

W.P.Nos.8490 to 8492 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2020

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Writ Petition Nos.8490 to 8492 of 2020

and

WMP.Nos.10246 to 10254 of 2020

Federation of Association of Private Schools
in Tamil Nadu (FAPSIT)
rep by its State Secretary Mr.D.C.Elangovan
No.6A, P.T.Rajan Salai,
20th Avenue, K.K.Nagar,
Chennai – 78. Petitioner in WP.No.8490 of 2020

All India Private Educational Institutions Association
Represented by its State General Secretary K.Palaniyappan,
No.5, M.P.Avenue,
Majestic Colony, Saligramam,
Chennai – 600 093. Petitioner in WP.No.8491 of 2020

Consortium of Self Financing Professional
Arts and Science Colleges in Tamilnadu,
Rep by its Secretary Mr.P.Selvaraj,
AF-57, 11th Main Road, Anna Nagar,
Chennai – 40. Petitioner in WP.No.8492 of 2020

Vs.

W.P.Nos.8490 to 8492 of 2020

1. The Chief Secretary to Government
Office of Revenue and Disaster Management Dept.
Disaster Management Wing,
DM II Section, Fort st. George,
Chennai – 600 009.

2. The Secretary,
Collegiate Education Department,
Fort st. George, Chennai -9.

3. The Secretary, School Education Department,
Fort St. George, Chennai -9.

4. The Director,
Directorate of School Education
DPI Campus, Chennai.

5. The Director,
Directorate of Matriculation Education,
DPI Campus, Chennai.

6. The Director,
Directorate of Elementary Education,
DPI Campus, Chennai.

... Respondents in WP.Nos.8490 & 8491 of 2020

1. The Chief Secretary to Government,
The office of Revenue and Disaster Management Department,
Disaster Management Wing,
DM II Section, Fort St. George,
Chennai – 600 009.

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2. All India Council for Technical Education

Rep by its Member Secretary,
Nelson Mandela Marg,
Vasant Kunj, New Delhi – 67.

3. The Director,

Centre for Affiliation of Institutions,
Anna University, Chennai – 25.

4. The Secretary,

Technical Education Department,
Fort St.George, Chennai – 9.

... Respondents in WP.No.8492 of 2020

WP.No.8490 of 2020:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned Government Order passed by the first respondent in G.O.(Ms)No.199 dated 20.04.2020 and quash the same as ultra vires, illegal and consequently, direct the respondents to permit the petitioner Association affiliated institutions to collect the fees fixed by fee fixation committee taking into consideration the expenses incurred by the Education Institution towards payment of salary to teaching and non-teaching staffs along with other charges, bills, fees payable by the institutions.

WP.No.8491 of 2020:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned Government Order

W.P.Nos.8490 to 8492 of 2020

passed by the first respondent in G.O.(Ms)No.199 dated 20.04.2020 and quash the same as ultra vires, illegal and consequently, directing the respondents to permit the petitioner Association affiliated schools and colleges to collect the fees fixed by fee fixation committee taking into consideration the expenses incurred by the Education Institution towards payment of salary to teaching and non-teaching staffs along with other charges, bills, fees payable by the institutions by considering petitioner's representations dated 28.05.2020.

WP.No.8492 of 2020:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned G.O.(Ms)No.199 Revenue and Disaster Management Department dated 20.04.2020 issued by the 1st respondent and the impugned communications Vide No.F.7-2/DD/Admn/Inter Corr. (Vol-II)Pt. Dated 15.04.2020 and Vide F.No.AICTE/MS Office/Circular/2020, Dated 18.05.2020 of the 2nd respondent and quash the same as Ultra virus, illegal and consequently directing the respondents to permit the petitioner Association affiliated Institutions to collect the fees fixed by fee fixation committee taking into consideration the factors such as Payment to be Remitted towards yearly renewal of Approval fee and Affiliation fee, maintenance of college buildings, payment of salary for teaching/non-teaching staffs and also the other expenses incurred by institutions such as payment of property tax, electricity bill, water charges etc.

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For Petitioners : Mr.K.M.Vijayan, Sr.Counsel
for Mr.E.Vijay Anand

For Respondents : Mr. Vijay Narayan, AG assisted by
WP.Nos.8490 & Mr. V.Jayaprakash Narayanan, GP and
8491 of 2020 Mr. R.Vijayakumar, AGP - R1
Mr. E.Manoharan, SGP -R2
Mr. C.Munusamy, SGP (Edn) – R3 to R6
Mrs.Hema Muralikrishnan -CBSE

For Respondents : Mr. Vijay Narayan, AG assisted by
WP.No.8492 of 2020 Mr. V.Jayaprakash Narayanan, GP and
Mr. R.Vijayakumar, AGP - R1
M/s.A.L.Gandhimathi - R2
Mr. E.Manoharan, SGP -R3 & R4

ORDER

Today, when the matters were taken up, Mr.K.M.Vijayan, learned Senior Counsel appearing for the petitioners, in continuance of the arguments advanced on the previous hearing i.e., on 23.06.2020, submitted that even under the Disaster Management Act, conducting classes through electronic media, is declared as one of the choices to impart education; several schemes were framed by both the Central and State Governments for the COVID-19 crisis, but there was no scheme for

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the welfare and protection of the Educational Institutions, even though 'Education' is one of the fundamental pillars in the process of development of the Nation; and hence, any order restricting the private school/college managements from collecting fees would cause embarrassment to them in the backdrop of the situation. The learned Senior Counsel further submitted that education is being imparted online and students are availing benefit thereof, the institutions are entitled to charge tuition fees, to meet out their infrastructural expenses. Stating so, the learned Senior Counsel pleaded that the interests of the petitioners should be protected.

2. Placing reliance on the decisions rendered by the various High

Courts, which were filed in the form of additional typed set of papers, Mr.E.Vijay Anand, learned counsel for the petitioners submitted that the orders/circulars issued by the various Governments to the effect that there should not be any fees to be collected by the private schools/colleges, have been stalled, consequent on the global devastation

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wrought by the pandemic COVID-19.

3. Mr. Vijay Narayan, learned Advocate General appearing for the respondent Government submitted that taking into account the plight of the parents, who have lost their livelihood due to the pandemic COVID -19, the Government passed the impugned order invoking the provisions of the Disaster Management Act, only restrains the private schools/collects from forcibly collecting fees from the parents and it does not prevent the parents from paying fees voluntarily.

4. On the other hand, Mrs. Hema Muralikrishnan, learned Counsel appearing for the private schools contended that by way of the Circular/Order, the Government have stalled the collection of fees not only for the current academic year 2019-20, but also for the academic year 2020-21. She further contended that the Government wants the Institution to pay the salaries of the teachers without collecting fees from the students.

5. In response to the above, Mr. Vijay Narayan, learned Advocate General submitted that in all the private schools, there are 25% reservation with respect to the admission of children belonging to the weaker sections of Society under the Right to Education Act; and in terms of G.O.Ms.No.38, School Education Department, dated 26.03.2020, the Government already sanctioned a sum of Rs.248.76 crores to the private schools towards reimbursement for 25% seats allotted under the RTE Act; and the same can be utilised by the Institutions in paying the salaries to the teachers for the next few months. He also submitted that divergent opinions have been rendered by some of the High Courts and in a case, where the Government have passed an order to collect 70% of the tuition fees in two instalments at the beginning of the academic year before the schools commence or at the time of admission. He ultimately suggested, if the petitioners submit their representations in detail to ventilate their grievances to the Government, the same shall be considered by the Government in a

prudent manner.

6.Denying the averments made in the affidavit filed in support of the writ petition in WP.No.8492/2020, Mrs.A.L.Gandhimathi, learned counsel for the second respondent / AICTU filed a counter affidavit, *inter alia* stating that the impugned communication dated 18.05.2020 is a strict guidelines to the Institutions/deemed to be Universities, which are insisting the students to pay the fees including admission fees during the lock down period, whereas, it is only a request/appeal not to force the students to remit the fees till the situation becomes normal, after opening of the lock down; and further, it is not a waiver of fees, which warrants a mandamus by this Court, as alleged by the petitioner. She further submitted that the approval process with regard to the Academic Year 2020-21 is already over and the affiliation will be processed only by Anna University.

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7.Having regard to the submissions made by the learned counsel

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appearing for all the parties and taking note of the decisions rendered by the various High Courts for and against the issue involved herein and also considering the difficulties faced by the private schools/colleges, more particularly, payment of salary to the teachers, this Court, as an interim measure, is inclined to pass the following order:

“The petitioners herein are directed to formulate an equation / Scheme with respect to collection of fees, not based on the fee structure framed by the Committee, but in instalments for a while, without prejudice to the rights of the parents and children, by way of detailed representations and submit the same to the Government, with an advance copy marked to the learned Advocate General, through e-mail on or before 02.07.2020 at 6.00pm. On such representations being submitted, the respondent Government shall consider the same, take a decision and file a report before this Court, on or before 06.07.2020.”

8. List these cases on 08.07.2020, for passing appropriate orders.

30.06.2020

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To

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Disaster Management Wing,
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2. The Secretary,
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4. The Director, Directorate of School Education
DPI Campus, Chennai.
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DPI Campus, Chennai. *सत्यमेव जयते*
6. The Director, Directorate of Elementary Education,
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7. All India Council for Technical Education
Rep by its Member Secretary,
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8. The Director,
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Anna University, Chennai – 25.
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