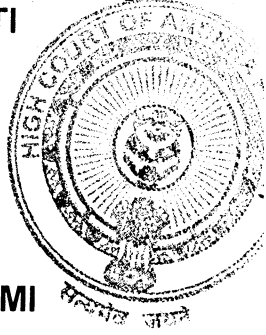


[2693]

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

TUESDAY, THE SIXTEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY ONE



:PRESENT:

THE HONOURABLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

IA No. 1 OF 2021
IN
WP NO: 1737 OF 2021

Between:

Independent Schools Managements Association (ISMA), D.No.35-5-47, Indupalli Jayaraju Street, Giripuram New Colony, Labbipet, Vijayawada - 520010, Krishna District, Andhra Pradesh, rep. by its President.

...Petitioner
(Petitioner in WP 1737 OF 2021
on the file of High Court)

AND

1. The State of Andhra Pradesh, Rep. by the Principal Secretary, School Education (PS) Department, Secretariat Building, Amāravati, Andhra Pradesh.
2. The Director of School Education, 4th floor, B Block, Anjaneya Towers, VTPS Road, Ibrahimpatnam, Vijayawada-521456
3. The Andhra Pradesh School Education Regulatory and Monitoring Commission (APSERM), Ibrahimpatnam, Andhra Pradesh.

...Respondent(s)
(Respondents in-do-)

Counsel for the Petitioner: SRI.B.AUDINARAYANA RAO, LEARNED SENIOR COUNSEL APPEARING FOR SRI SRINIVASA RAO BODDULURI
Counsel for the Respondent Nos.1 & 2: SRI PONNAVOLU SUDHAKAR REDDY, THE ADDL. ADVOCATE GENERAL
Counsel for the Respondent No.3: SRI VIVEK CHANDRASEKHAR, SC

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the operation of the G.O.Ms.No.57, dated 30-10-2020, pending disposal of the Writ Petition No.1737 of 2021, on the file of the High Court.

The court while directing issue of notice to the Respondents herein to show cause as to why this application should not be complied with, made the following order.(The receipt of this order will be deemed to be the receipt of notice in the case). The Court made the following:

ORDER:

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

I.A.No.1 of 2021
in
Writ Petition No.1737 of 2021

Order:

This Writ Petition is filed challenging G.O.Ms.No.57, School Education (PS) Department, dated 30.10.2020, deciding to impose a reduction of 30% of the tuition fees for the academic year 2020-21 which was allowed to be collected by the Managements of the Private Un-aided Educational Institutions and directing them to collect only 70% of the tuition fees from the parents equivalent to which they collected during the last academic year 2019-20, and a consequential direction is sought to direct the respondents not to interfere with the right of fixation of fees of the member schools of the petitioner's association.

The brief facts of the case are that the petitioner is a Society registered under the Andhra Pradesh Societies Registration Act, 2001 and its members are independent schools, which are described as Private Unaided Schools; the member schools of the petitioner though affiliated to national boards like CBSE and ICSE, the schools are offering various international curriculums like International General Certificate of Secondary Education, Cambridge (IGCSE) and International Baccalaureate Programme (IBP), Geneva; the expenditure incurred by these schools will be more than the expenditure incurred by a normal school by imparting globally recognized courses and the fixation of fees in these schools is done only after deliberation with the representatives of the parents; the Parliament enacted Right of Children to Free and Compulsory Education Act, 2009; by referring to the said central enactment, the Government of Andhra Pradesh issued G.O.Ms.No.42

dated 30.07.2010 seeking to impose several measures including fixing the fee structure and constituting District Fee Regulatory Committees, whose approval is made mandatory, if the school decides to collect fees over and above that was fixed by the Government; similar rules were made by the Government vide G.O.Ms.No.91 dated 06.08.2009 and that the fixation of fee under the said GO was struck down by this Court in Nalanda Educational Society, Kondapur, Hyderabad v. Government of Andhra Pradesh (2011 (2) ALD 163 (DB), and the said judgment was confirmed by the Hon'ble Supreme Court; G.O.Ms.No.42 dated 30.07.2010 and other consequential proceedings were also suspended by this Court in WP No.30891 of 2010 and batch and the said Writ Petitions are still pending; despite the same, the Government issued the impugned GO; Private Unaided Educational Institution is guaranteed academic and operational autonomy including in the matter of determining its own fee structure, subject to only a legitimate interventionist role of the State for prohibition of profiteering or the collection of capitation fees; as held in TMA Pai Foundation v. State of Karnataka (2002) SCC 481, Islamic Academy of Education v. State of Karnataka ((2003) 6 SCC 697), Modern School v. Union of India (2004) 5 SCC 583) and PA Inamdar v. State of Maharashtra (2005) 6 SCC 537), the rational process for the State to execute its regulatory powers is to analyze the fee structure of each private school and then determine whether the fee structure proposed by each private management is rationally related to the overall legitimate expenditure including a reasonable revenue surplus allowable for future development; the same has been held in Nalanda Case also; a notification has been issued on 26.05.2020 wherein the managements of private unaided schools were asked to submit relevant data to the

Andhra Pradesh School Education Regulatory and Monitoring Commission and the said notification was stayed in WP No.9563 of 2020; the Commissioner of School Education issued a memo dated 07.05.2020 wherein the private unaided schools were asked not to increase any kind of fee during the academic year 2020-21; the impugned GO did not take into account the opinion of the managements and only the remarks of the Director, School Education were called for before issuing the said GO; the conclusion of the GO that the operational and maintenance costs of the schools have been reduced is based on five reasons which are factually incorrect and based on the said five reasons the Government directed the private unaided schools to collect only 70% of the tuition fees collected during the last academic year 2019-20; the impugned GO came at the fag end of the year by which time the schools have already planned their expenditure based on the previous Government order of not increasing the fee for the academic year 2020-21; though online classes are being run, schools have reopened partially; the fee structure for each institution must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans of the expansion and betterment of the institution etc; even in P.A. Inamdar's case, every institution is free to devise its own fee structure which may however be regulated to prevent profiteering and that no capitation fee may be charged.

Counter affidavit is filed by the first respondent stating, *inter alia*, that the State Government issued the impugned GO in exercise of executive powers under Section 9(ii) of the Act 21 of 2019 and that for the previous year tuition fee is fixed by the institutions themselves and not by the State Government or the Commission; the third respondent

considering the plight of the parents recommended 30% reduction in the tuition fee; the schools were almost closed for a period of eight (8) months due to COVID-19 pandemic; the GO has been issued after going through the judgments of the Hon'ble High Courts of Rajasthan, Gujarat, Calcutta, Madras and Uttarakhand; the interim order passed by the Hon'ble Supreme Court in Special Leave to Appeal (C) Nos.27907-27916 of 2019 is not applicable to the facts of the present case and that it is the bounden duty of the State to ensure that the private schools in the State do not indulge in profiteering in the name of imparting education.

Counter affidavit is filed by the third respondent stating, *inter alia*, that the main function of the Commission is to regulate the fees and that a recommendation is made in exercise of the regulatory powers and based on the same the State Government has issued the impugned GO in exercise of their executive powers and the recommendation was made considering the plight of the parents who were incapacitated to pay the fees of the students.

Heard Sri B. Audinarayana Rao, learned Senior Counsel, appearing on behalf of Sri Srinivas Rao Bodduluri, learned counsel for the petitioner, Sri Ponnayolu Sudhakar Reddy, learned Additional Advocate-General appearing for respondents 1 and 2 and Sri Vivek Chandrasekhar, learned counsel appearing for respondent No.3.

The Andhra Pradesh School Education Regulatory and Monitoring Commission Act, 2019 (for short 'the Act') provides for establishment of Andhra Pradesh School Education Regulatory and Monitoring Commission to maintain standards of education, regulation of fee etc. Section 9 of the said Act deals with powers and functions of the commission. According to Section 9 (ii) the commission shall have the power to

Accordingly, IA No.1 of 2021 is ordered.

List the main Writ Petition for final hearing after physical hearing
is resumed.

Sd/-M.Suryanadha Reddy
ASSISTANT REGISTRAR

SECTION OFFICER

//TRUE COPY//

For

To,

1. The Principal Secretary, School Education (PS) Department, State of Andhra Pradesh, Secretariat Building, Amaravati, Andhra Pradesh.
2. The Director of School Education, 4th floor, B Block, Anjaneya Towers, VTPS Road, Ibrahimpatnam, Vijayawada-521456
3. The Andhra Pradesh School Education Regulatory and Monitoring Commission (APSERMC), Ibrahimpatnam, Andhra Pradesh.(1 TO 3 By RPAD)
4. One CC to Sri.Srinivasa Rao Bodduluri Advocate [OPUC]
5. One CC to Sri.Vivek Chandrasekhar, Standing Counsel [OPUC]
6. Two CCs to The Additional Advocate General, High Court of A.P. [OPUC]
7. One spare copy

SRL

HIGH COURT

KVLJ

DATED:16/03/2021

ORDER

I.A.NO.1 OF 2021

IN

WP.No.1737 of 2021

DIRECTION

