

Judgment Sheet
**IN THE LAHORE HIGH COURT,
MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT**

Writ Petition No. 7707 of 2024

Syed Ahsan Abbas, etc.
Vs.
Government of the Punjab, etc.

JUDGMENT

Date of hearing:	28.11.2024
Petitioners by:	M/s Malik Ansar Abbas Dharalah, Farooq Ahmad Buzdar, Ehsan Ali Gill, Malik Khaleel Ahmad Mamra, Malik Abdul Ghaffar Sayal, Raja Naveed Azam, Abid Ali Bodla, Tariq Mehmood Dogar, Muhammad Mazhar Iqbal, Sardar Muhammad Mohsin-ur-Rehman, Malik Atta Ullah, Ch. Nazir Ahmad Jatt, Zafar Iqbal Khan, Muhammad Tausif Imran, Malik Jawad Hussain, Abdul Khaliq Dogar, Malik Riaz Hussain, Muhammad Arif Manzoor, Muhammad Maalik Khan Langah, Abdul Rehman Khan Laskani, Muhammad Zeeshan Bhatti, Faiz Rasool Khan, Ghulam Farid Birmani, Mujahid Bashhir Gurmani, Mirza Nasim Baig, Ghulam Farid Birmani, Tahir Mehmood, Ch Muhammad Sarwar and Muhammad Qasim Buzdar, Advocates.
Respondents No.1, 2 & 4 to 14 by:	Malik Masroor Haider Usman and Mr. Khalid Masood Ghani, Assistant Advocate Generals with Muhammad Bakhsh, Litigation Officer office of DEO (MEE) Layyah.
Respondent No.3 by:	Mr. Waqar A. Sheikh, Advocate/ Legal Advisor with M/s Touseef Ahmad Awan, Additional Director Law/Senior Law Officer and Muhammad Ijaz Muner, Law Officer, Punjab Education Foundation.

ASIM HAFEEZ, J:- This and connected constitutional petitions, detailed in Schedule-A, appended and forms part of the judgment, are simply directed against the policy decision of the Provincial Government to out-source the running and management of Public schools under Public School Reorganization Program (PSRP). Further declaration is sought to declare this policy unlawful and unconstitutional, on the premise that it violates the constitutional guarantees extended under Article 25-A of the

Constitution of Islamic Republic of Pakistan 1973 (the ‘Constitution, 1973’).

2. Stand of the provincial government is that PSRP manifest continuation of the Public Private Partnership initiative, contemplated under the statutory framework of The Punjab Education Foundation Act, 2004 (Act of 2004). In terms of the Act of 2004, a Foundation was established with defined goals, objectives and targets, most crucial being promotion of education with support of private sector, ensuring that education is imparted to the poor masses – functions of the Foundation are listed in section 4 of the Act of 2004. Foundation comprises of Board of Directors, having combination of the representatives of the government and members possessing finesse and expertise in relevant fields, with diverse experience. A Fund was established which vests in the Foundation. It is apparent from the perusal of the Punjab Rules of Business 2011 that Foundation is under the allocation of School Education Department. Program is run, managed and regulated through the terms of reference, which prescribes mechanism for handing over of administration and management of underperforming Public Sector Schools to private service providers through the Foundation – in fact is the bridge between the Government and private sector. Program works in a manner that underperforming schools are identified – mechanism is provided under the terms of reference – and upon undertaking the process of scrutiny, management of public sector school is entrusted to a licensee under licensing arrangement – upon securing a school specific authorization. Terms of licensing arrangement are placed on record along report and para-wise comments. It is apprised that program is implemented in phases.

3. Petitioners, comprised of disgruntled parents, expressing grievance against entrustment of school(s) to licensee(s) under the arrangement. And other persons, whose interest and identity is not clearly disclosed in the petitions, also raise grievance against the

policy. It is believed that petitioners are aggrieved of the implementation of the Program. It is argued on their behalf that public-private partnership initiative is inherently opposed to the concept / commitment of providing free education, obligated in terms of Article 25-A of the Constitution, 1973. It is further argued that no legislative instrument is available to support the Program or the policy. Further submits that statutory framework provided under the Act of 2004 does not support the decision to outsource the schools. Learned counsel vehemently argued that no mechanism is prescribed for selection of schools, recruitment of teachers and provisioning of infrastructure. Adds that no mechanism is available to assess the performance of the licensee(s), which are hand-picked blue-eyed of the Politicians. Main emphasis is on the plea that enforcement of Program would result in imposition / increase in the fee and charges, which is contrary to the principle of free education, an obligation of the State.

4. Conversely, learned Law Officers and learned counsel representing the Foundation explained the features of the Program, mechanism prescribed for outsourcing, selection of eligible lessee(s) and strict monitoring regime. It is explained that there is no increase in the fee, which is one of the condition of the licensing arrangement and no document has been provided to show any raise in the fee, in any manner. Learned counsel for the Foundation read out salient features of the terms of reference and conditions of the agreement – in particular clause 13 thereof. Adds that Foundation is *alter ego* of the Government and is under the oversight of the School Education Department. Submits that tasks performed by the Foundation are strictly in accord with the functions assigned under Act of 2004. Lastly, submits that government owns and stand by its commitment of ensuring compliance of the mandate of Article 25-A of the Constitution, 1973.

5. Heard.

6. On previous date, learned Law Officer was directed to provide approval of the cabinet for enforcement of the Program. Approval of the Cabinet is placed on record, wherein Agenda item 45 is relevant, and discussion therein provides an illustrative insight in the functioning of the Program. Minutes of Agenda Item No.45 are reproduced hereunder for reference:-

“AGENDA ITEM NO.45 REQUEST FOR APPROVAL OF PUBLIC SCHOOLS REORGANIZATION PROGRAM (PSRP) TO REVAMP PUBLIC SCHOOLS FOR PROVISION OF QUALITY EDUCATION.

45.1 The Secretary School Education Department briefed the Cabinet that during a review meeting regarding the School Education Department (SED) held on 04.04.2024, the Chief Minister Punjab had in principle approved that the operational management of low performing public schools with zero teacher, single teacher or two teachers may be outsourced to private service providers in order to enhance the access and quality of education. It was further decided that due to capacity constraints of PEIMA, Punjab Education Foundation (PEF) will spearhead this outsourcing campaign on the lines of erstwhile Public Schools Support Program (PSSP).

45.2 The Cabinet was further apprised that there are 13,219 such schools with a total of 22,749 teachers, working against 56,175 sanctioned posts, and 1,089,961 enrolled students. The instant outsourcing program, titled as the Public Schools Reorganization Program (PSRP) has been designed to encourage educated youth, experienced individuals, expat Pakistanis, school chains, Ed-Tech firms and NGOs to join hands with the Government in reorganization and revamping of the public sector schools. Consultations were undertaken with the leading stakeholders and it was decided that the schools could be outsourced in three phases as follows:

Phases	Schools
i.	<i>Handing over operational management of following 5,863 school: 567 schools with zero teacher; 2,555 schools with single teacher; 2,741 schools with enrolment up to 50 students and two teachers.</i>
ii.	<i>Handing over operational management of 4,453 schools with enrollment from 51 to 100 students and two teachers</i>
iii.	<i>Handing over operational management of 2,903 school with more than 100 students and two teachers</i>

45.3 After exhaustive deliberations with the stakeholders and in the light of the comprehensive terms & conditions in vogue for erstwhile Public Schools Support Program, detailed TORs have been developed for PSRP, inducing eligibility criteria, evaluation criteria and clustering process. In order to ensure value for money, a performance evaluation system will also be put into place to assess the impact of this outsourcing on school performance, student enrollments and learning outcomes. This evaluation will be the yardstick for continuation of the outsourcing arrangements with the successful licensee.

45.4 The anticipated savings from outsourcing of these schools have been worked out as under:

Description	PKR (Billion)
<i>Salaries against the sanctioned posts 56,175</i>	<i>40.5</i>

<i>NSB against the current enrolment (1,089,961)</i>	1.6
Total Saving (Non- Development Budget)	42.1
<i>Note: Pensionary Contribution is not included in the saving.</i>	

45.5 In a follow-up review meeting held on, 15.05.2024, Chief Minister accorded approval for outsourcing in three phases in accordance with the timelines stated by the Department. The media campaign of PSRP was also approved with the directions of its immediate launch.

45.6 Finance Department observed that the RE 2023-24 for School Education Department is Rs. 516.6 billion while the BE 2024-25 is Rs. 573.4 billion showing an increase of 10.99%. Most of the expenditure in School Education Department goes towards salaries of teachers and other employee related expenditures, while the quality of education imparted and performance of the sector remains below par. Therefore, gradual shifting towards outsourcing the management of public schools and gradually shedding off the 600,000+ HR of this department is the only financially sustainable way forward. Proposal at para-6/ante is endorsed with the observation that the actual short term savings would be just the Non-Salary Budget at Rs. 1.6 billion but with each passing year as the work force of the department retires, savings in the Salary Budget would increase. The AD should divert the redundant HR from outsourced schools to other schools with high enrolment and low teacher count and the sanctioned posts not required should be conveyed to the Finance Department to be abolished.

45.7 Accordingly, the Cabinet was requested to consider and approve the proposals mentioned in paras 45.2, 45.3, and 45.5 above read with para 45.6.

DECISION No. 45:

The Cabinet considered and approved the proposal as mentioned in para 45.7 above.”

7. After hearing the learned counsel, it appears that the critical issue is whether the Foundation is an autonomous body, independent of the regulatory control of the Government or an instrumentality to benefit private sector at the expense of depriving deserving children of fair opportunity. And whether the functions performed by the Foundation are in accord with the mandate of the law. There is no cavil that School Education Department is the secretariat department of the Government, to which business of the government is allocated / distributed, which allotment *inter alia* includes the task of promoting quality education through Public-Private partnership through Punjab Education Foundation – clear instructions are contained in the Rules of Business. It is noted that Punjab Education Foundation was omitted from the list of Autonomous Bodies and brought under the regulatory control of the government department. It is in fact the policy of the department, which is being implemented under the statutory framework of address the Act of 2004. Section 13-A of the Act of

2004 provides key to address the consternation / concern of the petitioners, which is reproduced hereunder,

"13A. Direction of the Government.- In the performance of its functions, the Foundation shall be bound by and shall give effect to the directions of the Government."

8. Functionality of the Foundation is governed and regulated by the Government. Petitioners in fact are seeking exercise of judicial review jurisdiction in the functioning of the department, which intrusion in the absence of any illegality, voidness and perversity is unwarranted. No violation of any fundamental right is evident, when no direct evidence is available to substantiate allegation of fee raise or increase in education budget of the citizens. Learned counsel failed to convince this court that assumption and exercise of jurisdiction is imperative against policy decision of the government – outsourcing of the administration / management of underperforming schools and to deal with perennial problem of shortage of teachers. Argument of the petitioners that no law is available to back the policy of the government is misconceived. Policy introduced and Program implemented is in accordance with the mandate of provisions of Act of 2004. Policy had the approval of the cabinet. Neither any violation of constitutional guarantee is established nor violation of any provision of The Punjab Free and Compulsory Education Act 2014 is shown. In these circumstances, no case for exercising judicial review jurisdiction against the policy decision and Program is made out, which calls for showing deference to the policy-making domain of the Government/Executive. **Policy decisions require political judgment, not legal interpretation.**

9. This and connected petitions are devoid of merits and same are, hereby, **dismissed**.

(ASIM HAFEEZ)
Judge

M.S.Aleem

Approved for reporting

Judge