

(2013) 09 MAD CK 0197

In the Madras High Court

Case No : W.P. No. 21241 of 2013 and M.P. No. 1 of 2013

Everest Kenbridge School

APPELLANT

Vs

The Private Schools Fee Determination Committee and The
Regional Officer, Central Board of Secondary Education

RESPONDENT

Date of Decision : 23-09-2013

Acts Referred:

Citation : (2014) 2 CTC 686

Hon'ble Judges : R. Subbiah, J;R. Banumathi, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

R. Banumathi, J.—The Writ Petitioner, who is an Unaided Private School has filed the Writ Petition challenging the final order/fee structure prescribed by the School Fee Determination Committee dated 18.3.2013 on the ground of arbitrariness and that it is not in conformity with Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009 (Tamil Nadu Act 22 of 2009) and the directions issued by the Division Bench of this Court in W.P. No. 8489 of 2011, etc. batch dated 3.5.2012. Writ Petitioner-School is self-financing/private unaided CBSE School. To regulate the collection of fee by the Private Schools in the State of Tamil Nadu, Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009 was enacted. The vires of Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009 and Rules were upheld by this Court (except Section 11 of the Act and Rules 4(4) & 4(5) of the Rules) [Vide Tamil Nadu Nursery Matriculation and Higher Secondary Schools Association (Regd.) Vs. The State of Tamil Nadu and Others,].

2. Earlier, various orders passed by the Committee was challenged before this Court on the ground of arbitrariness. By the common Order dated 3.5.2012 in W.P. No. 8489 of 2011, etc. batch, all the Writ Petitions were remitted back to the Committee with a direction to afford sufficient opportunity to the Schools and pass fresh orders. In the said Order, this Court inter alia issued Guidelines for

fixation of School Fee in respect of (i) salary to teaching and non-teaching staff; (ii) employees provident fund; (iii) contribution to Employees State Insurance Corporation; (iv) gratuity and such other head shall be considered based on the bills produced. In the said Judgment, various Guidelines were issued in Para. Nos. 88 to 111 & 152.

3. Writ Petitioner-School is affiliated to Central Board of Secondary Education. By the Order in W.P. No. 17532 of 2011 dated 21.9.2012, we have held that the provisions of the Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009 are applicable to the CBSE Schools. Some of the CBSE Schools have challenged the Order of this Division Bench dated 21.9.2012 before the Hon"ble Supreme Court and the same is pending. Writ Petitioner-School has filed additional Affidavit stating that the Writ Petitioner-School is not challenging the applicability of the provisions of the Act.

4. Mr. B. Rabu Manohar, learned Counsel for the Writ Petitioner-School submitted that Committee has not determined the Fee Structure as contemplated u/s 6(2) of the Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009. According to the Writ Petitioner-School, the Committee has passed the Final Order without passing a Preliminary Order u/s 6(1) of the Act and without giving opportunity to the Writ Petitioner-School to raise their objections as contemplated u/s 6(3) of the Act and therefore, prayed that the impugned Order dated 18.3.2013 may be treated as a Provisional Order passed u/s 6(1) of the Act and an opportunity may be given to the Writ Petitioner-School to file their objections along with necessary materials.

5. Learned Counsel for the Writ Petitioner-School has submitted that the Writ Petitioner-School has not challenged the applicability of Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009 to the Writ Petitioner-School and to that effect, the Writ Petitioner-School had also filed an additional Affidavit and prayed for remitting the matter to the Committee.

6. Learned Counsel for the Writ Petitioner-School has drawn our attention to the typed set of papers and submitted that the Committee had taken into account the annual expenditure for paying salary to the teaching staff only to the tune of Rs. 12,44,709/-; whereas the actual expenditure for paying salary and allowances towards teaching and non-teaching staff works out to Rs. 43,71,290/- and thus, there is a deficit of Rs. 21,26,581/- and with the huge deficit, it has become difficult for the Writ Petitioner-School to run the School. It was also submitted that the actual expenditure incurred towards (i) Internet Charges (ii) Electricity Bill as reflected in the Auditor's Report and other expenses were not taken into account. The main contention of the Writ Petitioner-School is that various Guidelines issued by this Court in W.P. No. 8489 of 2011 dated 3.5.2012 were not taken into account.

7. Refuting the contentions of the learned Counsel for Writ Petitioner-School, Mr. P. Sanjay Gandhi, learned Additional Government Pleader (Education) submitted

that all the Guidelines issued by this Court in W.P. No. 8489 of 2011, etc. batch dated 3.5.2012 were taken into account by the Committee. It was submitted that the impugned Order was passed by the Committee u/s 6(1) of the Act and as per the statutory mandate u/s 6(3), the Writ Petitioner-School ought to have filed its objection before the Committee within a period of 15 days and without doing so, the Writ Petitioner-School has hurriedly filed the Writ Petition and therefore, the prayer sought for by the Writ Petitioner-School cannot be granted.

8. By perusal of the typed set of papers and materials, it is seen that the impugned Order was passed u/s 6(1) of the Act, which is a Provisional Order. Section 6(1) of the Act contemplates that the Committee shall determine the fee leviable by a Private School taking into account the factors indicated in Section 6(1) of the Act. In terms of Section 6(2), the Committee shall, on determining the fee leviable by a private School, communicate its decision to the School concerned. In terms of Section 6(3), any Private School aggrieved over the decision of the Committee shall file their objection before the Committee within 15 days from the date of receipt of the decision of the Committee. Thereafter, the Committee shall pass the orders fixing the fee to be collected by the Schools.

9. As pointed out earlier, by perusal of the impugned Order, it is seen that Order has been passed u/s 6(1) of the Act. However, instead of giving opportunity to the Writ Petitioner-School to file their objections, the Committee is said to have passed the Final Order determining the fee structure. Learned Counsel for Writ Petitioner-School drew our attention to various expenditure incurred by the Writ Petitioner-School on salary and allowances to teaching and non-teaching staff; internet charges; electricity bills, etc. which are according to the Writ Petitioner-School were not taken into account by the Committee, resulting in huge deficit in running the administration. Having regard to the submissions, we are of the view that the Writ Petitioner-School is entitled to have an opportunity to file their objections in terms of Section 6(3) of the Act.

10. Considering the submissions made by the learned Counsel for Writ Petitioner-School and the learned Additional Government Pleader, we are of the view that the impugned Order shall be treated as the Order passed u/s 6(1) of the Act and the Writ Petitioner-School shall file their objections before the Committee within a period of fifteen (15) days from the date of receipt of copy of this Order. On filing such objections before the Committee, the Committee shall afford sufficient opportunity to the Writ Petitioner-School to submit any further details with supporting documents and pass Orders in accordance with law. With the above observations and directions, the Writ Petition is disposed of. It is made clear that till the Committee passes the Final Order, the Writ Petitioner-School shall collect only the fee fixed by the Committee in the impugned Order. Consequently, connected Miscellaneous Petition is closed. No costs.