

(2012) 04 OHC CK 0024

In the Orissa High Court

Case No : Writ Petition (Civil) No's. 2440 and 1920 of 2012

Tapas Kumar Sahu and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-04-2012

Acts Referred:

Citation : (2013) 115 CLT 402

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Advocate : P. Panda and Ors., for the Respondent

Judgement

Sanju Panda, J.—Since common questions of facts & law are involved in both the Writ Petitions, they are heard together & disposed of by this common Judgment. The Petitioners in W. P.C. No. 2440 of 2012, who are the nominated members of the Parents' Grievance Redressal Forum, whose children are reading in St. Vincent Convent School, Balasore, hereinafter to be referred to as "School", in short, & the Petitioners in W.P.(C) No. 1920 of 2012, who are the students reading in Class I & III through their mother guardian, are challenging the action of the school so far as unusual hike of school fees in the midst of the session 2011-12, They have been imposed a condition that unless the students pay the enhanced fee, they will be debarred from appearing the final examination, which was scheduled to be held in February, 2012.

2. The short facts as revealed from the Writ Petitions are that the school is a recognised unaided institution affiliated to the Indian School Certificate Examination (ICSE/ISC) Board; New Delhi & the school is preparing its students for the ICSE Examination in Standard X level & ISC Examination at +2 level. The students strength of the school is 1883. The students of the school are paying the school fees as per the fee structure, which was communicated to them in their respective fees book including tuition fees, examination fees, computer fees, development fees, Digital class solution tees etc. The students are paying the said fees regularly. While the matter stood thus, the school authorities

demanding enhanced fees of Rs. 700/- towards Digital Solution as well as activities fees every month from the month of February, 2011 & June, 2011 for which the Petitioner-Association in an unanimous meeting held on 30.10.2011 passed a resolution & requested the management not to collect enhanced fees. Further, the Principal of the School by a notice in Annexure-3 directed to stop collection of digital & activities fees from the children. The school management pursuant to a memorandum presented by a group of parents on 30th October, 2011 formed a School Management Committee & that apart in the said reply to the memorandum it has been mentioned that the school management is willing to form a grievance redressal mechanism to address the concerns of the parents & the same will be held quarterly. This intimation was given by the school authorities sometime in November, 2011. However, till date neither they have formed such grievance redressal mechanism nor have taken any step. But before the final examination of the students, the school authorities gave a notice to the students that if the students fail to pay the dues, they will not be allowed to appear at the final examination in 2012. Challenging such action of the school authorities, the present Writ Petitions have been filed by the Petitioners.

3. Pursuant to the interim Order Dated 10.2.2012 in Misc. Case No. 2057 of 2012, this Court directed the school authorities to allow the children of the Petitioner association to appear in the ensuing examination, which was scheduled to be held from February, 2012.

4. Counter affidavit has been filed by the school authorities taking a stand that the school is a minority institution & it provides all sorts of facilities to the students as well as staff & it provides best education to its students. Apart from this, the school also provides curricular activities such as, music, dance (both classical & modern), Karate, Yoga, Abacus, creative writing, public speaking & under that head, the school is collecting Rs. 40/- only from Class-I to Class-V. The school has also provided all other infrastructural facilities to its students & the total expenditure of the school is depending upon the fees received from the students towards tuition fees, admission fees etc. Since the school is a purely private unaided one, the school management has decided to provide its students all modern technology like Computer & audio visual aids including Digital Solution system & accordingly, the school installed the Digital Solution System for better understanding & learning of the students. The entire system was introduced by eminent & expert resources persons from Edurite & Mexus Company. Since the said system is very expensive, before introducing the same, the school management conducted demonstration on Digital Solution System for the parents of the students of the school & after obtaining positive response from the parents, the school authorities initially installed the Digital Solution System in six rooms & all the students were availing the facility in rotation basis i.e., once in two weeks for each class & fee charged under the said head was Rs. 25/- per student per month, which comes per annum Rs. 300/- & the said fee is to be payable in two installments. Thereafter, since the students are getting benefit out of the said system, the parents persuaded the school for installation of more

number of Digital Solution Systems. Accordingly, the School authorities have decided to install 20 more Nos. of Digital Solution Systems. The cost of installation maintenance of the said systems was assessed & it was decided that Rs. 700/- per annum is payable by a student for availing the said facility. However, since the parents did not agree to pay the said amount, the school authorities decided to install only 10 mote Digital Solution Systems instead of 20 Nos. & the school authorities assessed the fees by enhancing from Rs. 25 to Rs. 54.16 (Rs. 25 + Rs. 29.16). It was further stated that the " Digital Solution System is very much helpful to the students & turned to a positive response of the parents. However some vested interest persons are creating disturbance & also disturbing the smooth functioning of the school. Therefore, the school authorities have also suspended the fees hike & have not demanded the 2nd installment towards Digital Solution fees. It is also stated in the counter that there is proportionate representation of the parents representative in the School Managing Committee where they agreed with the school authorities for enhancement of the fees towards Digital Solution System from Rs. 25/- to Rs. 54.16 from Nursery to Class XII with effect from November, 2011 & as such additional fees of Rs. 29.16 is only charged per student to avail the facilities & many students have not paid the fees for 1st installment for which they have been noticed to pay the same before the final examination & the Petitioners are only 1% of the students" strength, who are complaining regarding installation of the Digital Solution System & enhancement of fees. However, in the interest of the students, the decision taken by the school authorities should not be interfered with,

5. Learned Counsel for the Petitioners submitted that the school authorities have enhanced the fees unilaterally & they have neither consulted the Parents Redressal Mechanism nor constituted it even though they have decided to do so & the authorities should not have enhanced the fees with a motive to get profit. It is alleged" that the school authorities are violating the resolution dated 23.9.1996 passed by the State Government in the Department of School & Mass Education Department, wherein under Clause 4 it deals With fees, which stipulates as follows:

(i) Fee & charges should be commensurate with the facilities provided by the institution. Fees should normally be charged under the heads prescribed by the Department of School & Mass Education. No capitation fee or voluntary donations for gaining admission in, the school or for any other purpose should be charged collected in the name of the school. In case of such malpractices, the Government may take drastic action leading to withdrawal of No Objection Certificate of the school.

(ii) In case, a student leaves the school for, such compulsion as transfer of parents or for health reason or in case of death of the student before completion of the session, prorated return of quarterly/term/annual fees should be made.

(iii) The schools should consult parents through parents, representatives before

revising the fees. The fee should not be revised during the, mid-session.

The said resolution was passed pursuant to the observation made by this Court in OJC No. 2951 of 1993 taking into consideration the rapid growth of Private Educational Institutions imparting teaching in English & other Medium in the State which are affiliated to CBSE & ICSE. Before according necessary recognition to the private un-aided educational institutions, the prescribed authority shall have regard to matters like provision for suitable & adequate accommodation, location of the institution, its sanitary & healthy surroundings appointment of qualified teachers, provision for equipments & teaching materials & adequate financial support for the continuous & efficient maintenance of the institution & shall have to fulfil the terms & conditions specified in the said resolution. In the said resolution it is also stipulated that the Government may conduct an audit of the funds of the school as & when it thinks necessary to ensure that the funds/fees collected by the school authorities are not diverted & the staff are paid salaries at par with the salaries of the State Government & any other financial-irregularities, Learned Counsel for the Petitioners submitted that at no point of time the funds of the school have ever been audited by the Government to maintain transparency of the school authorities & as such, the present hike in the fees pursuant to the impugned notice should be quashed.

6. Learned Counsel appearing for the school submitted that the school authorities in consultation with the parents' representative & after approval of the School Managing Committee have decided to revise the fees towards Digital Solution System & at no point of time any authority has ever complained regarding the financial miss-management of the school & as such, the Writ Petitions have no merit & should not be interfered with.

7. Considering the above rival submissions of the parties & taking into consideration the decision rendered by this Court in the case of Management of DAV Public School and Others Vs. State of Orissa and Another the ratio decided in the said case regarding determination of fees structure of the school seems to be very reasonable. In the said case, this Court observed that the school has to be conscious of the fact that it has to be very reasonable & it cannot & should not charge parent more than what is absolutely essential. &" on the other hand, it has to meet the variety of expenditure on different activities, tasks & programmes so that education of high-quality & for all round development of the children is imparted. Keeping in view the law laid down by the Apex Court, this Court has held that fixation of irrational fee without assigning any reason amounts to violation of fundamental & statutory right of the children & directed the State Government to constitute a committee consisting of Commissioner-cum-Secretary, School & Mass Education Department, Government of Orissa, Inspector of Schools of the locality of the concerned school, the Principal/ Headmaster of the concerned schools, two representatives of the parents association of the concerned school & head of the local self Government, i.e., Mayor of Municipal Corporation, Chairman of the Municipality or NAC or Sarpanch

of the Gram Panchayat, in which area the school is functioning. The Commissioner-cum-Secretary may act in person or through his/her nominee not below the rank of Deputy Secretary & the Committee, if required, may cause a spot enquiry of the school and collect materials & evidence from the staff members with regard to the actual salary being received by them & may also collect information from the parents, if required, where the school does not have a registered association of parents with regard to the facilities being provided to the students of such school. In the said decision, this Court further observed that all such materials shall be taken into consideration by the said committee while fixing the fee structure for the school & in the event of filing any application by the school before the said committee, the final decision thereon shall be taken within a period of 90 days from the date of filing of such application. That apart, the said decision of the Hon'ble Single Judge was confirmed by the Division Bench of this Court.

8. Taking into consideration the above facts & circumstances & the fact that the children are the future citizens of the Country & in order to uplift the national policy adopted by the Country to give right of free and compulsory education to the children, this Court is of the view that the school authorities should have taken reasonable decision & persuade the parents to pay the enhanced fees & should not have put such harsh condition that if they fail to pay the same, they will not be allowed to sit in the final examination, which will create a bad impact on the psychology of the minor children. Accordingly, this Court while quashing the direction regarding payment of enhanced fees towards Digital Solution System from the students of the session 2011-12, directs the school authorities to move an application to the Committee constituted by this Court in the aforesaid Writ Petitions, in which event the said Committee shall consider the same & take appropriate decision within a period of three months from the date of filing of such application. With the aforesaid observation & direction, the Writ Petitions are disposed of. No cost.