

19 SCOB [2024] HCD 27**HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)
WRIT PETITION NO. 4177 of 2020****Tanvir Quader and another
Vs.****Bangladesh and others**

Mr. Anik R. Haque, with
Mr. Junayed Ahmed Chowdhury,
Advocates for the Petitioners
Mr. Mustafizur Rahman Khan, Advocate
..... For the respondent No.5
Mr. Omar Sadat, Advocate
..... For the respondent No.6

Mr. Samarendra Nath Biswas, D.A.G. with
Mr. Md. Abul Kalam Khan Daud, A.A.G.
with
Ms. Rehana Sultana, A.A.G. with
Mr. Ali Akbar Khan, A.A.G. and
Ms. Nurunnahar Akter, A.A.G
.... For the Respondents-government

Heard on: 24.02.2021 and 25.02.2021
Judgment on: 28.02.2021

Present:**Mrs. Justice Farah Mahbub****And****Mr. Justice S.M. Maniruzzaman****Editors' Note:**

The petitioners as being the parents of the students who were studying at the respective private schools filed this writ petition challenging the charging of unreasonable high tuition fees on the students who were attending on-line classes of the respective private schools during Covid-19 pandemic. The High Court Division, however, found that writ petition was not maintainable against the private schools who are neither “statutory body” nor “local authority”. Consequently, it discharged the 1st part of Rule. But it directed the respective registering authorities to take immediate steps under the provisions of বিদেশি কারিকুলাম এ পরিচালিত বেসরকারি বিদ্যালয় নিবন্ধন বিধিমালা, ২০১৭ and বেসরকারি প্রাথমিক (বাংলা ও ইংরেজী মাধ্যম) বিদ্যালয় নিবন্ধন বিধিমালা, ২০১১ to constitute respective Managing Committees who can look into the issue of the quantum and collection of tuition fees from students.

Key Words:

Article 102(5) read with Article 152 of the Constitution; Sections 3(39) and 3(28) of the General Clauses Act, 1847; Registration of Private Schools Ordinance, 1962;

A writ against private schools is maintainable only when those are either “*statutory body*” or a “*local authority*” respectively. ... (Para 50)

Article 102(5) read with Article 152 of the Constitution and Sections 3(39) and 3(28) of the General Clauses Act, 1847 and Registration of Private Schools Ordinance, 1962:

The respondent Nos. 5 and 6 are neither a ‘*statutory body*’ nor a ‘*local authority*’ within the meaning of ‘*person*’ as defined in Article 102(5) read with Article 152 of the Constitution and Sections 3(39) and 3(28) of the General Clauses Act, 1847 but are merely governed by the Ordinance of 1962 as well as the Rules so have been framed

thereunder for proper maintenance, administration and supervision of the respective educational institution. ... (Para 52)

Writ of *mandamus* can be issued only when there exists a legal right and a corresponding legal duty on the part of the executive. ... (Para 54)

Registration of Private Schools Ordinance, 1962:

In the instant case, the petitioners have miserably failed to show that charging same tuition fees as charged in pre Covid-19 period from the students of private schools including respondent Nos. 5 and 6 for the on line classes during Covid-19 pandemic is violative of the provisions of the Ordinance No. XX of 1962 and the Rules so have been framed thereunder. Consequently, the line of argument which has been resorted to by the petitioners for maintainability of the 1st part of the Rule, falls through. ... (Para 57)

Once the issue is decided in favour of a class of persons its benefit is equally applicable to similarly placed persons to do substantial justice. ... (Para 61)

Registration of Private Schools Ordinance, 1962, “বিদেশি কারিকুলাম এ পরিচালিত বেসরকারি বিদ্যালয় নিবন্ধন বিধিমালা, ২০১৭” and “বেসরকারি প্রাথমিক (বাংলা ও ইংরেজী মাধ্যম) বিদ্যালয় নিবন্ধন বিধিমালা, ২০১১:

Vide Registration of Private Schools Ordinance, 1962, “বিদেশি কারিকুলাম এ পরিচালিত বেসরকারি বিদ্যালয় নিবন্ধন বিধিমালা, ২০১৭” and “বেসরকারি প্রাথমিক (বাংলা ও ইংরেজী মাধ্যম) বিদ্যালয় নিবন্ধন বিধিমালা, ২০১১”, the respective functions of the private schools are being governed as well as managed and that said statute and the Rules have been framed thereunder do not contain any provision whatsoever fixing parameter of charging tuition/ school fees.

... (Para 63)

JUDGMENT

Farah Mahbub, J:

1. The petitioners as being the parents of the students who are studying at the respective private schools i.e. the respondent Nos.5 and 6, have filed the instant writ petition challenging the impugned action of the private schools including the said respondents as to charging unreasonable high tuition fees on the students who are attending on-line classes of the respective private schools during Covid-19 pandemic, whereupon instant Rule Nisi has been issued in the following manner:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why an order should not be passed declaring that the charge of the same tuition fee as charged in pre-Covid-19 period from students of private schools including the respondents No.5 and 6 for online classes during the Covid-19 pandemic is being done without any lawful authority and is of no legal effect, and also as to why the respondents should not be directed to formulate a scheme with respect to the quantum and collection of tuition fees from students of private schools during the subsistence of the Covid-19 pandemic based on the provisions of the Registration of Private Schools Ordinance, 1962, Non-Government School Registration Rules, 2017 and the United Nations Convention on the Rights of the Child, 1989 without prejudice to the rights of the parents and children.”

2. At the time of issuance of the Rule, the respondent Nos.2 to 6 were directed to formulate a scheme with respect to the quantum and collection of tuition fees from the

students of private schools(English Medium) during the subsistence of Covid-19 pandemic and to submit the same to the Government within a prescribed period.

3. Challenging the ad-interim order of direction the respondent No.5 moved the Appellate Division by filing Civil Petition for Leave to Appeal No.1509 of 2020. Upon hearing the parties the learned Judge-in-Chamber of the Appellate Division stayed operation of the interim direction. Ultimately, pursuant to the order dated 01.12.2020 passed by the Appellate Division this Bench has taken up the matter for hearing and disposal of the same.

4. In support of the Rule Nisi the categorical contention of the petitioners are that *Registration of Private Schools Ordinance,1962* (in short, the Ordinance,1962) was promulgated for the purpose of providing a framework for registration of private schools. The main objective behind such registration of private schools, as embodied in the preamble of the Ordinance, is to “*supervise and regulate the working of private schools in Bangladesh*”. In this pursuit of supervision and regulation of private schools, the Government in exercise of power as provided under Section 8 of the Ordinance,1962 framed the following Rules, namely:-

- (a) “ *বিদেশি কারিকুলাম এ পরিচালিত বেসরকারি বিদ্যালয় নিবন্ধন বিধিমালা, ২০১৭*” (in short, Rules, 2017); and
- (b) “ *বেসরকারি প্রাথমিক (বাংলা ও ইংরেজি মাধ্যম) বিদ্যালয় নিবন্ধন বিধিমালা, ২০১১*” (in short, Rules, 2011).

5. In order to ensure transparency and accountability (স্বচ্ছতা ও জবাবদিহিতা) of private schools, Rule 7 of the Rules of 2017 and Rule 9 of the Rules of 2011 stipulate creation of Managing Committees in every private school of the country comprising of, amongst others, teachers, parents of the students and promoters/ founders of those categories of school. One of the responsibilities of the said Managing Committees, however, is to determine the amount of tuition fee, admission fee, session charge and other fees of the respective students (as contained in Rule 9(gha) of the Rules, 2017 and Rule 12 (gha) of the Rules, 2011 respectively).

6. In this regard, the emphatic contention of the petitioners is that despite giving 17 (seventeen) points direction by this Hon’ble Court in *Barrister Fatima S Chowdhury –Vs- Government of Bangladesh and others* reported in **23 BLC 620** including constitution of Managing Committee under the Rules of 2017, no such Managing Committees have been constituted by the respondent Nos. 5 and 6 till date in compliance thereof. Consequently, for lack of Managing Committees in private schools with guardian representative the management of the private schools are exercising unbridled and uncensored power while determining the amount of tuition fees chargeable on the students. The further contention of the petitioners in this regard is that during the Covid-19 pandemic charging students the same amount of tuition fees as the private schools did before commencement of the said pandemic cannot be mandated as lawful, for, Section 2(g) of the Ordinance,1962 while defining a “*private school*” clearly stated that the respective educational institution is to impart “*organized instruction*”.

7. In this connection it has been averred that the International Standard Classification of Education’ 2011 (“ISCED 2011”) issued under the United Nations Educational, Scientific and Cultural Organization (UNESCO), defines “*organized instructions*” in the context of “*education and learning*” at paragraphs 11-16 and 100 in the following words:

“11. In ISCED, an education programme is defined as a coherent set or sequence of educational activities or communication designed and organized to achieve pre-determined learning objectives or accomplish a specific set of educational tasks over a sustained period. Objectives encompass improving knowledge, skills and competencies within any personal, civic, social and/or employment-related context. Learning objectives are typically linked to the purpose of preparing for more advanced studies and/or for an occupation, trade, or class of occupations or trades but may be related to personal development or leisure. A common characteristic of an education programme is that, upon fulfillment of learning objectives or educational tasks, successful completion is certified.

The key concepts in the above formulation are to be understood as follows:

12. EDUCATIONAL ACTIVITIES: deliberate activities involving some form of communication intended to bring about learning .

13. COMMUNICATION: a relationship between two or more persons or an inanimate medium and persons, involving the transfer of information (messages, ideas, knowledge, strategies, etc.). Communication may be verbal or non-verbal, direct/face-to-face or indirect/remote, and may involve a wide variety of channels and media.

14. LEARNING: individual acquisition or modification of information, knowledge, understanding, attitudes, values, skills, competencies or behaviours through experience, practice, study or instruction.

15. ORGANIZED: planned in a pattern or sequence with explicit or implicit aims. It involves a providing agency person(s) or body that facilitates a learning environment, and a method of instruction through which communication is organized. Instruction typically involves a teacher or trainer who is engaged in communicating and guiding knowledge and skills with a view to bringing about learning. The medium of instruction can also be indirect, e.g. through radio, television, computer software, film, recordings, Internet or other communication technologies.

16. SUSTAINED: the learning experience has the elements of duration and continuity.

.....

100. Programmes at ISCED Level O' or early childhood education, are typically designed with a holistic approach to support children's early cognitive, physical, social and emotional development and introduce young children to organized instruction outside of the family context. ISCED These programme aim to develop socio-emotional skills necessary for participation in school and society.”

8. In the light of the above, as contended by the petitioners, when the Ordinance, 1962 requires private school to impart “*organised instruction*”, it, infact, refers to the overall nurturing and development of children into both able-mind and socially aware citizens of Bangladesh. Moreover, the concept of education imparted by private schools is not merely limited to the materials prescribed in a textbook, but also involves installing important social and political values in children that will help create a more equitable society.

9. Furthermore, Rule 15(3) of the Rules of 2017 provides specific guidance as to what should be entailed in the education curriculum of private schools which involve physical demonstrations such as, indoor and outdoor sports activities, cultural activities in celebration of the history and culture of Bangladesh, book fairs, tree planting and cleanliness/hygiene related activities. In addition, Rule 15(4) of the Rules of 2017 and Rule 21(4) of the Rules of 2011 also stipulate that private schools must take necessary steps to ensure rights of children

in accordance with the United Nations Convention on the Rights of the Child, 1989 (“the UN Child Convention”).

10. However, fact remains that in the wake of Covid-19 pandemic private schools have shifted to providing virtual education to students through online platforms such as, Zoom, Google Meet etc. As a consequence, they developed online class schedules which cover a much less period of time and significantly fewer classes than usual (Annexures- B and B-1 respectively). Also, such virtual classes clearly do not include use of any indoor or outdoor space or field by the students for sports activities or any interaction with fellow students and/or between teachers and students. Thus, it is apparent that the respondent Nos.5 and 6 including other private schools have failed to comply the respective Rules so have been framed under the Ordinance, 1962.

11. In addition to above, vide an undated letter the respondent No. 5 had informed the parents of the respective students, by giving reference to the decision of the representative body called “Dhaka International Schools Association” (“DISA”), which has no legal entity in the eye of law, that no flat rate tuition fees would be waived by the school for all the students and that waiver of tuition fees would be considered on a case to case basis (Annexure C). Said letter of the respondent No. 5 clearly shows their inflexible attitude towards refusal to reduction or adjustment of school tuition fees based on changing times of Covid-19 pandemic.

12. Due to the said stand, left the petitioners with no other option but to file the instant writ petition whereupon instant Rule Nisi has been issued by this Court.

13. Respondent No. 5 entered appearance by filing affidavit-in-opposition stating, *inter-alia*, that the said respondent is fully dedicated to the growth and development of each of its students. The respondent school aims to provide broad, holistic, challenging and sound education in order to enable the children to reach their full academic potential. Textbooks and schemes of work are chosen to accommodate and stimulate children of all abilities. The curriculum is carefully structured, regularly reviewed and updated. Moreover, the respondent No.5 aims to provide opportunities, training and resources for students to research and become independent learners. The school monitors students’ progress through regular assessments and also provides extra-curricular activities to produce well rounded students. In addition to provide lab facilities to the students, the respondent No.5 also instill moral and ethical values to inspire students to become good human beings above all else.

14. Further, it has been averred that the quality of education imparted by the respondent No.5 school will be borne of the performance of its students in the examinations conducted by the international Boards, and also by the stature of the institutions of secondary and tertiary education to which its students are admitted, which included some of the most renowned universities and colleges of the world, apart from the leading institutions of Bangladesh.

15. It has also been stated that the respondent No.5 has a rich history of celebrating historical and cultural days in compliance with that of Bangladesh. The said respondent was the first school to make Bangladesh studies mandatory; in fact, the school chased Cambridge Assessment International Education to introduce it as a subject in 1995 and worked on developing the syllabus and the textbooks which were written by the teachers of the said respondent. Day long events are organized in school where students and teachers engage in discussions and activities annually such as, Pohela Falgun and Pitha Utshop on 13th February, International Mother Language Day on 21st February, Bangabandhu’s birthday and Children day on 17th March, Independence Day on 26th March, Pohela Boishak on 14th April, National

Mourning Day on 15th August and Victory Day on 16th December. Such events have not been organized in the school premises during the Covid-19 pandemic to avoid public gatherings; however, the school has arranged for celebration of such events virtually. In addition to the above, the respondent No.5 also arranges daily assemblies which are still being held virtually where it is mandatory for the National Anthem to be sung. The virtual class hours have been kept the same as the class times maintained by the respondent No.5 prior to Covid-19 pandemic, therefore, the class schedules are still the same.

16. Although physical education/activities have not been conducted during this Covid-19 pandemic, the respondent No.5 has ensured its engagement with students across all classes for counseling sessions by expert counselors. The school also arranged for Mind-Body-Soul(MBS) platform whereby this respondent counsels its students: (i) to battle their mental health issues which students and families have been facing at unprecedented levels during the Covid-19 pandemic, (ii) to guide students on physical health and consumption of healthy nutritional food; and (iii) to educate the importance of spiritual wellbeing which is achieved through physical exercises, yoga classes, etc. The respondent No.5 also allows student interaction by fun activities and arranges virtual concerts. Therefore, the respondent No.5 has to plain, arrange and design new ways of imparting such education by virtual means which never existed in the curriculum of the school.

17. It has been stated that prior to admission of the child to the respondent No.5 school, it issues a prospectus/brochure to the guardian of the child, including the fee structure, which the guardian accepts and only then the child is admitted. However, annual increase of school fees to the extent of 10% is allowed under the proviso as contained in Rule 19(1) of the Rules of 2017. Moreover, when the child of the petitioner No.1 was admitted to the respondent No.5 school in Playgroup for the session commencing from August 2019, the monthly tuition fee for Playgroup was Tk.23,000/- and Nursery was Tk.23,000/-. When the child of the petitioner No.1 was promoted to Nursery, his tuition fee was the same in the session starting in August' 2020. Hence, there is no scope for the petitioner No.1 to allege that there has been any violation of law.

18. Further, it has been stated that following the advent of the current Covid-19 pandemic, the respondent No.5 school has not increased its tuition fees, has not charged any penalty for late payment of tuition fees and has not expelled any student on account of non-payment or late payment of tuition fees.

19. Moreover, the respondent No.5 is a private school which does not receive any manner of subsidy from the Government or any public authority. The said school has not been established by a charitable or educational society or trust or religious organization. Hence, charging and realization of fees, in accordance with law, is crucial to the continued existence of the school, meeting its different expenses and returning a reasonable profit for those who have invested to set it up.

20. During the ongoing Covid-19 pandemic, the costs of the respondent No.5 have not seen any reduction, even though physical classes are not continuing. The respondent No.5 is to continue payment of rents for the premises and salaries of staffs and teachers, maintain existing infrastructure and also has had to incur additional expenditure for arranging online virtual classes. The hours of classes have not been reduced. Rather, due to online classes, additional resources have had to be procured and employed. Moreover, the respondent No.5 has continued to provide and incorporate regular routine during this COVID-19 pandemic as much as possible.

21. Also, it has been stated that the respondent No.5 continues to meet the International Standard Classification of Education' 2011 ("ISCED 2011") issued under the United Nations Educational, Scientific and Cultural Organization (UNESCO) to the extent possible during the Covid-19 pandemic. Since neither the Ordinance,1962 nor the Rules so have been framed thereunder including the ISCED-2011 provide for guidelines to be followed during a pandemic situation therefore, in the absence of such guidelines, the petitioners are wrongly placing allegations of non-compliance of the provisions of law and the guidelines under the ISCED-2011.

22. In this connection it has been contended that Covid-19 pandemic was beyond the contemplation of the Legislature at the time of promulgation of the Ordinance,1962 and the Rules, 2017. As such, allegation of violation of the Ordinance, 1962 and the Rules of 2017 for failing to arrange physical activities during such dire situation, does not arise at all.

23. Mr. Anik R. Haque, the learned Advocate appearing with Mr. Junayed Ahmed Chowdhury, the learned Advocate for the petitioners submits that online classes, as provided by private schools on a virtual platform, may be considered as a single part of the education or learning activities the students receive from the respective schools. However, these online classes are not the only component of education or learning activities that fall within the expression "*organised instruction*" to the students as mandated by the Ordinance,1962. Moreover, it has been contended that online classes also do not comply with the provisions of the Rules of 2017 nor the UN Child Convention,1989. Accordingly, he submits that since private schools including the respondent Nos.5 and 6 are not imparting the full extent of the "*organised instruction*" as envisaged by the UNESCO's International Standard Classification of Education' 2011 and as required under the Ordinance,1962 read with the Rules of 2017 as well as the UN Child Convention,1989 the private schools including the respondent Nos. 5 and 6 are not entitled to demand full tuition fees from the students during the Covid-19 pandemic, i.e. the exact amount that they used to charge before the Covid-19 pandemic.

24. He also submits that the nationwide closure of physical classes in schools has prevented private schools from complying with the educational standards set by the Government. As such, lack of significant educational resources given to the students on a virtual forum must be reflected in the tuition fees charged on such students. Hence, the private schools should impose significantly less tuition fees on students in exchange for the virtual education being imparted on them.

25. He further submits that Rule 19(1) of the Rules of 2017 provides that the Managing Committee of a private school will determine, amongst others, the school fees in consideration of the quality of education and infrastructural facilities being provided by such school. Consequently, the absence of Managing Committees in private schools is enabling the management of such schools to keep charging the same tuition fees during the Covid-19 pandemic even though they are not providing the same quality of education or infrastructural facilities as required under the said provision of law.

26. So far seeking direction to formulate scheme with respect to the quantum of tuition fees collected from the students during this Covid-19 pandemic period Mr. Anik goes to argue that the private schools including the respondent Nos. 5 and 6 must consult with their regulatory authority and the Government to formulate a scheme or plan regarding the exact amount of tuition fees that a particular private school can charge for providing online classes during the Covid-19 pandemic in consideration of the quality of education and infrastructural facilities based on *Registration of Private Schools Ordinance, 1962*, "বেসরকারি বিদ্যালয় নিবন্ধন বিধিমালা, ২০১৭" and the United Nations Convention on the Rights of the Child, 1989 without

prejudice to the rights of the parents and children, by way of detailed representations and submit the same to Government for consideration.

27. He lastly submits that this writ petition albeit has been filed by the petitioners in their capacity as parents of the students of the respondent Nos.5 and 6, but they have categorically satisfied the threshold requirement of *locus standi* for maintaining this public interest litigation, as espoused by the Appellate Division in the case of **Dr. Mohiuddin Farooque – vs- Bangladesh** reported in **49 DLR (AD) 1 para 48**. Hence, he submits that this writ cannot be knocked down on the ground of maintainability. In other words, he submits, this Rule is maintainable.

28. Conversely, Mr. Mustafizur Rahman Khan the learned Advocate appearing for the respondent No.5 submits that the respondent No. 5 which imparts education from Play Group to O' Level, falls within the purview of the Rules, 2017 as it is a "*private school*" within the definition of Rule 2(7) of the said Rules read with Section 2(g) of the Ordinance, 1962.

29. However, he goes to submit that Rule 7 of the Rules of 2017 provides for a Managing Committee of 11 members comprising, amongst others, 2 representatives, including at least 1 female, elected from amongst the guardians of the students studying in the school. Insofar as the election process is concerned, Rule 7(4) of the Rules, 2017 stipulates that the procedure for electing representatives shall be prescribed by general or special order of the registration authority. In this regard, he submits that the registration authority for the respondent No.5 is the respondent No.2 in terms of Rule 2(5) of the Rules, 2017 read with Section 2(h) of the Ordinance, 1962. But, to the knowledge of the respondent No.5, the respondent No.2 has not issued any general or special order in terms of Rule 7(4) of the Rules, 2017 prescribing the procedure of electing representatives in different categories of the Managing Committee, nor has the Government framed any Rules in this behalf under Section 8 of the Ordinance, 1962. As such, he submits that in the absence of such special or general order or Rules, the respondent No.5, of its own volition, has established two Managing Committees, one for the respondent No.5's primary section, which comprises of 3 founder members, 3 parent representatives, 1 teacher representative, 1 retired meritorious educationist (government employee) and the Head of School herself; and the other for the respondent No.5's secondary section, which comprises of 3 founder members, 2 teacher representatives, 3 parent representatives and the Head of the School herself. Thus, he submits, the members of these Managing Committees are not elected, rather are selected informally through consultations and are finalized by the owners of the school.

30. The present Managing Committee of the respondent No.5, he submits, has given input in deciding on the amount of tuition fees to be imposed during the Covid-19 pandemic. Pursuant to the decision of the Managing Committee, special accommodations have been provided by the respondent No.5 for its students, in particular; (i) the fees charged by the respondent No.5 for the academic year beginning from 18.08.2020 have not been increased, though in normal circumstances they increase annually; (ii) no late fee penalties have been imposed; (iii) the respondent No.5 has ensured that no student has to leave the school for inability to pay the required fees; and (iv) students are allowed deferred payment without letting delay in payment affect the attendance of the students in their online classes. The said respondent has communicated the concerned bank receiving the tuition fees to avoid charging penalties for late payment by email dated 11.05.2020. He also submits that despite the fact that costs of running the school has not been reduced during the Covid-19 pandemic, the respondent No.5 has continued paying the rental amount for the premises occupied by the school and the salaries to its employees and staff members.

31. He further goes to submit that the respondent No.5 continues to meet the International Standard Classification of Education, 2011, (“ISCED, 2011”) issued under the United Nations Educational, Scientific and Cultural Organization (UNESCO) to the extent possible during the Covid-19 pandemic. However, fact remains that ISCED-2011 does not provide for guidelines to follow during a pandemic situation; hence, in the absence of such a guideline, placing allegations by the petitioners of non-compliance of the guideline under the ISCED-2011, is not tenable in the eye of law.

32. He again submits that the respondent No.5 has continued to maintain regular routine during this Covid-19 pandemic to the extent possible. However, he submits, although physical education/activities have not been conducted during this Covid-19 pandemic, but the respondent No.5 has ensured its engagement with students across all classes for counseling sessions by expert counselors to battle their mental health issues which students and families have been facing at unprecedented levels during the Covid-19 pandemic, also to guide students on physical health and consumption of healthy nutritional food; and to educate the importance of spiritual wellbeing which is achieved through physical exercises, yoga classes, etc. Thus, he submits that the respondent No.5 has to arrange and design new ways of imparting such education by virtual means which never existed in the curriculum of the school.

33. He also submits that there is no express provision of law regulating the level of fees to be charged during the times of pandemic; as such, it cannot be alleged that the respondent No.5 has violated any provisions of the Ordinance, 1962 and the Rules so have been framed thereunder.

34. The learned Advocate concludes his argument by submitting that this writ is not maintainable for having had preferred by the petitioners against private schools. Hence, it is liable to be discharged.

35. Mr. Omar Sadat, the learned Advocate appearing on behalf of the respondent No.6 by filing affidavit-in-opposition adopts the submissions so have been advanced on behalf of the respondent No.5.

36. Instant writ petition is centering around the issue of charging same tuition fees during Covid-19 pandemic as being charged in pre-Covid period from the students of the private schools of the country including respondent Nos.5 and 6 for attending on line classes during this period.

37. Since the grievances of the petitioners squarely lie against the respondent Nos. 5 and 6, who are admittedly private schools including all other private schools of Bangladesh as such, the issue which requires to be resolved first is whether this writ is maintainable against private school(s).

38. Article 102(1)(a)(i) and (ii) of the Constitution of the People’s Republic of Bangladesh (in short, the Constitution) is invoked by the person aggrieved against any person or authority, including any person performing any function in connection with the affairs of the Republic for the enforcement of his fundamental rights as guaranteed under Part III of the Constitution. Article 102(1) of the Constitution is referred below for ready reference.

“102(1) The High Court Division on the application of any person aggrieved may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be

appropriate for the enforcement of any of the fundamental rights conferred by Part III of this Constitution”.

39. Vide Article 102(2)(a)(i) and (ii) writ of *certiorari, mandamus and prohibition* is maintainable against a “*person*” performing any functions “*in connection with the affairs of the Republic*” or of a “*local authority*”.

40. Article 102(2)(a)(i) and (ii) of the Constitution is quoted as under:

“The High Court Division may, if satisfied that no other equally efficacious remedy is provided by law-

(a) on the application of any person aggrieved, make an order-

- (i) directing a person performing any functions in connection with the affairs of the Republic or of a local authority, to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do; or*
- (ii) declaring that any act done or proceeding taken by a person performing function in connection with the affairs of the Republic or of a local authority, has been done or taken without lawful authority and is of no legal effect; or*
.....”

41. However, vide Article 102(5) the word “*person*”, as used in Article 102, includes a “*statutory public authority*” and any court or tribunal, other than a court or tribunal established under a law relating to the defence services of Bangladesh or any discipline force and the tribunal to which Article 117 is applied.

42. Article 102(5) is accordingly quoted below for a cursory glance:

102(5) In this article, unless the context otherwise requires, “persons” includes a statutory public authority and any court or tribunal, other than a court or tribunal established under a law relating to the defence services of Bangladesh or any disciplined force or a tribunal to which article 117 applies.

43. Thus, it appears that the definition of the word “*person*” is both inclusionary and exclusionary and it includes all statutory public authorities as defined in Article 152.

44. The definition of “*statutory public authority*”, as embodied in Article 152 of the Constitution is referred below:

“statutory public authority” means any authority, corporation or body the activities or the principal activities of which are authorised by any Act, ordinance, order or instrument having the force of law in Bangladesh;

45. In addition, the word “*person*” also includes “*local authority*” and that in view of Article 152(2) the definition of “*person*” and “*local authority*”, as provided in Sections 3(39) and 3(38) respectively of the General Clauses Act, 1897(in short, Act of 1897) is applicable in view of the *ratio* as decided in ***B.S.I.C – Vs- Mahbub Hossain (1977) 29 DLR (SC) 41.***

46. Sections 3(39) and 3(28) of the Act of 1847 are accordingly, quoted as under:

“3(39) "person" shall include any company or association or body of individuals, whether incorporated or not:

3(28) Local Authority- "Local authority" shall mean and include a Paura Shava, Zilla Board, Union Panchayet, Board of Trustees of a port or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund, or any corporation or other body or authority constituted or established by the Government under any law:]"

47. The respondent Nos. 5 and 6 including other private schools of the country as being private schools can claim to be a “local authority” if it is established by the Government under the law, as has been observed by the Appellate Division in the case of **Mofizul Huq – Vs- Mofizur Rahman and others** reported in **48 DLR (AD) 121**.

48. In **Mofizul Huq–Vs-Mofizur Rahman and others(supra)** the Appellate Division while deciding the issue as to whether a non-government secondary school is a “statutory body” or a “local authority” has categorically observed, *inter-alia*:

“To be a statutory body it must, first of all, owe its existence to a statute. In other words, it must be created by or under a statute. There is nothing in the Ordinance of 1961 nor any other law has been brought to our notice showing that a secondary school or, to be more particular, the Sammilani Girls’ High School in this case, is or has been created by or under any law. A distinction must be made between a body or institution which is created by or under a statute and a body or institution which is not so created but is governed by certain statutory provisions for the proper maintenance and administration of the said body or institution. A secondary school is undoubtedly governed by the provisions of the Ordinance in question and the various other regulations made thereunder but does not necessarily follow that the school is a creature of the said Ordinance or any other law.

It was held that the District School Board so far as that case was concerned, had no independent existence and every employee under the Board was in fact holding office under the Government. Evidently this decision is not at all relevant for determining what a ‘local authority’ is meant under the General Clauses Act.

It is, however, true that the school like any other non-government secondary school is regulated and managed in accordance with provision of the Ordinance of 1961 and the various regulations made thereunder. The Government have control over these schools in a very large measure. Nevertheless it is clear from what has been discussed above that thereby a recognized non-government secondary school does neither become a statutory body nor a ‘local authority’ within the meaning of the General Clauses Act.....”

49. Said observation and findings of the Appellate Division have further been reiterated in **Noor-E-Alom Jahangir (Md) English Teacher, Rifles Public School and College–Vs-Government of Bangladesh represented by the Secondary, Ministry of Education and others**, reported in **60 DLR (AD) 12** by observing, *inter-alia* :

“.....if the institution is simply governed by an Ordinance it does not necessarily follow that the said institution is a creature of the said Ordinance and that Rifles Public School and College, being regulated and managed in accordance with the provision of the Board of Intermediate and Secondary Education, Dhaka (Managing Committee of the Recongnised Non-government Secondary School) Regulations, 1977

and other provisions and regulations, is not a statutory body or local authority and the impugned order has not been passed by any statutory body or local authority and further, admittedly the Principal of the above Rifles Public School and College is also not in the service of the Republic and accordingly, the writ petition is not maintainable. ”

50. In the light of the above observations of the Appellate Division a writ against private schools is maintainable only when those are either “*statutory body*” or a “*local authority*” respectively.

51. In order to supervise and regulate the working of private schools in Bangladesh inclusive registration of such schools the “*Registration of Private Schools Ordinance, 1962* (Ordinance No. XX of 1962) was promulgated. However, in exercise of power as provided under Section 8 of the Ordinance, 1962 “বেসরকারী প্রাথমিক (বাংলা ও ইংরেজী মাধ্যম) বিদ্যালয় নিবন্ধন বিধিমালা, ২০১১” was framed in order to give effect to the provisions of the said Ordinance.

52. In view of the observations and findings of the Appellate division as well the position of facts of the instant case it is now evident that the respondent Nos. 5 and 6 are neither a ‘*statutory body*’ nor a ‘*local authority*’ within the meaning of ‘*person*’ as defined in Article 102(5) read with Article 152 of the Constitution and Sections 3(39) and 3(28) of the General Clauses Act, 1847 but are merely governed by the Ordinance of 1962 as well as the Rules so have been framed thereunder for proper maintenance, administration and supervision of the respective educational institution.

53. At this juncture, the contention of the petitioners are that the definition of the word “*person*” as provided in Article 102(5) of the Constitution is not exhaustive and that instead of depending on the “*type*” of person it is more reliant on the nature of the activities performed by such person, which covers “*public duty*”. Accordingly, it has been contended that since respondent Nos. 5 and 6 are undertaking “*public functions*” i.e. providing education to the children this writ is maintainable against “*private school*”. In support reliance has been made on the *ratio* of the case of **Ramesh Ahluwalia -Vs- State of Punjab and others**, in connection with **Civil Appeal No.6634 of 2012** where the Supreme Court of India while holding that writ is maintainable against unaided “*private school*” in view of the words “*any person or authority*” used in Article 226 of the Indian Constitution held as follows-

“The term authority’ used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words ‘any person or authority’ used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.”

54. Writ of *mandamus* can be issued only when there exists a legal right and a corresponding legal duty on the part of the executive. However, in the Indian jurisdiction, the Supreme Court of India has mandated issuance of writ of *mandamus* even against a private authority where such authority fails to discharge a public function casts upon it by statute.

55. Also, in *Satimbha Sharma –Vs- St. Paul’s Senior Secondary School (2011) 13 SCC -760 (para 25)* it has been observed, *inter-alia*, that where a statutory provision casts a duty on a private unaided school to the same salary and allowance to its teachers as are being paid to the teachers of government aided schools, then a writ of *mandamus* to the school could be issued to enforce such statutory duty; but not where there is no such statutory provision.

56. The contention of the present petitioners is squarely based on Indian jurisdiction where the Supreme Court of India has categorically relied on the statutory provisions which enumerate respective public functions as are being performed by private unaided school(s).

57. In the instant case, the petitioners have miserably failed to show that charging same tuition fees as charged in pre Covid-19 period from the students of private schools including respondent Nos. 5 and 6 for the on line classes during Covid-19 pandemic is violative of the provisions of the Ordinance No. XX of 1962 and the Rules so have been framed thereunder. Consequently, the line of argument which has been resorted to by the petitioners for maintainability of the 1st part of the Rule, falls through.

58. In other words, this writ fails as being not maintainable so far challenging the impugned actions of the respondent Nos. 5 and 6, the respective private schools including other private schools of the country.

59. It is further apparent that the petitioners have filed this writ petition on their behalf as well as on behalf of the other guardians in general posing themselves as the persons interested to espouse the cause of the guardians, whose children are studying in the respective private schools of the country.

60. In this connection their contention is that the result of this Rule Nisi will be equally applicable to all the parents and the children and the schools that are similarly placed. Hence, the relief which has been sought for should also be extended to those class of persons who did not approach this Court. As such, there is no justification for each and every parent and their children to file separate writ petition and pray for the same relief. In support, the learned Advocate has referred the case of *A.F.M. Mustafizur Rahman, Director General Bangladesh Railway Rail Bhaban and others –Vs- Manoharan Mazumder and others* reported in *9 MLR (AD) 251*.

61. We are also in agreement with the findings of the Appellate Division that once the issue is decided in favour of a class of persons its benefit is equally applicable to similarly placed persons to do substantial justice.

62. In the instant case, the petitioners have raised the issue of charging same tuition fees as charged in pre-Covid-19 period from the students of respondent Nos. 5 and 6. In view of the assertions of the respondent Nos. 5 and 6 it becomes apparent that each private school has their own respective framework towards fixation of tuition fees considering online class facilities, parents orientation and financial assistance program. In other words, the process of charging tuition fees by the respective private schools involves question of facts.

63. Moreover, vide *Registration of Private Schools Ordinance, 1962*, “বিদেশি কারিকুলাম এ পরিচালিত বেসরকারি বিদ্যালয় নিবন্ধন বিধিমালা, ২০১৭” and “বেসরকারি প্রাথমিক (বাংলা ও ইংরেজী মাধ্যম) বিদ্যালয় নিবন্ধন বিধিমালা, ২০১১”, the respective functions of the private schools are being governed as well as managed and that said statute and the Rules have been framed thereunder do not contain any provision whatsoever fixing parameter of charging tuition/ school fees.

64. In the given context, it cannot be said that all the other private schools of the country are at par with that of the respondent Nos. 5 and 6 on the issue in question. Hence, espousing the cause of the guardians in general, whose children are studying in the respective private

schools of the country along with the petitioners, whose children are studying at respondent Nos. 5 and 6, is not maintainable.

65. So far second part of the Rule Nisi is concerned the petitioners have sought for a direction to formulate scheme with respect to the quantum and collection of tuition fees from the students of private schools during the subsistence of Covid-19 pandemic based on the Ordinance, 1962, Rules, 2017 and the United Nations Convention on the Rights of the Child, 1989.

66. Vide Rule 9 of the Rules, 2011 and Rule 7 of the Rules, 2017 there shall be a Managing Committee for every non-government primary school and that said committee shall be composed of the representatives of different categories including the guardians of the respective class of students. However, vide Rule 12 of the Rules, 2011 and Rule 9 of the Rules, 2017 one of the functions of the said Managing Committee is to fix tuition fees of its students.

67. Rule 12 of the Rules, 2011 is quoted below for ready reference:

“১২। ব্যবস্থাপনা কমিটির কার্যাবলী। - ব্যবস্থাপনা কমিটির দায়িত্ব ও কার্যাবলী হইবে নিম্নরূপ, যথাঃ-

.....

(ঘ) ছাত্রছাত্রীদের টিউশন ফি নির্ধারণ.....”

68. Rule 9 of the Rules, 2017 is referred below:

“৯। ম্যানেজিং কমিটির দায়িত্ব ও কার্যাবলী। - ম্যানেজিং কমিটির দায়িত্ব ও কার্যাবলী হইবে নিম্নরূপ, যথাঃ-

.....

(ঘ) এই বিধির বিধানাবলী সাপেক্ষে, ছাত্র-ছাত্রীদের টিউশন ফি, ভর্তি ফি, সেশন চার্জ ও অন্যান্য ফি নির্ধারণ;.....”

69. In this regard, the categorical contention of the respondent Nos. 5 and 6 is that since respondent No.2, who is the registering authority, as defined in Section 2(h) of the Ordinance 1962, has not issued any general or special order in terms of Rule 7(4) of the Rules, 2017 prescribing the procedure of electing representatives in different categories of the Managing Committee, nor the Government has framed Rules in this behalf under Section 8 of the Ordinance, 1962 consequently, no Managing Committee could have been constituted in strict compliance of Rules of 2017. Said contention of the respondent Nos.5 and 6 has not been controverted by the respondent government.

70. Under the stated circumstances, the respondent Nos. 2, 3 and 4, the respective registering authorities are hereby directed to take immediate steps in terms of Rule 7(4) of the Rules of 2017 within a period of 8(eight) weeks from the date of receipt of the copy of this judgment and order with a view to constitute respective Managing Committee under the Rules of 2017 and 2011, who in their turn can look into the issue in question in view of Rules 9 and 19 of the Rules of 2017.

71. In the result, 1st part of the Rule is discharged as being not maintainable.

72. However, 2nd part of the Rule is disposed of with the observations and direction so have been given herein above.

73. There is no order as to costs.

74. Communicate the judgment and order to the respondents concerned at once.