

Via Video Conferencing

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision : 07.06.2021

+ LPA 179/2021, C.M. No. 18382/2021(for stay) & C.M. No. 18385/2021(leave to file appeal)

**MASTER YASHVIR SINGH CHAUHAN THROUGH HIS
FATHER DALIP SINGH CHAUHAN AND ANR. Appellants**

Through: Mr. K.B. Jha with Ms. Shikha
Sharma Bagga , Advocates.

versus

**ACTION COMMITTEE UNAIDED RECOGNISED PRIVATE
SCHOOLS & ANR. Respondents**

Through: Mr. Shyam Divan, Senior Advocate
with Mr. Kamal Gupta, Mr. Nipun
Jain and Mr. Sparsh Aggarwal,
Advocates.

+ LPA 180/2021, C.Ms. No. 18386/2021(for stay) &
18389/2021(leave to file appeal)

MASTER VIPUL YADAV AND ANR. Appellants

Through: Mr. K.B. Jha with Ms. Shikha
Sharma Bagga , Advocates.

versus

**ACTION COMMITTEE OF UNAIDED PRIVATE RECOGNIZED
SCHOOLS AND ANR. Respondents**

Through: Mr. Shyam Divan, Senior Advocate
with Mr. Kamal Gupta, Mr. Nipun

Jain and Mr. Sparsh Aggarwal,
Advocates.

+ LPA 184/2021 & C.M. No. 18510/2021(for stay)

DIRECTORATE OF EDUCATION

..... Appellant

Through: Mr. Vikas Singh, Senior Advocate
with Mr. Santosh Kumar Tripathi,
SC GNCTD with Mr. Aditya P
Khanna, Mr. Shashank Tiwari and
Mr. Rajiv Tanwar, LA PSB DOE,
Advocates.

versus

ACTION COMMITTEE UNAIDED PRIVATE
SCHOOL

..... Respondent

Through: Mr. Shyam Divan, Senior Advocate
with Mr. Kamal Gupta, Mr. Nipun
Jain and Mr. Sparsh Aggarwal,
Advocates.

+ LPA 185/2021, C.Ms. No. 18557/2021 (for stay) &
18560/2021(leave to file appeal)

JUSTICE FOR ALL

..... Appellant

Through: Mr. K.B. Jha with Ms. Shikha
Sharma Bagga , Advocates.

versus

ACTION COMMITTEE UNAIDED RECOGNISED PRIVATE
SCHOOLS & ANR.

..... Respondents

Through: Mr. Shyam Divan, Senior Advocate
with Mr. Kamal Gupta, Mr. Nipun
Jain and Mr. Sparsh Aggarwal,
Advocates.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MR. JUSTICE AMIT BANSAL

REKHA PALLI, J. (ORAL)

C.Ms. No. 18383/2021 & 18384/2021 (for exemption) in LPA 179/2021,
C.Ms. No. 18387/2021 & 18388/2021 (for exemption) in LPA 180/2021,
C.Ms. No. 18511/2021 & 18512/2021 (for exemption) in LPA 184/2021
&
C.Ms. No. 18558/2021 & 1859/2021 (for exemption) in LPA 185/2021

1. Exemptions allowed, subject to all just exceptions.
2. The applications stand disposed of.

LPAs 179/2021, 180/2021, 184/2021 & 185/2021

3. The present batch of appeals under Clause X of the Letters Patent Appeal assails the order dated 31st May, 2021 passed by the learned Single Judge in W.P. (C) No. 7526/2020 filed by the Action Committee Unaided Recognized Private Schools (hereinafter referred to as 'respondent Committee') that comprises of 450 private unaided schools in the National Capital Territory (NCT) of Delhi. Under the impugned order, the learned Single Judge has allowed the respondent Committee's challenge to the circulars/orders issued by the Directorate of Education, GNCTD on 18.04.2020 and 28.08.2020, by holding that the direction to postpone collection of Annual Charges and Development Fee from students until normal functioning of schools is resumed is illegal and *ultra vires* the

powers of the Directorate of Education under the Delhi School Education Act, 1973 (in short 'DSE Act') and the Delhi School Education Rules, 1973 (in short 'DSE Rules').

4. Issue notice. Mr. Kamal Gupta, Advocate accepts notice on behalf of the Action Committee Unaided Recognized Private Schools. He prays for and is granted three weeks' time to file written submissions. Response thereto, if any, besides the written submissions, be filed by the appellants before the next date. The parties are also granted liberty to file any documents forming part of the record which may not have been filed by the appellants.

5. List the matter before the Roster Bench on 12th July, 2021.

C.M. No. 18382 (for stay) in LPA 179/2021

C.M. No. 18386 (for stay) in LPA 180/2021

C.M. No. 18510 (for stay) in LPA 184/2021

C.M. No. 18557 (for stay) in LPA 185/2021

6. These applications preferred by the Directorate of Education seek stay of the impugned order during the pendency of these appeals. Under the impugned order, the learned Single Judge had passed the following directions:

“52. The fact remains, as noted above, that the schools are affecting some savings on account of the fact that the school are presently physically shut. The Supreme Court has already dealt with the stated issue. The directions as passed by the Supreme Court in the case of Indian School, Jodhpur & Anr. vs. State of Rajasthan & Ors. (supra) would clearly apply to the present case mutatis mutandis. Relevant para of the said judgment reads as follows:-

"128. Ordinarily, we would have thought it appropriate to relegate the parties before the Regulatory Authority to re-fix the school fees for the academic year 2020-21 after taking into account all aspects of the matter including the advantage gained by the school Management due to unspent overheads/expenses in respect of facilities not availed by the students. However, that course can be obviated by the arrangement that we propose to direct in terms of this judgment. To avoid multiplicity of proceedings (as school fee structure is linked to school-school wise) including uncertainty of legal processes by over 36,000 schools in determination of annual fee structure for the academic year 2020-21, as a one-time measure to do complete justice between the parties, we propose the issue following directions:

(i) The appellants (school Management of the concerned private unaided school) shall collect annual school fees from their students as fixed under the Act of 2016 for the academic year 2019-20, but by providing deduction of 15 per cent on that amount in lieu of unutilised facilities by the students during the relevant period of academic year 2020-21.

(ii) The amount so payable by the concerned students be paid in six equal monthly instalments before 05.08.2021 as noted in our order dated 08.02.2021.

(iii) Regardless of the above, it will be open to the appellants (concerned schools) to give further concession to their students or to evolve a

different pattern for giving concession over and above those noted in clauses (i) and (ii) above.

(iv) The school Management shall not debar any student from attending either online classes or physical classes on account of non-payment of fees, arrears/ outstanding fees including the instalments, referred to above, and shall not withhold the results of the examinations of any student on that account.

(v) If any individual request is made by the parent/ward finding it difficult to remit annual fees for the academic year 2020-21 in the above terms, the school Management to consider such representation on case-to-case basis sympathetically.

(vi) The above arrangement will not affect collection of fees for the academic year 2021-22, as is payable by students of the concerned school as and when it becomes due and payable. (vii) The school Management shall not withhold the name of any student/candidate for the ensuring Board examinations for Classes X and XII on the ground of non-payment of fee/arrears for the academic year 2020-21, if any, on obtaining undertaking of the concerned parents/students."

53. The above directions given in paras (i) to (vii) will apply to the petitioner schools mutatis mutandis. However, clause (ii) has to be modified. The amount payable by concerned students will be paid in six monthly installments w.e.f. 10.06.2021."

7. Issue notice. Learned counsel for the respondent Committee accept notice.

8. With the consent of learned senior counsel for the parties, we have taken up the interim application for disposal today itself.

9. In support of the prayer for interim stay, Mr. Vikas Singh, learned senior counsel for the Directorate of Education as also Mr. Jha for the appellants in LPA Nos. 179/2021, 180/2021 and 185/2021 have raised the following four grounds; the first being that the learned Single Judge has gravely erred in passing the same directions as issued by the Supreme Court in *Indian School, Jodhpur & Anr. Vs. State of Rajasthan (2021) SCC Online SC 359* by overlooking the fact that the said judgment, pronounced on 03.05.2021 after the impugned judgment had been reserved but was yet to be pronounced, pertains to an entirely different fact situation. In *Indian School, Jodhpur (supra)*, the Supreme Court was dealing with two sets of appeals assailing the orders passed by the Jaipur and Jodhpur Benches of the Rajasthan High Court affirming the decision of the State government to direct reduction of school tuition fees on account of the pandemic. He submits that the learned Single judge also failed to appreciate that the decision of the Supreme Court, in that case, to overturn the directions of the Rajasthan High Court came after it had noticed that the affected schools had already been partially re-opened for the students of Classes IX to XII which merited the collection of applicable fee. He submits that in the present case, neither have these schools seen any kind of re-opening, nor are they concerned with the tuition fee – the matter pertains to Annual Charges and Development Fee.

He further submits that the decision of the Supreme Court in *Indian School, Jodhpur* (*supra*) was made in exercise of jurisdiction under Article 142 of the Constitution of India - which power was not available with the learned Single Judge while passing the impugned judgment. He, therefore, submits that the impugned judgment is liable to be set aside on this ground alone.

10. Mr. Singh then submits that the Ld. Single Judge has failed to consider the specific statements of the appellant in their affidavit that only 40-60% of the amounts collected by way of tuition fee, the collection whereof was not interdicted in any manner, was being used for discharging the liability of the schools towards staff salaries. Consequently, there was enough funds available with the schools to bear the burden of any development charges or recurring charges payable by them, which may possibly have been reduced after the schools had closed on account of the pandemic w.e.f. March 2021.

11. Mr. Singh further submits that the Ld. Single Judge has failed to appreciate that the impugned circular of 18.04.2020 had already been upheld by a Coordinate Bench of this Court on 24.04.2020 in *Naresh Kumar Vs. Director of Education & Anr. W.P. (C) 2993/2020* and, therefore, it was not open for the learned Single Judge to now intervene with the circular on any ground whatsoever.

12. Finally, Mr. Singh submits that the learned Single Judge has failed to appreciate the wide scope of powers available with the Directorate of Education under Rule 43 of the DSE Rules which vest it with wide powers to issue any directions that it considers appropriate in public interest. He

also seeks to place reliance on Section 24 of the DSE Act which permits the Directorate to pass any order as may be deemed appropriate after inspection of the schools. He, therefore, prays that the impugned order, being wholly erroneous, be stayed pending a final decision in these appellate proceedings.

13. Countering the submissions of Mr Singh, Mr. Shyam Divan, learned senior counsel appearing on behalf of the respondent Committee submits that the very premise on which these appeals have been filed is misplaced. He submits that the Directorate is erroneously urging that the learned Single Judge has simpliciter adopted the directions given by the Supreme Court in *Indian School, Jodhpur (supra)*. By drawing our attention to paragraphs 30 to 51 of the impugned judgment, he submits that the learned Single Judge has meticulously analysed the relevant provisions of the DSE Act and Rules, before categorically concluding that the Directorate of Education had no power, whatsoever, to interject or interfere in private contracts executed between the parents of the students and the schools, by directing the private, unaided schools to indefinitely postpone collection of Annual Charges and Development Fee.

14. Mr. Divan contends that the learned Single Judge has rightly concluded that any such direction for interfering with a private contract in respect of fee structure/development charges, etc. was permissible under the DSE Act only when the schools are found to be engaging in profiteering or commercialisation. In fact, in Paragraph 49 of the impugned judgment, the learned Single Judge had noted that there was no finding in any of the impugned circulars/orders that the schools affected

by the directions thereunder were indulging in profiteering and commercialisation.

15. Mr. Divan further submits that in fact the learned Single Judge was also conscious of the undisputed position that the Member-schools of the respondent Committee were bearing all annual development and maintenance expenses in respect of these schools, even though their physical functioning was suspended. However, upon a holistic consideration of the matter and the admitted position that some of the expenses of these schools, for e.g. electricity charges, may have marginally reduced, the learned Single Judge followed the principles adopted by the Supreme Court *Indian School, Jodhpur (supra)*. He, thus, contends that the directions issued by the learned Single Judge are, in fact, beneficial to the students.

16. Mr Divan further submits that although the State is forcibly seeking to curtail the right of private unaided schools to collect Annual Charges and Development Fee, it has neither offered them any subsidy nor any concession in terms of tax payments during the pandemic period. On the other hand, the schools have been directed to continue conducting virtual classes so that there is no discontinuity in the students' education. This, in itself, he contends, makes it incumbent on the schools to continue functioning, which implies that they are bound to be incurring many expenses.

17. Mr Divan finally submits that once the learned Single Judge has come to a categorical conclusion that the impugned orders passed by the appellant were *ultra vires* of the powers vested upon them, no interim

order for stay on the impugned judgment is warranted . He submits that doing so would only bring into effect an order that was passed by an Authority *de hors* its statutory powers. In any event, the learned Single Judge has also put in safeguards for the parents/students in the impugned judgment by permitting them to pay the amounts due under monthly instalments and has also restrained the school managements from debarring any student from classes on account of non-payment of fees/arrears/outstanding fees.

18. In conclusion, Mr Divan fairly submits that even though the managements of private unaided schools have been permitted under the impugned order to collect the entire fee/charges applicable for the academic year 2021-22, in view of the fact that this Court is examining the present challenge to the impugned judgment, the members of the respondent Committee, till the next date, will follow the same principles as set down for collecting fee/charges for the years 2020-21 as have been laid down by the impugned order.

19. Mr. Puneet Mittal, learned senior counsel appearing for the Delhi Public School Society has also given similar assurance as Mr. Diwan.

20. Having given our thoughtful consideration to the submissions of the parties, we find that the learned Single Judge, after considering the provisions of the DSE Act and Rules, especially Rule 43 relied upon by Mr. Singh, has rendered a categorical finding that the orders passed by the appellants restraining the Committee Schools from Annual Charges and Development Fee till resumption of physical functioning of schools was not only contrary to the contractual terms of the agreement between the

schools and students' parents but was also beyond the scope and ambit of the appellant's powers under the scheme of the DSE Act and Rules.

21. The aforesaid Rule 43, heavily relied upon the appellant in support of its case, reads as under:

“43. Power to issue instructions

The Administrator may, if he is of opinion that in the interest of school education in Delhi it is necessary so to do, issue such instructions in relation to any matter, not covered by these rules, as he may deem fit.”

22. On a perusal of this Rule, we are *prima facie* inclined to agree with the findings given by the learned Single Judge in the impugned order that the scheme of the DSE Act and Rules do not vest the Directorate with any power to issue the kind of directions contained in the orders/circulars impugned before it, considering that they have such far reaching financial implications upon the private unaided schools of NCT of Delhi. No doubt, the statute vests the Directorate with supervisory power to ensure that these private schools, chosen by students and their parents out of their own volition for the purpose of admission, do not indulge in commercialization and profiteering, however this right is salutary in nature and does not give any license to the Directorate to pass directions that it perceives would be in public interest, without any basis therefor.

23. The Directorate has also vehemently contended that the learned Single Judge has erred in mechanically applying the directions issued by the Supreme Court in *Indian School, Jodhpur* (*supra*) without noticing that the facts in the two cases are not *pari materia*. Even on this aspect,

we are *prima facie* unable to agree. It is an undisputed position that these schools have been reeling under the impact of the pandemic for over a year, during which they were not only required to maintain the school premises and infrastructure, but also remain ready for the eventual re-opening of the schools, besides incurring the expenditures of IT infrastructure and training for smooth functioning of online classes. Not to mention, they continue to incur the expenditure of paying staff salaries. However, a perusal of paras 39 to 51 of the impugned judgment leave no manner of doubt that the learned Single Judge has carefully combed through the facts of the present case, by making detailed notes of the recurring capital and revenue expenditure of the schools during the pandemic when the students are not in physical attendance. While doing so, the learned Single Judge has also noticed that some expenses, like electricity and stationary charges, would have undoubtedly reduced, but has, instead of setting down new parameters, followed the basic principles laid down by the Supreme Court in *Indian School, Jodhpur* (*supra*). In this regard, we may refer to paragraphs 45 to 48 of the impugned judgment which reads as under:

“45. The break-up of expenses related to Annual Charges have been elaborated above and the sub heads are not disputed. It broadly includes the following expenses:

- 1. Hostel running expenses*
- 2. Administrative & General Expenses*
- 3. Rents, rates and taxes*
- 4. Communication Expenses*
- 5. Printing & Stationery*
- 6. Electricity & Water charges*
- 7. Travelling & Conveyance*

8. Expenses of teaching & non teaching staff
9. Insurance charges
10. Promotional expenses
11. Remuneration of Auditors (including expenses reimbursed)
12. Repairs & maintenance of Building
13. Depreciation
14. Financial expenses such as interest on loans, loss on sale of fixed assets & investments
15. Other expenses - Write offs and provisions
16. Miscellaneous expenses
17. Legal Expenses.

46. Similarly, the break-up of expenses related to Development Fees have been stated above and relate to the following expenditure:

1. Furniture, Benches
2. Chairs, Wall panelling, Green/Black Boards
3. Computers
4. Projectors
5. Smart Boards/ Touch Panels in classes
6. Water Coolers
7. Air conditioners
8. RO water treatment plant
9. Overhauling of electrical
10. Panels, switches, MCB's
11. Fire safety equipments
12. Fans and lights
13. Changing I repairing of doors and windows
14. Tiles, Lift

47. The issue that arises is that the schools are not physically open, can it be said that the expenses under the above heads are not being incurred by the private unaided recognized schools? In my opinion, a bare perusal of the heads of expenses clearly demonstrates and shows that most of the expenses are not correlated or connected with the actual

physical opening of the schools for the students. Expenses like rents, taxes, travelling, conveyance, insurance charges, remuneration of auditors, repair and maintenance of building and maintenance of equipment, furniture and fixture are all expenses which will continue to be incurred by the schools irrespective of the physical shut down. In case, the said repairs and expenses are not done, it is bound to cause damage to the building, infrastructure and functioning of the schools.

Further, it cannot be said that the school building is completely shut. The building would remain functional for administrative reasons and even, depending on facts and circumstances of the case, for conducting online classes, etc.

48. No doubt, the expenses under some of the heads will drop in the absence of actual full physical opening of the schools, namely, expenses like, electricity, water, stationery, etc.”

24. Finally, insofar as the appellant's contention is concerned that these schools are barely using 40-60% of the tuition fee collected by them for payment towards salaries, which sums are lying with them for their disposal, we find that there was absolutely no material produced in support of this bald claim, either before the learned Single Judge or before us. In any event, in case this allegation had any truth, the appellant would have instituted appropriate proceedings for profiteering against the erring schools.

25. Now, in ***Naresh Kumar*** (*supra*), the Court was considering a prayer for exemption from payment of tuition fee for all students during the pandemic, in addition to the exemptions that were already accruing on account of the circular dated 17.04.2020 issued by the Directorate of Education. Although that petition was rejected by the Court, we may note

that it involved a completely different order passed by the Directorate and was markedly different from the orders/circulars that we are concerned with today. Not to mention, a significant question decided under the judgment impugned herein is the power of the Directorate to issue order/circulars of such nature under the scheme of the DSE Act and Rules, which was not in issue before the Coordinate Bench in ***Naresh Kumar*** (*supra*). Even otherwise, we cannot lose sight of the fact that the decision in ***Naresh Kumar*** (*supra*) was passed at a time when the pandemic had just set in and no one had thought that it would continue for this long. Therefore, the decision of the Court in that case cannot be compared to the present one where we are a year into the pandemic and have had some time to settle into our new reality.

26. Ultimately, the managements of these unaided, private schools in the city, which do not receive any aid from the GNCTD and are solely dependent on the fee collected by them, would also need funds to sustain their operations and premises and continue imparting education online. Given the terrible exigencies of the pandemic, we have been forced to embrace new models for our institutions and virtual classes are our sole way of ensuring that the nation's children are being educated. Thus, one cannot gainsay the importance of these virtual classes and staying the impugned decision today without a deeper examination of the facts would only compromise with the ability of these schools to continue serving this critical function. That being said, insofar as the difficulties that may be encountered by the parents of the students are concerned, learned counsel for the respondents have already assured this Court that they would ensure that all Annual Charges and Development

Fee levied for the year 2021-22 would be recovered on the same principles applicable to the academic year 2020-21 under the impugned judgment.

27. Needless to say, these observations are *prima facie* in nature and the respondent Committee shall remain bound by the undertakings recorded in Paragraphs 18 and 19 above.

28. The application is dismissed in the aforesaid terms.

(REKHA PALLI)
VACATION JUDGE

(AMIT BANSAL)
VACATION JUDGE

JUNE 7, 2021
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