

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.Nos.8490, 8491, 8492, 8665, 8732, 8733, 8789, 8825, 8829, 8836, 8840, 8841, 8850, 8951, 9017, 9049, 9052, 9055, 9063, 9066, 9067, 9070, 9071, 9073, 9089, 9091, 9092, 9093, 9144, 9148, 9152, 9182, 9274, 9295, 9301, 9331, 9388, 9422, 9423, 9426, 9452, 9518, 9822, 9978 of 2020 and

W.P.Nos.12049 and 13588 of 2021

and

W.M.P.No.10247, 10248, 10250, 10251, 10254, 10497, 10586, 10587, 10588, 10590, 10591, 10601, 10668, 10717, 10725, 10728, 10733, 10737, 10739, 10752, 10966, 11008, 11015, 11019, 11034, 11040, 11042, 11046, 11050, 11053, 11075, 11078, 11080, 11082, 11152, 11160, 11161, 11165, 11200, 11305, 11332, 11349, 11417, 11475, 11511, 11513, 11519, 11552, 11630, 11632, 11938, 12125, 12126, &

19045, 10884, 11358, 10757 of 2020 and

WMP.Nos.15728, 15729 & 6398 of 2021

W.P.No.8490 of 2020

1. The Federation of Association of Private
Schools in Tamil Nadu (FAPSIT),
Rep. By its State Secretary Mr.D.C.Elangovan,
No.6A, P.T.Rajan Salai,
20th Avenue, K.K.Nagar,
Chennai-78

..Petitioner

Vs

1. The Chief Secretary to Government,
The Office of Revenue and Disaster Management
Department,
Disaster Management Wing, DM II Section,
Fort St.George, Chennai-600 009.

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2.The Secretary,
Collegiate Education Department,
Fort St.George, Chennai-9.

3.The Secretary,
School Education Department,
Fort St.George, Chennai-9.

4.The Director,
The Directorate of School Education,
DPI Campus, Chennai.

5.The Director,
The Directorate of Matriculation Education,
DPI Campus, Chennai.

6.The Director,
The Directorate of Elementary Education,
DPI Campus, Chennai.

7.G.BharaniRespondents
(7th respondent impleaded as per the order
dated 22.07.2021 made in WMP.No.14646 of 2020)

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned Government Order passed by the 1st respondent in G.O.(MS)No.199 dated 24.04.2020 and quash the same as ultra vires, illegal and consequently directing the respondents to permit the petitioner Association affiliated institutions to collect the fees fixed by the Fee Fixation Committee taking into consideration the expenses incurred by the Education Institution towards payment of salary to teaching and non-teaching staffs along with other charges, bills, fees payable by the institutions.

For Petitioners:

W.P.Nos.8490 of 2020 etc., batch

Dr.Father A.Xavier Arulraj,
Senior Counsel
for M/s. Father Xavier Associates

: W.P.Nos.8825, 8836, 8665,
8840, 8841,8850, 9049, 9052,
9055, 9063, 9066, 9067, 9070,
9071, 9073, 9089, 9091, 9093,
9144, 9152, 9182, 9274, 9295,
9301, 9331, 9388, 9422, 9423,
9426, 9452, 9822 of 2020

Mr.Silambanan, Senior Counsel
for M/s.Kaavya Silambanan Associates

: W.P.No.8829 of 2020

Mr.Godson Swaminath
for M/s.Issaac Chambers

: W.P.No.9518 of 2020

Mr.T.Gowthaman

: W.P.No.9017 of 2020

M/s.L.Murali Krishnan

: W.P.Nos.8789 of 2020

Mr.E.Vijay Anand

: W.P.Nos.8490, 8491, 8492,
8732, 8733 of 2020

Mr.G.Sankaran

: W.P.Nos.9148, 9978 of 2020

Mr.P.Ebenezer Paul

: W.P.No.8951 of 2020

Mr.S.Manuraj

: W.P.No.9092 of 2020

Mrs.U.K.Kalaiarasi

: W.P.Nos.12049 and 13588 of 2021

Mr.M.Purushothaman

: WMP.Nos.14710 and 14646 of 2020

For Respondents : Mr.R.Shunmugasundaram,
Advocate General, assisted by
Mr.A.Selvendran, Government Advocate
for the State of Tamil Nadu
Mr.Nagarajan,
Standing Counsel for CBSE

COMMON ORDER

These writ petitions (except W.P.Nos.13588 and 12049 of 2021) have been filed by private educational institutions, challenging the Government Order in G.O.(Ms)No.199, Revenue and Disaster Management Department dated 20.04.2020, directing all the Private Schools and Colleges (unaided) in the State not to compel the students or parents to pay the fee for the academic year 2020-2021 and the pending dues during the lock down period. W.P.Nos.12049 and 13588 of 2021 have been filed by parents directing the fourth respondent therein to consider the petitioner's representation dated 17.06.2021 to take necessary action against the respondents 7 to 9 therein for collecting 100% fees without conducting online classes and services and may direct the seventh respondent School to waiver of the school fees for the academic year 2020-2021 and to direct the seventh respondent to implement the order of the Government for all pass to the 1st to 9th standards and to promote their children to the next class.

2. This Court, vide detailed interim order dated 17.07.2020, has taken into consideration the situation prevalent at the time and in order to find out an interim solution to clear the logjam and in order to balance the interest of all the stakeholders, issued the following directions:

“16..(a) This interim order passed by this Court will apply to all unaided private institutions across the State of Tamil Nadu.

(b) The unaided private institutions shall collect 40% of the tuition fees as an advance fees based on the tuition fees collected during the academic year 2019-2020. This advance fee shall be paid by the students on or before 31.08.2020.

(c) The unaided private institutions shall also collect the arrears of fees payable for the academic year 2019-2020 and this arrears fees shall be paid on or before 30.09.2020.

(d) If any student already paid the entire fees including arrears, the same shall not be a ground to claim for refund of the fees.

(e) The balance of 35% of the fees based on the tuition fees collected for the academic year 2019-2020, shall be collected within a period of two months from the date on which the institution is reopened and physical classes commences.

(f) The fee Committee shall immediately start the process of determining the tuition fees for the respective institutions and make an attempt to complete the process within a period of

eight months starting from August 2020 onwards.

(g) The payment of balance if any, shall be determined after the final decision of the fee Committee.

(h) The directions given to the Fee Committee will not in any way prejudice to the rights of the institutions which have already challenged the jurisdiction of the determination of the fees and which are pending before this Court and the Hon'ble Supreme Court.

(i) The teaching and non teaching staff shall not insist for any increment in salary and/or DA, until the restoration of normalcy and further orders of this Court.

(j) The State Government is directed to immediately take into consideration the request made by the institutions to supply text books and note books to the students either free of cost or at some nominal rates. For this purpose, the State Government can also get the particulars from the respective schools regarding the students who are in dire straits and it can also be confined to those students who should not be deprived of education due to their inability to purchase text books and note books. This Court is confident that the State Government will come up with a positive response in this regard.

(k) The above directions are issued without prejudice to the rights of the petitioners to argue the writ petitions on all the grounds raised by them in their respective writ petitions.”

3. Subsequently, this Court expected the situation to improve and thought that the physical classes will commence atleast from November or December, 2020. However, the situation has not improved and the reopening of schools and commencing physical classes is not a possibility in the near future. In the meantime, the institutions have started imparting education through online classes and even examination have been conducted through online mode. It was also brought to the notice of this Court that some of the students have not been paid 40% fees and the arrears fees payable for academic year 2019-2020. However, the institutions are accommodating even such students considering the present situation. It was argued that this Court should consider giving further directions for the payment of the balance 35% of fees, since the institutions will have to meet various expenses such as payment of salary, payment of statutory dues etc., and it will not be possible for the institutions to continue their operations without collecting the balance fees. Therefore, this Court, vide interim order dated 18.11.2020, has issued the following directions:

“ 7.In view of the above, the unaided private institutions are permitted to collect the balance of 35% of the fees as per Clause (e) extracted supra and this fees shall be paid by the students on or before 28.02.2021. It is left open to the

institutions to collect this 35% fees in instalments by issuing an appropriate circular. It is also made clear that any student who has not paid the initial 40% fees and/or the arrears of fees payable for the academic year 2019-2020, shall pay this fees also apart from the balance of 35% of the fees.

8. This Court received various complaints from the parents and students against certain institutions, who had collected or asked the students to pay the entire fees in violation of the orders passed by this Court on 17.07.2020. Those cases are heard separately and already directions have been given to the District Educational Officers (DEOs) and Chief Educational Officers (CEOs) to identify such institutions and ensure that the directions given by this Court is strictly complied with by the private institutions. The directions issued by this Court in the present order shall also be complied with by the private institutions in letter and spirit and the same shall be ensured by the DEOs and CEOs within whose jurisdiction the institution falls. Any complaint received for violation of the orders passed by this Court shall be enquired and a report shall be filed before this Court to enable this Court to initiate action against the concerned institutions.

9. Post this case for further hearing on 01.03.2021”

4. The Commissioner of School Education, Chennai-6, vide proceedings in Rc.No.32673/G2/2021 dated 05.07.2021 has directed all the unaided private schools in Tamil Nadu to collect 75% of the tuition fees alone and the first instalment of 40% of fee may be collected on 31.08.2021 and the remaining 35% may be collected within a period of two months of the commencement of physical classes for the academic year 2021-2022 and with regard to the collection of balance 25% of fee, it will be decided in due course considering the pandemic situation.

5. Mr.Silambanan, learned Senior Counsel for the petitioner in W.P.No.8829 of 2020 has submitted that already the schools are under financial stress, as most of them collected only 75% of the fee in the last academic year 2020-2021 as per the interim order of this Court and nearly 40% of parents in many schools did not fully pay the fees and though this Court, vide interim orders dated 17.07.2020 and 18.11.2020, has permitted the private unaided institutions to collect 75% of the fees, based on the tuition fees collected during the academic year 2019-2020, in two instalments of 40% and 35%, the schools are unable to receive the fees and as such, they

are put to grave financial loss and finding it extremely difficult to run the schools. The learned Senior Counsel suggested that the students/parents may be classified into three categories viz., (a) those who are able to pay the full fees where there is no loss of income during the pandemic period; (b) those who can pay 75% of the fees in instalments, where there is loss of income during the pandemic period and (c) those who are unable to pay the fees due to unemployment, or loss of income due to shutdown of business owing to lockdown, they may approach the school Management for concession of fees. The learned Senior Counsel would submit that they are seeking modification of the present circular issued by the School Education Department directing them to collect only 75% of the fees in two stages for the academic year 2021-2022, as done in the case of last year and would further add that if the present circular of the Commissioner of School Education is allowed to continue, almost all the private unaided institutions will definitely suffer and many schools will come to a close and therefore, prays for suitable orders.

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6. Dr.Father A.Xavier Arulraj, learned Senior Counsel for W.P.Nos.8825 of 2020 etc., has submitted that the question of survival of private schools needs to be considered in these writ petitions, as nearly 40%

of the people were unemployed for the last one year and therefore, the schools are unable to collect even the 50% of the fees due for the academic year 2020-21. The learned Senior Counsel has drawn the attention of this Court to the list of expenses incurred by schools which have been enclosed in the additional typed set of papers, wherein expenses have been categorized as avoidable expenses, unavoidable expenses and other additional expenses and therefore, it cannot be easily said that schools are profited in running online classes rather than running physical classes and would further add that schools in rural areas are very much affected, as they are unable to pay salary to staffs and in many schools, staff strength were considerably reduced and therefore, prays for appropriate orders.

7. Mr.Godson Swaminathan, learned counsel for the petitioner in W.P.No.9518 of 2020 has submitted that the impugned Government Order infringes on the right of administration of the institutions (non-minority and minority) under Articles 19(g)(1) and 30(1) of the Constitution of India and the right to collect fee is a part of administration of educational institutions and neither under the Disaster Management Act, 2005 nor under any law, the Government can impose such prohibition on collection of fees. The learned

counsel would further submit that all the issues raised herein were already considered and answered by the Hon'ble Apex Court in the decision in ***Indian School, Jodhpur and Another v. State of Rajasthan and Others [2021 SCC Online SC 359]*** and drawn the attention of this Court to the various portions of the said judgment and submitted that the Hon'ble Supreme Court, in the concluding portions of the said judgment at Paras Nos.124 to 128, has directed private school managements to collect 85% of the fees for the academic year 2020-2021, based on the fee fixed for the academic year 2019-2020 in six equal instalments, by deducting 15% of the fees in lieu of unutilized facilities by the students during the relevant academic year and also directed that the school management shall not debar any student from attending either online classes or physical classes on account of non-payment of fees, arrears/outstanding fees including the instalments and shall not withhold the results of the examinations of any student on that account. It is the further contention of the learned counsel that the institutions under the petitioner Association would agree for the directions of the Hon'ble Supreme Court in the aforesaid judgment and similar orders may be passed in these batch of cases also.

8. Mr.T.Gowthaman, learned counsel appearing for the petitioner in W.P.No.9017 of 2020 has reiterated the submission of Mr.Godwon Swaminathan, learned counsel for the petitioner in W.P.No.9518 of 2020 and submitted that in many cases, the schools have considered concession/waiver of fees for deserving students and the Hon'ble Supreme Court in the aforesaid judgment held that individual representation of the parents should be looked into by the management.

9. Mr.M.Purushothaman, learned counsel appearing for the impleading petitioners and on behalf of the students contended that the prayer in the writ petition are verbatim the same, wherein they have stated that the schools will abide by the fee fixed by the Fee Determination Committee. He would further add that the decision in *Indian School, Jodhpur and Another v. State of Rajasthan and Others [2021 SCC Online SC 359]* will not be applicable to the cases on hand for the reason that fee fixed by the Fee Determination Committee was challenged in the said judgment and whereas in the case on hand, Fee Determination Committee did not finish the process of determining the tuition fees for the respective institutions, inspite of specific directions given by this Court vide interim order dated 17.07.2020. The learned

counsel further submitted that CBSE schools are not governed by the Fee fixed by the Committee constituted by the State Government and the details of fees have not been published in the website of the CBSE schools and would further add that some concession in the form of funds/subsidy/loan can be given to the parents by the Government for making arrangements to pay the school fees.

10. It is clarified by all the learned Senior Counsel appearing for the CBSE Schools that the circulars / notifications / instructions issued by the State Government will apply to all the schools including CBSE schools and therefore, common order may be passed in these writ petitions.

11. Mr.Nagarajan, learned Standing Counsel for CBSE has submitted that as per Clause 7.2 of the Affiliation Bye-Laws 2018 of the Central Board of Secondary Education, “*admission fee and fee charged under any other head are to be charged only as per the regulations of the Appropriate Government*” and therefore, the circulars /notifications/orders issued by the State Government will bind upon the respective CBSE schools within the jurisdiction and this Court may pass suitable orders in the interest of justice.

12. Mr.R.Shunmugasundaram, learned Advocate General, assisted by Mr.A.Selvendran, learned Government Advocate appearing for the State of Tamilnadu has drawn the attention of this Court to the typed of papers and submitted that consistency is being maintained by the State of Tamil Nadu in the fixation of fees and the Commissioner of School Education has issued the Circular dated 05.07.2021 for the academic year 2021-2022, based on the interim order passed by this Court. The learned Advocate General further submitted that the Hon'ble Supreme Court in the judgment in ***Indian School, Jodhpur and Another v. State of Rajasthan and Others [2021 SCC Online SC 359]*** has broadly considered in detail and issued various directions and however, the said judgment will not apply to the case on hand and would further add that in pursuant to the interim order passes by this Court, the Circular dated 05.07.2021 has been issued by the State Government and therefore, this Court may pass suitable orders in the interest of justice by following the aforesaid judgment of the Hon'ble Supreme Court. The learned Advocate General has further submitted that insofar as unfilled vacancies in the Fee Determination Committee is concerned, those vacancies will be filled up by the State Government at the earliest, so as to enable the Committee to function effectively for deciding the disputes in respect of

determination of fees and would further add that if there is any dispute between the School Management and the parents for redressal of their grievances, it would evolve a heavy burden on the authorities concerned.

13. This Court has anxiously considered the rival submissions and also perused the entire materials placed before it.

14. It is to be noted that schools being closed for more than a year now due to COVID-19 pandemic and classes being held virtually, education activities have taken a massive hit across the country and it's not the students alone who are suffering. Private schools are particularly affected, with many finding it difficult to even pay their staff and some have also had to temporarily terminate the services of their faculty for co-curricular and extra curricular activities such as sports and arts, besides other staff members. Orders have been passed directing the schools to collect only the tuition fees from parents and not to charge transportation fees, development fees etc. It is the grievance of many schools that collecting just the tuition fees too has become a challenge, especially in the second year of the pandemic. Virtual classes have also thrown up fresh costs for some schools, with authorities

having to buy laptops and pay for internet connectivity, for teachers who did not have the required infrastructure to conduct online classes, getting subscription for various web services for webinars, online assessment tools etc. Needless to state that schools with moderate funds are finding it extremely difficult to survive.

15. The Covid-19 pandemic has been financially challenging for parents, since they have not been able to make fee payments on the due dates owing to lockdown or on account of other reasons such as loss of income, unemployment, closure of businesses due to lockdown restrictions and the parents demand concession of fees since the classes are conducted online. This aspect is also to be considered and interest of students should also be protected in respect of those categories and therefore, this Court requires detail discussion on this issue to take appropriate decision for payment of fees.

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16. The learned Senior Counsel and the learned counsel appearing for the petitioners emphasized before this Court that the petitioners have challenged the impugned Government Order in G.O.Ms.No.199, Revenue

Disaster Management Department dated 20.04.2020, which has been issued by invoking the Disaster Management Act, 2005 and since, the said issue has already been decided by the Hon'ble Supreme Court in the decision in ***Indian School, Jodhpur and Another v. State of Rajasthan and Others [2021 SCC Online SC 359]***, they are not insisting upon to challenge the said Government Order. The primordial submission made by the learned Senior Counsel and respective learned counsel appearing for the petitioners is that by virtue of the interim order passed by this Court for the last academic year, the Commissioner of School Education Department has passed a proceedings in RC.No.32673/G2/2021 dated 05.07.2021 for the present academic year 2021-2022, permitting the private schools to collect only 75% of the tuition fees and if the said circular is allowed to continue, almost all the private institutions will face severe financial crunch and many schools will come to a close, since nearly 40% of the students did not pay the fees for the last academic year and therefore, prays for modification of the Government Order/Circular in the light of the aforesaid judgment of the Hon'ble Supreme Court.

17. Similar identical issues have already been raised before the Hon'ble Supreme Court in the decision in *Indian School, Jodhpur and Another v. State of Rajasthan and Others [2021 SCC Online SC 359]*, wherein the Hon'ble Apex Court after considering the contentions/submissions made on behalf of school authorities as well as the plight of the students, has passed a detailed order and it is useful to refer to the operative portions of the said judgment:

"125. Accordingly, the appellants are justified in assailing the order dated 28.10.2020 issued by the Director, Secondary Education and must succeed. However, that that does not give licence to the appellants to be rigid and not be sensitive about aftermath of pandemic. The school Management supposedly engaged in doing charitable activity of imparting education, is expected to be responsive and alive to that situation and take necessary remedial measures to mitigate the hardship suffered by the students and their parents. It is for the school Management to reschedule payment of school fee in such a way that not even a single student is left out or denied opportunity of pursuing his/her education, so as to effectuate the adage "live and let live" सियमेव जयते

126. In law, the school Management cannot be heard to collect fees in respect of activities and facilities which are, in fact, not provided to or availed by its students due to circumstances beyond their control. Demanding fees even in respect of overheads on such activities would be nothing short of indulging in profiteering and commercialization. It is a well-known fact and judicial notice can also be taken that, due to complete lockdown the schools were not allowed to open for substantially long period during the academic year 2020-21. Resultantly, the school Management must have saved overheads

and recurring cost on various items such as petrol/diesel, electricity, maintenance cost, water charges, stationery charges, etc. Indeed, overheads and operational cost so saved would be nothing, but an amount undeservedly earned by the school without offering such facilities to the students during the relevant period. Being fee, the principle of quid pro quo must come into play. However, no accurate (factual) empirical data has been furnished by either side about the extent to which such saving has been or could have been made or benefit derived by the school Management. Without insisting for mathematical exactitude approach, we would assume that the school Managements (s) must have saved around 15 per cent of the annual school fees fixed by the school/adjudicated by the Statutory Regulatory Authorities for the relevant period.

127. At this stage, we must advert to the stand taken by the learned counsel for the appellants that the appellants would be content with the interim order passed by this Court on 08.02.2021, being confirmed as a final order. This suggestion is indeed attractive, but that arrangement does not provision for the amounts saved by the school Management towards unspent overheads/expenses in respect of facilities not utilised or could not be offered by the school Management to the students due to lockdown situation. As aforesaid, we would assume that at least 15 per cent of the annual school fees would be towards overheads/expenses saved by the school Management. Arguendo, this assumption is on the higher side than the actual savings by the school Management of private unaided schools, yet we are inclined to fix that percentage because the educational institutions are engaged in doing charitable activity of imparting and spreading education and not make money. That they must willingly and proactively do. Hence, collection of commensurate amount (15 per cent of the annual school fees for academic year 2020-2021), would be a case of profiteering and commercialisation by the school Management.

128. Ordinarily, we would have thought it appropriate to relegate the parties before the Regulatory Authority to refix the

school fees for the academic year 2020-21 after taking into account all aspects of the matter including the advantages gained by the school management due to unspent overhead/expenses in respect of facilities not availed by the students. However, that course can be achieved by the arrangement that we propose to direct in terms of this judgment. To avoid multicplicity of proceedings (as school fee structure is linked to school – school wise) including uncertainty of legal processes by over 36,000 schools in determination of annual fee structure for the academic year 2020-21, as a one-time measure to do complete justice between the parties, we propose to issue the following directions:

i. The appellants (school management of the concerned private unaided school) shall collect annual school fees from their students as fixed under the Act of 2016 for the academic year 2019-20, but by providing deduction of 15 per cent of that amount in lieu of unutilised facilities by the students during the relevant period of academic year 2020-21.

ii. The amount so payable by the concerned students be paid in six equal monthly instalments before 05.08.2021 as noted in our order dated 08.02.2021.

iii. Regardless of the above, it will be open to the appellants (concerned schools) to give further concession to their students or to evolve a different pattern for giving concession over and above those noted in clauses (i) and (ii) above.

iv. The school Management shall not debar any student from attending either online classes or physical classes on account of non-payment of fees, arrears/outstanding fees including the instalments, referred to above, and shall not withhold the results of the examinations of any student on that ground.

v.If any individual request is made by the parent / ward finding it difficult to remit annual fees for the academic year 2020-21 in the above terms, the school Management to consider such representation on case-to-case basis sympathetically.

vi.The above arrangement will not affect collection of fees for the academic year 2021-22, as is payable by the students of the concerned school as and when it becomes due and payable.

vii.The school Management shall not withhold the name of any student/candidate for the ensuing Board examinations for Classes X and XII on the ground of non-payment of fee/arrears for the academic year 2020-21, if any, on obtaining undertaking of the concerned parents/students.

129. We are conscious of the fact that we are issuing general uniform direction of deduction of 15 per cent of the annual school fees in lieu of unutilised facilities/activities and not on the basis of actual data school-wise. As aforesaid, we have chosen to do so with a view to obviate avoidable litigation and to give finality to the issue of determination and collection of school fees for the academic year 2020-21, as a one-time measure which is the subject matter of these appeals. We have consciously limited the quantum of deduction from annual school fees to 15 per cent although the school Management had mentioned about its willingness to provide 25 per cent scholarship to deserving students, as we have compelled the school Management to collect annual school fees for the academic year 2020-21 as was fixed for the academic year 2019-20 on which some of the school Management(s) could have legitimately asked for increase of at least 10 per cent in terms of Section 6(5) of the Act of 2016.”

The Hon'ble Apex Court in the said decision also held that State Authorities do not have any power under the Disaster Management Act, 2005 to order reduction in fees of private unaided schools.

18. The learned Senior Counsel and learned counsel for the petitioners submitted that all the petitioners' school management are agreeable to follow/abide by the directions of the Hon'ble Supreme Court in the aforesaid judgment and this Court may pass suitable orders by following the said judgment of the Hon'ble Supreme Court. In the light of the judgment of the Hon'ble Supreme Court, the respective learned counsel for the parties has agreed for the following terms:

- (i) The petitioners school management can collect 85% of the fees [fee fixed for previous years by the Fee Determination Committee] for the academic year 2021-2022 in six instalments from those students/parents, who have not suffered loss of income during the pandemic period.
- (ii) In case of loss of income during this pandemic period, the concerned students/parents can make a request to the School Management and the Management will consider for collection of 75% of fees [fee fixed for previous years by the Fee Determination Committee] for the academic year 2021-2022 in six instalments.
- (iii) If students/parents seek any concession for payment of fees, they have to make a representation to the School

Management and it will be considered on case-to-case basis sympathetically;

(iv) The students will not be removed from the school under any circumstances for this academic year 2021-2022 in view of the present academic situation;

(v) No student will be restrained from attending online classes for this academic year 2021-2022 under any circumstances.

19. The common submission of the learned counsel for the petitioners is that order passed by this Court on 17.07.2021 is only an interim order, wherein the learned Judge has reserved the rights of the petitioners to argue the writ petitions at the time of final disposal and therefore, the said writ petitions can be decided on merits and revised Circular may be issued by the Government in the light of the directions issued in these writ petitions. The learned Senior Counsel for the petitioners and the learned counsel for the petitioners made a submission that (i) the students who can afford to pay the fees, in the light of the Supreme Court Judgment, shall pay 85% of fees for the academic year 2021-2022, where there is no loss of income during the pandemic situation; (ii) students/parents who have suffered loss of income during this pandemic period, shall make an request to the school management, who shall consider their request and collect 75% of the fees

(based on the fee fixed for the academic year 2019-2020) as per the Circular issued by the Commissioner of School Education and (iii) those who are unable to pay the fees due to unemployment, close down of business on account of lockdown, shall make a representation to the School Management and it will be considered on case-to-case basis. Therefore, the learned counsel for the petitioners prays for modification of the earlier interim order passed by this Court as well as the circular issued by the Commissioner of School Education, Chennai issued in pursuant to the interim order, permitting the private schools to collect 75% of the fee for the academic year 2021-2022.

20. The learned counsel appearing for the students suggested that the Government shall consider for grant of subsidy/grant/loan to the parents/students for making arrangements to pay the fees and however, this Court cannot issue any specific direction to the Government, since it involves financial implications to the State. He further submitted that appropriate directions may be issued to the Fee Determination Committee and the State Government has to provide necessary staff for the effective functioning and determination of fees by the Fee Determination Committee and would further

add that under Right to Education Act, CBSE Schools are under the control of the appropriate State Government and further seeks that CBSE schools has to display their structure of fees in their respective website and to that extent, CBSE has sent circulars, but they have not complied with the same and therefore, seeks necessary directions in this regard.

21. In view of the above discussions and following the judgment of the Hon'ble Supreme Court in *Indian School, Jodhpur and Another v. State of Rajasthan and Others [2021 SCC Online SC 359]*, and in order to protect the interest of students as well as the School Management during this extraordinary situation, this Court is of the view that it would be appropriate to issue the following directions:

(1) The petitioners (school management of the concerned private unaided school) shall collect 85% of the annual school fees (based on the fee fixed for the academic year 2019-2020) for the academic year 2021-2022 in six instalments, from those students/parents such as State and Central Government Employees, Public Sector Undertakings, Professionals and Business People etc., who have not suffered loss of income during this pandemic period, provided if they have conducted online classes; If the students had already paid first instalment

for this academic year, the balance amount shall be paid by way of instalments and the last instalment be paid on or before 01.02.2022.

(2) Students/parents who have suffered loss of income during this pandemic period, shall make an application to the school management, who shall consider their request and collect 75% of the fees (based on the fee fixed for the academic year 2019-2020) as per the Circular issued by the Commissioner of School Education, Chennai-6, for the academic year 2021-2022, in six instalments. If the students had already paid first instalment for this academic year, the balance amount shall be paid by way of instalments and the last instalment be paid on or before 01.02.2022.

(3) If any parents / wards seek further concession for payment of annual fees for the academic year 2021-22, apart from (1) and (2) stated above, on account of unemployment, close down of business due to lockdown, they shall make a representation to the School Management, who shall consider such representation on case-to-case basis sympathetically.

(4) The unaided private institutions shall also collect the arrears of fees payable for the academic year 2020-2021 in instalments.

(5) If any student has already paid the entire fees including arrears, the same shall not be a ground to claim for refund of the fees.

(6) The school Management shall not debar any student from attending either online classes or physical classes on account of non-payment of fees, arrears/outstanding fees including the instalments, referred to above, and shall not withhold the results of the examinations of any student on that ground. If any such action is brought to the notice of the educational authorities, it shall be viewed seriously and suitable action shall be taken against the institutions concerned.

(7) Regardless of the above, it will be open to the petitioners (concerned schools) to give further concession to their students or to evolve a different pattern for giving concession over and above those noted in clauses (1) to (3) above.

(8) If any dispute arises between the parents/wards and the School Management in respect of concession in fees, either on the reference by the School Management or on the application by the students / parents, the District Educational Officer of the Districts concerned shall consider and take appropriate decision within a period of 30 days from the date of receipt of the application.

(9) The students shall not be removed / dropped out from the institutions under any circumstances during this academic year 2021-22 and it is the responsibility of the jurisdictional Educational Authorities to monitor the same.

(10) If any difficulty faced by the students to continue in a particular school, they can approach the jurisdictional Educational Authorities, who shall make necessary arrangements to accommodate the said students in nearby Government / Corporation/ Municipal / Panchayat schools.

(11) As a special case under extraordinary situation, the State Government may also consider to sanction amount for the fees, if there is any unfilled seats available under 25% quota under the Right of Children to Free and Compulsory Education Act, 2009, for the academic year 2021-22, subject to eligibility criteria.

(12) The management of CBSE Schools shall publish the details of fees to be collected for the academic year 2021-2022 in their respective website, within a period of four weeks from the date of receipt of a copy of this order.

(13) In case of dispute in respect of determination of fees, the school Management or students/parents concerned can approach the Fee Determination Committee for redressal of their grievances.

(14) Students who seek to leave the school may inform to the schools concerned. It is made clear that the Education Department has already issued a circular that schools cannot insist upon production of Transfer Certificate for admission of students in schools. It is only an information to the school management for admitting new students in the said vacancies.

(15) The State Government shall take all necessary steps to fill up the vacancies in the cadre of staff and ensure effective functioning of the Fee Determination Committee. The said exercise shall be completed by the Secretary to Government, School Education Department, Government of Tamil Nadu, within a period of eight weeks from the date of receipt of a copy of this order.

(16) In view of the above directions, the State Government shall issue revised Circular and the same shall be communicated to all the Schools within a period of two weeks from the date of receipt of a copy of this order.

22. With the above directions, these writ petitions are disposed of.

No costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते

30.07.2021

Index : Yes / No

Internet : Yes / No

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To

1. The Chief Secretary to Government,
The Office of Revenue and Disaster Management Department,
Disaster Management Wing, DM II Section,
Fort St. George, Chennai-600 009.

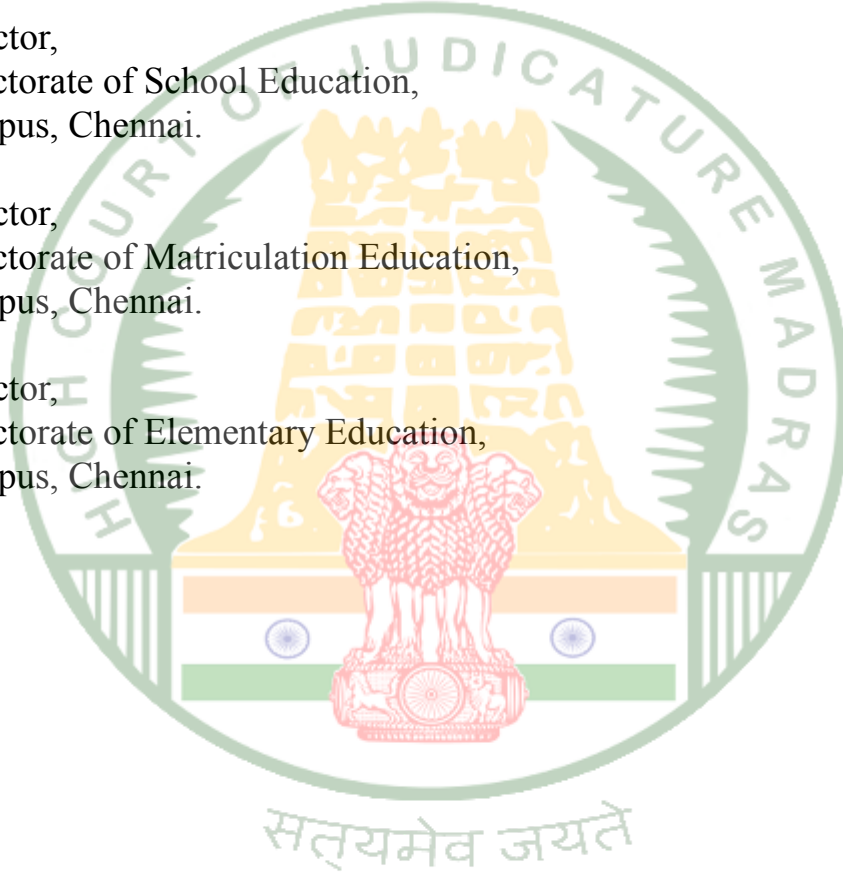
2.The Secretary,
Collegiate Education Department,
Fort St.George, Chennai-9.

3.The Secretary,
School Education Department,
Fort St.George, Chennai-9.

4.The Director,
The Directorate of School Education,
DPI Campus, Chennai.

5.The Director,
The Directorate of Matriculation Education,
DPI Campus, Chennai.

6.The Director,
The Directorate of Elementary Education,
DPI Campus, Chennai.

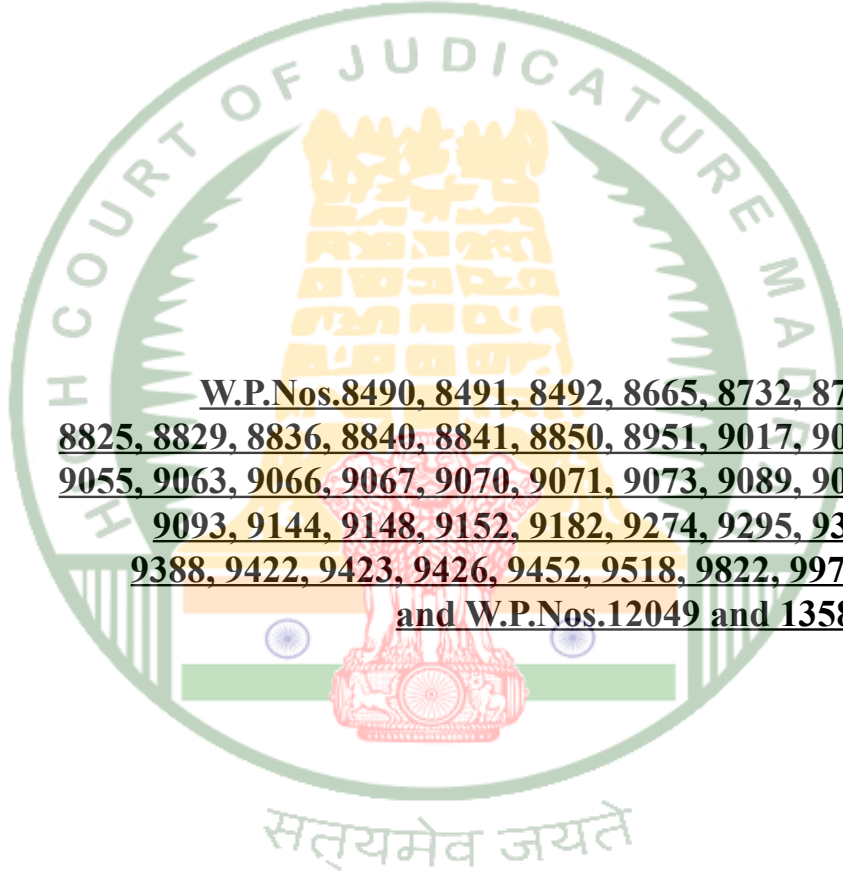


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W.P.Nos.8490 of 2020 etc., batch

D.KRISHNAKUMAR. J

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W.P.Nos.8490, 8491, 8492, 8665, 8732, 8733, 8789, 8825, 8829, 8836, 8840, 8841, 8850, 8951, 9017, 9049, 9052, 9055, 9063, 9066, 9067, 9070, 9071, 9073, 9089, 9091, 9092, 9093, 9144, 9148, 9152, 9182, 9274, 9295, 9301, 9331, 9388, 9422, 9423, 9426, 9452, 9518, 9822, 9978 of 2020 and W.P.Nos.12049 and 13588 of 2021

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30.07.2021