

IN THE HIGH COURT OF ANDHRA PRADESH

W.P. Nos.18555, 18831, 18993 and 19145 of 2021

W.P.No.18555 of 2021

Between:

East Godavari Private Schools Association (Regd. 576/2020)
Represented by its President
Sri Dasari Durga Srinivasarao,
R/o D.No.2-2-119, Shirdi Nagar,
Yeleswaram, East Godavari District
Andhra Pradesh – 533 429 and six others Petitioners

AND

State of Andhra Pradesh
Rep. by its Principal Secretary,
School Education (IE) Department,
Secretariat, Tullur, Velagapudi, Guntur District and three others
.... Respondents

DATE OF JUDGMENT PRONOUNCED: **27.12.2021**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
3. Whether His Lordship wish to
see the fair copy of the Judgment? Yes / No

U. DURGA PRASAD RAO, J

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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! Counsel for Petitioners : Sri Vedula Venkataramana, Senior Counsel
representing Sri M. Sri Vijay

^Counsel for Respondents : Government Pleader for School Education
representing respondent Nos.1 and 4, Sri
B.S.N. Naidu, learned Standing Counsel for
respondent No.2 and Ms. Elipe Santha Sree,
learned Standing Counsel for respondent
No.3

< Gist:

> Head Note:

? Cases referred:

1. (2002) 8 SCC 481
2. MANU/SC/0580/2003
3. MANU/SC/042/2004 = AIR 2004 SC 2236
4. 2005 (6) SCC 537 = MANU/SC/2621/2005

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Writ Petition Nos.18555, 18831, 18993 & 19145 of 2021

COMMON ORDER:

The petitioners in this batch of writ petitions are different Private Unaided School Associations, Junior College Management Associations, Junior Colleges and High Schools. In these writ petitions they are challenging the propriety and legality of G.O.Ms.No.53, School Education (PS) Department, dated 24.08.2021 and G.O.Ms.No.54, School Education (IE.A2) Department, dated 24.08.2021.

2. Briefly stating, G.O.Ms.No.53 spells out that the Andhra Pradesh School Education Regulatory and Monitoring Commission (for short, 'the APSERMC) in its meeting held on 24.04.2021 reviewed and determined the fee structure for Nursery to 10th class in private unaided schools in the State of A.P. for the block period 2021-2022 to 2023-2024 in terms of Section 9(ii) of the Andhra Pradesh School Education Regulatory and Monitoring Commission Act, 2019 (for short, 'the Act 21 of 2019') by considering the plight of common man/parents and also keeping in view the judgment of the Hon'ble Apex Court in the case of **TMA Pai Foundation v. State of Karnataka**¹, **Islamic Academy of Education v. State of Karnataka**² and **Modern School v. Union of India**³ and other

¹(2002) 8 SCC 481

²MANU/SC/0580/2003

judgments and forwarded its recommendations to the Government regarding fee structure for Nursery to 10th class of private unaided schools in the State of A.P. for the aforesaid block period. Pursuant thereof the Government of A.P. issued the notification by fixing the Composite Tuition/Annual Fee for schools collectible in three equal instalments by dividing schools location wise i.e., Gram Panchayats, Municipalities and Municipal Corporations. The fee structure is prescribed as per the location of the school and class wise. The G.O. *inter alia* reads about the Transportation charges and Hostel (Boarding and Lodging) charges etc.

(a) Whereas, the G.O.Ms.No.54 would depict that the APSERMC in its meeting held on 03.03.2021 reviewed and determined the fee structure of two years Intermediate course of private unaided junior colleges in the State of A.P. for block period 2021-2022 to 2023-2024 and made recommendations to the Government of A.P. and accordingly, the Government have issued notification in exercise of the powers conferred under Section 7 of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (Act 5 of 1983) [for short, 'Capitation Fee Act, 1983']. Like in the earlier G.O., the Composite Tuition / Annual Fee of junior colleges is fixed basing on the location of the junior colleges in Gram Panchayats, Municipalities and Municipal Corporations. This G.O. also *inter alia* deals with the

³ MANU/SC/042/2004 = AIR 2004 SC 2236

Transportation charges, Hostel (Boarding and Lodging) charges, maintenance of accounts etc.

3. The legality and validity of the above G.O.s is challenged in these writ petitions.

(a) The facts in all these writ petitions are more or less identical but for slight variations. Since the ultimate prayer in all these writ petitions is to set aside the two impugned GOs, it is considered apposite to adjudicate all these petitions by this common order treating W.P.No.18993/2021 as a lead case.

(b) The petitioner in W.P.No.18993/2021 is an Association of Independent Schools Management. Its case is that its member schools are imparting elementary and secondary education by affiliating themselves with CBSE and ICSE. Their schools are different from the regular schools and other public or private aided or unaided institutions either in composition, infrastructure facilities or teaching methodology. Some of their schools are offering various international curriculums like International General Certificate of secondary education, Cambridge (IGCSE) and International Baccalaureate Program (IBP), Geneva to commensurate with the international standards. Their schools have state of art indoor and outdoor amenities, digital classrooms, learning resource centres with extensive collection of books, DVDs, audio-visual rooms and labs. These schools have been fixing fee commensurate with their individual capital and revenue expenditures. The fixation of fee is wholly

transparent, done after deliberation with representatives of the parents. There is absolutely no element of profiteering. In that view, if the impugned G.O.Ms.No.53 is implemented, their schools have to be shut down immediately.

(c) The first tirade against impugned G.O.Ms.No.53 is that it was imbued with factual falsities. Though in the G.O. it was claimed that before arriving at the fee fixation, the Commission had discussed with private unaided management association members, it was factually incorrect. Not even one of the 119 members of the petitioner's association was consulted and they were unaware of any meeting being called for by the Commission. The Commission has not followed the Act 21 of 2019 and its Rules. No individual notices were served on the private educational institutions calling for their proposals of fee structure along with relevant documents and books of accounts. It is only after inviting proposals from the individual schools and upon considering the same, the Commission has to make an objective assessment as to whether fee structures proposed by the individual managements are reasonable taking into account the de-profiteering and de-commercialization aspects, the Commission shall make its recommendations class and category wise keeping in view the location, infrastructure of the institution, operational costs, medium of instruction and the expenditure on administration and maintenance. The Commission can only make recommendations on the proposal submitted by the individual schools, but it cannot fix fee

by itself. The proposals have to be considered only on the basis of empirical frame work devised by the Commission for grading the schools class and category wise. However, nothing of the sort has been done. Instead all the Schools have been painted with the same brush effacing the distinguishing features of individual schools.

(d) Nextly, it is pleaded that the impugned G.O makes an artificial classification among schools based on location which is irrational to the hilt. In fact, some international schools are located in rural areas and economy schools in corporate areas. For instance, Laurel High English Medium School, a prestigious school in Andhra Pradesh is located in a Village Gadala of East Godavari District in Andhra Pradesh. Similarly, another famous school by name Westberry High School is located in Peda Amiram Village near Bhimavaram in West Godavari District. There are many such examples which would prove that the impugned order suffers from the vice of unreasonable classification having no nexus with the objective sought to be achieved. Therefore, the geographical locations of schools cannot be taken as a basis for fixation of fee structure.

(e) Nextly, it is contended that by fixing the lowest fee possible commonly for all the schools in the State unilaterally the Government have bypassed the rule in **TMA Pai Foundation's** case (supra 1), wherein it was observed that the fixing of a rigid fee structure, dictating the formation and composition of governing body, compulsory nomination of teachers and staff for appointment or

nominating students for admissions would be unacceptable restrictions.

(f) Nextly, it is contended that the Capitation Fee Act, 1983 only gives power to regulate the fee. However, the 1st respondent proceeded to fix not just fee but also it fixed the transportation and hostel charges which are beyond the power of the Government. Even the transportation charges are ridiculously low.

4. In W.P.No.18555/2021 also the pleadings are similar. It is stated that challenging the constitutional validity of the Act 21 of 2019 W.P.No.4268/2021 is filed and the same is pending.

(a) It is contended that the fixation of fee under the two impugned G.Os by the Government orders is in total contravention of the procedure laid down by Rule 8 of the Andhra Pradesh School Education Regulatory and Monitoring Commission Rules, 2020 (for short, 'Rules, 2020'). The 2nd respondent has not called proposals from the respective schools/junior colleges before recommending the fee structure. Further, the 2nd respondent has not taken into consideration the parameters such as infrastructure of the institution, operational cost, medium of instructions, expenditure on the administration etc. except the location of the institutions for fixing the fee. The Government orders are imaginative and speculative as there is no proper method for fixation of the fee. There cannot be any mathematical equity based upon the location of educational institutions in a Gram Panchayat, Municipality or Municipal

Corporation for fixation of the fee. It is further contended that the State can only play regulatory role in the matter of fixation of fee. The college education also requires adequate/excellent infrastructure, teaching facility, laboratory facility etc. Therefore, educational institutions cannot be equated to Fair Price Shops to have a uniform standard rate for groceries sold/distributed. Thus, there is a serious error in grouping the educational institutions basing on their location. Next it is contended that as per the GOs, a post decisional opportunity has been given to the educational institutions to apply to the Commission in case the institutions are not satisfied by the fee fixed in the impugned GOs. Thus, the impugned GOs themselves are self-explanatory that the fee fixed in those GOs is arbitrary and unscientific. On the other hand, if Rule 8 is followed in letter and spirit, there can be no room for re-fixation/revision of the fee. So, both the GOs i.e., G.O.Ms.No.53 and 54 are liable to be set aside.

5. In the W.P.Nos.18831 & 19145 of 2021 also the pleadings are similar whereunder the petitioners remonstrated the fixation of fee by the Government basing on the location of the schools.

6. No counter is filed by the respondents.

7. Heard the arguments of Sri B.Adinarayana Rao, learned Senior Counsel representing Sri Bodduluri Srinivas Rao, learned counsel for petitioners in W.P.Nos.18993 & 19145 of 2021, and Sri Vedula Venkata Ramana, learned Senior Counsel representing Sri M. Sri

Vijay, learned counsel for petitioners in W.P.No.18555/2021, and Sri P.Veera Reddy, learned Senior Counsel representing Sri Sodum Anvesha, learned counsel for petitioner in W.P.No.18831/2021.

Heard arguments of learned Government Pleader for School Education, Sri B.S.N.Naidu, learned Standing Counsel for APSEPMC, and Ms. Elipe Santha Sree, learned Standing Counsel for Board of Intermediate Education.

8. All the learned counsel in their arguments, have reiterated their pleadings in the respective writ petitions, from which the following main points would emerge:

(1) Rule 8 of the A.P. School Education Regulatory and Monitoring Commission Rules, 2020 which is in *pari materia* with Rule 8 of the A.P. Higher Education Regulatory and Monitoring Commission Rules, 2019, pellucidly laid down that the APSEPMC and APHERMC shall call for the proposals from the educational institutions regarding the fee structure and thereafter they shall invariably consider the parameters given in the said Rule and then prescribe the fee so as to regulate the educational institutions from resorting to profiteering or charging Capitation fee. However, in this case the APSEPMC has not at all called for the proposals and relevant record from the petitioners and no notification was issued in that regard. As such, the petitioners and their ilk were totally ignorant of any exercise being conducted by the APSEPMC in terms of Rule 8. Hence, the impugned G.Os fall foul of the said Rule.

(2) The fixation of fee under the impugned G.Os basing on the geographical location of educational institutions is wholly unjust, illegal, illogical and contrary to Rule 8. As per the said Rule, the Commission has to consider several parameters enumerated in the said Rule before recommending the appropriate fee. The location of an educational institution is only one of the several parameters but it alone is not be all and end all.

(3) The Capitation Fee Act, 1983 and Act 21 of 2019 only gave power to the Government to regulate the “fee”, however, the 1st respondent proceeded to fix not just “fee”, but also the transportation, hostel charges etc. which are beyond the scope of the above enactments and power of the Government. Even such fixation of the transportation charges on location wise is ridiculously low and only aimed at scuttling private school education in the State and migration of students and the flight of capital to the neighbouring states. On this ground alone the impugned G.Os are liable to be struck down.

9. Projecting the above points, it is unanimously argued by the learned Senior Counsels that ignoring the series of judicial pronouncements of the Hon’ble Supreme Court exhorting that the State may regulate fee structure of private unaided schools to prevent them from indulging in profiteering but cannot impinge upon the autonomy of the schools to fix and collect the just and permissible fee, and also violating the statutory Rules, the Government brought forth the two G.Os.

10. In oppugnation, Sri B.S.N. Naidu, learned Standing Counsel for APSERMC would argue that as per Rule 8 the duty is cast on the petitioners and other educational institutions to submit their proposals and they have not submitted their proposals for fixation of fee structure. Therefore, the writ petitions are not maintainable.

11. Nextly, he argued that as per Point No.XII in both G.Os, an opportunity has been given to the concerned educational institutions, who felt that fee structure is low, to submit their own proposals for consideration of APSERMC. Such objections and proposals will be disposed of by the Commission within three months thereof. Learned Standing Counsel would argue that without availing the said opportunity, the petitioners have rushed to the Court and filed the writ petitions which are premature and hence, liable to be dismissed. It is further argued that the APSERMC made recommendations after consulting the parents Committees, educational institutions etc., and therefore, the fee structure mentioned in the impugned G.Os is just and reasonable and therefore, the writ petitions are liable to be dismissed on that score also. He thus prayed to dismiss the writ petitions.

12. The points for consideration in these writ petitions are:

(1) Whether G.O.Nos.53 and 54 fell foul of statutory provisions and rules and thus liable to be set aside?

(2) To what relief ?

13. Point No.1: It is harsh but true to say that ‘education’ in India, like river Ganga which slipped off from high mountainous regions to murky brooks, has gradually slid down from a high status of ‘charity or philanthropy’ to ‘occupation’ and further to ‘industry’ and finally to ‘a livelihood’. Education has thus since long been a subject matter of litigation between the competing interests. While one section who sponsors the private educational institutions independent of government aid claims that the establishment and administration of private educational institutions is their fundamental right under Article 19(1)(g) of the Constitution and State’s intervention therein is like a ‘bull in a china shop’, the other section i.e., the State and a section of the society clamour that though establishment of institutions is a fundamental right but not an absolute right so as to convert educational institutions into lucrative auction houses. On the other hand, the State has right and obligation to regulate such institutions in the context of admission of students and collection of fees so as to prevent the education being profaned. In the friction, beckoning judgments have been rendered balancing the rights and interests of the two competing sections.

14. In the above context, a eleven Judge Bench of the Apex Court rendered the judgment in **TMA Pai Foundation’s** case (supra 1). Dealing with the question as to whether in respect of private institution, can there be government regulations and if so to what

extent, the Apex Court observed that since providing good amenities to the students in the form of competent teaching faculty and other infrastructure need money, it has to be left to the private unaided institutions to determine the scale of fee that can be charged. However, inasmuch as, the education is regarded as charitable, the Government can provide regulations that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by the institution.

15. Various State Governments and educational institutions interpreted the judgment, in individual perspectivism which led to multiplicity of cases in respect of education in India. It ultimately led to constitute a constitutional Bench of five Judges in **Islamic Academy of Education** (supra 2) for resolving the tangle. Basing on the rival submissions, the Bench framed the following four questions for consideration, of which question No.1 is germane for the present writ petitions, which is as follows:

- (1) Whether educational institutions are entitled to fix their own fee structure?

16. So far as question No.1 is concerned, the constitutional Bench held that there can be no fixing of rigid fee structure by the Government. Each institution must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. Further, they must also be able to generate surplus

which must be used for the betterment and growth of that educational institution. It was further held, there can be no profiteering and no capitation fee can be charged. At the outset, imparting of education shall be essentially charitable in nature. Most importantly, with regard to the regulation of the fee structure of private unaided educational institutions, the Bench held that in order to give effect to the judgment in **TMA Pai Foundation** (supra 1), the respective State Governments / concerned authority shall set up, in each State, a Committee headed by a retired High Court Judge and other members from different disciplines. Each educational institution must place before the said Committee, well in advance of the academic year, its proposed fee structure by submitting the relevant documents and books of accounts for its scrutiny. The Committee shall then decide whether the fees proposed by that institution are justified or meant for profiteering or charging capitation fee. The Committee will be at liberty to approve the fee structure or to propose some other fee which can be charged by the institute and the fee structure so fixed shall be binding for a period of three years. Once fees are fixed by the Committee, the institute cannot charge either directly or indirectly any other amount over and above the amount fixed as fees. The Government shall frame appropriate regulations for penalizing the institutions charging more fee than fixed.

17. The judgment in **TMA Pai Foundation** (supra 1) was rendered by eleven Judges whereas the judgment in **Islamic Academy of**

Education (supra 2) was rendered by five Judges. Questions were raised that while giving clarifications and explanations to the findings in **TMA Pai Foundation's** judgement, the **Islamic Academy** runs counter to earlier judgment. Therefore, to clarify whether **Islamic Academy of Education's** case went in conflict with **TMA Pai Foundation's** case and if so, to what extent and to overrule to the extent of such over reaches, the matter was referred to seven Judges in the case of **P.A.Inamdar v. State of Maharashtra**⁴. After the exhaustive study of the judgments in **TMA Pai Foundation** and **Islamic Academy of Education**, the Apex Court in **P.A.Inamdar's** case (supra 4) gave several clarifications. Of them, we are concerned with right of the private unaided educational institutions to fix their fee structure vis-a-vis the right of the State to regulate the same.

18. It should be noted that the direction made in **Islamic Academy of Education** (supra 2) for appointment of the Committees has been vehemently assailed in **P.A. Inamdar** (supra 4). It was argued that the right to charge fees so as to run the college and to generate sufficient funds for its betterment and growth cannot be controlled by the State. That would seriously encroach upon the autonomy of the private unaided institutions. It was further argued that **Islamic Academy of Education's** case (supra 2) virtually reviewed the larger bench decision in **TMA Pai Foundation** (supra 1) in the guise of implementation of the said decision and went far beyond the law laid

⁴ 2005 (6) SCC 537 = MANU/SC/2621/2005

down by **TMA Pai Foundation** (supra 1) and directed each State to set up permanent Committees headed by the retired High Court Judges to decide the justification of the fee proposed by the institutions.

19. In **P.A. Inamdar** (supra 4), the Apex Court framed few questions to resolve the issues between **TMA Pai Foundation** and **Islamic Academy of Education**. Question No.3 is pertinent which is as follows:

(3) Whether Islamic Academy could have issued guidelines in the matter of regulating the fee payable by the students to the educational institutions?

On the above question, the Apex Court ultimately held thus:

“**146.** The two committees for monitoring admission procedure and determining fee structure in the judgment of Islamic Academy, are in our view, permissive as regulatory measures aimed at protecting the interest of the student community as a whole as also the minorities themselves, in maintaining required standards of professional education on non-exploitative terms in their institutions. Legal provisions made by the State Legislatures or the scheme evolved by the Court for monitoring admission procedure and fee fixation do not violate the right of minorities under Article 30(1) or the right of minorities and non-minorities under Article 19(1)(g). They are reasonable restrictions in the interest of minority institutions permissible under Article 30(1) and in the interest of general public under Article 19(6) of the Constitution.

(xxx)

149. In our considered view, on the basis of judgment in Pai Foundation and various previous judgments of this Court which have been taken into consideration in that case, the scheme evolved of setting up the two Committees for regulating admissions and determining fee structure by the judgment in Islamic Academy cannot be faulted either on the ground of alleged infringement of Article 19(1)(g) in case of unaided professional educational institutions of both categories and Article 19(1)(g) read with Article 30 in case of unaided professional institutions of minorities.

A fortiori, we do not see any impediment to the constitution of the Committees as a stopgap or ad hoc arrangement made in exercise of the power conferred on this Court by Article 142 of the Constitution until a suitable legislation or regulation framed by the State steps in. Such Committees cannot be equated with Unni Krishnan Committees which were supposed to be permanent in nature.”

20. In **Indian School, Jodhpur v. State of Rajasthan**⁵, when the validity of the Rajasthan Schools (Regulation of fee) Act, 2016 was assailed as being violative of Article 19(1)(g) of the Constitution, the Apex Court held that the High Court of Rajasthan had rightly concluded that the said Act was *intra vires* to the Constitution.

21. Thus, on a conspectus of the jurisprudential exposition by the Apex Court, it is pellucidly clear that while it is the fundamental right of private unaided educational institutions, guaranteed under Article 19(1)(g) of the Constitution of India to establish and administer institutions which includes fixation of fee structure, at the same time, the State Governments have power and obligation to regulate the fee structure so as to prevent such institutions resorting to profiteering and collecting Capitation Fee. It should be noted that in the wake of above judgments, particularly **Islamic Academy of Education** (supra 2), the State Government of Andhra Pradesh has enacted the A.P. School Education Regulatory and Monitoring Commission Act, 2019, and also framed the Rules thereunder for maintaining the standards of education, regulation of fee, competence of teachers, effective inspection, monitoring of schools etc. in respect of school education upto intermediate level including teacher education. The State has also enacted a similar enactment called ‘the A.P. Higher Education Regulatory and Monitoring Commission Act, 2019’ applicable to Post Secondary School Level with which we are not concerned now. Thus,

⁵ 2021 (3) CTC 531 = MANU/SC/0338/2021

it has now to be seen whether the two impugned G.Os were issued in accordance with or in violation of the provisions of Act 21 of 2019 and Rules made thereunder.

22. A perusal of the Act 21 of 2019 would show, it mainly deals with establishment of School Education Regulatory and Monitoring Commission and powers and functions of the said Commission. As per Section 3 of the Act, the State Government, by notification in Official Gazette, appoints the Regulatory and Monitoring Commission. Section 4 deals with the composition of the Commission which shall consist of a Chairperson who is a retired Judge of the High Court, one Vice Chairman and eight other academicians. Section 9 speaks about different powers of the Commission. Section 9(ii) says that the Commission shall have the power to monitor and regulate fee across all private schools in the State duly developing parameters of fee structure and grading of schools, irrespective of their Board of Affiliation or curriculum. Section 19 speaks about the power of State Government to review, revise and modify any of the decisions of the Commission in public interest. Rulemaking power is vested with State Government under Section 22. In consonance thereof, the Government have framed the Andhra Pradesh School Education Regulatory and Monitoring Commission Rules, 2020.

Rule 8 deals with fee regulation. It reads thus:

8. Fee Regulation

- (i) Every Educational institution shall submit the proposed fee structure of admissions along with all the relevant documents and books of accounts for scrutiny to the Commission based on the notification issued by the Commission from time to time.
- (ii) The Commission shall decide whether the fees proposed by the institution is justified and does not amount to profiteering or charging of capitation fee.
- (iii) The commission shall be at liberty to approve or alter the proposed fee.
- (iv) The Commission shall recommend the fee to be charged by the Private Educational Institutions Class and category wise in the State by duly taking into consideration of all the relevant parameters such as
 - (a) Location
 - (b) Infrastructure of the institution
 - (c) The operational costs in processing applications and registrations and other relevant circumstances
 - (d) Medium of Instruction
 - (e) The expenditure on administration and maintenance
 - (f) In case of transfer of Students from one Institution to other Institution, the procedure for payment of fee in the Institution to which the Student is transferred.
- (v) No Educational Institutions like Primary, Upper-Primary, Secondary, Intermediate and Teacher Education including Tutorial Institutions shall collect at a time a fee which is more than one year's fee from a candidate.

23. It should be noted, the petitioners have challenged the impugned G.Os for violation of Rule 8 on two counts - firstly, no prior notification was issued to educational institutions calling for their proposals regarding fee structures and secondly, the fee structure was fixed by the State Government basing on the geographical location of the educational institutions alone without considering the other parameters laid in the said Rule.

24. I carefully scrutinized Rule 8 in the light of above arguments. Rule 8(i) on one hand directs that educational institutions shall submit the proposed fee structure of admissions along with relevant documents and books of accounts for scrutiny of the Commission and on the other hand, imposes responsibility on the Commission to issue “**notification**” in that regard from time to time. The phrase “based on” employed in the Rule explains that the responsibility of educational institutions to submit proposed fee structure and relevant record comes only after the notification is issued by the Commission. Therefore, it is clear that the Commission, whenever it proposes to recommend the fee structure, shall issue notification calling for the fee structure proposals from the institutions. In the instant case, except arguing that a duty is cast on the educational institutions to submit fee proposals, learned Standing Counsel has not produced any record before this Court showing issuance of prior notification by the APSEPMC. It should be noted that the respondents filed some material papers wherein we find a copy of notification dated 26.05.2020 issued by the APSEPMC calling for the fee proposals from the managements of all private unaided schools and junior colleges in the State of A.P. to enable it to review and determine the fee structure for the Academic Year 2020-21. Needless to say that the said notification does not relate to the fees fixation for the Academic Years 2021-2022, 2022-2023 & 2023-2024. Most of the other material papers are the inspection reports relating to the inspections of

the educational institutions conducted by the administrative members of APSEPMC. Those papers are of no use to show that prior notification was indeed issued. In the impugned G.Os, no doubt it is mentioned as if the Commission before arriving the fee fixation, had discussions with managements of educational institutions and parents of the students in the State. In the material papers, the 2nd respondent filed a xerox copy of the paper showing signatures said to be that of parents of the students relating to different colleges who have attended the fee fixation meeting said to be held on 02.03.2021. Apart from it, a xerox copy of a part of letter dated 19.04.2021 said to be addressed by NIL of Independent Schools Managements' Association was also filed to show that said Association was thanking the Commission for inviting them for a discussion on the proposed fee structure fixation. In my considered view, the afore two documents will not supplant the requirement of issuing prior notification by the Commission as ordained by Rule 8. Thus, it is clear that the Commission has not issued prior notification calling for the fee proposals from the petitioners and other institutions. Therefore, I agree with the argument of the petitioners that no prior notification was issued by the Commission and thereby Rule 8 and principles of natural justice were violated.

25. The next attack on G.Os is that the parameters, set out in Rule 8 were not at all considered to fix the fee under impugned G.Os. In Rule 8(iv), six parameters as stated supra are given, in consideration

of which the Commission shall be required to recommend the fee. There can be no demur that those parameters were not considered by the Commission as it did not issue notification to call for the proposals. In Para No.4 of the impugned G.Os, we will find as if the Commission has recommended the fee structure, and basing on such recommendation the Government issued the G.Os. When no prior notification was issued by Commission calling for fee proposals from the educational institutions, it is highly incomprehensible as to how the APSEPMC has verified the several parameters mentioned in Rule 8 with reference to each educational institution and recommended the fee as per class and category-wise to the government. From this the only conclusion that can be drawn is that the fee structure fixed in the impugned G.Os is not backed up by any relevant data to arrive at just and reasonable fees to govern for three consecutive academic years.

26. The next argument is that fixation of fees, solely on the basis of geographical location of the educational institution is neither legal nor logical. It is argued that many premier institutes having sprawling buildings, larger playgrounds and other State of art infrastructure are established in Gram Panchayats also and therefore, if fee is fixed to all the educational institutions, solely on the basis of their location without categorizing them in terms of their facilities, infrastructure, expenditure etc. by ignoring other parameters, will result in grave injustice.

27. A bare perusal of the impugned G.Os shows, the fees was fixed basing on the geographical location of the concerned educational institutions i.e., in Gram Panchayats, Municipalities and Municipal Corporations. As rightly argued by the petitioners, geographical location of an institution alone cannot be the basis for fixation of fee. As per Rule 8(iv), in addition to location, other parameters shall also be taken into consideration by the Commission. It has to ultimately recommend the fee to be charged by the private educational institutions 'class' and 'category' wise. Therefore, the categorization of the educational institutions is an essential component for fixing the fee. Institutions can be categorized viz., A, B, C, D etc. basing on varied infrastructural and pedagogic facilities offered by them. It is a fact that all the educational institutions cannot and will not offer identical facilities. It is also a fact that for various reasons, particularly for having large space, high profiled concept schools and colleges are located even in Gram Panchayats, whereas medium and low level schools and colleges are functioning in Municipalities and Corporations. In that view, as rightly pointed out by the petitioners, geographical location alone cannot be taken as a parameter for grouping the educational institutions to fix their fee. On the other hand, to meet the requirements of Rule 8(iv), the Commission after calling for the fee proposals and relevant records from the institutions showing their infrastructural capabilities, has to classify the educational institutions into different categories and then recommend

the fee structure for each class basing on their location as well as their category. Thus, different fee has to be fixed for each class of a particular category of school basing on its location. However, impugned G.Os clearly fell foul of the required parameters enshrined in Rule 8. Added to it, under the impugned G.Os the Government has fixed not only the fee structure but also the transportation charges which do not directly fall within the ambit of the fee. For these gross violations the impugned G.Os are liable to be set aside. It is argued by learned counsel for respondents that in the impugned G.Os, a provision has been created that of the School managements felt that fee fixed in the G.Os is low, they may file a proposal before the Commission for its consideration which has to be disposed of within three months and in view of the availability of the efficacious and alternative remedy, the writ petitions are liable to be dismissed in limini. I am afraid this argument cannot be appreciated for the reason that Act 19 of 2019 and its Rules have not laid down any provision for post-fixation reconsideration. What is laid down is pre-fixational exercise and recommendation by the Commission. Such facilitation in the impugned G.Os runs counter to the statutory rules. Since there is a gross violation of statutory rules and principles of natural justice, the writ petitions are very much maintainable.

28. Before parting, it must be noted that since we are in the middle of the block period 2021-2022, some or all the educational institutions in the State might have collected fees for the said block period either

as per their own fee structure or following the impugned G.Os. Keeping this in view, the following order is passed:

Accordingly, the Writ Petitions are allowed and G.O.Ms.No.53, School Education (PS) Department, dated 24.08.2021 and G.O.Ms.No.54, School Education (IE.A2) Department, dated 24.08.2021 are hereby set aside with a direction to the Andhra Pradesh School Education Regulatory and Monitoring Commission (APSERC) to issue notification in terms of Rule 8 of the A.P. School Education Regulatory and Monitoring Commission Rules, 2020 and call for proposed fee structure of admissions along with relevant documents and books of accounts from all the educational institutions and afford a personal hearing to all the stakeholders and categorize the educational institutions taking into consideration the parameters stated in Rule 8 and recommend the fee structure for the block period 2021-2022, 2022-2023 & 2023-2024. This exercise shall be completed by 31.03.2022. In the event educational institutions collected any fee from the students for the block period 2021-2022, the same shall be adjusted in terms of fee recommended by the Commission and notified by the State Government. No costs.

As a sequel, interlocutory application pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

27.12.2021
KRK/MVA