

Form No.: HCJD/C
JUDGEMENT SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 2777 of 2016

Educational Services Pvt. Limited (ESL) & three others
VERSUS

**Federation of Pakistan through its Secretary, Capital
Administration & Development Division, Cabinet
Secretariat, Islamabad.**

For the Petitioners: Mr. Shahid Hamid, Ms. Asma Jahangir, Mr. Usama Malik, Syed Hamid Ali Shah, Syed Ishfaq Hussain Naqvi, Mr. Husnain Ali Ramzan, Mr. Nadeem Ahmad, Mr. Khurram M. Hashmi, Mr. Muhammad Wajid Hussain Mughal, Mr. Munsif Khan alias Mohsin Ghaffar, Mr. Misbah un Nabi, Advocates.

For Respondent No.1: Mr. Afnan Karim Kundi, Additional Attorney General. Raja Khalid Mehmood Khan, Deputy Attorney General.

For Respondent No.2: Mr. Muhammad Faisal Khan and Mr. Umer Tariq, Advocates.

For Applicant : Barrister Qasim Wadud, Mr. Iftikhar Ahmad Bashir and Mr. Muhammad Faisal Khan, Mr. Wasi Ullah Khan Surrani, Advocates.

Date of hearing: 23.10.2017

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AAMER FAROOQ J: This judgment shall decide the instant petition as well as petitions mentioned in the list attached herewith as Schedule-A, as common questions of law and facts are involved.

2. The petitioners, in all petitions, are Private Educational Institutions, *inter alia*, operating in Islamabad Capital Territory having different branches. The petitioners are aggrieved of Private Educational Institutions (Registration and Fee Determination) Rules, 2016 (herein after referred as 'the Rules'). The petitioners have challenged the vires/illegality of the referred Rules on various grounds including the same being in violation of Islamabad Capital Territory Private Educational Institutions (Registration and Regulation) Act, 2013 (herein after referred as the Act), the Constitution of Islamic Republic of Pakistan, 1973 and being unreasonable.

3. Learned counsels for the petitioners, *inter alia*, contended that earlier, a petition under Article 199 of the Constitution was filed before this Court wherein, *inter alia*, Notification dated 23-09-2015, issued by Respondent No. 2, was challenged alongwith vires of the Act and the said petition was partly allowed by this Court in case reported as (*PLD 2016 Islamabad 141*), wherein directions were issued to Respondent No. 2 to frame Rules in consonance with provisions of the Act by taking on board account all the stakeholders including the petitioners, however, same has not been done; hence Rules are in violation of said judgment of this Court. It was further contended that the Rules are arbitrary/unreasonable and ultra vires the fundamental rights of the petitioners, in particular, Article 18 of the Constitution of Islamic Republic of Pakistan, 1973; that the Rules are also in violation of Articles 4, 10-

A, 23, 24 and 25 of the Constitution. In this behalf, the learned counsels took the Court through various rules and pointed out the defect/illegalities in the same. It was contended that impugned Rule 36 read with Schedule V Table 1 prescribes that average fee shall not exceed Rs.8,350/- per month per student, in case of institutions having classes from Montessori to A-Level, Rs. 8,850/- per month per student in case of institutions having classes from grade Six to A-Level, meaning thereby that, the petitioners shall have to slash their fee which already was frozen in 2014-15; that the Rule is unreasonable perverse, obtuse and unworkable and in disregard with the guidelines given in paras 29/n and 30/n of this Court's order in the above mentioned case. It was further contended that Rules 3 and 4 read with Schedule II require the petitioners to obtain annual registration on payment of fee ranging from Rs. 2,00,000/- (two lac) to Rs. 5,00,000/- (five lac) per school i.e. branch. Likewise, it was contended that fee prescribed for initial registration is Rs.10,00,000/- (ten lac). It was stated that in comparison with the previous renewal fee in the Private Educational Institutions (Registration, Regulation and Promotion) Rules, 2006, was Rs.10,000/- (ten thousand) and was for period of two years; that initial registration fee is Rs. 20,000/- (twenty thousand). It was contended that the raise in the fee is exorbitant/unreasonable and is without any justification or basis. It was contended that the principle, underlining the fee, is the element of *quid pro quo*, however, no extra services are being

offered in the instant case. There is no proportionality, whatsoever, in the case of impugned Rules 3 and 4 of Schedule II. The prescribed renewal rate for initial registration and renewal fee, amounts to progressive extortionate tax, which is evident from Rule 4 (6) of the Rules which imposes a fine equal to registration fee *viz* Rs. 10,00,000/- (ten lac) for each month and delay in seeking renewal. It was further contended that the rate of renewal fee, by comparison with other areas of Pakistan, is much less inasmuch as in Punjab, it is Rs. 7,500/-, in Sindh Rs. 15,000/-, in KPK Rs. 5,000/- and in Balochistan, it is Rs.10,000/-.

4. Learned counsel further contended that under Rules 36 (3) (4), in case, the petitioners intend to increase their fee, they shall submit a proposal with justification and supporting documents including audited accounts of 180 days before start of new academic year and for the processing of that application for fixation of fee, sum of Rs. 20,00,000/- per school shall be payable for hiring professional services. It was contended that the referred Rule is totally perverse and extortionate, hence is unworkable. It was further submitted that under Rule 38, the factors which Respondent No. 2 have to take into account in determining the fee of school, does not take into consideration the expenditures and property tax, repair and maintenance, utility and other expenses appreciation etc., which is in violation of the judgement of this Court mentioned herein above. It was contended that according to

Government of Pakistan Statistics Division, education related expenditures increased by 11.10 % in 2016-17.

5. It was further contended that challenge to the vires of Rule 27 was also made on the ground that it prescribes that each school should have a Parent Teacher Syndicate empowered to take disciplinary action against students, examine and review several service contracts of teaching staff, redress grievance of students and parents, perform evaluation of teaching staff and formulate the admission policy for the school; under the said Rule, referred Body is to be elected and chaired by a parent. Under Rule 28, it is provided that the Parent Teacher Syndicate shall be arbitrator of disputes between a teacher and the petitioners/employers. It was contended that both the said Rules are in violation of Article 23 and 24 of the Constitution and provides remedies to the teachers, which otherwise, are not available in the labour laws and is beyond the scope of provisions of the Act. It was further submitted that Rule 29 prescribes for levy of fine. In case of violation of Rules, fine in the sum of rupees upto Rs. 20,00,000/- (twenty lac) and not less than Rs. 6,00,000/- (six lac) plus Rs.20,000/- (twenty thousand) per day for continuous violations, whereas under Section 19, the limitation is Rs. 5,000/- (five thousand) per day.

6. Learned counsel also submitted that Rule 31 provides complaint redressal system to cater all grievances of teaching and non-teaching employees as well as parents and guardians and students and in case of receipt of any complaint against a school by

Chairman PEIRA, the matter shall be referred to the said redressal committee; the same is unreasonable and unlawful inasmuch as it infringes the rights of the petitioners under the laws relating to employment. Under Rules 4(8)(9)(10)(11) and 5, Respondent No. 2 has empowered itself to constitute an inspection committee which has powers including compelling production of any document and taking down statements and/or procuring compulsory appearances; it was contended that the same is in violation of fundamental rights enshrined in the Constitution as well as under the Act. It was further contended that Rule 6 provides as many as 26 conditions for registration of a school and in addition, almost 11 conditions in Rule 11 *ibid* have been laid down, which are totally unworkable and exceeds the mandate given to Respondent No.2 under the Act. It was contended that the requirement, regarding three thousand books in library etc., is totally arbitrary. It was further submitted that under Rule 2A of the Rules, it is provided that the academic year shall commence from 15th of April and shall end on 31st of March. The same does not take into account the O and A Levels System commencing in August and ending in July.

7. It was contended that under Rule 12 of the Rules, Respondent No. 2 can evaluate each school on the basis of various criteria which are 17 in number. It was submitted that no provision of the Act empowers Respondent No. 2 to make such performance evaluation; that under Rule 14, in case the petitioners open a new class, it will be treated as fresh registration which is completely

unreasonable. Moreover, under Rule 17(3), a student without giving advance notice under Rule 17(3), cannot be penalized and the fee is to be refunded; Rule 18(2) prescribes that a student's admission upto class 8 shall be examined by the Head of the Institution. It was contended that the said Rule has no logic or basis inasmuch as there are competent teachers and designated staff available in the school for carrying out the admission process. Finally, it was submitted that under the impugned Rule 22(2), the school shall not designate any shop for purchase of uniform, books, etc., which is again in violation of rights of the petitioners and is baseless. Learned counsels, in support of their submissions, placed reliance on cases reported as '*Arshad Mehmood & others versus Government of Punjab through Secretary, Transport Civil Secretariat, Lahore & others*' (PLD 2005 SC 193), '*Elahi Cotton Mills Ltd. Versus Federation of Pakistan*' (PLD 1957 SC 582), '*Khwaja Imran Ahmed versus Noor Ahmed* (1992 SCMR 1152), '*NEPRA versus Faisalabad Electric Supply Company*' (2016 SCMR 50), '*Salahuddin and another versus Pakistan*' (PLD 57 WP Karachi 854), '*M/s Murree Brewery Company Limited versus Director General, Excise & Taxation*' (1991 MLD 267), '*K B. Threads (Pvt.) Limited Versus Zila Nazim, Lahore*' (PLD 2004 Lahore 376), (AIR 1996 SC 448), (AIR 1992 SC 115). Reliance was also placed on cases reported as '*Collector of Customs versus*' (1992 SCMR 1402) as well as *Judgement dated 13.04.2006, passed in*

Appeal (Civil) No.3453 of 2002 titled as 'Jandal Stainless versus State of Haryana and others'.

8. During the course of hearing, various applications were filed by individual parents and/or their bodies including C.Ms. No.4229/2016 and 4233/2016 in Writ Petition No.2777/2016, C.Ms. No. 4736/2016 and 3308/2016 in Writ Petition No. 2756/2016, C.M. No. 4735/2016 in Writ Petition No. 2824/2016, C. M. No. 2016/2016 in Writ Petition No. 2850/2016, C.M. No. 4738/2016 in Writ Petition No. 2823/2016 and C.Ms. No.3305/2016, 3309/2016 and 4740/2016, in Writ Petition No. 2846/2016, to be impleaded as respondents. Notices were issued on the said applications to the parties and in response thereto, learned counsels for the petitioners contended that they have no objection if said applicants are heard on merits. Learned counsels, appearing on behalf of the applicants, *inter alia*, contended that this Court, in case reported as (**PLD 2016 Islamabad 141**), has already held that the provisions of the Act are not ultra vires the Constitution hence no attack can be made on the same. It was further contended that the Rules have been challenged on the basis that they are in violation of fundamental rights as well as provisions of Articles 4 and 10-A of the Constitution. It was contended that at the time of drafting of Rules, the petitioners and their bodies were involved in the process. It was further contended that the Rules are neither in violation of the Act nor the Constitution, as they do not defeat the purpose of this Act rather promote the same. It was contended that there is a

difference between fee, regulatory fee and tax which has been highlighted by the Honourable Lahore High Court in cases reported as (*PLD 2016 Lahore 355*) & (*PLD 2017 Lahore 563*). It was further contended that laid down criteria, for regulations of the petitioners, does not infringe their freedom of trade inasmuch as in Article 18 and other Articles of the Constitution, fundamental rights are not absolute but subject to law. Reliance was placed on case reported as (*2015 SCMR 1739*), it was further contended that the legal concept of the regulation is in the public interest and is used to remove undue or unreasonable advantage, preferences or prejudice or discrimination and/or inequalities. It was further contended that in a case from United States jurisdiction titled "*Nebbia versus New York*' (*291 US 502*), it has been observed that a state is free to adopt any economic policy that it may deem necessary to promote a public welfare. Reliance was placed on various cases from the Indian jurisdiction including (*Civil Appeal No. 4060/2009*) titled '*Model Dental College and Research Center versus State of Madhya Pradesh*'. Learned counsel took the Court through various provisions of the Rules to justify their rational and reasonableness.

9. Learned counsel for Respondent No. 2, *inter alia*, contended that the Rules are in conformity with the provisions of the Act and do not suffer from any illegality, unreasonableness or arbitrariness. It was further contended that the same are not in violation of fundamental rights of the petitioners rather provide a

comprehensive system for streamlining the Parent Teacher Syndicate in Islamabad Capital Territory. It was further contended that the Act provides for the registration of the Private Educational Institutions and the provisions of the same have already been held to be intra vires the Constitution by this Court in case reported as (*PLD 2016 Islamabad 141*). Likewise, it was contended that Article 18 and other provisions of the Constitution do not prohibit the regulations of a private enterprise/trade and framing of Rules. Learned counsel took the Court through the Rules which have been assailed in the petitions to justify their reasonableness, rationality in the facts and circumstances. It was vehemently contended that Respondent No. 2 is an Autonomous Body and is independent of any Ministry or any organ of the Federal Government. In this background, it was contended that PEIRA has to arrange funds/sources for carrying out the purposes of its regulatory role. It was submitted that in accordance with the present requirements of PEIRA, the system of registration fee and renewal has been revised so that there is no shortage of funds and the affairs of the regulator can be managed smoothly. Likewise, it was contended that in case of schools, which want their fee to be fixed in accordance with their requirements, services of professionals including Chartered Accountants, have to be hired so that a proper assessment of the finances can be made. It was contended that the requirement of formation of grievance redressal system and Parent Teacher Syndicate is only to enforce the

provisions of device of free and compulsory Education Act, 2012, and does not suffer from any illegality. Likewise, it was submitted that the formation of the redressal committee is to ensure that schools adhere to the provisions of the Rules and there is no violation of the same. Reliance was placed on cases reported as *'Trade Service International (Pvt.) Limited versus PEMRA'* (PLD 2017 Lahore 563), *'M/s D.S. Textile Mills Ltd. versus Federation of Pakistan'* (PLD 2016 Lahore 355), *'LDA versus M/s Imrana Tiwana'* (2015 SCMR 1739), *Civil Appeals No. 4061 of 2009, 'Bushra Jabeen versus Province of Punjab, Province of Sindh'* (C.P. No. 6274 of 2017), *'Shahrukh Shakeel versus Province of Sindh'* (Constitution Petition No. 5812 of 2015) and *'All Pakistan Cement Manufactures Association'* (2010 CLD 1586). Comparison was also drawn to the powers exercised by other regulatory bodies which are provided to them under the law including NEPRA Tariff Standard & Procedures. Reliance was also placed on case reported as (2014 SCMR 396).

10. Since vires of the Rules have been challenged, therefore, notice under Order 27-A, CPC was issued to the learned Attorney General for Pakistan and in response thereto, learned Deputy Attorney General addressed arguments by way of supporting and adopting the arguments addressed by learned counsel for Respondent No.2.

11. Since the petitioners have challenged the vires of the Rules hence, it is just and proper that relevant Rules, for the ease of convenience, be reproduced below:

3. Application for registration. – *Every institution shall be required to be registered with the Authority under these rules and for that purpose shall make application to the Authority on prescribed form as set out in Schedule-I in accordance with the laid down procedure.*

4. Procedure for registration. – (1) *Application for registration under rule 3 shall be made by the institution to the Authority at least two months before commencement of the academic year.*

(2) *Any institution functioning but not registered shall make application for registration within sixty days of commencement of these rules and may continue to function till the disposal of registration application and decision of the Authority. The Authority shall acknowledge, upon receiving, the application for registration or renewal of registration, as the case may be, filed by an institution.*

(4) *Any institution for contravention of the Act and these rules shall be prosecuted against in accordance with relevant provisions of the Act.*

(6) *For contravention of sub-rules (3) and (4), the defaulting institution shall be liable to fine at the rate of registration fees prescribed in Schedule-II, multiplied by the number of months from the date of default and date of submission of application for registration with the Authority, in addition to registration fees prescribed in Schedule-II.*

(7) *An institution shall not be registered by the Authority unless the registration fee prescribed in Schedule-II and fine, if applicable under sub-rule (6) is deposited alongwith completion of other registration requirements under these rules.*

(8) *The Authority shall depute an Inspection Committee to inspect the institution, give directions to the institution to comply with these rules and submit report to this effect to the Authority.*

(10) *The Inspection Committee may, from time to time, enter and inspect the premises under the possession or control of any institution for the purpose of ascertaining whether these rules have been or are being complied with.*

(11) *In carrying out an inspection under sub-rule (10), the Inspection Committee may –*

(a) *examine any book, document, material or article as it may consider necessary and remove or make copies of it for further examination;*

(b) *require any person, whether a manager, teacher or student of the institution or otherwise, to be present before the Inspection Committee or any officer of the Authority and to produce for inspection any book, document, material or article which is in the possession or under the custody of that person, which the Inspection Committee or an officer of the Authority may remove or make copies thereof for further examination; or to furnish any information which is within the power of the person to furnish relating to the control or management of the institution, to the teaching carried on in the institution, to the student activities of the institution or to such other matter as the Inspection Committee may specify; or*

(c) *do anything that is necessary or expedient for the carrying out of the inspection.*

5. Enforcement powers of Inspection Committee. - (1) *In addition to the powers conferred under these rules, an Inspection Committee may –*

(a) *at reasonable hours, enter any premises or part thereof (whether or not in the possession or control of a private education institution) when it has reasonable cause to believe that evidence of the commission of an offence under these rules or the Act can be found therein, and search for and seize and remove any book, document, material or article or make copies thereof as it may consider necessary;*

(b) *require any person whom it reasonably believes to have committed the offence to furnish evidence of his identity;*

(c) *require, by order in writing, the attendance before it of any person within the limits of ICT who, from any information given or otherwise obtained by the Inspection Committee, appears to be acquainted with the facts or circumstances of the case;*

(d) *examine orally any person reasonably believed to be acquainted with the facts or circumstances of the case or with such other matter as the Inspection Committee may specify, and reduce into writing the answer given or statement made by that person;*

(e) *require any person to furnish any information or produce any book, document or copy thereof in the possession of that person, and inspect, copy, make extracts from such book or document; and*

(f) take such photographs or video recording, as the Inspection Committee thinks necessary, of the premises and persons reasonably believed to be acquainted with the facts or circumstances of the case or with such other matter as the Inspection Committee may specify.

(2) The person referred to in clause (b) of sub-rule (11) of rule 4 shall be bound to state truly the facts or circumstances with which he is acquainted. A statement made by that person shall be read over to him and shall, after correction, if necessary, be signed by him. All statements, answers, information and documents procured in the course of investigation shall be admissible in evidence in any proceedings under these rules and the Act against the person making or producing the same.

6. Conditions for registration of an institution. – *An institution shall be registered by the Authority provided the following requirements are abided by the institution, –*

(a) in general terms it is suitably located, staffed and equipped with proper learning facilities and with minimum requirements as follows:–

(i) institutions seeking registration with the Authority at Primary level shall have infrastructure capacity of minimum of 160 students, at Middle level minimum of 220 students, at Secondary or ‘O’ level minimum of 260 students and at Higher Secondary or ‘A’ level minimum of 300 students. Further details of infrastructure shall be as set out in Schedule-III. An institution, that does not fulfill these requirements, shall be registered only as a tuition centre or day care centre under these rules and these requirements shall not apply to tuition centers and day care centers;

(ii) submission of attested copies of land ownership papers and if applicable the agreement of lease;

(iii) maintenance of a maximum teacher to student ratio of 1:30;

(iv) each institution shall have adequate provision of clean drinking water for students and may have a cafeteria or canteen;

(v) no objection certificate from Capital Development Authority or municipal authority or district government, whichever is applicable, on the suitability of the location and correct use of the building, as per building bye-laws;

(vi) certificate from authorized structural engineer on the soundness of building structure;

(vii) teaching staff shall have the minimum qualifications for Primary, Middle, Secondary or O' level and Higher Secondary or A' level institutions as set out in Schedule-IV;

(b) it has constituted a managing committee or board of directors;

(c) the curricula, courses of studies and books being used or to be used for preparing students for examination conducted by a foreign educational agency shall contain nothing repugnant to the Islam or Ideology of Pakistan or discriminatory or prejudicial against minority communities;

(d) the teaching staff shall, in no manner, either by sign or word of mouth or writing or any other means propagate anything repugnant to the Islam and Ideology of Pakistan;

(e) in conformity with relevant laws, the principal and teaching staff shall be employed by the institution, on terms and conditions, through a written agreement between the management and the employee. The pay scales of teaching and non-teaching staff including allowances, leave facilities and other benefits shall be subject to approval of the Authority. The institutions shall furnish to the Authority annual teaching and non-teaching staff promotion and salary raise policy, data on promotions, trainings and annual salary raise for renewal of registration;

(f) a foreign national shall be employed by the institution only with the approval of the Government;

(g) tuition fees and other charges of an institution shall be in line with the fee and other charges determined by the Authority, from time to time, in accordance with these rules;

(h) the institution premises, accommodation, furniture, equipment and sports facilities are sufficient and of required standard to meet the educational needs;

(i) the institution shall abide by the Act, the rules and regulations made thereunder and the Right to Free and Compulsory Education Act, 2012 (XXIV of 2012) and the rules and regulations made thereunder, where applicable;

(j) the co-curricular activities shall be given due consideration and implementation and shall be properly programmed. Institutions, at the time of registration, shall submit a plan of annual co-curricular activities and club activities including annual days, sports days, inter-institutional competitions, seminars, workshops, exhibitions and mandatory scheduling of events on national days including Pakistan Day (23rd March), Independence Day (14th August), Iqbal Day (9th November)

and Birth Anniversary of Quaid-e-Azam (25th December) of each year. Institutions shall also participate in plantation drives, twice in a calendar year. Institutions shall submit execution report of these activities at the time of annual renewal of registration;

(k) the records and registers are properly maintained;

(l) the institution shall notify through a prospectus the details of facilities, fees and other information before the commencement of each academic year, under intimation to the Authority;

(m) the institution shall furnish such data, information or statements as may be required by the Authority;

(n) it shall have spacious and well-equipped laboratories in relevant disciplines at Secondary, O' level, Higher Secondary and A' level, as the case may be, and also where required at lower levels;

(o) it shall have a spacious and well stocked library containing minimum of three thousand books and three volumes of each textbook relating to the subjects being taught in the institution. Primary and Middle level institutions shall not be subjected to the condition of three thousand books;

(p) it shall employ on regular basis a qualified and experienced Librarian and a Physical Training Instructor or Director Physical Education, by whatever name called, as required;

(q) every institution or its branch being run under the same management or name at different premises shall be required to be registered separately;

(r) the institutions shall be responsible for payment of annual renewal of registration fee to the Authority. Rate of fee to be charged by the Authority for registration and annual renewal of registration of institutions shall be as per the rates set out in Schedule-II. The Authority shall review the rates of initial registration and annual renewal of registration fee, after every three years or earlier if it deems necessary;

(s) it shall function in conformity with the objectives of policy and shall follow curricula and syllabi as prescribed by the Government, the Board and the Authority from time to time. The institutions following schemes of studies other than that notified by the Government shall continue to follow curricula and other course of studies as prescribed for that scheme at the requisite level, provided that there is no contradiction or violation of these rules or any other relevant law for the time being in force;

(t) it shall be open to periodical inspection by the inspection committee authorized by the Authority to ensure that the provisions of the Act and rules made thereunder are followed;

(u) the management, staff and the students shall not take part in activities

prejudicial to the integrity and solidarity of the State or disseminate opinions tending to excite feeling of hatred and disloyalty towards the State, religion or bias, prejudice or discriminatory against minorities, from the platform of the institution;

(v) any tuition centre shall not be registered for Middle level and below;

(w) National Tax Number (NTN) of the employer (management of the institution) shall be mandatory for registration with the Authority;

(x) teaching staff shall have the minimum qualification as set out in Schedule-IV;

(y) the security fee charged by an institution, if any, shall be refunded to the student, after deducting any arrears at the time of leaving the institution. The admission fees charged by an institution, if any, shall be refunded to the student, in case student leaves the institution, prior to completing the highest class or grade in that institution; and

(z) make proper security arrangements under Government instructions endorsed by the Authority from time to time.

7. Refusal of registration. – Where registration is refused to an institution, a copy of the orders shall be sent to the applicant, stating clearly the reasons for which registration has been refused.

8. Withdrawal of registration. – (1) When an institution has ceased to fulfill the conditions of registration under these rules, the Authority shall withdraw registration of that institution. Where registration is withdrawn as a disciplinary measure the management shall be allowed sufficient opportunity to explain its position prior to withdrawal of the registration. If the defects are capable of immediate or early removal, the management in the first instance shall be allowed time to be fixed by the Authority but not exceeding ninety days, under a warning, within which to remedy them and if these are remedied to the satisfaction of the Authority, registration shall not be withdrawn but if an institution continues working without removing the defects after the warning, it shall be considered sufficient ground for the withdrawal of registration of that institution which suffers from the defect.

(2) Registration shall be withdrawn, as per procedure laid down in sub-rule (1), if the institution refuses to provide required data, information or statement.

(3) Registration may also be withdrawn if the management or the staff or the students of an institution take part in activities prejudicial to the integrity and solidarity of the State or disseminate opinions tending to excite feelings of disloyalty to the State or of enmity and hatred between different religious sects or classes in the Islamic Republic of Pakistan from the platform of the institution or if the students are permitted to attend political meetings or to engage in any form of political or communal agitation from the platform of the institution.

11. Renewal of registration. – (1) Registration shall be renewed after every twelve months of initial registration subject to deposit of the annual renewal fee as per the rates set out in Schedule-II and subject to furnishing of the following, namely: –

- (a) certified copy (by auditor) of annual audited accounts of the year prepared by registered audit firm in case an institution charges Rs 5,000 per month per student or above;
- (b) certified copy (by auditor) of filing of annual returns;
- (c) execution report of co-curricular activities listed in clause (j) of rule (6);
- (d) student enrolment and grade-wise total strength;
- (e) teaching staff list with their qualifications and experience;
- (f) list of subject specialist teachers (wherever applicable);
- (g) details of grade wise school fee and other charges;
- (h) proposed changes in service contracts of teachers, if any;
- (i) report on issues undertaken by the parent teacher syndicate and implementation status of decisions of parent teacher syndicate regarding those issues;
- (j) proposed changes in course details if any; and
- (k) list of vendors or outlets where course books, note books and uniform are available.

(2) In case there is no change under items mentioned under clauses (d), (e), (f) and (g) of sub-rule (1), the institution may furnish an affidavit to that effect and the Authority shall process the renewal under these rules.

12. Performance evaluation of institutions. – Performance of registered institutions shall be evaluated on two yearly basis and

awarded a rating category A, B or C based on factors mentioned in rule 6 including the following, namely: –

- (a) percentage of grades obtained in examinations conducted by third party external agencies, organizations and Board;*
- (b) winning an award in inter-institutional sports event or debate event or science exhibition;*
- (c) number of complaints against the institution and redress of those complaints;*
- (d) functional parents teacher syndicate elected through voting by parents;*
- (e) on campus ground, gymnasium and sports facilities with availability of trained instructor and lockers;*
- (f) institutional transport for students and staff with available parking for vehicles;*
- (g) medical room with medical van and paramedic staff;*
- (h) safety and security of the institution with walk through detecting gates and closed circuit television monitoring control room;*
- (i) fire life safety measures and emergency exits;*
- (j) high tech institution with institutional web portal with all updates, digital learning centre, administration software, Wi-Fi campus, interactive whiteboards, online assessments, e-lesson plans and automatic institutional bell smart cards;*
- (k) well stocked and updated library with paper books and digital library solutions and facility of online membership or subscription;*
- (l) cafeteria with seating capacity of five percent of total students' strength and on campus tea or coffee machines;*
- (m) type of accessories in conference room or hall;*
- (n) remedial teaching or extra coaching for slow learners;*
- (o) parents satisfaction index or annual parents feedback survey scoring and complaints;*
- (p) maintenance of the institution including grounds, ambience (entry from the main gate), air conditioners, buses and other vehicles, furniture, cleanliness, generators, security and swimming pool;*
- (q) minimum four newsletters in a calendar year;*
- (r) annual school magazine or its computerized discs; and*

(s) institutions' audit scoring by the Authority.

17. Institution leaving certificate. – (1) *A student leaving an institution shall not be admitted to another institution without the production of institution leaving certificate, in the prescribed form, issued by the last institution attended.*

(2) The institution shall not withhold issuance of institution leaving certificate to any student on any ground, except on the grounds recommended by the Parent Teacher Syndicate and approved by the Authority.

(3) The institution shall not withhold issuance of the institution leaving certificate and refund of security fees on the basis of failure of the student to submit an advance notice for leaving the institution.

18. Admission to institutions.– (1) *Admission to institutions shall be on merit irrespective of any distinction of religion, caste and creed in accordance with the prescribed criteria of the institution.*

(2) Students seeking admission to any class of a registered institution, up to 8th class or grade, shall be examined by the head of institution and admitted to the class for which they are found fit.

(3) Any grievances with regard to sub-rules (1) and 17(2) shall be addressed by Parent Teacher Syndicate.

22. Uniform.– (1) *Students in the institutions shall wear the uniform, where prescribed by the institutions. Institutions shall ensure that the prescribed uniform is in line with religious, traditional and climatic requirements of the country and shall be easily procurable from market.*

(2) An institution shall not engage in any anti-competitive practice of uniform and product tying with any specific shop. It shall only prescribe the specifications and design of its uniform and products and let the open market cater to the consumers.

27. Parent teacher syndicate. – (1) *In each institution, there shall be a Parent Teacher Syndicate (PTS), with the following mandate, namely: –*

(a) remedy of disciplinary action against students;

(b) examine and review the service contracts and related matters of the teaching staff and make recommendations to the Authority;

(c) redress of grievances of teachers pertaining to their service matters;

(d) assisting the management to ensure minimum of one hundred and eighty academic or working days for students;

(e) redress of grievances related to school leaving certificates, refund of security and admission fees;

(f) assisting the management in performance evaluation of the teaching staff and making recommendations for grant of performance based honoraria or bonus; and

(g) formulating an admission policy for the institution.

(2) The Parent Teacher Syndicate shall be constituted for a period of one year as follows:-

(a) each class and grade shall be represented by one parent to be elected

by the parents of children of that class and grade;

(b) principal of the institution shall be the secretary to the PTS and shall be responsible for arranging atleast one meeting of the PTS every month;

(c) chairperson of the PTS shall be elected from among the member parents;

(d) number of members plus Secretary of the PTS shall be odd. Wherever necessary, this requirement may be fulfilled through more than one elected parents from the highest class and grade of the institution;

(e) quorum for any PTS meeting shall be majority of its composition;

(f) members shall offer their services on voluntary basis and shall not be entitled to any remuneration;

(g) any member shall cease to be a member if majority of the members of the PTS file a written complaint against that member to the Secretary of the PTS;

(h) any member shall cease to be a member if he fails to attend three consecutive meetings; and

(i) election of the members of PTS shall be held on a day when routine parent-teacher meetings are organized by the institution. The Secretary shall be responsible to send a written notice to all parents one month in advance.

(3) All grievances and complaints directly received by the Authority shall be referred to the PTS concerned for resolution within thirty days. In case the PTS fails to resolve any matter, only then it shall be referred to the Authority for resolution under these rules. The Authority may require an institution to reconstitute its PTS upon a reasonable complaint against the PTS received by the Authority.

28. Employment of teachers. – (1) *An agreement stating in clear terms and conditions, under which a member of the teaching staff is engaged, shall be executed between the member and the management of the institution. A copy of each agreement, duly executed, shall be filed in the institutional record and shall be made available, at any time, for inspection by the Inspection Committee of the Authority. The agreement, inter alia, shall include –*

(a) the initial and maximum pay of the post and the rate of annual increment, house rent allowance, medical allowance, conveyance allowance and other applicable allowances;

(b) clause as to the payment of salary through crossed cheques or bank account; and

(c) conditions of termination of service.

(2) The agreement under sub-rule (1) may be terminated by either party on giving one month's notice in writing or paying one month's salary in lieu thereof unless the agreement provides for a shorter or longer notice.

(3) In case of dismissal the concerned individual, before dismissal, shall be called upon to submit his reply in defence in writing for which he shall be given three days from the issue of the letter. The individual shall be heard in person also. In the event of written defence, not being submitted within the said time, the management may take action ex-parte.

(4) Salaries shall be paid monthly within first ten days of the month for which these are due.

(5) The duties of teachers shall be such as are usual and customary in Government institution and such other duties, as head of the institution shall, from time to time, assign them. Teachers shall not undertake private tuition or any other duties, likely to interfere with their work, without written permission of head of the institution or management of the institution.

(6) Any dispute that may arise between teaching member and the management shall be referred to the Parent Teacher Syndicate for resolution. An appeal against decision of the Parent Teacher Syndicate may be filed with the Authority, whose decision shall be final and binding on all the parties.

29. Fine. – (1) *Where management contravenes any provision of these rules, the Authority may, subject to reasonable opportunity of defence, impose administrative fine which may extend to twenty thousand rupees per day from the date when the notice of contravention is served on the institution till such time the contravention continues.*

(2) If the contravention under sub-rule (1) continues for more than thirty days, the Authority may, in addition to any other action

or fine under the Act, file a complaint against the management in the Court of Magistrate of the First Class and the Court may punish the management with fine which may extend to two million rupees but which shall not be less than six hundred thousand rupees.

(3) Any person who –

(a) in relation to any application under these rules or any notification thereunder –

(i) makes any false statement which he knows to be false or does not believe to be true or which he makes recklessly; or

(ii) intentionally suppresses any material fact;

(b) neglects or refuses to produce any book, document, material or article or to furnish any information, neglects or refuses to attend before an inspector as required, furnishes any book, document, material or information which is false in a material particular and which he knows to be false or does not believe to be true, or, by the intentional suppression of any material fact, furnishes information which is misleading;

(c) obstructs or impedes the Authority, any officer of the Authority or any Inspection Committee lawfully carrying out any function or duty in the exercise of any power conferred by or under the Act and rules made thereunder; or

(d) being summoned to attend at a hearing of the Authority to give evidence or produce any document or other article, without reasonable excuse refuses or neglects to do so or refuses to answer any questions put to him by or with the concurrence of the Authority, or otherwise hinders, obstructs or deceives the Authority in the exercise of its powers under the Act and rules made thereunder,

shall be guilty of an offence liable for trial under sub-rule (2) and section 19 of the Act.

31. Grievance redress system. – *(1) The Authority shall develop a complaint redress system to cater for the grievances of teaching, non-teaching employees of the institution, parents, guardians, students or any other person or entity, affected by the decisions of the institutions in following manner:-*

(a) on receipt of any complaint or information regarding a dispute arising between an institution and parents or guardian of a student or between the institution and its teachers or other staff, the Chairman of the Authority shall refer the matter to the Parent Teacher Syndicate for resolution within thirty days.

(b) the Authority, on receipt of the report of the action taken by the PTS concerned, may pass any orders as deemed appropriate.

(2) Institutions shall develop a complaint redress system, to resolve the grievances of parents or students in the following manner:-

(a) institutions shall maintain a register of complaints of parents or complaints related to child abuse, neglect, harassment and discrimination with complete record of actions taken, for resolution, by the institution.

(b) institutions, through a notice on institution's notice board or institution's website, shall make parents aware of their right to register complaint by visit or letter or email or phone call.

(c) institutions shall make complete record of complaints available, at any time, for review by the Inspection Committee of the Authority.

PART-II

36. Regulation of fee structure of institutions. – *(1) The Authority shall implement a transparent criteria for determination and fixation of rate of fee being charged by the institutions, based on cost methodology and objective rationalization and criteria and financial model as set out in Schedule-V. Each institution shall be privileged only to charge fee, based on upper limit, determined by the Authority.*

(2) The Authority may conduct independent surveys to deduce reasonable costs and expenditures for determination of fees.

(3) In case an institution intends to charge a fee schedule in excess of that predetermined by the Authority, it shall one hundred eighty days before the start of new academic year submit a fee increase proposal (FIP), with complete working (basis of calculations), rationale and justification and other supporting documents including audited accounts for review and decision by the Authority.

(4) The Authority shall not process any FIP under sub-rule (3) for fee determination unless the institution has deposited the corresponding charges which shall not be less than twice the amount of corresponding registration fee as set out in Schedule-II. The Authority may utilize these charges for hiring legal counsel, financial experts, chartered accountants, auditors for assistance in review of the FIP and any other expenses as deemed appropriate.

(5) Fee shall be charged on monthly basis. Institutions shall issue written communication on fee for new academic year to parents, sixty days before the implementation of revised fee and its due date.

(6) Institutions shall provide official receipt of payments, made by parents in various heads and shall record the underlying transaction in institutions accounting records.

(7) *An institution shall allow fee concessions to deserving students and shall award scholarships to students, having meritorious records.*

(8) *Institutions shall develop a transparent process and eligibility criteria of fee concessions, shall keep its record and make it available, at any time, for review by the Inspection Committee of the Authority.*

38. Factors for determination of fee.- (1) *The Authority shall determine the fee leviable by a institution as indicated in Schedule-V by taking into account the following factors, namely:*

(a) *the location and building rental or ten years amortization of building of the institution as the case may be;*

(b) *the available infrastructure;*

(c) *the expenditure on human resources, administration and maintenance;*

(d) *the surplus (minimum 20% return on investment) or any other parameters directed by the Government; and*

(e) *any other factors as may be considered appropriate by the Authority.*

(2) *The Authority shall, on determining the fee leviable by a institution, communicate its decision to the institution concerned.*

(3) *Any institution aggrieved over decision of the Authority shall file objection before the Federal Secretary of the Division concerned within thirty days from the date of receipt of the decision of the Authority.*

(4) *The Federal Secretary of the Division concerned shall consider the objection of the institution and pass orders within thirty days from the date of receipt of such objection.*

(5) *The orders passed by the Federal Secretary of the Division concerned shall be final and binding on the institution.*

(6) *The Authority shall indicate the different heads under which the fees shall be levied, if it deems necessary to breakup the monthly charges into different heads.*

12. Under Section 3 of the Act, an authority is to be established known as 'Islamabad Capital Territory Private Educational Institutions Regulatory Authority'. The aims and objectives of the

Authority and its functions are provided in Sections 4 and 5 of the Act, which are reproduced below:

4. Aims and objectives of Authority.---The aims and objectives of the Authority shall be to register and regulate privately managed educational institutions in the Islamabad Capital Territory to ensure that such institutions follow a uniform policy that includes,-

- (a) curricula according to Federal scheme of studies;
- (b) duration of academic session and holidays or vacations;
- (c) determination and fixation of rate of fee being charged by the institutions, qualifications of teaching staff, their terms and conditions of service including salaries and mode of payment of their salaries;
- (d) promotion of curricular and co-curricular activities on inter-institutional basis;
- (e) achievement of fair measure of uniformity of academic standards and evaluation among the institutions;
- (f) capacity building of teachers; and
- (g) performance of such other functions as may be incidental or conducive, to the attainment of the aforementioned objectives.

5. Functions and power of the Authority.---(1) The functions and powers of the Authority shall be,-

- (a) to regulate, determine and administer all matters and do all such acts and things as are necessary for the achieving of aims and objectives of this Act;
- (b) to register and regulate, private educational institutions in Islamabad Capital Territory including fixation of grade-wise rate of admission fee, security fee, monthly tuition fee and other fees being charged by private educational institutions;
- (c) to cause inspections to be made by such persons as the Authority may nominate of institutions applying for registration or of registered institutions;
- (d) to withdraw registration if it is satisfied after the inspection that the management and instructions in an institution are not of prescribed standard and are in violation of the provisions of this Act;

(e) to check qualifications of teaching staff and their terms and conditions of service;

(f) to fix, demand and receive such fee for registration and inspection of the institution as may be prescribed;

(g) to adopt measures to promote physical and moral well-being of students including sports facilities;

(h) to ensure that the services, quality of education being provided and salary paid to the teachers commensurate with the fee being charged;

(i) to ensure that the building of the institution is adequate and its structure is sound to house the students;

(j) to arrange for the annual audit of the accounts of the Authority;

(k) to execute any other important matter concerning its functions as may be incidental or conducive to the exercise of aforesaid powers and performance of functions; and

(l) to make rules, regulations and policy and to execute the same; and

(m) to prescribe fines to be imposed for, violation of any of the provisions conferred upon the Authority under this section.

(2) The Authority shall perform such other functions as may be assigned to it by the Government including the appointment of staff and determination of their terms and conditions of service for proper execution of the functions assigned to the Authority under this Act.

(3) In discharge of its functions the Authority shall be guided on questions of policy given to it from time to time by the Government.

(4) All the law enforcement agencies shall come in aid of the Authority in exercise of its powers and performance of its functions.

13. Under the Act, PEIRA also has the powers to frame rules for its functioning, which it has done and some of which, have been assailed in the instant connected petitions. It is pertinent to observe that, some of the petitioners had challenged the vires of Sections 4 and 5 of the Act on the touchstone of Article 18 of the Constitution of Islamic

Republic of Pakistan, 1973 however, the referred prayer of the petitioners was turned down by this Court in case reported as *'Educational Services (Pvt.) Limited versus Federation of Pakistan' (PLD 2016 Islamabad 141)*. The petitioners have challenged the Rules on the touchstone that the same exceed the mandate under the Act; being in violation of Article 18 of the Constitution and that the same are unreasonable. The Honourable Supreme Court of Pakistan laid down the principles for declaring any enactment as void or unconstitutional in the case reported as *'Lahore Development Authority through D.G. and others v. Ms. Imrana Tiwana and others; (2015 SCMR 1739)*. In this behalf, the following guidelines were laid down:

“(i) There was a presumption in favour of constitutionality and a law must not be declared unconstitutional unless the statute was placed next to the Constitution and no way could be found in reconciling the two;

(ii) Where more than one interpretation was possible, one of which would make the law valid and the other void, the Court must prefer the interpretation which favoured validity;

(iii) A statute must never be declared unconstitutional unless its invalidity was beyond reasonable doubt. A reasonable doubt must be resolved in favour of the statute being valid;

(iv) Court should abstain from deciding a Constitutional question, if a case could be decided on other or narrower grounds;

(v) Court should not decide a larger Constitutional question than was necessary for the determination of the case;

(vi) Court should not declare a statute unconstitutional on the ground that it violated the spirit of the Constitution unless it also violated the letter of the Constitution;

(vii) Court was not concerned with the wisdom or prudence

of the legislation but only with its Constitutionality;

(viii) Court should not strike down statutes on principles of republican or democratic government unless those principles were placed beyond legislative encroachment by the Constitution; and

(ix) Mala fides should not be attributed to the Legislature."

14. In the instant petitions, the enactment which is under challenge, is Rules which is a form of sub ordinate or delegated legislation. The principles for assailing Rules/Regulations or any delegated legislation were laid down by the august Apex Court in case reported as '*Khawaja Ahmad Hassan versus Government of Punjab and others*' (2005 SCMR 186) and it was observed as follows:

39. *The rules may be declared ultra vires if the same are not made, sanctioned, published in the manner prescribed by the enactment repugnant to it, uncertain or unreasonable, bad faith, misconstruction of the enabling Act, failure to comply with the conditions prescribed under the enactment and violation of the object and reasons of the enactment.*

40. *The scope and power to make rules has been examined by Mr. S.M. Zafar in his book "Understanding Statutes at page 772 as follows:--*

"It is a recognized principle of law that the rules made in pursuance of a delegated authority must be consistent with the statute, under which they came to be made. The authority is given to the end that the provisions of the statute may be better carried into effect, and not with the view of neutralizing or contradicting those provisions." (Rajam Chetti v. Seshayya ILR 18 Mad.236, 245, Raghanallu Naidu v. Corporation of Madras AIR 1930 Mad. 648.

"Rules framed under the, rule-making power given by an Act should not be repugnant to the Act and in case of conflict between the Act and the rules the Act should prevail." (Central Karnataka Motor Services Ltd. v. State of Mysore AIR 1957 Mys 7; PLD 1967 Kar. 618).

"The general power to make rules cannot however, be used, to widen the purposes of the Act or to add new and different means for carrying out or to depart from, and vary its terms. " (Shankarlal Laxminarayan Rathi v. Authority under Minimum Wages Act 1979 MPLJ 15).

"If the power can be found elsewhere than the section quoted, the rule will be referred to that power and held not to be ultra vires." (Secretary of State v. Appurao AIR 1924 Mad. 24; King Emperor v. Shirallabh AIR 1925 Nag. 393; Hukam Chand Mills v. State of MP AIR 1959 MP 195, 196).

"When rules are framed they may be referred to any power in the Act which validates them." Gulabbai v. Board of Revenue AIR 1957 MP 43).

"Where an authority passes an order which is within its competence it cannot fail merely because it purports to be made under a wrong provision if it can be shown to be within its powers under any other rule." Bala Kotiah v. Union of India AIR 1958 SC 232, Prem Shankar Sarnia v. Collector 1962 Jab LJ 997):

"Provided that the law-making body had authority to make it under some other provision of law misquoting its authority by; oversight or mistake does not take away any authority given by law." Raghanalu Naidu v. Corporation of Madras AIR 1930 (sic) 648, 650).

"In order to justify a rule the rule itself need not show on its face under what particulars section of Act it is being made. So long as the rule, can be justified under the rule-making power, the non-recital of the fact that it has been so made, will not make the rule bad or invalid. (Brojendra Kumar v. Union of India AIR 1961 Cal. 217, 220).

Similarly, in case reported as ‘National Electric Power Regulatory Authority versus Faisalabad Electric Supply Company Limited’ (2016 SCMR 55), the Honourable Supreme Court of Pakistan held that Rules and Regulations are the progeny or off spring of a Statute and are to be strictly in conformity with the provisions of the statute where under same are framed. It is settled proposition of law that the rules framed under a Statute are to remain within the precinct of the Statute itself and cannot transgress the limits and parameters of the parent Statute itself. All efforts are to be made to interpret the rules so as to bring it in conformity and within the intent and spirit of the statute, however, where it is not possible then the rules in as much as

it is injuring the very intent and spirit must yield to the Statute.

Similarly, the Supreme Court of India in case reported as '*State of Kerala and others versus Unni and another*' [(2007) 2 Supreme Court Cases 365] observed as follows:

"The principles on which constitutionality of a statute is judged and that of a subordinate legislation are different. A subordinate legislation would not enjoy the same degree of immunity as a legislative Act would. Unreasonableness is one of the grounds of judicial review of delegated legislation. Reasonableness of a statute or otherwise must be judged having regard to the various factors including the effect thereof on person carrying on a business. If by reason of the rule-making power, the State intended to impose a condition, the same was required to be a reasonable one. It was required to conform to the provisions of the statute as its violation would attract penal liability. It was expected to be definite and not vague. Indisputably, the State having regard to Article 47 of the Constitution, must strive hard to maintain public health. However, it should have specified the mode and manner in which the percentage of ethyl alcohol can be found out by the licensee. When a statute provides for a condition which is impossible to be performed, its unreasonableness shall be presumed. It would be for the State in such a situation to justify the reasonableness thereof.

When a subordinate legislation imposes conditions upon a licensee regulating the manner in which the trade is to be carried out, the same must be based on reasonable criteria. Workability of a statute vis-a-vis question as to whether it is vague or otherwise must also be considered having regard to the question as to whether it is at all practical. A rule may not be workable if it imposes a condition which, unless some other guidelines are issued, would become impossible to be performed. If the contention of the State is upheld, that would not only result in penal consequences, but would, in view of Section 57 also lead to non-renewal of the license. The licensee, thus, for all intent and purport loses his right to carry on business. Carrying on trade of liquor may not be a fundamental right, but it is a contractual right, given to him in terms of the provisions of a statute. The terms and conditions are governed by statute. The violation thereof would lead to penal consequences. Interpretation of statute in the aforementioned situation rests on the principle of reasonableness, equity as well as good conscience.

Similarly, in case reported as '*Indian Express Newspapers (Bombay) Private Ltd. and others versus Bennett, Coleman & Company Ltd. and others*' (AIR 1996 SC 515), it was observed as follows:

“A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary.

A distinction must be made between delegation of a legislative function in the case of which the question of reasonableness cannot be enquired into and the investment by statute to exercise particular discretionary powers. In the latter case the question may be considered on all grounds on which administrative action may be questioned, such as, non-application of mind, taking irrelevant matters into consideration, failure to take relevant matters into consideration, etc. etc. On the facts and circumstances of a case, a subordinate legislation may be struck down as arbitrary or contrary to statute if it fails to take into account very vital facts which either expressly or by necessary implication are required to be taken into consideration by the statute or say, the Constitution. This can only be done on the ground that it does not conform to the statutory or constitutional requirements or that it offends Article 14 or Article 19(1)(a) of the Constitution. It cannot, no doubt, be done merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court considers relevant. The power to grant exemption should however, be exercised in a reasonable way”.

15. In case reported as [(2007) 2 Supreme Court Cases 365], the Indian Supreme Court observed that reasonableness of delegated legislation must be judged having regards to various factors including effect on the person carrying on business and impossibility of the condition to be performed. If violation of the condition contracts penal liability, it must not be vague and must not be beyond the limits. Similar views, regarding the test of reasonableness, were expressed in case reported as ‘**Abdul Hakim Qureshi and others versus State of Bihar**’ (AIR 1961 Supreme Court 448). In the English jurisdiction, delegated legislation is also challengeable on the

grounds of unreasonableness, however, rule making by government departments, is considered as an exception because Ministers are responsible to Parliament. The seminal judgment from the said jurisdiction is '*Kruse versus Johnson*' [(1898) 2 QB 91], wherein the test of unreasonableness of delegated legislation, was laid down in the following terms:

- a. partial between different classes;
- b. manifestly unjust;
- c. bad faith;
- d. Oppressive;
- e. gross interference.

16. In view of the above case law, the principles that emerge for challenging delegated legislation/Rules/Regulations, are as follows:

- i. the enabling Act is ultra vires the Constitution;
- ii. the administrative legislation is ultra vires the Constitution;
- iii. the administrative legislation is ultra vires the Act i.e. it is in excess of the power conferred by the Act or is in conflict with the Act or otherwise is unreasonable arbitrary and discriminatory.

17. In light of the above, validity of the Rules challenged in the instant petitions, is to be seen on the touchstone of Article 18 of the Constitution; Sections 4 and 5 as well as other provisions of the Act and the fact, whether the Rules are arbitrary and/or unreasonable. As already mentioned above, this Court in case reported as (*PLD 2016 Islamabad 141*) supra, has held that the provisions of the Act are not ultra vires the Constitution.

18. Since the legality of the Rules is to be examined on the touchstone of Article 18 of the Constitution, therefore, the referred Article, for ease of convenience, is reproduced below;-

18. Freedom of trade, business or profession.

Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business:

Provided that nothing in this Article shall prevent:-

- a) the regulation of any trade or profession by a licensing system; or*
- b) the regulation of trade, commerce or industry in the interest of free competition therein; or*
- c) the carrying on, by the Federal Government or a Provincial Government, or by a corporation controlled by any such Government, of any trade, business, industry or service, to the exclusion, complete or partial, of other persons*

The Honourable Supreme Court of Pakistan, in case reported as ***'Arshad Mahmood versus Government of Punjab'*** (PLD 2005 SC 193), interpreted Article 18 and limitations, placed therein, in the following manner:

"However from different pronouncements following definitions can be considered for purpose of ascertaining the meaning of reasonableness of restrictions on the fundamental rights of the citizens to conduct any lawful trade or business

- i) The limitation imposed on a person in enjoyment of a right should not be arbitrary or of an excessive nature beyond what is required in the interest of the public.*
- ii) The court would see both to the nature of the restriction and procedure prescribed by the statute for enforcing the restriction on the individual freedom, Not only substantive but procedural provisions of statute also enter into the verdict of its reasonableness.*
- iii) The principles of natural justice are an element in considering reasonableness of a restriction but the elaborate rules of natural justice may be excluded expressly or by necessary implication where procedural provisions are made in the statute.*
- iv) Absence of provision for review makes the provisions unreasonable.*
- v) Retrospectivity of a law may also be the relevant factor of law although a retrospectivity of law does not automatically make it unreasonable.*
- vi) Reasonable restriction also includes cases of total prohibition of a particular trade or business which deprive a person of his fundamental right under certain circumstances"*

19. Before embarking to examine the validity of the Rules, it is pertinent to observe that under Section 22 of the Act, the Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act. Hence the Rules, under challenge, have been made under Section 22 *ibid*.

20. The petitioners are aggrieved of Rule 3 *ibid* requiring the educational institutions for fresh registration or renewal of the same on payment of the requisite fee. Under sub-rule 5 to rule 3, Fees for registration or renewal of registration of institutions shall be set out in Schedule II. The bare perusal of the referred schedule shows that the fee for registration and renewal is progressive and is dependent on the fee charged by the institution. In this behalf, for an institution charging tuition fee of Rupees 20,001 and above, the initial registration fee is Rupees 1,000,000/- and annual renewal fee is Rupees 500,000/-. In the case reported as **‘Collector of Customs and others versus Sheikh Spinning Mills’ (1999 SCMR 1402)**, the Honourable Supreme Court held that distinction between a tax and a fee lies primarily in the fact that tax is levied as a part of common burden, while a fee is paid for a special benefit or privilege; unless fee earmarked or specified for rendering services to the payee, it would amount to a tax and not a fee. In (Appeal (Civil) 3453 of 2002) titled **‘Jindal Stainless Limited versus State of Hariyana and others’**, it was held that a fee or a compensatory tax is to be proportional and not progressive. Learned Counsel for PEIRA, during the course of arguments, candidly admitted that a fee at such a high rate, is being

charged from Institutions charging high fee due to their capacity to pay the same and also due to the fact that PEIRA being an autonomous body, needs resources/funds for running its affairs. In view of the referred case law and the above cited principles, Schedule II to the Rules is unreasonable, hence is declared so and is struck down. However, till such time that a new schedule for payment of fee for registration and renewal of registration is framed, the Institutions shall continue to pay the requisite fee as was being charged prior to promulgation of the Rules.

21. Under sub rule 4 to Rule 4 of the Rules, any institution which contravenes the Act or the Rules, shall be prosecuted in accordance with the Act. Moreover, under sub rule 6 of Rule 4 for contravention of sub rules 3 and 4 *ibid*, defaulting institution shall be liable to pay fine at the rate of registration fee prescribed in Schedule II multiplied by number of months from the date of default and date of submission of application for registration application, in addition to the registration fee. Section 20 of the Act provides for taking cognizance of offence for violation of any provision of the Act. Section 19 of the Act provides that whoever, violates provisions of the Act or the rules, shall be liable to be punished with imprisonment which may extend to one year or with fine which may extend to Rupees 5000/- for each day during the period of offence. In light of the referred Section, sub rule 6 to Rule 4 is *ultra vires* Section 19 and is not valid, hence is set aside. Similarly, since Schedule II has been set aside therefore, payment of requisite registration fee, under sub rule 7 of Rule 4, shall

be at the rate prior to the promulgation of the Rules. Under sub rule 11 of Rule 4 and Rule 5 invest the inspection committee constituted under sub rule 10 *ibid* with vast powers. The powers, so conferred, are draconian, unfair and unreasonable, hence are not tenable, therefore, struck down.

22. Rule 6 of the Rules lays down the conditions for registration of an institution. The bare perusal of rule 6(e) (f) (g) (o) (p) (q) (s) (x) and (y) are unfair and unreasonable and also contrary to Article 18 of the Constitution, therefore, set aside. Rule 11 of the Rules lays down the checklist i.e. the documents, which any institution is to provide the Authority at the time of making application for renewal of registration. For reasons, which are recorded hereunder, the requirement regarding proposed changes in service contracts of teachers, if any, and information about Parent Teacher Syndicate is also to be provided, is set aside. Rule 14 *ibid* provides for addition of classes or introduction of additional subject, which is offering to teach. In this behalf, under the referred rule, the addition cannot take effect unless prior permission is obtained from the Authority and the application for permission shall be treated as application for fresh registration. The said Rule is arbitrary and unreasonable. The application, for introduction of a class or a subject, cannot be regarded as an application for fresh registration; hence the said Rule is struck down.

23. Rule 17 pertains to issuance of school leaving certificate. Laying down parameters for issuance of or asking the institution not to

deduct any fee, tantamount to exercising control in the administration and the affairs of the institution, which is not permissible either under the Act, hence no rule which tends to do so, can stand; Rule 17, hence being unfair and unreasonable, is set aside. Rule 27 provides for creation of Parent Teacher Syndicate, a body which has certain functions, some of which even authorize the said body to interfere in the management of the institution. The Act does not authorize the Authority to directly or indirectly interfere in running the affairs of the institution or creation of a parallel management. Learned Counsel for PEIRA, during the course of arguments, admitted that the said concept has been taken from 'The Right to Free and Compulsory Education Act, 2012'. The scope and purport of the referred legislation, is completely different from the Act. The Rules have been framed by PEIRA under the Act, hence while framing Rules, the purpose and concepts provided in other legislation, cannot be incorporated, as the Rules are to be framed by the Authority under the Act in furtherance of the purpose of the Act, only. In view of the referred position, Rule 27 providing for creation of Parent Teacher Syndicate and empowering it to perform various functions, is ultra vires the Act and also is impractical and unreasonable, hence is struck down.

24. Rule 28 *ibid* pertains to governing terms and conditions of teachers. The said Rule lays down fixation of remuneration of teachers and the terms, which are to be part of the agreements between the institution and a teacher. This court is of the opinion that

the referred Rule violates the concept of free will which is the essence of any agreement/contract. In case, where the parties are compelled to incorporate the terms and conditions dictated by the Authority, the parties are left with little or no choice regarding the same. Moreover, the supervisory role given to the Authority under the Act is to ensure that no institution exploits or put teachers at a disadvantage while entering into agreement of employment, however, this does not mean that all aspects of the agreement, are to be provided for by the regulator i.e. The referred Rule, hence, is not tenable and is struck down.

25. Rule 29 provides for levy of fine in case of violation of any provision of the Act or the Rules, which may extend to Rs. 2000/- per day. Under the Act, the maximum limit of fine which can be imposed, is Rs. 5000/- per day. The said Rule is, therefore, ultra vires the Act and is struck down. Rule 35 prohibits an institution from entering into certain kinds of contracts and ventures. The said rule amounts to restraint of trade. Furthermore, the said prohibition is ultravires Sections 4 and 5 of the Act, therefore is struck down.

26. Rules 36 and 37 provides for regulation of fee by an institution and prohibition from charging excess fee. It is an admitted position that most of the institutions in the private sector are not non-profitable organizations but are running the same for profit. It is also an admitted position that due to dearth of educational institutions in the public sector or due to them not being at par with the modern standards, the parents are left with little choice but to send their

children to private institutions. The unbalanced demand and supply situation, leads to the private schools charging exorbitant fees. However, a private institution also enjoys fundamental right regarding freedom of trade under Article 18 of the Constitution. The balancing act, in the referred position, is the regulation of the fees and fee structure and not controlling the same. The Authority, in the Rules, has introduced two regimes for fee regulation. Firstly, a fee structure/chart is provided in Schedule V to the Rules and secondly, any institution may fix have its fee fixed by the Authority keeping in various factors provided in the Rules. The chart or the structure in Schedule V though is elaborate and take into account various factors but is not based on any cogent ground. The Authority cannot lay down across the board structure for all institutions by providing the fee structure. The charging of fee is an individual act of any institution which is based on multifarious factors. Likewise, in case of lawyers or doctors, their regulators cannot prescribe charging of uniform fee, as the same varies with the qualification or experience of the professional. Likewise, blanket prescription of fee cannot be made by the Authority. PEIRA, under the Act, has the power and authority to regulate the fee of an institution but the same power has to be exercised for each institution has its individual needs and circumstances. This court, in judgment reported as **(PLD Islamabad 1)** supra, laid down the factors which the Authority ought to take into account before fixation of the fees. On the above basis, Rules 36 and 37 are unreasonable and ultra vires the Act, hence are struck down.

27. For the above mentioned reasons, the instant petition as well as the petitions mentioned in the schedule attached herewith, are allowed, while enlisted CMs are disposed of; consequently the Rules mentioned in paragraphs 20 to 26 are struck down. The Authority shall be at liberty to frame rules in furtherance of the provisions of the Act, however, while doing so, shall keep in regard the provisions of the Act, Article 18 of the Constitution and the principles discussed above.

(AAMER FAROOQ)
JUDGE

Announced in Open Court on 19.01.2018

JUDGE

Approved for reporting

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