

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

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 VIOLATION OF LAW LAID DOWN BY THE 11 JUDGES BENCH OF THE HON'BLE SUPREME COURT IN TMA PAI FOUNDATION

(2002) 8 SCC 481).

AND

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

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

:: ORDER ::

D.B. CIVIL WRIT PETITION NO.1812/2014 ✓
D.B. CIVIL WRIT PETITION NO.6183/2014
D.B. CIVIL WRIT PETITION NO.616/2015
D.B. CIVIL WRIT PETITION NO.617/2015
D.B. CIVIL WRIT PETITION NO.2273/2015

09.03.2015

HON'BLE THE ACTING CHIEF JUSTICE MR. SUNIL AMBWANI
HON'BLE MR. JUSTICE PRAKASH GUPTA

Ms.Shobha with Mr.Amit Mittal,
Mr.Mahendra Singh, for the petitioners.
Mr.Rajendra Prasad, Addl.Advocate General,
Mr.S.S.Hasan,
Mr.Rajendra Soni,
Mr.Anoop Dhand for the respondents.

1. Shri Rajendra Prasad, AAG appears for the State of Rajasthan. He seeks three weeks' time to file a detailed reply to the D.B.Civil Writ Petition No.1812 of 2014 filed by the Society for Unaided Private Schools of Rajasthan, which has not been filed so far. In the other connected writ petitions, in which the constitutional validity of the Rajasthan Schools (Regulations of Collection of Fee) Act, 2013 (for short, 'the Act'), is also under challenge, copies of the writ petitions have been supplied to the respondents. The AAG is allowed three weeks' time to file replies to these writ petitions.

2. On 07.10.2014, in *D.B.Civil Writ Petition No.1812/2014 (Society for Un-aided Private Schools of Rajasthan, Jaipur Vs. State of Rajasthan)*, we had, after examining the provisions of the Act, passed an order, on an undertaking to be given by the private educational institutions, that for the academic session 2014-15, they will be free to



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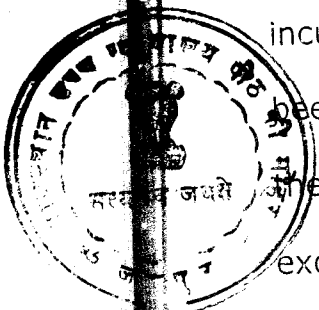
प्रशासनिक सहायक न्यायाधीश
राजस्थान उच्च न्यायालय पीठ,
जायपुर

increase the fees until the fee structure is determined, in respect of such schools individually, by the Committee constituted under the Act. Applications as well as additional affidavits have been filed, and allegations have been made in the connection D.B.Civil Writ Petitions, that the Committee is arbitrarily determining the fee in the private schools, by adopting a formula (a statistical model), which is common to all the Schools. It is submitted that formula is being applied, dividing the private schools into categories, namely, those who are charging fee below Rs.10,000/- per annum, and those who are charging above Rs.10,000/- per annum. The Formula, namely, (i) $F_{sc14-15} = \{F_p, F_{Adj14-15}, (1+C_4/100) F_{13-14}\}$ (for schools charging fees below Rs.10,000/- per annum) and (ii) $A = \text{Min} \{F_p, F_p, (1+C_4/100) F_{13-14}, F_{adj14-15}\}$; $B = \text{Min} (F_{12-13}, F_{adj12-13})$ $F_{sc14-15} = \text{Max} (A, B)$ (for schools charging fees above Rs.10,000/- per annum) provides for standardized method of fixation of fees. For example, in the Sophia Public School, Bhava, Rajsamand, the school had proposed the average annual fee for the year 2014-15 as Rs.29,138/-. The average annual fee calculated on the basis of admissible proposed expenditure for the year 2014-15, was Rs.38,335/-, whereas the Committee on adopting the formula prepared by it, has permitted an increase in the fees on the basis of CPI, and has fixed the school fees, in the orders passed under Section 6(4) of the Act, at Rs.18,313/-, without affording an opportunity of hearing.

3. It is submitted that the provisions of the Act for determination of school fees under Section 5 of the Act are applicable for determining the school fee, only after recording a finding, after examining the

school fees charged and proposed, taking into account the proposed expenditure for the year, that the school is charging exorbitant or excess fees. The provisions of the Act, enacted in light of the observation made by Hon'ble Supreme Court in Islamic Academy of Education & Anr. Vs. State of Karnataka & Ors., (2003) 6 SCC 697, apply after recording a finding that the privately managed school, not receiving any aid from State Government in any form, is charging exorbitant fee, and it is only after arriving at such a finding, that the Committee, under Section 5, can determine the fees, on the consideration of factors provided under Section 6(1)(a) to (e), in which a notice is to be given under sub-section (2), against which the private school may file objection within thirty days, and final order to be passed under sub-section (4). Rule 7 of the Rajasthan Schools (Regulations of Collection of Fee) Rules, 2013 framed under the Act provides for the guidelines for fixing the fee.

4. Prima facie, we find substance in the submission that unless a finding is recorded, considering the fact situation and the expenses incurred, including the repayment and servicing of loans, which have been taken, and modernization/expansion, which the management of the school has undertaken or proposes, that the school is charging exorbitant fee, or the fee structure is highly excessive, the Committee under the Act, does not get the authority to initiate proceedings under Section 6 of the Act. The Act prima facie, does not propose fixation of fee, for all schools, across the board, on a standard formula, prepared by it, dehors the finding of charging exorbitant fees. On the contrary, the orders under Section 6(4) passed by the Committee record its satisfaction that the school, for which the fee is determined, is not

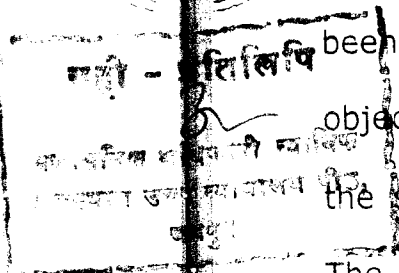
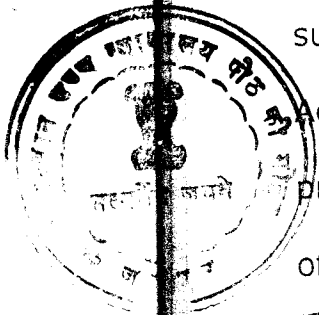


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charging exorbitant fees.

5. We are informed by learned AAG that out of about 37000 private schools, notices were issued under Section 6(2) of the Act to 17836 schools. No objections were filed in the cases of 4137 schools, and that, in cases of 13699 schools, where the objections were filed, the orders have been passed under Section 6(4) of the Act, in respect of only 5144 schools so far. In all, the Committee has determined the fee of 7306 schools in the State of Rajasthan, upto 03.03.2015.

6. Prima facie, we find substance in the contention of learned counsel appearing for the petitioners, that at this stage, pending examination of the validity of the Act, the manner in which the Committee has proceeded, and the method adopted by the Committee, do not serve the object of the Act. The standard formula for determination of fees, virtually amounts to fixation of fees of every private school, which is not aided, (except for providing certain seats and nominal reimbursement, under the RTE Act), violating the rights of the management of these schools. We further prima facie, find substance in the submission that the absence of any provision in the Act for personal hearing to be provided to the schools to justify the proposed fee structure, and that, in fact, not a single school, in respect of which orders have been passed under Section 6(4) of the Act, has been afforded an opportunity of personal hearing, to substantiate its objections filed under Section 6(2) of the Act, has violated the rights of the school management, in serving the principles of natural justice. The entire exercise undertaken by the Committee is arbitrary, unreasonable and violative of the principles of natural justice. The standard formula for fixing school fees, applied to expedite the huge



task of determination of school fees, after consideration of objections in about 37000 private schools, will impede the growth of school education by private unaided schools in the State of Rajasthan.

7. It is submitted that the academic session in all the private schools for the year 2014-15, for which the school fees has been fixed by the Committee, by adopting a standard formula, without any deviation or exception, drastically reducing the schools fees charged, will come to an end in March-April 2015. The directions issued by the Committee under Section 6(4) of the Act, applied retrospectively, will cause serious financial hardships to these schools, as the salaries of teachers and staff have been paid, and the projects of modernization/expansion, repairs and maintenance, and repayment of loans is in progress. The directions issued by the Committee, in reducing the school fees, will result into losses, leading to closure of many such private schools.

8. The State-respondents are allowed three weeks' time to file detailed replies to the applications and additional affidavits, including the Committee, for which Shri Rajendra Prasad, Additional Advocate General has assured to put in appearance. The rejoinder-affidavits/replies will be filed within two weeks thereafter.

9. List for hearing on 21.4.2015. Until further orders, the orders passed by the Committee under Section 6(4) of the Act, shall not be implemented, and no coercive steps will be taken by the State Education Authorities, for enforcing such orders.


(PRAKASH GUPTA), J.


(SUNIL AMBWANI), ACTG. CJ.

Skant/-, Proof Reader