

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
WA No. 1778 of 2024

(*ST. ALOYSIUS SENIOR SECONDARY SCHOOL POLIPATHAR JABLAPUR AND ANOTHER Vs THE STATE OF
MADHYA PRADESH AND OTHERS*)

WA/1780/2024, WA/1781/2024, WA/1782/2024

WITH

WA No. 1764 of 2024

(*STEMFIELD INTERNATIONAL SCHOOL Vs THE STATE OF MADHYA PRADESH AND OTHERS*)

&

WA No. 1763 of 2024

Dated : 13-08-2024

*Shri Anshuman Singh - Advocate for appellants in WA Nos.1778, 1780,
1781 & 1782 of 2024.*

*Shri Sankalp Kochar - Advocate for appellants in WA Nos.1764 & 1763 of
2024.*

*Shri Ritwik Parashar - Government Advocate for respondents-State, on
advance copy.*

Appellants impugn a common order dated 30.07.2024 passed by the learned Single Judge whereby the writ petitions filed by the petitioners-schools have been dismissed relegating them to availing of an alternative remedy of filing an appeal under Section 11 of the Madhya Pradesh Niji Vidyalaya (*Fees Tatha Sambandhit Vishayon Ka Viniyaman*) Adhiniyam, 2017 (hereinafter referred to as "the Act") and the Rules called the Madhya Pradesh Niji Vidyalaya (*Fees Tatha Sambandhit Vishayon Ka Viniyaman*) Rules, 2020 (hereinafter referred to as "the Rules").

2. Learned counsel for the petitioners submits that the remedy of an appeal would place an onerous burden on the appellants for the reason that there is no power of granting interim protection under Section 11 of the Act. He submits that contrary to the very scheme of the Act, an order has been passed directing refund

of the fee collected by the petitioners from the year 2017-18 onwards.

3. Learned counsel for the petitioners submits that in terms of Section 5 of the Act, any increase in the fee is to be regulated. It is contended that the management of the private schools is permitted to increase fee up to 10% of the fee fixed for the preceding year and any increase more than 10% is to be regulated by the District Committee. However, in case the fee increase is in excess of 15%, the District Committee has to refer the issue to the State Committee and the State Committee is empowered to permit increase of the fee beyond 15%. He submits that for increase of fee up to 10% from the preceding year, no permission or sanction is required.

4. Learned counsel submits that the increase of fee in each of the cases is 10% or less than 10%. However, in case of one or two classes, the increase of fee is negligibly more than 10% i.e. 10.03% or 10.04%. It is submitted that enquiry report dated 24.04.2024 also holds in favour of the appellants and returns a finding that the increase is not more than 10% from the preceding year. He submits that the enquiry report categorically holds that no substance was found in any of the complaints.

5. Learned counsel submits that on account of an error in appreciation of the factual matrix, by orders dated 05.07.2024 and 09.07.2024 in respective cases, it has been held that the fee increase in some instances has been 30% to 40% and a direction has been issued to refund the entire fee from the year 2017-18 onwards. It is contended that an error has been committed by the concerned officer by not taking into account the fact that during the pandemic period i.e. for the academic years 2020-21 and 2021-22, the schools were permitted to only charge tuition fee and other fees was not permitted to be charged. It is submitted that the comparison for the fee of the year 2022-23 has been done with the tuition fee charged for the

academic years 2020-21 and 2021-22. Learned counsel submits that if comparison was done with the fee structure for the year 2019-20 with 2022-23, the fee increase is 10% or less than 10%.

6. Further, it is contended that the direction to refund the fee has been issued in purported exercise of power under Section 10 of the Act. He submits that Section 10 of the Act permits the Authority to direct refund of the fee in case the fee has been collected in excess of the permitted fee under Section 5 of the Act. Learned counsel submits that the fee collected by the schools was not in contravention of Section 5 of the Act and it has been so observed in the enquiry report itself.

7. Learned counsel further submits that the Authorities have misinterpreted the provisions of Rule 3 of the Rules, which provides for submission of general information and accounts. He submits that the Authorities have held that since the appellants had not uploaded the fee structure 180 days or 90 days, as the case may be, before the commencement of the upcoming academic session, the entire fee collected, was liable to be refunded. He submits that Rule 3(4) of the Rules provides for imposition of penalty, as may be determined by the department. He submits that the said rule does not permit refund of the entire fee but only permits imposition of penalty. He submits that imposition of penalty also has to be commensurate to the error committed and cannot vitiate the entire fee that is collected. Further, it is submitted that for contravention of Rule 3 of the Rules of not uploading the relevant information, a penalty of Rs.25,000/- has already been imposed and the said rule does not permit the imposition of a second penalty of refund of the entire amount.

8. Issue notice.

9. Notice is accepted by learned Government Advocate appearing for respondents-State. He submits that since the writ petitions were disposed of

without giving an opportunity of filing reply, an opportunity of filing reply may be permitted.

10. In view of the above, let reply be filed within four weeks. Rejoinder within two weeks thereafter.

11. List after six weeks.

12. In the meantime, the operation of orders dated 05.07.2024 and 09.07.2024 (annexed to the writ petitions), as the case may be, shall remain stayed. However, in cases, where the petitioners have collected the fee in excess of 10%, the fee be refunded/adjusted, as the case may be, in terms of respective orders dated 05.07.2024 and 09.07.2024 and refund cheques be issued within a period of four weeks.

(SANJEEV SACHDEVA)
ACTING CHIEF JUSTICE

(VINAY SARAF)
JUDGE

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