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1-WP-ST-95629-2020 & Connected matters

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION STAMP NO. 95629 OF

2020 Association of Indian Schools and

Anr. ... **Petitioners**

Versus

The State of Maharashtra ... **Respondent**

WITH

INTERIM APPLICATION STAMP NO. 97186 OF 2020

IN

WRIT PETITION STAMP NO. 95629 OF 2020

State of Maharashtra ... **Applicant**

In the matter between

Association of Indian Schools and

Anr. ... **Petitioners**

Versus

The State of Maharashtra & Ors. ... **Respondents**

WITH

INTERIM APPLICATION STAMP NO. 97188 OF 2020

IN

WRIT PETITION STAMP NO. 95629 OF 2020

Arvind Rangnath Tiwari ... **Applicant**

In the matter between

Association of Indian School & Anr. ... **Petitioners**

Versus

The State of Maharashtra & Ors. ... **Respondents**

WITH

INTERIM APPLICATION STAMP NO. 97190 OF 2020

IN

WRIT PETITION STAMP NO. 95629 OF 2020

Association of Indian Schools ... **Applicant**

In the matter between

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1-WP-ST-95629-2020 & Connected matters

Association of Indian School & Anr. ... **Petitioners**
Versus
The State of Maharashtra & Ors. ... **Respondents**

WITH
INTERIM APPLICATION STAMP NO. 97013 OF 2020
IN
WRIT PETITION STAMP NO. 95629 OF 2020

Forum For Fairness in Education,
an NGO, through its authorised
representative – Jayant Babulal Jain ... **Applicant**

In the matter between

Association of Indian School & Anr. ... **Petitioners**
Versus
The State of Maharashtra & Ors. ... **Respondents**

WITH
WRIT PETITION STAMP NO. 95630 OF 2020

Global Education Foundation ... **Petitioner**
Versus
The State of Maharashtra & Ors. ... **Respondents**

WITH
INTERIM APPLICATION STAMP NO. 97184 OF 2020
IN
WRIT PETITION STAMP NO. 95630 OF 2020

The State of Maharashtra ... **Applicant**

In the matter between

Global Education Foundation ... **Petitioner**
Versus
The State of Maharashtra & Ors. ... **Respondents**

WITH
INTERIM APPLICATION STAMP NO. 97172 OF 2020
IN
WRIT PETITION STAMP NO. 95642 OF 2020

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1-WP-ST-95629-2020 & Connected matters

The State of Maharashtra ... **Applicant**
In the matter between
Kasegaon Education Society ... **Petitioner**
Versus
The State of Maharashtra & Ors. ... **Respondents**

WITH
WRIT PETITION STAMP NO. 95647 OF 2020

Sant Dnyaneshwar Mauli Sanstha ... **Petitioner**
Versus
The State of Maharashtra & Ors. ... **Respondents**

WITH
INTERIM APPLICATION STAMP NO. 99225 OF 2020
IN
WRIT PETITION STAMP NO. 95647 OF 2020

The State of Maharashtra ... **Applicant**
In the matter between
Sant Dnyaneshwar Mauli Sanstha ... **Petitioner**
Versus
The State of Maharashtra & Ors. ... **Respondents**

WITH
INTERIM APPLICATION STAMP NO. 97180 OF 2020
IN
WRIT PETITION STAMP NO. 95647 OF 2020

The State of Maharashtra ... **Applicant**
In the matter between
Sant Dnyaneshwar Mauli Sanstha ... **Petitioner**
Versus
The State of Maharashtra & Ors. ... **Respondents**

WITH
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) No.4070 OF 2020

Unaided School Forum & Ors. ... **Petitioners**
Versus
The State of Maharashtra & Anr. ... **Respondents**

**WITH
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION (L) No.5138 OF
2020**

Human Social Care Foundation & Ors. ... **Petitioners**
Versus
The State of Maharashtra & Anr. ... **Respondents**

**WITH
ORDINARY ORIGINAL CIVIL JURISDICTION
WRITPETITION (L) NO. 6670 OF 2020**

Maharashtra Samaj Ghatkoper ... **Petitioner**
Versus
State of Maharashtra & Ors. ... **Respondents**

**WITH
ORDINARY ORIGINAL CIVIL JURISDICTION INTERIM
APPLICATION NO.138 OF 2021 IN
WRIT PETITION (L) No.6670 OF 2020**

Aggrieved Parents Group
Of M.S.G.S. Universal School,
Ghatkopar. ... **Applicant**

IN THE MATTER BETWEEN :

Maharashtra Samaj Ghatkoper ... **Petitioner**
Versus
State of Maharashtra & Ors. ... **Respondents**

Mr.Pravin Samdani, Senior Advocate a/w. Mr.Pratik Seksaria a/w. Mr. Nivit Srivastava and Ms.Sneha Patil, Mr.Nishant Chothani, Ms.Radhika Kulkarni, Ms.Yamini Maheshwari i/b. Maniar Srivastava Associates, Advocate for the petitioner in WPST/95629/2020.

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1-WP-ST-95629-2020 & Connected matters

Mr.Pratik Seksaria a/w. Mr. Nivit Srivastava and Ms.Sneha Patil, Mr.Nishant Chothani, Ms.Radhika Kulkarni a/w. Ms.Yamini Maheshwari i/b. Maniar Srivastava Associates, Advocate for the petitioner in WPST/95630/2020.

Mr.Devendra Shah for applicant in IAST/97188/2020 in WPST/95629/2020.

Mr.Vinay Kanodia i/b. Law Chamber of Siddartha Murarka, Advocate for the applicant in I.A.St.No. 97013 of 2020 in WPST/95629/2020.

Mr.A.V. Anturkar, Special Counsel with Mr. Prathamesh Bhargune and Mr. Yatin Malvankar a/w P.P. Kakade, G.P. and Mr.B.V. Samant, AGP for State in WPST/95629/2020, IAST/97186/2020, IAST/97188/2020, IAST/97190/2020, IAST/97013/2020, IAST/97184/2020, IAST/97172/2020, WPST/95647/2020 and IAST/97180/2020.

Mr.Anil Anturkar, Sr. Adv. a/w P.P. Kakade, G.P. and Mr.M.M. Pabale, Addl. G. P. for State in WPST/95630/2020.

Mr.Soham P Salvi on behalf of Sandeep V. Marne, Advocate for the Respondent No.3 in WPST/95647/2020.

Mr.Piyush Raheja a/w Vishesh Malviya and Ms.Tresa Ajay i/b M/s.Rashmikant & Partners for Petitioners in OSWP(L) No.4070/2020.

Mr.P.K. Dhakephalkar, Senior Advocate a/w Mr.Saket Mone, Mr. Abhishek Salian, Mr.Vishesh Karla, Mr. Subit Chakraborti i/b.Vidhi Partners for petitioner in WPL/6670/2020.

Mr.Rui Rodrigues a/w Mr.D.P. Singh for respondent No.5-UOI in PIL(L)/5138/2020.

Mr.Atal Bihari Dubey, Advocate for the Applicant in IA/1343/2021 in WPL/6670/2020.

Mr.Anil Anturkar, Senior Advocate a/w. Ms.Geeta Shastri, Addl. G.P. for the Respondent/State in WPL/6670/2020, WPL/4070/2020 and PILL/5138/2020.

**CORAM : DIPANKAR DATTA CJ &
G. S. KULKARNI, J.**

DATED : MARCH 01, 2021.

P.C. :

1. These are batch of petitions which primarily assail Government Resolution dated 8th May 2020 directing the schools in Maharashtra, *inter alia*, not to increase the fees for the academic year 2020-2021, in view of the pandemic. The petitions also assail the notices issued by the Education Officers to the educational institutions consequent to the impugned Government Resolution. The issue raised in the petitions revolves around the applicability of the provisions of the Maharashtra Educational Institutions (Regulations of Fee) Act, 2011 (for short '**the 2011 Act**') and the amended provisions thereof, namely Sections 6(1A), 6(1B) and 6(1C) as brought about by the Maharashtra Educational Institutions (Regulation of Fee)(Amendment) Act, 2018 (for short '**the Amendment Act, 2018**') with effect from 26th August 2019.

2. We had taken up these petitions for final hearing. In the midst of the hearing, on 14th October 2020, we passed an order having noticed that certain basic facts are lacking, which were required for just and proper decision, on the issues raised in these writ petitions. We accordingly suggested to the petitioners to provide information to be placed on record in the following format:

(1) Name of the School Date of starting classes after recognition	(2) Increase proposed for academic year 2020-21 Yes/No	(3) Whether Section 6(1A) or 6(1B) was invoked	(4) If Section 6(1A), whether in one part or two parts	(5) Date of commencement of process under Section 6(1A) or (1B)	(6) Date of last increase	(7) Date of declaration

Such information was accordingly placed on record on behalf of the petitioners.

3. On 26th February 2021, when we commenced hearing of these petitions, Mr. Anturkar, learned Senior Counsel for the State made two fold submissions:- **firstly**, he reiterated the stand taken by the State Government that the Government

Resolution dated 8th May 2020 prohibiting increase of fees for the Academic Year 2020-2021, by the educational institutions in Maharashtra, would be applicable prospectively; **secondly**, he drew our attention to the provisions of Section 10 of the Amendment Act, 2018. Mr. Anturkar submitted that the amendments brought about by the Amendment Act, 2018 by, *inter alia*, incorporating Sections 6(1A), 6(1B) 6(1C) are applicable only in the

manner as provided in Section 10 of the Amendment Act, 2018, and for the academic year as specifically provided in Section 10.

4. Hearing such submissions, it was urged on behalf of the petitioners that if the Government Resolution dated 8th May 2020 has no retrospective application, that would take care of one part of their grievances qua such resolution. It was also urged that all the educational institutions have determined their fee structure for the Academic Year 2020-2021 in accordance with the amended provisions of the 2011 Act, and such fee structure has also been accepted and implemented before

the Government Resolution dated 8th May 2020 saw the light of the day.

5. We have heard the parties further, today. It has been disputed on behalf of the State that all the educational institutions have determined their fee structure in accordance with the provisions of the 2011 Act, as amended.

6. On a perusal of Section 10 of the Amendment Act, 2018, it is likely that the increase of fees undertaken by certain institutions may fall within the ambit of the nature of the saving as provided by Section 10 of the Amendment Act, 2018 or it can be a situation even otherwise.

7. Considering the above conspectus and more particularly the information placed on record by the institutions in pursuance of our order dated 14th October 2020, we are of the opinion that interest of justice would be sufficiently served if the State considers the issues in regard to each of such educational institutions, on case to case basis, in the event any application/complaint is received by the State, against any institution of violation by such institution of any of the provisions of the 2011 Act read with the provisions of the Amendment Act,

2018 or the Government Resolution dated 8th May 2020, or even suo motu upon receipt of any information in that behalf.

8. Having given our due consideration to the complexion of the issues arising in these proceedings, we are of the opinion that it may not be necessary for us to adjudicate these petitions on the prayers as made by the petitioners; suffice it to observe that these petitions can be disposed of leaving it open to the education authorities to decide any issue qua any of the institutions as may arise under the 2011 Act read with the Amendment Act, 2018 and the impugned Government

Resolution dated 8th May 2020 in regard to the fees determined by any of such institutions, in the manner we propose to direct. We accordingly, dispose of these petitions by the following order:-

ORDER

- (i) The Government Resolution dated 8th May 2020 is only prospective in nature and cannot apply to schools which have already fixed/declared their fee for the Academic Year 2020-2021 and/or where such fees are duly accepted in terms of the 2011 Act as amended and/or has been acted upon before the Resolution dated 8th May 2020.
- (ii) The question of validity of the Government Resolution dated 8th May 2020 as raised in these petitions is not decided and is expressly kept open. All the rights and contentions of the parties are expressly kept open and are not adjudicated upon by this order.
- (iii) The Government Resolution dated 8th May 2020 does not and cannot be construed as a direction for refund of any fees collected for 2020-2021, subject to the following clause.
- (iv) The State Government may, if so permissible under the 2011 Act, on a complaint made to it or suo motu upon the receipt of information that a particular



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school has violated the provision of the 2011 Act and the fees for the Academic Year 2020-2021 are not determined by the school in accordance with the provision of the 2011 Act, as amended by the 2018 Act, take such recourse in accordance with law. It is expressly clarified that all rights and contentions in this regard especially whether the State has the power to conduct such inquiry is kept open.

- (v) In the event of a complaint as aforesaid being received by the State or suo motu on receipt of information in relation to a particular educational institution, then in such an event such institution or the Management shall not debar any student from attending either online classes or



physical classes or attending the examinations on account of non-payment of only the increased component of fees in respect of the Academic Year 2020-2021 and the result shall not be withheld for non payment of the increased component. This protection shall continue should an adverse order be passed against any educational institution and till such time such adverse order is set aside. It is expressly clarified

that what has been stated above does not entitle any parent to claim that the fees are not payable. It is further clarified that the above protection is only granted in the peculiar circumstances existing on account of the pandemic and therefore only for the Academic Year 2020-2021 and does not prevent the educational institutions from taking such actions as may be permissible in law against the students who are in arrears or have defaulted in payment of fees for the earlier academic years or subsequent academic years.



- (vi) Any such complaint or suo motu inquiry if any commenced shall be decided as early as possible and after giving the concerned educational institution an opportunity of being heard. Pending conclusion of such inquiry, if any, no action shall be taken against such institution and in the event of any adverse order being passed, the same shall not be implemented for a period of 4 (four) weeks thereafter.
- (vii) It is also clarified that the protection to parents in respect of the Academic Year 2020-2021 shall apply only in the event there is an increase in fees fixed in the

Academic Year 2020-2021 from the fees fixed in the Academic Year 2019-2020 and even in such a case only in respect of the increased component of fees and not the entire fees.

(viii) Any actions initiated or communications issued against any of the petitioner schools and/or their members on the basis of the Government Resolution dated 8th May 2020 shall stand withdrawn. But this shall not debar the State to proceed in terms of clause (iv) of para 8 supra.

(ix) This order is without prejudice to the rights and contentions of the petitioners in pending Writ Petitions with regard to the constitutionality of provisions of the 2011 Act and the Rules framed thereunder.



9. The Writ Petitions and the Interim Applications are accordingly disposed of with no order as to costs.

10. In view of the above order of disposal, interim stay does not survive and stands vacated.

G. S. KULKARNI, J.

CHIEF JUSTICE