

## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/WRIT PETITION (PIL) NO. 64 of 2020

With

R/WRIT PETITION (PIL) NO. 114 of 2020

With

R/WRIT PETITION (PIL) NO. 89 of 2020

With

R/WRIT PETITION (PIL) NO. 100 of 2020

With

R/SPECIAL CIVIL APPLICATION NO. 8819 of 2020

## FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH

and

HONOURABLE MR. JUSTICE J.B.PARDIWALA

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

NARESHBHAI KANUBHAI SHAH

Versus

STATE OF GUJARAT &amp; 2 other(s)

## Appearance:

MR.VISHAL J DAVE(6515) for the Applicant(s) No. 1

MR KAMAL TRIVEDI, ADVOCATE GENERAL WITH MS MANISHA LAVKUMAR SHAH, GOVERNMENT PLEADER WITH MR DHARMESH DEVNANI, AGP WITH MR MEET THAKKAR, AGP for the Opponent(s) No. 1,2,3

CORAM: **HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH**  
and  
**HONOURABLE MR. JUSTICE J.B.PARDIWALA**

Date : 31/07/2020

**COMMON ORAL JUDGMENT**

**(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)**

1 As the issues raised in all the captioned petitions are the same, those were heard analogously and are being disposed of by this common judgement and order.

2 For the sake of convenience, the Special Civil Application No.8819 of 2020 is treated as the lead matter.

3 By this writ application under Article 226 of the Constitution of India, the writ applicants have prayed for the following reliefs:

*“(A) the Hon'ble Court be pleased to issue a writ of mandamus or a writ order or direction in the nature of mandamus and be pleased to quash and set aside the Government Resolution No.BMS/1220/53/FRCCell, dated 16.7.2020 issued by the Education Department, State of Gujarat.*

*(B) Pending admission and final hearing of the present petition, the Hon'ble Court be pleased to stay the implementation and operation of the Government Resolution No. BMS/1220/53/FRCCell, dated 16.7.2020 issued by the Education Department, State of Gujarat.*

*(C) Your Lordships may be pleased to pass such other and further order(s) that may be deemed fit and proper in the facts and circumstances of the case.”*

4 The facts in brief of the present litigation are as under:

*“2.1 The 1<sup>st</sup> petitioner is an association of unaided schools imparting pre-primary, primary, secondary and higher secondary education within the State of Gujarat. It is registered as a public charitable trust and is concerned with the interest of self financed schools within the State of Gujarat who are its members. The 2<sup>nd</sup> petitioner is the Secretary in the 1<sup>st</sup> petitioner’s and is a citizen and national of India. The 2<sup>nd</sup> Petitioner is also a trustee of a self financed school which is a member of the 1<sup>st</sup> Petitioner Association.*

*2.2 The members of the petitioners have established and are managing unaided schools in the State of Gujarat, which schools are affiliated to the State Board, Central Board for Secondary Education, Indian Council for Secondary Education, and international Boards.*

*2.3 The State of Gujarat has enacted the Gujarat Self Financed School (Regulation of Fees) Act, 2017 (“the Fee Act of 2017”) and the Gujarat Self Financed School (Regulation of Fees) Rules, 2017. The said Act is for fixing of fees in Unaided Schools situated within the State of Gujarat. The validity of the said Act has been upheld by this Hon’ble Court. The said judgment is subject matter of SLP (Civil) No. 314 of 2018 filed by the Petitioner Association which is pending final hearing before the Hon’ble Supreme Court. The Hon’ble Supreme Court has passed several orders from time to time. The proceedings of fixation of fees in terms of the said Act is made subject to the final outcome of the said proceedings pending before the Hon’ble Apex Court.*

*2.4 The Petitioners state that in view of the Covid-19 pandemic, the Government of India declared a lockdown and in furtherance thereof, all educational institutions were closed down. The Government of India permitted reopening of activities in a phase-wise manner. In terms thereof, the schools and other educational institutions have been permitted to operate, however, face-to-face education is not permitted and education can only be imparted online and/or by suitable audio-visual systems.*

*2.5 The Petitioners state that this Hon’ble Court was seized of a writ petition being Writ Petition (PIL) No.64 of 2020. The Petitioners are not parties to the said proceedings. The Petitioners have noticed an order passed by this Hon’ble Court, wherein the reliefs prayed for in the writ petition have been set out. The said prayers are reproduced hereunder for ready reference:*

*“(a) Your Lordships may be pleased to issue a Writ of Mandamus or any other appropriate Writ directing the respondents to issue respect of fees/hygiene to all the Private Schools across the State as under :*

*i. No fee such as transportation, sport, term, meat, medical, SMS, IT & other curriculum activity etc., except Tuition fee, shall be charged from the parents for the month of April, May and June, 2020 till the schools get reopen under section 2 of the Epidemic Disease Act, 1897;*

*ii. To remit/return the advanced fee taken from the parents, except Tuition fee, to the parents;*

*iii. Heads of the schools shall not demand and collect the Tuition fee from the parents/students on quarterly basis. The fee shall be collected on monthly basis only. Schools should not demand a consolidated fee, without distinguishing the various heads i.e., tuition fee, co-curricular activities fee etc.;*

*iv. Not to increase any fee in the academic session 2020-21 till further specific directions of the State Government/Union of India irrespective of the fact whether or not the school is running on the private land or the land allotted by Government;*

*v. Shell ensure to provide the access of Online Education/material/classes to all students, without any discrimination, by providing them ID and Password immediately to get them online education facility.*

*vi. Heads of the schools shall, in no case, deny ID and Password to those students/parents for getting online access of educational facilities/classes/ materials etc. to those students who are unable to pay the school fee due to financial crisis out of closure of business activities in the ongoing lockdown condition.*



*Vii. Managing Committee of the schools/Heads of the schools shall not put extra financial burden by creating any new head of fee.*

*Viii. Shall neither stop payment of monthly salary nor reduce the existing total emolument to the teaching and non-teaching staff of their schools in the name of non-availability of funds and arrange the funds in case of any shortfalls from the Society/Trust running the school or reserve fund.*

*ix. If there is any specific complaint against any particular school, the parents concerned would be entitled to bring the same to the notice of the respondent authorities, which shall take steps in accordance with law;*

*x. Head of all private schools shall make sure that proper sanitization is done in the school premises and the schools provide masks to children, teacher and other school staff and make sure that everyone in the school establishment use them as a post-COVID19 measure at least for 6 months ensure the availability of hygiene equipment's i.e. hand sanitizers, face masks, paper napkins, dustbins in school;*

*(b) Pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to direct the respondents in the interregnum to issue order/guidelines/directions with respect of fees/hygiene to all the Private Schools across the State as enumerated herein above in prayer clause (8) and further be pleased to grant ad-interim ex parte stay against demands of fees raised by private schools till above guidelines / order / directions permanently passed/implemented by the respondents by way of resolution or notification in context of this serious issue In the State and no coercive steps will be taken against the students/parents till further orders and be pleased to pass interim-relief immediately since parents are getting intimating/threatening calls from the school authorities that if they will not deposit the fees consequences may follow penalty charges will be levied or other coercive steps will be taken against the student by not allowing them to take online classes;*

*(c) Ad-interim relief in terms of paragraph (b).*

*(d) Your Lordships may be pleased to grant any other relief or relief's as this Hon'b/e Court may deem just, fit and expedient be granted in favour of the petitioners. ”*

*2.6 The Petitioners state that its office bearers were informed by the Officers of the State Government to participate in an online meeting to consider the issues in relation to fees being charged by the schools. The office bearers of the Petitioner Association participated in the said meeting and apprised the State Government that the members of its Association had voluntarily offered to charge the fees as was charged in the previous year and forego the revision of fees in terms of the orders passed by the Fee Regulatory Committee. It was also asserted that the schools had offered to provide monthly installments wherever required so as to mitigate any financial difficulty of any parent. As regards optional facilities was concerned, it was conveyed that charges to the extent of fixed costs only would be levied.*

*2.7 The Petitioners state that the State Government has issued the impugned resolution dated 16.07.2020 and declared that no fees shall henceforth be charged by any unaided school either towards tuition fees or in relation to any optional activity so long as the schools are being conducted online. It has been further provided that fees, if already paid, shall be adjusted against fees which would become payable upon the physical opening of the schools. The above Government Resolution is stated to have been issued by order and in the name of Governor of Gujarat.*

*2.8 The Petitioners state that the said Government Resolution refers to a representation dated 26/06/2020 addressed by the Petitioner Association.*

*2.9 The Petitioners state that the State Government has no authority or jurisdiction in law either under the Disaster Management Act, 2005, the Gujarat Self Financed School (Regulation of Fees) Act, 2017 or any other provision in law to impose upon or interfere with the fee structure of the self-financed schools.*

*2.10 The Petitioners state that the fee structure of the self-financed school is to be fixed by the Management of the self-financed school. The Fee Regulatory Committee constituted under the Fee Act of 2017 is the statutory authority empowered to*

*consider the proposal, verify the same, approve the fees proposed or determine the fees which can be charged by the self-financed schools. The said Act does not confer any power on the State Government to determine what fees can or cannot be charged by a self-financed school.*

*2.11 The Petitioners state that the Disaster Management Act, 2005 does not confer any power on the State Government to issue a Government Resolution seeking to interfere with the fee structure of self-financed school.”*

5 Thus, the federation of self-financed schools seeks to challenge the legality and validity of the Government Resolution dated 16<sup>th</sup> July 2020 declaring that having regard to the current pandemic situation, no fees shall be charged by any unaided schools either towards the tuition fees or in relation to any optional activity so long as the schools are being conducted online. The Government Resolution further provides that the fees, if already paid, shall be adjusted against the fees which would become payable upon the physical opening of the schools. The Government Resolution impugned in the present writ application has been issued by order and in the name of the Governor of Gujarat.

6 The grounds of challenge to the impugned Government Resolution, as raised in the memorandum of the writ application, are as under:

*“(A) It Is submitted that the impugned Government Resolution is without any authority or jurisdiction in law. It is submitted that there is no law which empowers the State Government to interfere with the fee structure of a self-financed school and to prohibit the collection of fees by self-financed schools. The impugned Resolution is, therefore, illegal and unconstitutional.*



(B) It is submitted that the Resolution refers to Section 39(I) of the Disaster Management Act, 2005. There is no such provision under the Act. The said Section is reproduced hereunder:

**“39. Responsibilities of departments of the State Government.**-It shall be the responsibility of every department of the Government of a State to-(i) such other actions as may be necessary for disaster management; ”

It is submitted that on a plain reading of the above provision, it is evident that the said provision relates to measures for prevention of disasters, mitigation, preparedness and capacity building in relation to management of the disaster. It does not, in any manner, empower the State Government to prohibit an unaided educational institution to collect fees.

(C) It is submitted that the impugned Resolution refers to Section 16 of the Gujarat Self Financed School (Regulation of Fees) Act, 2017. The said provision reads as under:

**“16. Powers of State Government to give directions -** The State Government may, from time to time, issue general or special directions consistent with the provisions of this Act and the rules made thereunder, as in its opinion are necessary or expedient for carrying out the purposes of this Act or for giving effect to any of the provisions contained therein or in any rules or orders made thereunder and the management of self financed school shall be bound by such directions.”

It is submitted that the Act does not authorize the State Government to fix the fees of any unaided school. No provision of the Act confers upon the State Government any power to restrict the collection of fees determined. The Act only is for fixation of fees and the authority is conferred upon quasi judicial bodies constituted thereunder. In view thereof, the impugned Resolution is not authorised by the provisions of the said Act and the powers under Section 16 cannot be invoked for the purposes of issuing the impugned Resolution.

(D) It is submitted that neither under the Disaster Management Act, the School Fee Act, 2007 nor under any other law, the State



*Government has the authority or competence to issue the impugned Resolution. The Right to set up a reasonable fee structure is a fundamental right guaranteed under Article 19(1)(g) of the Constitution. The impugned Resolution clearly infringes upon and interferes with the said fundamental right and is, therefore, an unreasonable restriction. It is well settled that the requirement of law cannot be subsumed by issuing a resolution. The impugned Resolution is, therefore, unconstitutional.*

*(E) It is submitted that the impugned resolution is ex facie unreasonable and arbitrary. It is submitted that the Resolution proceeds to prohibit the collection of fees while the schools are obliged to continue to impart education. It is submitted for operation and maintenance of the schools, the school management are required to incur the cost towards salaries and contractual obligations in addition to incurring the cost towards creating an online education eco system. It is unreasonable and irrational to require the schools to operate without the ability to collect the revenue towards the same.*

*(F) it is submitted that the impugned resolution is ex-facie discriminatory. The State of Gujarat is itself running several self financed education institutions. It has collected and continues to collect fees from the students admitted in the said educational institutions. It is submitted that in context of the present pandemic, there cannot be any distinction between educational institutions imparting education at the school level and those at the college level. All educational institutions are similarly situated. The impugned Resolution, however, seeks to impose the prohibition/restriction regarding collection of fees only upon the educational institutions concerned with school education. Even on a demurer, if authority is conceded to the State Government, the exercise of powers is clearly discriminatory and violates the mandate of Article 14.*

*(G) The impugned resolution is a measure of populism and is a colourable exercise of power. It is submitted that the lockdown period was from March 2020 to May 2020. Since June 2020, the Government has permitted all economic activity in a phased manner. There is, therefore, no basis for issuance of the impugned resolution in purported exercise of powers under the Disaster Management Act, 2005.*

*(H) It is submitted that the schools continue to be administered even during vacation period, the salaries of all teaching and non-teaching staff continue to be paid for the entire 12 months. The*

*contracts in relation to the maintenance and operation of the schools also enures during the entire period of 12 months. The online mode of education has been adopted and implemented on reopening of all schools consistent with the academic calendar of the respective boards. There is, therefore, no justification for the State Government to impose restrictions upon the schools from collection of fees.*

*(I) It is submitted that transportation, mess and similar optional services also have fixed and recurring costs. The persons employed in these departments continue to be paid their salary. It is in this context that the Petitioner Association had asserted before the State Government that it members would only collect the fixed cost and continued cost charges relatable to these optional facilities. The restriction from collection of charges in relation to the optional facilities is, therefore, unreasonable and hence, illegal.*

*(J) It is submitted that the State Government continues to pay the grant to all grant-in-aid schools for the very reason that the costs of running the school continues even during the subsistence of the pandemic and the inability to impart face-to-face education. The impugned decision seeking to restrict the self-financed schools from collecting fees is ex-facie irrational, unreasonable and hence unconstitutional.*

*(K) It is submitted that the impugned Resolution is even otherwise arbitrary, unreasonable. Unfair, unconstitutional and hence illegal.”*

7 It may not be out of place to state at this stage that this writ application seeking to challenge the legality and validity of the Government Resolution referred to above was notified before a learned Single Judge of this Court for hearing. However, having regard to the fact that this Court has been hearing various writ petitions filed in public interest, and one of the issues, which is being discussed over a period of time, is with regard to the online classes and fees to be charged by the unaided schools, we thought fit to pass the following order dated 30<sup>th</sup> July 2020, and thereby, called for the present matter also to

be heard along with the captioned writ petitions filed in public interest:

*“It has been stated at the Bar that Special Civil Application No.8819 of 2020 has been filed by the Association of Private Institutions challenging clauses 4.3 and 4.4 of the Government Resolution dated 16.07.2020. The said petition has been reported to be notified before a learned Single Judge, today. In the present group of PILs, since we are dealing with the Government Resolution dated 16.07.2020, it would be appropriate that the aforesaid petition also be connected to the present group of petitions.*

*Let all the four matters be listed again tomorrow i.e. on 31.07.2020. To be taken up at 11.00 a.m.”*

8 In fact, while hearing the Writ Petition (PIL) No.42 of 2020 i.e. the lead public interest petition, we thought fit to observe that the State Government should initiate appropriate talks with the federation of the unaided schools imparting pre-primary, primary, secondary and higher secondary education within the State of Gujarat for the purpose of bringing around some viable solution with regard to the mode and manner of imparting education and also to what extent the fees can be regulated. Such observations fell from this Court having regard to the current pandemic situation. The State Government in due deference to our suggestions took up the issue with the association of unaided schools, and ultimately, issued the impugned Government Resolution.

● **SUBMISSIONS ON BEHALF OF THE FEDERATION OF SELF-FINANCED SCHOOLS:**

9 It has been submitted on behalf of the federation that the impugned resolution is without jurisdiction and has been issued

in colourable exercise of powers. It is further submitted that neither under the Disaster Management Act, the School Fee Act, 2007 nor under any other law, the State Government has the authority or competence to issue the impugned resolution. The sum and the substance or rather the principal argument of the learned senior counsel is that the right to set up a reasonable fee structure is a fundamental right guaranteed under Article 19(1)(g) of the Constitution of India.

● **SUBMISSIONS ON BEHALF OF THE STATE GOVERNMENT:**

10 Mr. Kamal Trivedi, the learned Advocate General appearing with Ms. Manisha Lavkumar Shah, the learned Government Pleader submitted that instead of questioning the legality and validity of the impugned Government Resolution, it is expected of the federation to extend its cooperation having regard to the current pandemic situation. According to Mr. Trivedi, even otherwise, there is no merit in the contention raised on behalf of the writ applicants that the impugned Government Resolution has been issued without jurisdiction.

11 Mr. Trivedi brought to our notice the guidelines issued by the Government of India for the purpose of digital education. The guidelines are in the name of "PRAGYATA". Mr. Trivedi submitted that the guidelines are in the form of understanding digital / online education, the concept of digital education, mode of digital education, etc.

12 Mr. Trivedi would submit that the State Government is still open to further negotiation with the federation, as suggested by



this Court in the course of hearing of this matter provided the federation sits across the table with an open mind and open heart.

13 Mr. Trivedi also invited our attention to the averments made in the affidavit-in-reply filed in the Writ Petition (PIL) No.64 of 2020.

14 In such circumstances referred to above, Mr. Trivedi, the learned Advocate General would humbly urge that without going into the issue with regard to the legality and validity of the impugned Government Resolution, the federation may be requested to once again sit across the table and negotiate for the purpose of arriving at some equitable understanding.

● **SUBMISSIONS ON BEHALF OF THE PRESIDENT OF UNREGISTERED ALL GUJARAT VALI MANDAL:**

15 Mr. Vishal Dave, the learned counsel appearing for the writ applicants of the Writ Petition (PIL) No.64 of 2020 has filed a note in writing. The same reads thus:

*"1. The Petitioner, Mr. Naresh Shah, is the President of Unregistered All Gujarat Vali Mandal. He had given a representation on behalf of parents dated 07.04.2020 addressed to the Secretary of the Education Department of State of Gujarat requesting that since 21 day lock-down has been declared by the Prime Minister of India, an Order to the effect that all school managements should not charge any fees for the next three months be issued by the Government.*

*2. Although, the regulation of fees of self-financed schools comes under the Fee Regulatory Committees, the Hon. Minister Education summoned the representatives of School Managements from across the State and held discussions with them on the above request of the Petitioner.*

*The School Management posed following issues faced by them :*

*(i) Many of the Parents have not deposited the last quarterly fees of the schools since the schools were closed.*

*(ii) 70% of the amount received as fees goes in the salary of teachers and other non-teaching staff.*

*(iii) Schools have to pay the salary of all staff for the lock-down period also, which is a burden on the school management.*

*(iv) Even when the schools are not working/closed, they have to pay at least minimum electricity bills, maintenance of school buses, loan installments of buildings or rent of the building etc. Thus, they have to incur other expenses also.*

*requested the school management to give some positive response on the representation of the Petitioner. Consequently, the Self-Financed School Management Federation-Gujarat agreed on following points and accordingly issued a communication dated 14.04.2020 to its member schools across the state.*

*(i) If the fees of March-April-May 2020 is not paid by any student, the parent should be contacted and the fees may be collected in instalments spread up to November-2020.*

*(ii) No late-fee or penalty should be charged from the parents. After contacting the parent and assessing his economic condition appropriate reduction or rebate may be given on humanitarian ground.*

*(iii) The date of next academic session is not decided yet. So, it is inappropriate to demand fees for the same. When the next session starts, steps to boost the moral of students and teachers should be taken. Audio-visual methods should be utilized to create awareness among them and, motivate all and one to face the crises.*

*(iv) A positive letter in polite language asking for fees should be issued only after a week from the starting of next academic*

session. Before issuing such letter data of all parents should be prepared. Based on ' the class of work of parents such as : a government employee/ Officer; some businessman; is a worker in some factory/ industry, appropriate dates should be fixed for payment of fees so that all can have enough time to manage the payment. Approx. 60-65% of parents are economically capable of paying the fees in time. 15-20% belong to middle class and 20% are from poor segment including the admission given under. The RTE Act. Thus, after such categorization only, fees should be demanded. In present situation if some parents is not earning and is facing economic crises, the school management should continue imparting education to such students and if possible may waive the fees.

(v) No fees should be raised for 2020-21 academic session and fees as per

(vi) Considering the situation of pandemic, the penalty, late fee or pressure tactic for fees should be avoided.

(vii) The salary of academic and non-academic staff should be paid regularly. If it is not possible the salary should be paid in installments.

4. Even when the school is closed for the time being, burden of some regular expenses such as electricity bill, maintenance of school buses and payment of their drivers, salary of academic and non-academic staff, building maintenance, installments of loan (if any) is always existent. It cannot be conceived that parents giving admission in self-financed schools do not have any savings to pay the fees of their kids. Moreover, as stated earlier, the School management has already agreed to give fullest cooperation to the parents.

5. As per the provisions of the Gujarat Self financed (School fee)Regulation Act and Rules, 2017, the fees is determined by the respective Fee Regulatory Committee, headed by retired High Court Judges. So far as the Schools are concerned, they are unaided private institutions and the Government cannot interfere directly in the working of the FRC.

6. On line teaching also requires various applications to be prepared and appropriate material to be converted into technically feasible format. Thus, it involves expenditure on hardware as well as on software. The teachers in fact, may

*require more time and resources to do this than in traditional classroom teaching.*

*7. The schools are liable to observe the rules/guidelines issued by respective Ministry of the Central Government and the State Government from time to time during the pandemic situation. Currently schools are closed. When the schools re-open they are liable to follow relevant orders pertaining to the pandemic situation. Moreover, C.B.S.E. Bye-laws are not applicable to all schools which is pertinent to note. The State Government does NOT give rebate in any form in the name of education to any trust/society.”*

16 We also heard Mr. Maulik M. Soni and Mr. N.R. Mehta, the learned advocates appearing in the Writ Petition (PIL) No.114 of 2020. This writ petition has also been filed seeking appropriate direction to mitigate the negative adverse impact flowing from the decision of the State Government in prohibiting the collection of tuition fees by the self-financed schools.

17 We also heard Mr. Rahil Jain, the learned counsel appearing in the Writ Petition (PIL) No.100 of 2020. In this writ petition in public interest, the writ applicant seeks appropriate directions to prohibit conducting online / virtual classes so far as the Kinder Garden / Play Group across the State of Gujarat and other educational institution conducting online classes for the kids aged 18 months to 6 years of age is concerned. We also heard Mr. Jay J. Jani and Mr. Tejas S. Trivedi, the learned advocates appearing in the Writ Petition (PIL) No.89 of 2020. This petition also raises the very same issue i.e. conducting online classes, school fees, etc.

● **ANALYSIS:**

18 Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only



question that falls for our consideration is whether the State Government is justified in issuing the Government Resolution directing the unaided private schools that they shall not collect fees from the students.

19 This is not an appropriate time to consider the legal submissions canvassed on either side. We need to strike a balance so as to protect the interest of the students and their respective guardians, and at the same time, also the interest of management of the unaided private schools. This is where the role of High Court, being a Writ Court, assumes significance.

20 Before we proceed to express our views and try to find a way out, we would like to quote the Government Resolution, which has been impugned before us. The same reads thus:

*“Online education provided by the Schools and the fees charged by the self-finance schools in the situation of Covid-19.*

GOVERNMENT OF GUJARAT  
Education Department  
Sachivalaya, Gandhinagar.  
No.BMS/ 1220/ 53/ FRC Cell  
Dated the 16<sup>th</sup> July, 2020

*Read:*

*(1) Hon'ble Gujarat High Court oral order dated 19.06.2020 in WP (PIL) 42/2020, 64/2020 AND 89/2020.*

*(2) Gujarat Self-finance Schools (Regulation of Fees) Act, 2017.*

*(3) Education Department Resolution No.PRE/ 112020/ 192931/ K, dated 05.06.2020*

*(4) PRAGYATA, Guidelines for Digital Education, MHRD dated 14.07.2020.*

**Introduction:**

All schools [Government, Grant-in-aid and self financed] in the State have been closed from 6.03.2020 due to the covid-19 pandemic in the country. The schools have remained closed during the period of lock-down as declared from time to time by the central government. Considering prevailing conditions, it is forbidden to start educational institutions as per the directives of Central Government.

The new academic session of schools was to begin from 08.06.2020 as per the calendar of the state government but, as stated above, school could not be started physically. Alternatively` to ensure that the students get education at their home, instructions were issued vide Government Resolution dated 05.06.2020 about Home Learning which is binding on all type of schools. Many schools have started 'online classes' for providing education through home learning. Some schools are providing prerecorded educational content through You Tube to students. Schools are also using various social media applications to ensure home learning of students. The state government has provided free of cost QR coded textbooks to the students of government and gram in aid schools, so that by scanning, this QR code students can learn the subject. These books are also available for students of self-financed schools.

The Education Minister and the Secretary of School Education Department of the State discussed the issues about Children up to what age and to which extent can be imparted online education with leading educationalists, child psychiatrists, educators and pediatricians through video conferencing. It has been decided to declare the methodology of imparting online education to children after considering the ground realities of schools and children and as per the suggestions of the experts. Meanwhile, the Central Government Department of School Education and Literacy, Ministry of Human Resource Development, New Delhi has declared PRAGYATA. Guidelines for Digital Education on 14.07.2020.

Moreover, due to the special situation arising out of COVID-19 pandemic, various Public Interest Litigations have been filed by some petitioners before the Hon'ble Gujarat High Court raising various prayers. As per the directives of Hon'ble Gujarat High

*Court in the Oral Order dated 19.06.2020, following steps are required to be taken about the Online Education given by the schools and the fees demanded by the self-financed school:*

*1. The State Government should work out some modalities with regard to the Online education being imparted by various schools in the State*

*2. To Consider whether online teaching so far as very small children are concerned would be advisable ?*

*3. Clarify the issue of 'fees' demanded by the schools during the lock-down period and to ensure that the self-financed schools do not cancel the admissions of those students who are not able to deposit the fees by 30.06.2020*

*Resolution*

*:*

*Above matter was under consideration of the State Government. Meanwhile, the Department of School Education and Literacy, Ministry of Human Resource Development, New Delhi has declared PRAGYATA, guidelines for Digital Education on 14.07.2020. Home Learning has become the need of the day and these Guidelines cover all the necessary aspects of education through Home Learning. The state government has decided to follow these guidelines as it is an ideal guidelines for digital and online education. Thus, **after careful consideration it is resolved that all the schools in the state [government, grant-in-aid, self-financed] should follow these guidelines in letter and spirit.***

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*2. As stated in the Government Resolution, Education Department dated 05.06.2020 the schools should take steps to publicize and create awareness about home learning educational programs being telecast through BISAG for Standard 5 to 12, as per schedule, on Vande Gujarat Channel so that the benefit of teachings by best teacher reaches the students. The students should also be informed to watch educational programs being telecast on DD Girnar Channel.*

*3. The provision for Optional Fees has been made in the Education Department Notification dated 17.07.2018 according to*



*which such fees can be charged only from those students who take benefit of such activities. As, at present the schools are closed, the fees for optional activities cannot be charged from students by the school till they start functioning regularly. If any parent has paid such fees, the same should be adjusted in the fees to be charged and paid when the school starts functioning regularly. Which means, the schools cannot charge any fees for the services which are not provided.*

*4. Following instructions are issued for self financed schools in the State as per Section-39(I) of the Disaster Management Act, 2005 and under powers given to the State under Section-16 of the Gujarat Self financed Schools (Regulation of Fees) Act, 2017.*

*4.1. It has come to the notice of the State Government that even in the situation of complete lockdown, self-financed schools are demanding fees from students/parents and compels them to pay the same. Also, some private schools do not pay salary to their teaching and non teaching staff or pays 4000 to 5000 less salary. Educational institutions are charitable institutions and the main purpose of their establishment is & noble cause of providing education to society without profiteering. These institutions should give maximum support to students/parents especially when they are passing through precarious economic conditions in present circumstances. Even though, in the letter of the Self-finance School Management Association-Gujarat dated 26. 06. 2020 addressed to the Education Department, they have denied to reduce any fees for students. Therefore, in the larger public interest, the State Government has decided that schools shall not charge any tuition fees for the period starting from physical closure of the schools till the actual physical opening of schools to start functioning regularly again.*

*4.2 Further as stated in the paragraph-7 of the letter dated 14.04.2020 of Self-financed School Management Association-Gujarat addressed to all the schools of the Association, schools shall not raise/increase any fees for the year 2020-21. Accordingly, no self-financed school shall increase their fees in the next academic year 2020-21.*

*4.3 The expenditure incurred in the salary of teaching and non-teaching staff of the Schools shall be considered by the Fee Regulatory Committee under section-10 of that Gujarat Self-financed Schools (Regulation of Fees) Act, 2017 while determining the fees for the next year.*



*4.4 If any parent has paid advance fee, the school should adjust the same in the fees to be charged in the next academic year*

*5. No student studying in standard 1 to 8 can be removed from school as per section-16 of the Right of Children to Free and Compulsory Education Act, 2009. Further as per the Oral Order of the Hon'ble Gujarat High Court dated 19.06.2020, no school shall remove student from school for non payment of fees by 30.06.2020.*

*These orders are issued as per approval of the Government dated 16.07.2020 on the title of even number.*

*By order and in the name of the Governor of Gujarat,*

*sd/-*

*S.B. Karode  
Under Secretary,  
Education  
Department"*

21 We would also like to look into the guidelines issued by the Government of India for digital education. The same reads thus:

### **PRAGYATA**

#### **"Section-I Understanding Digital/ Online Education**

##### **1.1 Introduction**

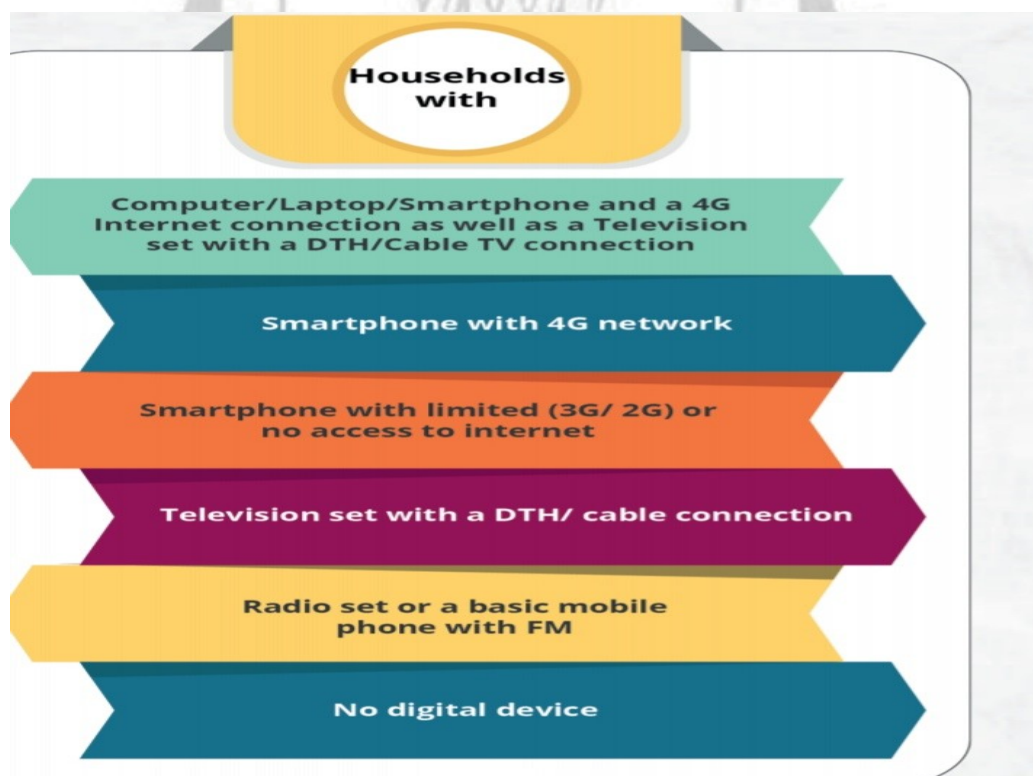
*COVID-19 pandemic has led to secure disruptions in normal life, including closure of schools. It has impacted over 240 million children of the country who are enrolled in schools. Extended school closures may cause loss of learning. To mitigate the impact of the pandemic, schools will not only have to remodel and reimagine the way teaching and learning have happened so far, but will also need to introduce a suitable method of delivering quality education through a healthy mix of schooling at home and schooling at school.*

*While digital or online education cannot replace classroom learning, it has some advantages. It allows flexible and personalized learning at the speed of the learner and one can continuously augment and expand content through digital means. The rapid increase in internet penetration and various government initiatives such as Digital India campaign have created a conducive environment for moving towards digital*

education. This shall be complemented by the recent launch of PM e-Vidya by the Ministry of Human Resource Development (MHRD), a national campaign which will unify all efforts related to digital/online/on-air education. This includes, DIKSHA (one nation – one digital platform), TV (one class-one channel), SWAYAM (online MOOCS on various topics), IITPAL (platform for exam preparation), AIR (through community radio and CBSE Shiksha Vani podcast) and study materials for differently abled students developed by NIOS. All these areas of e-learning shall be expanded and developed further in a systematic and unified manner by the MHRD in a phased manner.

Following guidelines have been developed from the perspective of learners, with a focus on online/blended/digital education for students who are presently at home due to lockdown. These guidelines also provide a roadmap or pointers for carrying forward online education to enhance the quality of education. The guidelines will be relevant and useful for a diverse set of stakeholders including school heads, teachers, parents, teacher educators and students.

### **1.2 Concept of Digital Education**



Digital Education is an evolving area which is primarily concerned with the teaching learning-process using digital medium. This has evolved from activities such as sharing of text

resources and students submitting assignments online to availability of various types of content such as audio, video and multimedia resources. The continuous advancement in the field of Information and Communication Technology (ICT) and the internet (with virtually unlimited supply of digital resources) has made multiple modes of digital education possible. With regards to the availability of digital infrastructure, Indian households can be classified into six categories:

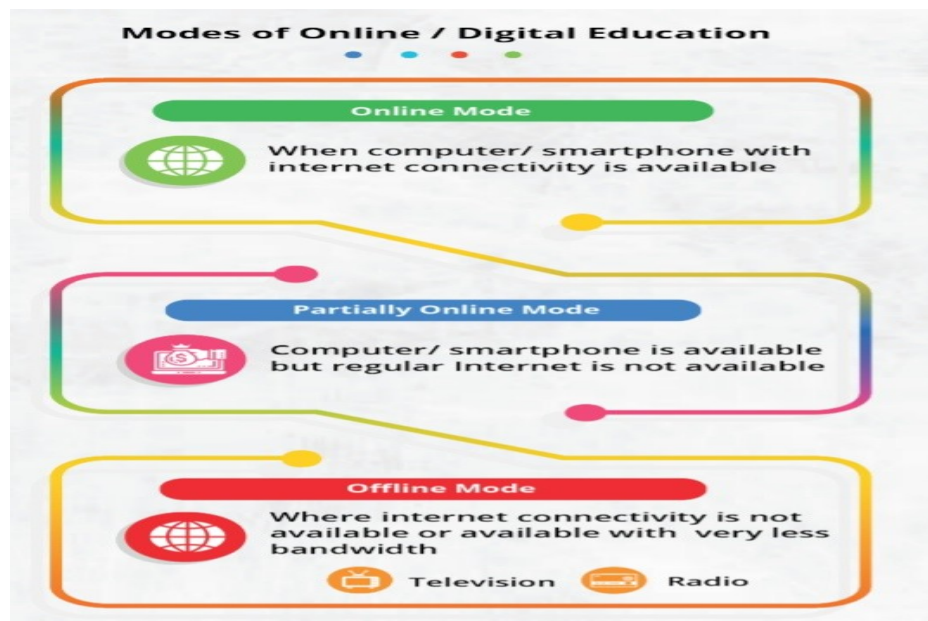
There are households with none of the above facilities while we are focusing on the mechanisms of teaching and learning with the help of digital/online education. There are two kinds of online learning and teaching that schools will need to balance based on the feasibility:

- *Synchronous*: This is real-time teaching and learning that can happen collaboratively and at the same time with a group of online learners or even individually, and usually a teacher, or some method of instant feedback; examples of synchronous learning are online teaching through video conference (two-way video, one-way video, twoway audio), audio conference (two way audio) using satellite or telecommunication facilities.
- *Asynchronous*: This is anytime, anywhere learning but not connected on real time, for example, emails, SMS, MMS, surfing e-content on DIKSHA, listening to radio, podcasts, watching TV channels, etc.

### **1.3 Modes of Digital Education**

The vastness and diversity of India is reflected in the scale at which school education operates in the country - with about 95 lakh school teachers and 25 crore students, characterized by geographical, socio-cultural and linguistic diversity. Therefore, decentralised planning and implementation is advisable for the digital education system to work, keeping in view the ground realities of each State and Union Territory. Depending upon the availability of ICT infrastructure, one can choose an appropriate mode for implementing digital education.





*Disclaimer: These guidelines are advisory in nature and have been prepared by NCERT. Many of the suggestions received from various states/UTs in this regard as a part of the consultation process have been incorporated in these guidelines. States/UTs are required to come out with their own detailed guidelines by adapting/ adopting/ modifying these guidelines in accordance with their requirements and assessment of the local situation.*

**1 Online Mode:**  
Anyone of the following model can be chosen when computer/ smartphone with internet connectivity is available

**Model 1:**  
Guide learners to go through the online resources shared by teachers through instant messenger/ mail etc. Students come prepared and then discuss their queries during online interaction through video conferencing tools.

**Model 2:**  
Conduct scheduled online classes through any one of the video conferencing tools.

**Model 3:**  
Conduct a scheduled live class through any of the Learning Management System (LMS) and students interact during live sessions or through forums/ groups in LMS. All the resources to be shared in the LMS itself, and assignment submission also happens in the LMS.



## 2

**Partially Online Mode**

When Computer/ smartphone is available but regular Internet is not available, any one of the following models can be chosen

**Model 1:**

Links of resources available at DIKSHA/ ePathshala/ NROER/ NDL or any publicly accessible platform are shared with students/ parents by teacher through instant messengers/ emails. Students can download those resources in a pendrive/ phone/ computer for offline use. Teachers can suggest activities (experimenting, further reading, etc) to be done offline for further exploration.

**Model 2:**

Teachers instruct students to read the textbook and other reference materials physically available with the student and then the teacher (once a week) interacts with students through WhatsApp, phone call, video call to clarify/ enrich/ teach the content.

**Model 3:**

Sharing DVD/CD with class wise topic wise resources like video lectures/ demonstrations/ simulations etc and students learn using the resources. The teacher comes online to discuss and clarify doubts, queries or explain concepts (may be once a week).

## 3

**Offline Mode:**

In situations where internet connectivity is not available or available with very less bandwidth, resources are shared through various platforms like television, radio etc that don't depend on internet connectivity

**Television –** Majority of the population in India has a television along with DTH/ Cable connection. Some of the models of using television as part of digital education are:

**Model 1:** Class wise and topic-wise resources transmitted on TV channels (DTH and Cable TV) like SWAYAM Prabha, Vande Gujarat, Victor Channel, MANA TV etc. Such contents can be easily accessed and utilised by students and teachers using television available at home.

**Model 2:** Sharing through pen drive/ DVD/ CD with class wise topic wise resources like video lectures/ demonstrations/ stories etc that be viewed through some of the resources newer sets TV if available at home.

**Model 3:** Incase where TV is also not available with student, community television which is available in panchayat union office, or in public places can be used for mass education.

**Radio –** It is perhaps the most cost effective medium when TV is also not available or when power supply is

**Model 1:** Class-wise, topic-wise audio content can be broadcasted through dedicated radio channels with support of AIR. Audio programmes organised through All India Radio (AIR) stations as per the curricular needs.

**Model 2:** Community/ FM radio channels utilised to broadcast teaching-learning resources and at times customised to address the local needs.

**Model 3:** Incase where radio is also not available with student, community radio, if available in panchayat union office, or in public places, can also be utilised along with loud speakers for mass education in some generic areas.

## **Section-II PRAGYATA- Steps for Digital and Online Education**

*Being one of the most effective ways to ensure continuity in school education, digital education presents several advantages over face-to-face classroom teaching. Parents may also desire to know more about the how, what and where of providing online education as well as its real-time online conduct so that their children do not get overly stretched or stressed, or get affected negatively (postural defects, ophthalmic issues, and other physical problems) owing to its prolonged use.*

*This section of the guidelines includes eight steps of online/ digital learning. An attempt has been made in this part of the guidelines to present in a way that they may answer frequently asked questions by different stakeholders on the modalities of providing online education.*

*In many schools across India, the MHRD has been funding computer labs, smart screens, etc. Twenty-nine States/UTs are already onboarded DIKSHA, a digital platform. Slowly, but surely, many teachers in several states/UTs are getting used to integrating ICT in the classroom process. Eight steps for implementation of online/ digital education is PRAGYATA.*



### **Online Learning for Class IV students An Exemplar**

*PLAN: Lesson Plan for the following is prepared by the teacher in great details*

**REVIEW:**

- *Teacher conducts a brief survey with the children via mobile about their access to digital devices and finds that:*

1. *15 Households have a Television, Smartphone with internet connectivity and also a Laptop*
2. *10 Households have a Smartphone with internet connectivity and a Television but no Laptop*
3. *4 Households have a basic mobile.*
4. *1 Household does not have even a mobile*

**ARRANGE:**

- *After this survey teacher may make arrangements in the following manner.*
- *Giving immediate attention to children belonging to households at (c) and (d). For children belonging to households at (c), teachers may plan calls early morning on the mobile as there is a possibility that the parent who will go out for work may take the mobile along with him/her.*
- *Teachers select a theme (Example - a theme from EVS, i.e. family)*
- *So, she/he will call the parent or student and ask them to discuss with their family members (their age, what work they do, etc.).*
- *For a child belonging to a household at (d), teachers may explore contacting them via the child's friends. After getting the contact of a student residing nearby, the teacher may explore communication channels with the household at (d) such as identifying his/her accessibility to a mobile belonging to a neighbor. The teacher will guide the parents, child or guardians.*
- *For children belonging to households at (a) and (b), she may plan to call them via Google Hangout or WhatsApp calls, etc. Teachers may create three groups of eight students each, and guide on the same theme - 'family' by asking them to discuss and make a chart as discussed above.*

**GUIDE:**

- *Teachers may also ask parents to show a video on the theme 'family' to their children and encourage them to discuss it. This may be an individual activity, wherein parents may also participate and may be motivated to discuss and talk to their children about the family.*

**YAK/TALK:**

- *Teachers will arrange doubt clearing sessions, and remain available at pre-specified times to talk to the learners.*



**ASSIGN:**

• She/he will guide the child to draw portraits of her/his family members, write her/his relationship with them, prepare a family tree, list their work and also write one thing about them that they like. • Learning of a language may also be made an integrated part of this activity, wherein students may be asked to write a poem on their family, or share an experience from within the family, etc.

**TRACK:**

• The chart or poster or data sheet that children have made may be sent to teachers through email or WhatsApp by the parents. • Teachers will track progress of students on each of the assignments and give constructive feedback to the learners.

**APPRECIATE:**

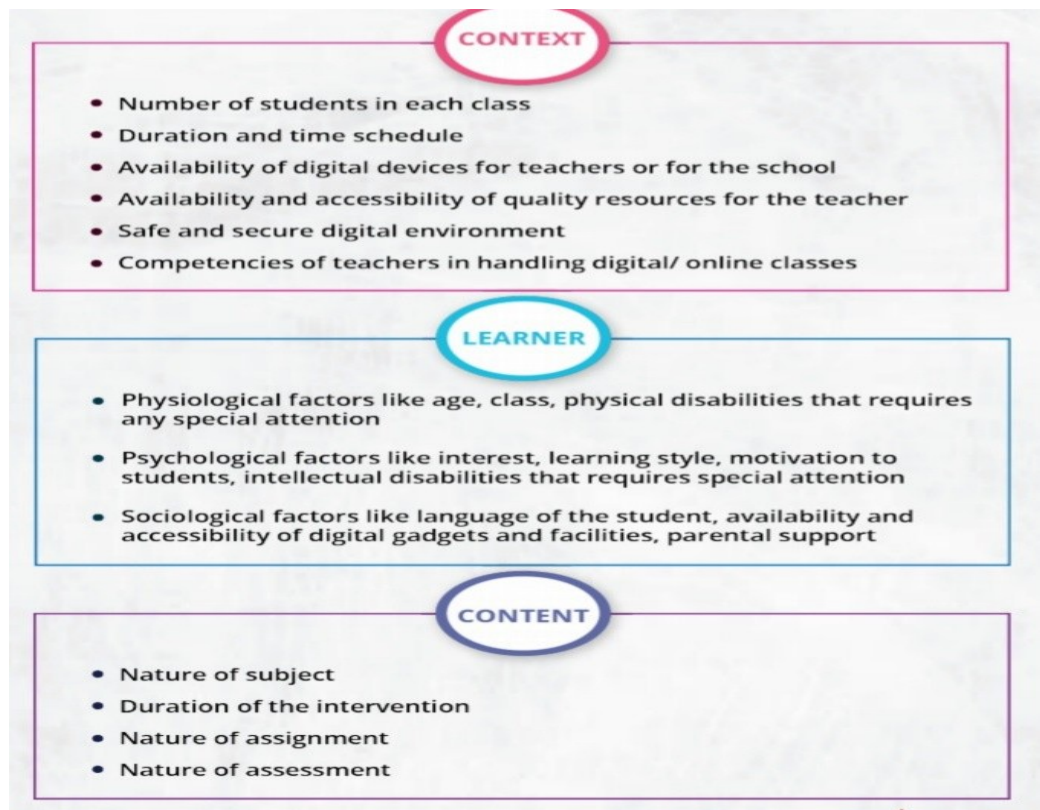
• Teachers need to attend to each and every group for a few minutes. Teachers need to appreciate children and parents by sending some good words on the completion of the assignment. • This will sustain the interest and motivation of children and parents both. Teachers will also inform parents and students that participating in this activity has made them progress as per the learning outcome already identified for the above class.

**2.1 Step I: Plan**

The need for proper planning is as much essential for the conduct of successful face-to-face teaching learning sessions as for online ones. For example, for face-to-face, the state department plans to provide textbooks every year, creates an annual calendar, assessment plan, etc. and schools make a timetable as well as plan on how to complete their syllabus. Similarly, teachers not only plan for a given session, but also prepare weekly and monthly plans along with formative and summative assessments, co-curricular activities, projects etc.

The same detailing will need to be carried forward for digital education where anyone who is involved with facilitating digital learning must prepare a plan at their level. For the successful implementation of a digital education, State department, School Heads and teachers must develop a coherent plan and ensure clarity about their respective roles. The scope of planning may vary from stakeholder to stakeholder. However, the core elements around which the planning is done are common to everyone. These important core elements/factors are as follows:





### **1. Age and Class of children**

*Planning should be undertaken keeping in mind the age and class of the children. Considering any concerns for their physical and mental health, audit the resources available, tools to be used and time duration for activities and online sessions, etc. e.g. for pre-school children, online classes on mobile or laptop must be discouraged. For them, television and radio can be used for this purpose. They can be given good television programmes that use animations, films, etc. to link learning with their day-to-day life. In case of availability of online and offline mobile and computer applications for children below class 3, parents must be engaged as a bridge between the digital device and the child.*

### **2. Number of students in each class**

*Consideration of the number of students in each class is another factor to be considered. Teachers need to plan different online strategies for different groups of children based on the digital tools available and accessible to them.*

### **3. Learning styles of children**

*Teachers must be aware that in their class some children learn by reading, some by listening and some by doing. So, students have different learning styles. Teachers may take into consideration these learning styles while planning group-wise sessions.*

**4. Nature of subject**

*Different subjects have different pedagogies, e.g., A Mathematics class may need more time allocated to solving numerical problems instead of discussions, and a Social-science session may require deeper/longer discussions because children belong to diverse contexts, etc.*

**5. Language to be used**

*Given the extent of multilingualism in our country, it should be kept in view that the programmes and material provided under digital education must be in language/s in which students are well-versed with.*

**6. Contexts of children**

*Students belonging to diverse socio-economic backgrounds come to school. Some get the full support of their parents in their education, but in some cases, parents are not able to support them because of illiteracy or if they are extremely busy with their work. So, while planning digital education, these contexts need to be kept in mind.*

**7. Accessibility of digital devices for children**

*All students do not have digital tools available at home. If available, they may not be able to access these tools as they belong to adults who are working from home and cannot spare their gadgets.*

**8. Availability of digital devices for teachers or for the school**

*While planning, tools available with teachers and with schools also need to be kept in view.*

**9. Availability and accessibility of quality resources for the teacher**

*Teachers need to see and analyse the e-content and e-resources for quality before referring these resources to the children.*

**10. Duration of the class/interaction/video online**

*This is a very important factor, which needs to be considered while planning. For this, teachers need to talk to parents and students beforehand in order to plan sessions with them as per their comfort. Accessibility and availability of technological aids with them also needs to be ascertained. The duration of these sessions and classes need to be planned in consonance with the age-group of the children.*

**11. Nature of assignment**

*With digital/online learning, assigning tasks to students is a*

*motivating and engaging factor. Accordingly, these need to be designed.*

## **12. Nature of assessment**

*Assessment needs to be planned keeping in view the following –*

*a. Too much dependence on pen-paper may be avoided. Alternative methods of assessment through online classes, social media, blogs and mobile phones need to be promoted.*

*b. Students' activities during lockdown must promote alternative modes of assessment like working on projects, portfolios, conducting home-based experiments, interaction with family members and elders, creating prose, poetry and improving literacy skills. These need to be assessed accordingly.*

*c. Open book examinations can be undertaken. Quality test items need to be prepared by subject specialists and assessment experts for open book assessment.*

*d. Issues related to public hygiene may not be assessed for grades and marks as the scores may not be reliable. A student may be good at drawing a beautiful chart or composing a very good poem on cleanliness but may or may not be practicing it. This may not provide objective observation as students are not physically present before teachers.*

*e. Test items related to local corona warriors, services, activities, people in the line of duty, health workers and soldiers can be very well integrated with all the disciplines and for all the grades. This includes subjects like mathematics and geography along with languages.*

## **13. Motivation to students**

*Students need to be regularly given positive remarks on their tasks, assignments, replies, questions, etc. Rather than waiting for a completed assignment, if students explain the process of doing assignment, he/she must be appreciated/encouraged.*

## **14. Participation of parents**

*Parents need to be made to understand their role in digital education; specifically, for students in the age group of 3-12 years. They need to be with their children while they are attending online classes or watching TV. In case the students face a problem during the class, parents either can resolve it themselves or talk to teachers about the same.*



**15. Cyber security and safety**

*Before planning, there must be a list of dos and don'ts for online education available with/created by teachers and School Heads. This must be discussed with students and parents.*

**16. If a child has some special need**

*Children with Special Needs (in the class) should be identified based on their auditory, visual, physical, intellectual and emotional characteristics for planning and delivery of digital education. So teachers may accordingly plan lessons with ebooks, audio/talking books, braille books, Digital accessible information system (DAISY books), sign language videos along with transcription, translation, subtitling, voice over integration into the existing digital resources.*

**17. Overall planning of class timetables for online learning by schools:**

*The school will have to ensure a synchronized approach for the learner in a given grade. Each subject teacher cannot insist on holding online sessions for several hours a day. For example, schools could decide on a fixed number of hours/ day of screen time for each level of schooling – lower primary, upper primary and secondary and senior secondary. Please see para 3.1 for more suggestions.*

**2.2 Step-II: Review**

*The second step would be to undertake a review after deciding different modes or tools for different sets of students and after identification of all available resources for the teacher/school. This would be a review of the plan in terms of time/duration, quality of resources, scope of assignments, methods of assessment, as well as cyber security and related safety concerns. While undertaking a review, teachers may decide to join hands with other teachers and share the responsibility of talking to parents or students individually or in groups to guide them on all the subjects one by one in view of saving time and the availability of technological tools with students.*

**2.3 Step-III: Arrange**

*After undertaking a review of all the information and resources which have been collected, their proper arrangement and organization for their daily/weekly or monthly transaction must be done. It is also to be decided, how follow-up can happen with students in the case of teachers, and by School Heads in the case*



of teachers.

#### **2.4 Step-IV: Guide**

Guidance on the part of teachers for students and their parents is a very important step. Teachers need to inform parents or students about the themes/topics to be learnt by the students under the guidance or via self-study (whatever, the case may be). Using different modes like instant messaging, SMS, teachers may guide each and every student on the following lines –

- Learning outcomes decided to be taken up for the session that the teacher is planning for the students.
- Themes/topics which help achieve progress in selected learning outcomes.

#### **Reflection and Construction**

Children should be provided with opportunities to reflect so that they can construct their own knowledge. Teachers need to give them different situations drawn from day-to-day life and a problem identified from within the said situation. As children to observe, hypothesize, collect data, test the hypotheses and draw conclusions. Example of a situation: You have 1000 litres of water for a family of four persons. Due to shortage of water, now, your family will not get a single drop of additional water. It will take atleast fifteen days to improve the situation. What plan will you make to pass these 15 days with the limited amount of water available to you while continuing to conduct all the essential and routine activities requiring water.

#### **Pedagogy**

- Reading content related from the textbook- reflecting upon that, making some important points and discussing either with groups created for online discussion or with the teacher.
- Watching a video-link provided by the teacher, noting down important points, texting the teacher or discussing them with peers, doing exercises related to the theme, answering questions provided with the video link, etc.

#### **Assignment**

Teachers need to guide students on how they will do their assignment, what resources they will use, and through what mode they will share this assignment with teachers.

#### **Assessment**

Teachers need to guide students and parents on assessment of students' work as well as the process that they have followed to complete their assignments. Teachers may also guide students on

*self-assessment and peer assessment.*

### **2.5 Step-V: Yak (Talk)**

*During their guidance, teachers must clarify that talk, chat, discussion, etc. must happen among the members of the groups (created among students), parents and their wards, and with teachers, so that students take an interest in studying the themes and doing the activities.*

### **2.6 Step-VI Assign**

*After completing two or three themes, teachers can give some interesting assignments to the children. These may be group activities or individual assignments, depending upon the technological tools available to the children.*

*A list of some of these creative assignments is as follows:*

- Healthy Practices for wellness – Parents and children together discuss, reflect and make a chart/table with the information – whether they follow these practices or not. (Individual Assignment for classes IV or V)*
- Status of Diabetes in India, state-wise analysis, age group, details about diabetes, symptoms, prevention, cure, suggestive health practices. (Group Work for class VIII)*
- Write about Corona Warriors of your locality (if you have heard about them from your parents or you yourself know him/her). Make a list of people whom you think are Corona Warriors in this crucial period (Individual and Group for class VI).*

### **2.7 Step-VII: Track**

*Tracking or follow-up of the given session and assignment is very necessary, otherwise, children will lose their interest, if they do not get response from their teacher or parents on their work or assignment. Teachers need to track progress either on social media like WhatsApp or by calling them and asking them to show what they have done or if this is not possible, then by telling them that they must keep these assignments in a file and bring those to school when they re-open. If work is incomplete, teachers may again guide them by selecting another pedagogy if the earlier one has not worked.*

*Teachers will have to make a tracker of habits, skills and values developed in students as they have been learning/receiving*

*education using alternative approaches. They may have their own criteria and need to observe these while talking to students in a group or by talking to the parents.*

#### *2.8 Step-VIII: Appreciate*

*On every completed task, teachers must compliment children by sending messages, calling them and appreciating them. Since the teacher is not physically with them and children do not have the opportunity to see teachers' expressions or listen to their praise, which may be boring or demotivating about getting online education. Through gestures of appreciation, teachers can make students feel that they love them, care for them and feel happy when they progress in their learning."*

#### ● **REPLY FILED BY THE STATE:**

22 We shall also look into the affidavit-in-reply filed on behalf of the State Government. The relevant averments made therein are as under:

*"3.1 It is stated that pursuant to the said directions given by this Hon'ble Court, the respondent No.1 State, under the chairmanship of the Hon'ble Education Minister, conducted two-day video conference on 1<sup>st</sup> and 2<sup>nd</sup> July, 2020 with eminent educationaists, child psychologists, pediatricians, and dignitaries of various institutions, etc. to understand the impact of home learning on children while inviting their recommendations and follow up action, so as to fix the modalities of the online education. Interestingly, most of them have accepted that the blended home learning is best feasible solutions with due precautions and care, considering the current situation, wherein no one can predict when situation will improve and schools will reopen for this academic year. Some of the important highlights of the discussion which took place in the said conference may be set out hereunder.*

*(i) It is known fact that presently, a child spends a good number of hours behind TV, smart phones, video games, etc. and that therefore, online education is to be seen in that context.*

*(ii) State Government should try to replace the aforesaid hours of usage of the above referred electronic gadgets by children, which are not so useful screen time i.e. leisure screen time With blended learning through home learning.*



(iii) The State should ensure that the education of children is not adversely affected and there is minimum learning loss and continuity of learning without schooling, blended schooling, blended home learning including the online teaching and home learning.

(iv) Preferably, online teaching should be done through pre-recorded programmes so that the same can be accessed by anyone at any time and that therefore, the families having limited devices, will not be an issue. Thus at least those who want to avail of this facility of online teaching, can take benefit of it and continue education of their children, more particularly when people in remote villages as well as people belonging to economically middle class or economically sound families have. now a days. a mobile phone or TV or a tablet.

(v) According to the Report published by TRAI in January, 2020, India has 117375 million wireless subscribers. with quarterly consumption of 20,315 million TB data and 687.62 million active internet users. out of which, about 14% are in the age bracket of 541 years, according to a new reopen from the Internet and Mobile Association of India (IAMAI).

Finally, majority of the participants in the aforesaid conference accepted that blended home learning is the best feasible solution. with due precaution and care. at the present moment.

3.2 Thereafter, on 26.06.2020, a detailed meeting was conducted through video-conference with some of the members of the self-financed School Management Federation, Gujarat including the chairman and treasurer, whereby it was requested by the Secretary (Primary & Secondary Education), Education Department. on the behalf of the State Government, to consider the current precarious situation and take an appropriate decision in that regard. In response to which. the Self-Financed School Management Federation, Gujarat. vide its letter of even date' i.e. 26.06.2020. conveyed that if school fees is reduced. the same would lead to closure of schools and that students have always an option either to go for schools taking lesser fees or government schools. A copy of the said letter dated 26.06.2020 is annexed herewith and marked as Annexure-I.

3.3 Before arriving at a specific decision in the aforesaid matter. it was learnt that Government of India is in process of formulating some modalities on 'online education' for being imparted to the



children across the Country. and therefore, the State authorities thought fit to await the issuance thereof. I further state that on 14.07.2020. the Government of India in its Department of School Education and Literacy. Ministry of Human Resources Development has issued broad guidelines entitled "PRAGYATA Guidelines for Digital Education". a copy whereof is annexed herewith and marked as Annexure-II. For ready reference, some of the relevant excerpts therefrom i.e. para 1 at Pg.12. para 7 at pg.13, para 3.1.3 at pg.19, para 3.4.1 at Pg. 25 and para 4.2 at Pg.30. are set out hereunder:

### **"1. Age and Class of children**

Planning should be undertaken keeping in mind the age and class of the children. Considering any concerns for their physical and mental health, audit the resources available. tools to be used and time duration for activities and online sessions. etc. e.g. for pre-school children. online classes on mobile or laptop must be discouraged. For them, television and radio can be used for this purpose. They can be given good television programmes that use animations. films. etc. to link learning with their day-to-day life. In case of availability of online and offline mobile and computer applications for children below class 3, parents must be engaged as a bridge between the digital device and the child."

### **"7. Accessibility of digital devices for children**

All students do not have digital tools available at home. If available, they may not be able to access these tools as they belong to adults who are working from home and cannot spare their gadgets"

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#### **3.1.3 Implementation of Digital Education**

Keeping overall development of students in mind, it is better that the screen time may be followed as recommended

<b>Class</b>	<b>Recommendation</b>
Pre Primary	On a given day for interacting with parents and guiding them, not more than 30 minutes.
Classes 1 to 12	Recommended to adopt/adapt the

	<i>alternative academic calendar of NCERT at <a href="http://ncert.in/aac.html">http://ncert.in/aac.html</a></i>
<i>Classes 1 to 8</i>	<i>Online synchronous learning may be undertaken for not more than two sessions of 30-45 minutes each on the days the States/UTs decide to have online classes for primary sections</i>
<i>Classes 9 to 12</i>	<i>Online synchronous learning may be undertaken for not more than four sessions of 30-45 minutes on each of the days as decided by States/UTs</i>

*Use Instant Messaging/Chat groups/emails involving parents (whenever required) for sharing important information, resources, suggestions and follow up activities*

*Post a weekly announcement to provide an overview of the coming week's topic or a recap of the previous week's work, or both.*

*Teachers may share e-content with students and parents and guide them how to use those contents using available gadgets at home.*

*Provide time to time feedback on the responses and performance of students in the assigned tasks.*

*सत्यमेव जयते (Emphasis supplied)*

*3.4.1 Create/Curate and share content  
prepare chapter briefs in advance so that the same may be shared with the CWSN prior to actual group teaching in online mode. Care should be taken to prepare these briefs in multiple formats such as text, audio (voice recorded), audio with visual support etc.*

*Allow flexible ways (types, recorded, audio visual with gestures, adult/sibling supported) of responding or submitting assignment/completed tasks, projects, homework, etc”.*

*(Emphasis supplied)*

#### *4.2 Yoga, Exercises*

*Practicing Yoga and physical exercises on a regular basis can help in strengthening the immune system as well as strengthening muscles, bones, and joints.*

*A short break from Computer/Television/Mobile phone*

*after every 30-60 minutes will help in reducing strain on eyes, exhaustion, improve circulation of blood and reduce stiffness in joints. One can walk around for a few minutes during such breaks. Switching one's eyes off the screen for 20 seconds after every 20 minutes is soothing for the eyes.*

*While sitting in front of a digital device. one can stand up periodically and do some stretching exercises.*

*(Emphasis Supplied)*

*3.4 In furtherance of the aforesaid model guidelines on digital education, issued by the Government of India on 14.07.2020, the State Government has now issued a Government Resolution dated 16.07.2020, adopting the said guidelines dated 14.07.2020 in its entirety and prescribing that the same has to be followed by Government Grant-in-Aid and self-financed schools, and a copy of the said Government Resolution is annexed herewith and marked as Annexure-III.*

*3.5 I respectfully say that as a result of issuance of the aforesaid Government Resolution, a sincere effort is made to comply with the directions given by this Hon'ble Court and contained in para Nos. 8 and 9 at Pgs. 23 and 24 and para No.3 at Pg. 64 of the order dated 19.06.2020, as discussed hereunder:*

*(i) For online education, maximum usage should be made of 'prerecorded' material so that more than one children of one family, studying in different standards with limited electronic gadgets, can avail of the benefit of the said online education as per their convenience, without there being any restriction as regards specific timings.*

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*(ii) Every school should take in to consideration that the program for the said online education is framed in such a manner that a short break from Computer/Television/Mobile phone is provided after every 30-60 minutes. which will help in reducing strain on eyes. exhaustion. improve circulation of blood and reduce stiffness in joints.*

*child so as to see that online classes on mobile or laptop are discouraged in case of pre-school children*

*(iv) All the self-financed schools of the state have been*



*directed not to cancel admissions of those student. who were not able to deposit the fees by 30.06.2020.*

*(v) During the period of closure of schools. all the self-financed schools, would not be entitled to charge / collect any tuition fees.*

*(vi) If any of the parents has paid fee in advance, then in that case. Same would be adjusted against the payable fees for the forthcoming period.*

*(vii) All the self-financed schools shall not charge fees for the optional activities as specified in Government Notification dated 17.07.2018, like fees towards transportation facility, boarding facility, dining facility, swimming, etc. issued by the State Government in its Education Department to be charged when the said schools were functioning, till the said schools resume the regular functioning and if any of the self-financed schools has recovered such fees in advance, the same shall have to be refunded and / or adjusted. A copy of the said Government Notification dated 17.07.2018 annexed herewith and marked as Annexure-IV.*

*4. In addition to the above. it is required to be considered that upon the request made by the Respondent No.1 State, the school management has considered the representation of the Petitioner positively and consequently. the Self-Financed School Management Federation. Gujarat. issued communication dated 14.04.2020. to its member schools across the State, whereunder various directions were issued. including non-increase of school fees for the next academic year i.e. 2020-21 copy whereof is annexed hereto and marked as Annexure-V.*

*5. Respectfully say that by way of the captioned writ petition, the Petitioner has sought directions from this Hon'ble Court against the respondents, including the Respondent No.1 State. To issue order / guidelines / directions with respect to fees / hygiene to all the private schools across the State of Gujarat. For the period of April-2020 to June-2020, till the school re Opens, inter alia, praying as under:*

*"12. The Petitioners prays that this Hon'ble Court may be*

*pleased to:*

*(a) Your Lordships may be pleased to issue a Writ of Mandamus or any other appropriate Writ directing the Respondents to issue order / guidelines / directions with respect of fees / hygiene to all the Private Schools across the State as under:*

*i. No fee such as transporting. Sport, term, meal, medical, SMS, IT & other curriculum activity etc., except Tuition fee, shall be charged from the parents for the month of April, May and June. 2020 till the schools get reopen under Section 2 of the Epidemic Disease Act, 1897;*

*ii. To remit/return the advance fee taken from the parents. Except Tuition fee, to the parents;*

*iii. Heads of the schools shall not demand and collect the Tuition fee from the parents/students on quarterly basis. The fee shall be collected on monthly basis only. School should not demand a consolidated fee without distinguishing the various heads i.e. tuition fees, co-curriculum activities etc.;*

*iv. Not to increase any fee in the academic session 2020-21 till further specific directions of the State Government I Union of India irrespective of the fact whether or not the school is running on the private land or the land allotted by Government;*

*v. Shall ensure to provide the access of Online Education/materials/classes to all students, without any discrimination, by providing them ID and Password immediately to get them online education facility.*

*vi. Heads of the schools shall, in no case, deny ID & Password to those students/parents for getting online access of educational facilities/classes/materials etc. to those students who are unable to pay the school fee due to financial crisis arising out of closure of business activities in the ongoing lockdown condition.*

*Vii. Managing Committee of the schools/Heads of the school shall not put extra financial burden by creating any new head of fee.*

*Viii. Shall neither stop payment of monthly salary nor reduce the existing total emolument to the teaching and non-teaching staff of their schools in the name of non-availability of funds and arrange the funds in case of any shortfalls from the Society/Trust running the school Or reserve fund.*

*ix. If there is any specific complaint against any particular school. The parents concerned would be entitled to bring the same to the notice of the Respondent authorities, which shall take steps in accordance with law;*

*x. Heads of all private schools shall makes sure that proper sanitization is done in the school premises and the schools provide masks to children, teacher and other school staff and make sure that everyone in the school establishment use them as a post-COVID 19 measure at least for 6 months ensure the availability of hygiene equipment's i.e. hand sanitizers, face masks, paper napkins, dustbins in school."*

6 Thus, in view of the aforesaid discussion made in the foregoing paragraphs, the same takes care of the prayer (i), (ii), (iii), (iv), (vii), (viii) and (ix) made in the captioned writ petition and thus, in the humble submission, the same do not survive any longer.

7 As far as prayer (v) and (vi) are concerned, with respect to issuance of Id and password, is concerned, it is submitted that the respondent No.1 State has not received any complaint about non-issuance of Id and password for online classes and more particularly, in terms of the Order dated 19.06.2020, as well as, Government Resolution dated 16.07.2020, the self-financed schools would not cancel the admissions of those students who are unable to deposit the fees by 30.06.2020.

8 As far as prayer (x) is concerned, with respect to the hygiene of the private school is concerned, it is submitted that the



*school authorities are always liable to observe the rules/guidelines issued by respective Ministry of the Central Government and the State Government, from time to time, in its true letter and spirit. Thus, in the humble submission, there is no need to give such specific directions, which are even otherwise obliged to be followed.”*

● **FINAL CONCLUSION:**

23 The pandemic has brought about not only a massive healthcare crisis but also economic instability. Thousands have lost their jobs and thousands others are working on salary cuts. We are in a situation where nobody's predicament can be ignored. We understand that schools need a certain amount of money to function and pay their staff salaries but it is also important to remember that not all families are financially stable at the moment. Keeping in mind the current situation, a balance has to be struck between providing children a reasonable education and allowing the schools to stay afloat.

Children are our first priority right now. A large study from South Korea, published by the Centers for Disease Control and Prevention in the U.S., found that children aged 9 and under infected others in their households just 5.6 percent of the time, while children aged 10 to 19 spread the virus at the same rate as the adults, nearly 19 per cent of the time. Trusting science and keeping in the mind the statistics, reopening schools and starting in person classes remains out of question. For the safety and wellbeing of our children, education must continue to be delivered remotely.

We are in uncharted territory currently. We do not have an

alternate education system in place that can be implemented during a public health crisis. Hence, the schools and teachers across the country are working very hard to redesign the current system to fit the needs of their students. Managing the education of students remotely by conducting Online classes is a tedious job. As individuals, their efforts and hardwork shouldn't be ignored. As professionals, they must be paid for their time and service justly. Thus, it is acceptable for the schools to charge a reasonable tuition fee to the parents for the online classes they conduct. All the other overhead fees for bus service, sports and recreation should be avoided. This seems like the only reasonable arrangement during the crisis. The top priority of both parents and the school is the children. Researchers and physicians believe that missing school for a long period of time can have significant impacts on the cognitive and social development of the child. Therefore, parents must also acknowledge that online education of their child is not a futile effort on the part of the schools and schools need to be paid appropriately for their service.

Schools on the other hand must be conscious of the economic instability faced by their students' families. Many parents have been laid off from their jobs or are working on severe salary cuts and it would be unfair for them to be paying for suspended school services (like bus, sports, activities, stationary etc). Given the current situation we are in, the schools might have to adopt a non profit outlook for the next few months. Schools must also be compassionate towards the struggles of their students' families. They should allow fees to be paid on a monthly basis or in installments so less burden is

exerted on the parents. A flexible method of payment might encourage financially struggling families to keep their child's education going, instead of pulling him out of school.

For the past few months, life has been thrown off track completely. What children need most is a sense of continuity and routine to make them feel like life is back on track. Schools are the best way to provide a child with this sense of normalcy, even if the schooling is online. In the best interest of children, we must strike a healthy balance to keep their education intact.

24 To sum it up, the points which the State Government as well the federation of the unaided private schools should bear in mind for the purpose of arriving or bringing around an amicable solution are as under:

*“1 There is a need to balance the interests of all stakeholders, students and / families of the students on one side and the teaching community on the other.*

*2 The adverse impacts of the situation created by the pandemic need to be shouldered by all stakeholders and the community as a whole, needs to be united in its fight. The impugned resolution and the actions of the state have the effect of dividing sections of the society.*

*3 Schools should not charge for any fees apart from tuition fees. No fees for extra-curricular activities should be charged.*

*4 Tuition fees cover salary, establishments and curricular activities, the maintenance expenditure which continues to be incurred by schools, even during the period of lockdown.*

*5 Unaided private schools, receive no funds from the government, are entirely dependent on fees, to defray their daily expenses.*



6 *Expecting smaller institutions to bear their own expenses without receipt of tuition fees will force many institutions to shut down, permanently. If such institutions shut down, the fate of the students studying in such schools will be at stake and the parents of such students will have no option but to enrol them in bigger schools that charge higher amount of fees, when schools are reopened for students.*

7 *If teaching is a noble and charitable cause as stated in the impugned resolution, why does the State not take steps to waive collection of tuition fees of colleges. Why should the waiver not be for all educational institutions, schools and colleges, both. For instance there are many medical colleges being operated by Societies and trusts established by the State. Why should the State not exempt the fees to such medical colleges and other private medical and engineering colleges ?*

8 *Parents need to pay tuition fees to keep institutions running. Arrangements can be worked out for payment of fees in instalments or on monthly basis but complete non-payment of tuition fees will hit the level of education.*

9 *What about families where parents of students, themselves belong to the teaching fraternity. The impugned resolution creates uncertainty for all.*

10 *Presently, the schools have resumed providing of online education but for how long can this be sustained by schools, more particularly the smaller institutions.”*

25 In such circumstances referred to above, we deem fit to quash and set aside Clause 4.1 of the impugned Government Resolution.

26 In the same manner, we also quash and set aside Clauses 4.3 and 4.4 respectively of the Government Resolution dated 16<sup>th</sup> July 2020.

27 We request the State Government to once again convene a meeting with the office bearers of the association of unaided private schools and try to arrive at some understanding which is equitable in nature. In other words, the Government should make all possible endeavour to strike a balance so as to protect the interest of the parents as well as the management of the private unaided schools.

28 It would be too much to say that the private schools shall not demand any fees. At the same time, we expect the federation and the State Government to sit across the table for the purpose of arriving at some understanding with an open mind and open heart. In other words, both, the federation and the State Government should sit and talk with an open mind and open heart. Once all the issues are resolved amicably, the State Government shall issue a fresh Government Resolution in this regard.

29 Before closing this litigation, we would humbly to remind all the parties in this litigation of what we had observed in our order dated 22<sup>nd</sup> May 2020 in the Writ Petition (PIL) No.42 of 2020 as regards the role played by “Carpathia” in the early morning hours of 15<sup>th</sup> April 1912, when the “TITANIC” during its maiden voyage from the Southampton to New York city, sank in the North Atlantic Ocean after striking an iceberg.

30 We hope and trust that the State Government and the association of unaided private schools will be able to reach to an amicable understanding.

31 As regards the other issues, the State Government shall follow the guidelines issued by the Central Government referred to above.

32 With the above, all the four writ petitions filed in public interest and the Special Civil Application are disposed of.

(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

CHANDRESH

