

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 6776 of 2022****With****CIVIL APPLICATION (FOR JOINING PARTY) NO. 1 of 2022****In R/SPECIAL CIVIL APPLICATION NO. 6776 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

=====

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

=====

FEDERATION OF SELF-FINANCED SCHOOLS, STATE OF GUJARAT**Versus****THE COLLECTOR AND DISTRICT MAGISTRATE, SURAT**

=====

Appearance:**MS DISHA N NANAVATY(2957) for the Petitioner(s) No. 1****for the Respondent(s) No. 1****MR HS MUNSHAW(495) for the Respondent(s) No. 2****MR. ALKESH N SHAH(3749) for the Respondent(s) No. 3****MS KRUSHITA DAVE, AGP for the Respondent(s) No. 1**

=====

CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA**Date : 16/02/2023****ORAL JUDGMENT**

1. Heard learned advocate Mr.Mitul Shelat for learned advocate Ms.Disha N. Nanavati for the petitioner, learned Assistant Government Pleader Ms. Krushita Dave for the respondent no.1, learned advocate Mr.H.S.Munshaw for respondent no.2 and learned advocate Mr.Alkesh Shah for respondent no.3.
2. Rule returnable forthwith. Learned advocates for respective respondents waive service of notice of Rule.
3. Having regard to the controversy in narrow compass, with the consent of learned advocates appearing for the respective parties, the matter is taken up for hearing.
4. By this petition under Article 226 of the Constitution of India, the petitioner has prayed for following reliefs:

"(A) This Hon'ble Court be pleased to issue a writ of mandamus or a writ, order or direction in nature of mandamus and be pleased to quash

and set aside the communications dated 31.03.2022 issued by Respondent No.1 and Respondent No.2

(B) Pending admission and final hearing of the present petition, the Hon'ble Court be pleased to stay the operation, implementation and execution of the impugned communications dated 31.03.2022 issued by Respondent no. 1 and Respondent no. 2;

(C) This Hon'ble Court be pleased to grant any other and further orders as may be deemed fit in the interest of justice."

5. Brief facts of the case are that the petitioner is an Association of Self Finance Schools imparting education in the State of Gujarat. Its members have schools in different districts within the State of Gujarat. In the Surat City and District there are approximately 600 schools who are members of the petitioner association.

5.1 The petitioner has challenged communications dated 31.03.2022 issued by the respondent no.1-Collector and District Magistrate, Surat and respondent

no.2-District Primary Education Officer, Surat restricting the Self-Finance schools from taking any measure of not allowing any child to continue the education in the school for non-payment of fees.

5.2 The State of Gujarat has enacted the Gujarat Self-financed School (Regulation of Fees) Act, 2017 (for short "the Act, 2017"). As per the provisions of the Act, 2017 respective Fee Regulatory Committees have been appointed to fix the fees in respect of unaided schools in State of Gujarat.

5.3 For the year 2020-2021, the State of Gujarat issued a Government Resolution whereby a fees for the said period would be 25% less than what was fixed for the year 2019-2020 in view of the COVID-19 Pandemic prevailing in that year.

5.4 It is the case of the petitioner association that State of Gujarat passed a resolution applicable to self-financed

schools only and no other educational institution including the State Government administered and financed, self-financed colleges have been directed to provide concession and fees.

5.5 It is the case of the petitioner association that large number of parents are refusing to pay the fees prescribed by the Fee Regulatory Committee for their respective school members despite repeated reminders and notices addressed by the concerned school management and were insisting for continuation of education of their child in the school without payment of the fees.

5.6 As per the petitioner association, the unaided private schools are dependent upon the fees being paid by the parents for imparting education to the children admitted in the school and if they do not receive the fees and in absence of any aid of any nature from the State Government for imparting education to children. it would be difficult to run

the school. As the relationship between the school management and the parent is in the realm of contract and the obligation to pay the prescribed fees is to be discharged by the parents to enable the school to impart education to the child. Therefore, in the event of non-payment of fees, the school management would be entitled to discontinue the admission of the child.

5.7 It is the case of the petitioner that under Right To Education Act, 2009, the students who are admitted against the 25% seats reserved in terms of the said Act no relief is claimed against such students in this petition and the petition is not concerning the students who are admitted under the said Act and it is only in respect to the students regularly admitted in the schools whose parents cannot insist for their statutory right to impart the education in a private schools without payment of fees.

5.8 The respondent no.1-Collector Surat issued the communication dated 31.03.2022 addressed to all Trustees and Principals of self-financed schools whereby it is informed to the schools that school fees is a financial matter between the school authorities and parents and not students and therefore schools can take up the issue of non-payment of fees by parents before appropriate Court but until then no measure of not allowing the child to continue the education in the school should be taken. Respondent no.1-Collector has referred to and relied upon the Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short the 'Act,2015') and hearing which took place on 14.03.2022 before the National Commission for Protection of Child Rights (NCPCR).

5.9 On the basis of the communication dated 31.03.2022 addressed by the District Collector Surat, the respondent no.2-District Primary Education Officer addressed the communication dated

31.03.2022 restricting the self-financed schools not to take any measures of not allowing a child to continue education in the school for non-payment of the fees.

6. Being aggrieved by the aforesaid communications dated 31.03.2022 the petitioner has approached this Court. This Court passed the following order on 08.04.2022:

“1. Heard learned Senior Advocate Mr. Mihir Joshi with learned Advocate Ms. Mitul Shelat for learned Advocate Ms. Disha N Nanavaty for the petitioner and learned Assistant Government Pleader Mr. Dhawan Jayswal for the respondents.

2. Learned Senior Advocate Mr. Mihir Joshi prays for joining National Commission for Protection of Child Rights, 5th Floor, Chanderlok Building, 36 Janpath, New Delhi-0001 as respondent No. 3. Permission is granted.

3. Learned A.G.P. Mr. Jayswal submitted that that respondent No.

1-Collector and District Magistrate, Surat issued the impugned communication dated 31st March, 2022 on the basis of hearing which took place on 14th March, 2022 before the National Commission for Protection of Child Rights upon the complaint received from the parents that their children are being harassed by the respective schools for non payment of fees. It was submitted that as the NCPCR issued the summons upon the respondent No. 1-Collector and during the course of hearing on 14th March, 2022, the collector was directed to take necessary actions in the matter of complaint filed by the parents. The collector has issued the impugned communication dated 31st March, 2022 whereby the following directions are issued:

"Reports cases of harassment of school students for non payment of fees and discriminative behavior by the school authorities/principals/teachers is a grave concern. The Commission has been receiving numerous complaints from all over the country where children are being harassed by the schools. This is a gross violation of Section 75 of the

Juvenile Justice (Care & Protection of children) Act, 2015 of which the NCPCR is the monitoring authority. It may be mentioned that the school fee is a financial matter between the school authorities and the parents; therefore, it is to be dealt with the parents and not with the children. The NCPCR in its hearing dated 14th March, 2022 has clearly mentioned that the school can take up the issue of non payment of fees by parents with the appropriate court, but until then no measures such as not allowing the students to continue with their education in the school, threatening or segregating them in school, not allowing the access to school premises, material and online classes etc. shall be permitted. Without clear direction from a competent court, no school to do anything that will affect education of the child. Non compliance of this direction shall be considered a violation of section 13(1) of the Right to Education.

Therefore, all the private school authorities are to deal with fee related issues with the parents and not the students and prevent fee

related harassment amongst school students"

4. It was further submitted that pursuant to the issuance of the aforesaid directions by the Collector, the respondent No.2-District Education Officer has informed the District Primary Education Officer to implement aforesaid impugned order passed by the Collector.

5. Learned Senior Advocate Mr. Joshi submitted that merely reminder sent to the parents for non payment of fees cannot amount to offense under Section 75 of Juvenile Justice (Care and Protection of Children) Act, 2015. It was submitted that in view of the impugned order if any complaint is filed before the police, the police would immediately register an offense under Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

6. It was therefore pointed that the impugned order issued by the respondent No.1-Collector is without jurisdiction and authority of law.

7. Considering the issues raised in this petition , a query was put to learned A.G.P. Mr. Jayswal as to under which provision of law or rule such an order can be passed by the Collector and District Magistrate, Surat-Respondent No. 1. However the learned A.G.P. Mr. Jayswal only submitted that pursuant to the hearing which took place on 14th March, 2022 before the National Commission for Protection of Child Rights (for short 'NCPCR'). It was therefore submitted that merely issuing reminder for non payment of fees or taking any action for non payment of fees, by the respondents-schools, cannot be said to be cruelty to child as per provision of Section 75 of the Act, 2015.

8. The petitioner has therefore made out a very good prima facie case for granting ad interim relief as the respondent No.1-Collector has issued the impugned order prima facie without any jurisdiction or authority of law.

9. Issue Notice returnable to newly joined Respondent No.3-National

Commission for Protection of child Rights. The impugned order dated 13th March, 2022 issued by the respondent Nos. 1 & 2 the implementation and execution of the impugned order dated 13th March, 2022 are stayed till the next date of hearing.

Issue Notice returnable on 22nd April, 2022."

7. Learned advocate Mr. Shelat for the petitioner submitted that the effect of the impugned communication is that the parents would not be willing to pay the fees as prescribed and the school management would be constrained to continue the admission of the children which would impinge upon the ability of the school management to meet with the expenses incurred for imparting the education and render the administration and management of the school unviable.

7.1 It was submitted that the declaration made in the impugned communication would also occasion initiation of proceedings

in the nature of criminal cases against the school management in the event of discontinuation of admission of the children whose parents are not willing to pay the fees as prescribed by the Fee Regulatory Committee which would expose the school management to unprecedented criminal proceedings.

7.2 Learned advocate Mr. Shelat for the petitioner submitted that the impugned communications dated 31.03.2022 issued by Respondent No. 1 and Respondent No. 2 are without authority and jurisdiction in law.

7.3 It was submitted that the impugned communications are in violation of principles of natural justice. The communications are addressed to Trustees of Self-Financed Schools affecting their right to administer the school. It is submitted that no notice or opportunity of hearing is given before issuing the said communications.

7.4 It was submitted that the impugned communication addressed by the District Collector, Surat relies on the hearing dated 14.03.2022 of NCPCR however the copy of the said hearing order is not provided with the impugned communication. Upon checking the website of the NCPCR, the Petitioner is unable to locate any minutes of meeting dated 14.03.2022.

7.5 It was submitted that the impugned communications dated 31.03.2022 seeking to incriminate the right of the unaided school to discontinue admission of a child whose parents are refusing to pay the fees as prescribed by the Fee Regulatory Committee is beyond the scope and ambit of provisions of Juvenile Justice Act 2015.

7.6 It was submitted that the Juvenile Justice Act 2015 does not regulate the issues relating to payment of fees by the parents for admission of their children in an unaided school.

7.7 It was submitted that there is no Court which is specially empowered under the Juvenile Justice Act 2015 to adjudicate upon the issues arising out of non-payment of prescribed fees by the parents seeking admission of their children in unaided school.

7.8 It was submitted that it is within the competence of the unaided school to discontinue the admission of child whose parents are not willing to pay the fees prescribed by the Fee Regulatory Committee constituted by the State Government.

7.9 It was submitted that the question of non-payment of fees between the parents and school management is of contractual nature and there was no question of commission of any offence punishable under the Juvenile Justice Act, 2015.

7.10 It was submitted that decision of any school to discontinue education of the student on account of refusal of the

Parent to pay fees as fixed by the Fee Regulatory Committee does not come within the purview of Section 75 of the Juvenile Justice Act, 2015.

7.11 It was submitted that no parent and/or child has a statutory right to insist upon being continued admission in a school without payment of the prescribed fees. The admission of regular students in school is entirely in realm of private contract which is capable of unilateral cessation.

7.12 It was submitted that the impugned communications are even otherwise arbitrary, illegal and unconstitutional.

7.13 It was submitted that the respondent no.1 and 2 have no jurisdiction to issue such communication and as the same are without authority of law and are liable to be quashed and set aside.

7.14 Learned advocate Mr. Shelat for the petitioner would submit that unaided private schools are entitled to collect

the fees as fixed by the Fee Regulatory Committee and in event of non-payment of fees by the parents, the unaided schools are entitled to discontinue the education of the students and such discontinuation would not fall within the provisions of the Act, 2015 and more particularly Section 75 prescribing punishment for cruelty to children which is relied upon by the respondent no.1- Collector while issuing the impugned communication.

7.15 It was submitted that the impugned communications seek to incriminate the legitimate and lawful right of the unaided school to seek payment of fees and no school management would be able to take any action for non-payment of school fees by any parent.

7.16 It was submitted that the parents who are refusing to pay the fees are the parents whose children are granted regular admission and not admission under the Right To Education Act, 2009 and therefore the rights and obligation of

the school management and parents are regulated by general law of contract and no parent has right to insist that the child should continue to be imparted with education without payment of fees prescribed by the Fee Regulation Committee.

7.17 It was therefore submitted that the impugned communications are in violation of principles of natural justice affecting the right of the member schools of the petitioner Association to administer the schools as no notice or opportunity of hearing is given before issuing such communications by the respondents.

7.18 It was submitted that reliance placed on the hearing dated 14.03.2022 of the NCPCR by the respondent no.1-Collector in the impugned communication is without any basis as no copy of the said minutes of hearing or the order is provided with the impugned communication and upon checking the website of the NCPCR it was not possible to locate any minutes of the

meeting dated 14.03.2022.

7.19 It was submitted that the impugned communication dated 31.03.2022 is beyond the scope and ambit of the Juvenile Justice Act, 2015 inasmuch as Section 75 of the said Act provides for punishment for cruelty to child which cannot be equated for taking action by the school management to discontinue the education for nonpayment of the prescribed fees by the parents. It was further submitted that no Court will be specially empowered under the Juvenile Justice Act, 2015 to adjudicate upon the issue arising out of non-payment of prescribed fees by the parents seeking admission of the children in unaided schools as it is within the competence of the unaided school to discontinue the admission of the child whose parents are not willing to pay the fees prescribed by the Fee Regulatory Committee constituted by the State Government.

7.20 It was submitted that in view of the contractual nature of relationship

between the parents and the school management no offence punishable under Section 75 of the Juvenile Justice Act, 2015 would arise for non-payment of fees. It was therefore submitted that no parent or child have a statutory right either under the Juvenile Justice Act or Right To Education Act in case of regular admission of the child to insist upon being continued admission in an unaided school without payment of fees prescribed by the Fee Regulatory Committee.

8. On the other hand learned advocate Mr.Shah for the respondent no.3 submitted that the NCPCR is a statutory body constituted under Section 3 of the Commission for Protection of the Child Rights Act, 2005 (for short 'CPCR Act') and has been entrusted with the function of the protection and promotion of the child rights across the Country. Reliance was placed on Section 13 and 14 of the said Act to submit that appropriation action including making recommendation to the Government Authorities under Section 15 of

the said Act is with the NCPCR and in view of its powers and functions, the Commission works towards the best interest of the children and therefore the recommendation made by the Commission in any matter is obligatory to be followed by the competent authority as the Commission has been entrusted with the protection of child rights in the Country under the CPCR Act.

8.1 It was submitted that in addition to the functions and powers under the CPCR Act the Commission is also the monitoring authority under Section 31 of the Right of Children to Free and Compulsory Education Act, 2009 and under the provisions of the said Act respondent no.3 has powers to examine and review the safeguards for rights provided by or under the said Act and recommend measures for their effective implementation, inquire into complaints related to child rights for free and compulsory education and take other necessary steps to implement the Act.

8.2 It was submitted that the respondent no.3-Commission has received seven complaints against six different schools in Surat pertaining to the discriminatory behavior by School authorities Principals, Teachers and harassment of children and discontinuation of education by striking off their names from school rolls due to non-payment of school fees by parents, overcrowded school rickshaws, vans and buses for transportation of their children and unnecessary hike in school fees, hefty fees in the name of curriculum activities seeking advance fee by the school and on receipt of such complaints, Commission deems it appropriate to take cognizance under Section 13 of the CPC Act, 2005.

8.3 It was submitted that prior to COVID-19 situation in view of the adverse method used by the schools for ensuring payment of fees, the Commission has issued a letter dated 12.02.2018 to all the Chief Secretaries of the States requesting to issue directions to the private schools

authorities to deal with all the fees related issues with the parents only and not with the students to prevent the fee related harassments and suicidal deaths among the school children and during the COVID-19 situation various complaints involving fee related matters in the schools were received and therefore by letter dated 21.04.2020, of NCPCR addressed to the Secretaries of School Education Department of all the States reaffirmed the recommendation dated 12.02.2018. It was submitted that the letter dated 21.04.2020 it was also requested to the Secretaries, School Education Department of all the States to disseminate the information regarding the grievance redressal mechanism towards stake holders especially schools and parents through social media and other means used by the department so as to see the redressal of such matters at local level.

8.4 It was also submitted that the NCPCR has developed "Model Fee Regulatory Framework

for Unaided Private Schools” under the mandate given to it under section 13 of CPCR Act, 2005 to regulate the fee mechanism adopted by private schools and also to prevent them from imposing any exorbitant fee upon the students so as to provide preventive strategy against physical, mental and emotional harassment of children in school resulting from mutual dispute between school and parents and school related issues which includes appointment and enhanced role of the parent teacher association in the nature of school management committee as prescribed by the RTE for the Government Schools.

8.5 Reliance was also placed on the orders dated 07.06.2021 and 27.07.2021 and 09.05.2022 of the Hon’ble Supreme Court in case of RE:Care and protection of children due to COVID-19 for ensuring education to each child without any interruption during COVID-19-Pandemic and more particularly with the children who have become orphan or have lost parents

during the COVID-19, Pandemic since March 2020, to continue in the same school be it private or Government at least for the current Academic Year and to ensure that no such child is forced to leave the school in any manner. It was therefore submitted that direction issued by the Hon'ble Supreme Court in the order dated 09.05.2022 are required to be considered for the purpose of protection of the children.

8.6 On perusal of the affidavit filed on behalf of the respondent no.-3 however there is no reference to the impugned communication. It emerges that there is no reference to the impugned communication issued by the respondent no.1 and 2.

9. Learned advocate Mr.H.S.Munshaw for respondent no.2 submitted that the communication issued by the respondent no.2 is based upon the letter dated 31.03.2022 issued by the Collector Surat.

10. Learned AGP supported the impugned communications relying upon the averments made in the affidavit of filed on behalf of the respondent no.3 NCPCR as well as submissions made by the learned advocate Mr. Shah for the respondent no.3.

11. Having heard learned advocates for the respective parties and having considered the impugned communications dated 31.03.2022 it appears that the respondent no.1 has under misconception of the provisions of the CPC Act 2005 and RTE Act 2009 and the Juvenile Justice Act, 2015 has issued the impugned communication dated 31.03.2022 which reads as under:

*"Aaush OAK, IAS
Collector & District Magistrate,
Surat*

*Office of the Collector &
District Magistrate,
5th Floor, B. Block, Jilla
Seva Sadan-2,*

*Athwalines, Surat
No. 7709/2021-22
Date: 31/3/2022*

*To,
Trustees/Principals,
All Self Finance School,
Surat District,
Surat*

Subject: Reported complain of harassments to the students for non payment of fees.

Dears,

The National Commission for protection of Child Rights (NCPCR) has been constituted by the Government of India, as a statutory body under Section 3 of the Commissions for protection of Child Rights (CPCR) Act, 2005 (No. 4 of 2006) for dealing with the protection of child rights and related matters. Under section 13 (1) of the Commissions for Protection of Child rights (CPCR) Act, 2005, has provided certain functions to ensure the rights of children.

Reported cases of harassments of school students for non payment of fees and discriminative behavior by the school authorities/Principals/teachers is a grave concern. The Commission has been receiving numerous complaints from all over the country where children are being harassed by the schools. This is a gross violation of Section 75 of the Juvenile Justice (Care & Protection of Children) Act, 2015

of which the NCPCR is the monitoring authority.

It may be mentioned that the school fee is a financial matter between the school authorities and the parents; therefore, it is to be dealt with the parents and not with the children.

The NCPCR in its hearing dated 14th march, 2022 has clearly mentioned that the school can take up the issue of non payment of fees by parents with the appropriate court, but until then no measures such as not allowing the students to continue with their education in the school, threatening or segregating them in school, not allowing the access to school premises, material and online classes etc. shall be permitted. Without clear direction from a competent court, no school to do anything that will affect education of the child. Non compliance of this direction shall be considered a violation of section 13 (1) of the Right To Education.

Therefore, all the private school authorities are to deal with fee related issues with the parents and not the students and prevent fee related harassments amongst school students.

sd/-
(Aayush Oak)
Collector & District
Magistrate, Surat"

12. On bare perusal of the above communication followed by the communication of the same date issued by the respondent no.2-District Primary Education Officer addressed to the Taluka Primary Education Officer to report any harassment to the children on account of non-payment of fees to the unaided private school is concerned, neither the CPCR Act 2005 nor the provisions of the RTE Act 2009 or Section 75 of the Juvenile Justice Care Act, 2005 would be applicable. It would therefore be germane to refer to the relevant provisions of the Commissions for Protection of Child Rights Act, 2005 as under:

"13. Functions of Commission.-(1) The Commission shall perform all or any of the following functions, namely:-

(a) examine and review the safeguards provided by or under any law for the

time being in force for the protection of child rights and recommend measures for their effective implementation;

(b) present to the Central Government, annually and at such other intervals, as the Commission may deem fit, reports upon the working of those safeguards;

(c) inquire into violation of child rights and recommend initiation of proceedings in such cases;

(d) examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disaster, domestic violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures;

(e) look into the matters relating to children in need of special care and protection including children in distress, marginalized and disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures;

(f) study treaties and other international instruments and undertake periodical review of existing policies, programmes and other activities on child rights and make recommendations for their effective implementation in the best interest of children;

(g) undertake and promote research in the field of child rights;

(h) spread child rights literacy among various sections of the society and promote awareness of the safeguards available for protection of these rights through publications, the media, seminars and other available means;

(i) inspect or cause to be inspected any juvenile custodial home, or any other place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority, including any institution run by a social organisation; where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if

found necessary;

(j) inquire into complaints and take suo motu notice of matters relating to,— (i) deprivation and violation of child rights; (ii) non-implementation of laws providing for protection and development of children; (iii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children, or take up the issues arising out of such matters with appropriate authorities; and

(k) such other functions as it may consider necessary for the promotion of child rights and any other matter incidental to the above functions. (2) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

14. Powers relating to inquiries.—(1) The Commission shall, while inquiring into any matter referred to in clause (j) of sub-section (1) of section 13 have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 (5 of 1908) and, in

particular, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;*
- (b) discovery and production of any document;*
- (c) receiving evidence on affidavits;*
- (d) requisitioning any public record or copy thereof from any court or office; and*
- (e) issuing commissions for the examination of witnesses or documents.*

(2) The Commission shall have the power to forward any case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

15. Steps after inquiry.—The Commission may take any of the following steps upon the completion of an inquiry held under this Act, namely:—

(i) where the inquiry discloses, the Commission of violation of child rights of a serious nature or contravention of provisions of any law for the time being in force, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;

(ii) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

(iii) recommend to the concerned Government or authority for the grant of such interim relief to the victim or the members of his family as the Commission may consider necessary.

"75 Punishment for cruelty to child

Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term

which may extend to three years or with fine of one lakh rupees or with both:

Provided that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not wilful and the penal provisions of this section shall not apply in such cases:

Provided further that if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extend up to five lakhs rupees:

Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended up to ten years and shall also be liable to fine of five lakhs rupees."

13. On bare perusal of the above provisions, it appears that Section 75 of the Juvenile

Justice Act, 2005 prescribing punishment for cruelty to child would not apply if the parents do not pay the fees of their children as prescribed by the Fee Regulatory Committee and in view of the impugned communication /order, the School Management would be compelled to continue to impart education to such child who has been granted regular admission inspite of non-payment of regular fees by prescribed the Fee Regulatory Committee under the Act, 2017. None of the ingredients of Section 75 of the Juvenile Justice Act with regard to assault, abandonment, abuse, expose or neglect in any manner, likely to cause such child unnecessary mental or physical suffering can be said to be attracted to deny the education to child in the unaided private school for non-payment of the fees by the parent. Proviso to Section 75 would also not be applicable in such scenario as the parents who is unable to pay the fees of the child as prescribed by the Fee Regulatory Committee under the provision of the Act, 2017 is entitled to get the child admitted

in any Government School and cannot insist the unaided private school to impart education without payment of fees. There is no question of harassment by the schools to children for non-payment of fees or discriminatory behaviour because it is the duty of unaided private schools to impart education on receipt of the fees prescribed by the Fee Regulatory Committee. Therefore, reference to Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 by the respondent no.1 in the impugned communication dated 31.03.2022 is without any basis and contrary to very object of the said provision.

14. Similarly reference to the hearing dated 14.03.2022 by the NCPCR is also without any basis as no minutes of the said meeting is placed on record by the respondent no.1 and impugned communication/order prescribing taking up the measures for non-payment of fees by parents with the appropriate Court and till then the students should be continued

to take their education in the schools, is also without any support from any provision of any law and hence, the impugned order is without any authority of law inasmuch as none of the provisions of the CPCR Act, 2005 would entitle the respondent no.3-NCPCR to look into the matters relating to the non-payment of fees by the parents which may result in denial by the school to impart education to such students.

15. The functions of the respondent no.3-NCPCR under the provisions of the CPCR Act, 2005 would not include issuing general direction by the District Collector to all the unaided private schools to impart education to the children though the parents of such children refuse to pay the fee prescribed by the Fee Regulatory Committee. If the members of the petitioner Association cause any harassment or discriminatory treatment to the children who are admitted under Right To Education Act, 2009 then the District Collector would be justified

to protect such children, however, when the students are admitted in regular quota by the unaided private school then such students would be liable to pay the fees which may be prescribe by the Fee Regulatory Committee under the provisions of the Act, 2017.

16. The reference made by the respondent no.3 to the "Model Fee Regulatory Framework for Unaided Private Schools" is in form of the Act of 2017 in the State of Gujarat and therefore when the fees as prescribed by the Fee Regulatory Committee appointed under the Act, 2017 is charged by the schools, then the parents of such school would be bound to pay the fees to impart education to their children and if they have any grievance that can be always raised by making payment of the fees under protest but refusal to pay the fees to such unaided private schools would seriously affect the management of the unaided private schools to impart education to all other children who are regularly paying the fees.

17. The Hon'ble Supreme Court has issued the guidelines vide order dated 09.05.2022 for the children who have lost their parents in COVID-19-Pandemic to be covered under the provision of Section 12(1) of the Right of Children to Free and Compulsory Education Act, 2009 has been take care of to implement the suggestions made by the NCPCR in SOP dated 25.06.2021 for protection of such children affected by COVID-19-Pandemic. However, such guidelines and the observations made by the Hon'ble Apex Court is in relation to the children who are affected by the COVID-19-Pandemic and cannot be considered for parents who have agreed to pay the regular fees prescribed by the Fee Regulatory Committee to impart education to their children by unaided private school. If any parent has any financial problem, the school management would be bound to consider such issues for granting temporary relief in payment of fees but refusal to pay fees by the parents and subsequent action by the school management

to deny the education to such child whose parent has refused to pay the fees, would not come within the purview of the provisions of the CPCR Act, 2005 or under the provisions of the Juvenile Justice Act, 2015 or Right To Education Act, 2009 as sought to be invoked by the impugned communication dated 31.03.2022 issued by the respondent no.1-Collector Surat.

18. It is also pertinent to note that before issuance of such communication dated 31.03.2022, no notice was issued, nor any opportunity of hearing was given to the trustees and principals of all self financed schools of district Surat by the respondent no.1-Collector resulting into the breach of principles of natural justice.

19. It appears that the impugned communication is issued as a dictate by the respondent no.1-Collector without authority of any law and such autocratic dictate by referring to the provisions of the CPCR Act, Juvenile Justice Act and the

hearing dated 14.03.2022 held by the NCPDR would not be tenable in law.

20. It is apparent that impugned communication/order is issued so as to pressurize the school members of the petitioner association from taking any steps against the children without any order from the appropriate Court or without any clear directions from the competent Court for the violation of Section 13(1) of the Right to Education Act, 2009. Section 13(1) of the Right To Education Act reads as under:

"Section 13 (1) no school or person shall, while admitting a child collect any capitation fee and subject the child or his or her parents or guardians to any screening procedure."

21. On perusal of the above provisions it is clear aforesaid provision only prohibits charging capitation fees and denial by the member of the petitioner Association to impart education to the student whose parents have refused to pay the fees prescribed by the Fee Regulatory Committee

under provision of the Act, 2017 cannot be considered as violation of the aforesaid Section as the same would not be applicable in such cases as it is categorically stated by the petitioner Association that so far as the students who are admitted under Right to Education Act, 2009 free education is to be imparted to such students by the unaided private schools.

22. In view of the above, it is clear that the impugned communication is issued by the respondent no.1-Collector and followed by the respondent no.2-the District Primary Education Officer is nothing but abuse of the process of law and the same is therefore liable to be quashed and set aside.

23. In view of the foregoing reasons the petition succeeds and is accordingly allowed. The impugned communications dated 31.03.2022 issued by the respondent nos.1 and 2 are hereby quashed and set aside. Rule is made absolute to the aforesaid

extent. No order as to costs.

24. In view of the order passed in the main matter, Civil Application for joining party also stands disposed of.

URIL RANA

(BHARGAV D. KARIA, J)