

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

WRIT PETITION (PIL) NO. 59 OF 2020

Japinder Singh

...Petitioner.

Vs.

Union of India and others.

...Respondents

WRIT PETITION (PIL) NO. 60 OF 2020

Akash Yadav

...Petitioner.

Vs.

State of Uttarakhand and others.

...Respondents

Sri Ajay Veer Pundir and Ms. Abhilasha Belwal, Advocate holding brief of Sri Lalit Belwal, Advocates for the petitioners.

Sri Paresh Tripathi, Chief Standing Counsel for the State.

Sri Rakesh Thapliyal, Asst. Solicitor General for the Union of India.

Sri Sandeep Tiwari, Sri S.K. Mandal and Sri Shikhar Kacker, Advocates for the applicants in the Impleadment Applications.

Dated : 12th May, 2020

Hon'ble Ramesh Ranganathan, C.J.

Hon'ble R.C. Khulbe, J.

Issue notice to the private respondents returnable in two weeks.

2. The State Government issued an order on 02.05.2020, in furtherance of its earlier order dated 22.04.2020 whereby private unaided schools in the State were permitted to conduct classes online. In terms of the Government Order dated 02.05.2020, these private schools were prohibited from collecting any fees other than tuition fees. This facility for collecting tuition fee was extended to private unaided schools only in cases where they were conducting online classes for its students. The private unaided schools, which were not conducting online classes, were prohibited even from collecting tuition fees from its students. These schools, which were also required to pay the salaries of their teachers and staff from their own funds,

were directed to strictly adhere to the instructions issued in the Government Order dated 02.05.2020.

3. The complaint in these two writ petitions, among others, is that these private schools are coercing parents to pay tuition fees though the Government Order dated 02.05.2020 made payment of tuition fees by parents voluntary; some of these schools claimed to conduct online classes even for Upper Kindergarten students (i.e. children even below Class 1); this ruse has been adopted only to collect tuition fees from gullible parents; e-mails and WhatsApp messages were being sent by these schools calling upon parents to pay tuition fees of their children, though the Government Order required payment of fees to be voluntary; and, since the State of Uttarakhand is a hilly and poor State, several of its inhabitants lack internet access resulting in their children not being able to participate in the online classes conducted by the schools, despite which they are being forced to pay the tuition fees for their children.

4. A statutory obligation is cast on private unaided schools, under the Right of Children to Free and Compulsory Education Act, 2009, to provide free education to certain categories of students who can ill-afford to pay the fees. Further, all private unaided schools in the State, be it affiliated to the State Board or to the Central Board of Secondary Education or to the ICSE, can only establish and run their schools on a No Objection Certificate being issued in their favour by the competent authority in the State Government.

5. While it is no doubt true, as contended by the learned counsel appearing on behalf of the private unaided educational institutions, that these schools are required to incur huge expenditure towards payment of salaries to their teachers and staff, establishment charges, rent for buildings, vehicle maintenance, ESI, EPF to its employees, etc., the current situation, where a lockdown has been imposed throughout the country because of the COVID-19 Pandemic, is unprecedented. The object of the Government Order dated 02.05.2020 is to ease the burden on parents, who do not even have the means to earn their livelihood in this period of crisis, in being required to pay the huge fees which these private institutions charge. While the difficulties of

these institutions, in having to incur expenditure without collecting fees from its students, is understandable, times of crisis like these would require the haves to extend a helping hand to the have-nots. The Government Order dated 02.05.2020 binds these private schools and, as long as it continues to remain in force, they are bound to adhere to the conditions stipulated therein.

6. With a view to ensure proper and effective implementation of the Government Order dated 02.05.2020, we issue the following directions:

i. The State Government shall appoint the District Education Officer and the Block Development Officer, in each district, to be the Nodal Officers to whom complaints can be addressed by parents who are being coerced to pay tuition fees by private schools.

ii. Wide publicity shall be given in the media informing the public at large, in the State, that they can address their grievance in this regard to the Nodal Officers.

iii. On receipt of any such complaints, the concerned Nodal Officers shall take prompt action against the erring educational institutions who are coercing parents, to pay the tuition fees of their children, though the Government Order dated 02.05.2020 expressly stipulates that payment of tuition fees is voluntary.

iv. Since the Government Order dated 02.05.2020 enables only those institutions which run online classes to collect tuition fees, it is only those students, who are able to access the online course being offered by the private educational institutions, who would be required to pay the tuition fee, if they choose to do so.

v. Children, who do not have access to the online course, cannot be asked to pay the tuition fee.

vi. It does appear that subtle means are being adopted by these private institutions to force parents to pay the tuition fees. Since payment of tuition fee by students is voluntary, none of the private schools shall send e-mails or

WhatsApp messages or any form of communication to the parents calling upon them to pay the tuition fees.

vii. The Secretary, School Education, shall call for information from all the District Education Officers regarding the number of private schools, in their respective districts, which offer online courses, and the number of students who have access to such online courses. Information shall be obtained from each of these private schools as to whether tuition fees is being collected even from those students who have no access to the online course offered by the schools, and whether these schools have collected tuition fees from such students also. This information shall not only be collected from students of Class 1 to Class 10, but also with regards children who are undergoing their Upper Kindergarten. The Secretary, School Education, shall submit a detailed report in this regard to this Court by the next date of hearing.

viii. The Secretary, School Education, shall also furnish information regarding online classes being conducted by private schools for Upper Kindergarten students. He shall consider the wisdom in conducting such online programmes for these children in Upper Kindergarten, examine whether this is just a ruse to collect tuition fee from them, and issue appropriate directions, to all such private schools, in this regard as he considers appropriate.

7. All Interim Applications for Impleadment are ordered.

8. Post on 26th May, 2020 in the Daily Cause List by which date the Secretary, School Education shall submit his report to this Court furnishing the aforesaid details.

9. Let a copy of this order be issued today itself.

(R.C. Khulbe, J.)
12.05.2020

(Ramesh Ranganathan, C.J.)
12.05.2020