IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **Date of Decision:June 30, 2020**
CWP-7409-2020 (O&M)

Independent Schools' Association Chandigarh (Regd.)& others

.....Petitioners

vs

State of Punjab and others

.....Respondents

2. **CWP-7466-2020 (O&M)**

Public Schools Welfare Association and others

.....Petitioners

vs

State of Punjab and others

.....Respondents

3. **CWP-7592-2020 (O&M)**

The Recognised and Affiliated School Association (RASA), Punjab

.....Petitioner

vs

State of Punjab and others

.....Respondents

4 **CWP-7956-2020 (O&M)**

Amandeep Singh and others

.....Petitioners

vs

State of Punjab and others

.....Respondents

5. **CWP-7959-2020 (O&M)**

Jaswinder Ram and others

.....Petitioners

vs

State of Punjab and others

.....Respondents

6. **CWP-8040-2020 (O&M)**

Dikshant Foundation and another

.....Petitioners

vs

State of Punjab and others

.....Respondents

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CORAM: HON'BLE MS.JUSTICE NIRMALJIT KAUR

Present: Mr. Aashish Chopra, Advocate with
Ms. Rupa Pathania, Advocate for the petitioners
in CWP-7409-2020.

Mr. Puneet Bali, Sr. Advocate with
Mr. Vibhav Jain, Advocate and
Mr. Paramdeep Saini, Advocate
for the petitioners in CWP-7466-2020.

Mr. Charan Pal Singh Bagri, Advocate and
Ms. Gurjit Kaur Bagri, Advocate,
for the petitioners in CWP-7956-2020
and for the respondents in CWP-7409-2020 and
CWP-7466-2020.

Mr. Sameer Sachdeva, Advocate,
for the petitioners in CWP-7959-2020.

Mr. Dilpreet Singh Gandhi, Advocate and
Ms.Arveen Sekhon, Advocate
for the petitioners in CWP-7592-2020.

Mr.Kanwaljit Singh, Sr.Advocate with
Mr.Ajaivir Singh, Advocate
for the petitioners in CWP-8040-2020

Ms. Harmanjeet Kaur, Advocate,
for the respondent(s) in CWP-7409-2020.

Mr. R.S. Bains, Advocate, for
the intervenor in CWP-7409-2020

Mr.Vivek Salathia, Advocate
for the intervener in CWP-7956-2020.

Mr. Veneet Sharma, Advocate,
for the respondent(s) in CWP-7409-2020.

Mr. Amandeep Singh, Advocate,
for the respondent(s) in CWP-7409-2020.

Mr. Pardeep Kumar Rapria, Advocate and
Mr. H.P.S. Ishar, Advocate,
for the intervenor in CWP-7409-2020.

Mr. Ferry Sofat, Advocate,
for the respondent(s) in CWP-7409-2020.

Ms. Sunaina, Advocate,
for the respondent(s) in CWP-7409-2020.

Mr. Atul Nanda, Advocate General, Punjab with
Ms. Rameeza Hakeem, Addl. Advocate General, Punjab.

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Nirmaljit Kaur, J.

This order shall dispose of all the above mentioned writ petitions as the impugned orders are common. However, for the sake of convenience, the facts are being extracted from CWP-7409-2020.

Petitioner No.1 in CWP No.7409 of 2020 is an Association of 78 unaided privately managed schools, which are affiliated either with Central Board of Secondary Education ('CBSE') or with Council for the Indian School Certificate Examinations (CISCE), whereas petitioner Nos.2 to 9 are the Societies running their respective Schools, which are private unaided Educational Institutions and are presently members of petitioner No.1-Association.

Due to the spread of the Covid-19 pandemic, the world is witnessing unprecedented times. India has not been able to remain unscathed from the spread of the contagion. To deal with the emergent situation, the Government of India as also the State of Punjab, have taken certain stringent measures. The country has been under nationwide lockdown since 24.03.2020. The Governor of Punjab, in exercise of powers purportedly conferred under Sections 2, 3 and 4 of the Epidemic Disease Act, 1897 (for brevity,' the 1897 Act') framed regulations 'the Punjab Epidemic Disease, Covid-19 Regulations, 2020' (for brevity, 'the Regulations 2020') which were duly notified on March 05, 2020, by the Government of Punjab through its Department of Health and Family Welfare.

Thereafter, the Director, School Education (for brevity,'the DSE') issued directions vide Memo dated 23.03.2020, whereby the non-Government Educational Institutions have been ordered to reschedule the

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last date of deposit of 'admission fee' to one month after the condition improves and that no extra fine should be imposed on the parents of the students studying in the Private unaided schools, on account of late fee.

Subsequently, the DSE vide memo dated 08.04.2020, while giving reference to memos dated 13.03.2020 and 23.03.2020, reiterated the earlier directions regarding rescheduling of the last date for depositing of the admission fee and drew the attention of the private unaided schools to the DO issued by Union Ministry of Labour and Employment dated 20.03.2020, whereby private establishments have been advised not to terminate their employees, or reduce their wages. If any worker takes leave, he should be deemed to be on duty without any consequential deduction in wages for this period after making reference of aforementioned letter of the Ministry of Labour and Employment, the order of the DSE goes on to note that the private schools are ordered to follow the above instructions, and if any schools are violating the instructions, the No objection Certificate/Recognition granted to them will be cancelled and further, it will also be written to their respective Boards to cancel their affiliation.

It may be pertinent to mention that on 10.04.2020, the DSE notified that summer vacations in all the Government, Aided and private schools would be from 11.04.2020 to 10.05.2020, being a duration of 30 days. The CBSE as well as CISCE had also been issuing circulars/instructions from time to time to the schools which have been affiliated to the respective Boards, in order to make the quarantine productive. Through their circulars, which apparently had been issued in wake of Covid-19 Pandemic and the directions, including that of the Department of School Education and Literacy, Ministry of Human Resource

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Development, Government of India, to work from home and to ensure that the educationists work responsibly and constructively and utilize the period for undertaking different activities by use of technology. The respective Boards too had been outlining the activities which the educationists could undertake with the students through online technology. One such circular issued by respective Boards, i.e. the CBSE and CISCE dated 25.03.2020, and 31.03.2020, respectively.

It is further stated in the petition that in order to ensure that the students do not suffer in their curricular activities during the 2020-21 academic session, the schools have been making painstaking efforts in providing education and holding classes through online platforms and that the effort in physically teaching students, in a regular classroom, cannot even remotely be compared with the effort that the teacher has to expand, in providing online education. Several schools have made investments in technology platforms and devices in the interest of students. Thus, most of the Members Schools of Petitioner No.1, including the petitioner-Schools, are for all intents and purposes functional and the teaching-learning process has continued with minimal interruption. The petitioner Schools have prepared timetables for the online classes being conducted by them.

Learned counsels for the petitioners, therefore, argued that in spite of the above, the Director School Education issued the Memo dated 14.05.2020 issuing certain directions which are not only *ex facie,* illegal, without jurisdiction and violation of the provisions of Punjab Regulation of Fee of Unaided Educational Institutions Act, 2016 (for brevity, the 2016 Act) and that there was no reason/occasion for the issuance of the said memo which requires to be set aside and liable to be withdrawn. The petitioners

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are, therefore, aggrieved with the following directions of the said memo:-

> "(i). The schools shall not charge any fee for the period of lockdown/curfew, excluding the period of summer break. However, those schools who have provided or are providing online education during the period of lockdown, may charge 'tuition fee' only, i.e. fee other than building charges, transportation charges, charges for meals, etc.;
>
> (ii) Given the exceptional circumstances occasioned by the lockdown, private schools are advised not the impose any increase in school fees in 2020-21 over those charged in 2019-20.; and
>
> (v) School management should not resort to removal of any teacher or reduction in the monthly salary or total emoluments of teaching/non-teaching staff."

Learned counsel for the petitioners while praying for setting aside the same firstly submitted that Memo dated 14.05.2020 was without any jurisdiction, illegal and arbitrary and was sans the authority of law. It is inherent and inescapable right of the private unaided schools to be able to generate funds to function and discharge their financial obligations.

Secondly, the first part of direction No.3.0(i) is not even rational and defies logic inasmuch as it states that schools shall not charge any fee for the period of the lockdown excluding the period of summer break. If schools could charge fee for the period other than the summer break then there is no reason as to why the schools cannot charge fee for the period other than the summer break. It shows total non-application of mind.

Third, the direction No.3.0(i) would further show that the respondent No.4 has sought to make a class within a class by allowing only those private unaided schools who have provided or are providing online

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education during the period of lockdown, to charge 'Tuition Fee'.

Fourth, the directions not to charge fee during the period of lockdown for schools or to only charge tuition fee, would also run contrary to the direction contained in Clause 3.0(v) of the aforesaid Memo, whereby the School Managements are required not to remove any teacher, or reduce the monthly salary or total emoluments of teaching/non-teaching staff.

Fifth, without prejudice to the above, the direction that those schools who have provided or are providing online education, during the lockdown period, could charge 'Tuition Fee', is vague and without any basis. Section 2(g) of the 2016 Act defines 'Fee' to mean any amount by whatever name it may be called, which may be charged directly or indirectly by an unaided Educational Institution for admission of a student for education to any standard of course of study. The 2016 Act nowhere provides or defines the term 'Tuition Fee'. It appears that apparently respondent No.4 has sought to give a self-serving definition/interpretation of term 'Tuition Fee' that too based on a purely exclusionary criterion. Even this exclusionary criterion in itself is vague and indefinite. The use of the word 'etc.' in determining what will be excluded from the ambit of 'Tuition Fee' also adds to the ambiguity and arbitrariness of the directive.

Sixth, the 'Transport Charges' have been disallowed seemingly under the misconception that the Transport Charges are only for the fuel expenses incurred in ferrying children to and from school premises. However, while fuel charges form a small part of the said transport charges, almost 80% of the transport charges are expanded towards payment of salaries of the drivers and attendants, repayment of loans, upkeep and maintenance of the fleet of buses, and other such fixed expenses. These

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directions, which not only predjucially affect the rights of the private unaided schools, but may even operate to force some of them to the verge of closure, have been issued without granting any opportunity of hearing to the schools which is in violation of the fundamental principle of natural justice of *audi altram partem.*

On the other hand, while defending its directions dated 14.05.2020, Mr.Atul Nanda, learned Advocate General, Punjab, at the first instance vehemently opposed the argument of learned counsels for the petitioners that the State had no jurisdiction to pass such executive orders in case of private unaided institutions and referred to Article 162 of the Constitution of India granting executive power to the State to issue the impugned directions which is exclusively in respect to the matters enumerated in List II of State List of the Seventh Schedule, by stating that such competence also extends to List III-Concurrent List except as provided in the Constitution itself or in any law passed by Parliament. Education being covered under Entry 25 of the Concurrent List would lend validity to the executive action taken by the respondent-State in terms of Article 162. Reliance was placed on the various judgments rendered by the Apex Court in the case of **Union of India vs Moolchand Khairati Ram Trust** (2018) 8 SCC 321, **Ram Jawaya Kapur vs State of Punjab** (1955) 2 SCR 225 and **Secretary A.P.D. Jain Pathshala vs Shivaji Bhagwat More** (2011) 13 SCC 99 to contend that it was open to the State to pass executive orders even in the absence of legislation in the concerned field. In the present case, the Governor of Punjab had invoked the powers under the Epidemic Disease Act, 1897 to issue the Punjab Epidemic Diseases, COVID 19 Regulations 2020. As per Regulations 12 (III) of the State Regulations, the District

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Administration was at liberty to close schools, offices and ban public gatherings etc. to stop the spread of the disease and the said Regulations were not limited and the District Administration was competent to pass the impugned order by invoking the Disaster Management Act, 2005 (for brevity, 'the 2005 Act'). Section 38(1) of the 2005 Act empowers the State Government to take any such measures as deem necessary for the purpose of the disaster management and Section 2(e)(i) allows the State to take measures by reducing the impact or effects of the disaster. Hence, the respondents-State issued the directions to mitigate and avert the trickle down effects and ill-effects of COVID-19.

While dealing with the argument that the same were violative of the Punjab Regulation of Fee of un-aided Educational Institutions Act, 2016, the State contended that even though it may be correct that the domain of fixing the fee, as per the Act is that of the School, the regulation of the fee of the private unaided schools during the emergent situation posed by COVID-19 was in public interest and the said power was incidental to the regulations envisaged in good faith. Reliance has been placed on the judgment of the Apex Court rendered in the case of **Deepak Theatre, Dhuri vs State of Punjab,** AIR 1992 SC 1519.

It was particularly argued that the Article 21 has primacy over Article 19- the Right to free and compulsory education has been recognised as a separate fundamental right under Article 21 of the Constitution of India. So, even if right to education is considered as a fundamental right under Article 19(1)(g), the same is subject to the restrictions under Article 19(6) of the Constitution. Even the State has power to restrict the fundamental right by invoking Article 19(6) of the Constitution by regulating the activities of

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the private institutions. Therefore, the impugned directions issued by the State in the interest of general public is a mitigating measures to combat COVID-19 and its effects are justified.

Further, the policy decisions cannot be tested under Article 226. Reliance was placed on the various judgments rendered by the Apex Court in the cases of **Census Commissioner vs R.Krishnamurthy (2015) 2 SCC 796, Premium Granites vs State of T.N.** (1994) 2 SCC 691 and **State of M.P. vs Narmada Bachao Andolan** (2011) 7 SCC 639 to contend that the Courts are not to interfere with the matters of Policy when the Government takes a decision bearing several aspects in mind and that the wisdom and advisability of the policies are not amenable to judicial review. It was not within the domain of Courts to embark upon an enquiry as to whether a particular public policy is acceptable or not.

Lastly, the present writ petitions filed under Article 226 of the Constitution of India alleging violation of Article 19(1)(g) filed by Associations of Schools would not be maintainable in the present form and manner as it is only available to a citizen of India and not juristic persons such as a Corporation, Company or association of persons while relying on the judgments rendered in the cases of **Divisional Forest Officer vs Bishwanath Tea Co.Ltd.** (1981) 3 SCC 238, **Tata Engineering and Locomotive Ltd. and others vs State of Bihar and others** AIR 1965 SC 40 and **State Trading Corporation of India Ltd.** vs **Commercial Tax Officer and others** AIR (1963) SC 1811.

On merits, Mr.Atul Nanda, learned Advocate General, Punjab, contended that the petitioners do not have a uniform fee structure and the breakup of school fee is different for each school and expenses also differ

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from school to school. For a fair and just adjudication of the petition and for the Hon'ble Court to grant appropriate relief in the present petition, material showing exact breakup of the school fee, its various components and the extent to which hardship suffered as a result of the impugned directions ought to have been placed before the Hon'ble Court, which has not been done.

Further, several other State Governments have in exercise of their executive powers and in exercise of powers under the Disaster Management Act, 2005 and Epidemic Diseases Act, 1897 have passed similar orders to private un-aided schools in their respective states stating that only tuition fee be charged where online education is being provided. Neither any fee hike nor other charges such as new admission fee, transportation, annual charges, meal charges etc. are to be charged. Some States have also specifically directed private unaided schools to continue payment of salary and other emoluments to their teaching and other staff. The said orders were challenged and tested before the Hon'ble respective High Courts, i.e. Hon'ble High Court of Delhi in **W.P.(C) 2977 of 2020** titled **Rajat Vats vs Government of NCT of Delhi and another** and **W.P.(C) 2993 of 2020** titled **Naresh Kumar vs Director of Education and another.** In both these cases the Hon'ble High Court refused to interfere with the order dated 17.04.2020 passed by the Government of Delhi on the ground that this order was within the realm of policy decision making of the State. Delhi High Court in WP (C) No.3142 of 2020 titled **Apeejay School Saket and others vs Government of NCT of Delhi and others** wherein the Hon'ble Court (dealing with order dated 18.04.2020 passed by the Government of Delhi) issued *pro term* directions to the schools therein to

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charge only tuition fee and that too on a monthly basis at the rates which were obtaining prior to 31.10.2019.

While referring to the orders passed by various High Courts, it was argued on behalf of the State that the Hon'ble High Court of Uttarakhand noting the distress of the Parents where schools were demanding fee other than tuition such as transportation fee, annual charges etc. issued certain protective measures vide order dated 12.05.2020 passed in **Japinder Singh vs Union of India WP(PIL) No.59 of 2020** for effective implementation of the Government order dated 02.05.2020 which stipulated that private schools were prohibited from collecting any fees other than tuition, further schools which were not conducting online classes were prohibited from collecting tuition fees.

The Hon'ble High Court of Kerala vide order dated 03.06.2020 in WP(C) No.10867 of 2020 titled **Shri Lekshmi S.vs State of Kerala** coming to the aid of distressed students/parents directed that in the interim no additional fee shall be levied by the school and matter to be heard by a learned Division Bench.

Hon'ble Allahabad High Court vide order dated 18.05.2020 in Misc.Bench No.8010 of 2020 titled **Association of Private Schools of UP and another vs State of UP and others** has issued notice of motion for 18.06.2020 but refused to grant any interim relief to the schools as prayed.

Now coming to the parents, the parents' associations too have filed their respective writ petitions. Some parents have filed applications to implead themselves as parties in the writ petitions filed by the schools, which were allowed. Written statements have also been filed by them. Mr.Charanpal Singh Bagri, learned counsel in the writ petition filed by the

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parents, Mr.R.S.Bains, learned counsel for the parents as intervener and the learned counsels of other parents who have been impleaded as party-respondents, being aggrieved with some of the directions in the impugned orders dated 13.03.2020, 23.03.2020 and 08.04.2020 while praying for dismissasl of the writ petitions filed by the schools have also prayed that a writ in the nature of mandamus be issued keeping in view the situation created by COVID -19 pandemic, whereby the following specific and clear restrictions be imposed:

> "(i) Not to charge any admission fee, annual charges, development charges etc. for the academic year 2020-21 except the tuition fee which should also be in proportion to actual classes delivered online against the mandatory teaching hours set out by the concerned education boards.
>
> (ii) Not to charge even tuition fee or a single penny from the parents whose wards are students of play-ways or pre-nursery to IIIrd standard as unable to attend the online classes being so young for the lockdown period.
>
> (iii) Not to strike down the names of students from the school rolls and not to debar them from attending the ongoing online classes even if their parents are not in a position to pay the proportionate tuition fee due to loss of their jobs.
>
> (iv) To utilize the "unaided Educational Institution Development Fund" generated by all the private schools since their incorporation in a transparent manner only to pay the salary of the school staff.
>
> (v) Not to ask to pay tuition fee from the wards who do not have acess to online classes.
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> (vi) Not to increase the tuition fee by merging other charges in the same and keep it same as in the previous academic

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sessions, i.e. 2019-20.

(vii) Not to opt subtle/coercive means to force the parents to pay fees.

(viii) To make public the profit and loss, balance sheets, ITRs total amount of fees including tuition fees, annual fees, development charges, building funds, transportation fee etc. charged by these schools from the students for the last three years. And to show the remaining profit on the website and on the notice boards as well.

(ix) To make public details of salaries which have been paid to various staff members for the months of April and May 2020 by each school.

(x) To display and submit with the respondent, the calculation of amount being collected from all the students per month under the head of tuition fees only and proposed salareis due towards the teaching staff.

(xi) To call for details of teaching and non-teaching staff expelled relieved, sent on compulsory leave or removed by these schools since March 2020.

(xii) To refund the fee, admission fee, annual charges, development charges and charges for extra-curricular activities etc. Obtained from the parents either prior to or during the lockdown for the session 2020-21.

(xiii) To cancel the N.O.C./recognition of said school and writ to the concerned Board to cancel the affiliation of erring schools who are violating the order/memos issued by respondents (i.e. Increase in tuition fees, received fees, admission fees etc. By coercing the parents) in general and especially in view of order dated 08.04.2020(p-2).

(xiv) To appoint District Education Officer or any other authority in each district and at sub-division levels to whom complaints can be addressed against the erring schools by

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the parents and the teachers. The authority so appointed must be duly vested with powers to take strong action against the erring schools.

AND

In alternative issue a writ in the nature of Mandamus directing the respondent State to take over charge and management of private unaided schools if they failed to conveniently run to discharge their obligations imposed by Constitution of India the Right of Children Free and Compulsory Educatin Act, 2009 as these are non-profiterring and non-commercial institutions came into existence on the lands allotted by the State and hard earned money of the parents including petitioners.

AND

Further to issue a writ in the nature of Certiorari to quash:

i. Only that part of the direction contained in point no.2.0 of memo/order dated 14.05.2020 (P-4) and similar such direction contained in order/memo dated 23.03.2020 (P-2) whereby private unaided schools are granted liberty to collect the admission fee after only month of normalization of circumstances.

ii. That part of direction 3.0(i) of memo order dated 14.05.2020 (P-4) whereby such schools have been permitted to collect the fee for summer break and are permitted to collect the tuition fee who are offering online classes in view of the direction sought above."

While praying for the said relief, the collective arguments of learned counsel for the parents are:

(a) as per the reports, over 122 million people in India lost their jobs in April, according to estimates from Centre for Monitoring Indian Economy (CMIE). These losses of jobs are from every conceivable industry

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and service. More than 75 per cent of the Indian workforce earn their livelihoods in the informal or un-organised sector, and for them, a stoppage of economic activity in the Medium, Small and Micro sectors has resulted in an immediate loss of livelihood and the means of sustenance.

(b) The assessment of the balance sheet of the unaided schools would reveal that the most of the unaided schools are sitting over the surplus money in crores. Therefore, the financial status of each school should be the basis for taking a rational and balanced decision regarding allowing waiver/charging/quantum of school fee by unaided schools. Many of the parents who are temporary workers in the private sector, some are working as junk dealers, electricians, shopkeepers etc. depending on their day to day earning. In case of a lockdown and a partial lock down, there is no activitiy in the wholesale market and that is going to affect the market and there is no job for the daily workers. The parents got admitted their wards in the schools as per their income prior to lockdown and at present their income is badly affected due to COVID-19 pandemic and helpless to meet daily expenditure of day to day life and have no money to pay fee of the schools. Internet connectivity and network issue is also there especially in villages and almost all the parents alongwith their families have been migrated to the village due to loss of their jobs and businesses in the cities.

(c) It was further argued that the Schools are providing 2-3 classes per day but CBSE, PSEB, ICSE etc. have set standard hours of study for the children per week including mandatory instructions for computer, sports, dance classes, art activities and other similar extra-curricular activities. As per the settled time table, there is requirement of 7-8 classes per day. Everyone is well aware of the difficulty faced by users to connect

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online and it does not work smoothly. Therefore, wards of the applicants are unable to take even 2-3 classes. These schools are providing online classes just to extort money from the helpless parents. These schools are demanding money even from the parents of those students who are living in the rural areas where there is either no connectivity of internet or is very poor and their wards are unable to get online classes. Moreover, it increases the financial burden of parents who are helpless to provide android cell phones, laptops and printers to their children to make this online study effective. Furthermore, parents are forced to spend extra money on costly net-pact recharges for getting the internet connectivity.

(d) Further, schools charge admission fees on the name of annual expenses in the starting of session which is being committed by almost all of these schools. Surprisingly, the schools have included all these charges under the head of tuition fee or monthly fee which amounts to misleading and mischief with the parents as well as state authorities.

(e) Presently, private unaided schools are providing services/education through different modes of Video Conferencing and the teachers are delivering lessons from their homes. Thus, the whole schools premises are closed incurring no expense on electricity, santiziation/cleaninhg, infrastructure, transportation, sports, computers and meals etc. The schools are delivering only two lectures per day for five days a week contrary to six to seven period per day to fulfil the mandatory working hours fixed by the CBSE or PSEB or other concerned Schools Boards. No extracurricular activities are going on. Hence, these schools are unable to deliver six-seven lecturers per day for which they fixed the monthly tuition fees to fulfil the hours of study fixed by the concerned

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Education Boards.

(f) There is no law, rule or regulation on this universe whereby a person can be held liable to pay charges for the services which have not been offered to him. In the prevailing situation created by the outbreak of COVID-19 pandemic and resultant lockdown, all schools premises are closed. The petitioner-schools are offering online classes to some of the students at their home, no buses are plying, no electricity/water charge incurred, no use of building of schools etc.. the respondent-parents are being compelled to pay total fee which is sum total of above all heads, i.e. Transportation, annual charges, building fund, sports charges, electricity and water charges, computer charges etc.. Granting this liberty to the petitioner-schools to recover fee from respondents/parents would result in grave injustice.

(g) The petitioners, i.e. Private unaided schools had started coercing the parents of wards to pay annual charges, admission fee, development charges etc.. Also from the parents of students of Kindergarten, nursery, pre-nursery, first standard, second standard who are unable to sit properly to whom they have never delivered even a single class online.

This Court proceeded to hear the case through Video Conferencing. The arguments were heard at length.

Learned Advocate General at the outset also raised a preliminary objection. It was contended that the writ petition filed through Assosication and the societies is not competent to invoke the writ jurisdiction under Article 226 of the Constitution as the same was available

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only to the citizens and only in case of violation of fundamental right guaranteed under Article 19(1)(g) of the Constitution. Reliance was placed on the judgments rendered by the Apex Court in the cases of **Tata Engineering and Locomotive Ltd. and others (supra)** and **State Trading Corporation of India Ltd. (supra)** to contend that the plea of the petitioner regarding the alleged violation of Article 19(1)(g) of the Constitution is ill-founded since Article 19(1)(g) only accrues to a citizen of India and the present writ petition, therefore, claimaing violation of fundamental right at the behest of the Association/Socieites of Schools would not be maintainable.

The said argument cannot be sustained in view of the judgment rendered by the Apex Court in the case of **M/s Andhra Industrial Works vs Chief Controller of Imports**, 1974(2) SCC 348, wherein the maintainability of the writ petition by a firm to enforce its rights under Article 19(1)(g) was in question and it was held that since firm stands for all the partners, collectively, the petition is to be deemed to have been filed by all the partners who are citizens of India. Similar view was held by the Hon'ble Apex Court in the case of **Sree Balaji Medical College and Hospital and another vs Union of India and another**, 2015 AIR (SC) 3076.

In fact, the question of the maintainability of the writ by a firm, society or company is no more *res* integra in view of the judgment rendered in the case of **Delhi Cloth and General Mills Co.Ltd. Vs Union of India and others etc.etc.,** 1983(4) SCC 166 wherein the Hon'ble Supreme Court while going into the question of maintainability of a petition by the company

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for violation of its right under Article 19(1)(g) after taking note of the judgments relied on by the learned counsel for the State in the cases of **State Trading Corporation of India Ltd.** (supra) and **Tata Engineering and Locomotive** (supra), held as under:

> "12.The learned Attorney General raised a preliminary objection to the maintainability of the writ petitions filed in this Court under Article 32 and those filed in the High Court under Article 226 of the Constitution. The submission was founded on the ground that an incorporated company being not a citizen for the purposes of Article 19 and therefore it cannot complain of the denial or deprivation of fundamental freedom guaranteed by Article 19 (1) (g) of the Constitution and the situation is not improved by joining either a shareholder or a Director as co-petitioner. It was said that the company has a juristic personality independent of the Director or a shareholder and the business or trade carried on by the company is not that of either the shareholder or the Director. As the corrolary, it was urged that even if the impugned Rule 3-A imposes an unreasonable restriction on the fundamental freedom to carry on trade or business, this Court cannot entertain a petition under Article 32 nor the High Court can entertain one under Article 226 of the Constitution. Frankly speaking, this is an of repeated contention whenever the petitioner is an incorporated company but the law in this behalf is in a nebulous state and therefore, it is not possible to throw out the petition at the threshold. More so because a petition under Article 226 of the Constitution can be filed by the company for any other purpose and also the petitioners complain of violation of Article 14 of the Constitution. The reasons for stating that the law is in a nebulous state may briefly be mentioned. In **State Trading**

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Corporation of India Ltd. v. Commercial Tax Officer, Visakhapatnam, (1964) 4 SCR 99 and Tata Engineering and Locomotive Co. v. State of Bihar, (1964) 6 SCR 885, this Court held that a Corporation was not a citizen within the comprehension of Article 19 and therefore, could not complain of denial of fundamental freedom guaranteed by Article 19 to a citizen of this country. These two decisions are an authority for the proposition that an incorporated company being not a citizen could not complain of violation of fundamental freedoms guaranteed to citizens under Art, 19. But a different note was struck in **R.C. Cooper v. Union of India, (1970) 3 SCR 530**, when it was held that a measure executive or legislative may impair the rights of the company alone, and not of its shareholders : it may impair the rights of the shareholders as well as of the company. It was further held that jurisdiction of the Court to grant relief cannot be denied, when by State action the rights of the individual shareholder are impaired, if that action, impairs the rights of the company as well. In that case, the Court entertained the petition under Article 32 of the Constitution at the instance of a Director and shareholder of a company and granted relief. The two conflicting trends in this behalf were noticed by this Court in **Bennett Coleman and Co. v. Union of India, (1973) 2 SCR 757** where after review of the aforementioned decisions and several others, it was held as under :-

> "As a result of the Bank Nationalisation case (supra) it follows that the Court finds out whether the legislative measure directly touches the company of which the petitioner is a shareholder. A shareholder is entitled to protection of Article 19. That individual right is not lost by reason of the fact that he is a shareholder of the company. The Bank Nalionalization case (supra) has established the view that the fundamental rights of

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> shareholders as citizens are not lost when they associate to form a company. When their fundamental rights as shareholders are impaired by State action their rights as shareholders are protected. The reason is that the shareholders' rights are equally and necessarily affected if the rights of the company are affected. The rights of shareholders with regard to Article 19 (1) (a) are projected and manifested by the newspapers owned and controlled by the shareholders through the medium of the corporation.""

Thus, in view of the position of law, the writ petitions filed by the Associations and the Societies under Article 226 are duly maintainable in the facts of the present case especially when they have claimed infringment of their rights under Articles 14 and 19(1)(g) of the Constitution.

This Court also needs to deal with the objection of learned counsels for the petitioners that the impugned orders are without any jurisdiction, illegal and arbitrary and sans the authority of law.

There is merit in the argument of counsels for the petitioner-schools to the extent that the orders are an interference and infringes the rights guaranteed to the private un-aided educational institutions under the 2016 Act, which is also upheld by the Hon'ble Apex Court in **TMA Pai Foundation vs State of Karnataka** (1994) 2 SCC 199. However, in the present case, the executive orders have been passed by invoking the powers under Article 162 of the Constitution of India, which reads as under:-

> **"162. Extent of Executive Power of State.-** Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the

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> Legislature of the State has power to make laws.
>
> Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof Council of Ministers."

Proviso to Article 162 shows that the executive power is limited and are conferred by the Constitution or by a law or legislation made by the Parliament or appropriate authority. Nevertheless, the Apex Court in the case **Moolchand Khairati Ram Trust** (supra), while dealing with an issue where the circulars and orders issued by the State and Central Government regarding free treatment to the weaker sections of the society by hospitals and nursing home was challenged, held that there was no necessity to first enact the law before issuing any executive orders and the action of the State was justified when it was in furtherance of the very objective, for which the medical profession exists being charitable institutions. The relevant portion of the judgment reads as under:-

> "90. We are of the considered opinion that there was no necessity of enacting a law, as the policy/rules under which the land has been obtained, the hospitals were obligated to render free treatment as the land was allotted to them for earning no profit and held in trust for public good. Similar is the provision in the 1981 Rules and apart from that the regulations framed by the Medical Council of India also enjoins upon the medical profession to extend such help and in view of the object of the hospitals, trust, and missionaries it is apparent that there was no necessity of any legislation and the Government was competent to enforce in the circumstances, the contractual and statutory

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liability and on common law basis."

It was similarly held in the case of **Ram Jawaya Kapur** (supra), which answers the issue in hand thus:-

> "The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes the initation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact the carrying on or supervision of the general administration of the State."

The judgment rendered in the case of **Secretary A.P.D. Jain Pathshala (supra)** also settles the issue where it was held that Article 162 was wide enough to allow the State to issue administrative directions even if there was no enactment covering a particular aspect, until the legislation makes a law on that behalf.

Thus, accepting that the State does have the power under Article 162 of the Constitution of India to issue executive instructions and more so in a situation where the entire country is in a lock-down, it was still required to be determined as to whether the impugned directions are beyond the purview of the Disaster Managment Act, 2005 and the Epidemic Disease Act, 1897.

The 2005 Act has been enacted with the intent to provide for the effective management of the disease. The terms disaster management is defined under Section 2(e) of the said Act, which reads as under:-

> "2(e) disaster management" means a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for-

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(i) Prevention of danger or threat of any disaster;

(ii) mitigation or reduction of risk of any disaster or its severity or consequences;

(iii) capacity-building;

(iv) preparedness to deal with any disaster;

(v) prompt response to any threatening disaster situation or disaster;

(vi) assessing the severity or magnitude of effects of any disaster;

(vii) evacuation, rescue and relief;

(viii) rehabilitation and reconstruction;"

The 1897 Act was enacted to provide for the better prevention of the spread of Dangerous Epidemic Diseases. The power of State Government has been circumscribed under Section 2 of the said Act. For ease of reference, the said Section is reproduced hereunder:-

"2. Power to take special measures and prescribe regulations as to dangerous epidemic disease.—

(1) When at any time the State Government is satisfied that the State or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease, the State Government, if it thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take, or require or empower any person to take, such measures and, by public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons as it shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed.

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> (2) In particular and without prejudice to the generality of the foregoing provisions, the State Government may take measures and prescribe regulations for—
>
> (b) the inspection of persons travelling by railway or otherwise, and the segregation, in hospital, temporary accommodation or otherwise, of persons suspected by the inspecting officer of being infected with any such disease."

However, Section 38 of 2005 Act, as referred by learned Advocate General, states the steps to be taken by the State Government for the purpose of the disease and management.

The question, therefore, is as to whether the obligation imposed on the private schools in deprivation of fee is covered under the action taken under the disguise of the disaster management. Definition of 'Mitigation' in Section 2(1) of the 2005 Act reads as under:-

> "2(i) **'mitigation'** means measures aimed at reducing the risk, impact or effects of a disaster or threatening disaster situation."

After a perusal of the above necessary provision, the impugned order deferring the fee or exempting the payment of fee although is not a factor to control the disease and may not techincally fall within the ambit of Disaster Management Act, 2005 or the Epidemic Disease Act, however, the steps taken like the lockdown to control and reduce the exposure to the risk of the disease in the present case has definitely resulted in loss of business, work and daily earning leading to the facing of financial crunch and hardship by many. Therefore, the concern of the State to mitigate and avert the trickle down the effects as a temporary measures is not totally out of line.

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Learned Advocate General raised yet another argument that the impugned orders are a policy decision and, therefore, the Courts have no right to interfere, hence not open to judicial review. This is a settled proposition of law and is not disputed except it is doubtful whether the impugned orders herein can be termed as policy decisions. Even if for the sake of arguments, it is accepted that the same amount to policy decision, it is an equally settled law that judicial review can always be exercised, in case the same is arbitrary, discriminatory or unreasonable. In such circumstances, it is the duty of the Court to exercise its power under Article 226, to impart justice. In the present case, the writ filed on behalf of the un-aided educational institutions receiving no help from the State but are required to continue to pay the salary of the teaching and non-teaching staff as also maintain the institutions without the corresponding right to recover the expenditure from their only source of income, i.e. the school fee from students, even though, being temporary in nature, cannot be thrown out at the threshold.

Learned Advocate General, at this stage, once again referred to the judgment rendered by the Division Bench of the High Court of Uttarakhand at Nainital in the case of **Japinder Singh** vs **Union of India and others** Writ Petition (PIL) No.59 of 2020 vide which number of writ petitions of the parents as well as the education institutions were disposed of on 10.06.2020 with a direction to the State to revisit and re-examine the whole issue in the light of the representations made by the school managements although it found force in the submission made by the school. Para Nos. 5 and 7 of its order read as under:-

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> "5. We find considerable force in the submission, urged on behalf of the Schools, that their very existence is in peril for they are required, by the Government Orders issued from time tot ime, to pay salary to their teachers and staff in its entirety on the one hand, while being disabled from collecting tuition fees from the students on the other. In abnormal times such as the present, where the COVID-19 pandemic has adversely affected the economy in general, and the source of livelihood of a very large number of persons in the State in particular, some concession/sacrifice on everyone's part, in a spirit of give and take, is in order. It is true that, in case the schools are in no position to continue running their instituions, the students, who have secured admission threat, would be deprived of much needed quality education.
>
> 7. Suffice it, in such circumstances, to dispose of these Writ Petitions permitting the school managements to submit representations to the Secretary, School Education, Government of Uttarakhand on or before 15.06.2020. The Secretary, School Education shall re-examine the whole issue in the light of the representations submitted by the school managements, and take a considered decision, on or before 22.06.2020, as to whether the earlier Government Orders dated 22.04.2020 and 02.05.2020 should be continued, modified or cancelled. The decision so taken by the State Government shall be communicated to all the Schools which have submitted their representations to the Secretary, School Education, as also to the public at large."

In view of the above, this Court too would have very well quashed the orders on the ground of natual justice as they were passed

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without hearing the School Managements. However, it would only result in delay and aggravate the situation which appears to be almost explosive. The paretns are protesting outside the schools and the schools are passing through uncertain times. Hence, the Court proceeded to decide the matter finally especially when the learned Advocate General informed the Court that efforts were made by him on the asking of a coordinate Bench for amicable solutation but in vain.

The judgments relied upon by learned Advocate General in the cases of **Rajat Vats** (supra), **Naresh Kumar** (supra), **Japinder Singh** (supra) and **Shri Lekshmi S.** (supra) rather support the case of the schools. They were filed by the parents and the various Courts refused to entertain them. Hence, they do not help the State in the present writ petitions filed on behalf of the schools.

Each one of us is aware of the hardships being faced by the entire country in view of the unprecedented situation created by the outbreak of COVID-19 Pandemic, resulting in lockdown and forced closure of all educations institutions. The Ministry of Home Affairs, Government of India imposed a National lockdown w.e.f. 25.03.2020. All schools were closed acros the country. In the above backdrop, certain orders were issued to the Management of the private schools. The first direction was issued on 23.03.2020 whereby the non-Governmental Educational Institutes were ordered to reschedule the last date of deposit of admission fee to one month after the condition improves and that no extra fine should be imposed on the parents of the students studying in the private unaided schools.

Another impugned order was issued on 08.04.2020. The earlier directions dated 13.03.2020 and 23.03.2020 were reiterated. However, in

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addition, it was alleged that some schools were asking the parents to deposit the transportation fee and were sending messages to the parents to deposit online fee under the garb of conducting online classes. Hence, it was directed that in case any school was found violating the instructions issued earlier, their recognition and affiliation shall be cancelled. At the same time, another Memo was issued on 14.05.2020. Directions issued in the Memo dated 14.05.2020 read as under:-

> "(i) The schools shall not charge any fee for the period of lockdown/curfew, excluding the period of summer break. However, those schools who have provided or are providing online education during the period of lockdown, may charge tuition fee only, i.e. Fee other than building charges, transportation charges, charges for meals etc.
>
> (ii) Given the exceptional circumstances occasioned by the lockdown, private schools are advised not to impose any increase in school fees in 2020-21 over those charged in 2019-20.
>
> (iii) Schools should allow the option to parents to pay fees on monthly or quarterly basis.
>
> (iv) School managements are further advised to sympathetically consider the cases of students whose parents livlihoods may have been adversely impacted due to the lockdown, for fee waiver/concession and that no child may be denied access to education (online or regular) on non-payment of fee.
>
> (v) School managements should not resort to removal of any teacher or reduction in the monthly salary or total emoluments of teaching/non-teaching staff.
>
> (vi) Schools shall endeavour to impart online/distance learning so that education is not adversely impacted due to

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> the present or furture lockdowns imposed due to COVID-19, and
>
> (vii) Apart from above, the Department may take any other attendant measures as it may deem reasonable and justified in the overall interest of school education."

Learned Division Bench of the High Court of Delhi in the case of **Naresh Kumar** (supra) which was relied upon by the State, in fact, recognised the fact that the money does not grow on trees and unaided schools who receive no funds from the Government are entirely dependent on the fees to defray their daily expenses.

The Hon'ble Supreme Court too in paragraph 61 of **TMA Pai Foundation**(supra), which too was heavily relied upon by the State while observing that the regulation of fee of private unaided institutions is within the exclusive domain of the private unaided Institutions rather went on to hold that the State's power is only limited to the extent of prevention of profiteering and charging of capitation fees by such institutions as under:-

> "In the case of unaided private schools, maximum autonoy has to be with the management with regard to administration, including the right of appointment, disciplinary powers, admission of students and the fees to be charged. At the school level, it is not possible to grant admission on the basis of merit. It is no secret that the examination results at all levels of unaided private schools, notwithstanding the stringent regulations of the governmental authorities, are far superior to the results of the government-maintained schools. There is no compulsion on students to attend private schools. The rush for admission is occasioned by the standards maintained in such schools, and recognition of the fact that state-run schools do not provide the same standards of

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> education. The State says that it has no funds to establish institutions at the same level of excellence as private schools. But by curtailing the income of such private schools, it disables those schools from affording the best facilities because of a lack of funds. If this lowering of standards from excellenece to a level of medicrity is to be avoided, the state has to provide the difference which, therefore, brings us back in a vicious circle to the orignal problem, viz., the lack of state funds. The solution would appear to lie in the States not using their scanty resources to prop up institutions that are able to otherwise maintain themselves out of the fees charged, but in improving the facitilites and infrastructure of state-run schools and in subsidizing the fees payable by the students there. It is in the interest of the general public that more good quality schools are established; automony and on-regulation of the school administration in the right of appointment, admission of the students and the fee to be charged will ensure that more such institutions are established. The fear that if a private school is allowed to charge fees commensurate with the fees affordable, the degrees would be "purchaseable" is an unfounded one since the standards of education can be and are controllable through the regulations relating to recognition, affiliation and common final examinations."

It is, therefore, no suprise that the petitioner-schools appear to be aggrieved with the following directions issued vide Memo dated 14.05.2020

> "(i) The schools shall not charge any fee for the period of lockdown/curfew, excluding the period of summer break. However, those schools who have provided or are providing online education during the period of lockdown, may charge tuition fee only, i.e. Fee other than building

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charges, transportation charges, charges for meals etc.;

(ii) Given the exceptional circumstances occasioned by the lockdown, private schools are advised not to impose any increase in school fees in 2020-21 over those charged in 2019-20;

(v) School managements should not resort to removal of any teacher or reduction in the monthly salary or total emoluments of teaching/non-teaching staff."

From the above, it emerges that:

(a) the directions amount to complete waiver of fees by the Private Unaided Educational Institutions that are not conducting online classes during lockdown period;

(b) The schools giving online classes could charge only the tuition fee for the lockdown period;

(c) The schools were restrained from recovering building charges, transport charges, charges for meals meaning thereby, the parents could not be burdened with the costs of any such facility or activity which was not availed by them during the lockdown;

(d) However, there was no bar of charging the fee for the period of summer break although there is no distinction between the schools providing online or not providing online classes when charging of fees during the summer break is concerned;

(e) It was advised not to increase the fee during the year 2020-21;

(f) the School Management was not authorised to remove any teaching or non-teaching staff;

(g) the school management could neither stop nor reduce the

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monthly salary either of the teachers or the staff;

The order was silent on the admission fee and annual charges. Therefore, when the matter was heard on an earlier date, the State of Punjab was required to clarify as to whether the admission charges/annual charges were simply deferred to be recovered at a subsequent date or the directions in the order dated 14.05.2020, which was silent on the aspect, was to be read as completely waived off especially because the earlier impugned order dated 23.03.2020 whereby DSE had issued directions to reschedule the last date of deposit of admission fee to one month after the condition improves was followed by the impugned order dated 14.05.2020 stating therein that the schools shall not charge 'any fee' for the period of lockdown leading to an ambiguity in the stand of the State. Accordingly, an additional affidavit dated 18.06.2020 has b een filed by the Secretary, Department of Education, Government of Punjab, clarifying that most of the schools were charging Fee as under:

1. Admission Fee;
2. Tuition Fee; and
3. Annual charges

In respect of the Admission Fee, the direction was merely to reschedule the payment of the admission fee. The said clarification, as per the additional affidavit is as under:-

> "To reschedule the payment of admissions fee/new admission fee for the new academic session, i.e. 2020-2021, which is normally to be paid by 31.03.2020, it is submitted that this admission fee for new students has merely been deferred until situation normalises, i.e. until the schools are allowed to

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physically re-open and function normally."

Learned counsels for the petitioner-schools, however, expressed that the schools were aggrieved with the said clarification in the affidavit because in the order dated 14.05.2020, the direction was not to recover for the lockdown period, whereas, now the same has been deferred uptill the schools phyiscally reopen, which may not be very soon. This fact is not correct as in the order dated 14.05.2020 there is no mention of admission fee. Thus we have to revert to the previous orders dated 23.03.2020 and 08.04.2020 which allowed the schools to reschedule the fee to another one month after situation improves, which reads as under:-

> ".....As per the previous letter and the current situation and for the parents benefit, all non-government educational institutions will reschedule the dates to deposit fee and will not force the parents to deposit fee. After the condition improves, the parents must be given at least a month to depoist fee and no extra fine will be imposed."

From the above, it is evident that the schools can charge the admission fee but only when the school reopens. The paying capacity of the parents is ancilliary to the opening of the lockdown and not with the reopening of the schools. Although the lockdown was partially opened on 04.05.2020, however, the same was further substantially lifted on 08.06.2020. Hence, to remove all confusions, the schools should be allowed to recover their admission fee now that the lock-down stands lifted on 08.06.2020 to a great degree.

Tuition Fee

So far as the Tuition Fee is concerned, it is clarified by the State

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as under:-

> "So far as tuition fee is concerned, the impugned order dated 14.05.2020 passed by the State Government imposes no restriction on the schools to collect such fee in respect of online education that has been provided or being provided. It is only those schools which are in fact not providing such online classes who may not charge such fee."

Thus, the dispute qua charging of Tuition Fee is only by the schools which are not providing online classes.

It is not disputed that even if schools do not provide online education, the schools are still required to meet the expenses, i.e. Full salary of the teachers and non-teaching staff as well as building, electricity expenses etc.. The schools that are not giving online classes are not exempted from paying the salary of its teaching and non-teaching staff. Hence, there is no rational in laying down such a classification especially when the obligations and basic expenses of all private un-aided schools remain the same irrespective of whether they are conducting online classes or not. In these circumstances, there cannot be a separate direction for the schools who are not offering online classes. Therefore, direction to the privately unaided Institutions who are not giving online classes not to charge tuition fee for the concerned period is definitely discriminatory and arbitrary.

The grievance of the parents that they should not be made to pay for the services which have not been rendered, especially when either some schools did not offer online services or because they reside in remote areas, where the online facility is not available, may be a reasonable complaint but while making the said complaint, the parents have forgotten the fact, as already noted above, that the staff and teachers have to be

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continuously paid the salary during this lockdown period. The maintenance of the infrastructure will have to be maintaiined during this period so that when the children return to schools, the basic amenities to the students in the form of qualified and competent teachers as well as the infrastructure is intact. It is the own stand of the parents that the grant of recognition to a private school depends upon fulfilment of various requirements including financial status and infrastructure but under no circumstances, the private schools can indulge in profiteering or business. If it is so, then the schools require the basic tuition fee in order to continue to maintain and fulfil their various requirements of financial status and infrastructure lest the schools are forced to close down which will be neither in the interest of the State, or the parents or the children. Even otherwise, this Court has no doubt that the schools shall make endeavour to make up the loss in the studies as suffered by the students during this lockdown period on its re-opening. Hence, there cannot be two set of rules between same class.

Annual Charges

The annual charges are stated to cover building charges, transportation charges, charges for meals etc.

A perusal of the direction 3.0(i) of the impugned order dated 14.05.2020 and affidavit are contradictory. While the impugned order says, “may charge tuition fee only, i.e. fee other than building charges, transport charges and meal etc.”, the affidavit quotes it as “fee other than building charges, transport charges, meal charges etc., is not to be charged for the duration of the lockdown excluding the period of summer break.” The learned Advocate General, while clarifying the anomaly stated that it

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means the charges under the head of building charges, transport charges and meal charges etc. are to be waived off only for the period of lockdown and that it be charged on *pro rata* basis. While justifying the said direction, it is stated that some schools outsource their transportation services and hence, are not directly incurring any expenditure on this account and, therefore, they are not entitled to claim such charges from the parents for the duration of the lockdown. Secondly, the difference in the total loss is not much. It is only a short period of the lockdown. Third, the schools do not show break up and include the expenses incurred in the tuition fee. Fourth, some schools have changed the fee structure after the impugned order.

The contention of the State is not entirly correct. The affidavit is silent qua those schools who are incurring charges towards transportation.

As per the learned counsels for the petitioner-schools, the full charges form only a small part of the transport charges. In fact, even qua the schools which have outsourced the transport services through contract are required to keep their contractual obligations, i.e. payment to the contractors, failing which they may face legal action by such contractors. It is necessary for them to honour the contracts to maintain the long standing associations with these contractors in view of the safety and interest of these students have long stood the test. Some of the schools have certain financial obligations, such as repayment of loan, tax and insurance liabilities, minimum charges for electricity and water bills etc. irrespective of the premises of the schools being closed.

In fact, Civil Writ Petition No.7959 of 2020 has been filed on behalf of the bus transporters dispensing their services to the schools or

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directly to the students/parents/guardians. It is contended by them that the school buses deployed in the services of the school are not ordinary buses and are specially desgined for the children taking into account their needs and cannot be put to any of the use for carry adult passengers, carriage of the goods etc. As such, cannot ply on roads for any other purpose for which are designed and made. The buses are totally halted in the parking yards and getting rust which is going to increase the cost of the maintenance and further depreciating the life of the stranded buses. It is further submitted that the business of the school bus service is a very week business involving high cost not limited to the cost of fuel, road taxes, permits, insurance etc. Petitioners have taken commercial loans at high interest rates for plying the school buses and further as per the instruction of the transport department and education department issued time to time the ezpenses were increased by engaging extra attendants and installiing CCTV cameras. For instance for operating a TATA 407 BUS having a carrying capacity of 27+2 seats would cost of more than Rs.6.52 lacs per annum is incurred leaving apart the fuel expenses. A detailed factual analysis of the cost of operation of a school bus is placed on record as Annexure P5. Rather, with this writ petition, due to pandemic, now the school buses have to be sanitized and have to follow the social distancing norms and have to run the buses with 50% capacity which is going to double the cost and the parents of the students would not be incliined to bear with high cost causing a total set back to the business and livelihood of the petitioners. As per almost accurate estimate, the fuel expenses of running a school bus is below 20% against the total standing and running expesnes of a vehicle. Thus, more than 80% expenses are being incurred for daily maintenance and upkeep of

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the standing vehicle even. The contention raised on this account has no rebuttal.

The apprehension of the State that some of the schools do not show the break up under various heads and charges are inclusive under one head and are, therefore, able to recover most of the expenses over and above the tuition fee may or may not be correct and no verdict can be given without evidence. The example of the Vivek High School has been cited which only has two heads, i.e. Admission fee and quaterly fee mentioned in their prospectus. The said example or apprehension is totally misconceived inasmuch as the parents who admitted their children in these schools like the Vivek High School, admitted their children with open eyes knowing fully well the fee structure. These affluent schools are catering to children of affluent parents, who are in sound financial position to pay.

The second apprehension that some of the schools have changed their fee structures after the order dated 14.05.2020 to recover more money from the parents by increasing the component of fee charge under the head of 'Tuition Fee' while proportionately decreasing their annual charges, other administrative charges would definitely amount to unfair practice and cannot be accepted. However, the provisions under Section 7 of the Punjab Regulation of Fee of Unaided Educational Institutions Act, 2016 reproduced in the later part of the judgment are sufficient to take care of any such complaint or violation.

This Court may have agreed with the Advocate General that the Annual charges were waived off only for the lockdown period and therefore the waived off amount is not much but for the genuine concern expressed by

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the schools which needs to be noted. This Court cannot ignore the painstaking efforts being made by the schools and teachers in providing education and holding classes through online platforms and the expenditure involved in disseminating education online may conceivably be much greater than that involved in classroom teaching. In their written submissions as also argued by the learned counsels for the schools, it is pleaded that the schools will now require to incur rather additonal costs and expenditures in order to undertake a variety of measures that shall be necessitated by, and in the aftermath of the COVID-19 pandemic. These would include sanitization of the premises, not only upon re-opening of the schools, but at regular intervals thereafter. Expenditure will also have to be incurred towards new and innovative measures to ensure maintenance of social distancing norms in schools. These would not only be extensive, but would also take the form of both capital and revenue expenditure. Many schools have already invested heavily in technology platforms and devices to provide online education to the students and such continued expenses on machinery, services, and teacher training which will become the norm in the months to come. In light of this, the necessity to charge complete fees from the parents of the students, that too in a timely manner, becomes vital.

Learned counsels for the petitioner-schools, at the same time, admit that there was no expenditure on the meals during the lockdown period and, therefore, they are not liable to charge. Similarly, there may be other heads as well under co-curricular activities, which may not require to be charged as no expenses were incurred although there are other expenses which they have incurred towards transportatiion, as discussed above, as well as electricity, taxes, EMIs to be paid for setting up any infrastructure

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etc., which may be difficult for this Court or the State to assess and pass a general order qua all the schools. Each school has its own genuine expenditure under this head.

In view of the above discussion, in order to maintain the balance, so that neither of the parties suffer, it would be appropriate that the school management works out only the actual expenditure incurred under the 'Annual Charges' for the period the school remaied closed due to lockdown including summer period and recover only such genuine expenditure incurred by it and shall not recover any charges for this period for any co-curricular activity towards which no expenditure was incurred. This Court has consciously observed 'for the period the school remained closed including summer period' as there is no difference in the expenditure whether the school was closed on account of lockdown or summer vacations.

The next bone of contention is the direction No.(ii) in the order dated 14.05.2020 with respect to the increase in school fee for the year 2020-21 over and above those charged in the year 2019-20. Sections 5 and 6 of 2016 Act grant the power to fix and increase the fee alongwith factors to be taken care of while fixing and increasing the fee. The same is reproduced below:

> "**Sections 5 and 6 of the 2016 Act**- Power to fix and increase fee and factors to be taken into consideration for fixing or increasing fee:- are as under:-
>
> An Unaided Educational Institution shall be competent to fix its fee and it may also increase the same after taking into account the need to generate funds to run the institution and to

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provide facilities necessary for the benefit of the students: Provided that while fixing or increasing fee, the factors mentioned in sub-section (1) of section 6, shall be kept in view by the Unaided Educational Institution:

Provided further that increase in fee shall not exceed eight per cent of the fee of the previous year, charged by the Unaided Educational Institution.

Provided further that while fixing or increasing fee, an Unaided Educational Institution cannot indulge in profiteering and it cannot charge capitation fee.

6. **Factors to be taken into consideration for fixing or increasing fee:-**

(1) For fixing or increasing fee structure by an unaided educational institution, the following factors shall be kept in view, namely:-

(a) the infrastructure and facilities available or to be made available in the Unaided Educational Institution;

(b) the investment made and salaries paid to the teachers and staff; and

(c) future plans for expansion and betterment of institution, subject however, to the restrictions of non-profiteering and non-charging of capitation fee.

(2) The fee fixed under sub-section (1), shall be displayed by every Unaided Educational Institution at the conspicuous place in the School premises.

(3) The Unaided Educational Institution shall also ensure that the fee or funds charged by it from the parents or guardians, are not diverted from such institution to the society or the trust, as the case may be, which runs such institution or to any other institution, except as permissible under sub-section (4) of section 10."

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Section 7 lays down powers and functions of the Regulatory Body, which ensures that unaided schools do not indulge in comercialisation of education and keep in check the fee structure and at the same time maintain the autonomy of the institution. It reads as under:-

> "**7.Powers and functions of the Regulatory Body:-** Subject to the provisions of this Act, the Regulatory Body shall exercise the powers and discharge the functions as mentioned below:-
>
> (a) to hear complaints from the students or their parents or guardians with regard to the charging of excessive fee or for doing or asking to do any other activity with a motive to gain financial benefit or profit in contravention of the provisions of this Act by any Unaided Educational Institution;
>
> (b) to ensure that the Unaided Educational Institutions are not indulging in commercialization of education;
>
> (c) to check that the fee structure is being kept within the limits as provided under this Act so as to avoid profiteering;
>
> (d) to strike a balance between autonomy of an Unaided Educational Institution, and measures to be taken in avoiding commercialization of education;
>
> (e) to check excessive hike in fee by an Unaided Educational Institution with the motive to earn profit;
>
> (f) to ensure that increase in the fee undertaken by an Un-aided Educational Institution is justified and necessitated by the circumstances like increase in expenditure or because of needed developmental activities, and does not result into profiteering; and

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> (g) to check that funds charged from the students are not diverted to any other purpose, except as permissible under sub-section (4) of section 10."

The direction in the order dated 14.05.2020 not to increase the fee for the year 2020-21 reads as under:-

> "(ii) Given the exceptional circumstances occasioned by the lockdown, private schools are advised not to impose any increase in school fee in 20-21 over those charged in 2019-20."

It may be correct that the directions amount to infringment in the rights granted to the unaided schools under the Act but no right is absolute and the Court has already dealt with the authority of the Sate to issue executive orders in certain circumstances. The direction is only an advisory but it would be in the fitness of the things if the schools restrain themselves from increasing the fee for the year 2020-21 and continue to charge the same as prevalent for the year 2019-20, keeping in mind the overall impact on the economy and every institution having been hit by the same. Some sacrifice, concession, adjustment should be made and contributed by each one. Accordingly, this Court is not inclined to interfere in the said advisory especially keeping in mind the concession offered in para 24 of the additional affidavit filed by the Secretary, Department of Education, Government of Punjab, which reads as under:-

> "24. It is submitted that if any school on account of charging tuition fee, as directed in the impugned order, is unable to meet its cost towards salaries then such school is at liberty to approach the District Education Officer under the Education Code or the Department of Education, Government of Punjab as per law e.g. Education code. The aggrieved school can make out its case/laydown its

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> grievances before such District Education Officer/ Department of Education who would pass an appropriate order on whether the school can recover other fees/charges or not, depending on the circumstances of that particular school."

The above undertaking should cover any financial hardship faced by any particular school either on account of the expenditure incurred to follow the guideline of sanitization etc. of the school on its opening due to COVID-19 or on account of the upgradation of their infrastructure for online teaching subject to the total financial break down of the school and not otherwise.

Coming to the parents, they have filed a joint writ petition. There is nothing on record to show that the parents of the children were not able to pay fee or they have no source of income during the lockdown period. The financial condition, the source of monthly income, the assessment, i.e. moveable and immovable property owned by each family, the losses incurred by any family differs from one family to another.

The interest of such genuine parents who are actually in difficulty and are not in a positiion to pay the total fee is already safe-guarded by the impugned order, dated 14.05.2020 itself, which reads as under:

> "(iv) School managements are further advised to sympathetically consider the cases of students whose parents livlihoods may have been adversely impacted due to the lockdown, for fee waiver/concession and that no child may be denied access to education (online or regular) on non-payment of fee."

Taking note of the same, the learned Division Bench of this

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Court while delaing with CWP-PIL No.58-2020 claiming that parents and students are facing difficulty in depositing the fee declined to entertain the same by observing that the order made adequate arrangement for accommodating the students and parents, who could not pay fee and disposed of the PIL as under:-

> **"**The petition is accordingly disposed of by granting liberty to the individual parents and students, if so aggrieved, to approach the concerned schools and thereafter the Grievance Redressal Committee in case of individual hardship on the basis of facts available in that particular case.**"**

Here, this Court needs to add a line of caution. Though, the learned counsels for the school Managements have been fair enough and offered to waive off the fee in genuine cases of hardships, poor sections of society, it will be the corresponding duty of such parents seeking concession or waiver to be fair and not misuse the directions issued by the State that no child will be denied the access of education online or regular due to no-payment of fee as also observed by the Division Bench of the High Court of Delhi in the face of similar apprehensions expressed by the School in the case of **Naresh Kumar** (supra). The same reads:-

> "18.....financial hardship being faced by professionals and businessmen, as well as by persons from the poorer sections of society, during the period of lockdown. Mr.Ramesh Singh, learned Senior Standing Counsel for the DOE correctly draw attention, in this context, to the fact that the impugned Order, dated 17th April, 2020, itself prohibits schools from denying ID and password, to students for obtaining access to online learning platforms, merely because,"owing to financial crisis arising out of closure of

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> business activities in the ongoing lockdown condition", the parents of such students are unable to pay school fees. This, again, is a wholesome provision and, once it finds place in the impugned order dated 17th April, 2020, we feel that the apprehension of the petitioner stands effectively allayed. We, however make it clear that we expect the DoE to, while implementing this provision, ensure that it is not misused, and extend its magnanimity only to persons who are, actually, in a state of financial crisis, owing to the lockdown. It would be necessary for parents, seeking the benefit of this releif, to establish, to the satisfaction of the school, or the DoE, that, owning to the lockdown, they are, in fact, financially incapacitated from paying school fees."

Even before this Court, there is no mention of the financial status of the concerned parents, no details of the income and assets is forthcoming. Moreover, the direction not to increase the fee for the 2020-21 in itself is a big relief and a heavy concession.

Accordingly, the writ petitions filed by the parents deserves to be disposed of in the same above terms.

In view of the above discussion and reasons for each of the direction stated in the judgment above, the writ petitions are disposed of as under:-

(a) The schools are permitted to collect their admission fee, henceforth.

(b) All schools irrespective whether they offered online classes during the lock-down period or not, are entitled to collect the tuition fee. However, they will continue to endeavour and impart online/ distance learning so

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that education is not adversely impacted due to the present or future lockdowns imposed due to COVID-19.

(c) The school management of each schools shall work out their actual expenditure incurred under the annual charges for the period the school remained closed and recover only such genuine expenditure incurred by them including actual transport charges and actual building charges but shall not recover any charge for this period for any activity or facility towards which no expenditure was incurred. However, the annual charges for the remaining period shall be recovered as already fixed by the school;

(d) The schools shall restrain themselves for the reasons, as mentioned above, from increasing the fee for the year 2020-21 and adopt the same fee structure as of 2019- 20.

(e) Any parent not able to pay the school fee in the above terms may file their application alongwith necessary proof about their financial status, which shall be looked into by the school- authority and, after looking into it sympathetically, give concession or exempt the entire fee, as the case may be. In case the parent is still aggrieved,in any manner, with an adverse decision by the school on his application, he may approach the Regulatory Body, so constituted under Section 7 of the Punjab Regulation

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of fee of Un-aided Educational Institutions Act, 2016. No parent shall misuse the concession by laying a false claim.

(f) Section 7 of the Punjab Regulation of fee of Un-aided Educational Institutions Act, 2016 is already in place for looking into the complaints of the parents or guardians with regard to charging of any excessive fee or to do any other activity with the motive to give financial benefit or profit. The parents are at liberty to take recourse to the same and, therefore, no specific direction is required to be given by this Court separately;

(g) In case any school is facing a financial crunch for not having charged the increased fee for the year 2020-21, may move a representation to the District Education Officer alongwith its proof of the same, who shall look into it and pass appropriate orders within three weeks of the receipt of such an application. However, this may be exercised only in a very hard case where the school is facing financial crunch and has no reserved resources to meet the expenses.

(h) It is clarified that there is no modification in the direction Nos.(ii), (iii) and (v) of the impugned order dated 14.05.2020.

(i) There is also no modification in the direction No.(iv) of the order dated 14.05.2020 that no child will be

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deprived of attending the schools and online classes. However, the same is subject to the parent of such a child moving an application in terms of direction (e) above of this order and final decision on the said application.

Disposed of in the above terms.

As the main case stands decided, the miscellaneous application(s) for modification is also rendered infructuous and disposed of accordingly.

June 30, 2020 **(NIRMALJIT KAUR)**
meenuss **JUDGE**

1. Whether speaking/reasoned ? Yes/No
2. Whether reportable ? Yes/No

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