

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

**C.P. No.D-2194 of 2013.**

**Present:**

**Mr. Justice Abdul Maalik Gaddi**

**Mr. Justice Adnan-ul-Karim Memon**

Muhammad Anwer and others ----- Petitioners

VERSUS

Fouji Foundation Model School & others----- Respondents

**Date of hearing and Decision: 06.08.2020**

Mr. Ejaz Ahmed Awan advocate for the petitioners.  
Mr. Muhammad Arshad S. Pathan, advocate for respondents 1-3.  
Mr. Muhammad Humayoon Khan Deputy Attorney General.  
Nemo for Respondents 4 & 5

**ORDER**

**ADNAN-UL-KARIM MEMON**, - Basically, the petitioners are aggrieved by the issuance of letter dated 12.04.2013 regarding increase of school fees by respondent No.01 as it has been issued in violation of statutory provisions of The Sindh Private Educational Institutions Regulations and Control Ordinance, 2001, and as such is not sustainable under the law.

2. Mr. Ejaz Ahmed Awan, learned counsel for the petitioners argued that under Article 25-A of the Constitution, all children in age of 5-15 years have fundamental right to get free education. He submits that this fundamental right is not only enforceable against Government Institutions but also against the Private Parties and Institutions. He further submits that education is a religious duty, therefore enforceable against all Muslims including the private schools governed under The Sindh Private Educational Institutions (Regulation and Control) Rules, 2005. He, while leading arguments on behalf of the petitioners has vehemently opposed the continuous exorbitant increase of school fees for each academic year by the respondent - school, which according to learned counsel, besides having no legal or factual justification, is being increased in violation of Rule 7(1) & (3) of the Sindh Private Educational Institutions (Regulation and Control) Rules, 2005. It has further been contended by learned counsel that petitioners, like most of the students studying in private schools and including branches / campuses of

respondent-fouji foundation, is compelled to take admissions in private schools for the reason that Government has failed to provide free and compulsory education to all children up to 5 - 16 years in terms of Article 25-A of the Constitution, whereas, according to learned counsel, most of the students belong to middle or lower middle class, and cannot afford to pay the exorbitant fee and its yearly enhancement arbitrarily being determined by the respondent - school, is in violation of Law and the Rules framed for such purpose. Per learned counsel, the Respondent-school does not only get fee structure fixed from the Government functionaries as per its own choice at the time of Registration and Re-registration, but also manage to get the approval of yearly enhancement of fee in excess of 5%, in violation of Rule 7(3) of Sindh Private Educational Institutions (Regulation and Control) Rules, 2005, whereas, neither any Notice to the students or their parents has been issued, nor any justification is given before the Registration Authority for seeking such enhancement of school fees. Learned counsel for the petitioners has argued that to provide education or to impart knowledge is a Noble Cause and service, which can be adopted as a profession or occupation as well, however, it cannot be treated at par with a free market trade or business activity, which determines its own unlimited profits, as per formula of demand and supply. On the contrary, per learned counsel, to get free and compulsory education is a fundamental right of every children, just like right of life, which also includes right of education as well. Per learned counsel, importance of such right has duly been recognized by inserting the Constitutional provisions which include Articles 3, 4, 18, 25 and 25-A of the Constitution of Islamic Republic of Pakistan. Per learned counsel the respondents have violated the provisions of Sindh Private Educational Institutions (Regulation and Control) Ordinance, 2001, duly amended in 2003 and 2005, as well as the provisions of Rule 7(1) and (3) of the Sindh Private Educational Institutions (Regulation and Control) Rules, 2005, while increasing yearly tuition fee over and above 5% of the last fee schedule, whereas, Registration Authority / Respondent No.5 has failed to enforce the above legal provisions of law, and to restrain the Respondent-school from enhancing the school fee exorbitantly, much in excess of 5% of the maximum limit as provided under Rule 7(3) of the Sindh Private Educational Institutions (Regulation and Control) Rules, 2005. Learned counsel for the petitioners while explaining the scheme of law as envisaged in the Sindh Private Educational Institutions (Regulation and Control) Ordinance, 2001, has referred to various Sections and argued that no Institution shall be established or continued except in accordance with the provision of Ordinance. That fee structure of an institution shall be fixed after obtaining approval of Provincial Government. After having referred to above provisions

of the Ordinance, 2001, learned counsel for the petitioners has also referred to the relevant provisions of Sindh Private Educational Institutions (Regulation and Control) Rules, 2005, with particular reference to Rules 7(1), (2) and (3) of the Rules, 2005. According to learned counsel, Sub-Rule (1) provides that Inspection Committee is authorized to recommend the fee structure of an institution, after detailed inspection of the institution at the time of Registration or Renewal of Registration of the institution to the Registering Authority, whereas, Sub-Rule (2) provides that the fee schedule once approved, shall not be increased at any time during the academic year and Sub-Rule (3) of Rule 7, provides that the fee may be increased up to 5% of last fee schedule, subject to proper justification and approval of the Registration Authority, whereas, any increase in school fee over and above 5% is not permissible. Learned counsel has further argued that private institutions (Schools) have been given reasonable authority to determine their own fee structure at the time of Registration as well as at the time of Renewal of Registration after every three years, however, per learned counsel through Rule 7(2) & (3), a reasonable restriction has been imposed only to the effect that fee schedule once approved shall not be increased, at any time during academic year, and thereafter, yearly fee may be increased up to 5% of last fee schedule however, subject to proper justification and approval of the Registering Authority. Learned counsel further argued that in terms of Rule 7(3), the respondent-school is not justified in law and fact to argue that the limitation placed by the legislation on such yearly increase violates their right to carry on business and profession of their choice. Based on above submission, he concluded that the instant constitutional petition is maintainable and school fee cannot be charged at exorbitant rate by the respondent-school under The Sindh Private Educational Institutions (Regulation and Control) Rules, 2005.

3. Conversely, Mr. Muhammad Arshad S. Pathan, learned counsel for respondents has raised the question of maintainability of instant petition on the ground that respondent-school does not have statutory Regulations therefore the petitioners are is not entitled to discretionary relief under Article 199 of the Constitution. He submitted that Fouji Foundation is a charitable organization / trust which is registered under Endowment Act, 1890, dedicated for the welfare of ex-servicemen and their families; that the objective of the Foundation is to provide welfare / services to its beneficiaries that includes healthcare, subsidized education, stipends and

vocational and technical training. It operates on a complete self-sustaining basis and receives no grant or assistance from any Government or Non-Governmental Organizations, and do not fall within the definition of Government or Local Authority as provided under Article 199(5) of the Constitution as well as in Section 3(21) & (28) of General Clauses Act, 1897. He further submitted that Fouji Foundation Model School is a Private School in Hyderabad; that respondent- school has increased fee in proportionate to inflation and increase of salaries and there is no exploitation or forming of cartel. He Submitted that parents of students have no locus standi against increase of fee because providing quality education against reasonable fee does not violates fundamental rights of the petitioners. He submitted that in any other case, the petitioners have remedy before competent authority. He further submitted that parents have also right to seek free education for their children from Government schools if so desired. He, however, denies the registration of respondent-school with the Provincial Government under Sindh Private Educational Institutions (Regulation and Control) Ordinance, 2001 and regulations framed thereunder. At this juncture we confronted him with the latest decision of Honorable Supreme Court with regard to school fee; he replied that the decision of Honorable Supreme Court in the aforesaid matters is altogether different from the present subject. He lastly prayed for dismissal of instant petition.

4. Mr. Muhammad Humayoon Khan learned Deputy Attorney General, supported the contentions of respondents.

5. We have heard the parties and carefully perused the record.

6. The pivotal question involved in the present proceedings is whether Fouji Foundation Model School Hyderabad enjoys the status of a 'person' within the contemplation of sub - Article (5) of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973?

7. The issue of maintainability of the captioned Constitutional petition has been raised, in view of the latest verdict by the Honorable Supreme Court of Pakistan in the case of Pakistan Defence Housing Authority vs. Mrs. Itrat Sajjad Khan & others (2017 SCMR 2010), as such we would confine ourselves to that extent only and refrain ourselves to dilate upon the merits of the case, if we find the instant matter is not maintainable under the law.

8. To answer the proposition, the profile of the Respondent-Fouji Foundation Model School Hyderabad reveals that neither Fouji Foundation Model School Hyderabad is a statutory body nor it has statutory rules, and do not fall within the definition of Government or a Local Authority as given

under Article 199(5) of the Constitution. The expression “performing of function in connection with the affairs of Federation” has already been discussed in detail by Honorable Supreme Court in its various pronouncements and needs no further deliberation.

9. As a result of foregoing discussion, we have reached to the conclusion that neither Fouji Foundation Model School Hyderabad is a statutory body nor it has any statutory rules hence no indulgence of this Court is required in the matter, and it is for the petitioners to take recourse as provided under the relevant law before the competent authority.

10. Reverting to the submissions of learned counsel for the petitioners that respondent-school is registered under Ordinance 2001, and regulations framed thereunder, we are unable to subscribe this contention for the simple reason that no document has been placed on record to substantiate the aforesaid factum. Consequently, the relief sought by the petitioners in above Constitutional Petition, seeking declaration to the effect that the impugned enhancement by the respondent-school in the Annual tuition fee, without approval of the competent authority is in violation of the provisions of the Sindh Private Educational Institutions (Regulation and Control) Ordinance, 2001 and Sindh Private Educational Institutions (Regulation and Control) Rules, 2005, is misconceived, and is hereby rejected.

11. Before parting with this order we may observe that since no concrete proof has been produced with regard to the factum whether the Respondent-school is registered under Ordinance 2001, and if the position is contrary then the competent authority of Respondents are under obligation to implement the Judgment pronounced by the Honorable Supreme Court in the case of Muhammad Imran and others v. Province of Sindh through Chief Secretary and others (2019 SCMR 1132).

12. These are the reasons of our short order passed on 6.8.2020 whereby we have dismissed the captioned constitutional petition.

JUDGE

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