

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC. CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2020
In R/SPECIAL CIVIL APPLICATION NO. 8819 of 2020
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 2 of 2020
In R/SPECIAL CIVIL APPLICATION NO. 8819 of 2020

=====

STATE OF GUJARAT
Versus
FEDERATION OF SELF FINANCED SCHOOLS

=====

Appearance:

MR KAMAL TRIVEDI, ADVOCATE GENERAL WITH MS MANISHA LAKUMAR SHAH GOVERNMENT PLEADER WITH MR DHARMESH DEVNANI, AGP WITH MR CHINTAN DAVE, AGP for the PETITIONER(s) No.1

MR MIHIR JOSHI SENIOR ADVOCATE ASSISTED BY MR MITUL SHELAT, ADVOCATE WITH MS DISHA N NANAVATY for the RESPONDENT(s) No. 1
MR VISHAL DAVE, ADVOCATE for the ALL GUJARAT PARENTS ASSOCIATION

=====

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

Date : 18/09/2020

IA ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH)

1 We have heard Shri Kamal Trivedi, learned Advocate General along with Ms. Manisha Lavkumar, learned Government Pleader, Shri Dharmesh Devnani, learned A.G.P., Shri Chintan Dave, learned A.G.P. for the State, Shri Mihir Joshi, learned Senior Counsel assisted by Shri Mitul Shelat, learned counsel for the Federation of Self-Financed Schools and Shri Vishal Dave, learned counsel appearing for the All Gujarat Parents Association seeking intervention in this matter.

2 By our order dated 31st July 2020 passed in batch of four Writ Petitions

(PIL) along with the Special Civil Application No.8819 of 2020, we had issued certain directions as contained from para 28 onwards being the operative portion of the order. For ready reference, paras 28 to 32 are reproduced below:

“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 22nd May 2020 in the Writ Petition (PIL) No.42 of 2020 as regards the role played by “Carpathia” in the early morning hours of 15th 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.”

3 By means of the present application filed by the State of Gujarat, through the Secretary of the Education Department, it has been prayed as follows:

“(A) This Hon’ble Court may be pleased to allow the captioned application;

(B) This Hon’ble Court may be pleased to take on record the documents produced along with the present application and to consider the developments indicated in the present application;

(C) This Hon’ble Court may be pleased to pass further directions with respect to charging of tuition fees and other fees by the self-financed schools during the period of physical closure of schools amid the Covid-19 pandemic, in the interest of justice;

(D) This Hon’ble Court may be pleased to grant any such relief/s as may deem

just and proper in the facts and circumstances of the case.”

4 In substance, the relief claimed in this application is to take on record the documents of the exercise undertaken and also the developments indicated therein and to pass further appropriate orders for charging of tuition fees and other fees of the self-financed schools during the period of physical closure of the schools amid the COVID-19 pandemic. Shri Trivedi, referring to the materials on record, submitted that the writ petitioner - the Federation of Self-Financed Schools (respondent No.1 herein), after due deliberations with the State, declined to accept the suggestions of the State for flat deduction of 25% of tuition fees and as such, the negotiations failed and that is why the State is before us for passing appropriate orders, as prayed for.

5 Shri Mihir Joshi, the learned senior counsel appearing for the writ petitioner (respondent No.1 to this application) submitted that the present application would not be maintainable. Mr. Joshi also submitted that the Federation of Self-Financed Schools i.e. the writ petitioner had made a counter proposal before the State as contained in the letter dated 17th August 2020 (page 89 of the writ application) addressed to the Chief Minister and the Education Minister, which was however not accepted.

6 Shri Vishal Dave, the learned counsel for the All Gujarat Parents Association in his submissions supports the submissions of Mr. Joshi that the Civil Application would not be maintainable. He however submits that the State ought to have taken an independent decision after the negotiations had failed.

7 We are in agreement with the submissions made by Shri Joshi and Shri Dave and accordingly, we are not inclined to entertain the present application leaving it open for the State to take an appropriate decision as it may deem fit. Such decision may be a balanced one keeping in mind the interest of all the

stake holders. This application is, accordingly, disposed of.

8 Shri Dave states that he has filed Civil Application No.2 of 2020 for impleadment of party.

9 In view of the above, the connected Civil Application No.2 of 2020 also stands disposed of.

NAIR SMITA V. / CHANDRESH

(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

