

स्वयंसेवी शिक्षण संस्था संघ, राजस्थान

PROVINCIAL ASSOCIATION OF PRIVATE EDUCATIONAL INSTITUTIONS

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क्रमांक : स.से.शि.सं.सं.रा./

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दिनांक : 20.01.2016.....

To

The Chief Secretary,
Government of Rajasthan,
JAIPUR.

Sub.: Fee Regulation of Unaided Private Schools.

Respected Sir,

Swayamsevi Shikshan Sanstha Sangh, Rajasthan submits its objection as under on the proposed Rajasthan Education Institutions (Regulation of Fee) Bill, 2016:

1. Through the bill, a Parents-Teachers Association is being thrust which will be an interference in the day to day working of the Private Unaided Schools and specially when it is clothed with an authority to approve / modify / determine the fee of the school afresh. The Parents-Teachers Association was conceptualized in United State and other countries with the motive of Parents' participation in the development and solving of problem(s) of the Public (government) Schools. But in India and specially in recent years, Parents-Teachers Association has become an instrument to disturb tranquility of private unaided schools and dictate its terms on the administration and management of the schools.

A School Level Fee Committee is proposed in the draft bill consisting of 10 members out of which 5 parents and 3 teachers will be from the Parents-Teachers association and only the Chairman of the School Managing Committee and the Principal of the school are proposed to be the members of the School Level Fee Committee. Thus in the Committee, the management will have only one out of ten members. It will result in statutory transfer of the right to determine the fee to parents and teachers. Whereas the management alone has a right to establish and administer the unaided private educational institution.

The Hon'ble Supreme Court in the matter of T.M.A. Pai foundation 2002 (8) SCC 481 has held "54. The fixing a rigid-fee structure, dictating the formation and composition of governing body, compulsory nomination of teachers and staff for appointment all nominating students for admission would be unacceptable restrictions."

It is proposed in the bill that "On the formation of the School Level Fee Committee, the management of the school shall submit the details of the proposed fee along with the relevant record to the School Level Fee Committee for its approval at least six month before the commencement of the next academic year while giving the approval the School Level Fee

Committee shall have the authority to decide the amount of fee afresh." The said proposal has reduced the authority of the management to the proposer and parents and teachers have been clothed with the authority to approve or decide the amount of fee afresh. This provision is not acceptable in the eyes of law

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being violative of fundamental right under Article 19(1)(g) . The similar kind of provision was provided by the Delhi state through its order dated 11-02-2009 which was challenged before the Hon'ble Delhi High Court and Hon'ble Delhi High Court struck down the same and held "65. At this stage, we would like to examine some other clauses of the orders dated 11-02-2009, validity whereof have been challenged by the schools. Notification dated 11-02-2009 while allowing the increase in existing fee as specified therein also restrains the private schools from increasing fee without seeking approval of PTA (see clause-3). To our mind, this clause is clearly illegal and is not supported by any statutory or legal provisions. On the contrary, when as per Section 17(3) of the Act even the permission of the DoE is not required, asking the schools to be at the mercy of PTAs for making further increase would clearly be contrary to the said provision. We, thus, hold that this clause is not valid.

2. It is proposed in the draft of the bill that school may increase the fee after two years on the basis of the proportional increase in CPI (issued by Govt. of India). CPI is neither per se nor in all circumstances a normatively relevant or even an approximate empirical index for determination of fee of a school. There are random circumstances, occasionally are often outside the CPI matrix may necessitate an increase in the salary and emoluments of staff and other establishment / operational expenses and hence the restriction is unreasonable and unlawful. Hon'ble Rajasthan High Court has stayed the implementation of orders of the Fee Determination Committee determining the fee on the basis of CPI.
3. It is also provided in the draft bill that "If the difference between the fee decided by the management and the fees approved by the School Level Fee Committee is not more than fifteen per cent., then the fees communicated by the School Level Fee Committee under sub-section (3) shall be binding on the management and if the difference is more than fifteen per cent then management may prefer an appeal to the divisional fee regulatory committee within a period of thirty days from the date of such communication under sub-section (3) in such manner as may be prescribed."

This provision will provide an opportunity for a play of foul game by the Parents-Teachers by keeping the difference less than 15% so that the fee approved by it become binding on the management.

4. A few factors which shall be considered while deciding the fee leviable by a school are enumerated in the draft of the bill.

Surprisingly an important factor i.e. the reasonable surplus required for the growth and development of the private school has not being included, whereas the Hon'ble Supreme Court in all the relevant decisions has recognized the need of a reasonable surplus for the development and growth of the institution.

But, the expenditure on the salary of teaching and non-teaching staff has been restricted to the salary of qualified teaching and non-teaching staff as per the norms and their salary components. It is an undisputed fact that due to non availability of qualified (B.Ed.) teachers in remote areas, the schools are hav-

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ing non-B.Ed. teachers but giving better education and excellent output. The law of the state gives autonomy to the schools to mutually decide the salary to be paid to the teachers. If the provision is read in strict sense, schools giving much higher salary than the salary of government teachers will possibly be not considered while approving the fee.

The factors mentioned in the draft of the bill are not in tune with the law laid down by the Hon'ble Supreme Court.

5. It is provided in the draft bill that the Divisional Fee Regulatory Fee Committee may authorized an officer not blow the rank of the Head Master of secondary school to make search, inspect and seize any record all documents etc. When the Divisional Fee Regulatory Committee will have power of a civil court under the Code of Civil Procedure 1908, this additional power to delegate power for search and seizer is unjust and unlawful. It is likely to be misused to harass the management.

6. A provision of penalty has been carved in the draft of the bill under which a fine not less than one lakh rupees which may be extend to five lakh rupees. This provision is too harsh and unguided.

From a bare reading of the draft bill it appears that the proposed bill has drafted without considering the conditions prevailing in our State. It appears that only the word "Maharastra" has been replaced by "Rajasthan". The pain to examine the provisions in the light of the facts and circumstances of the state has been conveniently avoided. To illustrate, "aided school" has been included in the

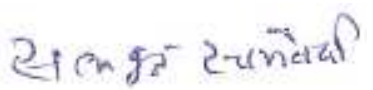
proposed bill, whereas there is no aided school in the state of Rajasthan. Pre-primary school has also been proposed to be covered under the bill. Pre-primary schools are neither recognized by the state nor are covered by Rajasthan Non Government Educational Institutions Act and Rules as these being non-formal education provider, whereas in the state of Maharastra the same are govern by their local law.

Recently, the State of Delhi has passed legislation in the matter of fee charged by private schools. A copy of the same is attached herewith your kind perusal. The Delhi Act provides for right of fee determination with the private unaided schools and right to entertain, examine and pass an appropriate order in case of a complaint by minimum specified number of parents. The similar type of provision has been introduced by the state of Haryana in their existing Act. An administrative order has been issued by the state of Madhya Pradesh on the similar lines.

The Maharastra Act is under challenge before the Hon'ble Bombay High Court and the Bombay High Court has granted stay.

It is requested that while proceeding for any kind of legislation, the state should keep the number of private schools, variation of infrastructure, facilities and faculty, and fee amongst private schools. The law of the land as pronounced by the Hon'ble Supreme Court should also be kept in mind.

Thanking you,


(SATYAVRAT SAMVEDI)
President


(KISHAN MITTAL)
Secretary