

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

WP (C) 1070/2022

New Convent High School and others

... Petitioner/Appellant(s)

Through: Mr. N. A. Beigh, Sr. Advocate with Mr. M. Sadiq, Advocate

V/s

Union of India and others

... Respondent(s)

Through: Mr. T. M. Shamsi, DSGI

Mr. Mohsin Qadiri, Sr. AAG with Ms. Maha Majid, Assisting Counsel

Mr. M. I. Dar, Advocate

**CORAM: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

**ORDER
04.10.2023**

1. There are seven petitioners in this writ petition. All the petitioners are educational entities running schools in their respective names in different districts of Kashmir province.
2. All the petitioners are individually concerned against a course of action and decision at the end of the respondents purportedly affecting the petitioners alike so they have joined together in the present writ petition.
3. This writ petition was filed on 23.5.2022. At the said point of time the cause of action for the petitioners to file the writ petition was an order no. 01-FFRC of 2022 dated 09.3.2022 passed by the respondent 4 - Committee for Fee Fixation and Regulation of Fee of Private Schools (CFFRF in short).

4. The aforesaid order was passed by the respondent 4- CFFRF purportedly acting post-amendment of J&K School Education Act 2002 effected vide SO-3466(E) dated 05.10.2020 issued under J&K Reorganization (Adaptation of State Laws) Third Order, 2020.
5. In terms of the impugned order no. 01-FFRC of 2022 dated 09.3.2022, the respondent 4 - CFFRF came forward with a directive permitting private school managements an increase of 12% in the transport fee charged from the students availing the school transport facility in October 2019 in Winter zone and February 2020 in Summer zone. The increase was to be operative from the date of opening of schools.
6. The aforesaid order came into existence after the issuance of SO-233 of 2022 dated 10.5.2022 in terms whereof Jammu and Kashmir Private Schools (Fixation, Determination and Regulation of Fee) Rules, 2022 framed under section 29 read with section 20(A), 20(B) and 20(C) of the Jammu and Kashmir School Education Act 2022, came into picture.
7. SO-233 of 2022 provides for composition of CFFRF. It defines the powers and functions of the CFFRF in terms of rule 5, the matter of fixation, determination and regulation of fee under rule 6, factors for determination of fee under rule 7 and submission for fixation, determination and regulation of fee by a private school under rule 8.
8. The petitioners in this writ petition have come to assail the vires of SO-3446(E) dated 05.10.2022 amending, the Jammu and Kashmir Education Act 2002, SO-233 of 2022 dated 10.5.2022 read with SO-177 of 2022 dated 15.4.2022 by reference and reliance upon the Hon'ble Supreme Court of India's judgment in the case titled as **TMA**

**Pai Foundation and others versus State of Karnataka and others
reported in AIR (2003) SC 355.**

9. In addition, the petitioners have come to pray for a writ of prohibition restraining the respondents from interfering with affairs of administration and management of the petitioners' school establishments in the matter of fixation of fees.
10. Upon filing of this writ petition, in terms of an order dated 01.6.2022 this court came to keep in abeyance the impugned order no. 01-FFRC of 2022 dated 09.3.2022 passed by respondent 4 - CFFRF. This order was passed upon appearance and in presence of the respondents inviting counter affidavit from the respondents.
11. In the course of time a subsequent development constrained the petitioners to come forward with an application for seeking amendment of the writ petition which came to be allowed in terms of an order dated 17.2.2023.
12. The development which necessitated the amendment of the petition was issuance of an Order no. 09-FFRC of 2022 dated 6.10.2022 passed by respondent 4 - CFFRF purportedly acting under the mandate of section 20E(1). In terms of this order, the respondent 4 – CFFRF, by referring to the state of litigation obtaining on the subject including a reference to the present writ petition WP (C) 1070/2022, came forward with a directive with respect to the matter of enhancement of school transportation/bus fee by granting 14% increase in relation to the transportation fee which used to be charged in October 2019 of Winter zone and February 2020 of Summer zone. 14% hike was made

applicable from March 2022 in both winter as well as Summer zones. A capping of Rs. 2000/- as transport/bus fee was mandated for the private schools to follow and adhere to. Any private school seeking to levy more than Rs.2,000/- transport/bus fee is to submit a proposal to the respondent 4 - CFFRF along with relevant documents with proper justification for inviting the decision in accordance with the law.

13. Along with the amended writ petition, the petitioners also submitted an amended application for an interim direction to stay the operation of Order no. 09-FFRC of 2022 dated 06.10.2022 passed by the respondent 4 – CFFRF.
14. Thus at the time of institution of the writ petition, the petition was in the context of the 12% raise prescribed by respondent 4 - CFFRF and by virtue of subsequent order 12% came to be further enhance to 14%. The petitioners are agitating that this raise of 14% is on the lower side and is not in sync with the parameters on the basis of which evaluation of charging of transportation/bus service meant for school children is to be governed and as such it is the petitioners whose exchequer is to suffer the burden.
15. It is in this scenario that the writ petition in its amended form is awaiting a reply from the respondents which despite levying of cost of Rs. 5000/- in terms of order dated 19.8.2023 has not so far been submitted by any of the six respondents for the reasons best known to them leaving this court in a precarious situation more particularly when this court in terms of its order dated 01.6.2022 had kept in abeyance the effect and operation of the impugned order no. 01-FFRC of 2022 dated

09.3.2022 providing 12% increase in transportation fees and now on the same parity of situation the petitioners post-amendment of the writ petition are seeking an interim direction for staying the operation of order no. 09-FFRC of 2022 dated 6.10.2022 passed by the respondent 4 - CFFRF.

16. The petitioners claim that their individual-wise school specific case was never ever available for a consideration and decision for respondent 4 - CFFRF in the context of the percentage of increase in transportation fee as intended by the petitioners qua their respective schools and that the direction by the respondent 4 - CFFRF at the time of passing of order no. 01-FFRC of 2022 dated 9.3.2022 and order no. 09-FFRC of 2022 dated 6.10.2022 is omnibus in nature and contrary to the mechanism as envisaged under SO-233 of 2022.
17. Be that as it may, to attend to the equities of the case this court requires the petitioners to act in use of clause (f) of the impugned Order no. 09-FFRC of 2022 dated 6.10.2022 in terms whereof the respondent 4 - CFFRF has kept scope for a particular school and its management to submit proposal along with relevant documents with proper justification for enhancing the transportation fee beyond the capping of Rs.2000/-. In light of this, this court directs the petitioners to submit their individual cases with all requisite material in the context of their respective school to have an authority to charge transportation fee at the rate higher than the one mandated by respondent 4 - CFFRF.
18. Needful be done by petitioners at their respective end within two weeks from the date of passing of this order, upon submission of which the

respondent 4 - CFFRF shall deal with the proposals of the petitioners individually and dispose of the same by an individual order *qua* each petitioner's proposal on the merits of facts and law obtaining on the subject. The respondent 4 - CFFRF shall dispose of the proposal(s) of the petitioners within a period of one month reckoning from the date of submission of individual proposal(s) by the petitioners.

19. Till passing of the final order by the respondent 4 – CFFRF the operation of the impugned order no. 9-FFRC of 2022 dated 06.10.2022 shall also remain in abeyance subject to condition that in case during the intervening time the petitioners shall charge transportation fee at the rate which may come to be higher than the rate at which the respondent 4 - CFFRF will mandate the petitioners to charge individual-wise the overcharged transportation fee shall be refundable/adjustable.
20. The respondents are given last and final opportunity to submit their counter within a period of four weeks failing which their right to file the same shall stand closed.
21. List on 20.11.2023.

(RAHUL BHARTI)
JUDGE

(TASHI RABSTAN)
JUDGE

Srinagar
04.10.2023
N Ahmad

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No