
(2020) 06 UK CK 0008

In the Uttarakhand High Court

Case No : Writ Petition (PIL) No. 59, 60 Of 2020, Writ Petition (M/S) No. 774, 789, 800 Of 2020

Japinder Singh And Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 10-06-2020

Acts Referred:

Citation : (2020) 06 UK CK 0008

Hon'ble Judges : Ramesh Ranganathan, CJ; R.C. Khulbe, J

Bench : Division Bench

Advocate : Ajay Veer Pundir, Abhilasha Belwal, Paresh Tripathi, Yogesh Pandey, Anil K. Bisht, Suyash Pant, S.S. Chaudhary, Rakesh Thapliyal, Sanjay Bhatt, V.K. Kapruwan, Virendra Singh Rawat, Shashank Upadhyay, Sandeep Tiwari, M.C. Pant, Shashank Pandey, T.S. Bindra, Vikas Bahuguna, S.K. Mandal

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Ajay Veer Pundir and Ms. Abhilasha Belwal, learned counsel for the petitioners, Mr. Paresh Tripathi, learned Chief Standing Counsel for the State of Uttarakhand, Mr. Virendra Singh Rawat, learned Standing Counsel for the Uttarakhand School Education Board-fifth respondent, Mr. Shashank Upadhyay, learned Standing Counsel for the C.B.S.E-sixth respondent, Mr. Sandeep Tiwari, Mr. M.C. Pant, Mr. Shashank Pandey, Mr. T.S. Bindra and Mr. S.K. Mandal, learned counsel appearing on behalf of the schools.

2. The State Government had, hitherto, issued an order on 02.05.2020, in furtherance of its earlier order dated 22.04.2020, whereby private unaided schools in the State were permitted to conduct online classes. The said Government Order dated 02.05.2020 prohibited these private schools from collecting any fees other than tuition fees; only such of those private unaided schools, which were conducting online classes for their students, were permitted

to collect tuition fees; and those private unaided schools, which were not conducting online classes, were prohibited from doing so. Further, payment of tuition fees was made voluntarily. These schools were, however, required to pay the entire salary and emoluments, of their teachers and other staff, from their own funds. We had, by our order dated 12.05.2020, issued several directions including that these schools should not send e-mails or WhatsApp messages, or any other form of communication, calling upon the parents to pay tuition fees, since we were of the view that such methods were adopted by these institutions to coerce parents to pay the tuition fees. We had also opined that, while the difficulties faced by these institutions, in having to incur expenditure without collecting fees from their students, was understandable, times of crisis, like these, would require the haves to extend a helping hand to the have-nots.

3. The complaint of the school managements, in this batch of Writ Petitions, is that, while the State Government has, on the one hand, directed that they continue to pay salary and other emoluments to their teachers and staff, it has, on the other, disabled these schools from collecting even tuition fees from those students who have been extended the facility of attending classes online. It is their case that, since the very survival of these institutions is at stake and as lockdown has been substantially lifted from 2nd June, 2020, this Court should set-aside or modify the Government Orders dated 22.04.2020 and 02.05.2020, and permit them to recover all fees which they are entitled to collect from students who have been prosecuting their studies, albeit online, in their schools.

4. The obligation placed on these institutions, by the Government Order to pay salary to its teachers and staff, requires them to incur huge expenditure from their own sources, since the tuition fees which they have been able to recover from parents, whose children are studying in their schools, is abysmally low. It is urged on behalf of the schools that, besides payment of salary to its teachers and staff, they are also required to incur huge expenditure towards rent and maintenance of the school buildings, the vehicles which they have engaged, the equipment in their schools etc; and, since these schools do not receive any aid from the State Government, the State cannot impose any such obligation on them. They also question the very jurisdiction of the authorities to pass Government Orders placing such onerous conditions on the manner in which their schools should be administered, and the fees which they are permitted to collect from their students.

5. We find considerable force in the submission, urged on behalf of the Schools, that their very existence is in peril for they are required, by the Government Orders issued from time to time, to pay salary to their teachers and staff in its entirety on the one hand, while being disabled from collecting tuition fees from the students on the other. In abnormal times such as the present, where the COVID-19 pandemic has adversely affected the economy in general, and the source of livelihood of a very large number of persons in the State in particular, some concession/sacrifice on everyone's part, in a spirit of give and take, is in

order. It is true that, in case the schools are in no position to continue running their institutions, the students, who have secured admission thereat, would be deprived of much needed quality education.

6. A relevant factor, which should be borne in mind, is that the lockdown has been partially lifted from the 02nd of June, 2020 and several restrictions, which had been imposed earlier, have now been relaxed by the Government itself. Since a balanced approach is required to be adopted, factoring in the interest of parents, of students studying in such schools, who may have lost their source of livelihood, and the financial problems which these institutions face on their being prevented from collecting tuition fees, we are of the view that the State Government should revisit the whole issue, which led to the Government Orders dated 22.04.2020 and 02.05.2020 being notified, and take a considered decision at the earliest.

7. Suffice it, in such circumstances, to dispose of these Writ Petitions permitting the school managements to submit representations to the Secretary, School Education, Government of Uttarakhand on or before 15.06.2020. The Secretary, School Education shall re-examine the whole issue in the light of the representations submitted by the school managements, and take a considered decision, on or before 22.06.2020, as to whether the earlier Government Orders dated 22.04.2020 and 02.05.2020 should be continued, modified or cancelled. The decision so taken by the State Government shall be communicated to all the Schools which have submitted their representations to the Secretary, School Education, as also to the public at large.

8. Till the Secretary, School Education takes a decision, as directed hereinabove, the earlier order passed by us on 12.05.2020 shall continue to remain in force.

9. We make it clear that we have not expressed any opinion on merits, for these are all matters for the Secretary, School Education to examine in the first instance. Suffice it to make it clear that all questions of law, raised in these Writ Petitions, are left open to be examined, if need be, later.

10. All the Writ Petitions are, accordingly, disposed of. No costs.

11. Let a certified copy of this order be issued to the learned counsel for the parties, on payment of the prescribed charges, by 11.06.2020.