

Form No.HCJD/C-121
ORDER SHEET

**IN THE LAHORE HIGH COURT
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT**

W. P. No.755 of 2024

Beaconhouse School System, Okara **Versus** Commissioner Sahiwal Division, etc.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
	01.02.2024	Mahr Haseeb Qadir, Advocate for the petitioner. Syed Wajid Hussain Rizvi, Assistant Advocate General, Punjab with Mushtaq Ahmad Sial, DPI (SE) and Wazir Ahmad Agha, CEO(DEA), Okara. Mr.Shakeel Javed Chaudhry, Advocate/Legal Advisor of BISE, Sahiwal.

In this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 ('Constitution'), the petitioner has assailed the orders dated 29.11.2023 and 29.12.2023 passed by the Chief Executive Officer/Secretary, District Registering Authority, Okara ('DRA') and the Commissioner, Sahiwal Division, Sahiwal respectively whereby its request for the issuance of School Registration Certificate/E-License for Beaconhouse School System Boys & Girls branches Okara was turned down and appeal preferred there-against was dismissed. A direction has also been sought for issuance of School Registration Certificate/E-License of the petitioner's school for affiliation with the Board of Intermediate & Secondary Education (BISE) Sahiwal and allowing its students to participate in the Board's examination.

2. Learned counsel for the petitioner mainly contends that in order to give effect to the obligation under section 13(b) of the Punjab Free and Compulsory

Education Act, 2014 ('the Act'), rules were required to be framed under section 24(2) of the Act which have not been framed and notified by the Government till date and in absence thereof penal action has been invoked by the DRA and maintained by the Commissioner against the petitioner without lawful authority.

3. Conversely, the Chief Executive Officer, DRA states that although no rules have been framed by the Government for the purpose of enforcement of section 13(b) of the Act, however, all notable schools in the Okara District have complied with the requirements on their own and if petitioner furnishes information in similar terms, the District Registration Authority shall extend the school registration of the petitioner forthwith.

4. Learned Legal Advisor of BISE, Sahiwal states that if the school registration of the petitioner is extended by the DRA Okara, according to his instructions every effort shall be made by the Board to enroll students of the petitioner's school for the Secondary School Certificate Examination, 2024 without any further loss of time.

5. Representative of the School Education Department, present in Court, states that draft of the rules has been framed and submitted to the Law Department which has suggested a few changes therein and the same shall be notified if some time is allowed.

6. Heard.

7. Access to free and compulsory education is a universally acknowledged right of all children. It is a *sine qua non* for the development of any State in addition to ensuring equality of opportunity for its

citizens and their right to live with dignity. In the Islamic Republic of Pakistan, such right has been included amongst the fundamental rights contained in Chapter 1 of Part II of the Constitution through the Eighteenth Constitutional Amendment. Fundamental rights occupy a place of pride in the scheme of our Constitution and the same indeed are conscience of the Constitution¹. By insertion of Article 25-A of the Constitution, an obligation has been cast upon the State to ensure provision of the free and compulsory education to all children between the age of 5 to 16 years in such a manner as may be determined by law. The subject of education has been devolved to the provinces for legislation and decisions regarding curriculum, syllabus, planning, policy and standard of education. Accordingly, the Punjab Free and Compulsory Education Act, 2014 was enacted.

Preamble of the Act reads as under:-

"An Act to provide for free and compulsory education to all children of the age of five to sixteen years.

Whereas Article 25A of the Constitution of Islamic Republic of Pakistan enjoins that the State shall provide free and compulsory education to all children of the age of five to sixteen years and, for the purpose, it is expedient to make necessary provisions"

8. Section 13 of the Act describes certain responsibilities of private schools for ensuring free education. The said section is reproduced hereunder: -

"13. Responsibility of private school for free education.—For purposes of this Act, a private sector school:

(a) specified in sub-clause (ii) of clause (k) of section 2, shall provide free education to such proportion of children admitted therein as its annual aid or grant so received bears to its annual recurring expenses;

¹ *Miss Benazir Bhutto vs. Federation of Pakistan and another* (PLD 1988 Supreme Court 416)

- (b) specified in sub-clauses (iii) and (iv) of clause (k) of section 2, shall admit in class one and then in every class, ten percent of the strength of that class, children, including disadvantaged children of the neighbourhood or other children as may be determined by the Government, and shall provide free and compulsory education to such children or, in the alternative, provide prescribed vouchers for education of disadvantaged children in any other school, as may be determined by the Government;
- (c) shall provide the information pertaining to the students admitted under clauses (a) and (b) to the Government, the local authority or any other prescribed authority; and
- (d) shall not require a parent to purchase textbooks, uniform or other material from a particular vendor or provider and shall not charge any amount other than tuition fee, admission fee or prescribed security in the name and style of building fund or under any other name or style.”

9. Section 2 of the Act, *inter alia*, defines “child”, “education”, “disadvantaged child”, “free education” and “school” in the following terms:-

“2. Definitions.—In this Act:

- (a) “child” means a child from the age of five to sixteen years;
- (c) “disadvantaged child” means a child who belongs to a socially and economically disadvantaged class or to any other group having disadvantage owing to social, or such other reasons or who belongs to such a parent whose annual income is less than the limit which the Government may, by notification, specify;
- (d) “education” means teaching and training of mind and character by attendance in regular school education, madrassa education, vocational training and special education in the classroom and school setting, or non-formal education or the education prescribed for a child or category of children by the Government;
- (e) “free education” implies that the Government or local authority shall not charge any fee or expense for providing

education and shall endeavour to remove financial barriers that may prevent a child from completing ten years' education.

(k) “*school*” means an educational institution imparting primary, elementary or secondary education to the children and includes:

- (i) *a school owned or controlled by the Government or a local authority;*
- (ii) *a school receiving aid or grant to meet whole or part of its expenses from the Government, Federal Government or a local authority;*
- (iii) *a school not receiving any kind of aid or grant from the Government, Federal Government or a local authority; and*
- (iv) *a Deeni madrassa or any school providing religious education recognized by the Government.”*

10. There are certain features in the above provisions which are required to be determined by the Government and in that regard section 24 of the Act empowers the Government to make rules for carrying out purposes of the Act as follows:-

“24. Power to make rules.—(1) The Government may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for any of the following matters:

- (a) *manner of maintenance of records of children;*
- (b) *criteria for determination of disadvantage children or payment of vouchers;*
- (c) *the area or limits for establishment of a neighbourhood school;*
- (d) *extended period for admission of a child and the manner of completing study by the child if admitted after the extended period;*
- (e) *academic calendar;*
- (f) *duties to be performed by the teachers;*
- (g) *the manner of redressing grievances of teachers, students or any other person;*
- (h) *the manner of giving opportunity of hearing under this Act;*

- (i) *receipt of contribution, utilization and withdrawal of money from the Taleem Fund; and*
- (j) *maintenance and audit of accounts;*

11. From perusal of the above provisions of law, it is manifest that without framing rules, *inter alia*, to outline criteria for the determination of disadvantaged children or payment of vouchers and the manner of maintenance of records of children under clauses (a) & (b) of section 24(2) of the Act, any claim of compliance of obligations under section 13 of the Act would remain subjective, open to objections and disputes. Certainty lies at the heart of rule of law. Any vagueness or uncertainty in prescribing legal obligations opens the doors for whimsical, arbitrary and capricious exercise of authority. Law has to be reasonably precise and unambiguous to attract penal consequences for its alleged violation. It is for this recognition on part of the provincial legislature that the requirement to specify criteria for the determination of disadvantaged children or payment of vouchers and the manner of maintenance of records of children was mandated for the Government under clauses (a) & (b) of section 24(2) of the Act. No redundancy could be attached to legislative expressions including the aforementioned provisions of section 24 ibid.

12. It is noteworthy that legislation in this case was enacted by the Punjab Assembly in the year 2014 and this Court is at a complete loss in comprehending how the disadvantaged children could be denied their right to education, which is their fundamental right guaranteed under Article 25A of the Constitution, owing to procrastination at the hands of the Government which failed to frame and notify rules in discharge of its

responsibilities under clauses (a) and (b) of section 24(2) of the Act. The private education sector, which was supposed to share the responsibility of right to education of disadvantaged children, has benefitted from inaction on part of the Government Departments even after the lapse of 10 years of passing of the Act. At best, it shows an obvious neglect of the Government whereas, at worst, it may well be a case of regulatory capture warranting inquiry.

13. This Court would abstain from commenting on reliability of the information provided to the DRA by other schools in the District, however, it is observed that when criteria for the determination of disadvantaged children or payment of vouchers and manner of maintenance of records of children under clauses (a) & (b) of section 24(2) of the Act has not been prescribed, how could compliance of the same be verified and certified by any authority.

14. For the foregoing reasons, while accepting this petition, the impugned orders dated 29.11.2023 and 29.12.2023 are set aside. Consequently, District Registration Authority, Okara is directed to ensure registration of the petitioner-school if conditions other than those specified in section 13(b) of the Act are satisfied and the Board of Intermediate and Secondary Education, Sahiwal shall also ensure that students of the petitioner-school are duly registered for the SSC Examination 2024 without any further delay. Government of the Punjab is directed to fulfill its obligation to frame rules, *inter alia*, to prescribe the criteria for the determination of disadvantaged children or payment of vouchers and the manner of maintenance of records of children under clauses (a) & (b) of section

24(2) of the Act within a period of 30 days whereafter it shall proceed for the enforcement of section 13 of the Act through penal actions in accordance with law. There shall be no order as to costs. The Deputy Registrar (Judicial) of this Court shall immediately send a copy of this order to respondents No.5 & 6 for compliance.

(RAHEEL KAMRAN)
JUDGE

Approved for reporting

JUDGE

Saeed Akhtar