.Nos.21045,	Mr.S.Nedunchezhiyan

34233/2023	
For petitioner in WP.32738/2023	Mrs.E.Angayarkanni
For petitioner in W.P.5629, 5655, 5634, 5636, 5653, 5658, 5664, 5668, 5671, 5673, 7401, 9688, 9692, 9785, 9693 of 2024	Mr.P.Muthusamy
For respondents in all WPs	Mr.J.Ravindran, AAG assisted by Ms.Mythreye Chandru, Spl.Govt. Pleader for Tamil Nadu State

COMMON ORDER

The issue involved in all these writ petitions are one and the same, hence all the writ petitions are clubbed together and are disposed of by a common order.

2. The petitioners herein are the representatives of the Matriculation Schools run by them. They filed the present writ petitions challenging the GO.Ms.No.99 School Education Department dated 02.06.2023 issued for specification of 'Per Child Expenditure' under section 12(2) of the Right To Education Act, 2009 for the year 2022-2023, 2023 to 2024 , 2024-2025 and 20205-2026 relating to classes LKG to VIII.

3. According to them, at present, the Matriculation Schools are brought under the control of Director of Private Schools in accordance with the Tamil Nadu Private Schools Regulation Act, 2019. Subsequent to amendment made to our Constitution in the year 2002, Article 21A was introduced with an object to provide free and compulsory education to all children upto the age of 14 years, particularly, with an intention to give continuous education to the children from the weaker sections who dropped out from schools before completing their elementary education under 25% reservation quota. Pursuant thereto, the Right of children to Free and Compulsory Education Act, 2009 came into force w.e.f. 01.04.2010.

4. As per section 12(1)(c) of the Act, unaided schools not receiving any aid from the Government should admit the children from weaker sections of Society in class I under 25% quota and provide free and compulsory elementary education till their completion. As per section 12 (c) (2) of Right to Education Act, the expenditure incurred by the such school to impart education for the pupil from such economically weaker sections shall be reimbursed by the appropriate Government. The expenditure

incurred by the said schools to the extent of per-child expenditure (in short 'PCE') incurred by the State or the actual amount charged from the child, whichever is less, in such manner as may be prescribed.

5. Accordingly, as per provisions of 12(2)(c) of the Act, the tuition fee for the children belonging to weaker section who got admitted in schools under 25% quota is being reimbursed to the unaided private schools in accordance with Per Child Expenditure notified every year.

6. The Government has to increase PCE for every academic year in consonance with escalation of price etc and also in comparison with the PCE incurred by the state in respect of Government Schools, whereas, the rate of PCE has been grossly reduced without reference to the actual PCE incurred by the schools concerned. Having regard to the PCE fee structure specified by the Government for every academic year, the petitioners have duly represented to the respondents to increase the same in consonance with current escalation of price, but the same was not considered by the respondents.

7. Whileso, vide impugned Order in GO.Ms.No.99, dated

02.06.2023, the Government has issued orders specifying PCE for the Academic Year 2022-2023 and for consecutive Academic years 2023-2024, 2024-2025 and 2025-2026 for classes commencing from LKG to VIII standard for the purpose of reimbursement. In the above GO, it is found that for LKG and UKG, PCE is specified at Rs. 6000, which, according to the petitioners, is grossly at a reduced rate and the PCE for the above academic years were not fixed in consonance to the actual expenditure incurred by the schools concerned as well as the school fee fixed by Fee Regulation Committee.

8. Apart from that, there is no basis or reasons stated in the impugned order to arrive at the grossly reduced rate for the PCE and the impugned order is not supported by any material. In other words, the Government has issued the impugned GO in fixation of PCE by grossly reducing the rate contrary to the provisions of Central Act without furnishing any calculation of details and without affording any opportunity of personal hearing to the petitioners. Hence, for the above stated reasons, the impugned GO is exfacie arbitrary, illegal and against the principles of natural justice, hence

the same is liable to be quashed .

9. The further grievance of the petitioners is that in respect of the students who are admitted under the 25% quota as per the Right of Education Act, the respondents have not settled the fees as per the amount spent by the State Government in respect of Government School Students. In the year 2014, they disbursed more than Rs.20,000/-, per student, however in the year 2023, they drastically reduced it as Rs.11,000/-.

10. Learned counsel appearing for the respective petitioners in all writ petitions submitted that as per the Right to Education Act, the petitioner schools have admitted 25 % poor students under the the abovesaid quota and as per the RTE Act, the government has to bear the entire expenditure to those students admitted under 25% quota. In the year 2014, the Per Child Expenditure per student is determined as Rs.21,000/- and subsequently, it was increased up to Rs.25,000/-. But, all of a sudden, by the Order impugned, the Government had reduced the same to Rs.15,000/-, which according to the petitioners, is not an acceptable one and the same is not liable to be continued. Therefore, they prayed for setting aside the

impugned order and direct the respondents to fix a reasonable amount for per child expenditure from the year 2017 onwards.

11. Learned counsel for the petitioners further submits that right form 2017, till date, the Government has not paid any amount towards per child expenditure and hence he seeks a direction to Government to settle the entire amount as on 2023-2024, 2024-2025.

12. Learned Addl. Advocate General appearing for the State submitted that the Right of Children to Fee and Compulsory Education, Act, 2009 (The Central Act 35 of 2009) was enacted by the Government of India. After notifying the Central Act 35 of 2009, the Government of Tamil Nadu issued the Tamil Nadu Right of Children to Fee and Compulsory Education Rules, 2011 and notified the same in the Tamil Nadu Government Gazette (Extraordinary), dated 12.11.2011. The Government issued G.O.(Ms) No.99, fixing the Per Child Expenditure under section 12(2) of RTE Act 2009 for the academic year ro the year 2022 to 2026. It is the policy decision of the Government to fix the Per-Child Expenditure from the year 2022 to 2026 and it will aid in smooth reimbursement to every private

schools without any delay. The payment to private school under RTE is done from the year 2013 to till now. From the academic year 2017, the Tamil Nadu Government issued GO every year for the purpose of reimbursement. But, now the Government has taken a policy decision to fix Per Child Expenditure for a period of 4 years and GO (Ms) No.99, School Education Department, dated 02.06.2023 was issued. It is submitted that as per clause (c) of sub-section (1) of section 12 of the Act, reimbursement will be done to schools and the amount fixed by the Government vide G.O.(Ms) No.99, School Education Department dated 02.06.2023 is unreasonable, arbitrary, illegal or contrary to the Act and Rules and no right is infringed. Even the Act says from classes 1 to 8, but the Tamil Nadu Government is issuing 100% grant to LKG and UKG whereas, for class 1 to 8, out of which, 60% is from Central Government and 40% is from State Government. The Government has not acted against the objective of Article 21A and is providing free and compulsory education upto the age of 14.

13. He further submitted that the State Government had so far reimbursed a sum of Rs.1992.97 crore to those private schools which have admitted children under 25% reservation quota as per section 12(1)(c) of the

Right of Children to Fee and Compulsory Education Act from AY 2013-2014 to 2021-2022. The per child expenditure is calculated by considering the expenditure incurred by the Government on the teacher salary and the school grants Teacher's salary and the composite school grant are the prime components and cover the mandated expenditure for a child studying in Government School. Therefore, only those expenditures are taken into account for calculating the per-child expenditure from the year 2021-2022 and the Government fixed cost for next 4 consecutive Academic year as well.

14. The Government of India approves reimbursement only for classes form I to VIII. Though reimbursement of expenditure for admission under 25% quota in LKG to UKG has not been envisaged in the Act and also the expenditure has not been reimbursed by the Government of India, the State Government, considering the interest of school children, admitted in LKG and UKG under RTE quota has taken a policy decision to reimburse a fixed amount of Rs.6000/- to the children admitted in LKG and UKG under 25% quota. Therefore, the amount of reimbursement has been reasonable and fixed at Rs.6000/-.

15. He further submitted that from 2014-2015 to 2016-2017, to fix per child cost, 15 components are taken and from 2017-2018 to 2020-2021, 7 components were taken and from 2021-2022, pursuant to policy decision of the Government, only 3 components were taken to fix the per child expenditure and accordingly GO (MS) No.99 dated 02.06.2023 is issued. However, the enactment of Right to Education Act is meant to the poor children who are not entitled to continue studies either in Government Schools or nearby private schools and the Government schools which were away from the residence of the poor students within one kilometre, if any private school is available, they were given admission under 25% quota to improve literacy rate in each State, thereby the benevolent piece of Legislation is enacted. In respect of 75% of the students studying in their schools, the petitioners are entitled to collect fees of their own.

16. It is his further submission that the Government is not acting in arbitrary manner and have not determined the fee with any ulterior motive. Inspite of Central Government not providing any aid to LKG and UKG classes, the State Government is providing aid under RTE Act for those

classes also. The fixation of reimbursement fee for a child is fixed reasonably and there is no arbitrary reason. Hence, the policy decision of the Government need not be interfered with. Therefore he prayed for dismissal of these writ petitions.

17. Heard the learned counsel appearing for the petitioner in each of the writ petitions and the learned Addl. Advocate General assisted by learned Special Govt. Pleader appearing for the State and perused the entire materials available on record.

18. The fact in the present case is not in dispute. Admittedly, the petitioner schools admitted poor students of 25% of the strength of the class in order to provide compulsory elementary education as per section 12(1)(c) of the Right to Education Act. As per section 6 of the RTE Act, Tamilnadu Government says for imparting elementary education to the poor students belonging to weaker sections, who do not have access to the Government schools, shall be admitted in a private school located within the radius of one kilometer of their residence under 25% quota and the cost of education for such students for the academic year would be borne by the

State Government.

19. The prime issue involved in these writ petitions is that in the year 2014 the Government has paid nearly more than 20,000 towards Per Child Expenditure, however, for the academic year 2022-2023, the same has been reduced to Rs.12,000/-. The cost has been assessed based on the per child expenditure studying in the school.

20. It is seen from the records that for the academic years from 2014-2015 to 2016-2017, the Government has fixed per child cost based upon the 15 components such as 1. Text book, 2. Note Book, 3. Crayon and colour pencils, 4. Geometry Box, 5. Atlas, 6. School Bag, 7. Footwear, 8. Woolen Sweater, 9. Noon Meal, 10. Bus pass, 11. Uniform (4sets), 12. Teacher's Salary average cost, 13. Special Fee, 14. SSA School Grant and 15. Other Establishment Charges are taken into account, whereas from 2017-2018 to 2020-2021, 15 components were reduced into seven components and from 2021-2022 to 2025-26 only three components were taken into consideration to fix Per Child Cost and accordingly impugned GO came to be passed.

21. It is seen that the Government has reduced Per Child Expenditure for the subsequent academic years. Though it is the contention of the Government that the amount of reimbursement has been reasonably fixed and the reimbursements granted by the State Government is high when compared with other State Governments in respect of Per Child Expenditure, there must be some justification on the part of the State Government for fixation of cost which is assessed based on Per Child Expenditure for the children studying in the Government schools.

22. It is pertinent to note that Right of Children to Free and Compulsory Education Act, 2009 (The Central act 35 of 2009) and subsequent State enactment i.e., Tamil Nadu Right of children to Fee and Compulsory Education Rules, 2011 were enacted for the purpose of granting free education to children belonging to weaker sections of Society and by issuing the impugned G.O.(Ms) No.99 dated 02.06.2023, a policy decision has been taken by the State Government to fix the Per-Child Expenditure for the subsequent academic years 2022 to 2026. In such a view of the matter, this court is not inclined to interfere with the impugned

order passed by the Government. However, there will be a direction to the State Government to settle the per child expenditure to the petitioners upto date within a period of 12 weeks from the date of receipt of a copy of this order, if not already paid. Accordingly, the respondents are directed to reimburse the entire Per child Expenditure as on date to the petitioners within a period of 12 weeks from the date of receipt of a copy of this order. The State Government is directed to Redo the entire exercise for re-fixing the Per Child Expenditure for the upcoming academic years commencing from 2025-2026 onwards.

23. With the above directions, these writ petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions, if any, are closed.

12.09.2024

Index: yes/no
Internet:yes/no
msr
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Department, Fort St. George,
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M. DHANDAPANI, J.

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