
SCHOOL FEE HIKE DURING COVID-19: Justified or not?

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ABSTRACT

The pandemic of COVID-19 had an impact not only on economic activities but also on education. While the nationwide lockdown was imposed in March 2020 to prevent the spread of infections resulting in the closure of educational institutes, many of them quickly adapted to online classes within months. During the crisis, parents of school-aged children dealt with the issue of increased fees by private institutes. The collection of tuition fees by private schools became a national concern. Parents from different parts of the country petitioned the Supreme Court for a moratorium or deferral on school fee payments while the lockdown was in effect. The Supreme Court rejected the petition, stating that these issues should be handled by the respective High Courts because the challenges faced in each state may differ. As a result, a slew of lawsuits was filed in High Courts across the country. Various state governments have issued orders/regulations /notifications/ circulars defining the permissible limits on school fees charged by private schools during the pandemic. In May 2021, the Supreme Court issued a ruling that provided some relief to students and parents by ordering a minimum 15% reduction in school fees.

Keywords: covid-19, fee-hike, schools

I. INTRODUCTION

The constitutional permissibility of the role of state governments in determining the fee charged by private schools has been a source of much debate. As a result, the parents contacted Prime Minister Narendra Modi and the Ministry of Human Resource Development (MHRD) via social media, open letters, and online petitions, pleading with them to resolve the issue. The parents' petition also requested that the federal and state governments direct aided and unaided private schools to charge only proportionate fees. Various High Courts across the country have been confronted with the issue of determining the amount of school fees that can reasonably

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be collected during the pandemic. Parents and students were concerned about their financial situation. Unfortunately, today, not having a basic education can harm one's career path. As a result, many parents choose to take the risk and go into debt. While those high fees may provide a cosier and more prestigious place to live, the rising cost is not always a good thing. The Delhi government told the Delhi High Court that it was "improper and harsh" for schools to run on commercial lines to recover fees when many children lost one or both parents during COVID-19 and became jobless because of the lockdown. Delhi government said that these institutions are expected to provide maximum support in education so that as many students as possible have access to education by providing a convenient financial environment.² Furthermore, the Uttar Pradesh government instructed schools not to raise fees for the academic year 2021-22 and stated that if any school has charged a higher fee for the new session, the additional amount will be adjusted in the coming months.

II. DECISIONS OF THE COURT

*i. Independent Schools' Association Chandigarh & Ors v. State of Punjab & Ors*³

On June 30, 2020, the Punjab & Haryana High Court held that regardless of whether schools offered online classes during the COVID-19 lockdown period or not, they are entitled to collect the tuition fee. The HC observed that to maintain the balance and ensure that neither party suffers, it would be appropriate for the school administration to calculate only the actual expenditure incurred under the 'Annual Charges' for the period the school remained closed due to lockdown, including the summer period, and recover only such genuine expenditure incurred by it, and not recover any charges for this period for any co-curricular activity for which no expenditure was incurred. The Court has consciously observed 'for the period the school remained closed including the summer period' because the expenditure is the same whether the school was closed due to lockdown or summer vacations.

In its judgement, it added that any parent who is unable to pay the school fee may apply with the necessary proof of their financial situation, which will be reviewed by the school authority, who will either give a concession or exempt the entire fee, depending on the circumstances. If the parent is still dissatisfied with the school's decision on his application, he may appeal to the

² Rai Vinay Kumar, *No break amidst pandemic! 63% parents say schools increased fees this year*, Business Today, (Jul 07, 2021, 3:20PM), <https://www.businesstoday.in/education/story/no-break-amidst-pandemic-63-parents-say-schools-increased-fees-this-year-300701-2021-07-07>.

³ 2020 SCC Online P&H 847; (2020) 3 RCR (Civil) 51; PLR (2020) 199 P&H 222

Regulatory Body, which is established under Section 7 of the Punjab Regulation of Fee of Unaided Educational Institutions Act, 2016. No parent shall take advantage of the concession by filing a false claim. It also said that if a school is experiencing financial difficulties as a result of failing to charge the increased fee for the school year 2020-21, it may make a representation to the District Education Officer, who will investigate and issue appropriate orders within three weeks of receiving such an application. However, this should only be used in extreme circumstances, such as when the school is facing a financial crisis and has no reserves to cover the expenses.

But both the Punjab and Haryana governments then appealed the decision made by two separate single benches. The case came before the High Court after the two state governments issued separate orders restricting private schools' ability to collect fees. In the case of Punjab, the bench allowed schools to collect other fees during the lockdown period but barred them from raising fees for the current academic session (2020-21) and ordered them to use the same fee structure as the previous year.

The Haryana government issued a notification prohibiting private schools from collecting increased fees and other funds from students during the lockdown period. In the aftermath of the Covid-19 situation, the government also instructed schools to only collect monthly tuition fees from those who are capable of paying, and not to collect other charges such as building funds, maintenance funds, admission charges, and computer charges. The Punjab and Haryana High Court set aside its previous order and ruled on October 2, that private schools in Punjab and Haryana can only charge tuition if they provide online classes regularly during the lockdown period. The court also ordered the school administration to file the balance sheets for the previous seven months within two weeks. "We direct that tuition fee would be charged only if the students are offered online classes on a day-to-day basis during lockdown period," a division bench of Justices Rajiv Sharma and Harinder Singh Sidhu said in the order.³

ii. Action Committee unaided v. Directorate of Education (DOE)⁴

The Delhi High Court quashed two orders issued by the Delhi Government on the 18th of April and the 28th August 2020 prohibiting private schools from collecting annual charges and development fees from students. According to the single judge, the Delhi government does not

⁴ 2021 SCC Online del 2744

have the authority to postpone the collection of annual charges and development fees by private unaided schools indefinitely because it would unreasonably restrict their operations.⁵

The case raises the legal question of whether the DOE has the authority to set fees for unaided educational institutions and to monitor them if they have reason to believe that the schools are charging excessive fees to students' parents. The court came to a conclusion and validated the DOE's act, while also taking into account the needs of the schools to cover expenses, and came up with a solution that helped both the parents and the school organisation by allowing them to charge a fee in six-month instalments and with a 15 per cent deduction from the total fee to be paid, thus assisting both the parents and the school organisation.

The Single-Judge bench held that:

- a. The appellants (school management of the concerned private unaided school) are required to collect annual school fees from their students following the Act of 2016, but with a 15% deduction in lieu of unutilized facilities by the students during the relevant period of the academic year 2020-21.
- b. No student shall be barred from receiving an education because he or she is unable to attend physical or online classes due to non-payment of fees, or fees pending/due, including the instalments mentioned above, and as a result, the results of the exams held shall be announced for all students, leaving no student behind due to non-payment of fees or any other reason.
- c. The school authorities should act in accordance with the circumstances and be sympathetic to any student/parent who submits a request for assistance in paying the annual school fee for the academic year 2020-2021.
- d. The appellants are free to decide whether they can provide more concessions or if they want to provide a different pattern to the students/parents, not regarding the above mentioned as in addition to what has been mentioned in the decision.⁶

⁵ Nupur Thapliyal, *Delhi High Court Quashes Govt Orders Preventing Pvt Unaided Schools From Collecting Annual Charges, Development Fees During Lockdown*, Live Law, (May 31, 2021, 5:39PM), <https://www.livelaw.in/news-updates/delhi-high-court-quashes-delhi-govt-orders-preventing-private-unaided-schools-from-collecting-annual-charges-development-fees-during-lockdown-174961>.

⁶ Arjun Singhal, *Action Committee Unaided Recognized Private Schools vs. Directorate of Education, Ipleaders*, (Jul 11, 2021), <https://blog.ipleaders.in/action-committee-unaided-recognized-private-schools-vs-directorate-education/>.

The decision of the single-judge bench dismissing the appeal was upheld by the division bench of Justice Rekha Palli and Justice Amit Bansal.

iii. Gandhi Sewa Sadan Rajsmand v. State of Rajasthan⁷

In the aftermath of the COVID-19 pandemic, the Director of Secondary Education in Rajasthan issued an order on April 9, 2020, directing private schools recognised by the Primary and Secondary Education Departments to postpone the collection of school fees for three months. On October 28, 2020, the Director of Secondary Education in Rajasthan issued an order stating that schools that were/are providing online instruction can charge students capacity-building fees equal to 60% of the tuition fees. The Supreme Court noted that the Director of Secondary Education lacked any authority to issue directives regarding the fee structure established under the Rajasthan Schools (Regulation of Fee) Act, 2016, including a reduction in the fee structure for the academic year 2020-21 in private unaided schools. This does not, however, give the School Administration permission to be rigid and insensitive in the aftermath of a pandemic.

As a result, in a major victory for private schools in Rajasthan on 9 February 2021, a bench of Justices AM Khanwilkar and Dinesh Maheshwari has ordered school management to collect fees for the academic years 2019-2020 and 2020-2021 from students in six monthly instalments beginning March 5, 2021, equivalent to the amount of the fee notified for the academic year 2019-2020. However, the Court stated that if parents have any difficulties, they can "approach the school authorities, who will consider individual cases and deal with them sympathetically."⁸

But, the matter was not settled here. It was taken up for hearing again on 15 February 2021. The Apex Court explained that, under the law, the school administration cannot be held liable for collecting fees for activities and facilities that are not provided to or utilised by its students due to circumstances beyond their control. Demanding fees for such activities, even for overheads, would be nothing short of profiteering and commercialization. Furthermore, during the academic year 2020-21, schools were not allowed to open for a significant period due to a complete lockdown. As a result, the school's management must have saved money on overhead

⁷ 2021 SCC Online SC 70

⁸ Prachi Bhardwaj, *As Supreme Court allows Rajasthan Schools to collect fees for the academic years 2019-2020 and 2020-2021, read what's in it for the students and parents*, SCC Online Blog, (Feb 09, 2021), <https://www.sconline.com/blog/post/2021/02/09/as-supreme-court-allows-rajasthan-schools-to-collect-fees-for-the-academic-years-2019-2020-and-2020-2021-read-whats-in-it-for-the-students-and-parents/>.

and recurring costs such as gasoline/diesel, electricity, maintenance, water charges, and stationery.

Therefore, The Supreme Court of India allowed private schools in Rajasthan to collect 85 per cent of their fees for 2020-21 in May 2021. Because of the unused facilities by students in 2020-21, a 15% deduction was granted. Schools cannot profit from underutilised facilities.⁹

iv. Association of India Schools v. State of Karnataka and ors (16 September 2021)

The High Court issued a notice in response to a petition asking the state government to allow the collection of half of the school fees. "... Private Institutions are mandated to pay the salaries of the teachers following the rules, whereas Institutions are not allowed to charge the fees simultaneously," according to the petition. On January 29, 2021, the government issued an order requiring all schools to collect 70% of the fees as was collected the previous academic year. Later that year in September, the Karnataka High Court modified the Government order dated 19.01.2021, inter alia prohibiting educational institutions from collecting fees above 70% of tuition fees for the academic year 2020-2021. It allowed the fees for private schools to be waived by 15% in 2020-21.

v. Atul Dattatray Bhatkhalkar v State of Maharashtra (7 July 2021)

The court was hearing a petition filed by BJP MLA Atul Bhatkhalkar, who expressed concern about students being denied access to online schools due to non-payment of fees. "Demanding fees in respect of overheads on such activities (which students cannot access) is nothing short of profiteering and commercialization," the petition stated. Without providing such a facility to the students during the relevant period, the school's overhead and operations costs would be nothing more than an amount unjustly earned by the school." The Bombay High Court stated that schools in Maharashtra should try to resolve fee-related issues with parents amicably rather than barring students from taking online classes and turning the situation into a legal battle. The petition requested that schools be ordered to reduce their fees by 50%.¹⁰

⁹ Prachi Bhardwaj, *COVID-19| Schools can't profit from unutilised facilities; Rajasthan Schools to provide 15% deduction of annual fees for academic year 2020-21: Supreme Court*, SCC Online blog, (May 05, 2021), <https://www.scconline.com/blog/post/2021/05/05/covid-19-schools-cant-profit-from-unutilised-facilities-rajasthan-schools-to-provide-15-deduction-of-annual-fees-for-academic-year-2020-21-supreme-court/>.

¹⁰ PTI, *Amicably settle fee issue with parents instead of turning it into legal battle: Bombay HC to schools*, The New Indian Express, (Jul 08, 2021, 5:39PM), <https://www.newindianexpress.com/nation/2021/jul/08/amicably-settle-fee-issue-with-parents-instead-of-turning-it-into-legal-battle-bombayhc-to-schools-2327334.html>.

III. SOME OTHER HC ORDERS

1. The Gujarat government issued a circular in 2020 prohibiting the collection of tuition fees during COVID-19. The Gujarat High Court quashed the circular and ordered the state government to consult with representatives from unaided private schools in order to reach an agreement. When the parties' negotiations fell through, the Court declined to intervene, stating that the government has the authority to make its own decisions under the Disaster Management Act and the Epidemic Diseases Act, both of which are in effect due to the pandemic. Finally, the State Education Department issued a notice allowing for a 25% reduction in school fees and prohibiting the collection of miscellaneous fees such as activity fees, transportation charges, and so on. Parents were also urged to pay any outstanding fees from the previous academic year, as well as half of the fees for the next two quarters, by the end of October 2020.
2. Although students are only required to pay 80% of the fees, some schools in West Bengal continue to demand 100% payment. The Calcutta High Court refused to grant any further concessions but did give parents a longer time to pay the fees. It was also emphasised that students who have not paid their fees should not be subjected to coercion.
3. In a case before it, the Kerala High Court issued a similar order not to expel students for non-payment of fees. In December 2020, the Kerala government issued a directive requiring all schools in the state not to charge fees in excess of expenditure. A school charging an exorbitant "celebration and miscellaneous fee" during the pandemic prompted this decision. The Kerala State Commission for the Protection of Child Rights' full bench has asked schools to allow a 25% reduction in the current fee. This applied to both CBSE and ICSE schools.

IV. CONCLUSION

Education is one of the few aspects of India's development project that appears to have had some recent success. Enrolment in school and higher education has increased significantly, and the gender gap in enrolment has narrowed up to secondary education. However, the results of the NSSO's 75th Round survey of "Household Social Consumption of Education in India," which was conducted between July 2017 and June 2018, are alarming. Essentially, this expansion of education has increased the financial burden on households, resulting in a situation where even school education has high costs for families.

The Concurrent List of the Constitution's Seventh Schedule includes the subject of 'Education.' This means that both the state and the federal government have jurisdiction over matters relating to education. In light of recent fee increases by several private unaided schools, it was worth considering whether schools can raise fees at will and what parents of school-aged children can do about it. The rising cost of attending school is one of the most pressing issues affecting education access today. Dramatic increases in tuition and fees, reduced state education budgets, and increased demand for institutional accountability are all symptoms of the trend. Increases in tuition fees are a major issue, particularly for families whose incomes cannot keep up. It has the potential to restrict access and lifetime opportunities for aspiring college students, particularly low-income students, putting India's future in the global, knowledge-based economy in jeopardy. A fee increase should be used to improve the quality of education rather than profiteering, implying that these organisations have lost sight of their primary goal of providing education. The central mission of public higher education in this country is to educate and prepare young adults to enter the workforce as productive members of society, contribute to national and regional economic competitiveness, strengthen our communities and nation as educated and caring citizens, and live enriching lives.

Along the lines of the above cases and orders passed by different High Courts and State Governments, it is clear that the Supreme Court left it to the respective state's High Courts to decide the fee matter because the conditions and circumstances differ from state to state. It is only in extreme need that the Supreme Court interfered to make a decision. Most petitioners' petitions to the courts share a common theme: there should be no collection of fees for facilities that are left unoccupied by students during school closures. Development fees, annual fees, celebration fees, travel fees, laboratory fees, sports fees, extracurricular fees, and so on are examples.

The measures taken by Apex Courts and other state HCs are commendable, as they have proven to be very effective in stabilising the nation's capricious status quo. As COVID-19 spreads, both the judiciary and the general public should be vigilant in ensuring that the above-mentioned guidelines and orders are followed. Furthermore, to take opposite actions in a judicious manner to achieve such compliance. It would not be wrong to say that the above-mentioned measures not only instil the faith of the public but also set an example of how our judiciary is improving and not neglecting the interests and voice of the citizens.
