

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

OWP No. 193/2011

Sacred Era Experimental School

.....petitioner

Through :- Mr. K.S. Johal Sr. Advocate with
Mr. Supreet R.S.Johal Advocate

V/s

State and others

.....respondents

Through :- Mr. P.D.Singh Advocate.

CORAM:

HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT(ORAL)

1 By this petition under Article 226 of the Constitution of India, the petitioner, a private unaided school is seeking issuance of an appropriate writ, order or direction, including the following reliefs:

- (i) That the petitioner may be allowed to continue running the private school;
- (ii) That the petitioner's school be recognized under the provisions of Jammu and Kashmir School Education Act, 2002;
- (iii) That 35 students of the petitioner's school be permitted to appear in the 8th class External Examination, 2011, commencing from 19th February, 2011.
- (iv) That the respondents be restrained from interfering in the functioning of the petitioner's school and be directed not to prevent the aforesaid 35 students from appearing in the aforesaid examination.

Factual matrix:

2 The present petition is being filed through Sh. Ashok Tikoo, who is the Principal of the petitioner's school. The school was initially established to cater to nursery-level education and was upgraded progressively up to 8th standard. The petitioner applied for permission and recognition of the school

in accordance with the provisions of the J&K Education Act, 1984 and subsequently under the J&K School Education Act, 2002. Vide communication dated 18.05.1997, 34 unrecognized schools, including that of the petitioner, were permitted to conduct examinations up to 8th class. The Director of School Education had conducted examinations for the petitioner's students in the academic years 1998-99. In pursuance of petitioner's application, the Director School Education, Jammu instructed the Zonal Education Officer (ZEO), Udhampur to inspect the school and submit a report under SRO 259 through the Chief Education Officer, Udhampur. Despite repeated requests, the inspection was never conducted.

3 In the year 2007, the petitioner was asked to resubmit documentation, which was duly complied with. However, no inspection was carried out. The respondents, however, allowed the petitioner's students to appear in examinations until 2008. In the year 2009, the respondents began obstructing the petitioner's students' participation at the eleventh hour. Aggrieved by such obstruction, the students approached this Court by way of OWP No. 192/2009. Vide interim order dated 19.02.2009, this Court permitted them to appear in the examination at their own risk and responsibility. Later on, vide order dated 18.04.2009, this Court directed the respondents to declare the students' results, subject to the outcome of the writ petition. In the year 2010, students of the petitioner's school once again approached this Court by way of OWP No. 165/2010. This Court, vide interim order dated 19.02.2010, permitted them to appear in the examination, though their results were withheld until further orders. Subsequently, on 20.05.2010, this Court directed the respondents to declare their results. It is stated that despite the petitioner's consistent compliance, the respondents

continued to demand fulfillment of certain formalities such as submission of documents related to furniture, fee structure, enrolment statements, Red Cross funds, sports funds, building revalidation certificates, etc. It is further stated that there are currently more than 400 students enrolled in the petitioner's school and more than 33 employees, including well-qualified teachers, have been serving for the past 10 years. It is submitted that similarly situated institutions have been granted recognition, whereas the petitioner has been subjected to discriminatory treatment despite fulfilling all necessary requirements.

4 In their reply, the respondents have contended that the petitioner has not submitted a proper application in accordance with the prescribed rules for obtaining recognition. It is submitted that the petitioner has, over the years, relied on interim Court orders to enable students' participation and their declaration of results without adhering to the norms or supplying the required information. It is further submitted that, as per Rule 4(1) of the Jammu and Kashmir School Education Rules, 2010 notified vide SRO 123 of 2010, an application for permission to establish, run, or maintain a private school must be submitted in Form-A, accompanied by the prescribed inspection/application fee payable through treasury receipt, cash, or bank draft and submitted to the competent authority. According to the respondents, the petitioner has not complied with this mandatory process.

5 I have heard learned counsel for the parties and perused the material on record.

6 This Court, vide interim order dated 15.02.2011, directed the respondents to permit 35 students of the petitioner's institution to appear in

the 8th class T2 External Examination 2011 at their own risk and responsibility. Subsequently, vide order dated 26.04.2011, the Court directed the declaration of their results. Similar interim orders were passed in previous academic sessions directing both appearance and result declaration.

7 The petitioner has submitted that it has repeatedly applied for recognition of the school by submitting Form 'A' application to the concerned Authority and has complied with the procedural requirements as per SRO 259, which was applicable to the recognition of the private schools at the relevant point of time. The petitioner has annexed a copy of communication dated 28.02.2005, addressed by the Director School Education, Jammu to the Zonal Education Officer, Udhampur, wherein the Zonal Education Officer was directed to conduct an inspection of the petitioner's school and submit the inspection report along with the allied documents as per SRO 259, to the Chief Education Officer, Udhampur. The Chief Education Officer was, in turn, required to forward the same, along with his recommendations, to the Directorate of School Education. According to the petitioner, no further action has been taken by the authorities with regard to the recognition of the school. It is submitted that the failure of the respondents to recognize the petitioner's school is arbitrary and discriminatory, particularly when similarly situated schools have been granted recognition.

8 The respondents have, however, disputed the aforesaid claim of the petitioner and submitted that the petitioner never submitted the application in Form-A, along with the requisite inspection fee and documents as required under Rule 4(1) of the Jammu and Kashmir Education Rules, 2010, and hence cannot claim recognition.

9 Section 4 and Section 5 of the J&K School Education Act, 2002 impose a duty upon the Government to ensure free and compulsory education up to Class 8th. At the same time, Sections 11 and 12 provide the legal framework under which private educational institutions may be established and recognized, subject to compliance with prescribed norms.

10 Rule 4(1) of Jammu and Kashmir School Education Rules, 2010 notified vide SRO 123 of 2010 mandates that an application for permission to run or maintain a private school must be submitted in Form A, along with the requisite fee, to the competent authority.

11 The Hon'ble Supreme Court in **State of Tamil Nadu v. K. Shyam Sunder, (2011) 8 SCC 737**, has held that the State cannot shirk its responsibility in ensuring that private institutions providing primary education are either regularized or appropriately regulated. Denial of recognition without any cogent justification may result in arbitrary deprivation of the right to education under Article 21-A of the Constitution of India.

12 It is evident from the record that the petitioner has been running the school for several years and has made attempts to comply with the statutory requirements. The respondents have failed to demonstrate any cogent reason as to why the case of the petitioner's school has not been considered, despite the petitioner having complied with the necessary formalities, including the submission of Form 'A'. The respondents have neither issued any closure notice nor provided any explanation as to why similarly situated institutions have been granted recognition, while the petitioner has been denied the same benefit. Such a selective and differential

treatment smacks of arbitrariness and is violative of the principle of equality enshrined under Article 14 of the Constitution of India.

13 In view of the above discussion, the writ petition is partly allowed with the following directions:

(a) The petitioner shall file a fresh application in Form-A, under Rule 4(1) of the Jammu and Kashmir Education Rules, 2010 notified vide SRO 123 of 2010, along with all requisite documents and fees, within two weeks from the date of this order.

(b) Upon receipt of such application, the Director, School Education, Jammu, shall consider and decide the application within one month thereafter, in accordance with the Act of 2002 and the rules framed thereunder i.e the Rules of 2010.

(c) If the petitioner's institution is found to be compliant with the statutory requirements, the respondents shall grant recognition and necessary permission to run the school.

(d) The respondents are further directed not to obstruct the functioning of the petitioner institution or the appearance of its students in future examinations unless a reasoned order is passed after following due process of law. It is made clear that any non-compliance by the petitioner with the conditions of recognition or statutory obligations shall entitle the respondents to take appropriate action under law.

(MOKSHA KHAJURIA KAZMI)
JUDGE

Jammu
29.05.2025
Sanjeev

Whether approved for judgment: Yes/No