

**Court No. - 3**

**Case :-** WRIT - C No. - 358 of 2022

**Petitioner :-** Association Of Private Schools Of Up Through Its President Atul Kumar And Another

**Respondent :-** State Of U.P. Through Principal Secy. Secondary Education Civil Secy., Lko And Others

**Counsel for Petitioner :-** Manish Vaish

**Counsel for Respondent :-** C.S.C.

**Hon'ble Attau Rahman Masoodi,J.**

**Hon'ble Narendra Kumar Johari,J.**

Heard Sri J.N. Mathur, learned Senior Counsel assisted by Sri Tushar Verma and Vikram B. Trivedi, Sri Sudeep Seth, learned Senior Counsel, assisted by Sri Manish Vaish and Sri R.P. Gupta on behalf of the petitioners. Sri H.P. Srivastava, learned Addl CSC has put in appearance on behalf of the State.

This Court after hearing the learned counsel for the parties at length passed an order on 16.2.2022 expecting the State Government to take a decision in the light of observations made therein. The order passed on 16.2.2022 reads as under:

"Limiting the challenge and submissions only to the extent of validity of Government Order dated 7th January, 2022, Sri Vinay Naware, learned senior counsel assisted by Sri R.P. Gupta and Sri Manish Vaish, learned counsel for the petitioners has submitted that the State Government with the issuance of Government Order dated 11th February, 2022 has itself provided a justification for reconsideration of the Government Order dated 7th January, 2022 impugned herein this writ petition.

The impugned Government Order dated 7th January, 2022 amply shows that it was the apprehension of the surge of Covid-19 that the State Government looking to the closure of normal business establishments/educational and other economic activities had issued the Government Order under challenge. The restrictions have now been relaxed with the issuance of Government Order dated 11th February, 2022 filed alongwith the rejoinder affidavit. This clearly implies that the normal life is restored with all duties and obligations.

According to learned counsel for the petitioners, the proposal of new/enhanced fee structure is to be uploaded two months prior to the start of new academic session, meaning thereby that the same has to be done on or before 1st April 2022. It is in the light of Government Order dated 11.02.2022 that a prayer has been made before this Court that the State Government may reconsider its decision whereby a blanket ban is imposed against the enhancement of fee contrary to the mechanism provided under the statute. Further submission made by learned counsel for the petitioner is to the effect that the reasons spelt out in the impugned Government Order dated 07.01.2022 are based on an apprehension which stand ruled out with the issuance of subsequent Government Order dated 11th February, 2022, hence the very foundation of the earlier Government Order stands nullified, therefore, the matter requires reconsideration. The argument put forth by the learned counsel for the petitioner, does have force.

Sri H.P. Srivastava, learned Additional Chief Standing Counsel, at this stage prays that he may be allowed some time to obtain instructions on this specific aspects of the matter.

It is also to be noted that the State Government ought not to remain oblivious of the fact that the academic session is to start on 1st April, 2022, before which date, the schedule of fee structure has to be uploaded by the members of the petitioners' association in terms of the statute. The objections, if any, by the association of parents have also to be considered in the mechanism prescribed.

We expect the State to reconsider the matter in the light of Government Order dated 11.02.2022, as observed above.

List/put up on 28.02.2022."

Sri H.P. Srivastava, learned Addl CSC appearing for the State has made a prayer that the State Government may be allowed some more time to take a decision in the light of observations made in the order extracted above.

It is the bounden duty of the State Government to take into consideration any direction issued by this Court failing which the controversies raised before a court of law assume different dimensions for adjudication of the lis on merit. The policy of the State government evolved under extra ordinary circumstances and affecting the cause of education at a large scale must be revisited with a sense of responsibility in order to strike a balance between the public interest viz a viz the statutory rights of a party aggrieved.

We hope and trust that a final decision in the light of observations made in the order already passed are taken note of by the State on or before 31.3.2022 and apprised to the Court on the next date of listing.

List on 11.4.2022.

**Order Date :- 15.3.2022**

Fahim/-