COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

1. S.B. Civil Misc. Stay Application No.7080/2020

in

S.B. Civil Writ Petition No. 7564/2020

Society Of Catholic Education Institutions In Rajasthan, Head Office At Bishops House, Kesarganj, Ajmer, 305001, Rajasthan Through Its Vice-President, Rev. Bishop Oswald Lewis Son Of Mr. Xavier Lewis.

----Petitioner

Versus

1. The State Government Of Rajasthan, Through Principal Secretary To The Government, Secondary Education Secretary, Government Secretariat, Jaipur.
2. Director, Secondary Education Department, Bikaner.

----Respondents

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Connected With

2. S.B. Civil Misc. Stay Application No.7127/2020

in

S.B. Civil Writ Petition No. 7609/2020

Progressive Schools Association, Through Its President Mr. Birendra Shrivastva S/o, Shri Avadhesh Kumar Verma, Aged About 57, R/o 8 Uit Colony Shobhawaton Ki Dhani, East Pal Road, Jodhpur.

----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary, Department Of School Education Govt. Secretariat Jaipur
2. Director, Primary And Secondary Education Board, Rajasthan, Bikaner.

----Respondents

3. S.B. Civil Misc. Stay Application No.8296/2020

in

S.B. Civil Writ Petition No. 8835/2020

1. Nisa Education, A Society Registered Under The Societies Registration Act Xxi Of 1860 Bearing Registration No S/1907/ District South/2016, Having Its Registered Office At Nisa Education A-24-D, Gf, Hauz Khas, New Delhi

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Through Its Secretary

2. Jaipur Sahodaya Schools Complex, Through Its Secretary, Sector 4 Jawahar Nagar Jaipur.

----Petitioners

Versus

1. State Of Rajasthan, Through Secretary, School Education And Bhasha, Government Of Rajasthan, Rajasthan Secretariat, Jaipur (Raj.)
2. Directior, Secondary Education Rajasthan, Bikaner.

----Respondents

4 S.B. Civil Misc. Stay Application No.8256/2020

in

S.B. Civil Writ Petition No. 8826/2020

1. School Shiksha Pariwar Sanstha, 413, Mansarowar Plaza Madhyam Marg, Mansarover Jaipur Rajasthan Through Its President Anil Sharma S/o Shri Ramji Lal Sharma, President, Age About 50 Years, Paterkar Colony Road, Mansarowar, Jaipur Rajasthan
2. D.g.j. Educational Society, 94, Paterkar Colony, Jodhpur Through Its President Shri Vaibhav Doshi S/o Shri Niranjan Doshi Age About 33 Years, House No 95, Sector 7 New Power House Road, Jodhpur

----Petitioners

Versus

1. The State Government Of Rajasthan, Through Principal Secretary To The Government, Secondary Education Secretary, Government Secretariat, Jaipur.
2. Director, Secondary Education Department, Bikaner

----Respondents

For Petitioner(s)	:	Mr. Kamlakar Sharma, Senior Advocate, with Ms. Alankrita Sharma Mr. Rishab Khandelwal Mr. Dinesh Yadav Mr. Shailesh Prakash Sharma Mr. Hukam Chand Sharma
For Respondent(s)	:	Mr. Rajesh Mehrishi, AAG Mrs. Sangeeta Sharma & Mr. Amit Changani for Intervenors

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HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Order

DATE OF RESERVED :: 04/09/2020

DATE OF PRONOUNCEMENT :: 07/09/2020

In Interim Application Nos.1/2020, 2/2020:

Heard on interim applications seeking impleadment of the applicants as party respondents in S.B. Civil Writ Petition Nos.7564/2020 and 7609/2020.

Taking the consideration the facts as mentioned in the interim applications, the same are allowed to the extent of being intervenors.

On Stay Application Nos.7080/2020, 7127/2020, 8996/2020 & 8256/2020:

1. All these writ petitions raise common grievance as against the orders passed by the State Government dated 9.4.2020 and 7.7.2020. As a lead case, brief facts of S.B. Civil Writ Petition No.7609/2020 titled as "Progressive School Association Versus State of Rajasthan & Anr." are being taken note of for disposal of stay applications. As per order dated 9.4.2020 following directions were issued to the private and unaided schools recognized by Department of Primary & Secondary Education:

a) After 15th March, 2020, collection of all outstanding dues, current applicable fees and advance fees shall be deferred for a period of three months in respect of all students studying in non-governmental institutions. During this period, names of students shall not be struck off for non-governmental institutions. During this period, names of students shall not be struck off for non-payment of such fees;

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b) In case the students continue to receive education from such non-governmental institutions then the deferred fees for the session 2020-21 could be paid after such suspension period;

c) On the completion of the lockdown period if the students desire to obtain transfer certificate from such schools then the transfer certificates may be issued after payment of the fees 2019-20 and on obtaining no-dues certificate thereof.

2. By the order dated 7.7.2020 and the aforesaid directions were continued to operate and extended indefinitely till the State Government takes any decision for opening of the schools.

3. Mr. Kamlakar Sharma, Senior Advocate, assisted with Ms. Alankrita Sharma, Advocate, appearing for the petitioners in S.B. Civil Writ Petition No.7564/2020, were heard along with Mr. Shailesh Parakash Sharma, Advocate, appearing in S.B. Civil Writ Petition No.8835/2020 and Mr. Dinesh Yadav, Advocate, appearing in S.B. Civil Writ Petition No.7564/2020 and Mr. Hukam Chand Sharma in S.B. Civil Writ Petition No.8862/2020 on stay applications.

4. Arguments were also advanced on behalf of the State Government by Mr. Rajesh Mehrishi, Additional Advocate General and the counsels, Mrs. Sangeeta Sharma, who has been allowed as intervenors on behalf of the parents of the students.

5. Without going into the details and for the purpose of deciding the stay applications, this Court finds that the submissions of the learned counsel appearing for the petitioners are essentially to the fact that the power was not available with the State Authorities, namely, Principal Secretary, Department of Education and Director, Primary & Secondary Education, Rajasthan, to have restrained the

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petitioner schools from taking fees from the students and for passing of the order of deferment of the fees for indefinite period.

6. Learned counsel submits that while the Disaster Management Act, 2005 (hereinafter referred to as "the Act of 2005") may provide powers to the State Disaster Management Authorities for taking decision and for laying down the policies and plans for Disaster Management in the State, but the said powers could be exercised only in accordance with the provisions of the Act of 2005. Learned counsels submit that after issuing of notification under sub-section (1) of Section 14 of the Act of 2005, a State Executive Committee was required to be constituted, which was to be chaired by the Chief Secretary of the State Government, who could have passed the orders under Section 24 of the Act of 2005 and all the orders passed by any other authorities were required to be authenticated in terms of the provisions of Section 68 of the Act of 2005. Learned counsels further submit that there has already been a deferment of fees for a long period of almost six months and the schools required to maintain the infrastructures and also pay salary to its staff, which includes non-teaching and teaching staff and are facing great hardship and therefore, by interim arrangement at least tuition fees be allowed to be collected from students.

7. Learned counsel submits that as per the provisions of the Rajasthan Non-Government Educational Institutions Act, 1989 and the Rules framed therein, it is binding for the institution(s) to pay regular salary to its staff even during the lock-down period. It is further submitted that the staff of the schools cannot be reduced as decision to open the schools is wholly uncertain and as soon as

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physical attendance of the students is allowed in the schools, the entire staff would be required for the purpose. While the power was available under the Act of 2005 to restrain the schools from opening, the schools are only closed for the purpose of disallowing the children to appear physically. However, so far as the teaching process is concerned, the same is continuing in terms of the directions issued by the Central Board of Secondary Education by adopting entire process and for the purpose of teaching by virtual methods, the members of the petitioner association had to incur additional expenditure in procuring additional gadgets for implementation of virtual classes.

8. Learned counsel submits that the State Government has failed to take notice of the difficult situation, which the schools have been put in on account of the impugned orders quoted above because the entire financial backing of the schools is based on only tuition fees and other kinds of fees, which the schools receive from its students. While a deferment was initially for a period of three months, later on, by the order dated 7.7.2020, it has been continued for indefinitely and it is not known as to when the State Government shall allow the schools to start operating by allowing the children to come to the schools and till that time, the schools cannot stop the teaching work.

9. In fact, Mr. Dinesh Yadav, learned counsel appearing for the petitioner – Society of Catholic Education Institutions, has pointed out that first session of online classes is already over and the class room examination of the students has also been conducted online and the studies are going on seriously in all the schools. The teachers are putting their labour, however, the School

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Management is finding it very difficult to pay the salary to the teaching staff. It is submitted that all the students are taking benefit out of the online classes being run by the schools and it cannot be said that the students are not being provided education for their classes during this pandemic.

10. Per contra; learned Additional Advocate General appearing for the State-respondents submits that the schools are bound to provide free education to its students upto the elementary level i.e. upto the age of 14 years in terms of the provisions of the Right to Education Act. The tuition fees can only be charged, when actually the teachers are teaching the students in the classes and the same cannot be charged on the basis of teaching being done online.

11. It is submitted by the counsels appearing for intervenors that the parents have been made to incur extra expenditure by providing arrangement for online classes for their wards at home and therefore they had to purchase laptops or computers for the purpose and also provide internet facility. It is also submitted that the parents of the wards have also been deprived of regular earnings due to lock-down and pandemic and it is not possible for them to meet out with the heavy fee structure of the schools and submit that determent cannot be interfered.

12. All the counsels appearing for the petitioners submit that while the petitioners may not claim the entire fees from the students, by way of an interim arrangement and in order to make a balance, members of the petitioner association ought to be allowed to at least receive tuition fees from the students.

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13. I have considered the submissions as above and perusal the material available on record.

14. While there are myriad issues involved in the present batch of the writ petitions, which are required to be examined finally; at this interim stage, this Court finds that a balance is required to be struck between financial difficulty of the school management relating to release of the salary of the staff and minimum upkeep of school on one side and the financial pressure, which has come on the parents due to the pandemic and lock-down as noticed above.

15. After noticing the judgments passed by the High Court of Gujarat at Ahmedabad in the case of *Nareshbhai Kanubhai Shah Versus State of Gujarat & 2 Others*: R/Writ Petition (PIL) No.***64/2020*** and other connected matters decided on 31.7.2020, the High Court of Punjab and Haryana at Chandigarh in the case of *Independent Schools Association Versus State of Punjab & Others*: CWP No.***7409/2020*** and other connected matters decided on 30.6.2020 and the High Court of Delhi in the case of *Rajat Vats Versus Govt. of Nct of Delhi & Another*: WP (C) No.2977/2020 decided on 20.4.2020, this Court is of the view that *prima facie*, members of the petitioner association cannot be deprived of receiving the tuition fees for the students, who continued to remain on their rolls.

16. However, this Court notices that total infrastructure cost, which the school may incur for the regular studies during normal days, has been definitely reduced day to day schools are not opening. It is noticed that the tuition fees is assessed on the basis of the infrastructure expenditure including staff salary and

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operation cost incurred by the schools in terms of the provisions of the Rajasthan Schools (Regulation of Fee) Act, 2016, after following the procedures laid down therein.

17. This Court agrees *prima facie* with the counsel for intervenors that while the institutes had to incur certain additional expenditure for developing online classes process, the same would be less than individual expenditure being incurred by the parents for providing infrastructure to their each ward, who is undergoing online classes at home. There may be also cases where the parents may have two or three children. To each one separate laptop or computer will be required to provide as all of them would be undergoing online classes at the same time. Thus, comparative balance is required to be maintained.

18. *Prima facie*, this Court is also of the view that under the Act of 2005, the authorities would have jurisdiction to lay down policy, guideline and direction, which may be found to be suitable for the purpose of providing the relief to the persons affected by the disaster as mentioned in Section 22 of the Act of 2005. The guidelines can be laid down for mitigation of such loss to the citizens. The powers and functions of the State Executive Committee under Section 22(j) provide that the State Executive Committee shall ensure that non-governmental organizations carry out their activities in an equitable and non-discriminatory manner. The petitioners are all non-governmental organizations and are expected therefore to play their necessary role in mitigating the sufferance caused to the public at large, while at the same time also protect their own staff from facing financial difficulties. This Court is also conscious of the fact that the State-

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respondents, while passing the impugned orders, have not taken into consideration the difficulties, which the staff of the concerned school would face on account of non-payment of the fees. However, burdening the parents with complete tuition fees would not be appropriate and justified.

19. In view of the above, this Court by an interim measure and till the situation gets normalized, directs the school authorities to allow the students to continue their studies online and allow them to deposit 70% of the tuition fees element from the total fees being charged for the year. The said 70% of the tuition fees shall be paid for the period from March, 2020 in three installments to the respective schools. However, it is made clear that on non-payment of the said fees, the student(s) may not be allowed to join online classes, but shall not be expelled from the school. The three installments shall be fixed by depositing the first installment on or before 30.9.2020 while the second installment shall be paid by 30.11.2020 and third installment shall be paid by 31.1.2021. However, it is further made clear that the question regarding remaining fees shall be examined at the stage of final disposal of these writ petitions. The orders are being passed as interim arrangement subject to final adjudication of the case.

20. The stay applications are accordingly disposed of.

(SANJEEV PRAKASH SHARMA),J

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