

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 30TH DAY OF JUNE 2020 / 9TH ASHADHA, 1942

WP(C).No.10867 OF 2020(S)

PETITIONERS:

- 1 SREELEKSHMI S., 9 YEARS, D/O. SANTHOSH KUMAR, MANATHARA VADAKKATHIL, EDAKKULANGARA P.O., THODIYOOR, KOLLAM DISTRICT-690 523, REPRESENTED BY HER NATURAL GUARDIAN FATHER MR.SANTHOSH KUMAR, S/O.GANGADHARAN, AGED 42 YEARS, MANATHARA VADAKKATHIL, EDAKKULANGARA P.O., THODIYOOR, KOLLAM DISTRICT-690 523.
- 2 DHANVIN M.PILLAI, 5 YEARS, S/O. MUKESHKUMAR.R., MUKESH BHAVAN, KALLELI BHAGOM P.O., KARUNAGAPALLY, KOLLAM DISTRICT-690 519, REPRESENTED BY HIS NATURAL GUARDIAN FATHER MR.MUKESH KUMAR.P., S/O.RADHAKRISHNA PILLAI, AGED 33 YEARS, MUKESH BAHVAN, KALLILI BHAGOM P.O., KARUNAGAPALLY, KOLLAM DISTRICT-690 519.

BY ADVS.SRI.MANU RAMACHANDRAN
SRI.SAMEER M. NAIR

RESPONDENTS:

- 1 THE STATE OF KERALA
REPRESENTED ITS CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 2 THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF EDUCATION, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 3 THE DISTRICT COLLECTOR, DISTRICT OF KOLLAM, CIVIL STATION, KOLLAM DISTRICT-691 013.
- 4 DISTRICT EDUCATION OFFICER, EDUCATIONAL DISTRICT OF KOLLAM, CIVIL STATION, KOLLAM DISTRICT-691 013.
- 5 CENTRAL BOARD OF SECONDARY EDUCATION, SHIKSHA KENDRA 2, COMMUNITY CENTRE, PREET VIHAR, DELHI-110 092, REPRESENTED BY ITS CHAIRMAN.
- 6 THE REGIONAL OFFICER, CENTRAL BOARD OF SECONDARY EDUCATION, REGIONAL OFFICE OF THIRUVANANTHAPURAM, BLOCK B, 2ND FLOOR, LIC DIVISIONAL OFFICE CAMPUS, PATTOM, THIRUVANANTHAPURAM-695 004.
- 7 THE SREE BUDHA CENTRAL SCHOOL, IDAKULANGARA P.O., KARUNAGAPPALLY, KOLLAM DISTRICT-690 523, REPRESENTED BY ITS MANAGER.
(EMAIL ID-SBCSKARUNAGAPPALLY@GMAIL.COM).
- 8 THE PRINCIPAL, THE SREE BUDHA CENTRAL SCHOOL, IDAKULANGARA P.O., KARUNAGAPPALLY, KOLLAM DISTRICT-690 523.
(EMAIL ID-SBCSKARUNAGAPPALLY@GMAIL.COM).

R1 TO R4 BY SR. GOVT.PLEADER SRI. SURIN GEORGE IPE
R5 AND R6 BY ADV. SRI. S. NIRMAL, SC,
R7 & R8 BY ADV. SRI.R.T.PRADEEP, SMT.M.BINDUDAS & SRI.K.C.HARISH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-06-2020, THE COURT ON 30-06-2020 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 30th day of June, 2020

S.Manikumar, C.J.

Instant public interest litigation is filed for the following reliefs:

- (i) To issue a writ of mandamus or any other appropriate writ order or direction, directing respondents 1 to 6, to issue necessary directions to the 7th respondent - Sree Buddha Central School, represented by its Manager, Kollam, to provide quality online/virtual class to the students using modern video conferencing techniques;
- (ii) To issue a writ of mandamus or any appropriate writ order or direction, directing respondents 1 to 6, to issue necessary directions to the 7th respondent School to charge only monthly tuition fees, if they provide quality online/virtual class to the students using modern video conferencing techniques;
- (iii) Declare that the Schools conducting online/virtual classes using modern video conferencing techniques are entitled to charge the tuition fees alone till the re-opening of schools;
- (iv) To issue a writ of mandamus or any other appropriate writ order or direction directing respondents 1 to 6 to issue necessary directions to the Schools conducting online/virtual classes using modern video conferencing techniques to ensure that no student is denied the same on the reason on failure to pay fees;

(v) To issue a writ of mandamus or any other appropriate writ order or direction, directing respondents 1 to 6 to consider and dispose of Exhibit-P7 representation dated 30.05.2020 filed by the parents of the petitioners."

2. In support of the reliefs sought for, the petitioner raised the following grounds:

- A. The children below the age of 14 years are having the right to education and the same shall not be fettered in any manner. Anything goes against the same, is liable to be interfered being violative of fundamental right of children and against the provision of Right To Education Act. The 7th respondent school was closed from the 1st week of March, 2020, after the State Government took a decision to close down educational institutions in view of Covid-19 pandemic. Hence, the charging of fees for the said period, during which there was no classes, is unreasonable and liable to be interfered with. But, the fees for the April as well as May, 2020 were taken during the beginning of 2019-20 academic year, in the name of 'Annual fees' and as such lockdown has not hampered the interest of the school in the said manner. The stand taken by the schools in respect of loss of revenue due to lockdown is unfounded and the same is false.
- B. As per Exhibit-P3 notification dated 30.05.2020 issued by the Ministry of Home Affairs, the Central Government devises a phase wise re-opening of various activities and the educational institutions, including schools were directed only to function from phase II proposed from July, 2020, based on the then existing situation and after discussions with the stakeholders including State Government/UTs. Hence, there is no

justification on the part of the schools in demanding fees from the students and they are entitled only to tuition fees to the extent of providing quality online/virtual class room teaching.

- C. Though there are reports regarding the directions issued by the State Government requiring all the schools, including unaided CBSE Schools in Kerala, not to increase the fees in view of Covid-19 or demand fees during the time lockdown is existing and normal classes are not conducted, several schools, including the 7th respondent, are demanding fees at normal rate, which are inclusive of charges other than tuition fees. Respondents 7 and 8 are demanding the petitioners and other students of the school to remit amounts ranging from Rs.12,000/- to Rs.25,000/-, which are inclusive of annual fees, special fees, 1st term tuition fees, text books, uniform dress, T-Shirt, belt, socks and stationary, as evident from Exhibit-P6.
- D. The online classes which respondents 7 and 8 have assured to be provided to the students are not virtual classes or online classes to the real meaning and yet, they are charging unreasonable fees even on the heads of smart class room facilities and computer charges. The online classes meant by respondents 7 & 8 are nothing but voice messages of teachers sent through 'Whatsapp', which the parents are required to download and teach the children below VI Standard. They were told to take measures for students to clear their doubts for which, the students have to message the same to teachers and the same will be responded later. The attempt of respondents 7 and 8 is to charge fees on various heads in the name of giving online classes, but they are providing only sub-standard method of teaching. If the online or virtual class rooms conducted to its real meaning are regarded only as a substitute

for real class rooms, then their method of 'Whatsapp' voice messages of classes can never be considered to be online or virtual classes. The intention behind the initiation of online as well as virtual classes by respondents 7 and 8 are to lessen the effects of closure of schools upon the academic training, but the said objective will be reduced to a mockery, if the 7th and 8th respondents are allowed to conduct classes by sending voice clips of classes.

- E. Schools like 7th respondent, manage to conduct 'online classes' in the name sake only due to the lack of proper guidelines by the authorities. The same is taken advantage by the schools and the students alone are the scape-goats in this situation. Despite guidance given by the CBSE towards e-learning/teaching as evident from Exhibit-P5, the 7th respondent is not following the same. Though parents of the petitioners as well as others have approached respondents 7 and 8 seeking to conduct proper online/virtual classes and to reduce the fees and filed Exhibit-P7 representation before the respondents, no action was taken on the same. Respondents 6 and 7 have informed that they cannot allow any such reduction of fees. It was only then informed that the classes for standards VI to XII even though conducted through Zoom App, the same is also directed to be working in manner against the concept of virtual class rooms.
- F. Petitioners have further contended that other States in India like Andhra, Telangana, Tamil Nadu and New Delhi have issued orders, which are evident from Exts.P8 to P10, restricting the schools, including private unaided schools, from charging fees under various heads other than tuition fees. The said States have put in guidelines upon which such fees are to be collected

on the monthly basis and also not to deny course material or online classes to any students for the want of payment of fees.

- G. Though the petitioners have preferred Ext.P7 complaint to the respondents 1 to 6, they have not taken any steps to regulate or issue guidelines to set standards to the conduct of online/virtual classes. The said respondents have also not intervened in the matter by regulating payment of tuition fees limited to monthly basis as done by the other States as aforesaid, which is nothing but failure in exercising statutory functions. As per affiliation by-laws of the CBSE, matters regarding levy of fees and its various heads could be determined by the respective Governments of State/Union Territories.
- H. Respondents 7 and 8 are threatening the parents by stating that online classes as well as Whatsapp voice classes, as the case may be, text books will not be provided to the students whose fees are not paid in the manner demanded by them. Some of the parents have paid the fees only due to the threats. Apart from tuition fees, fees under several heads including 'annual fees' are charged, evident from Exhibit-P11. The charging of fees for the period during which there will be no classes is unreasonable and liable to be interfered with.
- I. The petitioners as well as many others, whose parents raised voice against charging exorbitant fees and fees other than tuition fees, are on the verge of losing the online classes and Whatsapp voice teaching. The right of the petitioners and other students to get education will be affected by the same. Lack of proper directions from the part of the Government is the reason for the same and the situation prevailing in Kerala in this regard

necessitates and justifies interference of this Court to issue directions to the Government."

3. On the above grounds, Mr. Manu Ramachandran, learned counsel for the petitioners, made submissions. That apart, inviting the attention of this Court to the averments made in the counter affidavit of respondents 7 & 8, he further submitted that respondents 7 and 8 have made scathing remarks about the parents. He also submitted that when the parents protested against the charging of annual fees and special fees for the period during lockdown between 24.03.2020 and 31.05.2020, they were threatened with police. Referring to Rule 29 of the Kerala Education Rules, 1959, he further submitted that the 7th respondent is a recognised school and, therefore, cannot charge fees more than the prescribed.

4. Learned standing counsel for respondents 5 and 6 has filed a statement, wherein they have referred to Chapter 7 of the CBSE Affiliation Bye-laws, 2018, which deals with school fees. Chapter 7 of the bye-laws reads thus:

"Societies/trust/companies are required to run schools without any profit motive in accordance with the provisions contained in these bye laws. The School shall endeavor to charge fees to the extent the expenses for running the School are met. Schools shall follow the following norms in respect of the fees charged from pupils:

- 7.1 No Society/Trust/Company/School shall charge capitation fee or accept donations for the purpose of admission for pupils.
- 7.2 Admission Fee and Fee charged under any other head are to be charged only as per the regulations of the Appropriate Government.
- 7.3 Fees shall be charged under the heads prescribed by the Department of Education of the State/UTs.
- 7.4 **REFUND OF FEES:**
In case not otherwise provided by the Appropriate Government, in the event of a student discontinuing the studies or wishing to migrate to some other School, dues shall be collected only upto the month of discontinuance or migration and not upto the month in which the transfer certificate is applied for. This shall apply to all Heads of fee.
- 7.5 **FEE REVISION: _**
 - 7.5.1 Fee revision of schools shall be subject to laws, regulation and directions of the Appropriate Government.
 - 7.5.2 Fee shall not be revised without the express approval of the School Management Committee or the process prescribed by the Appropriate Government under any circumstances.
- 7.6 The acts and regulations of the Central and State/UT Governments enacted/framed in connection with regulation of fee in respect of the various categories of the schools situated in the state will be applicable to the school affiliated with CBSE also.

7.7 For schools situated in foreign countries a transparent process, as per the applicable laws and regulations of the country where the school is situated, shall be followed in respect of all matters related to fee and revision of fee etc.”

5. It is stated that the schools can only charge fees to the extent of the expenses for running it and the levy of fees is to be without any profit motive. Further, the revision of school fees is subject to laws and regulations of appropriate Government.

6. Learned standing counsel for respondents 5 and 6 further submitted that having regard to Exhibit-P5 Circular No.Acad-31/2020 dated 5.5.2020 issued by the CBSE, online training for teachers of affiliated schools was introduced. CBSE conceptualized the online teachers training programme on pilot basis from the third week of April, 2020 and conducted 500 plus free online training sessions. More than 35000 teachers and Principals from various parts of the country participated in the programme. Therefore, respondents 5 and 6 have been actively guiding the affiliated schools to meet the emergent situation created due to COVID-19 pandemic.

7. The Secretary of Sree Buddha Foundation, Kollam, administered by Sree Buddha Central School, respondent No.7, has filed a counter affidavit, wherein it is contended as follows:

- (a) Sree Buddha Foundation which is registered under Travancore Cochin Literary Scientific Charitable Societies Act, 1955 has got an unchequered history in establishing various educational institutions of excellence in Kollam District to cater the educational need of the locality. Sree Buddha Central School, Karunagappally was established in the year 1993, in the rural set up at Idakkulangara with avowed objective to empower the rural children who were lacking English medium education as there was no school in Karunagappally offering English medium education.
- (b) The society made no compromise in providing quality education through the educational institution which it established and administered. The parents of the children studying in the school have appreciated the functioning of the school in imparting quality education and bringing up the children by rooting in discipline, inculcating high morals in life so as to have good citizens for the country.
- (c) The school is levying only abysmally low fees commensurate with the quality of education imparted and sound infrastructure facilities provided. The teaching and non-teaching staff are paid decent salary, not only in the school in Karunagappally but also in another dozen schools and colleges run by the society in different parts of the State. With the advent of Covid-19 pandemic, the school started online classes for students of Standards X and XII, who have to write public examination by middle of April, cutting short their vacation and without realizing any fee from students. The parents and students are happy with the endeavour of the school, in equipping the students, in advance, to face the examination. It is pertinent to note

that this is the practice followed by most of the CBSE schools in the State. The teaching staff of the school with no hesitation co-operated with online classes by rendering extra work. As far as small kids are concerned, online classes are not practically feasible. Hence, classes recorded in voice mail and videographed are send as WhatsApp messages, for which there was no complaint from any quarters. The contrary contentions are bereft of truth and hence, denied.

- (d) The 7th respondent school was opened on 1.6.2020 and the teaching staff was equipped in taking online classes by availing the service of IT experts. Though online classes are not a substitute for direct teaching, where the teacher and student have eye to eye contact, the students cannot be kept idle, whereby their understanding faculties will go down day-by-day. Online classes are only feasible when the whole world is fighting against COVID-19 and to arrest social spread. The shortcomings in online classes can be made good when regular classes being started.
- (e) The teaching staff of the school were given training of online classes by availing the service of IT experts at the cost of the school. The scheme of online classes was discussed with a cross-section of parents. A meeting of the executive committee of Parent-Teacher Association was held on 23.05.2020 and a demonstration of the online classes on platforms was performed before the Committee. The Executive Committee of P.T.A was fully convinced of the efficiency of online classes.
- (f) A very few number of parents met the 8th respondent in the morning on 25.5.2020 and expressed their inability to

pay the entire quantum of fees to be paid as first instalment in the aftermath of Covid-19. The 8th respondent readily agreed on taking specific instruction from the management by giving instalment for payment of fees for such parents. There was no forceful extraction of fee from the students hitherto in the past history of the school. The fee payable as first instalment would take in the cost of text books mainly NCERT books. Even then, the school did not hesitate to allow instalments for payment of fees for such incapacitated parents. It is pertinent to note that notebooks and uniforms, except belt and tie which have mark of the school, are not supplied by the school.

- (g) The father of the 1st petitioner namely Mr. Santhosh Kumar with a batch of unruly elements came to the school in the evening on 25.5.2020 and picked up quarrel with the members of P.T.A. by engaging in a wordy altercation in the most unbecoming manner. The exit gate of the school was blocked and it was realized that Santhosh Kumar has got an axe to grind against the school for absolutely no reason. The employees of the school including large number of lady staff were put under wrongful confinement without allowing them to leave the school. The police came by 6 p.m. and liberated the staff of the school. On enquiry, it came to know that Mr. Santhosh Kumar, who is a truck driver by profession, had the company of a large number of anti-social persons, who have criminal track record. The school is at a loss to understand why he demonstrated such behaviour.
- (h) Fearing repercussion from unleashing violence on the staff of the school, he started a tirade against the school,

deliberately perpetrating false news in the social media to defame the school and to create a bad image in the minds of parents. He has taken cudgels against the online classes without understanding the effort taken by the school to make it operational. His allegation that conduct of online classes is an effortless work by the teachers, and therefore, no fees be paid, would reflect the total unawareness of the system and a ridicule to the teachers engaged after undertaking tumultuous task.

- (i) The Circle Inspector of Police, Karunagappally called for a discussion on 28.5.2020 and 29.5.2020, and settled the issue. The condition was that, those who wanted text books could get it by paying the cost along with the annual fees stipulated. The tuition fee may be paid in installments. More than 90% of parents paid the fee according to the arrangement. The father of 1st petitioner was insisting that he will not pay the part of tuition fee during the period of online classes as he has no faith in the online classes. It is a ridicule on the efforts of teachers to take online classes.
- (j) The teachers are paid decent salary round the year and it is depended on the fee paid by the students. There is not even a single pie as arrears of salary for teaching and non-teaching staff even during the time period of lockdown when scores of complaint are coming to the force regarding non-payment of salary. The special fee levied for establishment charges and laboratory facilities are fully utilized for enhancing the quality of education and providing other ancillary utility services to the students like transport, curricular - co-curricular and extra-curricular

activities, arts and sports, cultural meet, magazine, annual day etc.

(k) It was further contended that the school is only levying the fees charged on the former year without enhancing a single pie. The school was contemplating to enhance the fees in the wake of better education and other facilities provided for the academic year 2020-2021, but abstained from doing so in the wake of pandemic. The following is the schedule of fees for the academic year 2020-2021, which only reflects the fees levied on the yester academic years.

FEE SCHEDULE (2020-2021)

Particulars	Std I to IV	Std V to VII	Std VIII to IX	Std X	Std XI	Std XII
Admission Fees	750	750	750	750	750	750
Special Fees	3000	3200	3300	3450	3650	3650
Amenities	1650	1650	1650	1650	1950	1950
PTA	100	100	100	100	100	100
SWF	100	100	100	100	100	100
Tuition Fees (Term Fees)	5000	5260	5700	6000	7150	7150
Computer Fees (Term)	230	230	230		300	300
Smart Class Fees (Term)	300	300	300	300	300	300
Caution Deposit					250	
Total	11130	11590	12130	12350	14825	14575

(l) It was further contended that the school which is coming within the contemplation of self-financing institution is not amenable to the writ jurisdiction of this Court. Being a self-financing institution, the school has got the unavoidable right to fix its own fees commensurate with the quality of education imparted and other amenities offered by providing infrastructure facilities.

(m) The school has now provided an online studio for video graphing and recording classes. The school has imparted training of online experts for the teaching staffs. The salary of teaching and non-teaching staff are also paid by the school. No additional fee is charged for the extra expenditure incurred for providing online class. Being a self-financing institution, the society has got the fundamental right guaranteed under Article 19(1)(g) of the Constitution of India in running the school and the State cannot regulate the exercise of fundamental right other than by law made by Legislature.

8. On the basis of the averments in the counter affidavit, Mr. R. T. Pradeep, learned counsel for the 7th respondent, made general submissions, as to how online classes were ordered to be conducted by CBSE, meeting with the PTA, training given to teachers, expenses incurred, and classes conducted in the school.

9. In addition to the above, taking this Court to the relevant paragraphs in the counter affidavit, he explained as to how the petitioner conducted himself in the school which warranted the school to seek the assistance of police. On the reliance to Rule 29 of the Kerala Education Rules, 1959, learned counsel for respondents 7 & 8 submitted that the said rule is not applicable to a CBSE school. Placing reliance on the decision in **T.M.A. Pai Foundation and Others v. State of Karnataka and Others** reported in **(2002) 8 SCC 481**, he submitted

that a self financing institution is entitled to fix a reasonable fee. He further submitted that though this Court in the interim order directed the respondents 6 and 7 not to levy any additional fee from the children of the petitioners, they have not even paid the fees prescribed.

10. Referring to the 2nd prayer made in the writ petition extracted above, learned counsel for the respondents 7 & 8 submitted that the petitioners have not made any request to the school in this regard and if any such representation is made, the same would be considered in accordance with law. Though it is not a part of record, learned counsel for the respondents 7 & 8 submitted that there are 2167 students studying in the school, 143 teaching staff and 89 non-teaching staff in the school. Teaching and non-teaching staff have to be paid their monthly salary, no matter whether there is lock down or not. Parent Teacher Association was involved in online classes. IT professionals were engaged in training teachers. In the above circumstances, learned counsel has sought for dismissal of the writ petition.

11. Heard the learned counsel for the parties and perused the material available on record.

12. Exhibit-P3 is the notification dated 30.05.2020 issued by the Ministry of Home Affairs, Union of India, and the relevant portion of the same is reproduced:

"No. 40-312020-DM-I(A)
Government of India
Ministry of Home Affairs

North Block, New Delhi-110001
Dated 30th May, 2020

ORDER

Whereas, an Order of even even number dated 17.05.2020 was issued for containment of COVID-19 in the country, for a period upto 31.05.2020.

Whereas, in exercise of the powers under section 6(2) (i) of the Disaster Management Act, 2005, National Disaster Management Authority (NDMA) has directed the undersigned to issue an order to extend the lockdown in Containment Zones upto 30.06.2020, and to re-open prohibited activities in a phased manner in areas outside Containment Zones:

Now therefore, in exercise of the powers, conferred under Section 102(1) of the Disaster Management Act, 2005, the undersigned hereby directs that guidelines, as **Annexed**, will remain in force upto 30.06.2020.

Sd/-
Union Home Secretary
and, Chairman, National Executive Committee (NEC)

Guidelines for Phased Re-opening (Unlock 1)

(As per Ministry of Home Affairs (MHA) Order No. 40-3/2020-DM-I (A) dated 30 May, 2020)

1. Phased re-opening of areas outside the Containment Zones In areas outside Containment Zones, all activities will be permitted, except the following, which will be allowed, with the stipulation of following Standard Operating Procedures (SOPs) to be

prescribed by the Ministry of Health and Family Welfare (MOHFW), in a phased manner:

Phase I

The following activities will be allowed with effect from 8 June, 2020:

- (i) Religious places/ places of worship for public.
- (ii) Hotels, restaurants and other hospitality services.
- (iii) Shopping malls.

Ministry of Health & Family Welfare (MoHFW) will issue Standard Operating Procedures (SOPs) for the above activities, in consultation with the Central Ministries/Departments concerned and other stakeholders, for ensuring social distancing and to contain the spread of COVID-19.

Phase II

Schools, colleges, educational/ training/ coaching institutions etc., will be opened after consultations with States and UTs. State Governments/UT administrations may hold consultations at the institution level with parents and other stakeholders. Based on the feedback, a decision on the re-opening of these institutions will be taken in the month of July, 2020. MOHFW will prepare SOP in this regard, in consultation with the Central Ministries/Departments concerned and other stakeholders, for ensuring social distancing and to contain the spread of COVID-19.

13. Exhibit-P4 is the order dated 29.05.2020 issued by the Department of General Education, State of Kerala, and the same is reproduced.

"ORDER

The Government have decided to initiate online/virtual teaching for School students of the State since there is no conducive circumstances to reopen schools in the State from 18th of June due to Covid19 restrictions. In connection with the same, students are to be provided with special classes through KITE Victers Education Channel and other available online platforms from 15th June, 2020. The same is to ensure, engage and equip the students in academics and the same is not intended to be an alternative to classroom academic exercises. This facility is provided for the students of classes from 1st standard to 12th standard except 11th standard. The following directions are issued for the purpose of initiating, preparing and broadcasting said classes.

1. The agencies namely SCERT, KITE, SSK, SIET shall prepare academic sessions and modules for respective classes/standards under the supervision of Director, General Education Department in a time bound manner which shall be made available to Kerala infrastructure and Technology for Education for the purpose of broadcasting. The academic supervision of the said activities shall be upon SCERT and Technical coordination will be upon KITE.
2. The broadcast with respect to each class shall be done on pre-declared schedule. Sufficient preparations and arrangements for the time bound broadcasting of classes to each category shall be done by KITE and KITE shall make arrangements to publish the broadcasting schedule through website, KITE Victers Channel and social media.
3. Arrangements shall be made to ensure that the content broadcasted by KITE Victers shall be also made available at KITE Victers Web, Mobile App, Social media pages etc. simultaneously. The headmasters/principals and class teachers shall ensure that the students are having access to academic contents broadcasted through any of the above mentioned platforms. The students will be provided academic sessions through KITE Victers channel in Television or over internet.

4. The students who are having no access to television, smart phone, internet facilities in their home shall be provided alternative arrangements. Alternative arrangements as aforesaid shall be done by class teacher after interaction with such students and in consultation with the principal/head teacher. The arrangements as aforesaid is to watch the broadcast of classes live or later from web considering the duration of classes to different standards ranging from 30 min. to 2 hrs. per day. Different types of arrangements will be necessitated based on the prevailing situation of the place and student. The said arrangements can be by way of Television/internet facilities at the residence of classmate residing nearby, library/Akshaya Centres. In faraway places, SSK coordinators, SPC, NSS volunteers, members of Little KITES may coordinate and exhibit classes using laptop and projectors (downloaded content can be exhibited in places without internet facility) or similar facility can be arranged in nearby schools. If a student is given access to the content in the above manner, arrangements can be made to use IT facilities of a school to give the whole week's academic content in 1 or 2 days.
5. The class teachers shall communicate and interact with students of their class before and after the broadcast of academic sessions through social media/phone or other manner (telephone of neighbouring house, Akshaya Centres, direct... .. etc.). The teachers shall motivate the students to watch the academic sessions and opportunity to clear doubts shall be provided, which shall be monitored by the principal/head teacher.
6. The SSK shall make arrangements to prepare and deliver worksheets for students belonging to standards 1 to 7 and its monitoring.
7. The content is broadcasted and made available in web free of cost for the purpose of using it repeatedly. The same can be viewed by the students, teachers, parents and general public live during the broadcast or later in web. Due to the above facility, arrangements shall be made for watching classes at appropriate and convenient time through YouTube link of KITE Victers(youtube.com/itsvicters) or during re-broadcast even if the student was prevented from watching the classes for want of Cable-internet facilities or power failure.

8. The arrangements are made to benefit all students by providing special classes from 18th of June. The Head teacher/Principal shall utilize the aid of PTA, respective local self-government institutions and kudumbasree units, if any students or area in which there is hindrance or difficulties in getting access to classes provided.

9. Precautions shall be taken to avoid a situation (due to lack of TV, Smartphone, Internet etc. at home) wherein a student is left out from access to the content broadcasted. The class teacher shall interact with the student in the manner stipulated in the preceding paragraphs to understand the availability of facilities to the students. The arrangements as aforesaid made shall be to watch the broadcast of classes live or later from web considering the duration of classes to different standards is ranging from 30 min. to 2 hrs. per day.

10. The above said activities shall be undertaken by strictly adhering to Covid19 safety protocols.

(As per the order of Governor)

K.V. Muralidaran
Special Secretary”

14. Exhibit-P7 is the representation dated 30.05.2020 filed by the parents of the petitioners before respondents 1 to 6 and the same is extracted hereunder:

“Sir

Sub:- Complaint of the Parents of students studying in Sree Budha Central School, Idakulangara PO, Karunagappally, Kollam, Kerala, regarding school fees.

As opening of the school is uncertain due to the pandemic decease COVID 19, Hon'ble Chief Minister has ordered the schools that they can only take the fees once it opened their academic sessions. Despite this order the above said school is insisting the parents to pay the fees of lockdown periods. They have also started new admissions and taking Rs.12000/- to

Rs.25000/- for various classes. They are taking this fees on the pretext of starting online classes from LKG students. It has incurred huge liability for the parents including NRI people who lost the jobs due to the pandemic decease COVID 19. We are ready to pay the fees as per the order of Government of Kerala once the school has started their academic sessions. The school authorities is not willing to hear parents side and they are not ready to arrange a PTA meeting. We hereby request you to kindly take necessary actions against this school to wave off the fees of lockdown periods as per the Government Order.

Thanking you,
Yours Faithfully”

15. As per the CBSE guidelines, the schools can charge only fees to the extent of the expenses for running the school and levy of fees is to be without any profit motive. CBSE has further stated that revision of fees is subject to the laws and regulations of appropriate Government. Material on record discloses that there are no regulations or orders issued by the Government of Kerala, prescribing fees for CBSE schools in Kerala.

16. Thus, it is clear that there is no uniform fee prescribed. According to the petitioners, lack of proper direction from the part of the Government of Kerala and the situation prevailing in Kerala, requires interference of this Court to issue directions to the Government. The above issue is purely a policy decision of the Government and Courts

cannot issue any direction to the Government, to prescribe a uniform fee in all the CBSE schools. In **T.M.A. Pai Foundation's case (cited supra)**, the Hon'ble Supreme Court drew a reasonable nexus between the fixation of fees by the private unaided educational institutions and the standards maintained by them. The Hon'ble Apex Curt accepted the harsh reality that the standards maintained in private unaided educational institutions was far better than Government institutions and curtailing their fee structure or manipulating it, would give rise to unwarranted consequences affecting the excellence of such institutions. The Court, *inter alia*, was of the opinion that it was, in fact, the standards maintained by such institutions that encouraged the students to enroll in private institutions, rather in the Government institutions. The above-mentioned notion was envisaged by the Hon'ble Apex Court as under:

“53.....Furthermore, in setting up a reasonable fee structure, the element of profiteering is not as yet accepted in Indian conditions. The fee structure must take into consideration the need to generate funds to be utilized for the betterment and growth of the educational institution, the betterment of education in that institution and to provide facilities necessary for the benefit of the students.

56....It has, therefore, to be left to the institution, if it chooses not to seek any aid from the Government, to determine the scale of fee that it can charge from the students. One also cannot lose sight of the fact that we

live in a competitive world today, where professional education is in demand. We have been given to understand that a large number of professional and other institutions have been started by private parties who do not seek any Governmental aid. In a sense a prospective students has various options open to him/her where, therefore, normally economic forces have a role to play. The decision on the fee to be charged must necessarily be left to the private educational institution that does not seek or is not dependent upon any funds from the Government.

57....Since the object of setting up an educational institution is by definition "charitable", it is clear that an educational institution cannot charge such a fee as is not required for the purpose of fulfilling that object. To put it differently, in the establishment of an educational institution, the object should not be to make a profit, inasmuch as education is essentially charitable in nature. There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution.

61. In the case of unaided private schools, maximum autonomy has to be with the management with regard to administration, including the right of appointment, disciplinary powers, admission of students and the fees to be charged. At the school level, it is not possible to grant admission on the basis of merit. It is no secret that the examination results at all levels of unaided private schools, notwithstanding the stringent regulations of the Governmental authorities, are far superior to the results of the Government-maintained schools. There is no

compulsion on students to attend private schools. The rush for admission is occasioned by the standards maintained in such schools, and recognition of the fact that state-run schools do not provide the same standards of education. The State says that it has no funds to establish institutions at the same level of excellence as private schools. But by curtailing the income of such private schools, it disables those schools from affording the best facilities because of a lack of funds. If this lowering of standards from excellence to a level of mediocrity is to be avoided, the state has to provide the difference which, therefore, brings us back in a vicious circle to the original problem, viz., the lack of state funds. The solution would appear to lie in the States not using their scanty resources to prop up institutions that are able to otherwise maintain themselves out of the fees charged, but in improving the facilities and infrastructure of state-run schools and in subsidizing the fees payable by the students there. It is in the interest of the general public that more good quality schools are established; autonomy and non-regulation of the school administration in the right of appointment, admission of the students and the fee to be charged will ensure that more such institutions are established. The fear that if a private school is allowed to charge fees commensurate with the fees affordable, the degrees would be "purchasable" is an unfounded one since the standards of education can be and are controllable through the regulations relating to recognition, affiliation and common final examinations.

69.....A rational fee structure should be adopted by the Management, which would not be entitled to charge a

capitation fee. Appropriate machinery can be devised by the state or university to ensure that no capitation fee is charged and that there is no profiteering, though a reasonable surplus for the furtherance of education is permissible. Conditions granting recognition or affiliation can broadly cover academic and educational matters including the welfare of students and teachers.”

17. Petitioners have placed reliance on Exhibits-P8, P9 and P10 news reports dated 18.04.2020, 10.05.2020 and 23.04.2020, to contend that in other states in India viz., Andhra Pradesh, Telangana, Tamil Nadu and Delhi, Governments have issued guidelines that fees are to be collected on monthly basis and not to deny course material or online classes to any students for the want of payment of fees. As stated supra, as per CBSE guidelines, revision of fee is subject to the laws or regulations framed by the appropriate Government. Though according to the learned counsel for the petitioner, things are not different in other States, decisions of the States stated supra, cannot be said to have a uniform application throughout the country, as each State is empowered to take a decision. For the above said reason, we are unable to accept the submissions of the learned counsel for the petitioner on the reliance placed.

18. Rule 29 of the Kerala Education Rules, 1959 pressed into service by the learned counsel for the petitioner, reads thus:

"29. Fees in recognised schools – The Management of a recognised school shall realize necessary fee from pupils for running the school."

Said rule, in letter and spirit, is not applicable to the case on hand, as regards prescription and collection of fees.

19. While considering the allegation that the school has made scathing remarks on the petitioners and the explanation of the school as to why police investigation was sought for, it is a matter of fact, which we are not inclined to delve into. The main issue is that during the lockdown from March to May, 2020, schools were closed and online classes commenced only from June 2020. Students have been asked to pay tuition fees for the above said period also.

20. It is the case of the petitioners that a separate annual fee is demanded. According to the learned counsel for the respondents 6 and 7, the fees charged for the previous year and the current year is same and there is no change. At this juncture, at the risk of repetition, the fees charged by the respondents from the students as tabulated in the counter affidavit is reproduced:

FEE SCHEDULE (2020-2021)

Particulars	Std I to IV	Std V to VII	Std VIII to IX	Std X	Std XI	Std XII
Admission Fees	750	750	750	750	750	750
Special Fees	3000	3200	3300	3450	3650	3650
Amenities	1650	1650	1650	1650	1950	1950

PTA	100	100	100	100	100	100
SWF	100	100	100	100	100	100
Tuition Fees (Term Fees)	5000	5260	5700	6000	7150	7150
Computer Fees (Term)	230	230	230		300	300
Smart Class Fees (Term)	300	300	300300	300	300	300
Caution Deposit					250	
Total	11130	11590	12130	12350	14825	14575

21. Though Mr. Manu Ramachandran, learned counsel for the petitioner reiterated that the annual fees has not been specifically mentioned, we are unable to accept the said contention, for the reason that annual fees includes fees collected under various heads. Concedingly when confronted with a question as to whether annual fees which according to him is different, learned counsel for the petitioner candidly admitted that there is no change.

22. The main contention of the petitioners is that no fee should be collected during the lock down period. As rightly contended by the learned counsel for the respondents 6 and 7, whether there is lock down or not, monthly salaries for the teaching and non-teaching staff have to be paid. Though not contended, judicial notice can be taken that maintenance expenditure is a factor to be considered. Considering the fact that there is no change in the fees for the last year and the current year, and for other reasons stated supra, the demand of the petitioners that no fees can be collected during the lock down period cannot

be accepted. There is no irregularity or illegality in the action of respondents 6 and 7.

23. Considering the totality of the case, we are of the view that the petitioners have not made out a case for issuance of a writ. Writ petition fails and accordingly, dismissed. However, we make it clear that dismissal of the writ petition will not be a bar to consider the request of the petitioners for making monthly payment, if any, in accordance with law. Respondents 6 and 7 are directed to consider the same.

Pending interlocutory applications, if any, shall stand closed.

Sd/-
S.Manikumar,
Chief Justice

Sd/-
Shaji P.Chaly
Judge

krj

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1 COPY OF THE STUDENT ID CARD OF THE 1ST PETITIONER OF 2019-2020 ACADEMIC YEAR.

EXHIBIT P2 COPY OF THE STUDENT ID CARD OF THE 2ND PETITIONER OF 2019-20 ACADEMIC YEAR.

EXHIBIT P3 COPY OF THE NOTIFICATION DATED 30.05.2020 ISSUED BY THE MINISTRY OF HOME AFFAIRS, UNION OF INDIA.

EXHIBIT P4 COPY OF THE ORDER DATED 29.05.2020 ISSUED BY THE DEPARTMENT OF GENERAL EDUCATION, STATION OF KERALA.

EXHIBIT P5 COPY OF THE CIRCULAR NO.ACAD-31/2020 DATED 05.05.2020 ISSUED BY THE CBSE.

EXHIBIT P6 COPY OF THE SCREEN SHOTS OF THE GROUP MESSAGES SEND BY THE 7TH AND 8TH RESPONDENT REQUIRING THE PETITIONERS AND OTHERS TO PAY FEES.

EXHIBIT P7 COPY OF THE REPRESENTATION DATED 30.05.2020 FILED BY THE PARENTS OF THE PETITIONERS BEFORE THE RESPONDENTS 1 TO 6 THROUGH EMAIL.

EXHIBIT P8 COPY OF THE ORDER DATED 18.04.2020 ISSUED BY THE GOVERNMENT OF NCT OF DELHI IN CHARGING FEES BY SCHOOL.

EXHIBIT P9 COPY OF THE NEW REPORT DATED 10.05.2020 IN THE HINDU E-NEWSPAPER ABOUT THE DIRECTOR OF GOVERNMENT OF MAHARASHTRA IN CHARGING FEES BY SCHOOLS.

EXHIBIT P10 COPY OF THE NEWS REPORT DATED 23.04.2020 IN THE NEWS MINUTE E-NEWSPAPER REGARDING THE DIRECTION OF STATE OF ANDHRA PRADESH IN CHARGING FEES BY SCHOOLS.

EXHIBIT P11 COPY OF THE FEE RECEIPT ISSUED BY THE 7TH RESPONDENT SCHOOL.

EXHIBIT P12: COPY OF THE COMPLAINT PREFERRED BY THE PARENTS, INCLUDING THE PETITIONERS' PARENTS.

EXHIBIT P13:- COPY OF THE EMAIL COMPLAINTS FILED BY OTHER PARENTS OF THE STUDENTS AT 7TH RESPONDENT SCHOOL.

EXHIBIT P14:- COPY OF THE FEE CARD OF A STUDENT OF 7TH RESPONDENT SCHOOL DURING 2019-2020 ACADEMIC YEAR.

RESPONDENT'S/S EXHIBITS: 'NIL'