

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
CP D-6266 of 2019

Order with signature of Judge

Present: **Muhammad Ali Mazhar** and **Agha Faisal, JJ.**

Nisar Ahmed

vs.

Province of Sindh & Others

1. *For orders on Misc. 27843 of 2019*
2. *For hearing of main case*

07.11.2019

Mr. Muhammad Kamran, Advocate for the petitioner.
Mr. Jawad Dero, Additional Advocate General Sindh.
Mr. Ashraf Yar Khan, Advocate and Mr. Saadat Yar Khan,
Advocate for respondents 2 to 5.
Mr. Tasawur Khalil attorney of the owner of NAKHLA School
is present.

Muhammad Ali Mazhar J. This petition has been preferred to challenge the revisional order passed by VIIIth Additional District and Sessions Judge, Karachi East in Civil Revision Application 74 of 2019. The record reflects that the petitioner filed Suit 752 of 2019 against respondents 2 to 5 for recovery of some amount on account of alleged excess payment of fee to the institution. However, the plaint was found deficient in court fee and some issues were also raised for maintainability, therefore, the plaint was rejected against which the civil revision application was filed.

2. At present there are two limbs of the case; one as made by the petitioner to challenge the revisional order; but at the same time he has prayed for some directions against the school to allow his children to continue their education with further directions to release their final results. The learned counsel for the petitioner agrees to give up challenge to the revisional order if some directions are otherwise given to resolve the issue to the respondents.

3. Learned counsel for respondents 2 to 5 have filed their counter affidavit and reply. The petitioner's counsel has also filed a statement

with fee challan. The monthly fee slab is admitted by the petitioner. According to the learned counsel for respondents 2 to 5, the petitioner has not paid the monthly fee of his children from January, 2019 and the petitioner is liable to pay arrears for at least 8 months. On the contrary, learned counsel for the petitioner argued that the petitioner has already paid Rs.245,023/- in excess, which amount has not been adjusted or refunded.

4. So far the monthly fee is concerned, the petitioner has no issue and agrees that the amount is according to the approved slab. The four children of the petitioners were studying in the NAKHLAH School and Mr. Tasawur Khalil attorney of the school owner is also present in Court. Name of the petitioner's children are Alishba tul Fatima, Ayresha Nisar, Arshia Nisar and Abdul Rehman, who were students in classes (GR 2646) Class VI-B, (GR 2645) Class VI-C, (GR 2970) Class IV-C and (GR 4243) Class I-C respectively.

5. In the writ jurisdiction we cannot resolve the controversy as to whether the petitioner has really failed to pay the monthly fee as alleged by the attorney of school owner or they have already paid the excess amount for which they are claiming refund or adjustment. The proper mechanism and manner is to refer to this case to the Director General Education (Private) Schools, who is respondent 7, who can examine the paid challan of the petitioner and also visit the NAKHLAH School situated at Kashmir Road, PECHS, Karachi to ascertain as to whether the petitioner has paid some excess amount or not. The petitioner will also produce all paid fee challans of the alleged excess amount before the Director General Education (Private) Schools and after proper verification the Director General Education (Private) Schools shall determine what actual fee is liable to be paid by the petitioner, including the arrears. The Director General Education (Private) Schools will issue notice to the petitioner as well as the attorney of the school owner and shall decide the claim of the petitioner within a period of 20 days and if the visit to school is required he will also visit the school for verification to decide the claim of the petitioner.

6. It is stated by the counsel for the petitioner that since May 2019 children of the petitioner are not being allowed to join their classes, therefore, as an interim arrangement, the petitioner agrees to pay three months' fee of each children to the school within a period of one week. Challans for three months fee of each children shall be issued by the school to the petitioner for payment and on payment of three months fee of each children, they will be allowed to sit in their classes and continue their study.

7. The petitioner shall also be responsible to make payment in accordance with directions of the Director General Education (Private) Schools as may be determined by him after deciding and verifying claim of the petitioner and the school including the impact of the judgment of hon'ble Supreme Court rendered in the school fee case. This entire exercise shall be completed within a period of twenty days. The petition is disposed of in the above terms.

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