

(2010) 10 MAD CK 0175

In the Madras High Court

Case No : W.A. No's. 2035, 2039 and 2040 of 2010

P.B. Prince Gajendra Babu General Secretary, State Platform
for Common School System

APPELLANT

Vs

Federation of Association of Private Schools in Tamilnadu, The
State of Tamilnadu and The Private Schools fee
Determination Committee
The Special Officer Private
Schools Fees Determination Committee and Others Vs Dr.
G.S. Kalyanasundaram Matric. Hr. Sec. School
The
State of Tamil Nadu and The Private Schools Fee
Determination Committee Vs Federation of Association of
Matriculation Higher Secondary Schools in Tamil Nadu

RESPONDENT

Date of Decision : 05-10-2010

Acts Referred:

Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009 — Section 11, 16, 2, 3,
3(2)

Tamil Nadu Schools (Regulation of Collection of Fee) Rules, 2009 — Rule 3, 4(4), 4(5)

Citation : (2011) WritLR 322

Hon'ble Judges : M.Y. Eqbal, C.J.;T.S. Sivagnanam, J

Bench : Division Bench

Advocate : M. Radhakrishnan, for S. Sathiyachandran, in W.A. No. 2035 of
2010, P. Wilson, A.A.G assisted by G. Sankaran, Spl. Govt. Pleader Education in
W.A. Nos. 2039, 2040 of 2010 and RR 2-4 in W.A. No. 2035 of 2010, S.
Silambanan, A.L. Soymazee, V.T. Gopalan, s, R. Natarajan and N.G.R. Prasad, for
the Appellant; R. Krishnamoorthy for V.P. Sengottuvel, for R1 in W.A. No. 2035/
2010, R. Muthukumaraswamy for V.P. Sengottuvel, for R1 in W.A. No.
2040/2010, for the Respondent

Judgement

M.Y. Eqbal, C.J. and T.S. Sivagnanam, J.—These appeals are directed against the interim orders granted in M.P. No. 1 of 2010 in W.P. No. 19299 of 2010, M.P. No. 2 of 2010 in W.P. No. 19023 of 2010 and M.P. No. 1 of 2010 in W.P. No. 19300 of 2010, dated 14.09.2010, in and by which, the learned Judge restrained the authorities from enforcing the revised fees structure for various schools in the State of Tamil Nadu. Though, there were several writ petitions filed challenging

the orders of the fee determination committee only three appeals have been preferred one appeal at the instance of the parents and two appeals by the State. However in order to give a full hearing, we have heard all the learned senior counsels, who appeared before the learned Judge in the interim applications for the association of the management schools and managements of individual schools, and we have heard the learned Additional Advocate General on behalf of the appellant State.

2. Though elaborate submissions have been made by the learned Senior counsels for the schools, the learned Additional Advocate General appearing for the State and the learned Senior counsels appearing for the parents and students, the issue which has to be decided in these appeals lies in a narrow campus.

3. The Tamil Nadu Government enacted a law to provide for regulating the collection of fees by school in the State of Tamil Nadu termed as the Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009 (hereinafter referred to as the "Act") and also framed the rules there under.

4. In terms of Section 3 of the said Act, there was a prohibition on Government school or aided school from collecting fee in excess of the fee fixed by the Government for admission of pupils to any standard or course of study in the school. In terms of Sub-Section 2 of Section 3, no fee in excess of the fee determined by the committee under the Act shall be collected for admission of pupils to any standard or course of study. Committee has been defined u/s 2(c) to mean the committee constituted u/s 5. The committee constituted u/s 5 is headed by a Chairperson, who is a retired Judge of this Court and five ex-officio members of whom, the Additional Secretary to Government, School Education Department is the Member Secretary. For the purpose of these appeals, Section 6 of the Act is relevant, which deals with the factors for determination of the fee and the procedure to be followed. For better appreciation, the same is reproduced hereunder:

6.(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 reversion.

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

5. The Act came into force on 07.08.2009, when it was published in Tamil Nadu Government Gazette. In exercise of the power conferred u/s 16 of the Act, the Tamil Nadu Schools (Regulation of Collection of Fee) Rules, 2009, (hereinafter referred to as the "Rules") came into force on 07.12.2009. The vires of the Act and the Rules were challenged in a batch of writ petitions before this Court and the Division Bench by Judgment dated 09.04.2010 upheld its validity, except Section 11 of the Act and Rule 4(4) and 4(5) of the Rules giving power for entering the school for search, inspection and seizure. The SLP filed against the Judgment in SLP. No. 13428 of 2010 was dismissed by the Hon'ble Supreme Court by order dated 11.05.2010.

6. Even prior to the challenge to the validity of the Act, the Government by G.O. Ms. No. 320 School Education Department, dated 07.12.2009, constituted the committee under the Chairmanship of a Retired Judge of this Court and the committee prepared a questionnaire and circulated to 10934 private schools through Chief Educational Officer. It is stated that 10233 school responded and submitted filled in questionnaire forms. Thereafter, the committee appears to have sent individual orders to all the schools, which have submitted their questionnaire form, determining the fee, by order dated 07.05.2010. On receipt of such fee determination orders about 6400 schools have submitted their objections u/s 6(3) of the Act, objecting to the determination of the fee fixed by the committee. The committee also issued a press release on 11.08.2010 stating that the committee has received 6400 representations from the schools stating that the fee fixed by the committee is less and they have sought for revision. Therefore, it is considered by the committee that the fee may be fixed after personally inspecting the schools and assessing the quality and other matters and this exercise may take some time and the revised fee fixed, after re-inspection may be implemented from the academic year 2011-12 and so far as the current academic year 2010-11, the fee already been fixed by the committee will be in force. This press release and the orders passed by the committee were questioned in a batch of writ petitions, and these writ petitions came to be filed in August 2010. It appears that the State has not filed counter affidavits in the writ petitions. In the miscellaneous petitions, the writ petitioners prayed for stay of the operation of the fee fixation committee and the press release for an order

of injunction to restrain the State from implementing the fee fixed by the committee and for interim direction to collect the fee as proposed by the school before the order of the fee fixation committee.

7. The learned Judge by the impugned order restrained the State from enforcing the order of the fee fixation committee for this academic year by passing a common order in the stay petition and injunction petition and observed that no separate order is necessary in the direction petitions. Further, the learned Judge directed the writ petitions itself to be posted for final disposal on 29.11.2010. It is as against this interim order, the present appeals have been filed.

8. The grounds raised by the learned Additional Advocate General and the learned Senior counsels appearing for the appellants are that one of the writ petitioner being a Federation of Association of Matriculation Higher Secondary School is not an aggrieved person, since the fee fixation committee has passed individual orders for each institution and such orders cannot be questioned by the Federation. Further, it is contended that the writ petitions itself has been allowed at the interim stage and by virtue of the interim orders granted, the schools, which have already implemented the order of the fee fixation committee are now threatening the parents and demanding payment of further fees and several complaints have been received by the Department from the parents. It is further contended that the parents and the students, who are aggrieved person ought to have been heard in the matter and failure to hear the aggrieved person goes to the root of the matter affecting the very validity of the interim order passed. Further, it is contended that the wisdom of expert committee cannot be questioned in a writ petition unless malafides are alleged and admittedly, there are no allegations of malafides and therefore, the writ petitions itself are liable to be dismissed on the ground that this Court does not have expertise to go into the said question. Further, it is submitted that the committee has all the infrastructure and a thorough exercise has been done and thereafter, the fee has been fixed and such of those schools, which are aggrieved have submitted their objections, which would be considered in due course and until then the schools are entitled to collect only the fee fixed by the committee. Further, it is contended that the Court while granting interim order should also take into consideration, the effect of such order on public interest and in support of the said contention reliance is placed on the decision of the Hon'ble Supreme Court in *Probhjot Singh Mand and Ors. v. Bhagwant Singh and Ors.* CDJ 2010 SC 109. Further, on account of interim order virtually the provisions of the Act and Rules have been stayed and such order ought not to have been ordered. Further, it is contended that the Hon'ble Supreme Court in *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, , permitted private trusts to establish institutions so that the fundamental rights enshrined under Article 21A are fully achieved, since, the State was not able to fulfill the entire educational needs of the country and this permission/approval cannot be taken to be a license to profiteering. The learned Counsel further relied on paragraph 17 & 23 of the Division Bench of this Court in *T.N. Nursery Matriculation and HSS Assn. v. State*

of T.N. (2010) 4 MLJ 209 in support of his contention. Therefore, the learned Additional Advocate General, learned Senior counsel appearing for the appellants and the learned Counsel representing the interest of parents submitted that the order impugned is required to be stayed.

9. The learned Senior counsels appearing for the Federation and institutions would submit that fixation of fee is the prerogative of the school and the committee without deciding the objections submitted by the schools cannot enforce its order of determination, which has been accepted by the State to be a preliminary order. Further, by relying upon individual orders communicated to certain schools, it is submitted that the fee fixed by the committee is ridiculously low, which shows that the committee did not make any analysis and with the fee fixed by the committee, it would be unworkable to run the institution, more so when, the sixth pay commission has revised the scales of pay to teaching and non-teaching staff. Further, it is contended that the form of questionnaire, which was given by the committee sought for the details of the fee collected for the year 2009-10 and there was no column in the questionnaire form regarding the fee proposed during the year 2010-11 and without calling for such details, the committee was not justified in determining the fee provisionally. Further, the procedure adopted by the committee in fixing the fee is not in consonance with the principles of natural justice and especially when the fixation of fee cannot be general and it has to be specific. The learned Senior counsels made elaborate submissions on the quantum of fee collected by each institutions vis-a-vis their expenditure and submitted that there is already a deficit and there is no profiteering and committee did not take note of the relevant factors, while passing the provisional order. Further, it is contended that Section 3 & 6 of the Act are to be read harmoniously and the entire process of determination of fee has been abandoned midstream and the State is not empowered to enforce the preliminary order by the committee, when the process of consideration of the objection is still pending. Further, learned Senior counsels appearing for the various institutions would submit that the fee as fixed by the respective institutions for 2009-10 has already been collected and that the writ petitions itself could be heard and disposed of at an early date and the interim order granted in the writ petitions may be confirmed.

10. In reply the learned Additional Advocate General would contend that the records of the committee for each school is available and the committee has done a thorough exercise and determined the fee and communicated to the institutions and 40% of such institutions have implemented the fee structure and the remaining 60% have given their objections, which are in the process of being considered and pending such consideration for the current academic year, the State is fully justified in directing the institutions to collect the fees fixed by the committee u/s 6(1) of the Act. The question of granting stay of such order that to at the instance of a Federation should not be entertained and the parents, who are aggrieved persons have not been heard and the process and the committee has not abandoned the process midstream and considering the public interest,

the interim order granted should be vacated.

11. We have considered the submissions of all the learned Senior counsels appearing for the appellants, Parents and other representatives as well as the learned Senior counsel appearing for all the institutions, who have appeared before the learned Judge in the writ petition and we have perused the materials available on record including the one sample file of the fee determination committee.

12. At this stage of the matter, the issue which is to be decided lies in a very narrow campus. The object of granting interim orders is to preserve status-quo till a final decision is arrived at in the main writ petitions and the three cardinal principles to be borne in mind, while granting the interim orders are that whether prima facie case has been made out, in whose favour the balance of convenience lies and what would be irreparable hardship caused, if the interim order is not granted.

13. The Hon''ble Supreme Court has added yet another facet to these three principles, when on account of grant of such interim order, it may have an impact on a large section of the public. The Hon''ble Supreme Court in *Probhjot Singh Mand and Ors. v. Bhagwant Singh and Ors.* CDJ 2010 SC 109 was considering an appeal arising out of the interim order relating to seniority between direct recruits and promotees in the Punjab Civil Services. The Service tribunal refused to pass interim orders and observed that any action taken would be subject to the ultimate result of the original application. The High Court granted an interim order by staying the reversion of the first respondent therein. The matter was carried to the Hon''ble Supreme Court and their Lordships, while considering the validity of the interim order granted by the High Court observed thus:

27... But is is beyond any cavil of doubt that before passing an interim order, the courts should not only consider prima facie case, balance of convenience, and irreparable injury but also its effect on public interest also.

14. The learned Senior counsel appearing for the appellants/parents would strenuously contend that the interim order would cause great hardship to large section of public and the institutions are demanding higher fees after having, initially implemented the order passed by the committee and therefore, the order should be stayed. From the statistics placed before this Court, it is seen that there are 10934 schools of which 10233 schools responded to the committee directives and filled in the questionnaire. The committee has thereafter fixed fees and communicated individual orders to the respective institutions, on receipt of such fee fixation order 4534 schools have accepted the orders and did not raise any objections. 6400 schools have submitted their objections and the objections are in process of being considered by the committee.

15. Complaints has been made by the institutions that there has been violation of principles of natural justice, there has been no objective analysis of the materials placed before the committee and they are not aware as to on what

basis, the committee fixed the fee. The learned Additional Advocate General produced one file relating to the fee determination committee and it is seen that the institution had given the particulars, which was sought for in the annexure and based on that an abstract has been prepared.

16. From the abstract, it is seen that the data provided by the Institution has been assimilated and tabulated and the Committee has made a calculation and method of calculation as seen from the abstract is by taking the average income per student, total expenditure (teaching staff, non-teaching staff and other expenses), an addition of 10% for future expansion, average expenditure per student and miscellaneous expenditure per student and the total expenditure per student and based on such calculation, the fee has been determined.

17. In the sample file circulated to us, a pencil noting has been made stating that the depreciation of building, equipment, furniture, etc. is high and therefore the committee has taken it from the audited balance sheet. Thus, the Institution namely Christ Matriculation Higher Secondary School, Kollapatti, Krishnagiri District, which was collecting Rs. 4,850/- for L.K.G. Class has been now fixed at Rs. 4,000/- by the Committee. Thus, it appears that the Committee had considered the data submitted by the Institution and it has done certain exercise and fixed the fee and communicated it to the Institution. Therefore, the allegation made by the Federation of Institution that there has been no analysis made by the committee may not be correct. In any event, it is to be noted that these 6,400 schools who have submitted their objections to the fee fixed are awaiting the orders to be passed by the Committee.

18. The Division Bench in the case of Tamil Nadu Nursery Matriculation, referred supra, while upholding the validity of the Act, analysed the enactment and listed out the procedure which will be followed by the Committee Sections 6(1) and 7(1) of the Act and for better appreciation, the same are reproduced herein.

20. On this background, when we look to the committee constituted u/s 5(1) of this Act, it shows that the initial function of the committee is to approve the fees structure formulated by the concerned institution. It is only when the committee finds the fee structure to be objectionable and cannot be approved, then it will determine some other fee, and the private schools will be asked to charge the same. Sections 6(1) and 7(1) of the Act lays down the procedure which will be followed by the committee: -

(a) The Committee has to call upon the private institutions to place before it the proposed fee structure of the institution with all relevant documents and books of accounts for scrutiny within the period to be indicated by the Committee in the given notice. (The Committee has already circulated the questionnaire to the institutions which contains details) about the fee component.

(b) After the receipt of the proposal from the concerned institution, the Committee has to verify as to whether the fee proposed by the Private School is justified and it does not amount to profiteering or charging of exorbitant fee.

(c) In case the Committee is of the view that the fee structure proposed by the institution appears to be correct, taking note of the various facilities provided and that there was no profiteering or collection of exorbitant fee under the guise of capitation fee, it has to approve the fee structure.

(d) In case the Committee is of the view that the fee structure forwarded by the institution is exorbitant and that there is an element of profiteering, the Committee has to determine some other fee.

(e) While fixing some other fee, the Committee has to follow certain procedures taking into consideration the factors as found mentioned u/s 6(1) as well as Rule 3 of the Rules.

(f) The determination of the fee as made by the Committee should be intimated to the concerned institution and there upon the institution has got a right to submit their objections within fifteen days.

(g) The objections so submitted by the institution shall be examined by the Committee. The Committee has to consider it objectively. The Committee was not expected to reject the objection summarily. As per Section 7(4) of the Act, the Committee shall have the powers to regulate its own procedure in all matters and it shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 regarding summoning and attendance of witness and related matters. Therefore, the Committee would be within their powers to get the factors verified in respect of the claim made by the institution, to approve their fee structure, as against the fee determined by the Committee.

(h) The fee so prescribed would be in operation for a period of three years and at the end of such period, it would be open to the institution to make an application for revision of fees."

Therefore, it is to be seen that there are sufficient guidelines in the Act for either to approve the fees or for fixing the fee and this exercise is yet to be completed and it is at the stage of being considered by the Committee.

19. Admittedly, the order passed by the Committee was communicated to the individual Institutions during May 2010 and except for handful of Institutions, the individual Institutions are not before this Court. The fixation of fee cannot be a general order and it has to be specific. Thus, the materials placed before the Institution have to be considered by the Committee and individual orders of re-fixation/confirmation has to be passed. If that be the case, it is appropriate for the aggrieved Institutions to contest such fixation and the Federation of schools are not justified in challenging such individual orders. It is true that some of the Institutions have filed separate Writ Petitions, but all the writ petitioners are commonly aggrieved by the "press release" given by the Committee stating that pending decision by the Committee on their objections, the fee fixed by the Committee shall be implemented. Thus, it appears that the 6400 school who have submitted their objections are desirous of pursuing their objections before

the Committee and they request that the Committee should consider each individual case in full compliance with the principles of natural justice, affording them fair and reasonable opportunity to place all materials. Pending such decision they submit that the provisional order of the committee should not be given effect to and they should be allowed to collect the fee determined by them prior to the preliminary order of the committee.

What then should be done pending decision of the Committee ?

20. Learned single Judge has not correctly interpreted and appreciated the provisions of Section 3 and 7 of the Act. In paragraph - 15 of the order, the learned Judge observed as under:

15. In the considered view of this Court, the combined reading of the definitions of Sections 2(j) and 7(1) to 7(3) of the Act would considerably support the view expressed on the petitioners' side that the committee is only to verify whether the fee collected commensurate with the facilities provided and if it is found to be exorbitant in nature, then the power of the Committee is to recommend CBSE for disaffiliation of the schools. It is to be noted herein that the Act while dealing with the power and functions of the committee u/s 7(1) proceeds to say that the committee shall determine the fee structure to be collected by the private schools and as per Section 7(2), the Committee has the power to require each private schools to place the proposed fee structure before the Committee and then to approve the fee structure or determine the fee which can be charged by the private schools. Whereas Section 7(3) proceeds to say while dealing with the power of the Committee in the matter of verification of fee structure collected by the schools affiliated to CBSE that the Committee has the power to verify whether the fee collected commensurate with the facilities provided by the schools and if there is collection of any excess fee recommends to CBSE for disaffiliation of the schools. If the intention of the legislature is to empower the Committee to determine the fee structure of its own for CBSE schools then there is no necessity for introducing Section 7(3) which separately deals with the power of the Committee in so far as the CBSE Schools are concerned. Unlike Section 7(2), u/s 7(3), no power is given to the Committee to determine the fee structure in the event of the proposed fee structure submitted by the schools is not approved by the Committee. Thus, the plain reading of the provisions of law would at this stage lead to a reasonable doubt as to whether the Committee has any power to determine the fee structure of its own and to enforce the same against CBSE Schools. Even assuming it to be accepted that one such power is available to the Committee, the next aspect to be seen is as to whether the proposed fee structure is made in adherence to the statutory requirements and can be validly enforced against the petitioners herein as in the case of the other petitioners.

21. Further, it has not been disputed that before issuing the impugned order fixed fee structure of the different schools the Committee prepared questionnaire and circulated it to the 10,934 private schools through the Chief Educational

Officer. In response thereto about 10,233 schools submitted their forms duly filled in along with the other relevant documents. It was only after scrutinizing the said forms the Committee sent individual orders to all the schools determining their respective fee structure. Even assuming the determination of the fee structure by the Committee as provisional the learned Judge has erred in holding that the same is violative of the principles of natural justice.

22. Admittedly, the fee fixation orders were communicated to the individual Institutions in May 2010. 6400 Institutions have submitted their objections in June and July 2010. The Institutions have re-opened and started functioning from June 2010 and it is submitted by the learned Counsel appearing for the Institutions that they have collected the fee which they had fixed for the previous academic year i.e. 2009-2010. The complaint now made by the parents is that after the interim orders have been granted, the parents are being harassed to pay the difference between the fee collected and the fee which was originally fixed by the Institution prior to the order passed by the Committee. This, in our view, cannot be permitted since the interlocutory order cannot have the effect of granting the final relief.

23. From perusal of the operative portion of the impugned order passed by the learned judge, it is clear that interim relief by way of injunction has been granted in favour of even those schools who did not assail the impugned order passed by the Committee. As a matter of fact, the learned Judge stayed the operation of the impugned individual fee structure dated 07.05.2010 and the News Release dated 11.08.2010, and further, restrained the authority from implementing and enforcing the said order. We have, therefore, no hesitation in holding that such an interim order ought not to have been passed in favour of those schools which were not before the Court.

24. After having considered the entire facts of the case and the law discussed hereinabove, in our considered opinion, the impugned interim order passed by the single Judge cannot be sustained in law and is liable to be set aside. We, therefore, in order to give a quietus to the entire controversy dispose of these appeals by passing the following order:

1. The 6400 Institutions who have submitted their objections to the Fee Fixation order passed by the Committee shall be entitled to pursue their objections before the Committee;

2. Pending consideration of the objections, all these 6400 Institutions shall not be entitled to collect any further fees than what has been collected by them at the beginning of the academic year in June 2010 i.e. at the rate fixed for the previous academic year 2009-2010. The amount of fees so collected if be in excess of what has been fixed by the Fee Fixation Committee in its preliminary order dated 07.05.2010, that excess component shall be deemed to be retained as deposit by the respective Institutions and the same shall abide by the final decision to be taken by the Fee Fixation Committee;

3. If any additional fee has been collected by the 6400 Institutions after the interim order in the writ petitions, the same shall also be retained as a deposit and the same shall abide by the final decision to be taken by the Fee Fixation Committee.
4. The 4,534 Institutions who have accepted the order passed by the Fee Fixation Committee shall not be entitled to collect any fee in excess of what has been permitted in the order of the Fee Fixation Committee;
5. The Committee is directed to consider the objections of the 6,400 Institutions by affording an opportunity of personal hearing to the Institutions to enable them to submit materials for consideration of the Committee and thereafter pass individual orders by considering all the materials as expeditiously as possible, preferably within a period of four months from the date of receipt of a copy of this order;
6. The 6,400 Institutions shall be entitled to submit to the Committee further materials at the time of personal hearing before the Committee if they so decide;
7. No Institution shall demand from any parent any fee more than what has been indicated above and if any specific complaint is received by the authorities against any such Institution, the same shall be considered in accordance with law by the appropriate authority after notice to the concerned Institution.
25. With the above directions, the Writ Appeals are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.