

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

**Reserved on 13.02.2024
Pronounced on 16.02.2024**

**WP(C) No.3185/2023
CM Nos.7622/2023,
7983/2023, 7984/2023,
7985/2023 and 7986/2023.**

Gousia Educational Institute Syed Sahib
& others

.....Petitioners

Through: Ms Rifat Ara Butt, Advocate

versus

UT of Jammu & Kashmir and others

.....Respondent(s)

Through: Mr. Mohsin Qadri, Sr. AAG, with Mr.
K.D.S. Kotwal, Dy.A.G.

Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE

JUDGMENT

1. Through the medium of instant writ petition, the petitioners are seeking a direction to the respondent-Board to release the Registration Return (RR) Forms of the students enrolled in Class 9th and examination forms for 10th, 11th and 12th standard classes in the petitioners-schools and also to issue directions to the respondent-Board to open online facilities for submission of Registration Return Forms and examination forms for the students of these classes.

2. The facts-in-brief, as gathered from the writ file, are that the petitioners are unaided private schools within Jammu & Kashmir. The petitioners-schools have been registered with the Government/respondents in the School

Education Department from time to time and that the registration is in vogue in case of petitioners-schools herein. It is averred that as the issue with regard to the grant of extension in the period of registration was pending before the Government, an amendment was carried out to the J&K School Education Rules, 2010 vide SO 177 dated 15.04.2022. In Rule 4, after sub-Rule 2-A, Rule 2-B has been incorporated which provided that in order to validly run and operate a school, it should be located, either on proprietary land or on lease land. A certificate, in terms of format prescribed by the rules, was also required to be obtained from Revenue Authorities (Tehsildar concerned). In case of failure to obtain the certificate, certifying the location of the school and the land on which the school was constructed, would not entitle the school to continue.

3. It is further averred that the students of class 9th are to be registered by the Board of School Education and for this purpose Registration Return Forms are required. After they are made available, they are to be sent to the Board and the students can be registered in the Board which enables them to appear in the 10th Class examination. Further, the examination forms for the students of 10th, 11th and 12th standards are required to enable the students of these classes to appear in the final examination.

4. Now, the grievance of petitioners-schools is that when they applied online to the Board for providing them with Registration Return Forms and examination forms, the Board did not issue the same in view of the amendment carried out in the J&K School Education Rules, 2010. Hence, the present petition.

5. Learned counsel appearing for petitioners-schools contended that as the amendment was *per se* illegal, the other similarly situated schools filed a writ petition in this Court and this Court issued the order of status-quo in SO 177. Similarly, in WP(C) Nos.1275/2022, 1276/2022, 1277/2022 and 1282/2022 this Court directed the writ respondents to release the required facilities to the petitioners-schools. However, the respondent-Board has not opened the online facilities so as to enable the petitioners-schools to have the students enrolled in the schools to seek registration with the Board and to release the examination forms for the students to appear for the Board examination already enrolled with the Board. Learned counsel for petitioner further argued that till the issue with regard to the constitutional validity of SO 177 dated 15.04.2022 is not decided by this Court, the writ respondents be directed to open the online facilities for the petitioners-school also. Learned counsel further prayed for finally deciding the writ petition.

6. Objections have been filed by the writ respondents contending therein that the public property cannot be used for profit making or to the profit oriented educational institutions. It is averred that it was found that many schools are committing breach and does not have their own land or having proper permission of land from concerned revenue authorities and are running illegally on the Government lands. As such, it is averred, the intent of the School Education Department is only to get the land record/documents verified by the concerned Revenue authorities in order to check that the private schools are having valid land documents and are legally entitled to run such private schools and the buildings/lands are free from all legal encumbrances. Therefore, the aim and objective of S.O 177 of 2022 is to regulate the

illegality, if any, committed by the private schools while getting the recognition and the same is for the larger benefit of the education sector.

7. Learned Senior AAG contended that the BoSE being a primary examining body is fully conversant of the issues related to the sustainable development of the academic career of the students and takes every step to safeguard the academic interest of the students. He further contended that the academic career of the candidates is always given top priority.

8. Heard learned counsel appearing for the parties, considered their rival contentions and also perused the file.

9. The grievance of petitioners-schools is that in view of the amendment carried out in the J&K School Education Rules, 2010 vide SO 177 dated 15.04.2022, the respondent-Board is not releasing the Registration Return Forms of the students enrolled in Class 9th so as to seek registration with the respondent-Board enabling the students to appear in Class 10th Board Examination to be conducted by the Board. Further, the respondent-Board is not releasing the online facilities to submit the examination forms for the students enrolled in classes 10th, 11th and 12th standard classes in the petitioners-schools enabling them to appear in the Board examination to be conducted by the J&K Board of School Education, Srinagar.

10. Admittedly, the grievance of petitioners-schools is with regard to amendment which was carried out to the J&K School Education Rules, 2010 vide SO 177 dated 15.04.2022, whereby, amongst other things, in Rule 4, after sub-Rule 2-A, Rule 2-B has been incorporated which provided for production of no objection certificate regarding land use issued by the Revenue

Department, Government of J&K. The said rule came to be notified on 15.04.2022, whereas the present petition came to be filed on 06.12.2023, i.e., after more than nineteen months of notifying the said rule. If the petitioners-schools were aggrieved of the said amendment they ought to have challenged the legal validity of the amendment but they waited for more than nineteen months in filing the present petition. Further, in paragraph-11 of the writ petition, the petitioners-schools have specifically averred that the amendment is *per se illegal*, however, they have failed to challenge the said rule. Once the petitioners-schools have failed to challenge the said rule, the very purpose of filing the writ petition becomes redundant, as, without challenging the said rule, no legal consequences follow and the relief claimed by the petitioners-schools cannot be granted. In such a situation, the petitioners-schools are estopped from questioning the validity of said rule or terming the same as illegal.

11. Viewed thus, without discussing the merits of the case, the petition is dismissed along with connected CMs. However, as there is already number of writ petitions pending regarding the same subject wherein the said rule has also been challenged, as such, the petitioners-schools are at liberty to file fresh petition, if they are so advised.

12. In view of the dismissal of writ petition, contempt petition being CCP(S) No.553/2023 shall also stand dismissed.

Jammu
16.02.2024
(Anil Sanhotra)

(Tashi Rabstan)
Judge

Whether the order is reportable ?
Whether the order is speaking ?

Yes/No
Yes/No