

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : W.P. NO.3392-2019

Dr. Uzma Fayyaz Qazi

Vs.

**Islamabad Capital Territory Private Educational Institutions
Regulatory Authority through its Chairman etc.**

CASE NO. : W.P. NO.3415-2019

Roots Millennium School Pvt. Ltd.

Vs.

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

Petitioners by : Mr. Hazrat Younas, Advocate in W.P. No.3392-2019
Mr. Husnain Ali Ramzan & Ch. Bilal Ahmad Mehar, Advocates in W.P. No.3415-2019.
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.3415-2019, as common questions of law and facts are involved.

2. Dr. Uzma Fayyaz Qazi, the petitioner in W.P. No.3392-2019, seeks direction to respondent No.1 to have letter dated 26.09.2019 implemented in letter and spirit, whereas Roots Millennium School Pvt. Ltd., the petitioner in W.P. No.3415-2019, has assailed the said order.

3. The facts, giving rise to the above petitions, are that children of Dr. Uzma Fayyaz Qazi namely Ibrahim Khan Yousafzai and Ms. Shanazay Yousafzai were students at Roots Millennium School having its Campus at House No.80, St. No.1, Sector E-11/4, Islamabad.

The said children of petitioner were expelled from School by the administration of the petitioner in W.P. No.3415-2019, which was assailed by way of a complaint before Islamabad Capital Territory Private Educational Institutions Regulatory Authority (hereinafter referred to as ICT-PEIRA). In the referred complaint, Roots Millennium School Pvt. Ltd. was asked to furnish comments/report, which it did not do so hence a direction was issued to restore admission of above students.

4. Learned counsel for the petitioner in W.P. No.3392-2019, *inter alia*, contended that respondent No.1 be directed to compel respondent No.2 to comply with its decision dated 26.09.2019. In this behalf, it was contended that above children are suffering due to highhandedness of the School authorities and they have been removed from the rolls without any rhyme or reason. It was further submitted that School authorities were lingering on the matter before respondent No.1, which resulted in passing of impugned decision dated 26.09.2019.

5. Learned counsel for the petitioner in W.P. No.3415-2019, *inter alia*, contended that under the facts and circumstances, respondent No.1 namely ICT-PEIRA has no authority to order re-induction of above students. It was submitted that at best, if there was any violation of direction, rules or regulations, criminal complaint could be filed against the school administration. It was submitted that even-otherwise, the impugned decision is without

lawful authority inasmuch as it does not show that same was issued by the authority as defined in Islamabad Capital Territory Private Educational Institutions Regulatory Authority Act, 2013 (hereinafter referred to as the Act); while elaborating his referred argument, learned counsel contended that the Authority, under the Act, comprises of Chairman and Two Members; that nowhere in the Act, it is provided that any Member or Chairman may exercise authority solely or any two Members or Chairman and a Member, hence in order to constitute authority and pass valid decisions, entire Authority has to be present and pass decisions collectively. Moreover, it was submitted that under the powers, functions, aims and objectives of the Authority as defined in the Act, such controversy does not fall within the domain of ICT-PEIRA.

6. Learned counsel for ICT-PEIRA, *inter alia*, contended that under the Act, direction can be issued or order can be passed by the Authority pursuant to the powers, which ICT-PEIRA has, hence direction was issued for re-induction of above children.

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

8. The facts, leading to filing of instant petitions, have been mentioned hereinabove therefore need not be reproduced.

9. The issue, which goes to the root of the matter in the above facts and circumstances, is the competency of ICT-PEIRA to take

steps or pass order of the nature as mentioned above and issue directions with respect thereto.

10. Respondent No.1 is the creation of the Act. Section 3 of the referred Act establishes ICT-PEIRA. Under subsection (2) of section 3 *ibid*, the Authority is a body corporate, having perpetual succession and a common seal, with power, subject to the provisions of this Act to enter into contracts, acquire and hold property, both moveable and immovable, and shall by the said name sue and be sued. The composition of the Authority is provided in section 6 of the Act; comprising of Chairman and two Members possessing qualification and experience as may be prescribed. Likewise, the Authority is defined in section 2 (a) *ibid* as Islamabad Capital Territory Private Educational Institutions Regulatory Authority (ICT-PEIRA) established under section 3; nowhere in the Act, the quorum or in absence of any Member or Chairman, composition of the Authority is provided, which means that the Authority, while acting as such, shall be comprised of the Chairman and two Members, hence all decisions taken, directions issued and orders passed, are to be passed by the Authority i.e. Chairman and two Members. The aims and objectives of the Authority and functions and powers of the same are provided in sections 4 & 5 of the Act. For ease of convenience, relevant sections 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 examination of above sections shows that ICT-PEIRA, in the capacity as Regulator, has multifarious functions and powers, which *inter alia* includes regulation of fee, maintenance of curriculum, syllabus and other similar issues. No specific power or function is provided for decision on the matter regarding removal of any child/student by any private school; however, on the other hand, residual power is provided regarding taking steps and performance of functions which are residual to the performance of aims and objective and primary functions. The residual powers are always in support of the primary functions and powers and cannot be interpreted in such a way as to create a new or independent function or power.

11. It was argued on behalf of petitioner in W.P. No.3415-2019 that in case of any violation of any provision of the Act, rules or regulations, sole remedy with ICT-PEIRA is by way of a criminal complaint, which entails maximum punishment of one year or with fine; on the other hand, it was argued on behalf of ICT-PEIRA that under section 16 of the Act, where the Authority, on receipt of a

complaint or otherwise, after making such inquiry or inspection as deemed fit, is satisfied that there is a contravention of any of the provisions of the Act, the rules or terms and conditions of the certificate of registration or any order passed or instruction issued by the Authority, it may after giving opportunity to the person concerned being heard, suspend or cancel the certificate of registration. For ease of convenience, section 16 *ibid* is also reproduced below:-

“16. Cancellation or suspension of certificate of registration.—(1) Where the Authority, on receipt of a complaint or otherwise, after making such inquiry or inspection as deemed fit, is satisfied that there is a contravention of any of the provisions of this Act, the rules or terms or condition of the certificate of registration or any order passed or instruction issued by the Authority, it may after giving an opportunity to the person concerned of being heard, suspend or cancel the certificate of registration:

Provided that where the default can be remedied no order shall be made unless an opportunity is provided to the person concerned to rectify such default within the specified period.

(2) On the cancellation or suspension of the certificate of registration, the Authority may make such orders and take such action with respect to the completion of the current education term as may be considered necessary.

(3) On the cancellation of the certificate of registration under this section, the institution shall be closed down by the Authority”.

The bare perusal of above Section shows that the Authority (ICT-PEIRA) is the competent body to entertain complaints; however, same has to be with respect to violation of any provision of the Act and/or rules or regulations etc. It is pertinent to observe that Federal Government, in consultation with ICT-PEIRA, did frame the rules for working of the latter by way of Private Educational Institutions (Registration and Fee Determination) Rules, 2016, however, majority of rules were struck down by this Court through

judgment 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); Intra Court Appeal filed by ICT-PEIRA is pending adjudication before Division Bench of this Court. In the referred judgment, this Court ordered ICT-PEIRA to frame fresh rules of the Authority keeping in view the aims, objectives, powers and functions and observations made in the judgment, however, due to pendency of appeal (ICA), no rules have been framed yet.

12. In light of above facts and circumstances, the law and the background, there is nothing on record to substantiate that letter dated 26.09.2019 was issued by the Authority inasmuch ex-facie it does not show that the letter was issued with permission or concurrence of the competent Authority i.e. the Chairman and Members or they have signed it or accorded approval, rather it has been signed by one Assistant Research Officer and only copy of same has been referred for information to Chairman, ICT-PEIRA hence according to documents available on record, the impugned letter has been issued without lawful authority.

13. For what has been stated above, since the letter impugned has not been issued by the Authority (ICT-PEIRA) or it has accorded approval thereto, hence is set aside; however, the complaint filed by petitioner in W.P. No.3392-2019, shall be deemed to be pending

and shall be decided in accordance with the provisions of the Act as well as rules, if any, on the subject and observations made above after affording opportunity of hearing to all the parties concerned, especially the petitioner in W.P. No.3415-2019.

14. The petitions stand disposed of in light of observations made above. Since the matter is pending since long, it is expected that needful shall be done expeditiously preferably within a period of two weeks from the date of receipt of this judgment. Needless to observe that in light of section 6 *ibid* and the observations, made hereinabove, the matter shall be taken up and decided by the Authority comprising of the Chairman and two Members. The parties shall be at liberty to raise any legal or factual objection and also shall not delay the matter in any way.

(AAMER FAROOQ)
JUDGE

Announced in Open Court on 28.02.2020.

JUDGE

Zawar