

(2019) 03 J&K CK 0071

In the Jammu And Kashmir High Court

Case No : Other Writ Petition (OWP) No. 714, 914, 1021 Of 2016, IA No. 01, 02 Of 2016, 1, 2 Of 2017

J. P. World School Ors

APPELLANT

Vs

State & Ors

RESPONDENT

Date of Decision : 18-03-2019

Acts Referred:

Jammu & Kashmir School Education Act, 2002 — Section 3, 5(b), 11, 12, 12(4), 16, 29
Jammu And Kashmir School Education Rules, 2010 — Rule 9

Citation : (2019) 03 J&K CK 0071

Hon'ble Judges : Dhiraj Singh Thakur, J; Sanjay Kumar Gupta, J

Bench : Division Bench

Advocate : Ajay K. Gandotra, Sunil Sethi, D.S. Chouhan, Ravinder Gupta, S.K. Anand

Final Decision : Dismissed

Judgement

D.S. Thakur, J

1. This is a batch of petitions, filed by various private un-aided schools functioning within the Jammu Province in the State of Jammu and Kashmir.

2. The petitioners are aggrieved of the notices issued to them by the Fee Fixation Committee constituted by the Govt. vide Govt. Order No. 520-Edu of 2013 dated 07.05.2013.

3. The Committee was constituted in compliance to the directions issued in PIL NO. 719/2009 titled Parents Coordination Committee and others vs. State of J&K and Ors and also the Apex Court judgment in Islamic Academy of Education & anr Vs. State of Karnataka & ors, (2003) 6 SCC 697. The Committee so constituted consisted of four members with a retired Judge as its Chairman.

Subsequently, on account of the resignation of the Chairman, the Govt. issued an Order bearing Order No. 344 of 2015 dated 21.7.2015 appointed Justice (Retd.) Hakim Imtiyaz Hussain as a Chairman of the Fee Fixation Committee.

PIL No. 12/2014, PIL No. 13/2014 and OWP No. 1182/2013

In the earlier round of litigation, PIL Nos. 12/2014 and 13/2014 came to be filed, highlighting the plight of the school going children due to unprecedented floods that hit Kashmir in the year 2014. The petitions also raised issues regarding the delay in conducting the examination of some of the students among other issues.

Writ petition bearing OWP No. 1182/2013 was filed by J&K unaided Private Schools Coordination Committee, challenging the Govt. Order No. 520 of 2013 dated 7.5.2013. All these petitions came to be decided by virtue of judgment and order dated 1.8.2015 with consensus of the counsel appearing for the petitioners. Liberty was granted to the school managements to approach the Fee Fixation Committee for appropriate directions keeping in view the relevant criteria mentioned in the said order.

4. Para 9-C of the judgment rendered in OWP No. 1182/2013 is important inasmuch as it mandated that till new fee structures were fixed by the Committee, the management would collect only such fees as were being collected in August, 2014. For facility of reference, para 9-C of the judgment is reproduced as under:

"The managements of the un-aided private schools are granted liberty to approach the said Committee for fixation of fee structure of each standard and till new fee structure is fixed by the Committee the managements shall collect all type of fees as in August, 2014."

5. Despite the agreement recorded before the Division Bench, it appears that the private unaided schools continued to enhance their fee which created a lot of resentment amongst the students as also their parents' community. This was noticed by the Govt. which then issued the Govt. Order No. 98 of Edu of 2016 dated 24.3.2016 wherein the directions of the Division Bench issued vide judgment and order dated 20.9.2016 and its strict implementation by the authorities within the Department were recorded. It was made clear that schools would be de-recognized if there was any violation recorded in that regard.

6. The Fee Fixation Committee upon its re-constitution, based upon the complaints from various quarters issued notices to the petitioners, highlighting the grave violation of the directions dated 20.9.2016 issued by the Division Bench of this court. The petitioners were also directed to reduce their fee structures and further to charge from the students only such fee as was applicable in August, 2014. It was also ordered that management of the schools should refund the fee charged from the students in excess of the fee structure as was applicable in August 2014.

7. Being aggrieved of the show cause notices issued to the petitioners, the present batch of petitions have been filed, challenging the very jurisdiction and competence of the Fee Fixation Committee to issue such notices. The challenge is to the following effect:

(i) That the petitioners having been affiliated with the Central Board of School Education were not amenable to the jurisdiction of the State of Jammu & Kashmir and, therefore, the Fee Fixation Committee would consequently have no control to regulate the fee structure.

(ii) That the constitution of the Fee Fixation Committee in purported compliance to the directions passed by the Apex Court in case titled "Islamic Academy of Education V/s State of Karnataka," reported in (2003) 6 SCC 697 is erroneous, inasmuch as the directions apply only to Technical/Professional Colleges and not to schools.

ISSUE NO. 1

8. With regard to issue No. 1, a preliminary objection was raised by counsel for the respondents to the effect that a Division Bench of this Court in OWP No. 910/2016 titled Joint Committee of Private Schools vs. State of J&K &ors has already held that all the schools either aided or unaided are subject to the provisions of the Jammu and Kashmir School Education Act, 2002 and further that the Govt. was empowered to prescribe norms and conditions for functioning of the recognized schools including the constitution of a Committee to fix the fee structure. It was submitted that in the light of the judgment (supra) dated 20.9.2016, it was not open to the petitioners to yet again raise a similar issue.

9. In OWP No. 910/2016, the Joint Committee of Private Schools, an unregistered body of private schools had challenged the Govt. Order No. 520 of 2013 and also Govt. Order 344 Edu of 2015 which constituted the Committee for fixation of fee in private unaided schools on various grounds. In para 9 the Division Bench of this court in OWP No. 910/2016 held as under:

"9.To answer the said issue, it is to be noted that all the schools, either aided to unaided, shall be recognized under the J&K School Education Act, 2002 by the Government. Section 3 of the Act specifically states that the provisions of the said Act shall apply to all the schools in the State. Establishment of private schools is permitted under Section 5 (b). Section 11 mandates that no private school shall be established, un or maintained without permission in writing of the Government or the competent authority and the Government shall prescribe the procedure to be followed for the grant of permission to establish run or maintain private schools. Section 12 deals with recognition of private schools which states that only such private schools as are recognized shall be permitted to function. Section 12 (4) States that Government shall prescribe norms and conditions for the functioning of the recognized schools. Thus, the Government is empowered to prescribe norms and conditions for functioning of the recognized schools which include constitution of a Committee to fix the fee structure."

10. The Division Bench further went on to hold that the challenge thrown to the Constitution of the Fee Fixation Committee even otherwise was unsustainable as the same had been constituted for implementing the directions of the Supreme Court.

11. We have no reasons to disagree with the reasoning or the conclusions arrived at by the Division bench in the aforementioned judgment rendered in OWP no. 910/2016 in regard to the applicability of the provisions of the Jammu and Kashmir School Education Act, 2002 in all schools which are to be established, run or to be maintained in the State of Jammu and Kashmir especially in view of the mandate of Section 11 of the Act which requires a permission in writing of the Govt. or the Competent Authority. We also endorse the finding recorded that in terms of Section 12 of the Act, only such private schools as are recognized are to be permitted to function. Equally so the condition prescribed under Section 12 (4) of the Act which retained with the Govt. the power to prescribe norms and conditions for functioning of the recognized schools.

Permission and recognition by the Govt. for purposes of establishing, running or maintaining a school within the State of Jammu and Kashmir is totally different from affiliation/recognition granted by a Board like the Jammu and Kashmir Board of School Education constituted in terms of the Jammu and Kashmir State Board of School Education Act, 1975 or for that matter, the Central Board of School Education with which the petitioners claim that they are affiliated/recognized.

12. While failure to comply with the standards fixed by an affiliating body might result in disaffiliation by such a board, it would not per se prevent such an educational institution from seeking affiliation with any other board if such an institution satisfied the conditions prescribed by them. On the other hand, the de-recognition of a school by the Govt. in terms of the Section 16 of the Act of 2002 would totally prevent such a school from functioning as such. Inasmuch as the petitioners have established their schools within the State of Jammu and Kashmir, they are subject to all conditions of permission and recognition as also the monitoring regulation in regard to the fixation of fee that can be chargeable by such schools.

13. Apart from the directions issued by the Apex Court in regard to constitution of the Fee Fixation Committee, Section 29 of the Act of 2002 authorizes the Govt. to make rules for purposes of carrying into effect the provisions of the Act. Sub clause 2(f) of Clause 29 further authorizes the Govt. to provide for inter alia the levy and collection of fees in private schools.

14. Rule 9 of the Jammu and Kashmir School Education Rules 2010 framed in terms of the power granted to the Govt. inter alia envisages as under:

Levy and Collection of Fees

(a) Every private school shall, before the commencement of each academic session, notify, for general information, the details of its fee structure.

(b) The admission fee shall be charged only once i.e. upon first enrollment of the child/study in the school.

(c) No money from any source shall be accepted without due acquaintance and

without being properly accounted for.

(d) There shall be no mid session revision of fee.

(e) The school shall affect any revision of fee, in consultation with the parents' association under an intimation to the concerned Director, School Education."

It therefore, transpires that matters pertaining to levy and collection of fees, apart from the directions of the Apex court were matters within the scope and ambit of the powers vested with the Govt. The Govt. thus, could prescribe conditions which would while giving sufficient fair play in the joints to education institutions to retain their autonomy in regard to fixation of fee also prevent commercialization of education.

15. The argument that because the petitioners were affiliated with the Central Board of School Education, they are not amenable to the jurisdiction of the fee fixation committee is therefore, wholly unsustainable and is, accordingly, rejected.

Issue No. 2

16. The next issue highlighted by the learned counsel for the petitioners was that the fee fixation Committee could not have been constituted in purported compliance to the directions passed by the Apex court in *Islamic Academy of Education and anr vs State of Karnataka and ors*, (2003) 6 SCC 697, inasmuch as the directions in that case apply only to technical and professional colleges and not to schools is also untenable. In this regard, it may be beneficial to refer to the judgment of the Apex Court as rendered in *Islamic Academy of Education's case* (supra).

17. One of the issues that came up for consideration before the Apex Court in *Islamic Academy of Education's case* (supra) was whether educational institutions were entitled to fix their own fees structure. It was held that each institute should have freedom to fix its own fee structure while taking into consideration the need to generate funds for running the institution and to provide facilities necessary for the benefits of the students. It was also held that the institutes must be able to generate surplus to be used for its betterment and growth. It was, however, specified that the surplus/profit generated must be used only for the benefit and use of that education institution and that it cannot be diverted for any other use or purpose, for personal gain, business or enterprise. It was in that context the Apex Court in the judgment (supra) held as under:

".....we direct that in order to give effect to the judgment in *TMAPAI's case* the respective State Governments concerned authority shall set up, in each State, a committee headed by a retired High Court judge who shall be nominated by the Chief Justice of that State. The other member, who shall be nominated by the Judge, should be a Chartered Accountant of repute. A representative of the Medical Council of India (in short 'MCI') or the All India Council for Technical

Education (in short 'AICTE'), depending on the type of institution, shall also be a member. The Secretary of the State Government in charge of Medical Education or Technical Education, as the case may be, shall be a member and Secretary of the Committee. The Committee should be free to nominate/co-opt another independent person of repute, so that total number of members of the Committee shall not exceed five. Each educational Institute must place before this Committee, well in advance of the academic year, its proposed fee structure. Along with the proposed fee structure all relevant documents and books of accounts must also be produced before the committee for their scrutiny. The Committee shall then decide whether the fees proposed by that institute are justified and are not profiteering or charging capitation fee. The Committee will be at liberty to approve the fee structure or to propose some other fee which can be charged by the institute. The fee fixed by the committee shall be binding for a period of three years, at the end of which period the institute would be at liberty to apply for revision. Once fees are fixed by the Committee, the institute cannot charge either directly or indirectly any other amount over and above the amount fixed as fees. If any other amount is charged, under any other head or guise e.g. donations the same would amount to charging of capitation fee....."

18. It needs to be highlighted that the issue with regard to whether the Fee Fixation Committee directed to be constituted pursuant to directions given in Islamic Academic of Education's Case (supra) were in any manner went beyond the directions issued in T.M.A, PAI Foundation and ors vs. State of Karnataka &ors (2002) 8 SCC 481 came up before the Apex Court in P.AInamdar and ors vs. State of Maharashtra and ors (2005) 6 SCC What was held by the Apex court in this judgment (P.A. Inamdar's case) is as under:

"On Question-4, our conclusion, therefore, is that the judgment in Islamic Academy, in so far as it evolves the scheme of two Committees, one each for admission and fee structure, does not go beyond the law laid down in Pai Foundation and earlier decisions of this Court, which have been approved in that case. The challenge to setting up of two Committees in accordance with the decision in Islamic Academy, therefore, fails. However, the observation by way clarification, contained in the later part of para 19 of Islamic Academy which speaks of quota and fixation of percentage by State Government is rendered redundant and must go in view of what has been already held by us in the earlier part of this judgment while dealing with Question No.1."

19. As to what was the meaning of the expression "Education" and "Educational Institutions" came up for consideration in P.AInamdar's case before the Apex court. The question No. 11 which was framed by the Apex court in the said judgment is relevant and reproduced as under:

"A. The expression "education" in the articles of the Constitution means and includes education at all levels from the primary school level up to the postgraduate level. It includes professional education. The expression "educational institutions" means institutions that impart education, where

"education" is as understood hereinabove."

Therefore, any institution, which imparts education at all levels from the primary school level till the post-graduate level would fall within the meaning of the expression "Educational Institution" and would necessarily fall within the ambit of the directions issued in the case of Islamic Academy of Education's Case. The argument that the directions for constitution of Fee Fixation Committees were only meant for professional colleges and institutes and not for schools, therefore, is unsustainable and is, accordingly, rejected.

20. Be that as it may, the petitions are found to be without any merit and are accordingly dismissed. The petitioners shall refund the entire fee beyond the scale, which was chargeable by the schools uptill August 2014 in terms of the judgment and order dated 20.9.2016 passed by the Division Bench in OWP No. 910/2016. The fee so refunded shall be paid along with interest @ 9% per annum on the said sum.