

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 6776 of 2022

=====

FEDERATION OF SELF-FINANCED SCHOOLS, STATE OF GUJARAT
Versus
THE COLLECTOR AND DISTRICT MAGISTRATE, SURAT

=====

Appearance:

MS DISHA N NANAVATY(2957) for the Petitioner(s) No. 1
for the Respondent(s) No. 1
NOTICE SERVED BY DS for the Respondent(s) No. 1,2

=====

CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 08/04/2022

ORAL ORDER

1. Heard learned Senior Advocate Mr. Mihir Joshi with learned Advocate Ms. Mitul Shelat for learned Advocate Ms. Disha N Nanavaty for the petitioner and learned Assistant Government Pleader Mr. Dhawan Jayswal for the respondents.
2. Learned Senior Advocate Mr. Mihir Joshi prays for joining National Commission for Protection of Child Rights, 5th Floor, Chanderlok Building, 36 Janpath, New Delhi-0001 as respondent No. 3. Permission is granted.
3. Learned A.G.P. Mr. Jayswal submitted that that respondent No. 1-Collector and District Magistrate, Surat issued the impugned communication dated 31st March, 2022 on the basis of hearing which took place on 14th March, 2022 before the National Commission for Protection of

Child Rights upon the complaint received from the parents that their children are being harassed by the respective schools for non payment of fees. It was submitted that as the NCPCR issued the summons upon the respondent No. 1-Collector and during the course of hearing on 14th March, 2022, the collector was directed to take necessary actions in the matter of complaint filed by the parents. The collector has issued the impugned communication dated 31st March, 2022 whereby the following directions are issued:

"Reports cases of harassment of school students for non payment of fees and discriminative behavior by the school authorities/principals/teachers is a grave concern. The Commission has been receiving numerous complaints from all over the country where children are being harassed by the schools. This is a gross violation of Section 75 of the Juvenile Justice (Care & Protection of children) Act, 2015 of which the NCPCR is the monitoring authority.

It may be mentioned that the school fee is a financial matter between the school authorities and the parents; therefore, it is to be dealt with the parents and not with the children.

The NCPCR in its hearing dated 14th March, 2022 has clearly mentioned that the school can take up the issue of non payment of fees by parents with the appropriate court, but until then no measures such as not allowing the students to continue with their education in the school, threatening or segregating them in school, not allowing the access to school premises, material and online classes etc. shall be permitted. Without clear direction from a competent court, no school to do anything that will affect education of the child. Non compliance of this direction shall be considered a violation of section 13(1) of the Right to Education.

Therefore, all the private school authorities are to deal with fee related issues with the

parents and not the students and prevent fee related harassment amongst school students”

4. It was further submitted that pursuant to the issuance of the aforesaid directions by the Collector, the respondent No.2-District Education Officer has informed the District Primary Education Officer to implement aforesaid impugned order passed by the Collector.

5. Learned Senior Advocate Mr. Joshi submitted that merely reminder sent to the parents for non payment of fees cannot amount to offense under Section 75 of Juvenile Justice (Care and Protection of Children) Act, 2015. It was submitted that in view of the impugned order if any complaint is filed before the police, the police would immediately register an offense under Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

6. It was therefore pointed that the impugned order issued by the respondent No.1-Collector is without jurisdiction and authority of law.

7. Considering the issues raised in this petition, a query was put to learned A.G.P. Mr. Jayswal as to under which provision of law or rule such an order can be passed by the Collector and District Magistrate, Surat-Respondent No. 1. However the learned A.G.P. Mr. Jayswal only submitted that pursuant to the hearing which took place on 14th March, 2022 before the National

Commission for Protection of Child Rights (for short 'NCPCR'). It was therefore submitted that merely issuing reminder for non payment of fees or taking any action for non payment of fees, by the respondents-schools, cannot be said to be cruelty to child as per provision of Section 75 of the Act, 2015.

8. The petitioner has therefore made out a very good prima facie case for granting *ad interim relief* as the respondent No.1-Collector has issued the impugned order *prima facie* without any jurisdiction or authority of law.

9. Issue Notice returnable to newly joined Respondent No.3-National Commission for Protection of child Rights. The impugned order dated 13th March, 2022 issued by the respondent Nos. 1 & 2 the implementation and execution of the impugned order dated 13th March, 2022 are stayed till the next date of hearing.

Issue Notice returnable on 22nd April, 2022.

MANISH MISHRA

(BHARGAV D. KARIA, J)