Date	Order with signature of Judge

Fresh Case :
1. For orders on Misc. No.11015/2020 (U/A) :
2. For orders on Misc. No.11016/2020 (Exemption) :
3. For orders on Misc. No.11017/2020 (Stay) :
4. For hearing of Main Case :

05.05.2020 :   M/S Arshad Tayebaly and Omar Memon,
                     advocates for the petitioners.
                     …………

1.   Urgency granted.

2.   Exemption is granted subject to all just exceptions.

3&4.   The petitioners, who are privately managed schools, have impugned Notification dated 27.04.2020 (page 337) whereby Rules 19-A to 19-E have been inserted / added after Rule 19 of The Sindh Private Educational Institutions (Regulation and Control) Rules, 2005, and also the special order dated 28.04.2020 (page 341) issued by respondent No.2 in pursuance of the above amendment. The petitioners are aggrieved mainly by clauses (ii) and (iv) of the impugned special order, which read as under :

> "ii.   *It is mandatory for every school to grant 20% concession in the tuition fee of students for the months of April & May, 2020 subject to payment of fee of April & May, 2020 during the same months.*
>
> iv.   *If any school has collected full fee for the months of April & May, 2020, the concession of 20%, which is supposed to be granted in the aforesaid period, be refunded or adjusted in the fees of coming months with the consent of the parents.*"

It is contended, *inter alia*, on behalf of the petitioners that the above Rules were framed purportedly under Section 15 of The Sindh Private Educational Institutions (Regulation and Control) Ordinance, 2001, which Ordinance was purportedly amended by The Sindh Private Educational Institutions (Regulation and Control) (Amendment) Act, 2003. It is urged that an Ordinance cannot be amended by an Act nor can any Rules be framed under an Ordinance, and on this ground alone, the above Rules of 2005 as well as the impugned amendment therein is of no legal effect.

Without prejudice to his above submission, learned counsel submits that if it is assumed that the above Ordinance is the parent statute, even then the impugned amendment and special order, being beyond the scope of the Ordinance, are *ultra vires* the Ordinance, Rules and the Constitution ; under Rule 19 of the Rules of 2005, the Government could only issue **"guidelines"** for effective and transparent institutional management etc., and the Government has no power under the Ordinance and/or Rules to pass any order or to direct the schools to grant mandatory concession in tuition fee of the students under any circumstances ; the impugned action is discriminatory inasmuch as on the one hand the schools have been directed to pay full salary to their teaching and non-teaching staff for the period in question and on the other hand they have been arbitrarily directed to grant concession at the rate of 20% in the tuition fee ; the impugned action is also biased and one-sided as all the so-called concessions / reliefs granted therein are against the schools, and that too without notice to any of the schools and/or to the Association managing their affairs and without affording any opportunity of hearing to any of them, which makes the impugned action violative of the well-settled principles of natural justice ; the impugned action is discriminatory and biased also on the ground that no other profession, business or sector has been compelled by the Government to reduce its income mandatorily on the ground of the current pandemic ; and, the matters of engagement / appointment of teachers by the schools and admission of students are contractual matters subject to certain terms and conditions, which cannot be modified or interfered with by the Government under any circumstances.

Issue notice to the respondents as well as to learned Advocate General Sindh for **14.05.2020 at 11:00 a.m.** Till the next date of hearing, operation of clauses (ii) and (iv) of the impugned special order dated 28.04.2020 shall remain suspended.

J U D G E

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05.05.2020/Short Orders DB/Court Work/ARK/D