

MEMORANDUM OF WRIT PETITION

Under Article 226 of the Constitution of India
IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

W.P.No.8491/2020

All India Private Educational Institutions Association
Represented by its. State General Secretary K.Palaniyappan
No.5, M.P.Avenue,
Majestic Colony,
Saligramam,
Chennai - 600 093.

.... Petitioner

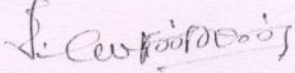
-Vs-

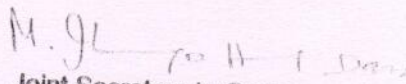
1. The Chief Secretary to Government,
The office of Revenue and Disaster Management Department
Disaster Management Wing, DM II Section,
Fort St.George,
Chennai- 600 009.
2. The Secretary
Collegiate Education Department,
Fort St. George, Chennai - 600 009.
3. The Secretary,
School Education Department,
Fort St. George, Chennai - 600 009.
4. The Director,
The Directorate of School Education,
DPI Campus,
Chennai.
5. The Director,
The Directorate of Matriculation Education,
DPI Campus,
Chennai.
6. The Director,
The Directorate of Elementary Education,
DPI Campus,
Chennai.

... Respondents

Page No. : 1

No. of Corns.:


Deputy Secretary to Government,
Higher Education Department,
Secretariat,
Chennai-600 009.


Joint Secretary to Government
Higher Education Department

COUNTER AFFIDAVIT FILED BY THE SECOND RESPONDENT

I, M. Ilango Henry Dass S/o S. Marianantham, aged about 55 years, working as Joint Secretary to Government, Higher Education Department do hereby solemnly affirm and sincerely state as follows:

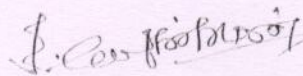
1. I am the Joint Secretary, Higher Education Department and as such I am well acquainted with the facts of the case from the records. On behalf of the 2nd respondent and on behalf of others I have been authorized to file counter affidavit. I have read the affidavit filed by the Petitioner and I deny all the averments made therein except those that are specifically admitted herein.

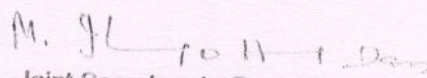
2. It is submitted that the petitioners herein have filed this Writ Petition before the Hon'ble High Court of Madras, Chennai and have challenged the G.O.(Ms).No.199, Revenue and Disaster Management Department, dated.20.4.2020 and prayed to quash the same as Ultra Vires, illegal and consequently direct the respondents to permit the petitioner association affiliated institutions to collect the fees fixed by Fee Fixation Committee taking into consideration the expenses incurred by the Educational Institutions towards the payment of salary to teaching and non-teaching staff, contribution to employees provident fund along with other charges, bills, fees payable by the institutions.

3. It is submitted that Disaster Management Act, 2005 has been invoked by the State Government and the department has passed the impugned G.O. which directs that all Private Colleges and Schools in the State not to compel Students or Parents to pay the fee for the next academic year 2020-2021 or pending dues for the academic year 2019-2020 or levy any penalty for any delay during this lockdown period under Disaster Management Act, 2005. In this connection, I am to point out that COVID 19 has been declared as Disaster under the relevant acts of the State and Central Governments. Under this act the State Government is empowered to take measures for the welfare of the general public. Hence the contention of the petitioners that the impugned G.O. is ultra vires cannot be sustained.

Page No. : 2

No. of Corns.:


Joint Secretary to Government
Higher Education Department
Secretariat,
Chennai-600 009


Joint Secretary to Government
Higher Education Department

4. It is submitted that Section 18 of the Disaster Management Act, 2005 empowers the State Authority as follows :

“(g) to review the development plans of the different departments of the State and ensure that prevention and mitigation measures are integrated therein ;

(h) to review the measures being taken for mitigation, capacity building and preparedness by the departments of the Government of the State and issue such guidelines as may be necessary.”

5. It is submitted that in the impugned G.O. it has been mentioned that it is brought to the notice of the Government that some of the private colleges / schools demanding fee from parents during this period of lockdown. Hence, the Government after careful consideration direct that all the private colleges / schools in the state not to compel students or parents to pay the fee for the next academic year 2020-21 or the pending dues for the academic year 2019-20 or levy any penalty for any delay, during this lockdown period, under Disaster Management Act, 2005.

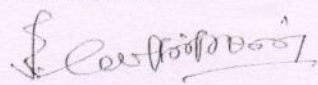
6. It is humbly submitted that the even-semester examination in all Engineering, Polytechnic and Arts & Science Colleges could not be conducted till date due to lockdown. The decision regarding the conduct of examination is yet to be decided by the Government. Also, the reopening day for the 2nd, 3rd year students of Arts & Science, Polytechnic and 4th year students as well as in respect of Engineering Colleges is yet to be decided due to COVID-19 lockdown. Hence, the collection of fees at this juncture does not arise.

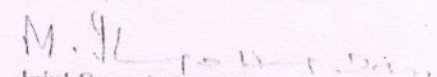
7. It is submitted that the Government has the prerogative to invoke the powers vested with it and pass such orders as it deems fit for the welfare of the general public including students. It is further submitted that COVID 19 has brought an unprecedented situation where all the parents of the students could not pay the fees to the colleges where their children are studying due to various constraints. Hence the impugned order has been passed taking into consideration the real plight of the general public.

8. It is further submitted that colleges may have their own reserve funds accumulated by way of fee collection in the previous years. They have to

Page No. : 3

No. of Cords.:


Secretary to Government
Higher Education Department
Secretariat,
Chennai-600 009.


Joint Secretary to Government
Higher Education Department

utilize the accumulated reserve funds for payment of salary to the teaching and non-teaching staff etc. Hence the argument that the management lack funds cannot be accepted.

9. It is humbly submitted that in compliance to the Hon'ble High court directions the President, All India Private Educational Institutions Association in his petition dated 30.06.2020 has submitted the following proposal for consideration.

(i) For the current academic year tuition fees can be collected in three equal installment in the month of August 2020, December 2020 and April 2021.

(ii) Last year pending tuition fees can be collected without causing any hardship to the parents.

10. It is further submitted that, the Government has examined the above proposal carefully and has decided to accept to permit Self financing Colleges to collect the fees as fixed by Fee Fixation Committee in three equal installments in the month of August 2020, December 2020 and April 2021.

In the above circumstances, it is humbly prayed that this Hon'ble Court may be pleased to pass such orders as deemed fit in the above Writ Petition and thus render justice.

Solemnly affirmed at Madras on

this the day of July 2020

and signed his name in my presence

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No. of Cors.::

M. J. ...
Joint Secretary to Government
Higher Education Department

BEFORE ME
J. ...
Deputy Secretary to Government
Higher Education Department
Secretariat,
Chennai

DISTRICT

HIGH COURT, MADRAS

W.P.NO. 8491 of 2020

COUNTER – AFFIDAVIT

SPECIAL GOVERNMENT
PLEADER
