

(2021) 03 KL CK 0309

In the High Court Of Kerala

Case No : Writ Petition (C) No. 2520 Of 2021

Sijo K.J And Ors

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 25-03-2021

Acts Referred:

Citation : (2021) 03 KL CK 0309

Hon'ble Judges : Anu Sivaraman, J

Bench : Single Bench

Advocate : Blaze K. Jose, Judy Jose, Urmila Zacharia, Nirmal S, K.P. Satheesan, P. Mohandas, K. Sudhinkumar, S.K. Adhithyan, Sabu Pullan, Gokul D. Sudhakaran

Judgement

1. The writ petition is filed seeking the following reliefs:-

"i) Issue a Writ of Mandamus or any other appropriate writ, order or direction commanding the respondents 1 to 3 to take appropriate action to prevent the 4th respondent from discriminating students on the basis of religion or caste in the matter of school fees and discounts in school fees.

ii) Issue a Writ of Mandamus or any other appropriate writ, order or direction commanding the respondents 1 to 3 to fix uniform fees for all the students in the 4th respondent school, taking into account the covid - 19 pandemic situation.

iii) Issue a Writ of Mandamus or any other appropriate writ, order of direction commanding the respondents 1 to 3 to ensure that the children of the petitioners are allowed to attend the online class and complete the academic year without any obstruction in 4th respondent school."

2. Heard the learned counsel for the petitioners, the learned Government Pleader, the learned Standing Counsel for the CBSE and the learned Senior Counsel appearing for the 4th respondent Manager.

3. It is submitted by the learned counsel for the petitioners that the petitioners are the parents of the students of the 4th respondent's school. They contend that

the school had been conducting only online classes during the previous year, but had been demanding fees ranging from Rs.23,200/- to Rs.33,700/- for classes from LKG to Standard XII during the previous year as is evident from Exhibit P2. It is submitted that due to Covid 19 pandemic there were huge job losses, economic recession etc. and the parents were not in a position to pay the huge fees demanded. It is stated that schools were also not having expenses as in normal times. Exhibit P3 representation was, therefore, submitted by 433 parents of 605 students seeking remission in the fee. It is stated that the said request was rejected by the management, but the management was granting major fee discount/subsidy only to students who belong to the St.Mary's Church. Exhibits P4 and P5 fee receipts are produced in support of the said contention. It is stated that some of the petitioners submitted a representation expressing their willingness to pay the 1st installment and requesting the extension of relaxation of fees and for permission to their wards to attend classes. However, it is submitted that even in spite of repeated requests and complaints preferred before all authorities, no steps have been taken to redress the petitioners' grievances.

4. A detailed counter affidavit has been placed on record by the 4th respondent. It is submitted that one of the petitioners had not remitted any fees so far. It is stated that seven of the petitioners have remitted fees for one child, even though two children are studying in the school. The remaining four parents have remitted the first term fees. It is stated that therefore only four of the petitioners have remitted the first term fees as directed in the interim order. It is stated that the school is run by a charitable society by name St.Mary's Charitable society and that 1271 students are studying in the school. By Exhibit R4(a) dated 21.12.2020, a 30% discount of the entire fees was given to all students from LKG to Class 12. It is further stated that in case of students, who had specifically made request for remission of fees on the ground of financial distress, concession of fees ranging from 50% to 100% had been granted to several students, as is evident from Exhibit R4(b). It is further submitted at paragraph 9 of the counter affidavit as follows:-

"The petitioners rely upon Exts. P4 and P5 to show that different rates of fees are charged from the children of two religious communities is absolutely false and incorrect. It is submitted that the school is run by St.Mary's Charitable Society. The members of the charitable society are given concession in the fees to their children. This is not the first time and the same has been practicing from the beginning of the school itself. This is not based on any communal discrimination, but on the other hand considering the initial contribution made by the persons who formed the society as well as the school. They are the founder members of the society. Their children are given fee concession considering the effort made by them in bringing up the school. The school is maintaining a good standard and academic excellence. Such achievements are obtained only because of the efforts made by the members of the society. Naturally the children of such members are given a little concession in the fees as a gratitude to the service rendered by

them. This is evidenced by Ext.P4 itself in which the receipt shows that (CM) to the name of the student. CM means, Charitable Society Member or the members of the family. That is how the discount is shown in Ext. P4 and that is not on the basis of any communal discrimination. It is submitted that such concessions are not given to any other students including Christian other than the members of the society. It is a gratitude given by the society to the children of the members of the society and their family. It cannot be termed as a communal discrimination."

5. Reliance is also placed on Exhibit R4(c) judgment of a Division Bench of this Court in *Sreelekshmi S v. The State of Kerala* [AIR 2020 Ker 174] and on Exhibit R4(e) judgment in *W.P.(C).No.19023 of 2020* and connected cases where the direction was confined to a 15 to 20% reduction in fees.

6. It is contended by the learned Senior Counsel for the petitioner that even in the judgment of this Court in the batch of writ petitions seeking reduction in fees, there was a specific direction to the petitioners to pay the 2nd term fee as discounted on or before 26.2.2021 and the balance on or before 31.2.2021. In the instant case it is contended that most of the petitioners have not even paid the first term fee in full.

7. A statement has also been placed on record by the 2nd respondent pointing out that no discrimination can be meted out to students by a management on the ground of religion or denomination. It is stated that respondents 1 to 3 are to fix uniform fees for all the students. It is further submitted that Exhibit R2(a) communication had been issued by the CBSE to all States requesting the State Government to examine the issue of lumpsum payment of school fees and teachers' salary considering the interest of all stakeholders. The provisions of Clause 7.2 and 7.3 of the CBSE byelaws are also specifically referred to.

8. I have considered the contentions advanced on all sides. The contention of the petitioners that they are eligible for discount in fees charged by private school managements appears to be a justifiable claim. However, the respondents have produced Exhibit R4(a) to show that the respondents have permitted a 30% fee remission across the board to all students. This is more than the remission which has been directed by this Court in the common judgment. If that be so, the further contention raised by the petitioners with regard to remission in fees to persons like the petitioners cannot be considered by this Court, especially in the light of Exhibit R4(e) judgment. The learned counsel for the 4th respondent specifically contends apart from four petitioners, the other petitioners have not even remitted the first term fee.

9. Having considered the contentions advanced and taking note of the findings in Exhibits R4(c) and R4(e) judgments, I direct that the petitioners may be given a last chance to pay off the fees as discounted in Exhibit R1(a) within a period of one month from the date of receipt of a copy of this judgment. The petitioners shall positively pay the first term fees on or before 31.3.2021. They will be given

one month time from the date of receipt of a copy of this judgment to pay the 2nd and 3rd term fees, taking note of the remissions as permitted in Exhibit R1(a). If they have any further complaints, it is for them to raise it before the competent respondents. Without making the payments of the fees in respect of their wards, the petitioners cannot agitate any further grievances before this Court.

This writ petition is ordered accordingly.