

**Office of the Chairperson
Committee for Fixation & Regulation of Fee of Private
Schools, J&K (FFRC)**

Order No: 58 -FFRC of 2021
Dated: 29 -07-2021

Sub: Complaint against Tiny Harts School, Tengpora, Bypass, Srinagar.

'Not only something, but it appears everything is rotten' in Tiny Harts School, Tengpora, Bypass, Srinagar.

Before advertng to the facts obtaining on record in respect of aforesaid School, it is deemed appropriate to take notice of the provisions of law occupying the field.

The Jammu and Kashmir School Education Act' 2002 (for short Act of 2002) and Right to Free and Compulsory Education Act' 2009 (for short Act of 2009) are the statutes which govern the setting-up and functioning of Private Educational Institutions. The Jammu and Kashmir Private Schools' (Fixation, Determination and Regulation of Fee) Rules' 2021 (for short Rules of 2021), (draft rules), are in pipeline for being notified, and stand already adopted by the Committee for Fixation and Regulation of Fee of Private Schools (for short Committee) vide its resolution dated 18.03.2021 (for short Draft Rules), also govern the private schools.

Private Educational Institutions are being permitted by the competent authority in accordance with the mandate contained in the aforesaid statutes, for performing the functions and duties which otherwise are performed by the Government. Hon'ble the Supreme Court has considered the rights and duties of owners' of the Private Educational Institutions as also the regulatory measures to be prescribed by the Government in plethora of judgements right from T M Pai up to



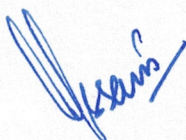
Indian School, Jodhpur and another Versus State of Rajasthan and others decided on May 3rd 2021 (Civil Appeal No.1724 of 2021). Para-19 of the said judgement is taken note of:

“After this jurisprudential exposition, it is not open to argue that Government cannot provide for external regulatory mechanism for determination of school fees or so to say fixation of ‘just’ and ‘permissible’ school fees at the initial stage itself.”

To carry out the mandate contained in various judgements of Hon’ble the Supreme Court governing the subject, and also to perform its legislative obligation, amendments were made in the Act of 2002 by the competent authority. In terms of the said amendments Sections 6, 7, 8, 9 & 10 were omitted from the Act of 2002 and after Section 20, 20-A, 20-B, 20-C, 20-D, 20-E, 20-F, 20-G, 20-H, 20-I & 20-J were inserted in the Act of 2002. Besides this, Section-22 of the Act of 2002 stand omitted and Section-25 and Section-27 of the Act of 2002 were substituted. Section 28-A has also been inserted in the Act of 2002.

Section 20-A mandates that Government shall constitute a Committee to be known as “Committee for Fixation and Regulation of Fee of Private Schools” (for short Committee), for the purpose of regulating and determining of fee in the private schools in the Union Territory.

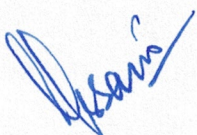
The Government in pursuance to the mandate contained in Section 20-A constituted Committee and appointed Chairperson and Members for the said Committee.



Section 20-C (1) provides “**subject to provisions of this Act or any other law for time being in force**, the Committee for Fixation and Regulation of Fee of Private Schools shall exercise such powers and perform such functions as may be prescribed by the Government to ensure that the private schools are not indulging in commercialization of education and undue profiteering”. Sub-section (2) of Section 20-C provides that Government may by notification delegate any of the powers vested in the Committee to the Chairperson of the said Committee, to the extent as may be prescribed. Sub-section (3) of Section 20-C prescribes that orders passed by the Committee shall be deemed to be have been duly passed by public servant and its violation or non-compliance shall amount to disobedience under the provisions of Section-188 of Indian Penal Code (45 of 1860).

Section 20-D (1) prescribes that the Committee shall while determining the fee to be charged by private schools established after Aug’ 2014 take into account inter-alia the location, infrastructure, expenditure of administration, aid, assistance and support in any form received by the private school from the Government or any other person or agency or any other factors as may be prescribed. Sub-section (2) of Section 20-D prescribes that Committee may from time to time issue notification for fixing maximum ceiling of the fee to be charged under various categories.

Sub-section 20-E (1) prescribes that private schools shall not charge any fee from the students or guardians, except tuition fee, annual fee, transport fee and voluntary purpose fee such as; picnic, tour, excursion etc. completely voluntary in nature or any other fee as may be provided by the Committee after following the procedure prescribed. The



proviso to Section 20-E provides that private schools shall not charge in any manner, any other fee including admission fee or any amount by whatever name called than the fee mentioned above.

Section 20-F prescribes that Committee may at any stage call the record of any school for scrutiny if it comes to conclusion that private school has violated or is not adhering to its directions.

Section 20-G (1) prescribes that Committee shall for the purpose of assisting it in the discharge of its functions, be provided by the Government, such officers and employees as may be determined from time to time by the Government in consultation with the Chairperson of the Committee. Sub-section (2) of Section 20-G prescribes that all establishment charges of the Committee shall be borne by Government. Similarly, sub-section (3) prescribes that terms and conditions of the services of the officers and employees referred to under sub-section (1) shall be such as may be determined by the Government from time to time. Sub-section (4) of Section 20 G prescribes that in the discharge of their functions under the Act, the officers and employees referred to under sub-section (1) shall be subject to the exclusive administrative control and directions of the Committee.

Section 20-H prescribes that Government may constitute such other sub-committees at Divisional or District's level with such powers and functions as it may deem fit to effectively regulate the fee in the private schools.



Section 20-I prescribes that Committee may by notification make such regulations as it may deem necessary for carrying out the purpose of the said Committee.


Section 20-J prescribes that Committee shall for the purpose of making any enquiry or initiating any proceedings under this Act, have same powers as are vested in a Civil Court, under the code of civil procedure, 1908.

Section-25 prescribes that notwithstanding anything to the contrary contained in the code of civil procedure, 1908 or any other law for the time being in force, no court shall grant any injunction or make any interim order restraining any proceedings which is being or is about to be taken under this Act.

Sub-section (2) of Section-25 prescribes that no suit, prosecution or other legal proceedings shall lie against the Chairperson or other Members of the Committee or any officer or any employee or any person acting on the directions either of the Government or of the said Committee in respect of anything done in good faith or intended to be done in pursuance of the provisions of the Act of 2002, or rules or regulations or orders made there-under.

Section-27 prescribes penalties which can be imposed and Section 28-A prescribes for remedial mechanism against such penal orders.

A conjoint reading of aforesaid provisions make it writ-large on the face of the record that the legislature has evolved a complete mechanism and provided scheme for regulating and determining fee in private



schools. The intendment of the legislature has to be gathered from the aforesaid statutory provisions.

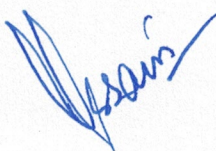
The basic purpose of enacting the aforesaid provisions of law is to secure a larger public interest in ensuring that there is no commercialization and profiteering of education made by the private schools.

In order to achieve goal set out by legislature in the aforesaid provisions, all the provisions are to be read in conjunction with each other and not in isolation of each other.

Section 20-A mandates for constitution of Committee for the purpose of regulating and determining the fee in private schools. To carry out the aforesaid solemn purpose a complete mechanism, as already stated has been evolved and scheme formulated in these provisions of the Act. No provisions of Section 20 - A to J can be read in isolation and exclusion to each other. Clauses A to J of Section-20 are limbs of one single provision of law.

The provisions of Section 20 - A to J confers powers on the Committee to regulate and determine the fee in private schools. These provisions envisage as to what is to be done by the Committee and what purpose is to be achieved while exercising its powers.

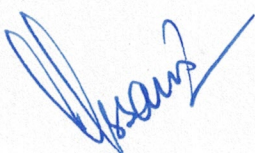
On the one hand powers have been conferred on the Committee to regulate and determine the fee in the private schools and on the other hand the exercises of such powers has been regulated by providing that the Committee shall have same powers as are vested in civil courts under



the code of civil procedure. The Committee has been conferred with powers to call for the record of any school for scrutiny, and to ensure that the fee prescribed by Section 20-E (1) is charged and collected by the private schools and to further ensure that any other fee including admission fee is not charged and collected by the private schools. The Committee has also been given discretion to issue notifications for fixing maximum ceiling of fee to be charged under various categories.

Section 20-C (1) is an enabling and not a disabling provision and prescribes that in addition to the powers conferred by Section 20 - A to J and Section-25 and Section-27 upon the Committee, the Committee will exercise those additional powers and perform such other functions, as may be prescribed by the Government to ensure that private schools do not indulge in commercialization of education and undue profiteering. This provision thus makes it clear on the face of the statute that to achieve the laudable public purpose, the Committee can have more powers and perform other additional functions as may be prescribed by the Government. Section 20-C (1) does not limit the powers of the Committee but has the capacity of enlarging the powers of the Committee.

Assuming for arguments sake, but not admitting the same, that the language appearing in Section 20-C (1) limits the powers of the Committee, then the other provisions will be rendered ineffective and otiose and this will be also opposite to what the legislatures have stated, that Section 20-C (1) is subject to provisions of the Act or any other law for the time being in force. The other provisions of the Act are not subject to Section 20-C (1) but Section 20-C (1) is subject to other provisions and



laws. Any other meaning ascribed to Section 20-C (1) would have the effect of making provisions of Act of 2002 subservient to Rules, which may or may not be prescribed. Though in this case, Rules have been drafted and are to be notified.

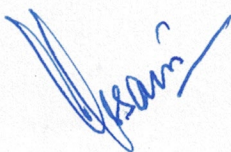
Assume a situation that Government may not prescribe the powers to be exercised by the Committee and functions to be performed by it, in view of expression "may" appearing in Section 20-C (1), then the very purpose of inserting Section 20 - A to J in the Act of 2002 will become meaningless and redundant.

In the interpretation of statutes the provision of Act become source for framing Rules. It is the Act which has precedence over Rules and not vice-versa. The "Act" will control "Rules" and "Rules" can never control "Act". The powers to be exercised and functions to be performed not only inhere in Section 20 - A to J and other provisions of Act, but are apparent thereon.

The provisions of Section 20 - A to J and other substituted provisions of Act of 2002 are interlinked and authorize Committee to exercise powers and perform functions even in absence of Rules.

Be that as it may, the Government has already framed the rules which stand vetted by the Law Department and have been adopted by the Committee and stand approved by the Advisor to Hon'ble Lieutenant Governor and are in pipeline for being notified.

The Section 20-C (1) in the aforesaid background does not circumvent the powers to the Committee but has the capacity of



enlarging its powers by making rules by the Government, which as already stated stand approved and are in pipeline for being notified. The Committee is also acting through draft rules in the performance of its functions.

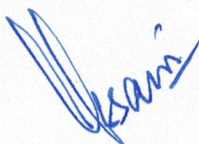
Section 20-D (1) has to be read in the backdrop of the judgement dated 1st of June' 2015 passed by Hon'ble the High Court of Jammu and Kashmir in PIL No. 12/2014 and clubbed matters. Para 9 (a to c) of the said judgement are taken note of:

“(a) OWP No.1182/2013 having not been pressed by the learned counsel for the petitioner, as stated supra, which was recorded in order dated 19.05.2015, is dismissed as not pressed.

(b) The Committee constituted pursuant to Government Order No.520-Edu of 2013 dated 07.05.2013 being non-functional due to resignation of the Chairman, the State Government is directed to nominate a retired Judge of this Court as Chairman, if not already nominated, within one week from today, for fixation of fee structure of the private schools.

(c) 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.”

Since Hon'ble the High Court made August' 2014 the basis for collecting of all types of fee, that is how August' 2014 finds its mention in Section 20-D (1). A statute is to be interpreted in the manner that the



purpose sought to be achieved by the Act is accomplished. The guidelines made by Hon'ble the Supreme Court and by the statute cover all the private schools for the purpose of determining and regulating of fee structure, irrespective of date, when the school has been set-up. All the considerations necessary for determining and regulating the fee structure of private school is applicable to all the private schools irrespective of date of their coming into existence. Section 20-D (1) has to be read in the backdrop of the judgements of courts of law and other statutory provisions to amplify its character, which protects its soul and body.

The first preference of the constitutional courts has been to save the statute and statutes are not to be read in isolation but in conjunction with other provisions as also the rules made under such a statute.

The competent authority has already taken steps to rectify the nomenclatural mistake that has crept-in in Section 28-A (1), in as much as the revision petition is to be filed before the Secretary against the order of the Director. Besides even the draft rules which are in pipeline for being notified are being issued in exercise of powers conferred by Section-29 read with sub-section 20-A, 20-B and 20-C of the Act of 2002.

Now the facts:-

Tiny Harts School is located at Tengpora, Bypass, Srinagar. The School imparts education from class Pre-Nursery up to 10th standard.

From the record it appears that School Management has shown least interest in managing the affairs of this educational institution, which, otherwise, is expected, to ensure that the students studying in



the said School rise to the levels where from they can serve the society at large.

The Parents' Association of the School has been raising issues about the mis-management and malfunctioning of the School by the School Management, with the concerned authorities as also with Director of School Education Kashmir.

Record shows that Joint Director Schools, Directorate of School Education Kashmir issued order dated 8th April' 2019 after it experienced failure on behalf of the Chairman of the School to fulfill the commitments made to the School Authorities and Parents' Association about improving the educational standards and other necessary paraphernalia, and directed that "no affairs of Tiny Harts School, Tengpora, Bypass, Srinagar shall be entertained at any level till N.O.C. is issued by this Directorate".

The perusal of the aforesaid order reveals that a team of officers/officials and some Members of the Parents' Association visited the School on 27th March' 2019. This inspection was conducted in view of the serious complaints made against the School Management about the malfunctioning of the School. The order reveals that Chairman of the School had requested the Joint Director Schools for one month time to make good the deficiencies within one month. The request of the Chairman was granted by Joint Director Schools vide communication dated 29th March' 2019. The Chairman, however, failed to fulfill the commitments made to Directorate of School Education Kashmir which resulted in issuance of aforesaid communication dated 8th April' 2019.



The record also shows that Mrs. Bhagat, P. A. to the Principal sent communication dated 5th September' 2019 where-under the Directorate of School Education Kashmir was assured that issues raised in the meeting between the Head of the Institution viz; Mrs. Hart and Director School Education Kashmir on even date will be addressed and grievances redressed.

The Parents' Association filed a complaint against the Management of the School to Committee for Fixation and Regulation of Fee of Private Schools (FFRC) in which it was stated that School Management is not following the mandate contained in SRO 293 and 123; and that the School had changed books against the orders of the Directorate of School Education Kashmir; has sold books and stationery from School premises and school teachers were compelled to do the sale work in the premises of a prominent book-seller in Srinagar; forced parents to pay fee by withholding results of their wards; increased the Annual Charges without informing the parents about the intended expenditures; till May' 2019, the School was giving out fictitious receipts of Computer Class Fee and collected Capitation Fee and in lieu thereof issued fake receipts. This complaint was filed on 22nd December' 2020.

Notice was issued to school authorities for filing response within one week.

The School Management was directed to comply with all orders concerning fee structure issued by the Competent Authority(s) and FFRC. This order was issued on 23rd December' 2020.



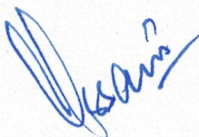
When the School Management did not respond, last opportunity was given for complying with earlier orders and it was also provided that failure to comply with orders will result in initiation of penal action.

In view of further representations pouring-in in FFRC against the malfunctioning of the School Management and failure of the School Management to file response or to appear in person, the FFRC on 9th March' 2021 issued certain directions which are taken note of:

“(a) The management of the respondent school shall forthwith take steps to ensure all the children including the child of Mr. Shakil Ahmad Kawoosa, whose complaint is pending in this office, are provided with the result certificate within 02 days time, irrespective of the fact, the Tuition Fee has been paid or not. This issue can be settled, but the future of the child can not be put to jeopardy. In case of failure of the School Management to comply with the FFRC direction the steps be taken for registering FIR against the Chairman and Principal of the school.

(b) Further more in view of the mandate contained in section 20J of the J&K Education Act 2002, which has conferred powers of Civil Court on the committee, the Principal /Chairperson shall produce record about all the fee transactions in this office for its examination. In default thereof, process will be initiated for attaching the bank accounts of the Principal and Chairman of the school.

(c) Director School Education Kashmir is requested to constitute a team of officers headed by a senior officer for inspection of the school at the earliest and report about all the affairs of the school. The committee so constituted shall also allow the



President of parents association of the parents of the school to be a part of the said committee. The report may be sent to this office within 03 weeks time."

The complaint was ordered to be taken up after report was received from Directorate of School Education Kashmir.

Yet in another complaint filed by Mr. Shakeel Kawoosa against the School, the Headmaster of the School submitted representation/reply on 19th March' 2021 and 27th March' 2021.

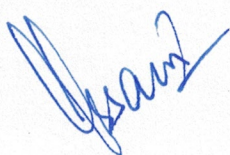
The Headmaster's reply/representation dealt with the complaint of Mr. Shakeel Kawoosa and request was made for revocation of order dated 9th March' 2021.

The Parents' Association submitted reply to the response of the School Management in which they controverted all the claims made by the School Management.

Record also shows that Zonal Education Officer, Batamaloo visited the School on 12.04.2021 and submitted the inspection report to Directorate of School Education Kashmir vide communication No.5713 dated 05.06.2021 copy whereof was also addressed to FFRC.

The inspection report records following state of affairs of the School:

- (a) the School has strength of about 1,000 students.
- (b) the School has 2 buses which are registered in the name of Mr. J. B. Singh, who happens to be the runner of the School.



(c) the condition of classrooms is worst and to the astonishment of the Zonal Education Officer are not worth to be used for teaching purpose, notwithstanding this fact that school authorities are charging exorbitant school fees and other charges.

It is also observed by Zonal Education Officer in the inspection report that seemingly funds are not been properly utilized on the infrastructure; on the basis of the record presented by parents, it appear that there are only 34 teachers for more than 1,000 students; the list of teachers which has been enclosed with the inspection report was found to be not in conformity with the salary statement and in salary statement some teachers were missing.

It was learnt that School has no managing body. The Zonal Education Officer, Batamaloo concluded the communication by stating that the School is run in brazen violation and derogation of prescribed rules and standards fixed by the expert Committee. The Zonal Education Officer exhibited astonishment and surprise as to how superior authorities have permitted to run the School in brazen violation of norms that too at the cost of student community. She has also mentioned in the said communication that in case such a situation is continued, the education will be first casualty and it also poses threat to quality education.

The photographs which have been placed on record show that more than being an educational institution, the school building and classrooms represent a dungeon.



One more serious complaint made by the Parents' Association against the School Management is that the Annual Fee was increased from Rs.500/Rs.700 to Rs.6000/- in one go.

The School Management has not responded in positive manner to the notices sent to it nor bothered to explain its position to FFRC.

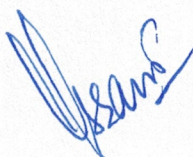
The complaints have also poured-in in FFRC about charging and collection of Admission Fee which is barred by statute and charging of Capitation Fee has been barred by the orders of the courts of law also.

From the record available with FFRC, it prima facie appears that School has not been set-up and is not being run to impart education to the children but has been created as a source of making money.

The School Management has failed to comply with the orders of the FFRC and did not produce record as directed by it.

The record reveals that there is no managing body in the School which could be held accountable and responsible. It appears that the affairs of the School are not been looked after by anyone but money in the shape of fee is being collected and probably siphoned off into coffers of private person and is not being spent for the welfare and well-being of the children studying in the School.

The deterioration in the affairs of the School has put the future of the children to jeopardy. The waters of destruction are rising fast, so it becomes statutory and legal duty to safeguard the interest of the student community.



Hon'ble the Supreme Court has repeatedly stated that imparting education is an act of Charity. Some people, including the owner of the School in question, has converted Charity into Commerce.

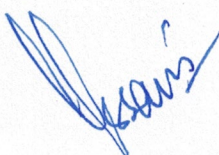
An Educational Institution, when set-up, affects in many ways a large section of society. Its affairs are being run by the money paid by the parents of children. An Educational Institution in law cannot be property of an individual or group of individuals, but is the property of the public at large and the individual or group of individuals act as trustees only.

The persons who run the Educational Institution get many benefits, including tax exemptions, as in law, the Education is being treated as Charity.

In the afore-stated backdrop, at this stage, it is accordingly provided as under:

(a) The Principal Secretary to Government, School Education Department to take immediate steps for protecting the interests of the school children by appointing an Administrator for the School.

(b) The Administrator so appointed, besides being regulated by the orders of the Principal Secretary, in the performance of his duties shall ensure that only Tuition Fee is collected for the time being from the students and salaries are regularly paid to the teaching and non-teaching staff.



The surplus amount shall be maintained in an account in the manner same is provided in the order of the Principal Secretary.

(c) The Administrator shall ensure that the education of the children remains unhindered and unhampered and they are provided all support for continuation of their education.

The Headmaster and the Owner of the School is at liberty to file their response alongwith all the record and may seek vacation of this order.

Sd/-

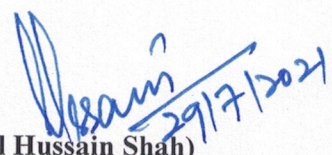
Justice Muzaffar Hussain Attar
(Former Judge)
Chairperson
Committee for Fixation & Regulation
Of Fee of Private Schools J&K (FFRC)

No. FFRC/FF/Comp/53/2020

Dated: - 29/07/2021

Copy to:-

1. Director School Education Kashmir for information;
2. Secretary J&K Board of School Education for information;
3. Chief Education Officer, Srinagar for information;
4. Sr. Private Secretary to Chairperson FFRC for the information of Hon'ble Chairperson;
5. Private Secretary to Principal Secretary to Government School Education Department for information of the Principal Secretary;
6. Principal/Chairperson/Owner/Headmaster, Tiny Harts School, Tengpora, Bypass, Srinagar, for compliance;
7. I/C Website for uploading the same on official website;
8. Office File.


(Nazir ul Hussain Shah)
Administrative Officer

Committee for Fixation & Regulation
Of Fee of Private Schools J&K (FFRC)