

W.P. No.5975/2015

10.04.2017

Shri Piyush Mathur, learned Senior Counsel with Shri Gaurav Chhabra, learned counsel for the petitioner.

Shri Sunil Jain, learned AAG with Shri Yogesh Mittal, learned Govt. Advocate for the respondents/State.

They are heard.

2. By this writ petition under Article 226 of the Constitution of India, the petitioner is praying for quashment of order dated 30/04/2015(Annexure-P/3) as well as subsequent orders (Annexure-P/6, P/7 and P/8) of respondents based upon impugned Guidelines dated 30/04/2015, on the ground that the same is contrary to the law.

3. Learned Senior Counsel for the petitioner has also drawn our attention to the decision of the Gwalior Bench in the case of **Little Angels Shiksha Samiti Vs. State of M.P. & Ors.** reported in **2016(1) M.P.L.J., 474** and submitted that similar policy has been framed by the Collector, Gwalior and the aforesaid order was subject-matter in the case of **Little Angels Shiksha Samiti(supra)** and the learned writ court quashed the aforesaid order. Para 49 to 52 of the decision are relevant which reads as under :-

49. On the basis of foregoing analysis, it is apt

to summarize the conclusions :-

(i) The impugned action and orders of Collector in the present matters are without authority of law. Collector had no authority and Jurisdiction under the RTE Act and Rules and CBSE bye-laws to take the impugned action.

(ii) The proceedings before the Collector in the present matter were not proceedings before a "Court" within the meaning of [Contempt of Court Act](#). Hence, the notices issues by the Collector under the said Act are null and void.

(iii) In setting up a reasonable fee structure element of profiteering is not acceptable.

(iv) Fee structure must take into consideration the need to generate fund to be utilized for the betterment and growth of educational institutions, the betterment of education in that institution and to provide facilities necessary for the benefit of students. It needs no emphasis that fee hike must be based on actual need and should not be outcome of profiteering and greed.

(v) The occupation of education is regarded as charitable, the Government can provide regulation for forbidding the charges of capitation fees and profiteering by the institutions.

(vi) In the establishment of educational institution, the object should not be to make profit, in as much as education is essentially charitable in nature.

(vi) The reasonable revenue surplus, generated by the institution must be used for the purpose of development of education and expansion of the institution. "Reasonable surplus" can be used for development of various activities of the institution and for the betterment of students themselves

(vii) If education institution goes beyond "charity" into commercialization, it would not be entitled to protection of [Article 19\(1\)\(g\)](#).

(viii) The fee structure must be fixed keeping in mind the infrastructure and facilities available, salaries paid to the teachers and staff, future plans for expansion and / or betterment of

institution subject to two restrictions, namely, non-profiteering and non-charging of capitation fees.

(ix) The guiding principle in such matters is to strike a balance between autonomy of institution and measures to be taken in avoiding commercialization of education.

(x) To strike such balance, solution lies in establishing a permanent regulatory body / mechanism.

(xi) Such regulation is need of the hour. The question of fee hike cannot be totally left on the mercy of the market forces. Some regulation is required through Regulatory bodies in the matter of fee hike.

(xii) Regulatory frame work for education sector is extremely essential. The concept of welfare of the society would apply more vigorously in the field of education.

(xiii) The proper academic atmosphere will help in developing good citizens which will ultimately strengthen the nation.

(xiv) The pious atmosphere with charity will give a moral boost and training to the pupil. On the contrary, if educational institutions are permitted to function as profit making factory, it will vitiate the academic atmosphere which will ultimately cause harm to the educational environment.

(xv) The competent authorities under the RTE Act, Rules and CBSE bye-laws are bound to ensure that relevant provisions are directly implemented.

50. As analyzed above, the impugned orders of Collector in the present matters are set aside. Notice of contempt issued by the Collector are also quashed. Since commonality of issues are decided by this common order, if any other peculiar aspect involved in any writ petition is left out, it will be open to the said writ petitioner to challenge it in separate appropriate proceedings. In view of similarity of WPs, question of maintainability of WP by Association is left open. In the light of what has been analyzed hereinabove, it is directed that

the Government should consider the aspect of regulation of fees and other relevant issues. The Government may appoint an expert committee which can go into feasibility of establishing a regulatory body for institutions and recommend the changes that are required to be made in the existing law or to suggest separate legislation (if required).

51. It is also relevant to mention that the use of "reasonable surplus" and question of profiteering needs to be examined by financial experts. Thus, Government is required to apply its mind on this aspect also. This direction for consideration is all the more necessary because in *Modern School Vs. Union of India* (Supra) the Apex Court opined that any control or regulation over an educational institution must be done only by legislation Act and not by any executive instruction. Government needs to consider this aspect as well. The Regulatory body must have statutory backing.

52. In view of aforesaid, Government may also examine whether its recent policy dated 30.04.2015 will serve the aforesaid purpose or not. Government shall consider these aspects in the context of aforesaid findings and take appropriate decision. This exercise must be completed within six months from today.

4. Learned Senior Counsel for the petitioner has submitted that the impugned action is without authority of law. The private united institutions can only be regulated by a legislation and not by executive instructions.

5. Shri Sunil Jain, learned AAG appearing on behalf of respondent/State has drawn our attention to order dated **12/04/2016**, passed by the Principal Seat of Jabalpur, in **W.P. No.8478/2015 in the case of Christ Church Girls Senior**

Secondary School Vs. The State of M.P., wherein then learned Division Bench relying on the decision of **Little Angels Shiksha Samiti(supra)** has observed that Policy dated 30/04/2015 is not being enforced for the present and as and when new policy, statute or ordinance is issued, the petitioners have a right to challenge the same. Order dated 12/04/2016 reads as under :-

In these petitions, the petitioners have challenged the impugned order dated 30.04.2015 passed by the State Government whereby on the basis of a policy formulated by the State Government steps are being taken and the State Government institutes are being compelled to fix the fees in accordance with the policy formulated. The contention of the petitioners in these writ petitions are that the policy being non-statutory, in the nature of executive inspection, it cannot be enforced as there is no statutory approval to the policy in question.

This aspect of the matter has already been considered by the Gwalior Bench of this Court in various writ petitions being W.P. No.2450/2012, WP. No..5775/2012 and W.P. No.3709/2012 and various other cases collectively decided by an order passed on 30.05.2015 wherein it has been held that the policy which does not have backing of a statute cannot be enforced.

In the light of the aforesaid judgments rendered by Gwalior Bench, today on behalf of the State Government certain preliminary submissions are made in a detail counter affidavit filed along with the affidavit of District Education Officer, Jabalpur.

Keeping in view the aforesaid, now as the State Government has come out itself with the statement that the policy dated 30.04.2015 is not being enforced for the present and as and when new policy, statute or ordinance is

issued, the petitioners have a right to challenge the same, we see no reason to matters pending as the petitioners' grievance stands now remedied by aforesaid orders passed by the Gwalior Bench and the stand taken by the State Government as indicated herein above.

In view of the above, both these petitions are disposed of and liberty is granted to the petitioners to challenge the action taken by the State Government in future in accordance with law if they have any grievance in the matter.

6. The aforesaid order dated 12/04/2016, passed by the Division bench of Principal Seat, Jabalpur in W.P. No.8478/2015, shall be applicable *mutatis mutandis* in the present case also.

7. This Court on 10/09/2015 while issuing notice to respondents granted Interim Stay in favour of the petitioner that there shall be no coercive action against the institutions, which are members of the petitioner/association pursuant to the guideline dated 30/04/2015.

8. Keeping in view the aforesaid, now as the State Government has come out itself with the statement as the policy dated 30/04/2015 is not being enforced for the present and as and when new policy, statute or ordinance is issued, the petitioners have a right to challenge the same, we see no reason to keep this matter pending and dispose of the present writ petition on the same terms as passed in order dated 12/04/2016 and liberty is granted to the petitioner to challenge

the action taken by the State Government in future, in accordance with law if members of the association have any grievance in the matter.

9. In the meanwhile, no coercive action shall be taken against the institutions on the basis of impugned order and till the new policy is framed, the same shall be kept in abeyance.

10. With the aforesaid, Writ Petition No.5975/2015 is disposed of.

(P.K. Jaiswal)
Judge

(Virender Singh)
Judge

pn/