

**IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)**

PRESENT:

MR. JUSTICE ASIF SAEED KHAN KHOSA, CJ
MR. JUSTICE FAISAL ARAB
MR. JUSTICE IJAZ UL AHSAN

AFR (D.J)

CIVIL APPEALS NO. 1095-1097, 134-L, 1021-1026, 1138, 1154-1158, 1486 AND 1487 OF 2018

AND

**CIVIL PETITIONS NO. 4475 AND 4476 OF 2018
AND 1362 OF 2019**

AND

**CRIMINAL ORIGINAL PETITIONS NO. 14, 18, 25
AND 26 OF 2019**

AND

**CIVIL REVIEW PETITIONS NO. 16, 17, 20, 37-49,
77, 127-133 OF 2019**

AND

**CIVIL MISCELLANEOUS APPLICATIONS NO. 462,
465, 508, 686, 1085, 1970, 1974, 1976, 1982,
2050, 2619, 2623, 2659, 2660, 2664, 2875 AND
2880 OF 2019, AND 8466 AND 8806 OF 2018**

Mohammad Imran	(in C.A. No.1095/18)
Rehan Ahmed	(in C.A. No.1096/18)
Kiran Nadeem	(in C.A. No.1097/18)
Govt. of the Punjab through its Minister of Education, Lahore, etc.	(in C.A.No.134-L/18)
BPS (Pvt) Ltd. and others	(in C.A. No.1021/18)
Bay View Academy (Pvt) Ltd, Karachi and others	(in C.A. No.1022/18)
Education Systems (Pvt) Ltd, Karachi and others	(in C.A. No.1023/18)
City Schools (Pvt) Ltd, Karachi	(in C.A. No.1024/18)
City Schools (Pvt) Ltd, Karachi	(in C.A. No.1025/18)
Shahrukh Shakeel Khan and others	(in C.A. No.1026/18)
All Private Schools Management and others	(in C.M.A. No.8466/18)
Civilizations (Pvt) Ltd, Karachi and others	(in C.A. No.1138/18)
City Schools (Pvt) Ltd., Karachi	(in C.A. No.1154/18)
City Schools (Pvt) Ltd., Karachi	(in C.A. No.1155/18)
Beacon house School System, Karachi	(in C.A. No.1156/18)

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

Beacon house School System, Karachi	(In C.A. No.1157/18)
Beacon house School System, Karachi	(In C.A. No.1058/18)
City Schools (Pvt) Ltd. through its Regional Director, Karachi	(In C.P. No.4476/18)
Asim Iftikhar Yakub and another	(In C.P. No.4476/18)
Foundation Public School (Pvt) Ltd Karachi and another	(In C.A. No.1486/18)
Origins School through its Partner Nahid Japanwala, Karachi and others	(In C.A. No.1487/18)
Muhammad Umeran Khokhar and others	(In CrI.O.P. No.14/19)
Ali Abbas	(In CrI.O.P. No.18/19)
Muhammad Imran	(In CrI.O.P. No.25/19)
Muhammad Imran	(In CrI.O.P. No.26/19)
Lahore Grammar School (Pvt) Ltd. and others	(In C.R.P. No.16/19)
LACAS (Pvt) Ltd and another	(In C.R.P. No.17/19)
Bay View Academy (Pvt) Ltd. and others	(In C.R.P. No.20/19)
Educational Systems (Pvt) Ltd. Karachi	(In C.R.P. No.37/19)
City Schools (Private) Ltd.	(In C.R.P. No.38/19)
City Schools (Private) Ltd.	(In C.R.P. No.39/19)
City Schools (Private) Ltd.	(In C.R.P. No.40/19)
City Schools (Private) Ltd.	(In C.R.P. No.41/19)
Beacon house School System, Karachi	(In C.R.P. No.42/19)
Beacon house School System, Karachi	(In C.R.P. No.43/19)
Beacon house School System, Karachi	(In C.R.P. No.44/19)
Foundation Public School (Pvt) Ltd Karachi and another	(In C.R.P. No.45/19)
City Schools (Private) Ltd.	(In C.R.P. No.46/19)
Mr. Asim Iftikhar Yakub and another	(In C.R.P. No.47/19)
City Schools (Private) Ltd.	(In C.R.P. No.48/19)
Education Services (Pvt) Ltd, Lahore and others	(In C.R.P. No.49/19)
Origins School thr. its Partner and others	(In C.R.P. No.77/19)
Lahore Grammer School (Pvt) Ltd and others	(In C.M.A. No.462/19)
LACAS (Pvt) Ltd and others	(In C.M.A. No.465/19)
Alliance Resource (Pvt) Ltd.	(In C.M.A. No.508/19)
Salamat School System (Pvt) Ltd, Lahore	(In C.M.A. No.686/19)
Lahore Grammer School (Pvt) Ltd and others	(In C.M.A. No.1085/19)
All Private Schools Management and others	(In C.M.A. No.8806/19)
City Schools (Private) Ltd.	(In C.R.P. No.127/19)
City Schools (Private) Ltd.	(In C.R.P. No.128/19)
Educational Systems (Pvt) Ltd.	(In C.R.P. No.129/19)
City Schools (Private) Ltd.	(In C.R.P. No.130/19)
City Schools (Private) Ltd.	(In C.R.P. No.131/19)
City Schools (Private) Ltd.	(In C.R.P. No.132/19)
City Schools (Private) Ltd.	(In C.R.P. No.133/19)
Alliance Resources (Pvt) Ltd.	(In C.M.A. No.1970/19)
Headstart School (Pvt) Ltd.	(In C.M.A. No.1974/19)
Al-Huda International Welfare Foundation	(In C.M.A. No.1976/19)
EPIC Islamic School and others	(In C.M.A. No.1982/19)
Salamat School System (Pvt) Ltd.	(In C.M.A. No.2050/19)
Origins School and others	(In C.M.A. No.2623/19)
Foundation Public School (Pvt) Ltd and another	(In C.M.A. No.2619/19)
Froebel's (Pvt) Ltd. and another	(In C.P. No.1362/19)

...Appellant(s)/Applicant(s)/Petitioner(s)

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

versus

Province of Sindh through Chief Secretary
and others
The City School (Pvt) Ltd. etc.
The Province of Sindh through Secretary
Education/Law and Parliamentary Affairs, Sindh
The Province of Sindh through the Secretary,
Education and Literacy, Karachi and others
Taymur Mirza
Major Noman Khan
Dr. Farzana Feroz
Kasim Kasuri
Govt. of the Punjab thr. its Minister of Education,
Lahore and others
Muhammad Imran and others

(In C.A. No.1095/18, etc.)

(In C.A. No.134-L/18)

(In C.A. No.1021/18)

(In C.A. No.1022/18, etc.)

(In CrI.O.P. No.14/19)

(In CrI.O.P. No.18/19)

(In CrI.O.P. No.25/19)

(In CrI.O.P. No.26/19)

(In C.R.P. No.16/19, etc.)

(In C.M.As. No.1974 &
1976/19)

...Respondent(s)

In attendance:

Mr. Shahid Hamid, Sr. ASC
Mr. Makhdoom Ali Khan, Sr. ASC
Mr. Faisal Siddiqui, ASC
Mr. Aftab Alam Yasir, ASC
Mr. Hassan Nawaz Makhdoom, ASC
Mr. Hamid Ali Shah, ASC
Mr. Muhammad Ali Raza, ASC
Ms. Ayesha Hamid, ASC
Ms. Shireen Imran, ASC
Mr. Rashid Mehmood Sindhu, ASC
Syed Faisal Hussain Naqvi, ASC
Mr. Shahzad Ata Elahi, ASC
Mr. Salim-ur-Rehman, ASC
Mr. Muhammad Ikram Ch., ASC
Mr. Fauzi Zafar, ASC
Mr. Taffazul Haider Rizvi, ASC
Mr. Khurram Mumtaz, ASC
Sardar Muhammad Ajaz Khan, ASC
Mr. Zaheer Bashir Ansari, ASC
Mr. Sharjeel Adnan Sheikh, ASC
Mr. Abid Hussain Chatta, ASC
Barrister Haroon Mumtaz, ASC
Mr. Mudassar Khalid Abbasi, ASC
Khawaja Ahmad Hosain, ASC
Mr. Rashid Hanif, ASC
Mr. Muhammad Imtiaz Khan, ASC
Mr. Ejaz Mehmood Ch. ASC
Mr. Maqbool Ahmed Sheikh, ASC
Mr. Iqbal Javed Dhallon, ASC
Mr. Riasat Ali Gondal, ASC
Barrister Suleman Akram Raja, ASC
Mr. Muhammad Azhar Siddique, ASC
Ch. Hafeez Ullah Yaqoob, ASC
Mr. Mehr Khan Malik, AOR
Mr. Muhammad Sharif Janjua, AOR
Mr. Muhammad Kassim Mirjat, AOR

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

Mr. Ahmed Nawaz Ch., AOR
Mr. Aman Naseer, Advocate
Rana Shamshad Khan, Additional Advocate-
General, Punjab
Abdul Latif Khan Yousafzai, Advocate-General,
Khyber Pakhtunkhwa
Barrister Qasim Wadud, Additional Advocate-
General, Khyber Pakhtunkhwa
Mr. Salman Talib-ud-Din, Advocate-General,
Sindh
Barrister Shabbir Shah, Additional Advocate-
General, Sindh
Mr. Sajid Ilyas Bhatti, Deputy Attorney-General
for Pakistan
Mr. Arbab Tahir Kasi, Advocate-General,
Balochistan
Mr. Muhammad Ayaz Khan Swati, Additional
Advocate-General, Balochistan
Mr. Tariq Mehmood Jehangiri, Advocate-
General, Islamabad
Barrister Qasim Chohan, Additional Advocate-
General, Punjab
Mr. Zahid Yousaf Qureshi, Additional Advocate-
General, Khyber Pakhtunkhwa
Mr. Ahmed Hussain Rana, in person
Mr. Jessam Ubaid, in person.
Mr. Muhammad Javed Chohan, Law Officer
(ED), Government of Punjab
Qazi Shahid Pervez, Secretary Schools, Sindh
Mr. Humayun Akhtar Sahi, Law Officer, Punjab
Mr. Imtiaz Ali Qureshi, Chairman PEIRA
Mr. Zubair Khan Shahid, D.S. Education,
Lahore
Mr. Muhammad Ikram Abbasi, L.O.
Dr. Mansoob Hussain Siddiqui, D.G. Private
Schools, Government of Sindh
M/s Muhammad Tajasib Minhas and Umair
Ahmed, representative of parents of the students
from Lahore
Mr. Athar Hussain, father of a student,
Islamabad

Date of Hearing: 09.05.2019

ORDER

IJAZ UL AHSAN, J.- For the reasons to be recorded
later, the instant matters are decided as follows:-

- i. Civil Appeal No. 134-L/2018 is allowed and the
judgment of the learned Division Bench of the Lahore
High Court, Lahore in Writ Petition No. 29724/2015
delivered on 05.04.2018 titled *City School Private*

ATTESTED

Court Associate
Supreme Court of Pakistan

Limited v Government of the Punjab and others (PLD 2018 Lahore 509) is set aside;

- ii. Civil Appeals No.1021 to 1026 and 1095 to 1097/2018 are allowed and the judgment of the learned Division Bench of the High Court of Sindh, Karachi in Constitution Petition No. D-5812/2015, etc. delivered on 05.03.2018 titled *Shahrukh Shakeel Khan and 2 others v Province of Sindh through Chief Secretary, Government of Sindh and 4 others* (PLD 2018 Sindh 498) to the extent of declaring Rule 7-A of the Sindh Private Educational Institutions (Regulation and Control) Rules, 2005 ("Rules of 2005") is set aside. The said judgment in so far as it declares Rule 10 of the Rules of 2005 as *intra vires* is upheld;
- iii. Civil Miscellaneous Application No. 8466/2018 and Civil Appeals No. 1138, 1154 to 1158, 1486 and 1487/2018 are dismissed and the judgment of the learned Full Bench of the High Court of Sindh, Karachi in Constitution Petition No. D-6274/2017 etc., delivered on 03.09.2018 titled *Bushra Jabeen and 367 others v Province of Sindh through Chief Secretary and others* (2018 MLD 2007) is affirmed and upheld; and
- iv. Civil Petitions No. 4475 and 4476/2018 filed against the order dated 19.11.2018 passed in Civil Miscellaneous Application No. 33322/2018 in Constitution Petition No. D-6274/2017, etc. are dismissed as having been rendered infructuous.

2. It is unanimously held and declared that Section 7-A of the Punjab Private Educational Institutions (Promotion and Regulation) Ordinance, 1984, as amended by the Punjab Private Educational Institutions (Promotion and Regulation) (Amendment) Act, 2017 is *intra vires* the Constitution of the Islamic Republic of

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

Pakistan, 1973 ("the Constitution") and does not violate Articles 18, 23, 24 or 25-A thereof.

3. It is unanimously held and declared that Rule 10 of the Rules of 2005 is *intra vires* the statute, i.e. Sindh Private Education Institutions (Regulation and Control) Ordinance, 2001, and the Constitution.

4. With a majority of two against one, we are not persuaded to interfere with Rule 7(3) of the Rules of 2005, with Faisal Arab, J. expressing the view that the restriction imposed by Rule 7(3) *ibid* is unreasonable and hence invalid.

5. Upon decision of the main appeals in the terms noted above, all interim orders passed during the pendency of the appeals (including the order dated 13.12.2018 passed in Civil Appeal No. 1095/2018 regarding reduction of fees by 20% as an interim measure) have ceased to be effective, subject to recalculation of fee by using the fee prevailing in 2017 as the base fee, in accordance with the provision(s) of the Punjab Private Educational Institutions (Promotion and Regulation) (Amendment) Act, 2017 and onwards, for the Province of Punjab. For the Province of Sindh, fees may be recalculated using the fee prevailing on 29.06.2017 as the base fee and onwards, in accordance with the Rules of 2005 (gazetted on 29.06.2017). Provided that the schools shall not recover any arrears on account of the reduction in fee by reason of the interim order of this Court dated 13.12.2018 till the date of this judgment. Therefore, all the review petitions filed against the said interim order are disposed of in these terms. In view of the fact that these appeals/petitions are being finally decided, all criminal original petitions and civil miscellaneous applications are disposed of.

6. It is further directed that all schools shall collect the fee, strictly in accordance with the procedure and timeframe provided by the law, the rules and regulations including, but not limited to the Punjab Private Educational

ATTESTED
Court Asst. Secy
Supreme Court of Pakistan

Institutions (Promotion and Regulation) Ordinance, 1984, as amended by the Punjab Private Education Institutions (Promotion and Regulation) (Amendment) Act, 2017 and the Rules of 2005.

Chief Justice Asif Saeed Khan Khosa,

CHIEF JUSTICE

I consider Rule 7 (3) of Rules of 2005 to be an unreasonable restriction and in this regard have appended my separate note herewith.

Chief Justice Asif Saeed Khan Khosa,

Judge Fayaz Ahmad,

JUDGE



Announced in open Court
On 12.06.2019 at Islamabad
Not approved for reporting
ZR/*

Judge Fayaz Ahmad,

JUDGE

Certified to be True Copy

13688/19

GR No: _____ Civil/Criminal
Date of Presentation: 12.6.19
No of Words: _____
No of Folios: 48
Requisition Fee Rs: 82
Copy Fee in: 82
Court Fee Stamps: 82
Date of Completion of Copy: 13/6/19
Date of delivery of Copy: 15/6/19
Compared by/Prepared by: Fayaz Ahmad
Received by: _____

Court Associate
Supreme Court of Pakistan
Islamabad

Faisal Arab, J.- After agreeing with Hon'ble Chief Justice and Ijaz ul Ahsan, J on the validity of Section 7A of Punjab Private Educational Institutions (Promotion and Regulation) Ordinance, 1984, which allows 8% increase in tuition fee in an academic year, I respectfully differ on the reasonableness of Rule 7(3) of Sindh Private Educational Institutions (Regulations and Control) Rules, 2005 and wish to record my own opinion.

2. The parents of students coming from the whole range of middle class families approached the Courts, not because they wanted to challenge the tuition fee which the schools charged at the time of taking admissions but what agitated them was the periodical increases made in the tuition fees which proved to be an enormous burden on their purses. Hence a substantial raise in fees in comparison to the existing fees stirred agitation amongst the parents who invoked Rule 7(3) of the Sindh Private Educational Institutions (Regulations and Control) Rules, 2005 in Sindh and Section 7A of the Punjab Private Educational Institutions (Promotion and Regulation) Ordinance, 1984 in Punjab in order to seek reduction.

3. Section 15 of the Sindh Private Educational Institutions (Regulations and Control) Ordinance, 2001 gives rule making power to the provincial government, which *inter alia* states that rules shall provide for fixation of tuition fees and other sums to be realized from the students. Pursuant to this rule making power, the Sindh Private Educational Institutions (Regulations and Control) Rules, 2005 were framed. Rule 7 (2) and (3) provides that fee in an academic year can be increased only upto 5% subject to establishing proper justification before the Registering Authority. Hence while providing room for periodical increases, a cap of 5% was imposed which was given primacy over any reason that may justify raise in the tuition fees beyond such limit. It is because of this primacy that the private schools felt that this rule imposes unreasonable restriction as schools with such limited room for

ATTESTED

Court Associate

seeking increase in fees would not be able to cope with the corresponding increase in the cost of running of the schools which in turn would eventually put them out of business. Thus the case of the Schools is that the cap of 5% was arbitrarily determined by the functionaries of the government which militates against the freedom of doing business guaranteed under Article 18 of the Constitution.

4. In the last thirty years or so we have witnessed mushroom growth of educational institutions in the private sector as dependence of parents for educating their children in such institutions has grown phenomenally. This dependence is on account of pathetic quality of education in the government education system. Many government schools do not have proper buildings. Where there was once a proper running school building now it is in shambles. Most of the schools are without teachers and where there are any, they don't take classes, remain mostly absent yet get paid from the exchequer. Most of the teachers do not even have requisite skills in the subjects which they teach though they on paper can demonstrate to be qualified teachers. Even where these teachers attend schools there is either no or little furniture and that too appears to be falling apart what to speak of other necessary facilities which the government has prescribed in the rules for private educational institutions. Thus on account of lack of capable and efficient teachers as well as lack of necessary facilities, many middle and lower middle class families, who a few decades ago used to send their children only to government schools, have utterly lost faith in the public education system. These families in their desire for better education for their children, have started seeking admissions in private schools where not very long ago only upper middle and rich class families used to send their children. This has resulted in prenominal growth of private schools. Now more than 50% of students as per some statistics study in private schools where the level of education as compared to government schools is quite high. The students qualified from private schools have qualitative edge over the students who pass

AD

ATTESTED

Court Associate
Supreme Court of Pakistan

out from government schools. An overwhelming number of teachers who teach in private school have themselves studied in private schools. They by far excel in their teaching skills than most of the teachers of government schools. Today one can notice the difference between those students who have studied in private schools and those in the government schools. That is the reason the students who complete their education from private education institutions get admissions in renowned universities abroad and capture a very big chunk of the job market and easily secure higher executive positions than those who are being churned out from government schools. It is for this reason that regardless of the cost, parents from the middle and lower middle class families are sending their children to private schools even though it has impacted their budget severely. Much of the blame for such burden is attributable to the government which has failed in running public education system successfully. This is also one of the reasons that the literacy rate of the country, which was 60% a few years ago, has now declined to 58% and is likely to decline further thanks to the government's education policies which have proved to be worthless.

5. In the past few decades, we have seen that quite a few private school systems have earned a name, goodwill and reputation of imparting good quality education. The only alternative to such schools is to send children abroad for education, which costs much more than what these schools charge. Some of these schools with the quality of teaching faculty and facilities at their campuses charge handsome fees which only the affluent class can afford. These private schools can be classified as first tier schools. Application of Rule 7(3) on such schools would certainly have the effect of subsidizing the rich of the society. As for the children of upper middle and middle class families there are private schools which can be classified as second tier schools. Many of these schools also impart good quality education. Their tuition fees are comparatively affordable, however, for middle class families who send their children to these schools,

[Handwritten signature]

ATTESTED

[Handwritten signature]
Court Associate
Supreme Court of Pakistan
Islamabad

their budget gets affected when the tuition fee is raised phenomenally in an academic year. Then there are private schools that can be classified as third tier schools where only lower middle class families send their children. The education level of these schools is much better than most of the present day government schools. Hence private schools can be classified in three tiers that charge tuition fee ranging from Rs.1,000 to Rs.60,000 per month or thereabouts.

6. The value of professional service in a particular field cannot be measured and priced in the same manner as the value of an essential edible item such as milk and flour are measured while fixing their prices under price control laws. The worth and value of any essential food item remains the same regardless of the fact as to who is selling or buying it. In contrast to this, there is a whole spectrum in which worth of professional service in a particular field can be evaluated and priced. It varies from person to person or institution to institution which dispenses it. It would be very harsh to evaluate professional services through a mechanism that does not fully take into consideration ground realities. The only object of the laws in question should be to check profiteering after students are admitted in schools. But when the fee of any particular service is regulated in a manner that has the potential of gradually eating-up legitimate margin of profit, it makes businesses compromise on their quality lest they would run into losses which in turn lead to layoffs or their eventual closure. For businesses such a regulation can prove to be worse than imposing heavy tax on income as atleast in that eventuality the burden of tax would be conditional upon making profits not otherwise. In the past we have experienced the negative impact of regulating the industrial sector of our country as the Board of Investment retained unbridled power to decide which industrial unit in private sector should be allowed to be set-up and which not. Such strict regulation had proved to be a discouragement to investment that retarded the industrial growth of the country. Any regulation that acts as a discouragement in making investment in

ACCEPTED

Court Associate
Supreme Court of Pakistan
Islamabad

any trade, business or industry, which is otherwise permissible in law, violates the freedom guaranteed under Article 18 of the Constitution.

7. The justification to raise school fee mainly depends upon two key factors i.e. rise in the cost of running a school on account of diminution in the value of Rupee and additional facilities made available by schools to the students as compared to the last academic year. There is a strong possibility that on account of 5% cap arbitrarily determined, many of the private schools in Sindh at a certain point in time may not be able to fully absorb the increase in the cost of running a school or the cost of the facilities provided to the students. As a consequence thereof the much needed growth of private schools is certainly going to be retarded. If that happens then it is very likely that private sector would be discouraged to fill the vacuum in Sindh left by government educational institutions. The existing private schools may start closing down or the number of their branches may dwindle which in turn would make it very difficult to cope with the ever increasing demand for good quality educational institutions, the only alternative to government's dismal education system in the present times. Encouragement of investment in private sector has its own positive effects as it induces competition that in turn reduces margin of profit. Through growth of private schools, quality education has become more accessible. In the present case no one has argued that any cartel exists that does not leave much choice with the parents but to admit their children in a particular set of school systems only. So there exists no monopoly in the fixation of tuition fees, except that based on reputation and goodwill some of the schools charge hefty fees.

8. On one of the dates of hearing of this case Mr. Muhammad Tajassir Minhas and Mr. Umair Ahmad who sent their children to private schools of Punjab were present in court. At their request this court allowed them to place their point of view in their

ATTESTED

B

Court Associate
Supreme Court of Pakistan

capacity as representatives of parents. They expressed their full satisfaction on the increase in the tuition fee in an academic year to the extent of 8% as provided in Section 7A of Punjab Private Educational Institutions (Promotion and Regulation) Ordinance, 1984. So let's apply the 8% increase formula as an example in a given case. When tuition fee of a student is taken to be Rs.15,000/- per month at the time of admission, the total increase at a compound rate 8% for a five year period would result in an overall increase of Rs.5,308/- only i.e. from Rs.15,000/- per month fee payable in the first year the increase in the fifth year would take the fee to Rs.20,308/- per month. This 8% raise in every academic year is atleast much closer to setting-off the diminution in the purchasing power of Rupee that normally takes place in a span of five year period. Limiting the raise to 5% only under Rule 7(3) would be too harsh a financial restriction. as it does not fully take care of the cost of running a school in comparison to the cost of its previous academic year. This is evident from the value which the Rupee has consistently been shedding in any five year period. Looking from that angle too, the arbitrarily determined cap of 5% imposed under Rule 7 (3) would certainly act as an unreasonable restriction on carrying on a lawful business.

9. The negative impact of Rule 7(3) does not stop here as it further requires that no raise in fee can be made unless Registering Authority first grants its approval. In this context it is important to note that there are said to be 17,000 private schools in Sindh and in order to seek any increase in tuition fee, each school has to apply to the Registering Authority which may take considerable period of time to process thousands of applications, that may leave a huge number of applications pending to be processed in the next academic year. Notwithstanding such pendency thousands of fresh applications in the next academic year are bound to pour in making it further difficult to timely process all applications. This inbuilt cumbersome process to seek increase in tuition fee under Rule 7(3) also amounts to unreasonable restriction.

ATTESTED

Court Associate
Supreme Court of Pakistan

- 14 - 7

10. No one can claim any right in any concession or exemption that is often granted in a statute like tax laws. But to allow increase in tuition fee is not something that is to be equated with some concession or benefit granted by the state as it is mainly intended to compensate for the diminution in the purchasing power of Rupee. In other words, revision in tuition fee should be solely intended to meet the ever increasing cost of running of a school and at the same time persevering reasonable margin of profit. Parents send their children to a particular school with the intention that they would complete their studies in a period which span over a number of years and it is neither convenient nor good for the student to change schools after every year or two. So once a student after his admission is committed to study for several years in a particular school, the only consideration for incorporating Rule 7(3) in Sindh Private Educational Institutions (Regulations and Control) Rules, 2005 ought to have been to compensate for diminution in the value of Rupee, provision of additional facilities for the students and to prevent profiteering while preserving reasonable margin of profit. However, where this rule, which is a product of delegated legislation, fails in fully taking into account these factors and is also cumbersome in its application, as it requires processing of thousands of applications each year by the Registering Authority in order to allow any increase in tuition fee in any academic year, no matter how insignificant it may be then it can be termed as unreasonable restriction being a discouragement to run a lawful business. In connected cases coming from the Province of Punjab, 8% increase in an academic year has already been validated. In my view that limit too should be made enforceable without recourse to Registering Authority. Raising the cap under Rule 7(3) to 8% would also create uniformity in its application in the provinces of Sindh and Punjab where overwhelming majority of children of this country get education. This uniformity is also a necessity as the private schools, whether in Punjab or Sindh, are subject to income tax on their profits at the same rate and the diminution in the value of Rupee affects the

ATTESTED

**Court Associate
Supreme Court of Pakistan
Islamabad**

entire country equally being the common legal tender. Keeping all these considerations in mind, arbitrary cap of 5% can be raised to the level of 8% which looks much closer to ground reality i.e. having the effect of offsetting the depreciation in the value of Rupee to a greater extent which was also acceptable to the parents of the children of Punjab. In this regard reliance is placed on the case of Ahmed Hassan Vs. Government of Punjab (PLD 2004 SC 694) where it has been held that where a Rule has the effect of being an unreasonable restriction, it can be struck down. Raising the cap of 5% provided in Rule 7(3) to an automatic increase upto 8% in an academic year would bring it within the limits of reasonableness and should be so read with effect from the year in which the controversy in the present proceedings first started.

11. In view of what has been discussed above the arbitrarily determined cap of 5% imposed under Rule 7 (3) and the manner by which it is to be enforced is an unreasonable restriction on carrying on a lawful business. Increase upto 8% in an academic year without recourse to Registering Authority would be closer to the ground realities and at the same time save the department and the schools much of the inconvenience in the periodical revision of tuition fees. The Government of Sindh is directed to amend Rule 7(3) accordingly within a period of two months.

12. Civil Appeal Nos. 1095 to 1097, 1021 to 1026, 1138, 1154 to 1158, 1486, 1487 of 2018, Civil Petition Nos. 4475 & 4476 of 2018 stand disposed of in the above terms along with all pending Review Petitions/CMAs.

Prof. Jaisal Arora

(JUDGE)

Announced on 12.06.2019 at Islamabad.

Approved For Reporting

and
13/6/19

ATTESTED

[Signature]
Court Associate
Supreme Court of Pakistan
Islamabad