

W.P.Nos.8446, 7976, 7982, 8477, 8639, 8804 of 2020
& W.P(MD) No.6645 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.09.2020

Delivered on : 09.09.2020

C O R A M

The Hon'ble Mr.Justice M.M.SUNDRESH
and
The Hon'ble Mrs.Justice R.HEMALATHA

W.P.Nos.8446, 7976, 7982, 8477, 8639, 8804 of 2020
& W.P(MD) No.6645 of 2020

& W.M.P.(MD)Nos. 5993 & 5995 of 2020, W.M.P.Nos. 9414, 9423,
10224 to 10226, 10168 of 2020

W.P.No. 8446 of 2020

R.Bharaneeswaran

Petitioner

Vs

- 1.The Government of Tamil Nadu
Rep. by its Secretary,
School Education Department,
Fort St.George,
Chennai – 600 009.
- 2.The Director of School Education,
DPI Campus, College Road,
Chennai – 600 009.
- 3.The Director of Elementary Education,
School Education, DPI Campus,
College Road, Chennai – 600 009.

4.The Revenue and Disaster Management

Department,
Rep. by its Secretary,
Disaster Management Wing,
Commissionerate of Revenue
Administration and Disaster Management,
Ezhilagam, Chepauk,
Chennai – 600 005.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing respondents 1 to 3 to prohibit online classes for School Students through video conferencing or any other online platforms and ensure strict adherence and compliance to the implementation of G.O.(Ms) No.199 dated 20.04.2020.

For Petitioner

in WP 8446/2020 : Mr.P.J.Rishikesh

in WP(MD) 655/2020 : Mr.C.M.Arumugam

in WP 7982/2020 : Mr.S.Prabakaran, Sr. Advocate
for Mr.R.Krishna Kumar

in WP 8477/2020 : Mr.J.Ravindran

in WP 8804/2020 : Mr.A.Syed Kaleesha
Party-in person

in WP 7976/2020 : Mr.Leo Valam Leonard

in WP 8639/2020 : Mr.Ajay Francis Inigo Loyola

For Respondents

R4 in WP 8446/2020
R1, R2 & R5
in WP(MD)6645/2020
R4 to R6 in
WP 7982/2020

: Mr.Vijay Narayan,
Advocate General
assisted by
Mr.G.K.Muthukumar, Spl GP

R1 & R2
in WP 8639/2020

: Mr.V.Jayaprakash Narayanan
Government Pleader

R1 & R2
in WP 8477/2020
& for R7 & R10 in
WP 7982/2020
for R1 to R3 in
WP 8804/2020
for R2 in WP 8639/20
for R3 in WP(MD)
6645/2020
for R1 to R3 in
WP 8846/20250

: Mrs.Narmadha Sampath,
Addl. Advocate General
assisted by
Mr.C.Munusamy,
Spl. GP (Education)

for R4 in WP 8804/2020
for R3 to R5 in
WP 8477/2020
for R1 to R3, R8, R9 & R12
in WP 7982/2020

for R3 to R5
in WP 8639/2020
for R1 to R3
in WP 7976/2020

: Mr.R.Sankaranarayanan,
Addl. Solicitor General
assisted by
Mr.Venkataswamy Babu

for R4 in
WP 7976/2020

: Mr.L.J.Venkatesh

for impleaded
respondent

: Mr.T.Gowthaman

COMMON ORDER

M.M.SUNDRESH., J

The purpose and object of education has been misunderstood by us for quite sometime along with the role to be played by the teachers. Education is not mere imparting of knowledge. A mere knowledge in literacy, as we understand in common parlance, can never be termed as education. It is one's own growth of wisdom, compassion, character followed by conversion into action that would constitute education. A great nation is built on a character of its own citizens. It transforms into the character of the nation leading to its progress achieved through a value system. The great *Swami Vivekananda* describes the said concept as under:

"We want the education by which character is formed, strength of mind is increased, the intellect is expanded, and by which one can stand on one's own feet."

2. The Greek philosopher Plato succinctly explains education through his beautiful words *"not as it were to fill an empty vessel but to turn the eye of the soul towards light."*

3. Dr.Sarvepalli Radhakrishnan explains education through the following statement *"Education is the means by which we can tidy up our minds, acquire information, as well as a sense of values. Education should give us not only elements of general knowledge or technical skills but also impart to us that bent of mind, that attitude of reason, that spirit of democracy which will make us responsible citizens of our country."*

4. A man is both a creator and destroyer. Therefore, he is his own future. A better future can only be secured through the younger generation, existing and awaiting. As observed by Dr.Sarvepalli

Radhakrishnan, who himself is a great and acclaimed Teacher, a mental decay, degradation and decadence is far more dangerous than the physical. The only way to remove and eradicate the same is by way of Education. Today, we have problems galloped. The process of creating a good citizen has got multiple roadblocks created by various factors. Thus, Education will have to address this seminal issue without deviating towards more literacy in imparting knowledge without character.

5. For building a great nation, the role of a Teacher is singularly important. With the onslaught of information pouring through the technology, it is imperative to make sure that the children are groomed in the right way. As we know, technology as such cannot be faulted but only its wrong usage. We are concerned in these batch of cases on the right use of technology in imparting education which by the definition mentioned earlier would only be construed as "growth of wisdom".

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6. We have heard the learned counsel appearing for the parties. Due publication is also made giving information of the pending cases enabling the schools to participate.

7. All these writ petitions have been filed expressing concerns on the usage of online classes hastened by the pandemic. It has become one of necessity than option, as schools are yet to re-open having found that the children will be more vulnerable to the dreaded disease.

8. There are many questions that pop-up for consideration. These questions would involve the problems in the usage of technology *qua* online classes, the roles to be played by all the stakeholders, namely, the instrumentalities of the State, Schools and the Parents. Another important factor is on the social divide which unfortunately gets widened through imparting of the present education between the rich and the poor through varied curriculum, methodology and facilities. Thus, education does in a way create more imbalance instead of reducing it. We may also note the rightful step that has been taken

by the Union of India in this regard, though we do not wish to discuss in detail.

9. At the time of filing of the writ petitions, guidelines of the Union of India and the State Government were not in existence. Therefore, numerous materials were taken note of and placed before us. During the pendency, comprehensive and extensive guidelines are issued by the Central Government and the State Government. In fact, the guidelines for Digital Education issued by the Department of School Education & Literacy, Ministry of Human Resource Development, Government of India called as "PRAGYATA" is adopted substantially by the State Government.

10. On an extensive reading of the above said guidelines, we find that there is no need to go into the materials produced by the learned counsel appearing on behalf of the parties. In fact, almost all the submissions made placing reliance upon the aforesaid materials, including the materials from the World Health Organization, United Nations, are found in the guidelines. However, the question that arises for consideration is on the implementation of the guidelines. This

would include compliance by the schools and the parents. The incidental question is also on the inability of the students having access either due to lack of internet or the availability of device. It has been informed by the learned counsel placing reliance upon empirical data that most of the parents may not have either smart-phones or any other electronic devices to facilitate their wards in getting the benefits of online education.

11. We would like to place on record the excellent assistance rendered by all the learned counsel. We find that starting from the first case, in which, learned Senior Counsel Mr.S.Prabhakaran, ending with the learned Additional Solicitor General and the learned Additional Advocate General appearing for the Union of India and the State respectively, inclusive of the learned counsel appearing for the Institutions, submissions have been made with the primary concern of the children alone. It is heartening to note that even the learned counsel appearing for the schools made their respective submissions keeping in mind the role expected to be played by them as officers of the Court.

12. Since we have prefaced on the extensive and exhaustive guidelines of the Government of India and the State Government, we refrain ourselves from going into many of the materials produced by the learned counsel. As stated, in a different form they have been taken note of and we do not wish to undertake the role of a superior expert than those who spent days in preparing the guidelines being experts in their fields. Hence, we would only highlight the important aspects of the guidelines while concentrating on the issues flowing out of the same including the complaints made on the extensive usage by some of the overzealous institutions.

13. PRAGYATA Guidelines for Digital Education - These guidelines have been introduced by the Union of India with the knowledge that the Online Education can never be substituted for classroom learning, while acknowledging the advantages in doing so. It recognized three modes of education for online/digital education. They are, (i) online mode, (ii) partial online mode and (iii) offline mode. It fixes specific roles to be played by the School, Teachers, authorities and the Parents. In implementing the digital education it recommended screening time by dividing the students into four categories based

upon the classes in which they are studying. It further takes care of the safety measures to be taken while giving certain guidelines for physical and mental wellness during Education.

14. When the writ petitions came up for hearing, during one of the earlier occasions, an order was passed by us, after taking note of the guidelines of the Government of India. We deem it appropriate to reproduce the said order dated 20.07.2020:

"4. .. the guidelines issued by the Central Government are advisory in nature. The State Government is yet to take a call. The decision of State shall include imparting of education to all government school students as well as the private schools, both aided and otherwise. After all, we are interested in the well being of the children. The idea is to see to it that the children are not exposed to the gadgets at the cost of their health. Thus, we expect the State Government to come with clear guidelines, while taking into consideration the concerns expressed above, particularly, to the point of view of health of the children, apart from the convenience that is involved."

15. Taking note of the aforesaid order passed by us and the guidelines issued by the Government of India, the State Government passed a Government Order in G.O.(Ms) No.65, School Education (ERT) Department, dated 29.07.2020 along with the guidelines for Digital/Online Education. On a perusal, we find that the said guidelines are in tune with the guidelines of the Government of India. Suffice it to say that the focus has been with regard to the well being of the students. The health of the students was also taken note of, inclusive of possible strain to the eyes. An order was also passed by our predecessor Bench calling for a report from the Eye specialists. We find that the concern expressed in the affidavit filed by the Government Eye Specialists has been taken note of and addressed in the guidelines of the State Government.

16. Clause 5.1.3.1, which speaks of the Assessment, reads as under:

"5.1.3.1 Assessment

Assessment may be made an integral part of online learning programs in order to ensure achievement of learning outcomes at each level.

Concept inventories (diagnostic question banks) for all subjects may be created and published widely so that teachers can make best use of them.

The quantum of assessment given shall be in proportion to the time available for the completion of the same.

The assessment shall be meant only for monitoring purposes and shall not be in any case linked to the performance assessment for final grading."

Thus, the assessment, as indicated above, is not to be made relatable or linked to the performance for the purpose of final grading.

17. Clause 5.1.4, which deals with the Cyber Safety Measures, reads as under:

"Students, Teachers, and Parents may be oriented on Do's and Don'ts of cyber safety and security.

Make students aware about cyber bullying and how to avoid getting bullied. Also, encourage them to refrain from cyber bullying.

Do not share personal information, textual communications, videos or images of students on social media for any purpose including advocacy and showcasing your work. Create a congenial, safe and secured online learning environment. Communicate often with students with utmost clarity on do's and don'ts of engaging with digital learning.

Each and every one should avoid cyber bullying and follow internet etiquette as brought out by NCERT (given in Annexure – 1)”

These measures are to be kept in mind by Students, Teachers and Parents. Specific instructions have also been given to avoid cyber bullying. Clear instructions have been given to Students studying in different classes, Parents and Teachers. Schools have been instructed to balance both the online and offline activities. Advices have been given towards safety and ethical precautions.

18. Clause 6.5 deals with Attendance in Online Classes and the same reads as under:

"1.Attendance may be taken on the electronic system only for flagging, remediation requirement

of the absentees and not for any punitive or financial purposes. Such attendance shall not be counted mandatory for performance evaluation purposes.

2.The teachers may take the responsibility and ensure that all students who were absent for online sessions are suitably coached and brought on par with the other students who attended the online classes, when the school reopens.

3.While assessments and assignments can be done online, none of the assignments or assessments conveyed remotely to the child over electronic modes and through an electronic device may be made mandatory or be counted towards final grading/marking/performance evaluation.”

19. On the question of attendance, schools have been informed that it shall not be accounted as mandatory for performance evaluation purposes.

20. Taking note of the difficulties that may be faced by the Parents and the Students *qua* the device and access guidelines, Clause 6.6 has been introduced, which reads as under:

“6.6 Guidelines for lending and borrowing of devices/other guidelines

1.Lending/borrowing of devices within the family and proximate community could be practised for facilitating online classes. Any lending/borrowing of devices for online classes may be kept to the minimum time and be mediated by preferably the parent/responsible guardian/teacher concerned.

2.Parents/guardians/persons lending devices to children may be given complete agency on whether to let the children attend online classes based on their personal circumstances and safety perceptions till a fully firewalled LMS is in place and all children have requisite devices & connectivity for the school/school system.

3.Nobody/no parent or guardian may be compelled to share any device with children for online classes when the children are unsupervised by a responsible and trustworthy adult.

4.Nobody may take any advantage of a child or its family on the ground that (s)he had lent/will lend a device to the child for attending online classes.

5.Nobody may gain access to a child's house or private space on the grounds of lending a device to the child for attending online classes.

6. Nobody and no child may be compelled to attend any online classes using terms like "shall, should, must, compulsory will be counted in attendance, grades/marks/evaluation are based on this, etc." These may build feelings of stress or deprivation among children with unexpected conflicts or consequences in the family or the community.

7. All communications regarding online classes may be communications of information only. All teachers/school staff and authorities may be sensitized on this matter that there should not be a hint of compulsion even in their tone of voice or in the mode of drafting/language of the letter.

8. A protocol may be informally established that the elder child gets access to the device if online classes are happening simultaneously for more than one child in the family, if there is a shortage of devices. This is to ensure that conflicts are minimized in the family on this account."

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21. Under the guidelines 6.7, the timing for online classes is specified. This is for different classes starting from pre-primary classes to XII:

"6.7 Timing for online classes

1. Each online session may have 30-45 minutes of curricular delivery. Children with special needs and differently abled children may have shorter sessions in consultation with their parent/guardian.

2. A break of at least 10-15 minutes shall be given between each session to give rest to the eyes and to enable children to relax, stretching of body or to take water.

3. A teacher may take a maximum 6 classes per day, subject to a maximum of 28 online classes per week.

4. Classes may be scheduled between 9.00 a.m. to 5.00 p.m. normally on all working days.

5. All other electronic communication regarding online classes, assignments etc, may be restricted between 8.00 am to 6.00 p.m.

6. No online classes may be scheduled for preprimary classes for teaching curriculum. But, online sessions may be scheduled for interacting with parents and guiding them for not more than 30 minutes.

7. For students of Standards 1 to 8, online classes may be undertaken for not more than two sessions of 30-45 minutes for a day.

8.For students of Standards 9 to 12, online classes may be undertaken for not more than four sessions of 30-45 minutes for a day.”

22. In Annexure – 1, phone number of the cyber crime as well as the complaint mechanism has been given. Thus, from the above, an extensive mechanism has been provided to deal with the situations.

23. With the above backdrop, let us see the grievance of the petitioners as submitted by their respective learned counsel.

24. Learned counsel appearing for the petitioners made the following submissions:

(i) there is no mechanism to prevent the obscene and pornographic videos that pop-up during the online classes. The young inquisitive mind would certainly be tempted especially when there is no possibility of the elders being around;

(ii) of all the modes, the recorded versions through the local television channels should be a preferred one, as the issues including the access and the availability would not arise;

(iii) online classes are being conducted without adhering to the time limit, and therefore, the institutions will have to be strictly asked to follow the guidelines;

(iv) online classes create more differences between the rich and the poor. There are serious problems towards connectivity and the availability, no steps have been taken to find out these problems;

(v) there has been a time limit for disposing of complaints by the police. A case has to be registered at the earliest and enquiry will have to be completed in a time bound manner. The guidelines issued should be directed to be complied with in letter and spirit. Incidentally,

there must be a mechanism to supervise the implementation;

(vi) the time limit fixed will have to be varied as the classification made for different groups of students is not correct;

(vii) since the entire methodology adopted is temporary, there shall not be any insistence towards evaluation and the understanding of the students being different from each other has to be kept in mind.

(viii) there is no element of privacy involved and, therefore, end-to-end encryption will have to be ensured.

26. Learned Additional Solicitor General and the learned Additional Advocate General submitted that the guidelines being exhaustive, appropriate orders can be passed upon the same. They being guidelines, it is for the Schools and the Parents to implement the same. However, there can be a mechanism at the District Level to supervise and monitor the compliance of the guidelines.

27. Upon hearing all the learned counsel extensively, we are of the view that what is required to be done is the proper implementation of the guidelines and the difficulties that might arise in the present digital learning/online education.

28. This new form of Education is created by the technology which has been imposed upon us by the pandemic. Therefore, it should be used as an opportunity to deal with the situation till the normalcy is restored. This is not a substitute to the education in the physical form, but is only supplementary. Digitalization has created distinct literate called digital literates. Usage of this technology is an opportunity to learn which would not arise otherwise. This is from the perspective of the Teachers and the Students. Therefore, while doing so, the Institutions along with the Teachers and Parents will have to play their respective roles with all seriousness. Without the co-operation of all the stakeholders, it would not be possible. It has been brought to our notice that there are certain Schools which are overburdening in conducting the examinations, making the attendance mandatory and taking the classes beyond the time limit mentioned in the guidelines.

This, we do not approve. Though the guidelines are not stated to be mandatory, we are of the view that they are binding on the Institutions. Taking care of the interest of the children is the primary duty of the Parents, Teachers, Institutions, Government and the Court. The Directive Principles enshrined in the Constitution of India will have to be kept in mind. We have already discussed the need for creating a better environment. It can come only when the next generation is prepared accordingly. The concept of education "has to be understood correctly" by all the stakeholders. A constitutional mechanism will never work if the education system is faulty. Certainly, it will impact the fundamental rights. Therefore, we are of the firm view that the guidelines are to get the trappings of the mandatory directions. It is nobody's case that the guidelines are not correct, though some grievance has been expressed by one of the learned counsel to increase the number of hours for the higher education. Suffice it to state that no challenge has been laid. Schools are bound by the directions issued by the authorities. These guidelines are obviously in the interest of the students. Therefore, it will not come in conflict with the Institutions with the right to manage and administer.

29. We are dealing with the classes of varied categories such as Government Schools which are few in existence, aided and un-aided schools, their curriculum is also different. Hence such a right is subject to the larger right of the students. This is only a temporary phenomenon as of now because of the pandemic situation. Thus, we hold that the guidelines are to be complied with by all the stakeholders.

30. Having held so, we now deal with the other issues that arise for consideration. As rightly submitted by Mr.S.Prabakaran, the learned Senior Counsel appearing for one of the petitioners, prevention is better than cure. Mr.Gowthaman, learned counsel submitted that to deal with the pop-ups, one can have a blocker. This is an issue which can be considered by the State Government by issuing a circular to all the Institutions. We are not experts in the field, thus, we call upon the State Government, namely, the Secretary to the Government, Department of Education, Fort St.George, Chennai to deal with the said issue. This issue might not arise for the Government school students to whom, we are told that the classes are being conducted by recorded versions through the local television channels.

31. Insofar as the submissions made regarding the usage of the recorded versions through the local television channels is concerned, though we find force, we do not wish to make it mandatory. It is for the respective schools to adopt their mode while keeping in mind the guidelines issued. However, they can also explore the possibility of going for the recorded classes as it would ease out the pressure from the point of view of the students. Similarly, recorded versions can be sent through Whatsapp apart from being uploaded in the school portals.

32. Insofar as the poor students are concerned, they have two difficulties as it appears. One is with respect to the availability of the device and the other is the connectivity. Perhaps, to tide over this problem, Institutions are required to make a thorough inspection and find out the difficulties. In the Government schools which are maximum in number, classes can be conducted in the community halls and for those who cannot afford, steps may be taken either to provide the device, or make them to attend the classes, if they are few in numbers, while maintaining the social distancing. After all, the idea is a

child shall not be made to lose the class because of any other consideration. We may note, teachers are now fully available and the class rooms are empty with the lockdown eased considerably.

33. Accordingly, keeping in mind the interest of the children, we are inclined to issue the following directions:

(i) the guidelines issued by the Government of India and the State Government are to be treated and construed as mandatory and, thus, to be adopted and followed by all the stakeholders, particularly the Schools.

(ii) the time limit for the online classes should be strictly adhered to and any violation would require action at the hands of the concerned authorities.

(iii) the State of Tamil Nadu and other bodies, with whom the Schools are affiliated, shall issue circulars to the Schools which are to be circulated in turn to the Parents towards the measures that

are required to be taken to block obscene contents.

(iv) the programmes conducted will have to be sent by Whatsapp to the Parents and uploaded in the school portals.

(v) At every District level, the Government of Tamil Nadu and the other competent authorities are expected to set up a Committee to monitor and supervise the due compliance of the guidelines by the institutions. These Committees will have to meet once in a month for the aforesaid purpose.

(vi) The schools concerned will have to undertake the exercise of identifying the problems being faced by the Parents and Teachers in online connectivity and availability of the device. If they are in existence, the feasibility of having classes,

particularly for the Government students through the recorded versions telecasted in community halls will have to be considered.

(vii) the schools can also allow group of students identified by them requiring special attendance in view of the difficulties faced in online and digital education to attend physical classes while following social distance. Therefore, in a single class, a small group of students may be permitted to attend the schools by taking all the safety measures.

(viii) Schools can also explore the possibility of Teachers going to the students and giving education if there exists facility to do so.

(ix) the guidelines issued with respect to the attendance, test and examination will have to be strictly complied with.

(x) the guidelines with respect to pre-primary students will have to be complied with strictly.

(xi) the Schools will have to explore the possibility of having end-to-end encryption.

(xii) the guidelines of the State Government will have to be translated in Tamil, if not done already, and the copies of the same will have to be sent to all the schools. The schools in turn are expected to circulate the same to the parents.

(xiii) There shall be interaction between the Schools and the Parents on the functioning of the online/digital education, as many of them may not be digital literates.

(xiv) Any complaints given to the support and help line numbers will have to be looked into by the

cyber crime cell and other authorities at the earliest. The complaints to the police will have to be registered immediately if offence is made out and investigation will have to be completed at the earliest. Similarly, the complaints made to the other authorities will have to be looked into and the process of the investigation will have to be completed within a period of three months.

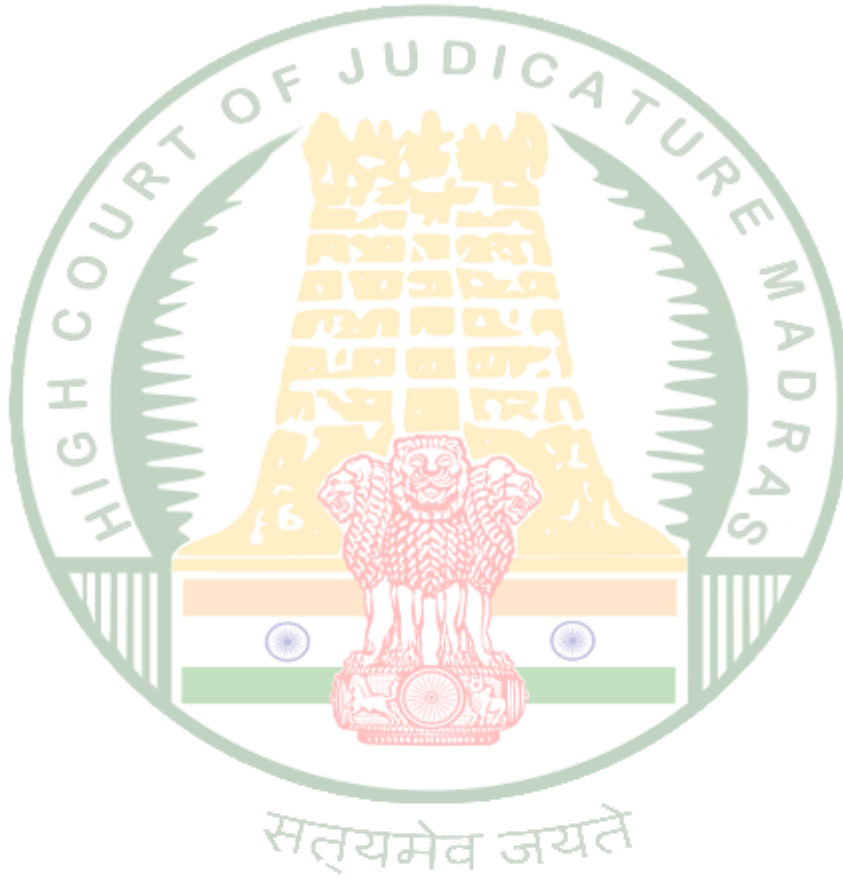
34. We do sincerely hope that the above said directions are complied with by all the stakeholders, as we believe that the ongoing pandemic would pass allowing the children to breathe fresh air. We make it clear that the above directions are applicable to all schools functioning in the State of Tamil Nadu.

The writ petitions stand disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

(M.M.S., J) (R.H., J)
09.09.2020

W.P.Nos.8446, 7976, 7982, 8477, 8639, 8804 of 2020
& W.P(MD) No.6645 of 2020

Index :Yes/No
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M.M.SUNDRESH, J.
AND
R.HEMALATHA, J.

(Order of the Court was made by *M.M.SUNDRESH,J.*)

After pronouncement of the order, the learned counsel appearing for the parties made a request that liberty may be given to file appropriate application in future in view of the stand that is likely to be taken from time to time by the State and the Central Government.

2.In view of the above submissions, the parties are at liberty to file appropriate application, if so advised.

(M.M.S.J.) (R.H.J.)
09.09.2020

Note: Registry is directed to upload the order copy today.
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To

- 1.The Secretary,
School Education Department,
Fort St.George,
Chennai – 600 009.
- 2.The Director of School Education,
DPI Campus, College Road,
Chennai – 600 009.
- 3.The Director of Elementary Education,
School Education, DPI Campus,
College Road,
Chennai – 600 009.
- 4.The Secretary,
Revenue and Disaster Management Department,
Disaster Management Wing,
Commissionerate of Revenue Administration and Disaster
Management, Ezhilagam, Chepauk,
Chennai – 600 005

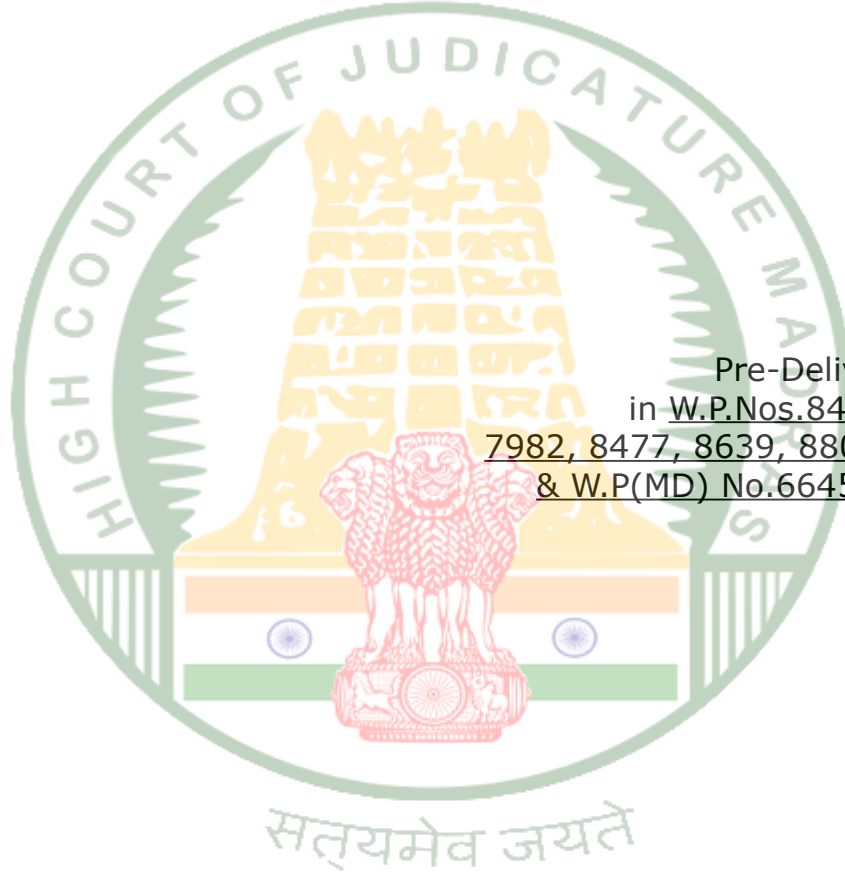


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M.M.SUNDRESH ., J
and
R.HEMALATHA .,J

(ssm)



Pre-Delivery Order
in W.P.Nos.8446, 7976,
7982, 8477, 8639, 8804 of 2020
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09.09.2020