

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

Subject: Legal position in respect of charging of fee by private schools.

Order No. 07 FFRC of 2022
Dated: 09 /09/2022

The Committee for Fixation and Regulation of Fee of Private Schools (FFRC) constituted in terms of mandate contained in Section - 20 A of the Jammu and Kashmir School Education Act' 2002 (Act of 2002), is saddled with onerous duty to determine, fix and regulate the fee structure of the private schools, set-up and functioning in the Union Territory of Jammu and Kashmir.

To carry forward the mandate, contained in Hon'ble the Supreme Court judgements, more particularly (2003) 6 SCC 697, Act of 2002, Draft Rules and now the Jammu and Kashmir Private Schools (Fixation, Determination and Regulation of Fee) Rules, 2022, notified vide SO No. 233 dated 10th of May' 2022 (Rules of 2022), the FFRC issued notification(s) asking school managements to submit their record in accordance with the proforma notified for the purpose, to enable FFRC to regulate the fee structure of private schools.

Those private schools who responded to the said notification, their records were considered by FFRC and fee structure was regulated, except of those where the school record was deficient, and who stand notified for making good those deficiencies.

A few schools being not satisfied with the orders of the FFRC about the regulation of their fee structure, challenged such orders before Hon'ble the High Court of Jammu and Kashmir & Ladakh. In some cases, the Hon'ble Court has been pleased to keep in abeyance the FFRC orders regulating the fee structure of the schools.



Few schools from amongst the above class of schools, as per complaints received in FFRC office, have fixed highly unreasonable and unjust fee structure which is bound to result in Commercialization of Education.

In view of the complaints received, and the issue being of considerable legal and public importance do call for its resolution.

Before dealing with the issue and culling out a legal and just solution, it is deemed appropriate to take note of certain Paras of order No.74 – FFRC of 2021 dated 29.12.2021, passed by the Chairperson, FFRC:

“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 Draft Rules were adopted by FFRC vide resolution dated 18.03.2021. Rule – 8 thereof required private schools to submit the proposal to the Committee on the proforma as may be prescribed by the Committee alongwith requisite documents as specified in the prescribed proforma within the time-frame mentioned therein.

Rule – 5 c of Rules of 2022 require each private school to place before the Committee the proposed fee structure of such school with all relevant documents and books of accounts for scrutiny within such date as may be prescribed by the Committee.

Rule – 5 e of Rules of 2022 authorizes the Committee to verify whether the fee proposed by the private school is justified and it does not amount to Profiteering and Commercialization of Education. Rule – 5 i of Rules of 2022 prescribe that the Committee shall have the power to regulate its own procedure in all matters arising out of the discharge of its functions and for the purpose of making any enquiry under the rules has been conferred with all the powers of Civil Court under the Code of Civil Procedure which are prescribed for trying a suit, in general and in particular, in respect of the matters summarized from I to IV of the said Sub-Rule.

Rule – 8 a of the Rules of 2022 provide that private schools shall submit a proposal to the Committee on the proforma as may be prescribed by the Committee. The proposal for fixation, determination



and regulation of fee for next year shall be submitted 03 months before the next academic year starts.

Rule – 17 (2) of Rules of 2022 prescribe that any order issued by the Government with regard to the Committee or order passed by the Committee or Chairperson, pursuant to the Draft Rules, shall be deemed to have been passed under the provisions of these rules.

Rule 17 of Rules of 2022 is taken note of:

“Repeal and Savings.-(1) With the enforcement of these rules, any rule or order which is inconsistent to the Act or these rules shall be deemed to have been repealed and superseded;

(2) Any order issue by the Government with regard to the Committee or order passed by the Committee or Chairperson pursuant to the draft rules shall be deemed to have been passed under the provisions of these rules.”

From amongst the schools who submitted their record and proposed fee structure, most of the schools were such who submitted the proposed fee structure and the record for the first time to FFRC.

Hon’ble the Supreme Court, as referred to herein above, has mandated that each educational institute must place before the Committee, well in advance of academic year its proposed fee structure. It is also mandated that Committee will be at liberty to approve the fee structure or propose some other fee which can be charged by the institute. The latest judgement of Hon’ble the Supreme Court of 2021 has also ruled that Government can provide for external regulatory mechanism for determination of school fee or for fixation of just and permissible school fee at the initial stage itself.



Hon'ble the High Court of Jammu and Kashmir & Ladakh, in its judgement dated 1st of June' 2015, the relevant Para whereof is reproduced in the beginning of this order, also gave liberty to managements of unaided private schools to approach the Committee for fixation of fee structure of each standard. It is also provided that till new fee structure is fixed by the Committee, the management shall collect all types of fee as in August' 2014.

In view of the law laid by Hon'ble the Supreme Court and Hon'ble the High Court of Jammu and Kashmir & Ladakh, and in view of the mandate contained in the Act of 2002, Draft Rules and Rules of 2022, it was duty of each private educational institution/school to submit its proposed fee structure alongwith the record to FFRC.

In most cases, in which the fee regulation order of FFRC has been stayed, as already stated, had approached FFRC for the first time. In these schools, in view of non-submission of proposed fee structure and record to FFRC previously, the fee was not determined and regulated by FFRC in respect of previous academic sessions. In violation of judgements of Hon'ble the Supreme Court and Hon'ble the High Court of Jammu and Kashmir & Ladakh, and mandate of the law, such schools have fixed the fee structure themselves. This act of such school managements is *per se* illegal and void ab-initio, as fee structure has been fixed in breach of the mandate of the judgements of the Hon'ble Supreme Court and High Court and the statute occupying the field. Such fee structures cannot be recognized in law.

The question of public and legal importance arises when Hon'ble Court stays the fee regulation order of FFRC, can a school be permitted to charge and collect the fee which it has fixed itself and which in view of



the mandate of the judgements of the Hon'ble Supreme Court and High Court and statute, is impermissible? Can such schools charge and collect such fee from the students?

The answer in law is that such type of schools have no authority in law to charge and collect fee fixed by themselves.

Such type of schools shall have to request the Hon'ble High Court to decide their writ petitions or seek clarification from Hon'ble the High Court about the fee which in law they are entitled to charge and collect from students.

In the other type of schools, fee structure has been earlier regulated by the FFRC, and who not being satisfied with the latest fee regulation order of FFRC, challenged same in Hon'ble the High Court of Jammu and Kashmir & Ladakh, and wherein the fee regulation orders of the FFRC have been kept in abeyance. Such type of school managements in law would be authorized to charge and collect only that fee from the students which was earlier regulated by the FFRC. Such type of schools cannot fix the fee themselves and charge and collect same from students.

Keeping in abeyance of fee regulation order of FFRC by Hon'ble the High Court, would not and shall not authorize school managements to fix fee structure at their sweet will and charge same from students, same being not permitted by Hon'ble the Supreme Court and Hon'ble the High Court and the statutes occupying the field.

No person can be permitted to abuse and misuse the process of Court to secure a legally impermissible benefit. Court orders protect legal rights and do not protect illegal acts.



In these type of cases, Hon'ble the High Court has only kept in abeyance/stayed fee regulation orders, and has not authorized school managements to fix fee of any type themselves.

All the private school managements falling in the aforementioned categories shall have to follow the mandate of law and charge and collect fee accordingly. In view of legal position, they, in no circumstances, can fix fee themselves and charge and collect it from the students.

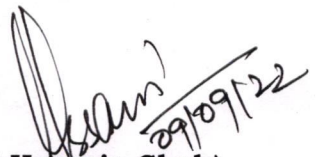
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Justice Muzaffar Hussain Attar
(Former Judge)
Chairperson
Committee for Fixation & Regulation
of Fee of Private Schools J&K (FFRC)

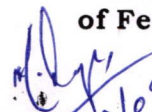
No.FFRC/Sgr-2022/3590-03

Dated: 09.09.2022

Copy to the:-

1. Director School Education Jammu/Kashmir for information;
2. Secretary J&K Board of School Education (Member FFRC) for information;
3. Private Secretary to Principal Secretary to Government School Education Department (Member Secretary, FFRC) for information of the Principal Secretary;
4. P. A. to Chairperson, FFRC for information of the Hon'ble Chairperson, FFRC;
5. President, Private Schools' Association J&K;
6. President, J&K Private Schools' Association, Jammu;
7. Chairperson, Parents' Association of Privately Administered Schools (PAPAS);
8. I/C Website for uploading the same on official website;
9. Office file.


(Nazir ul Hussain Shah)
Administrative Officer
Committee for Fixation & Regulation
of Fee of Private Schools J&K (FFRC)


09/09/2022