

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

Subject: Complaint(s) of Private School Association of Minto Circle Higher Secondary School, Aloochoi Bagh, Srinagar; Peerzada Salim Mehjoor, Solina; Mehraj Din Sheikh, Batmaloo; Sameer Ahmad Khan, Nowhatta and Mohd. Yousuf Bhat against Minto Circle Higher Secondary School, Aloochoi Bagh, Srinagar.

Order No: 74 - FFRC of 2021

Dated: 29 / 12 / 2021

The constitutional and other courts created by and constituted under law act as sentinels of the inherent, constitutional and other rights created by the constitution and other laws. The constitution recognizes and guarantees rights of the people/citizens, as also, imposes certain duties which are to be performed by them.

Every person/citizen can pursue any permissible avocation, business and occupation. No person/citizen has absolute freedom to lead life in the manner he wishes. To maintain discipline and sanctity in the society, the conduct of the human beings is being regulated by divine scriptures, as also, man-made laws. The distinction between virtues and vices is the main theme of all these laws. These laws regulate the human freedom with avowed purpose of having a society based on principles of truth, fairness and justice.

It is said that no freedom is absolute. The freedom to set-up an educational institution, as such, is not and cannot be absolute. The person(s) who set-up an educational institution, infact, undertakes an onerous duty of chiselling not only the future of a child but of a nation. This fundamental purpose of setting-up an educational institution is to build a human resource for overall betterment of the society. The very purpose of setting-up an educational institution thus distinguishes it from any other avocation. In this settled position, an educational institution



cannot be established for undertaking commercial activity, as the child is not a commodity, but a superior creation of the Creator.

From times immemorial, education has never been commerce, whereas, commerce needs education. Hon'ble the Supreme Court, in case titled T.M.A Pai Foundation and others Vs. State of Karnataka (2002) 8 SCC 481, has stated that setting-up of educational institution is an occupation in terms of Article – 19 of the Constitution of India, but has simultaneously, specifically cleared that imparting education is a charity which would mean that it can neither be commercialized nor any profit can be made out of it.

Hon'ble the Supreme Court, in case reported as Islamic Academy of Education and ... Vs. State of Karnataka and others (2003) 6 SCC 697, has gone a step further by directing States and Union Territories to constitute Committees for regulating the fee structure of educational institutions to be headed by retired High Court Judge, who is to be nominated by the Chief Justice of the concerned State.

Hon'ble the Supreme Court in the aforesaid judgement has at Para – 213 ruled as under:

“each educational institute must place before the 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 fee 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 the 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. The government/appropriate authorities should consider framing appropriate regulations, if not



already framed. Hereunder if it is found that an institution is charging capitation fees or profiteering that institution can be appropriately penalized and also face the prospect of losing its recognition/affiliation."

Hon'ble the Supreme Court, in its judgement dated 3rd of May' 2021 in case titled Indian School, Jodhpur & ANR. Vs. State of Rajasthan & Ors, in Civil Appeal No.1724 of 2021 and connected appeals at Para – 19, has ruled as under:

"after the Jurisprudential exposition, it is not open to argue that the Government cannot provide for external regulatory mechanism for determination of school fees or to say fixation of 'just' and 'permissible' school fees at the initial stage itself."

The Hon'ble High Court of Jammu & Kashmir, in its judgement dated 1st of June' 2015, passed in PIL No.12/2014 and connected cases, in which Private Schools' Associations were party, directed as under:

"The management 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 management shall collect all types of fee as in August' 2014."

The Jammu and Kashmir School Education Act' 2002 has also been amended. Besides other amendments, after Section – 20, Section – 20 A to Section – 20 J, have been inserted. Besides, Section – 25 and Section – 27 have been substituted and after Section – 28, Section – 28 A has been inserted.

The Section – 20 A prescribes for constitution of Committee for fixation and regulation of fee of private schools for the purpose of regulating and determining the fee of the private schools of UT. Section – 20 C (1), provides that the Committee for Fixation and Regulation of Fee of Private Schools (FFRC) shall exercise such powers and perform such functions as may be prescribed by the Government to ensure that private schools do not indulge in commercialization of education and undue profiteering.



The draft rules have been adopted by the FFRC vide its resolution dated 18th of March' 2021.

Reverting back to the complaint filed by Private School Association of the school in question and the report given by the office, it emerges that the school management has never submitted its record for regulating its fee structure.

The Central Board of Secondary Education (CBSE), has notified Affiliation Bylaws' 2018, vide notification dated 18th of October' 2018. Bylaws 7.6 provides that Act and Regulation of the Central and State/UT Governments enacted/framed in connection with regulation of fee in respect of various categories of schools constituted in the State will be applicable to the School affiliated with the CBSE, also. The said bylaw is taken note of:

"The acts and regulations of the Central and State/UT Governments enacted/framed in connection with regulation of fee in respected of the various categories of the schools situated in the state will be applicable to the school affiliated with CBSE also."

In order to enable the private schools to submit their record for regulating the fee structure, Order No.35 – FFRC of 2021 dated 19.01.2021 was passed. At the request of Private Schools' Associations and individual schools, time was extended up to 22nd March' 2021 vide Order No.46 – FFRC of 2021 dated 22.02.2021.

At request, time was again extended up to 10th of May' 2021, 30th of June' 2021, 31st of July' 2021 and 30th of September' 2021.

Most of the schools submitted their record and fee has been regulated in majority of the schools which fall in Winter Zone. A few files were left out as the school managements were asked to make good deficiencies in their record.

In Summer Zone also, fee structure has been regulated in almost 50 percent of the schools, who submitted record for such regulation.



The FFC was earlier constituted in pursuance of the orders of Hon'ble the Supreme Court. In view of amendments made in Jammu and Kashmir School Education Act' 2002, it is a statutory Committee now.

All Authorities and Chairperson, FFRC/ FFRC are duty bound to carry out the mandate contained in the judgements of Hon'ble the Supreme Court and High Court and are further duty bound to implement the law made in this behalf.

In view of the law laid down by Hon'ble the Supreme Court in Islamic Academy of Education and ... Vs. State of Karnataka and others (2003) 6 SCC 697, it becomes duty of each and every educational institution to submit its record to the FFRC for regulating its fee structure. Furthermore, in view of the orders of the High Court of Jammu & Kashmir referred to hereinabove, for seeking hike in any type of fee, the educational institution is under command to approach the FFRC and get fee of each standard fixed.

The statutory prescription carries forward the mandate contained in these judgements.

Since the record shows that Minto Circle Higher Secondary School, Aloochoi Bagh, Srinagar, has not at any point of time submitted its record for regulating its fee structure, has thus violated the mandate contained in the Supreme Court and High Court judgement and has shown non-compliance of the statute, as well.

Hon'ble the High Court of Jammu, Kashmir & Ladakh, in its judgement dated 1st of June' 2015 (PIL No.12/2014), as quoted hereinabove, has given liberty to managements of Un-aided Private Schools to approach the Committee for fixation of fee structure of each standard. It was also provided that **"till new fee structure is fixed by the Committee, the management shall collect all types of fee as in August' 2014"**.

All Authorities and Chairperson, FFRC/ FFRC are duty bound in law to obey the orders of Hon'ble the Supreme Court and High Court and to follow the statute.



Since the school in question has never submitted its record and/or sought fixation of fee structure of each standard, in view of the mandate contained in the judgement, the school management has to mandatorily collect all types of fee as it stood in August' 2014. In view of the afore-stated discussion, it is accordingly, ordered as under:

1. The Principal/Chairman/Management of Minto Circle Higher Secondary School, Alooichi Bagh, Srinagar, shall charge and collect all types of fee as it stood in August' 2014 and students/parents shall pay the fee accordingly.
2. The School Management shall display the fee structure viz; Tuition Fee and Annual Fee, as it stood in August' 2014, on its notice board, within two (02) days time.
3. Collection of Annual Fee will be subject to the Government Circular No.01-Edu of 2020 dated 14.05.2020 and endorsed by FFRC in its meeting dated 18.03.2021.
4. Charging and collecting of Admission Fee is barred by law of land.
5. Any breach of this order, which implements only Supreme Court/ High Court judgements and statutes, will result in penal action, as also, recommendation for de-affiliation of the School.

Sd/-

Justice Muzaffar Hussain Attar

(Former Judge)

Chairperson Committee for Fixation &
Regulation of Fee of Private Schools J&K

No: FFRC/Comp/21/2021

Dated: 29 /12/2021

Copy to the:

1. Director School Education Kashmir (Member, FFRC) for information and implementation of this order;
2. Secretary J&K Board of School Education (Member, FFRC) for information;
3. Joint Director Information, Jammu with the request to publish the same in leading dailies of Jammu and Kashmir preferably Greater Kashmir, Mountain Valley Kashmir, Rising Kashmir, Kashmir Horizon, Daily Excelsior, Daily Nigraan, Daily Rangyul, State Times, Amar Ujala, Tameel e Irshad, Daily Aftab for wider publicity.




4. Private Secretary to Principal Secretary to Government School Education Department (Member Secretary, FFRC) for information of the Principal Secretary;
5. Private Secretary to Chairman, Central Board of Secondary Education, for information of the Chairman, CBSE.
6. P. A. to Chairperson, FFRC for information of the Hon'ble Chairperson, FFRC;
7. Principal/Chairman/Management of Minto Circle Higher Secondary School, Aloochoi Bagh, Srinagar, for compliance.
8. Complainants.....(All), through e-mail/ WhatsApp for information.
9. I/C Website for uploading the same on official website;
10. Office copy/file.


(Nazir ul Hussain Shah)

Administrative Officer

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


29/12/21