

IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE RAJA SAEED AKRAM KHAN, CJ
MR. JUSTICE KH. MUHAMMAD NASIM
MR. JUSTICE RAZA ALI KHAN

CIVIL APPEALS No. 26, 27 & 28 OF 2023

(Against the consolidated
Judgment dated 03.10.2022,
passed by the High Court in
writ petitions No. 3184, 3404
and 3405 of 2022)

AJK BISE and 2 others,
(in civil appeal No. 26/2023)

Azad Government and 5 others,
(in civil appeal No. 27/2023)

Azad Government and another,
(in civil appeal No. 28/2023)

... Appellants

VERSUS

Leading Book Publishers and 33 others,
(in civil appeal No. 26/2023)

Leading Book Publishers and 33 others,
(in civil appeal No. 27/2023)

Leading Book Publishers and 36 others,
(in civil appeal No. 28/2023)

... Respondents

Appearances:

For the appellants: Raja Waseem Younas, Syed Atif Mushtaq Gillani and Sh. Attiq-ur-Rehman, Advocates.

For the respondents: Barrister Hamayoun Nawaz Khan and Mr. Muhammad Saghir Javed, Advocates.

For the Intervenor: Miss. Rahat Farooq Raja, Advocate.

Date of hearing: 24.05.2023

JUDGMENT

RAZA ALI KHAN, J:- Impugned before us is the judgment dated 03.10.2022, rendered by the learned High Court, passed in writ petitions No. 3184, 3404 and 3405 of 2020. As all the appeals (supra) arise out of the common judgment of the High Court, involving identical questions, hence, were heard together and being decided through this consolidated judgment.

2. The brief facts forming the background of the captioned appeals are that the respondents, herein, filed three separate writ petitions bearing No. 3184, 3404 & 3405 of 2022 before the learned High Court, wherein, they sought the common reliefs i.e. the protection of the notification dated 13.04.2018 through which the worthy President of the Azad State of Jammu and Kashmir, granted approval for preparation of the Text Books by the AJ&K Text Book Board on the strength of the Text Book and Learning Material Policy and Plan of Action, 2007-08, for Intermediate classes; the order dated 09.11.2021, through which the worthy President of the Azad Jammu and Kashmir granted approval to adapt the Text Books printed in continuation of the Notification

dated 13.04.2018; and the circular dated 22.08.2022, through which the Department of Elementary and Secondary Education directed all the authorities under its supervision to implement the order dated 09.11.2021. They further sought cancellation of the press release dated 18.08.2022, issued by the AJ&K Board of Intermediate and Secondary Education (BISE) along with the Circular dated 24.06.2022, issued by the Higher Education Department through which all the officials under its supervision were directed to continue teaching the syllabus of Punjab Textbook Board till the matter is adjudicated by the cabinet. The learned High Court admitted the writ petitions for regular hearing and directed the respondents, therein, to file written statement. The respondent-appellants, herein, individually and collectively submitted their written statements. The learned High Court, after hearing the parties and necessary proceedings, vide its consolidated judgment dated 03.10.2022, accepted the writ petitions and accordingly quashed the press release dated 18. 08.2022 and circular dated 24.08.2022, with the following observations: -

" بحالات بالا حکومت آزاد کشمیر ایسے اقدامات کر سے جن سے عیاں ہو کہ آزاد حکومت محکمہ تعلیم کے آفیسران اور اساتذہ اکرام کو آزاد کشمیر کی تعلیمی نظام پر اعتماد ہے۔ یہ درج کرنا بھی ضروری ہے کہ دوران بحث یہ بات بھی عیاں ہوئی کہ آزاد جموں و کشمیر میں طلباء کے لیے نصاب تعلیم مرتب کرنے والے آفیسران کے بچے انگلش میڈیم سکولز میں زیر تعلیم ہیں جہاں مجوزہ نصاب تعلیم کا سرے سے ہی کوئی عمل دخل ہی نہیں۔ آزاد جموں و کشمیر کے تعلیمی نظام کو یکساں کرنے کے لیے ضروری ہے کہ جملہ تعلیمی ادارہ جات خواہ وہ سرکاری ہوں یا نیم سرکاری ہوں یا غیر سرکاری، میں یکساں نصاب تعلیم رائج کیا جائے اور آزاد کشمیر میں نئے تعلیمی اداروں کے قیام کی بجائے موجودہ تعلیمی اداروں کو جملہ سہولیات جن میں اساتذہ کی کمی، مکانات کے مسائل وغیرہ شامل ہیں، کو دور کیا جا کر قائم شدہ اداروں کو موثر طریقہ سے فعال کیا جائے۔ آزاد جموں و کشمیر محکمہ تعلیم میں اصلاحات نافذ کرتے ہوئے متذکرہ محکمہ کو مثالی بنا کر قومی ادارہ کے طور پر تسلیم کیا جانا وقت کی اہم ضرورت ہے اور اس ضمن میں ہنگامی بنیادوں پر اقدامات کیے جائیں اور سرکاری، نیم سرکاری اور غیر سرکاری تعلیمی اداروں میں یکساں نصاب تعلیم لاگو کیا جائے۔

آزاد جموں و کشمیر کے تعلیمی نظام پر اعتماد کو قائم کرنے کے لیے آزاد جموں و کشمیر کے وزراء حکومت، سیکرٹریز حکومت اور ان کے ماتحت تمام آفیسران / ملازمین، محکمہ تعلیم کے تمام آفیسران ملازمین اور اساتذہ کے بچوں کو آئندہ تعلیمی سال سے جملہ غیر سرکاری اداروں میں داخل کرنے پر پابندی عائد کی جائے۔

اس نسبت نظامت اعلیٰ ایلیمنٹری اینڈ سیکنڈری ایجوکیشن نے بروئے سر کلر محررہ 16،3.05.2022، 16 ستمبر 2022، 25.04.2022 واضح طور پر یہ ہدایات جاری کی ہیں کہ تمام اساتذہ کے بچوں کا سرکاری سکولوں میں یقینی بنانے کے لیے اقدامات کیے جائیں۔ اس بابت واضح طور پر قانون سازی کی جائے اور اس وقت تک متذکرہ سر کلر باپر سختی سے عملدرآمد کیا جائے۔

بحالات بالا ہر سہ آئینی درخواست ہار کو یکسو کیا جا کر پریس ریلیز محررہ 3.08.2022 سر کلر محررہ 24.08.2022 کو خلاف آئین و خلاف قانون قرار دیا جا کر کالعدم کیے جاتے ہیں نقل فیصلہ دیگر متعلقہ امسلات کے ہمراہ شامل کرتے ہوئے تحت ضابطہ داخل دفتر ہوں۔ فیصلہ ہذا کی مصدقہ نقول بغرض تعمیل چیف سیکرٹری آزاد حکومت ریاست جموں و کشمیر، سیکرٹری ہائر ایجوکیشن اور سیکرٹری ایلیمنٹری اینڈ سیکنڈری ایجوکیشن کو ارسال ہوں۔ فیصلہ سر اجلاس سنایا گیا۔"

3. After the examination of the record and arguments, this Court has reached three vital issues to be resolved, which are narrowed down as:

1. Uniformity of syllabus all over the State,
2. Question as to the legality of the observation made by the learned High Court in the impugned judgment relating to impose ban on the children of Secretaries to the Government, Ministers and teachers to be admitted in the private/non-governmental institutions; and
3. Legal view of this Court on the ban imposed by the High Court on the upgradation of the schools.

4. During the course of arguments, vide order dated, 09.02.2023, this Court directed the Secretary Higher Education to put his submission along-with the suggestions in writing before the Court within a period of three days. In pursuance of the direction of this Court, a meeting under the chair of the Chief Secretary to the Azad Government of Jammu and Kashmir was convened and

recommendations were submitted before the Court, however, during the pendency of titled appeals, It came into this Court's knowledge that both the syllabuses of Punjab Text Book Board and AJ&K Text Book Board are being taught in different institutions (colleges) and there is no uniformity in this regard. To further grasp the situation and for the best interest of public at large, this Court directed the Chairman BISE to submit his written suggestions, which were submitted before the Court, accordingly. As per these suggestions, an effective solution to handle such an uncertain situation was to provide both options to the students in the admission form for the on-going classes this year that would contain an extra column where the students would either choose the syllabus of AJ&K Text Book Board or Punjab Textbook Board (on the basis of what they have been taught in their respective institution), and the exams would be prepared according to the option chosen by the students. This Court being satisfied with their written suggestion, passed the order dated 01.03.2023, which reads as follows: -

“Currently, in some schools of the state the syllabus of Punjab is being taught, whereas, in others the syllabus of AJK Text Book Board is under study, which has given rise to an uncertain situation and the students are confused that in the coming exams which syllabus will be considered for preparation of papers. To make the things clear and certain, we have directed the Chairman BISE to submit his written suggestions, which have been filed. Today, the Secretary Higher Education, Secretary Elementary and Secondary Education and Chairman BISE are present. All of them are unanimous that the situation can be met by providing option to the students. While elaborating their suggestion, they have submitted that the admission form will contain an extra column providing option to the students either to choose the syllabus of AJK Text Book Board or Punjab and the papers will

be prepared on the basis of option of the students. The written suggestion has also been submitted which is signed by both the Secretaries. In our opinion, the suggestion appears to be convincing, therefore, the Chairman BISE is directed to implement the same. He is directed to submit the proposed admission form before the Court through the Additional Registrar. It is further directed that extra care should be taken to save the students from any anomaly. It is also clarified that no compromise on the transparency of the exams will be accepted at any cost and in case of any lapse the concerned will have to face the music.”

5. In the light of the above order of this Court, the matter pertaining to the syllabus for this year has been settled down due to which the proposition in this case has become narrower and only point left was to the extent as to which syllabus would be feasible for students so that such uncertainty does not arise in future. In this regard, this Court asked the Secretary Higher Education and Secretary Elementary and Secondary Education for their suggestions, who appeared before the Court and unanimously submitted that the syllabus of Ministry of Federal and Professional Training (Pakistan) would be suitable as it would also save the students from the burden of preparation for the entry tests as all the professional exams and tests are conducted as per the said syllabus. They were accordingly directed to submit their written assertions in this regard within a period of one week. In compliance of the Court order, both the Secretaries i.e. Secretary Elementary and Secondary Education, and Secretary Higher Education, placed reports before this Court, through which, they unanimously proposed Syllabus of Ministry of Federal and Professional Training (Pakistan) as the future syllabus for AJ&K students. The reports dated 01.03.2023 and 06.03.2023, respectively, submitted by them are reproduced herein for better appreciation.

“Today the Supreme Court Circuit Bench Mirpur, asked us i.e. Secretary Elementary and Secondary Education and Secretary Higher Education, that the court intends to pass an interim order on account of 1st year Exams, commencing from June 2023, in AJK, that students should be given option in all subjects, whether they intend to opt for the syllabus/course content published by The Punjab Text Book board or AJK Text Book board. In response to this we the undersigned, unanimously agreed, that for the 1st year Exams commencing from June 2023, the BISE Mirpur shall insert a special column for the students in the Board Examination Forms, for all papers, to give clear option if the student opts for Text Books of AJK or The Punjab Text Books, for the year 2023 only. Accordingly, the BISE Mirpur shall prepare separate question papers for all the subjects. The court said that the detailed verdict on the Text Book issue shall be issued later, in line with SLO based assessment/Exams as per NC2006 and furthermore the BISE Mirpur develop partnership for exchange programme with FBISE which is already implementing NC2006 and the SLO based assessment.”

“In pursuance of verbal directions of the apex court, Circuit Bench Mirpur, on March 02, 2023, at Mirpur, we the undersigned i.e. Secretary Elementary and Secondary Education Department and the Secretary Higher Education Department, submitted the written proposals (interim) regarding the first year Exam, commencing from June 2023, and the federal syllabus as the future syllabus for AJK Students, the same is again enclosed in light of the apex court's order No.S.C/2468/2023 dated March 02, 2023”

06. We have heard the arguments advanced on behalf of the parties and perused the reports submitted by both Secretaries and considered their suggestions in the light of the situation at hand. Currently, the educational landscape in Azad Jammu and Kashmir (AJ&K) is characterized by the absence of a standardized and a certain curriculum. In different institutions throughout the region, different syllabi are being taught without any uniformity as

some institutions are following the syllabus of AJ&K Textbook Board, while others follow the curriculum prescribed by the Punjab Textbook Board and some even follow the Oxford syllabus. This lack of uniformity in the curriculum creates an uncertain environment across the education sector in the entire State every now and then which creates difficulty for the students and teachers. Given this situation, there is a alive need to establish a uniform curriculum for educational institutions in AJ&K. A uniform curriculum would ensure consistency in the educational content delivered to students across different schools and further would eliminate the disparities arising from the adoption of different and multiple curriculum. It would also streamline the teaching and assessment methodologies for educators, and they would no longer need to modify their teaching methodologies to accommodate multiple syllabi-outlines, thereby enabling them to focus more effectively on delivering equal and quality education. It would also simplify the evaluation and grading procedures, as students' performances could be assessed fairly at equal standard.

07. Based on the reports dated 01.03.2023 and 06.03.2023, which were carefully considered by this Court, it has come to our attention that both Secretaries of the concerned Department have conducted a thorough analysis and reached a consensus regarding the implementation of the syllabus of the Ministry of Federal and Professional Training (Pakistan), in the entire State of Azad Jammu and Kashmir (AJ&K). Their suggestions indicate that by adapting the Syllabus of Ministry of Federal and Professional Training (Pakistan) for intermediate classes would not only be feasible but also be highly beneficial for the students in AJ&K. Considering the welfare of students and the overall benefits to the education sector, we find ourselves inclined to

concur with these suggestions. Consequently, we direct the Secretaries Educations to take the necessary steps for the implementation of the syllabus of Ministry of Federal and Professional Training (Pakistan) in AJ&K, in accordance with the recommendations and findings they have submitted to this Court.

08. Before parting with, it is pertinent to mention here that the learned High Court in paragraph 35 of the impugned judgment has made an observation that in order to establish trust and confidence in the education system of Azad Jammu and Kashmir, the children of Ministers, Secretaries and their subordinate officers/employees, all the officers/employees of the Education Department and the teachers, should be banned from being admitted to all non-governmental institutions. The said paragraph is reproduced hereunder for better appreciation: -

"آزاد جموں و کشمیر کے تعلیمی نظام پر اعتماد کو قائم کرنے کے لئے آزاد جموں و کشمیر کے وزراء حکومت، سیکرٹریز حکومت اور ان کے ماتحت افسران / ملازمین، محکمہ تعلیم کے تمام آفیسران / ملازمین اور اساتذہ کے بچوں کو آئندہ تعلیمی سال سے جملہ غیر سرکاری اداروں میں داخل کرنے پر پابند عائد کی جائے۔ اس نسبت نظامت اعلیٰ ایبلنسٹری اینڈ سیکنڈری ایجوکیشن نے بروئے سرکلر 13.05.2022، 16 ستمبر 2022، 25.04.2022 واضح طور پر یہ ہدایات جاری کی ہیں کہ تمام اساتذہ کے بچوں کو داخلہ سرکاری سکولوں میں یقینی بنانے کے لئے اقدامات کئے جائیں! اس بابت واضح طور پر قانون سازی کی جائے اور اس وقت تک متذکرہ سرکلر باپر سختی سے عملدرآمد کیا جائے۔"

09. Diligent scrutiny of the supra reproduced observations has taken us to a viewpoint that the observation made by the learned High Court is superfluous, and redundant. No doubt that the existing situation of the education system in Azad Jammu and Kashmir, which can be rightfully regarded as an "open secret", is an undeniable reality that has permeated the collective consciousness of the concerned stakeholders. However, even then, coercively mandating or compelling any individual to admit their

children to a specific institution, stands in direct violation of the fundamental rights, liberties, and freedoms guaranteed to the citizens. Such an imposition inherently transgresses the cherished principles enshrined within the very fabric of our legal framework and socio-political ethos.

10. To infringe the liberties, freedoms and choices of the parent to determine or decide anything for their child is a straight violation of fundamental human and parental rights. Hence, it becomes imperative to emphasize on the vital significance of upholding and safeguarding the rights and liberties of individuals, which encompass the right to determine the educational trajectory of their children without unwarranted interference or undue encumbrances imposed by external entities. Therefore, the High Court's observation to this extent is set-aside.

11. Sheikh Attique-ur-Rehman, the learned counsel, while objecting to the judgment of the learned High Court stated at bar that the learned High Court has wrongly imposed ban on the upgradation of schools. In our opinion, the rule of "Quality over Quantity", must be kept in mind before taking any steps for the upgradation of schools by the education department. As there is a desperate need for raising the standard and quality of the education and educational institutes before establishing new ones. Rather than embarking upon establishing new educational institutions, it is of utmost importance to prioritize the effective functioning of the existing institutions. The lack of basic and necessary facilities, such as non-availability of buildings, necessary equipment and teaching staff, poses significant challenges and impedes the provision of quality education to the students. Recognizing the pivotal role of the Azad Kashmir Education Department, this Court desires it to transform into an exemplary and robust institution. It is

incumbent upon the authorities to take swift and decisive action on an emergency basis to address the deficiencies and enhance the department's efficiency. Consequently, we issue the following directives in this regard:

- i. The State has a responsibility to allocate a sufficient amount of resources in the budget to ensure adequate provisions of better standard of education,
- ii. Although, this Court is not creating any sort of ban on the up-gradation of schools, but the same should be restricted and allowed in very inevitable conditions. More attention and resources should be provided to existing institutions so that quality and standard is ensured rather than a numeric race,
- iii. The Government of AJ&K should consider the implementation of the recently introduced Teachers License Policy, by the Sindh Government,
- iv. Steps should be taken to take care of the needs of the existing institutions as far as possible,
- v. Teachers-students ratio of each school may be determined and reflected in decision matters and progress reports regarding each school and area be prepared and published as well,
- vi. A comprehensive inspection of educational institutions should be strictly done and monitored, and
- vii. It is also in the judicial notice of this Court that some school buildings have not been constructed after the earthquake of 2005, therefore, it is directed that policy be made and implemented for the reconstruction of all the affected school buildings at the foremost priority. Moreover, such reconstruction shall also consider the needs of libraries , labs and sufficiency of classrooms.

12. It is also pertinent to discuss here that the books published by the AJ&K Text Book Board are full of errors, misprints and mistakes, which has also been observed by the learned High Court in the impugned judgment and this Court for its own satisfaction examined the matter deliberately and observed the same. Such negligence cannot be overlooked by this Court as it is a matter of larger public interest and the future of the students. It is therefore, directed that the Chief Secretary to Azad Government of the State of Jammu and Kashmir, shall look into the matter and cater it by taking necessary steps expeditiously; so that such blunders and negligence with the future of students shall be avoided.

13. In the light of the above detailed discussion, we hereby dispose of the appeals as observed hereinabove in the preceding paragraphs and set-aside the judgment of the High Court to the extent of observation made in paragraph 35. No order as to costs.

JUDGE CHIEF JUSTICE JUDGE

Muzaffarabad,
08.06.2023
Approved for reporting.