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A.M.M.Foundation Vs. the Secretary, Private School Fee Determination Committee and Another

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Court : Chennai

Decided On : Dec-06-2012

Judge : The Honourable Mrs. Justice R. Banumathi & the Honourable Mrs. Justice K.K. Sasidaran

Appeal No. : Writ Petition No.15948 of 2011

Appellant : A.M.M.Foundation

Respondent : The Secretary, Private School Fee Determination Committee and Another

Advocate for Pet/Ap. : For the Petitioner : S. Thanka Sivan, Advocate. For the Respondents: P. Sanjay Gandhi Addl. Govt. Pleader (Edn.).

Judgement :

(Prayer Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Certiorari or any other order in the nature of writ calling for the records relating to the order dated 3.6.2011 Ref.30535 passed by the 1st Respondent and quash the same and all consequential proceedings.)

R. BANUMATHI, J.

Challenging the order passed by Private School Fee Determination Committee that it is not in conformity with Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009 (Tamil Nadu Act 22 of 2009), writ petitioner, unaided private school has filed this writ petition.

2. A.M.M.Foundaltion is a Public Charitable Trust and the Trust is running various institutions including hospitals and polytechnic colleges in various parts of the State of Tamil Nadu. T.I.Matriculation Higher Secondary School, Ambattur, an unaided Private School is one of the institutions run by the petitioner Trust. In pursuance to the direction issued by the First Bench in P.B.Prince Gajendra Babu v. Federation of Association of Private Schools in T.N. (2010(5) CTC 721), the writ petitioner school submitted its response to the questionnaire along with the fee proposed by them and also the supporting materials. The Committee headed by Justice K.Raviraja Pandian passed impugned order dated 3.6.2011 fixing the fee structure for the three academic; years i.e., 2010-11, 2011-12 and 2012-13.

3. Contending that the actual expenditure as per the auditor's statement has not been taken into account and the actual salary paid to the teachers together with statutory payments and other financial commitments has not been taken into account and the fee structure fixed by the Committee is very low, leaving a huge deficit and making it difficult to run the school, Writ Petitioner school has filed the writ petition.

4. Mr.S. Thanka Sivan, learned counsel for Writ Petitioner submitted that the Committee did not take into account the total expenditure incurred by the school and that the proposed fee structure is not in commensurate with the actual expenditure incurred by the Writ Petitioner school. The Committee has considered only Rs.1,27,86,315/- towards total expenditure, leaving huge deficit. It was further contended that salary to teaching and non-teaching staff are to be paid on par with VI Pay Commission and that the Committee has not taken into account the impact of increase in pay due to Pay Commission. Contention of Writ Petitioner is that Writ Petitioner school has various financial commitments viz., (i) Increase in D.A. declared by the State Government twice in a year; (ii) Management's contribution to EPF; (iii) Payment of gratuity to staff members, surrender and encashment of

leave salary etc.; (iv) General maintenance; (v) Miscellaneous expenses and (vi) Expenses for maintaining the equipments – computer, play grounds. It was also submitted that the action of the Committee directing the Writ Petitioner school to collect the fee at an unreasonable lower rate amounts to an unreasonable restriction and encroachment on the constitutional right of the Writ Petitioner school to establish and run the Institution. Drawing our attention to the order passed in W.P.No.8489 of 2012 etc. batch, learned counsel submitted that the Writ Petitioner school is similarly placed school as that of the schools in the above batch of Writ Petitions and prays for remitting the matter back to the Committee for consideration of the matter afresh in the light of the guidelines laid down in the order dated 03.5.2012.

5. We have heard Mr.P.Sanjay Gandhi, learned Additional Government Pleader (Education) for Respondents. Learned Additional Government Pleader (Education) fairly conceded that the matter be remitted back to the Committee for re-determination of the fee structure in the light of the guidelines issued in the order dated 3.5.2012.

6. Earlier, in a batch of Writ Petitions [W.P.No.8489 of 2012 etc. batch – 2012 Writ Law Reporter 489 : CDJ 2012 MHC 2161], by the common order dated 03.05.2012 (one of us was a member – Justice R.Banumathi), the orders passed by the Committee headed by Justice K.Raviraja Pandian were set aside. Written submission was filed by the Government stating that expenses incurred in respect of (i) salary to teaching and non-teaching staff; (ii) employees provident fund; (iii) contribution to employees State Insurance Corporation; (iv) gratuity; and such other head shall be considered based on the bills produced. In our earlier order (3.5.2012), we have also referred to the expenditures on administration; other miscellaneous expenses and maintenance, depreciation of building, furniture, fixtures equipments; land and lease rent and other expenses and surplus for development.

7. Elaborately referring to the written submissions filed by the learned Advocate General, in the order dated 03.5.2012, in Paragraphs 88 to 117, we have formulated certain guidelines for determination of fee structure in respect of

unaided non-minority educational institutions.

8. The operative portion of the order in W.P.No.8489 of 2012 etc. batch (Paragraphs 152 to 154) reads as follows:-

"152. For the foregoing reasons, the impugned orders in all the writ petitions are set aside and the matters are remitted back to the School Fee Determination Committee for consideration of the matters afresh. Fee structure approval form shall be given to Writ Petitioner Schools calling upon them to produce the details and documents required to be furnished. All the Writ Petitioner Schools shall propose the fee structure afresh with fresh or additional materials/Audit statements showing the expenditure and income. The Committee shall give personal hearing to each of the Writ Petitioner Schools and also afford reasonable opportunity to all the Writ Petitioner Schools and pass final orders as expeditiously as possible, preferably by the end of December 2012.

153. In respect of unaided Non-Minority Educational Institutions, the School Fee Determination Committee shall keep in view the guidelines in Para Nos.88 to 117 and 152 of this order. For the reasons stated in Para Nos.109 and 110, all the unaided Non-Minority Educational Institutions shall be entitled to surplus for development i.e., Village and Town Panchayats at 10%; Municipalities and District Headquarters at 12% and Corporations at 15%.

154. For the reasons stated in Para No.111, for Infrastructure Grading, there shall be an increase in fee - 7% to 10% depending on the availability of the infrastructure in the Schools."

9. Considering the grounds raised in this Writ Petition, the earlier order dated 03.05.2012 in W.P.No.8489 of 2012 etc. batch (2012 Writ Law Reporter 489 : CDJ 2012 MHC 2161) is applicable to the Writ Petitioner school also and setting aside the impugned order, this Writ Petition is remitted back to the Committee for consideration of the matter afresh in the light of the guidelines issued in the said order dated 03.05.2012.

10. In the result, the impugned order dated 03.6.2011 passed by Committee is set aside and this Writ Petition is disposed of in terms of the earlier order dated 3.5.2012 in W.P.No.8489 of 2012 etc. batch (2012 Writ Law Reporter 489 : CDJ 2012 MHC 2161). We request the Committee to expedite the process and dispose of the matter preferably by 15th March 2013.

It is made clear that till the final order passed by the Committee, the Writ Petitioner school shall continue to collect only the fee fixed by the Committee by its order dated 03.6.2011.

Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

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