

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. _____ : W.P. NO.2457-2019

Lahore Grammar School Pvt. Ltd.

Vs.

**Islamabad Capital Territory-Private Educational Institutions
Regulatory Authority & Another**

Petitioner by : Mr. Husnain Ali Ramzan, Advocate
Ch. Bilal Ahmad Mehar, Advocate
Respondents by : Mr. Rashid Hanif, Advocate
Raja Saad Sultan, Assistant Attorney
General
Date of hearing : 20.12.2019

AAMER FAROOQ J. For the reasons recorded in
judgment of even date passed in W.P. No.1783-2019, instant
petition is also disposed of.

(AAMER FAROOQ)
JUDGE

Announced in Open Court on 28.02.2020.

JUDGE

Zawar

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. _____ : _____ W.P. NO.1783-2019

Headstart School Pvt. Ltd. etc.

Vs.

**Islamabad Capital Territory-Private Educational Institutions
Regulatory Authority etc.**

CASE NO. _____ : _____ W.P. NO.1902-2019

Roots Millennium School Pvt. Ltd.

Vs.

**Islamabad Capital Territory Private Educational Institutions
Regulatory Authority & Another**

CASE NO. _____ : _____ W.P. NO.2457-2019

Lahore Grammar School Pvt. Ltd.

Vs.

**Islamabad Capital Territory Private Educational Institutions
Regulatory Authority through its Chairman & Another**

CASE NO. _____ : _____ W.P. NO.2458-2019

Lahore Grammar School Pvt. Ltd.

Vs.

**Islamabad Capital Territory Private Educational Institutions
Regulatory Authority & Another**

**Petitioners by : Syed Hamid Ali Shah, Advocate
Mr. Husnain Ali Ramzan, Advocate
Ch. Bilal Ahmad Mehar, Advocate**

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

Date of hearing : 20.12.2019

AAMER FAROOQ J. This judgment shall decide instant petition as well as W.P. No.1902-2019, W.P. No.2457-2019 & W.P. No.2458-2019, as common questions of law and facts are involved.

2. The petitioner, in W.P. No.1783-2019 namely Headstart School Pvt. Ltd., has challenged the decision by Islamabad Capital Territory Private Educational Institutions Regulatory Authority (hereinafter referred to as ICT-PEIRA), whereby on the complaint of respondent No.3, ICT-PEIRA reinstated her into service. In W.P. No.1902-2019, the petitioner namely Roots Millennium School Pvt. Ltd. has challenged the order dated 08.04.2019, whereby the petitioner was asked to furnish comments with respect to complaint filed by one Asif Javed to the effect that fee is being charged by the School in violation of the orders of Hon'ble Supreme Court of Pakistan dated 13.12.2018 & 10.01.2019. Likewise, in W.P. Nos.2457 & 2458/2019, the petitioner namely Lahore Grammar School Pvt. Ltd. has challenged the complaint filed by one Babar Ali as to the charging of fee by the petitioner.

3. Learned counsel for the petitioners in W.P. No.1783-2019, *inter alia*, contended that no complaint regarding charging of fee is entertainable before ICT-PEIRA inasmuch as this Court, in decision reported as 'Educational Services Pvt. Ltd. (ESL) through Company Secretary and 3-others Vs. Federation of Pakistan through Secretary, Capital Administration and Development Division, Islamabad and another' (2018 MLD 624), struck down the rules framed by the Federal Government regarding regulating the private schools qua charging of fee and enhancement in the same. It is submitted that against the referred decision, Intra Court

Appeal is pending but no injunctive order was granted by the Division Bench of this Court; that since the referred judgment of this Court still holds the field hence notices are not competent. Learned counsel pointed out that decision of the Hon'ble Supreme Court of Pakistan does not pertain to Islamabad Capital Territory and was with respect to Provinces of Punjab and Sindh only. It was further submitted that relationship between complainant namely Anam Nauman and the petitioner is one of 'master and servant', in which, ICT-PEIRA has no authority. It was contended that decision to remove respondent No.3 was based purely on merit, as she was not performing well and same was not in violation of orders of Hon'ble Supreme Court of Pakistan. It was further contended that ICT-PEIRA was not competent to issue directions as has been done in the impugned order. In support of his submissions, learned counsel placed reliance on cases reported as 'Educational Services Pvt. Ltd. (ESL) through Company Secretary and 3-others Vs. Federation of Pakistan through Secretary, Capital Administration and Development Division, Islamabad and another' (2018 MLD 624), 'Muhammad Mubeen Us Salam and 24-others Vs. Federation of Pakistan through Secretary Ministry of Defence, Government of Pakistan and others' (2010 SCMR 1904), 'Muhammad Zaman and others Vs. Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad and others' (2017 SCMR 571),

'Nisar Ahmed Vs. Director, Chiltan Ghee Mills and another' (1987 SCMR 1836), 'Chairman, WAPDA and 2 others Vs. Syed Jamil Ahmed' (1993 SCMR 346), 'Mrs. Anisa Rehman Vs. P.I.A.C. and another' (1994 SCMR 2232), 'United Bank Limited and others Vs. Ahsan Akhtar and others' (1998 SCMR 68) and 'Karachi Development Authority and another Vs. Wali Ahmed Khan and others' (1991 SCMR 2434).

4. Learned counsel for petitioners in W.P. No.1902-2019, W.P. No.2457-2019 & W.P. No.2458-2019, *inter alia*, contended that procedure of inquiry, which has been adopted by ICT-PEIRA, is totally uncalled for and is in violation of the judgment of this Court reported as 'Educational Services Pvt. Ltd. (ESL) through Company Secretary and 3-others Vs. Federation of Pakistan through Secretary, Capital Administration and Development Division, Islamabad and another' (2018 MLD 624). It was submitted that charging of fee is in accordance with rules and regulations and there is no violation of orders of Hon'ble Supreme Court of Pakistan. It was contended that even-otherwise, the impugned letter has not been issued with lawful authority inasmuch as under the law, the competent body to regulate the affairs of private educational institutions, is ICT-PEIRA which is defined in section 6 of the Act comprising of the Chairman and two Members. It was contended that the decision to issue notices and call for complaints has not been taken by the Authority as

defined in Islamabad Capital Territory-Private Educational Institutions Regulatory Authority Act, 2013 (the Act). It was reiterated that majority of rules framed by the Federal Government for regulating affairs of private educational institutions were struck down by this Court and the Intra Court Appeals are pending before Division Bench of this Court. Learned counsel further contended that any penalty, which ICT-PEIRA can impose, is provided under section 19 of the Act and in this regard, a complaint has to be made under section 20 of the Act before the Magistrate. It was submitted that penalty is one year imprisonment and fine. Learned counsel contended that other than referred penalty, no action can be taken. In support of his contentions, learned counsel placed reliance on cases reported as 'Shakeel Sardar Awan and another Vs. Election Appellate Authority, Tehsil Gujranwala (City) and others' (2016 SCMR 242), 'Syed Abdul A'ala Maududi Vs. The State Bank of Pakistan & Another' (PLD 1969 Lahore 908), 'Independent Newspapers Corporation Pvt. Ltd. and others Vs. Federation of Pakistan and others' (PLD 2017 Lahore 289), 'Mian Nasser Hayat Maggo through attorney Vs. Federation of Pakistan through Secretary, Ministry of Commerce and others' (2019 CLD 267) & 'A.R. Awan and 2-others Vs. City District Government, Karachi and another' (2011 SCMR 691).

5. Learned counsel for ICT-PEIRA, *inter alia*, contended that Hon'ble Supreme Court of Pakistan passed interim orders for

maintenance of fee at a certain level and not to reduce the same till further orders. It was contended that notices were issued in W.P. Nos.1902-2019, W.P. No.2457-2019 & W.P. No.2458-201 in context of the complaints made. It was submitted that though bulk of the rules, in particular, the rules pertaining to enhancement of fee of private educational institutions, were struck down, but that does not take away the authority of ICT-PEIRA to regulate the fee and do the needful. It was contended that under sections 4 & 5 of the Act, ICT-PEIRA retains the power for regulating fee of private educational institutions even though it has no procedural framework for implementing the same by way of rules. Learned counsel further contended that only notices were issued to decipher the veracity of complaints, which have been challenged and no order, as such, has been passed.

6. Learned counsel for ICT-PEIRA in W.P. No.1783-2019 contended that since Hon'ble Supreme Court of Pakistan specifically directed that no adverse action would be taken against an employee or any facility rendered could be closed down, hence dismissal of respondent No.3 fell within the ambit of ICT-PEIRA.

7. Despite notices issued, no one entered appearance on behalf of respondent No.3 in W.P. No.1783-2019.

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

9. As noted above, the petitioners in W.P. No.1783-2019 has challenged the decision of ICT-PEIRA regarding re-induction of respondent No.3 and also notices issued on the complaints filed by parents of students against the petitioner schools for non-compliance of orders of Hon'ble Supreme Court of Pakistan for charging of fee.

10. ICT-PEIRA is the creation of Islamabad Capital Territory-Private Educational Institutions Regulatory Authority Act, 2013. The aims and objections and functions and powers of ICT-PEIRA are defined in sections 4 & 5 of the Act. For ease of convenience, same 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,

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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”.

11. The composition of ICT-PEIRA as authority is provided in section 6 *ibid*, which reads as follows:-

“6. Composition of the Authority._ The Authority shall consist of a Chairman, two Members possessing qualifications and experience as may be prescribed;

Provided that the Government may at any time increase the number of members and by notification in the official Gazette, prescribe the qualifications and mode of their appointment.”

The bare reading of above section shows that Authority comprises of the Chairman and two Members.

12. The bare perusal of impugned decision in W.P. No.1783-2019 shows that ex-facie, nowhere it is reflected that same was taken by the authority i.e. Chairman and Members. Even-otherwise, no finding has been rendered to the effect that dismissal of respondent No.3 from service was contrary to the orders of Hon'ble Supreme Court of Pakistan by reducing staff. The said conclusion has been arrived in an arbitrary and whimsical manner without taking into account the noted fact that this was a case of one of termination of service of respondent No.3 and not cutting down of facilities or shedding of staff on such a scale which could amount to curtailing the expenses.

13. The relationship between the petitioner, which is a private entity and its employees, is in the nature of 'master and servant'; whether or not any termination of teaching staff by Private Educational Institution falls within the functions and powers of the regulatory authority has not been examined in the impugned decision.

14. This Court examined the vires of Islamabad Capital Territory Private Educational Institutions (Registration and Fee Determination) Rules, 2016 and a number of rules were struck down vide judgment dated 19.01.2018, which is now reported as 'Educational Services Pvt. Ltd. (ESL) through Company Secretary

and 3-others Vs. Federation of Pakistan through Secretary, Capital Administration and Development Division, Islamabad and another' (2018 MLD 624). The appeals are pending against said judgment and no injunctive order has been granted by Division Bench of this Court. In light of referred decision, no proceedings could have been conducted or action taken by ICT-PEIRA on the basis of said rules, however, ICT-PEIRA could perform functions which fall within its domain and are provided in sections 4 & 5 of the Act as noted hereinabove; though the regulatory authority would be handicapped, as procedure as far as carrying out the functions do not exist due to judgment of this Court. Since regulation of fee is one of the functions and falls within the powers of ICT-PEIRA, it can entertain complaints on behalf of parents with respect to the same; it is also borne out from section 16 of the Act, which provides for suspension or cancellation of registration of any private school, where on complaint, it is found that any provision of the Act or rules or regulations have not been followed. As argued by learned counsel for the petitioners, even criminal complaint can be filed against the delinquent institutions. However, all the functions provided in sections 4 & 5 of the Act are to be performed by ICT-PEIRA as an Authority defined in section 2(a) of the Act and its composition explained in section 6 *ibid*. The Act of 2013 is silent about the quorum and any situation where vacancy exists either of the Chairman or any of the

Members. Even it is not provided, as in the case of many other statutes, that legislature caters for the eventuality where decision is passed by any one Member or the Chairman either alone or collectively. Under the Act of 2013, no such protection has been afforded to the Authority. Reading of section 2(a) *ibid* and even collectively with section 6 *ibid* clearly shows that mandate of law is that where any action is to be taken by the Authority, it has to be by the Chairman and two Members together; some functions are attributed to the Chairman alone but while suspending or cancelling registration of any private educational institution or for institution of criminal complaint under section 20 of the Act, the Authority has to take action and the same comprises of the Chairman and two Members.

15. In light of above observations, notices issued *ex-facie* divulge that the same has been done by an Officer of ICT-PEIRA, however, since no decision has been taken as such, they do not suffer from lack of authority.

16. In view of what has been stated above, W.P. No.1783-2019 is allowed and the impugned decision is set aside.

17. In so far as notices in W.P. No.1902-2019, W.P. No.2457-2019 & W.P. No.2458-2019 are concerned, they are disposed of with observation that since they are not conclusive, do not suffer from lack of authority, however any decision rendered by ICT-PEIRA on the complaints especially regarding charging of fee in

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violation of orders of Hon'ble Supreme Court of Pakistan, the needful is to be done by the Authority as defined above and in light of observations made hereinabove by this Court.

(AAMER FAROOQ)
JUDGE

Announced in Open Court on 28.02.2020.

JUDGE

Zawar