

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

Order No: 61 -FFRC of 2021
Dated: 12 -08-2021

Sub: Complaint against Foundation World School, Humhama.

This is about two tales of one School. The first issue about order No.01-FFRC (FF) of 2021 dated 18.03.2021 cannot be dilated upon, notwithstanding this fact, that the matter was directed to be considered again after six (06) months, in as much as, the owners of the School have challenged the aforesaid order before Hon'ble the High Court of Jammu, Kashmir & Ladakh and matter is sub-judice.

The issue now is about the charging and collection of Admission Fee by the Foundation World School located in district Budgam.

One Mr. Lateef Ahmad Bhat, sent a mail to FFRC on 16.06.2021, in which he sought some clarification about the payment of the tuition fee.

Yet another complaint was sent by one Mr. Aijaz Lone on 02.07.2021, in which it was complained that Foundation World School, Humhama is charging full fee including the Transport Charges from the parents. It was also stated in the complaint that parents are paying the fee as per FFRC order but the School Management is not accepting the same. Request was made for taking action against the School and to save the aggrieved parents.

While these complaints were under consideration of FFRC, a mail addressed to Mr. Suhail Dar by Foundation World School and also endorsed to FFRC, was received on 28.07.2021. The relevant para of the said mail sent by Foundation World School, is taken note of:

“Also please note the admission fee charged to you by school has been charged on 30/05/2019 which is before 31.10.2019 which is the date of applicability of order issued by Dr Asgar Hassan Samoon on 18.9.2020. (Principal Secretary to Government School education Department). Order attached.”

An order was passed on the School mail, which is taken note of:

“A child is an asset, who belongs to whole society. Educational institution is not a money minting organization. Those who set-up educational institutions need to be educated that they are performing a noble job and not commercial one.

Payment of tuition fee will require to be settled, but that cannot be a ground for withholding result of child. Such an act would not only be violation of the Hon’ble Supreme Court orders but illegal, unethical and immoral also.

The issue of charging of admission fee requires to be examined. School must file response within 10 days.”

On 1st of August’ 2021 Mr. Suhail Dar sent mail, in which he complained that the School Authorities have charged an amount of Rs.50,000/- as Admission Fee in May’ 2019 in violation of FFRC, DSEK and Supreme Court orders. Request was made for ordering refund of the Admission Fee. Mr. Suhail Dar attached pdf file and screen shot in support of his claim. On 02.08.2021, office was asked to put up the

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complaint with School file. Meanwhile, the mail of the complainant was directed to be sent to School Management for filing response, if any, before the date fixed in earlier matter of the said School.

A mail from Dr. M. H. Mukadam, CEO, Foundation World School, was received in FFRC office on 07.08.2021 sent via e-mail id of Mr. Zahoor Ahmed Koul, Director Finance, Foundation World School. In the said mail, besides other things, it is also stated that Foundation World School has not with-held result of any student including Mr. Suhail Dar's child. It is also stated in the mail that child of the complainant and all other students were duly promoted last year, despite being major fee defaulters. It is also stated in the mail that Admission Fee paid by Mr. Suhail Dar at the time it was paid, was legal in erstwhile state of Jammu and Kashmir. Reference is made to order passed by then Principal Secretary to Government School Education Department vide Government Order No.228-Edu of 2020 dated 18.09.2020. It is also conveyed in the said mail that the School has started charging Annual Fee only after the issuance of the Government Order.

The relevant para of the mail is taken note of:

“Regarding the Admission fee paid by Mr. Dar, at that time Admission Fee was legal in erstwhile state of Jammu and Kashmir. Kindly refer to order of then Principal Secretary to Government School education department which is testimony of that. (Annexure 4 attached)”

The perusal of the Government Order No.228-Edu of 2020 dated 18.09.2020 reveals that the Government has referred to Order No.01-FFC of 2019 dated 28.01.2019 to clarify that the School shall not charge,

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in any manner, any other fee including Admission Fee other than the fee mentioned in the Order No.01-FFC of 2019 dated 28.01.2019. The Government Order No.228-Edu of 2020 dated 18.09.2020 further reveal that the communication dated 15.09.2020 was sent by FFC to Principal Secretary to Government School Education Department, wherein request was made that Private Educational Institutions be directed not to charge Admission Fee in violation of the order of FFC, Hon'ble High Court/Government. The Principal Secretary to Government School Education Department also referred to Section - 13 of Right to Free and Compulsory Education Act' 2009, which prohibits charging of capitation fee and which was made applicable to Union Territory of Jammu and Kashmir on 31st Oct' 2019.

What is important from the aforesaid facts is that the School Management has admitted that Admission Fee was received from the complainant, Mr. Suhail Dar on 13.05.2019 and justified its action on the ground that same was received before 31.10.2019, on which date the Right to Free and Compulsory Education Act' 2009 was made applicable to Union Territory of Jammu and Kashmir.

The School record, which was submitted by the School Management for regulation and determination of its fee structure shows that from the academic session 2015-16 to academic session 2018-19, the School Management has been charging and collecting Tuition Fee @ Rs.6,000/-, whereas, in the academic session 2019-20, the Tuition Fee has been charged @ Rs.6360/-.

This hike in Tuition Fee amounts to 6% of the Fee which was being charged by the School Management.

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The hike in Fee Structure by 6% owes its genesis to Order No.01-FFC of 2019 dated 28.01.2019 passed by FFC. Relevant part of the Para - 5 of the aforesaid order is taken note of:

“5. The Private schools may raise their fee structure annually by not more than 6% on the fee structure existing as on 1st August 2018. The private school who intends to revise fee structure more than the prescribed ceiling of 6% shall apply to the Fee Fixation Committee for approval.”

The Para - 8 of the same FFC order is taken note of:

“8. Private school shall not charge in any manner, any other fee including admission fee or any amount, by whatever name called than the fee (s) prescribed above.”

Hon'ble the Supreme Court has consistently prohibited charging of capitation fee which is akin and similar to Admission Fee. Carrying out the mandate of Hon'ble the Supreme Court, the Committee for Fixation of Fee of Private Schools, J&K (FFC), as it was known then, vide Order No.01-FFC of 2019 dated 28.01.2019 restrained Private Educational Institutions from charging **Admission Fee**.

School Management of the Foundation World School has on the one hand hiked its Fee Structure by 6% in the academic session 2019-20 by relying upon Para - 5 of the Order No.01-FFC of 2019 dated 28.01.2019, and has very conveniently and deliberately given go by to Para - 8 of the same order, which specifically restrained Private Educational Institutions from charging Admission Fee.

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The brilliant minds of the School Management have thus deprived the parents of the children studying in their School of their hard-earned money by both the hands. The School Management was bound by Order No.01-FFC of 2019 dated 28.01.2019 and had no authority to charge and collect Admission Fee from the students/parents in the academic session 2019-20. Though, in view of the legal position obtaining in respect of Private Educational Institutions, the Admission Fee could not be charged and collected from the year 2002.

Reliance on Government Order No. 228-Edu of 2020 dated 18.09.2020 by the School Management to justify their illegal action of charging and collecting Admission Fee is inconsequential in view of the fact that main catalyst for passing of Government Order No. 228-Edu of 2020 dated 18.09.2020 was Order No.01-FFC of 2019 dated 28.01.2019. A request was made by FFC to Government, to carry forward the mandate of FFC order dated 28.01.2019.

The School Management, which was bound by Order No.01-FFC of 2019 dated 28.01.2019, of which it has derived benefit also by hiking the Tuition Fee by 6%, has in cruel disregard thereof charged and collected Admission Fee. This action of the School Management is illegal and unauthorized.

It needs to be restated that charging and collection of Admission Fee becomes fountain-head of commercialization of education, in as much as, the School Management, when it asks for Admission Fee, literally puts the price tag on the school seat and sells the same to a

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parent. The Educational Institution which has to provide literacy and education to children rather begins with commercial activity than a noble one of providing literacy and education to children.

In our times, the value system has undergone sea-change. The Human greed has destabilized the equilibrium of life. But, in the **Ultimate Court of Justice**, worldly influences, affluences, machinations, maneuvering, hoodwinking, powers and acquisitions will be of no consequence. All these worldly qualifications/disqualifications will stay back and get destroyed. **Only Truth will Triumph there.**

From what has been stated hereinabove, it becomes writ large on the face of the record that School Management has prima facie defrauded parents, in as much as, on the one hand, it has hiked the fee by 6% by taking benefit of Order No.01-FFC of 2019 dated 28.01.2019, and on the other hand, in breach of the same order, has charged and collected Admission Fee from the students/parents. This brazen act is incapable of being justified. The Admission Fee which has been admittedly charged and collected from the complainant and other parents is an illegal act and retention of such money cannot be justified in law, as laws stand by truth and justice. It may not be out of place to mention here that Order No.01-FFC of 2019 dated 28.01.2019 stands revoked by Order No.44-FFRC of 2021 dated 18.02.2021.

The School Management cannot be permitted to retain the money which is admittedly charged as Admission Fee, as that will be allowing them to enjoy the fruits of an illegal act, which is not countenanced in law, morality and ethics.

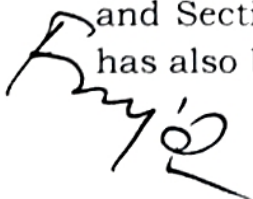
Before concluding this order by passing the appropriate directions, the legal aspect which has been discussed in Order No.58-FFRC of 2021 dated 29.07.2021, passed in Complaint No. FFRC/FF/Comp/53/2020, against Tiny Harts School, Tengpora, Bypass, Srinagar, is taken note of:

“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

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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

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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.

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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

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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.

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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.

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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.”

In view of the aforesaid circumstances, the Principal/ Chairperson/ Vice-Chairperson/ Trustees of the Foundation World School, Humhama/ Mammath, Budgam, are directed to return and refund amount of Rs.50,000/- to complainant, Mr. Suhail Dar and all other parents from whom Admission Fee has been charged and collected within fifteen (15) days and submit compliance report.

Sd/-

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

No. FFRC/FF/Comp/2021/3501

Dated: - 12 /08/2021

Copy to:-

1. Director School Education Kashmir for information;
2. Secretary J&K Board of School Education for information;
3. Chief Education Officer, Budgam 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/ Vice-Chairperson/ Trustees of the Foundation World School, Humhama/ Mammath, Budgam, for compliance;
7. Complainant, Mr. Suhail Dar, for information.
8. I/C Website for uploading the same on official website;
9. Office File.


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