

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

W.P. No.3391 of 2019

Adeel Hassan Ejaz Khan and others

Versus

Federation of Pakistan and others

Petitioners by : Hazrat Younas, Advocate.

Respondents By : Mr. Rashid Hanif, Advocate.
Raja Saad Sultan, Assistant Attorney
General.

Date of Hearing : 13.02.2020.

AAMER FAROOQ, J. - In view of my detailed judgment passed
in Writ Petition No.2274 of 2019, the instant petition is **disposed of**.

(AAMER FAROOQ)
JUDGE

Announced in open Court this 28th day of February 2020.

JUDGE

M.Shah/.

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

W.P. No. 2274 of 2019

Private School Association Islamabad

Versus

Federation of Pakistan and others

Petitioners by : Mrs. Shireen Imran, Barrister Husnain Ali Ramzan, Mr. Wajid Hussain Mughal, Mr. Azeem ul Qader, Syed Hamid Ali Shah, Mr. Salim ur Rahman, Agha Syed Muhammad Murtaza Moosavi and Hazrat Younas, Advocates.

Respondents By : Mr. Rashid Hanif, Syed Muhammad Bilal Ahmed, Advocates.
Raja Saad Sultan, Assistant Attorney General.

Date of Hearing : 13.02.2020.

AAMER FAROOQ, J. - This judgment shall dispose of the instant petition as well as writ petitions mentioned in the schedule attached herewith as well as contempt petitions filed by various persons as common questions of law and facts and involved.

2. The facts, giving rise to filing of the petitions in question, are that the petitioners except petitioners in Writ Petitions No. 3318 & 3391/2019 are Private Educational Institutions. The petitioners, in Writ Petitions No. 3318 & 3391/2019, are parents of children studying in Private Educational Institutions of Islamabad. The Private Educational Institutions including Private Schools Association, Islamabad are aggrieved of notices issued by Islamabad Capital Territory, Private Educational Institutions Regulatory Authority ("**PEIRA**") for recalculation of fee in light of decision of the august Apex Court dated 09.05.2019 in *inter alia* Civil Appeals No. 1095-1097/2018. The august Apex Court in the referred cases as well as many other similar appeals vide short order dated 09.05.2019 and later through detailed reasons thereof laid down certain guidelines and granted

directions. PEIRA being regulatory body for private educational institutions in Islamabad Capital Territory issued notices to the institutions for recalculation of the fee on the basis of judgment of august Apex Court. The parents of children studying in schools at Islamabad through referred petitions seek direction to PEIRA for implementing the judgment of the Hon'ble Supreme Court mentioned above.

3. Learned counsel for the petitioner, in Writ Petition No. 2274, *inter alia*, contended that judgment of the august Apex Court is with respect to Private Educational Institutions of Punjab and Sindh and does not provide any direction to either PEIRA or private educational institutions in Islamabad. It was contended that the question of regulation of fee by PEIRA originally formed basis for challenging *vires* of the Islamabad Capital Territory Private Educational Institutions (Registration and Regulation) Act, 2013 ("**the Act**"); that this Court through judgment dated 30.05.2016, which is reported as Educational Services (Pvt) Limited and 4 others **versus** Federation of Pakistan and another (PLD 2016 Islamabad 141) declared various provisions of the Act as *intra vires* including provisions for regulation of fee. It was contended that subsequently, the Federal Government framed Rules for working of PEIRA, which were called as Private Educational Institutions (Registration and Fee Determination) Rules, 2016, vires of which were challenged before this Court and resulted in decision dated 19.01.2018 through case reported as Educational Services Private Limited and 3 others **versus** Federation of Pakistan and another (2018 MLD 624); that this Court struck down a number of rules framed by the Federal Government on the basis that they are unreasonable and ultra vires the Act. It was further submitted that the rules regarding determination and enhancement of fee were struck down by this Court, however, appeal against the above judgment is pending before Division Bench of this Court. In light of the above backdrop, it was conceded that though under the Act, PEIRA has the power to regulate fee

but it was contended that judgment of the Hon'ble Supreme Court is not applicable, hence cannot form basis for regulation of fee.

4. Learned counsel for the petitioners, in Writ Petitions No.3310 & 3427/2019, adopted the arguments of learned counsel for the petitioner in W.P. No. 2274/2019 and contended that in any case, the Hon'ble Supreme Court of Pakistan vide short order dated 09.05.2019 has held that all interims orders stand vacated. It was contended that though during the course of proceedings before the Hon'ble Supreme Court, files of the appeals (ICAs) pending before the Division Bench of this Court were summoned, however, no order has been passed with respect to those appeals and rather files have been remanded and the matter is now being heard by the Division Bench of this Court.

5. The petitioners, in Writ Petitions No. 3318 & 3391/2019, seek implementation of judgment of the august Apex Court dated 12.06.2019 by way of direction to PEIRA to do the needful and schools be directed to recalculate the fee in accordance with the directions and guidelines provided by august Apex Court.

6. Learned counsel for PEIRA, *inter alia*, contended that in the judgment of the august Apex Court comprehensive guidelines are provided and though can form basis by providing guiding principles for PEIRA to recalculate the fee by the Educational Institutions. It was contended that there is no cavil with the proposition that PEIRA does have authority to control the Private Educational Institutions regarding fixation of fee and enhancement thereof, and in case of violation of the directions consequences shall ensue.

7. In Writ Petition No. 2819/2019, the petitioners have challenged decision of the PEIRA to seal the schools premises for non-registration, however, during the subsistence of the proceedings, the matter stood settled as per the statement of the learned counsel for the parties.

8. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

9. As noted above, the private educational institutions have challenged notices issued by PEIRA for recalculation of fee in line with the judgment of the Hon'ble Supreme Court of Pakistan. For ease of convenience, one such notice, which has been issued to the petitioner in W.P. No.2274/2019, is reproduced below:-

**"8-1/PEIRA/Acad/Letter/PEIs/2019
Government of Pakistan
Ministry of Federal Education and Professional Training
Private Educational Institutions Regulatory Authority (PEIRA)

Subject: **Recalculation/Fixation of Grade-Wise Base Fees of All Private Schools/ Colleges of Islamabad in Compliance with the Honorable Supreme Court's Judgment Dated 12-06-2019.**

In pursuance of judgment of the Honorable Supreme Court of Pakistan dated 12-06-2019 passed in Civil Appeals No. 1095-1097, 134-L, 1021-1026, 1138, 1154-1158, 1486 and 1487 of 2018, etc. and while exercising powers under Section 4 (C) and 5(1) of the Islamabad Capital Territory Private Educational Institutions (Registration & Regulation) Act, 2013 (hereinafter referred to as the "Act"), all private educational institutions (Private Schools/ Colleges) whether "For Profit" or "Not For Profit" offering education in any manner, up to Intermediate or 'A' level or equivalent level and charging fees in excess of Rs. 5,000/- per month are hereby directed to submit their grade-wise base fees charged during the academic year ended in 2017, till 21-06-2019 positively to enable the Authority (PEIRA) to recalculate/determine grade wise base fees of Private Schools/ Colleges of Islamabad. The base fees determined as such by the Authority shall take effect from 13-06-2019 onwards.

2. Till the time, grade-wise fees are recalculated/determined by the Authority, all such Private Schools/ Colleges of Islamabad shall comply with the Honorable Supreme Court of Pakistan's Order dated 13-12-2018 subsequently clarified by Order dated 10-01-2019 in letter and spirit.

3. In case of non-provision or provision of wrong information relating to base fees of academic year ended in 2017, the Authority reserves the right to initiate legal action against owners of such defaulter Private Schools/Colleges under Section 19 and 20 of the Act.

(Waqas Mehmood Kayani)
Member Registration (PEIRA)"

Bare reading of the notice shows that the same has been issued on the basis of the judgment of the august Apex Court. The grievance of the petitioners is that judgment of the Hon'ble Supreme Court of Pakistan is not applicable to the private educational institutions in Islamabad inasmuch as it pertains to Institutions of Punjab and Sindh. In order to resolve the controversy, it is appropriate that short order of the august Apex Court passed in cases noted above be reproduced for the ease of convenience. In Civil Appeals No. 1095-1097, 134-L, 1021-1026, 1138, 1154-1158, 1486 and 1487/2018, and other similar petitions, the Hon'ble Supreme Court, vide short order dated 09.05.2019, passed the following order:-

"For the reasons to be recorded later, the instant matters are decided as follows:-

- i. Civil Appeal No. 134-L/2018 is allowed and the judgment of the learned Division Bench of the Lahore High Court, Lahore in Writ Petition No. 29724/2015 delivered on 05.04.2018 titled *City School Private Limited v Government of the Punjab and others (PLD 2018 Lahore 509)* is set aside;
 - ii. Civil Appeals No. 1021 to 1026 and 1095 to 1097/2018 are allowed and the judgment of the learned Division Bench of the High Court of Sindh, Karachi in Constitution Petition No. D-5812/2015, etc. delivered on 05.03.2018 titled *Shahrukh Shakeel Khan and 2 others v Province of Sindh through Chief Secretary, Government of Sindh and 4 others (PLD 2018 Sindh 498)* to the extent of declaring Rule 7-A of the Sindh Private Educational Institutions (Regulations and Control) Rules, 2005 ("Rules of 2005") is set aside. The said judgment in so far as it declares Rule 10 of the Rules of 2005 as *intra vires* is upheld;
 - iii. Civil Miscellaneous Application No. 8466/2018 and Civil Appeals No. 1138, 1154 to 1158, 1486 and 1487/2018 are dismissed and the judgment of the learned Full Bench of the High Court of Sindh, Karachi in Constitution Petition No. D-6274/2017 etc., delivered on 03.09.2018 titled *Bushra Jabeen and 367 others v Province of Sindh through Chief Secretary and others (2018 MLD 2007)* is affirmed and upheld; and
 - iv. Civil Petitions No. 4475 and 4476/2018 filed against the order dated 19.11.2018 passed in Civil Miscellaneous Application No. 33322/2018 in Constitution Petition No. D-6274/2017, etc. are dismissed as having been rendered infructuous.
2. It is unanimously held and declared that Section 7-A of the Punjab Private Educational Institutions (Promotion and Regulation) Ordinance, 1984, as amended by the Punjab Private Educational Institutions (Promotion and Regulation) (Amendment) Act, 2017 is *intra vires* the Constitution of the Islamic Republic of

Pakistan, 1973 ("the Constitution") and does not violate Articles 18, 23, 24 or 25-A thereof.

3. It is unanimously held and declared that Rule 10 of the Rules of 2005 is *intra vires* the statute, i.e. Sindh Private Education Institutions (Regulation and Control) Ordinance, 2001, and the Constitution.

4. With a majority of two against one, we are not persuaded to interfere with Rule 7(3) of the Rules of 2005, with Faisal Arab, J. expressing the view that the restriction imposed by Rule 7(3) *ibid* is unreasonable and hence invalid.

5. Upon decision of the main appeals in the terms noted above, all interim orders passed during the pendency of the appeals (including the order dated 13.12.2018 passed in Civil Appeal No. 1095/2018 regarding reduction of fees by 20% as an interim measure) have ceased to be effective, subject to recalculation of fee by using the fee prevailing in 2017 as the base fee, in accordance with the provision(s) of the Punjab Private Educational Institutions (Promotion and Regulation) (Amendment) Act, 2017 and onwards, for the Province of Punjab. For the Province of Sindh, fees may be recalculated using the fee prevailing on 29.06.2017 as the base fee and onwards, in accordance with the Rules of 2005 (gazette on 29.06.2017). Provided that the schools shall not recover any arrears on account of the reduction in fee by reason of the interim order of this Court dated 13.12.2018 till the date of this Judgment. Therefore, all the review petitions filed against the said interim order are disposed of in these terms. In view of the fact that these appeals/petitions are being finally decided, all criminal original petitions and civil miscellaneous applications are disposed of.

6. It is further directed that all schools shall collect the fee, strictly in accordance with the procedure and timeframe provided by the law, the rules and regulations including, but not limited to the Punjab Private Educational Institutions (Promotion and Regulation) Ordinance, 1984, as amended by the Punjab Private Educational Institutions (Promotion and Regulation) (Amendment) Act, 2017 and the Rules of 2005."

Bare perusal of the order shows that in paragraph-i, decision of the Hon'ble Lahore High Court with respect to schools in Punjab was set aside; in paragraph-ii, decision of the Hon'ble Sindh High Court was set aside; in paragraph-iii, the judgment of the Full Bench of the Sindh High Court was affirmed and upheld and in paragraph-iv, certain petitions were dismissed as having become infructuous. Moreover, the august Apex Court declared Section 7-A of the Punjab Private Educational Institutions (Promotion and Regulation) Ordinance, 1984, as amended by the Punjab Private Educational Institutions (Promotion and Regulation) (Amendment) Act, 2017 as *intra vires*; Rule 10 of Sindh Private Educational Institutions (Regulation and Control) Ordinance, 2001 was declared

as *intra vires*, Rule 7(3) of 2005 Rules was held to be *intra vires* as majority decision. The august Apex Court observed that upon decision of the main appeals, all interim orders including one dated 13.12.2018 passed in Civil Appeal No. 1095/2018 regarding reduction of fee by 20 % shall ceased to have effect subject to recalculation of fee by using the fee prevailing in 2017 as base fee with respect to Punjab. For the province of Sindh, fee may be recalculated using fee prevailing on 29.06.2017 in accordance with Rules of 2005. Schools were prohibited to recover fee as arrears. The schools were directed to collect fee in accordance with the Rules and Regulations, not limited to Punjab Private Educational Institutions (Promotion and Regulation) Ordinance, 1984 as amended by the Act of 2017. Similarly in the detailed opinion reference was made to the arguments addressed by the PEIRA as well as private educational institutions, however, no order was passed as such. Likewise, in order dated 10.01.2019, the Hon'ble Supreme Court of Pakistan, in the above-mentioned cases, observed that order dated 13.12.2018 pertains to 22 schools mentioned therein to reduce their fee by 20%. In light of the above short order and careful examination of the detailed opinion of the same, it does not mention schools in Islamabad and it seems that controversy was with respect to only schools in Punjab and Sindh. The said inference is fortified by the fact that though appeals were summoned by the august Apex Court but later while deciding the matter were remanded to this Court for decision, however, there is no order to the effect on record but it is an admitted position conceded by all the parties that appeals are pending before this Court and are being heard on merit.

10. In so far as regulation of fee is concerned, it is pertinent to observe that PEIRA is the creation of the Act. Its aims and objectives as well as functions and powers are provided in Sections 4 and 5 of the Act, which for the ease of convenience 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.”

The bare reading of the above two provisions show that regulation of fee is one of the functions of PEIRA. Challenge was made to the said function of PEIRA by attacking various provisions of the Act. This Court in case reported as Educational Services (Pvt) Limited and 4 others **versus** Federation of Pakistan and another (PLD 2016 Islamabad 141), in paragraph-29, made following observations:-

“29. In light of the above judgments and relevant provisions of the Act, the following principles are deduced:

- i. PEIRA has the authority to fix the fee but the same cannot be done in arbitrary manner without calling for record of expenses and examination of requirements of individual Private Educational Institution.
- ii. The factors which the PEIRA has to take into consideration in fixation of the fee should be formulated in the Rules which it has the power to frame under the Act.
- iii. The broad guidelines which PEIRA has to keep in consideration before fixation of the price and/or formulation of Rules and Regulations are as follows:
 - a) The privately managed Educational Institutions can only maintain high standards of education if they hire highly qualified teachers;
 - b) Provide adequate buildings comprising all the facilities;
 - c) Escalation in utility bills and other charges;
 - d) Payment of rents on commercial rates.
- iv. The Private Educational Institutions should not make windfall profits, however, are entitled to return for services rendered.”

The referred judgment of this Court still holds the field, however, the Rules framed pursuant to the above judgment were struck down by this Court in case

reported as Educational Services Private Limited and 3 others **versus** Federation of Pakistan and another (2018 MLD 624). Appeals against the said judgment are pending, however, till such time that appeals are decided and controversy is put to rest, PEIRA is to perform all functions provided in Act including regulation of fee and can do so since it is its statutory obligation. In doing so, guidance can be taken by the observations made by this Court in (PLD 2016 Islamabad 141) supra as well as judgment of the Hon'ble Supreme Court of Pakistan mentioned hereinabove, however, it is to be kept in mind by the PEIRA and all concerned that as noted above, judgment pertains to fixation and regulation of fee with respect to private educational institutions of Punjab and Sindh and directions were made by the august Apex Court for regulation of fee in accordance with the Rules framed under the statute governing the institutions. Since statutory provisions of Punjab and Sindh are different from the Islamabad Capital Territory, hence strict adherence to the guidelines and directions may not be practicable but as stated above guidance can be sought while regulating fee of private educational institutions in ICT. The failure on part of the Federal Government to provide quality education has led to immense growth of institutions in private sector, which need regulation especially in fixation of fee.

11. Composition of PEIRA is provided in section 6 of the Act, and it comprises of a Chairman and two members. All actions by or on behalf of the PEIRA is to be taken by the Authority as Chairman and two members; any action which is not taken by the Authority as defined in section 6 read with section 2 (a) *ibid* would be defective and amounts to an act without lawful authority. Bare reading of the impugned notices show that the same have not been issued by the Authority in terms of sections 6 and 2 (a), hence are without lawful authority.

12. As observed above, PEIRA despite absence of Rules still is the authority to regulate the fee which it should do so as fixation of fee and enhancement cannot be left unregulated especially in times of escalatory trend in

prices of all items and contraction of economy resulting in limited resources for the parents to educate their children. The balance is to be maintained by the PEIRA keeping in account the quality of education and other facilities being offered by school with a reasonable return over the referred expenses.

13. For what has been stated above, notices issued by PEIRA are without lawful authority, however, it can issue fresh notice for regulation of fee pursuant to powers provided under the Act and while regulating the fee, it shall keep in regard the observations made hereinabove. The petitions filed by the Private Educational Institutions as well as Private School Association are **disposed of** in above terms. The petitions filed by the parents i.e. Writ Petitions No. 3318 & 3391/2019 are also **disposed of** in light of the observations made above. Writ Petition No. 2819/2019 is **disposed of** as having become infructuous. Since the petitions of out of which criminal originals No. 177/2019 & 235/2018 have arisen are disposed of, therefore, the contempt petitions are **disposed of** as having become infructuous.

(AAMER FAROOQ)
JUDGE

Announced in open Court this 28th day of February 2020.

JUDGE

M.Shah/.

Approved For Reporting.

Uploaded By : Engr. Umer Rasheed Dar

SCHEDULE

LIST OF PETITIONS CONNECTED WITH
WRIT PETITION NO.2274 OF 2019

Serial No.	CASE NO./YEAR	TITLE
1.	Writ Petition No.3299/2019	Private School Association, Islamabad versus Federation of Pakistan and others
2.	Writ Petition No.3310/2019	Roots Millennium School (Pvt) Limited versus Islamabad Capital Territory – Private Educational Institutions Regulatory Authority, Islamabad and another
3.	Writ Petition No.3311/2019	Headstart School (Pvt) Limited versus Islamabad Capital Territory – Private Educational Institutions Regulatory Authority, Islamabad and another
4.	Writ Petition No.3427/2019	Lahore Grammar School (Pvt) Limited versus Islamabad Capital Territory – Private Educational Institutions Regulatory Authority, Islamabad and another
5.	Writ Petition No.2819/2019	The City School Private Limited and another versus Federation of Pakistan and others
6.	Writ Petition No.3318/2019	Salim ur Rahman and another versus PIERA through its Chairman, Islamabad and others
7.	Writ Petition No.3391/2019	Adeel Hassan Ejaz Khan and others versus Federation of Pakistan and others
8.	Criminal Original No.177/2019	Private School Association, Islamabad versus Imtiaz Ali Qureshi and another
9.	Criminal Original No.235/2018	Private Schools Association, Islamabad versus Hasnaat Qureshi, Chairman PEIRA and another