

(1999) 07 J&K CK 0010
In the Jammu And Kashmir High Court
Case No : Letters Patent Appeal No. 212/99

Un-aided Private Schools Federation	Vs	APPELLANT
State of J&K & Ors.		RESPONDENT

Date of Decision : 26-07-1999

Acts Referred:

Jammu and Kashmir Board of School Education Act, 1975 — Section 3

Citation : (2000) KashLJ 596 : (2000) SriLJ 576 : (2000) 2 SriLJ 576

Hon'ble Judges : Arun Kumar Goel, J and T.S.Doabia, J

Bench : Division Bench

Advocate : H.L.Jhelmeria, D.S.Chauhan, Advocates appearing for the Parties

Judgement

Doabia, J.—The appellants in this appeal are running private schools. They are aggrieved of the orders passed by the State Government.

One of such order bears No. 121Edu of 1998 dated 22011998. By this order a scheme has been prepared for conducting examinations for class

VIII Standard.

2. There is another order issued on 02031998. This deals with conducting examination with regard to class IX and class X Examinations. There is yet another order by which the fee structure is sought to be regularised. Communication in the shape of a notification was issued on 26091998.

3. The appellants felt aggrieved. They preferred writ petition in this court. The writ petition stands dismissed. They have come in appeal under clause 12 of the Letters Patent.

4. Learned counsel for the appellants submits that there is an Act by the name of the Jammu and Kashmir Board of School Education Act 1975. It

is submitted that in terms of section 3 of the Act the State Government can take

action only if advice is received from the Board of School

Education. It is accordingly submitted that the communications which have been issued are in breach, of the provisions of section 3 of the Act

referred to above. In addition to this it is urged that a scheme has already been prepared by the Board so far as the scheme for class VI to VIII is

concerned, this has been placed on the record. Similar scheme prepared for class IX and X has also been placed on the record. It is submitted

that the instructions/notifications referred to above which have now been issued, are contrary to the scheme which has been formulated by the

J&K Board of School Education. Specific challenges which have been made are as under:

i) that in the scheme which was originally framed there was special emphasis to reduce the importance of external examiners;

ii) that the advice is supposed to be given by the Board was not available with the State and as they have acted without obtaining any advice,

therefore, the action of the Government in issuing the notification is null and void.

5. Learned counsel for the appellants placed reliance on the authorities reported as AIR 1994 SC: 1808; AIR 1992 SC: 1858; AIR 1990 SC: 40

and AIR 1973 SC: 2178.

6. The respondents have put in appearance. The stand taken by them is that they have acted in terms of section 10 of the Act on which reliance

has been placed by the appellants. It is submitted that under this scheme the Board has the power to take action visavis the matters enumerated in

section 10, but this is subject to the directions and instructions of the Government.

7. As counsel for the appellants is placing reliance on section 3 and as respondent's counsel is placing reliance on section 10, these provisions so

far as relevant are being noticed below:

3, Incorporation of the Board (i) The Government shall, by notification in the Government Gazette, establish a Board of School Education for the

State to advise the Government on matters of policy relating to elementary Education, Secondary Education and Higher Secondary Education and

in respect of matters specified by or under this Act. (2) The Board shall be a body corporate by the name of the 'Jammu and Kashmir State Board

of School Education"" and shall have perpetual succession and a common seal

and shall have power to acquire, hold and dispose of property and to enter into contracts and do all other things necessary for the purpose of its constitution and may sue or be sued by its corporate name as aforesaid.

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Section 10: reads as under.

10. Powers and functions of the Board Subject to the provisions of this Act and also subject to the broad education policies and such directions

and instructions as the Government may adopt and issue from time to time, the Board shall have the following powers and functions:

(i) to prescribe the courses of institution, prepare curricula and detailed syllabi and also prescribe test books for the elementary, secondary school

and higher secondary (school graduation). School examinations;

(ii) to conduct public examinations for persons who have pursued the secondary school and higher secondary (School graduation) school

education courses;

(iii) to publish the results of examinations conducted by the Board;

(iv) to grant diplomas or certificates to persons who have passed the examinations of the Board under conditions laid down in the regulations;

(v) to recognize institutions for the purpose of providing instructions in the secondary and Higher Secondary Courses on such conditions and on

receipt of such fees as may be fixed by the regulations;

(vi) to require schools recognized by the Board, to extend their cooperation in the conduct of examinations held by it, by placing their staff,

equipment, halls and rooms, laboratories and other apparatus at the disposal of the Board;

(vii) to conduct inspection of the recognized schools/institutions to ensure

a) that the recognized schools have the requisite facilities of playgrounds, furniture, laboratories, library, equipment, accomodation and qualified

teaching staff as prescribed by the regulations;

(b) that no recognized school/institution adopts books as course of study other than those prescribed/approved by the Board;

c) that the recognized schools/institutions maintain the standard of education and impart instructions strictly in accordance with the regulations made

under this Act;

(viii) to disaffiliate recognized schools which do not fulfil the conditions laid down in clause (vi) and subclause (a) and (b) and (c) of clause (vii) of

this section.(ix) to admit candidates to the examinations of the Board under the conditions laid down by the Regulations;

(x) to demand and receive such fees as may be prescribed by the regulations;

(xi) to hold control and administer the funds and property by the Board,

(xii) to receive bequests, donations, endowments, trusts and other transfers of any property or interest therein,

(xiii) to cooperate with the University of Jammu, University of Kashmir other Boards and with other authorities and with other institutions in such

manner and for such purpose as the Board may determine;

(xiv) to place before the Government the view of the Board on any matter with which it is concerned;

(xv) to call for reports from a Director of School Education on the conditions prevailing in the recognized institutions or in institutions applying for recognition;

(xvi) to adopt measures to promote the physical, moral, cultural and social welfare of the students in recognized institutions;

(xvii) to take such measures as the Board may think necessary to raise the standard of the education in the State and advise the Government

matters of policy relating to elementary secondary and Higher Secondary Education;

(xviii) to frame regulations for carrying out its purposes;

(xix) to institute and award medals and prizes and scholarships under conditions that may be prescribed;

(xx) to approve the annual financial estimates of the Board after having been endorsed by the Finance Committee;

(xxi) to appoint committees consisting of such members of the Board and such other persons, if any as the Board in each case may deem fit for

carrying out specified purposes and to delegate to these committees, such powers as it may consider necessary;

(xxii) to issue instructions by correspondence;

(xxiii) to exercise full academic control over the recognized institutions;

(xxiv) to obtain loans in furtherance of the objects of the Board;

(xxv) to delegate such of its powers to any officer or committee of the Board as it may deem fit, provided that such delegation is made by a majority of not less than two-thirds of the members of the Board;

(xxvi) to appoint, say as otherwise provided in this Act, the Joint Secretaries and such other officers as may be declared by the Regulations to be the officers of the Board;

(xxvii) to undertake editing, printing and publication of text books for various courses as the Board may deem proper;

(xxviii) to adopt measures for coordinating national and State policies in Secondary and higher Secondary, technical and vocational education and for coordinating higher secondary education with the elementary and University education;

(xxiv) to constitute various divisions, units and committees for the furtherance of its objectives; and

(xxx) to do all such other acts and things as may be necessary for furtherance of the objectives of the Board as a Corporate body constituted for regulating and supervising elementary, Secondary and higher Secondary education in the State.

8. We are of the opinion that the view expressed by the learned Single Judge of this court holding that no case has been made out for interference

is an opinion to which no exception can be taken.

9. Merely because in the section 3 of the Act the words used are "that a Board of School Education is to be constituted for advising the State" it

cannot be said that the State Government is always bound to obtain such an advice and that such an advice is always binding on the Government.

In this regard it would be apt to refer the decision of the Supreme Court in the case reported as State of Uttar Pradesh Vs. Madan Lal Srivastava

(AIR 1957 SC: 912). In the above case on the basis of Article 320 of the Constitution of India an argument was raised that the Union of India is

supposed to consult the Union Public Service Commission and if this is not done then the mandatory provisions of Article 320 shall be deemed to

have not been complied with. This aspect of the matter was noticed by the Supreme Court. It was observed that merely because Article 320 uses

the word "shall" would not mean that the Union of India is bound to consult the

Union of Public Service Commission. It was observed that the words ""shall be consulted"" are not to be construed in the sense that in default of the consultation action of the Government under Article 320 would be null and void. In the present case the only mandate of law is that.....is to be constituted. There is no mandate that advice has necessarily been obtained from the Board. This is the plain meaning of section 3. In view of the decision of the Supreme Court (supra) the appellant is not entitled to any relief.

10. So far as the other matters are concerned these are purely executive matters. The view taken by the State is for the benefit of the students.

The requirement of holding a uniform examination for classes beginning from Class VIII is a step in the right direction. As a matter of fact

examinations are being conducted by following the scheme formulated by the State. In view of the aforementioned decision of the Supreme Court

holding that merely because the word 'shall' is used the same is not to be treated as mandatory no care is made out.

11. We are of the opinion that no case is made out for interference. The decision on which the reliance has been placed by the learned counsel for

the appellant have been noticed. It is however, observed that these decisions are not applicable to the issue involved in this case. This appeal is

found to be without any merit and is dismissed.