

(2012) 08 MAD CK 0090

In the Madras High Court

Case No : Writ Petition No. 11882, 12811, 11883, 14560, 14561, 14562 and 13077 of 2012

Sree Niketan Matriculation Higher Secondary School

APPELLANT

Vs

The Private Schools Fee Determination Committee

RESPONDENT

Date of Decision : 29-08-2012

Acts Referred:

Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009 — Section 11, 6(1)

Citation : (2012) 08 MAD CK 0090

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

Bench : Division Bench

Advocate : V.P. Sengottuvel in W.P.Nos.11446 to11451, 11482, 11882, 11883 of 2012, Mr. L. Murali Krishnan in W.P. No. 12811 of 2012 and Mr. S. Silambanan, for M/s.Profexs Associates in W.P.Nos.14560 to 14562 of 2012 and W.P. MD No. 13077 of 2011 and Mr. A. Navaneetha Krishnan, A.G. all Writ Petitions, for the Appellant; E. Sampath Kumar, Spl. Govt. Pleader (Edn) and Mr. P. Sanjay Gandhi, Addl. Govt. Pleader (Edn), for the Respondent

Judgement

R. Banumathi, J.—The Writ Petitioners who are unaided private schools have filed these Writ Petitions challenging the final order (dated 03.6.2011)/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]. All the Writ Petitioners are self financing schools, not getting any financial aid from the State Government or other Government sources. Some of the Writ Petitioners are recognised under Tamil Nadu Private Schools Regulation Act; few others are recognised under Code of Regulations for Matriculation Schools or Code of Regulations for Anglo Indian Schools.

2. Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009 was enacted on 07.8.2009. Tamil Nadu Schools (Regulation of Collection of Fee) Rules, 2009 came into force on 07.12.2009. Validity of the Act and the Rules (except Section 11 of the Act and Rules 4(4) and 4(5) of the Rules) was upheld in Tamil Nadu

Nursery, Matriculation and Higher Secondary Schools Association Vs. The State of Tamil Nadu and others, reported in (2010 (4) CTC 353).

3. By G.O.(Ms) No. 320, School Education Department, dated 07.12.2009, Government constituted a School Fee Determination Committee under the Chairmanship of Justice K.Govindarajan, a retired Judge of this Court and the Committee prepared questionnaire and sent the same to the private schools through the Chief Educational Officer. To the said questionnaire, the Writ Petitioner Schools sent their response. After considering the response from the individual schools, orders were passed by the Fee Determination Committee fixing the fee to be collected for the years 2010-2011 to 2012-2013.

4. The said orders passed by the Committee dated 07.5.2010 and the Press Release were challenged in a Batch of Writ Petitions. By the order dated 14.09.2010 in M.P. No. 2 of 2010 in W.P. No. 18854 of 2010, a single Judge of this Court passed interim order restraining the State Government from enforcing the order of Fee Fixation Committee for the academic year 2010-2011 and the said order of the single Judge was challenged in W.A. Nos. 2035 of 2010 etc. batch. First Bench of this Court disposed of the appeals in P.B.Prince Gajendra Babu Vs. Federation of Association of Private Schools in T.N. (2010 (5) CTC 721) inter alia issuing directions directing the Committee to consider the objections of 6400 institutions by affording opportunity of personal hearing to the institutions to enable them to submit further materials for consideration of the Committee and thereafter pass individual orders by considering all the materials. The said order of First Bench was challenged in the Supreme Court by way of SLP in Special Leave to Appeal (Civil) No. 36589 to 36591 of 2010 and the same was dismissed by the Supreme Court on 16.12.2010.

5. In pursuance to the direction issued by the First Bench in 2010 (5) CTC 721, fresh questionnaires were sent to the schools and the schools have submitted their response along with fee proposed by them and also the supporting materials. Taking into account the factors in Section 6(1) of the Act, the Committee headed by Justice K.Raviraja Pandian passed the impugned orders fixing the fee for the next three academic years i.e. 2010-2011, 2011-2012 and 2012-2013.

6. Heard Mr. S. Silambanan, learned Senior Counsel appearing for M/s. Profexs Associates, Mr. V.P. Sengottuvel and Mr. L. Murali Krishnan, appearing for the Writ Petitioners respectively. On behalf of Respondents, we have heard Mr. E.Sampath Kumar, learned Special Government Pleader (Education) and Mr. P. Sanjay Gandhi, learned Additional Government Pleader (Education).

7. Contentions of Writ Petitioners is that:-

As per T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , private Educational Institutions have right and freedom to fee structure and therefore, entitled to fix their fee structure including surplus for expansion and development of the Educational Institutions.

Learned Committee did not consider the estimate and Auditors' report submitted by the Writ Petitioner Schools and the expenditure on many items were either restricted or disallowed, thereby leaving huge deficit making the institutions to suffer loss.

Committee did not take into account the salary paid to the teaching and non-teaching staff. Committee also did not keep in view the revised scale of Pay as per VI Pay Commission.

Committee has not allowed any amount for the property tax payable and the other statutory dues payable by the institutions.

Main challenge in the Writ Petitions is that the Committee did not provide reasonable opportunity to the Writ Petitioner Schools while hearing their objections/representations by the Committee and that there was violation of principles of natural justice.

8. In W.P. No. 12811 of 2012, the learned counsel Mr .Murali Krishnan has drawn our attention to the mistake crept in the impugned order regarding the existing fee and the fee proposed by the School, which mistake affecting the fee determined by the Committee, thereby leaving huge deficit.

9. Learned counsel for Writ Petitioners submitted that these Writ Petitions are covered by the orders of this Court in W.P. No. 8489 of 2012 etc. batch (dated 03.5.2012) and prayed for remitting the matter to the Committee for re-determining the fee and also prayed that the benefit of interim arrangement be extended to these Writ Petitioner Schools. Learned counsels would also submit that these Writ Petitions were filed in April 2012 itself and due to administrative difficulties, they could not get the Writ Petitions listed before the "Specially Ordered Bench" earlier and that is why these Writ Petitions could not be tagged along with the batch matters (W.P. No. 8489 of 2012 etc. batch).

10. Learned Special Government Pleader (Education) and the learned Additional Government Pleader (Education) raised strong objection for remitting the matter back to the Committee and also extending the benefit of interim arrangement as per the order dated 03.05.2012. Learned Additional Government Pleader submitted that the fee fixed by the Committee is only for three academic years i.e. 2010-2011 to 2012-2013 and that one quarter of the academic year 2012-2013 is already over and at this distant point of time, the parents cannot be further burdened with levy of additional fee. Learned Additional Government Pleader further contended that in any event for all the schools in the State the Committee would be reconsidering the fee to be collected from the next academic year 2013-2014 and it would be always open to the Writ Petitioner Schools to place available materials for consideration of the Committee.

11. We have carefully considered the submissions and the materials produced both by the Writ Petitioner schools and the Respondents.

12. Similar orders passed by the School Fee Determination Committee headed by

Justice K.Raviraja Pandian fixing the fee was challenged in a Batch of Writ Petitions - W.P. No. 8489 of 2012 etc. batch in Lakshmi Matriculation School Vs. State of Tamil Nadu, The Secretary To government ,Education Department and Others, (CDJ 2012 MHC 2161 : 2012 Writ Law Reporter 489). Each and every point now raised by the Writ Petitioner Schools thereon were considered in the above said batch matters.

13. The points raised in these Writ Petitions are covered by the common order in W.P. No. 8489 of 2012 etc. batch (CDJ 2012 MHC 2161 : 2012 Writ Law Reporter 489). These Writ Petitions were filed in April 2012. As rightly contended by the learned counsel for Writ Petitioners, because of administrative difficulties, these Writ Petitions could not be listed earlier before the "Specially Ordered Bench" and be tagged with the batch matters in W.P. No. 8489 of 2012 dated 03.05.2012.

14. In the batch matters, by a detailed common order dated 03.5.2012 (in which one of us was a member Justice R.Banumathi), the orders passed by the Committee headed by Justice K.Raviraja Pandian were set aside and the matters were remitted back to the Committee for consideration of the matter afresh. For determining the school fee, Bench framed certain guidelines.

15. The operative portion of the order in W.P. No. 8489 of 2012 etc. batch in LAKSHMI MATRICULATION SCHOOL VS. STATE OF TAMIL NADU, THE SECRETARY TOGOVERNMENT, EDUCATION DEPARTMENT AND OTHERS, (CDJ 2012 MHC 2161 : 2012 Writ Law Reporter 489) dated 03.5.2012 reads as follows:-

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.

16. Considering the facts and circumstances and the orders which are challenged, the earlier order dated 03.05.2012 in W.P. No. 8489 of 2012 etc. batch (CDJ 2012 MHC 2161 : 2012 Writ Law Reporter 489) is applicable to these Writ Petitioner Schools also and these Writ Petitions can be disposed of in terms of the above lines.

17. In the order dated 03.5.2012, (CDJ 2012 MHC 2161 : 2012 Writ Law Reporter 489) pending final orders of School Fee Determination Committee, it was held that as an interim arrangement, Writ Petitioners thereon shall be entitled to collect 15% over and above the fee fixed earlier by the Committee for the academic year 2012-2013. Paragraph 156 and 157 of the earlier order (03.5.2012) reads as under:-

IV-Interim arrangement

156. The academic year 2012-2013 already started. In view of the fee structure earlier fixed, many of the schools are said to be facing financial difficulties. Pending final orders of School Fee Determination Committee, Writ Petitioner Schools both Minority and Non-Minority Schools shall be entitled to collect 15% over and above the fee fixed earlier by the committee. The interim arrangement is applicable only to the Writ Petitioner Schools and not to other Schools. Collection of enhanced fee is subject to the final orders to be passed by the Committee.

157. Learned Advocate General has submitted that number of other private schools have so far not chosen to challenge the fee fixed by the School Fee Determination Committee headed by Justice K.Raviraja Pandian. The learned Advocate General urged us to specifically clarify that the interim arrangement in this order shall not be made applicable to the other schools, who have not so far challenged the order of the School Fee Determination Committee headed by Justice K.Raviraja Pandian. Lest, all other unaided private schools would try to take advantage of the interim arrangement in this order and thereby burdening the parents.

It was made clear that the cut-off date for availing the benefit of the interim arrangement made in the order is 02.5.2012. That is only those schools who filed Writ Petitions challenging the order of the School Fee Determination Committee headed by Justice K.Raviraja Pandian prior to 2.5.2012 shall alone be entitled to claim the benefit of the interim arrangement. That too, only after final orders are passed in those Writ Petitions on considering the facts and merits of each case.

18. The clarificatory directions passed in the earlier batch on 9.5.2012 shall also hold good in respect of these writ petitioner schools. The said clarificatory directions read as under:-

(i) Only the writ petitioner schools covered under the order dated 03.05.2012 would be entitled to collect 15% fees over and above the fee fixed by the Committee and that it is only for the academic year 2012-2013. Writ petitioner

Schools cannot seek to collect the said 15% increase for the previous academic years.

(ii) It is mandatory that the writ petitioner schools covered by the order dated 03.05.2012 should display in their notice boards the fee earlier fixed by the School Fee Determination Committee and the number of the writ petition and also revised fee to be collected in view of the order of the High Court (dated 3.5.2012), separately showing the amount payable towards 15% increase. Notice should also indicate that the said 15% increase is subject to the outcome of the final decision of the Committee.

(iii) Receipt issued to the parents/students by the writ petitioner schools for the academic year 2012-2013 should also indicate separately the fee to be collected as per the Committee's original order and 15% increase over and above the fee earlier fixed by the Committee and also the total. The receipt also should indicate that 15% increase is subject to the outcome of the final decision of the Committee.

(iv) The Government shall ensure that the notice board of the Offices of the District Educational Officer displays the names of the writ petitioner schools covered under the order of the High Court dated 03.05.2012.

If any school other than the writ petitioner schools collect higher fee, misinterpreting the order of the High Court, the Government/Education Department/School Fee Determination Committee is at liberty to take appropriate action against those erring schools in accordance with law. The Government/Education Department shall issue necessary circulars to all the Private Unaided Schools regarding this and ensure strict compliance.

19. Writ Petitions in W.P.Nos.11446, 11447, 11448, 11449, 11450, 11451, 11482, 11882, 11883, 12811, 14560, 14561, 14562 of 2012 and 13077 of 2011 were filed prior to the said cut off date 02.05.2012. Hence, in terms of the order dated 03.05.2012, (CDJ 2012 MHC 2161 : 2012 Writ Law Reporter 489), the Writ Petitioner Schools shall be entitled to collect 15% over and above the fee fixed earlier by the Committee for the academic year 2012-2013 from the month of October 2012. The Writ Petitioner Schools shall not collect 15% increase fee retrospectively for previous three months i.e. July September 2012. The said interim arrangement is subject to the final orders to be passed by the School Fee Determination Committee. In the result, the impugned orders in all the Writ Petitions are set aside and these Writ Petitions are disposed of in terms of the earlier order dated 03.05.2012 in W.P. No. 8489 of 2012 etc. batch, (CDJ 2012 MHC 2161 : 2012 Writ Law Reporter 489) and also the clarificatory directions dated 9.5.2012.

Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.