

(1999) 02 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1095 Of 1998

Un-aided Private Schools Federation (J & K) through its
Convenor Varinder Khajuria

APPELLANT

Vs

State of J&K through Commr/Secretary Education Deptt.Civil
Sectt.Jammu/Sgr

RESPONDENT

Date of Decision : 16-02-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Jammu and Kashmir State Board of School Education Act, 1975 — Section 10

Citation : (2000) KashLJ 199

Hon'ble Judges : G.D.Sharma, J

Bench : Single Bench

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

Judgement

G.D.Sharma, J.—The petitioners herein run unaided private schools in the capacities shown in the title of the petition. They have prayed for

quashing of Govt. Orders No. 121Eduof 1998 dated 22.1.98 and No. 314Edu of 1998 dated 2.3.98. Further relief for quashing all consequential

and incidental order passed there under has also been prayed.

2. The petitioners have averred that by passing the above said orders the Govt. has completely overhauled the schemes of the examinations of 6th,

8th, 9th, 10th and 11th classes. These schemes have been attached as annexures A, B and c and are known as ""Continuous and Comprehensive

evaluation schemes."" These Schemes were formulated by the J and K State Board of School Education after comprehensive study done by the

experts in the respective fields of education and they were made applicable to all types of schools which consist of schools run by the Govt.,

private schools aided by the Govt. and unaided private schools. These schemes are aimed to promote talent in the students in conducting the

examinations through internal examiners. The schemes had been yielding good results but the impugned orders will have the tendentious effect of

prohibiting the concerned subject teachers to be members of the supervisory staff of the examinations as well as Evaluators The orders make it

compulsory for a student to repeat the class and no provision has been kept for reevaluation of the papers. In order to qualify for class 9th

examination, it is required to obtain 33% marks in any four subjects contrary to the requirement of the schemes where this percentage was

compulsory in respect of three subjects only. Exorbitant examination fee has been prescribed which is beyond the capacity of an ordinary student.

Unauthorised persons were associated when fee structure was fixed vide annexureH. 3. Respondents No. 1, 3, 4 and 5 in their objections have

taken preliminary objection regarding the maintainability of the writ petition. They have pleaded that petition could not be filed on behalf of

Federation which is not registered recognised body. On facts it is pleaded that the orders are valid as the Govt. under section 10 of the J and K

State Board of School Education Act, 1975 (hereinafter to be referred as Act) had the power to pass them. They have improved the schemes in

question by ensuring uniformity in the examinations and providing comprehensive evaluation.

4. ResponderiV2 in the objections has pleaded that petitioners have no legal or fundamental right to challenge the orders.

5. Heard the arguments.

6. Learned counsel appearing for the petitioners has contended that it was obligatory for the govt. to take advice from the Education Board before

the impugned orders could be issued as those orders deal with matters of policy relating to elementary education, secondary education and higher

secondary education. This obligation was under sec. 3 of the Act. Exorbitant fees have been prescribed and that will debar the poor strata of the

society to educate their children. To receive education is a fundamental right guaranteed by the Constitution and any action which deprives a

person to have the education is unconstitutional. On facts he has argued that private unaided schools are imparting better education and giving

good examination results. Under the impugned orders, the management of the examinations have been entrusted to the respective Principals of the concerned DIET institutions in the Districts which lack infrastructure to conduct the examinations. These orders are thus defeating the aims and objects of the Act and are bad in the eye of law.

7. Counsel appearing for the respondents have contended that section 10 of the Act defines the powers and functions of the Board and the govt. is competent to adopt broad educational policies and issue directions and instructions to the Board to implement them. The Board is under obligation to carry them besides the functions enumerated in section 10 of the Act.

8. At the threshold, the point which falls for consideration and determination is whether it was mandatory for the govt. to take advice from the Board before the orders in question were issued or they have been passed under the independent power. Section 3 of the Act makes it obligatory for the Govt. to establish a Board of school education for seeking the advice on matters of policy relating to elementary education, secondary education and higher secondary education and in respect of matters specified by or under the Act.

9. It has been contended on behalf of the respondents that in terms of impugned order No. 121Edu of 1998 dated 22.1.98 in order to ensure

adequate level of attainment at upper primary level only examination of 8th class has been prescribed and that has been now given to concerned

Principals of D. I. E. T. institutes of the concerned Districts. This is an arrangement with regard to conducting the examination of upper primary

education. That in terms of impugned govt. order No.314Edu of 1998 dated 2.3.98, the Board has been entrusted the functions to conduct the

examinations for classes IX and XI which fall within the definition of high and higher secondary classes. The counsel have further contended that u/s

10 of the Act subject to the provisions of the Act and also to broad education policy, the govt. has the powers to adopt and issue any policy or

issue directions or instructions. The Board has been entrusted with the powers to conduct public examinations for persons who have perused the

secondary schools and higher secondary (school graduation) school education courses.

10. The contention that all the powers in the referred annexures A, B and C have

been upset is factually incorrect. The impugned orders were passed to infuse the element of fairness in the mode of examinations and improve the educational standards. The orders cover the broad principles of the policy and promote the aims and objectives of the Act.

11. After considering the respective contentions of the counsel for the parties and going through the relevant provisions of the Act, it can be said

with certainty that the impugned govt. orders are found not suffering from any legal infirmity. Order No. 121 Edu of 1998 dated 22.1.98 deals with

the external examination of 8th class and the conduct of the examination has been entrusted to the State Institute of Education. The Chief Education

Officers and Principals of DIETs have also been associated with the evaluation and other procedure of the examinations. In other words, the

management of the petitioners have been excluded to conduct the examinations as well as to evaluate the papers. The other impugned order which

is govt. Order No.314Edu of 1998 dated 2.3.98 does not take away the power of the Board of Education for the conduct of the examinations for

classes IX and X as well as of evaluation of the papers. Both the orders could be found bad in the eye of law had they run contrary to the reason

deter of the Act. The powers and functions of the Board have been specified in section 10 of the Act. Under head (ii) of the section, the Board has

the power to conduct public examinations for persons who have perused the secondary school and high secondary (school graduation) school

education courses. The terms "Higher Secondary Education" and "secondary education" have been defined in section 2 of the Act. Under clauseE

of section2, "Higher Secondary Education" means such general, technical, vocational or special education (including any combined courses thereof)

which follows the stage of Secondary Education and is imparted in classes XI and XII and precedes the education controlled by a University or

any other examining body established, by law in the State or outside. Under ClauseR, term "Secondary Education" means such general, technical,

vocational or special education (including any combined course thereof) which follows the stage of elementary education and is imparted in classes

IX and X and precedes the higher secondary education. Vide impugned govt. order No. 121Edu. of 1998 dated 22.1.98, external examination of

8th class has been dealt with and entrusted to the authorities specified the rein.

The impugned order has not interfered with the powers and functions of the Board because the Act did not vest the Board with the powers and functions to take examinations of VIII class. In the other impugned order which is No.314Edu of 1998 dated 2.3.98, the powers to conduct the examinations of the classes specified therein have not been taken away from the Board, but directions and instructions have been given for the better conduct of those examinations. Had these orders supplanted the provisions of the Act they could be said illegal but they are found supplementing the aims and objects of the Act so they are valid orders. The other arguments advanced by the learned counsel for the petitioners with regard to the better examinations results being yielded by the schemes in question or levying of heavy fees for the ensuing examinations cannot be viewed seriously. The fees are not of such a magnitude that they can be termed as beyond the reach of the ordinary student. By no stretch of imagination they can be equated with capitation fee charged in professional colleges as they run in four or five figures. The Govt. has always the power to increase or decrease the fee in question. If there is any grievance, the matter can be reviewed by the competent authority. On such a view being taken, there is found no merit in this petition which is accordingly dismissed.