

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,

JAIPUR BENCH AT JAIPUR

D. B. CIVIL WRIT PETITION NO. 1812 /2014

7/10  
(M)  
3593  
03/02/14

Society for Un-aided Private Schools of Rajasthan, Jaipur,  
through its President, Damodar Prasad Goyal,  
Plot No. B-126, Janta Colony, Jaipur, Rajasthan

....Petitioner

Versus

State of Rajasthan

Through Principal Secretary, School and Sanskrit Education,  
Government of Rajasthan, Secretariat Building, Jaipur, Rajasthan

...Respondent

IN THE MATTER OF:-

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION  
OF INDIA FOR ISSUANCE OF AN APPROPRIATE WRIT ORDER  
OR DIRECTION, DECLARING SECTIONS 3(2), SECTION 5, 6(1),  
6(3), 6(4), 6(5), 6(6), 7(1)(A), 7(2)(B), 8, 9 AND SECTION 11 OF THE  
RAJASTHAN SCHOOLS (REGULATIONS OF COLLECTION OF  
FEE) ACT 2013 AND RULE 4(2) & 5, 6 AND 7 OF THE RAJASTHAN  
REGULATIONS OF COLLECTION OF FEE IN PRIVATE SCHOOLS  
RULES 2013 FRAMED THEREUNDER, AS UNCONSTITUTIONAL  
AND VIOLATIVE OF ARTICLE 19(1)(g), 26, 29 AND ARTICLE  
30 OF THE CONSTITUTION OF INDIA AND FOR BEING DIRECTLY  
IN TEETH OF LAW LAID DOWN BY THE 11 JUDGES BENCH OF  
THE HON'BLE SUPREME COURT IN TMA PAI FOUNDATION

संसदीय अधिकार (2002 (3) SCC 481).  
स्थान उच्च न्यायालय पीठ,  
जायपुर

AND

ARTICLES 14, 19(1)(g) 26, 29 AND 30 OF THE CONSTITUTION OF

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT JAIPUR BENCH, JAIPUR

D.B. Civil Writ Petition No.1812/2014

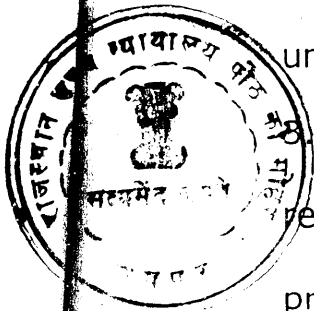
07.10.2014

**HON'BLE THE ACTING CHIEF JUSTICE MR.SUNIL AMBWANI**  
**HON'BLE MR. JUSTICE VEERENDR SINGH SIRADHANA**

Ms.Shobha with  
Mr.Amit Mittal for the petitioner.  
Mr.N.M.Lodha, Senior Advocate & Advocate General assisted by  
Mr.Sitanshu Sharma for the respondents.

1. We have heard learned counsels for the parties.
2. In this writ petition filed by the Society for Unaided Private Schools of Rajasthan through its President, the petitioner has challenged the constitutional validity of the Rajasthan Schools (Regulations of Collection of Fee) Act, 2013 (in short, 'the Act of 2013'), as violative of Articles 19(1)(g), 26, 29 and 30 of the Constitution of India. The petitioner has also challenged Sections 3(2), 5, 6(1), 6(3), 6(4), 6(5), 6(6), 7(1)(A), 7(2)(B), 8, 9 and 11 of the Act of 2013, being unguided with uncontrolled powers, and also unconstitutional, as well as violative of the rights guaranteed under Articles 19(1)(g), 26 and 29 of the Constitution of India.

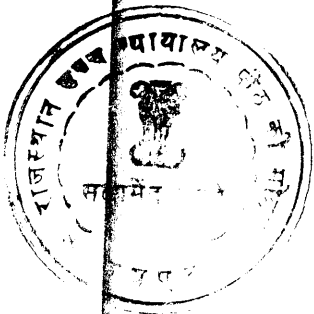
The writ petition was filed on 3.2.2014. The State-respondents represented by learned Advocate General has filed a preliminary reply to the writ petition on behalf of the State-respondents. He states that pleadings are not complete and that the matter should not be finally heard at this stage. He has also raised objections to hearing of the interim application on the ground that the facts and circumstances, on which the interim



सुनी - प्रतिलिपि  
प्रकाशित अधिकारी न्यायालय  
राजस्थान उच्च न्यायालय पीठ,  
जयपुर

orders are solicited, are not available in the pleadings. In the alternative, he has prayed that the matter may be listed for hearing on interim application in the next week.

4. Learned counsel appearing for the petitioner submits that the Act of 2013 clearly violates the ratio of the decision of eleven Judges' Bench of the Hon'ble Supreme Court in **T.M.A. Pai Foundation & Ors. Vs. State of Karnataka & Ors., (2002) 8 SCC 481** (paragraphs 46, 47, 48, 49, 50, 51, 54, 56 & 57). She has also brought to the notice of the Court the blanket ban put by the Committee constituted under the Act of 2013, on all the private schools in the State for increasing their fees. It is submitted that there are more than 37,000 unaided private schools in the State of Rajasthan. The Committee headed by a retired Hon'ble Judge of the High Court, started functioning in August 2013 without any infrastructure and adequate staff. It has, so far, determined the fee structure of only about 230 private schools in the State. The resolutions passed by the Committee in its meeting dated 30.12.2013 have however put a complete ban on increase of fees by all private schools in the State of Rajasthan, until the fee is determined by the Committee resulting into chaos and serious infraction on the rights of the private schools to manage their affairs. The Act of 2013 does not have the machinery provisions for its implementation. The Committee has not framed any guidelines under Section 7(3) of the Act to proceed with the fixation of fees, and that, the manner in which the Committee, it will take the Committee about 100 years to fix the fees structure of all the private unaided schools in



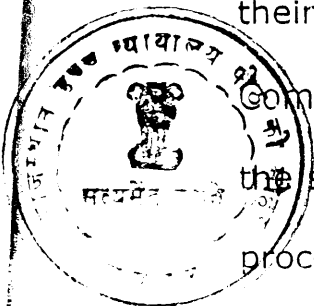
सहायक न्यायाधीश  
प्रशासनिक अधिकारी न्यायिक  
राजस्थान उच्च न्यायालय पीठ,  
जयपुर

the State, inasmuch as, so far, according to the statement of the Minister of Education on the floor of the State Assembly, the Committee has been able to determine the fee structure of only 230 private unaided schools in the State.

5. It is submitted by learned counsel for the petitioner that the Act of 2013 does not give powers to the Committee to put a ban on all the private unaided schools, on increase of their fees. The Committee has no authority under the Act to make a resolution to that effect. The resolution passed in its meeting on 30.12.2013 that, unless and until it fixes the fees of any privately run school in the State of Rajasthan, the said schools will not have power to increase the fees is ultra vires the scheme of the Act of 2013.

6. It is submitted by learned counsel for the petitioner that the Rules made under the Act for calling the school management for information regarding its fee structure. The Committee has adopted an erroneous approach in collecting the data of fee structure from the web portal of the Directorate of Education under the Right of Children to Free and Compulsory Education Act, 2009, which required the private unaided schools to upload their fee structure on the web-portal for the year 2012-13. The Committee has proposed to reduce the scale of fees charged by the schools in the year 2012-13 by 10%. It is submitted that this procedure of reduction of fees charged for the year 2012-13 by

10% will prohibit the schools from raising the salary of their teachers; make provision for maintenance, payment of municipal taxes and to maintain and improve the standards of education, even if the expansion is not taken into consideration. It will cause



सहस्र - प ह लि पि  
प्रशासनिक अधिकारी न्यायिक  
राजस्थान उच्च न्यायालय  
जयपुर

a serious blow and cripple on the primary education in the State of Rajasthan.

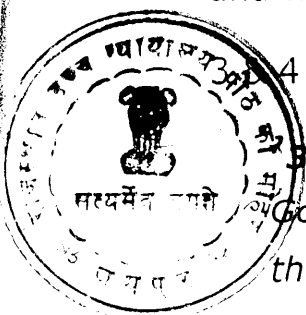
7. Learned Advocate General states that the statistics collected by the petitioner are not reflected in the pleadings. The Act of 2013 provides sufficient guidelines for determining the fee structure. The Committee is regularly holding its sittings and is carrying out its tasks for determining the fee structure in each private unaided school in the State. He prays for time for submitting further details with regard to the functioning of the Committee and the guidelines fixed by it, for determination of fees. He further submits that the Act of 2013 was enacted to regulate the exorbitant fee charged by school management, and to restrain the schools from profiteering making the school education unaffordable for the people of the State.

8. The Rajasthan Schools (Regulations of Collection of Fee) Act, 2013 (Act No.14 of 2013) was enacted to provide for regulation of collection of fee by schools in the State of Rajasthan and matters connected therewith and incidental thereto. Sections

4 of the Act of 2013 provides as follows :-

**3. Prohibition of collection of excess fee.-** (1) No Government or aided school shall collect fee in excess of the fee fixed by the Government for admission of pupils to any Standard or course of study in that school.

(2) No fee in excess of the fee determined by the Committee under this Act shall be collected for admission of pupils to any Standard or course of study in a private school,-



सही - प्रतिलिपि

3

शासनिक अधिकारी न्यायिक  
राजस्थान उच्च न्यायालय पीठ  
जयपुर

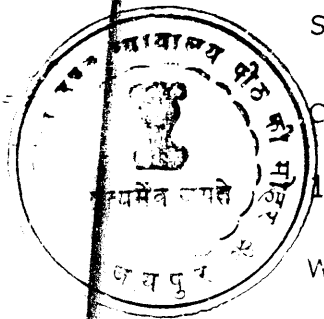
(a) by any person who is in charge of, or is responsible for, the management of such private school; or

(b) by any other person either for himself or on behalf of such private school or on behalf of the management of such private school.

**4. Fixation of fee by the Government.-** The Government shall fix the fee for admission of the pupils to any Standard or course of study in Government schools and aided schools.

9. Section 6 provides for factors for determination of fee, and Section 7 provides for powers and functions of the Committee, which includes the power to determine the fees to be collected by Government and private schools. Sub-section 1(a) and sub-section 2(a) require each private school to place before the Committee the proposed fee structure of such school with all relevant documents and books of accounts for scrutiny within such date as may be specified by the Committee and sub-section 2(b) provides to verify whether the fee proposed by the private schools is justified and it does not amount to profiteering or charging of exorbitant fee.

10. We are prima facie of the view that subject to hearing of the writ petition, even if the objects for giving the powers and functions of the Committee under Section 7(1) & 7(2), are justified, the procedure prescribed and the method of fixing of fees, provided in the Act of 2013, without any effective guidelines, the task of determining the fee structure for each school in the State of Rajasthan, in the manner the Committee is proceeding may take decades altogether to complete the task.



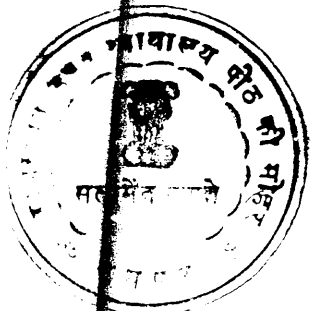
सही - प्रतिलिपि

प्रशासनिक अधिकारी न्यायिक  
राजस्थान उच्च न्यायालय पीठ  
जयपुर

11. We cannot conceive of the situation where until the determination of fee structure by the Committee i.e. for an indefinite period, the schools may not be allowed to increase the fee and further to bring such fees 10% lower than, which was proposed in the year 2012-13.

12. We find that Section 3 of the Act prohibits the collection of excess fees, only where the fee is fixed by the Government for admission of pupils to any standard or course of study in that school. The fee may be treated in excess only if it is in excess of the fixed by the Government. The prohibition on collection of fee is thus conditional on the fixation of fees by the Government, which under the Act, has to be recommended by the Committee. The blanket ban put by the Committee vide resolution No.8 in its meeting dated 30.12.2013 (Annexure-9 of the writ petition) is prima facie beyond the powers of the Committee. No such power has been conferred or is contemplated under the Act of 2013. It is only after the fee is determined, after that, the school may not be allowed to increase fees for the current or any subsequent academic session.

13. We take judicial notice of the fact that there is a lot of resentment in the private schools, in the manner in which the Committee is proceeding to fix the fee structure of individual schools without adopting any method in categorizing or classifying them. We also take judicial notice of the fact that the Chairman of the Committee has made several requests for providing staff and infrastructure, and to increase sitting fees of the Chairman for the



सही प्रतिलिपि

न्यायिक अधिकारी न्यायिक  
स्थान उच्च न्यायालय पीठ,  
जबलपुर

onerous task, which the Committee is required to perform. Looking to the facts and circumstances, and the objects, which the private schools are serving, to provide primary education to the children, which is now a fundamental right guaranteed to them under Article 21-A of the Constitution of India, we are of the view that the blanket ban put by the Committee by the resolution No.8 in its meeting dated 30.12.2013 is beyond the powers conferred on it by the Act of 2013.

14. As an interim measure, we direct that unaided private schools in the State of Rajasthan, for which the fee structure has not been determined by the Committee, will be free to increase the fees for the academic session 2014-15, and thereafter, until the fee structure is determined in respect of such school by the Committee constituted under the Rajasthan Schools (Regulations of Collection of Fee) Act, 2013, on a condition that such unaided private schools will submit an undertaking to the statutory body with which they are affiliated and recognized, to the effect that they will abide by the fee structure to be fixed by the Committee under the Rajasthan Schools (Regulations of Collection of Fee) Act, 2013 subject to challenge of the increase in accordance with law. This undertaking will be in addition to the undertaking to be given under sub-rule (1) of Rule 8A (Form-1) for grant of recognition under the Rules made under the RTE Act. The undertakings will be furnished within one week from the date of this order.

15. List again on 19.11.2014 alongwith all connected matters, for final hearing. It will be open to the State-respondent to



सही - प्रतिलिपि

प्रशासनिक अधिकारी न्यायिक  
राजस्थान उच्च न्यायालय पीठ,  
जयपुर



supplement its pleadings by bringing on record all the facts and the documents, which it wants to rely upon. The additional pleadings will be exchanged by the parties within four weeks.

SR

SA

(VEERENDR SINGH SIRADHANA),J. (SUNIL AMBWANI),ACTING C.J

Skant/-, Proof Reader

