

(2013) 07 MAD CK 0301

In the Madras High Court

Case No : W.P. Nos. 1458 to 1463, 1821, 2422, 2826, 3283 to 3285, 3662, 4586, 4587, 4622, 4927, 4930, 5694, 5900, 5901, 5906, 7732, 9141, 9589, 9887, 10002 and 14731 of 2013

Kshatriya Vidhyasala Matriculation Higher Secondary School
and Others etc. etc.

APPELLANT

Vs

The Government of Tamil Nadu, and The Private Schools Fee
Determination Committee, and Others etc. etc.

RESPONDENT

Date of Decision : 19-07-2013

Acts Referred:

Citation : (2013) 6 MLJ 503

Hon'ble Judges : T.S. Sivagnanam, J; R. Banumathi, J

Bench : Division Bench

Judgement

R. Banumathi, J.—The writ petitioners, who are unaided private schools have filed these writ petitions challenging the final orders/fee structure prescribed by the School Fee Determination Committee 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 dated 03.5.2012. All the writ petitioner schools are self-financing schools/private unaided schools. 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 (vide Tamil Nadu Nursery Matriculation and Higher Secondary Schools Association (Regd.) Vs. The State of Tamil Nadu and Others,) (except Section 11 of the Act and Rules 4(4) and 4(5) of the Rules).

2. Earlier, various orders passed by the Committee headed by Justice K. Raviraja Pandian were challenged before this Court on the ground of arbitrariness. By the common order dated 03.5.2012 (W.P. No. 8489 of 2011 etc. Batch), all the writ petitions were remitted back to the Committee with a direction to the Committee to afford sufficient opportunity to the schools and pass fresh orders. In the said

judgment, this Court interalia 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.

3. The above writ petitions - W.P. No. 8489 of 2011 etc. Batch were disposed of with the following directions:--

152. For the foregoing reasons, the impugned orders in all the writ petitions are set aside and the matters are remitted back to the School Fee Determination Committee for consideration of the matters afresh. Fee structure approval form shall be given to Writ Petitioner Schools calling upon them to produce the details and documents required to be furnished. All the Writ Petitioner Schools shall propose the fee structure afresh with fresh or additional materials/Audit statements showing the expenditure and income. The Committee shall give personal hearing to each of the Writ Petitioner Schools and also afford reasonable opportunity to all the Writ Petitioner Schools and pass final orders as expeditiously as possible, preferably by the end of December 2012.

153. In respect of unaided Non-Minority Educational Institutions, the School Fee Determination Committee shall keep in view the guidelines in Para Nos. 88 to 117 and 152 of this order. For the reasons stated in Para Nos. 109 and 110, all the unaided Non-Minority Educational Institutions shall be entitled to surplus for development i.e., Village and Town Panchayats at 10%; Municipalities and District Headquarters at 12% and Corporations at 15%.

154. For the reasons stated in Para No. 111, for Infrastructure Grading, there shall be an increase in fee - 7% to 10% depending on the availability of the infrastructure in the Schools.

4. We have heard Mr. S. Silambannan, Senior Counsel, Mr. L. Muralikrishnan, Mr. T. Gandhi, R. Shankaranarayanan, Ms. R. Meenal, Mr. T.P. Prabakaran, Mr. R. Thiagarajan, Mr. N.V.N. Margandeyan, Mr. B. Rabu Manohar, M. Narayanasamy and Mr. P. Godson Swaminath, learned counsel appearing for the writ petitioner schools.

5. Grievance of the writ petitioner schools is that after remand from this Court, writ petitioner schools filed their objections before the Committee and based on the objections, the impugned orders came to be passed. Grievance of the writ petitioner schools is that while so passing orders, the Committee has not kept in view the directions issued in paragraphs (85) and (152) to (154) of the common order dated 03.05.2012 [2012 WLR 489]. Further grievance of the writ petitioner schools is that even though the matters were remanded by this Court, provisional order ought to have been passed u/s 6(1) of the Act and opportunity ought to have been given to the writ petitioner schools to file objections as contemplated u/s 6(3) of the Act within the period of limitation. According to writ petitioner schools without affording such opportunity to the writ petitioner schools, the Committee has straight away passed the impugned orders.

6. Writ petitioner schools inter alia have also raised various contentions alleging as to how the guidelines issued by this Court have not been complied with and the Committee has failed to take into account the actual expenditure incurred by the schools. According to writ petitioner schools, since the Committee failed to take into account the actual expenditure incurred, heavy loss is caused to the writ petitioner schools, which has resulted in serious prejudice to the writ petitioner schools in running the school.

7. By perusal of the typed set of papers and materials, it is seen that after the matters were remitted back to the Committee, after inviting objections from the schools, the Committee appears to have straight away passed the impugned orders. 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 and pass provisional orders. 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 Committee shall pass the order fixing the fee to be collected by the Schools.

8. Section 6 reads as under:--

Factors for determination of fee.:--

(1) The Committee shall determine the fee leviable by a private school taking into account the following factors, namely:--

(a) the location of the private school;

(b) the available infrastructure;

(c) the expenditure on administration and maintenance;

(d) the reasonable surplus required for the growth and development of the private school;

(e) any other factors as may be prescribed.

(2) The Committee shall, on determining the fee leviable by a private school, communicate its decision to the school concerned.

(3) Any private school aggrieved over the decision of the Committee shall file their objection before the Committee within fifteen days from the date of receipt of the decision of the Committee.

(4) The Committee shall consider the objection of the private school and pass orders within thirty days from the date of receipt of such objection.

(5) The orders passed by the Committee shall be final and binding on the private school for three academic years. At the end of the said period, the private school

would be at liberty to apply for revision.

(6) The Committee shall indicate the different heads under which the fee shall be levied.

9. By perusal of the impugned orders and typed set of papers and also the other relevant materials, it appears that instead of initially passing provisional order u/s 6(1) of the Act and communicating the same to the writ petitioner schools and thereafter, opportunity to the writ petitioner schools in terms of Section 6(3) of the Act, the Committee appears to have straight away passed the impugned orders. Since no separate provisional order was passed as contemplated u/s 6(1) and since the same was not communicated, virtually the order was passed u/s 6(3), the petitioner schools are entitled to have an opportunity to file their objections in terms of Section 6(2) of the Act.

10. It is stated that the details furnished by the writ petitioner schools to the Committee pertains only to the academic year 2012-13 and the Committee has fixed the fee structure for 2013-14 and 2014-15 also by giving marginal increase to the fee fixed for the academic year 2012-13. It is therefore submitted that had the opportunity been given to the writ petitioner Schools, the petitioner schools would have been able to produce the records to show that they are entitled to higher fee in the next two academic years and therefore, the writ petitioner schools prayed that they may be given an opportunity to go before the Committee and place all the relevant materials treating this impugned orders as an order passed u/s 6(1) of the Act.

11. Mr. Sanjay Gandhi, learned Additional Government Pleader (Education) submitted that if at all the writ petitioner schools are having grievance by the order passed by the Committee, they ought to have filed their objections before the Committee within a period of 15 days and without doing so, all the writ petitioner schools have straight away approached this Court and therefore, the writ petitioner schools are not entitled to any relief. Learned Additional Government Pleader submitted that in the case of writ petitioner schools, before passing the impugned orders, the Committee has taken into account all the materials furnished by them and passed the impugned orders.

12. Considering the submissions made by the learned counsel for writ petitioner schools and the submissions made by the learned Additional Government Pleader and also the materials on record, it is held that the impugned orders passed by the Committee are directed to be treated as the provisional orders passed u/s 6(1) of the Act. All the writ petitioner schools are at liberty to file their objections before the Committee within a period of 15 days from the date of receipt of copy of this order. On filing such objections before the Committee, the Committee is directed to afford sufficient opportunity to the writ petitioner schools to submit any further details with supporting documents and afford sufficient opportunity to the petitioner schools and pass orders in accordance with law. All the writ petitions are disposed of with the above observations and directions. It is made

clear that till the Committee passes the final order, the writ petitioner schools are to collect only the fee fixed by the Committee in the impugned order. Consequently, connected miscellaneous petitions are closed. No costs.