

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPPIL No. 48 of 2015

- Meherban Singh S/o Shri Darshan Singh, Aged About 44 Years R/o Raipur Naka, Sindhi Colony, Quarter No. 22, P.S. Durg, Tehsil Durg, District Durg Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh Through Its Secretary, School Education Department, Mantralaya, Naya Raipur, District Raipur Chhattisgarh
2. Director, Public Education, Directorate, Raipur Chhattisgarh
3. District Collector, Durg, District Durg Chhattisgarh
4. District Education Officer Durg, District Durg Chhattisgarh
5. Krishna Public School, Bhilai, through its Principal Nehru Nagar, Bhilai, District Durg Chhattisgarh
6. M.G.M. School, Bhilai, Through its Principal Sector 6, Bhilai, District Durg Chhattisgarh

----- Respondents

For Petitioner	: Shri Ashish Bech, Advocate
For Respondents- 1 to 4/State	: Shri YS Thakur, Additional Advocate General
For Respondent- 5	: Shri Manoj Paranjpe, Advocate
For Respondent- 6	: Dr NK Shukla, Senior Advocate with Shri Shailendra Shukla, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Justice Sharad Kumar Gupta

Order on Board

Per Thottathil B. Radhakrishnan, Chief Justice

14.09.2017

- 1) Heard learned counsel for the parties.
- 2) This matter which stands tagged along with the bunch matter is segregated at the request of the learned counsel for the petitioner who points out that the only issue that would be relevant in this case is confined to further action due under Section 13 of the Right of Children to Free and Compulsory Education Act, 2009,

hereinafter called 'the Act', in relation to respondents- 5 and 6 which are unaided schools which fall under Section 2(n)(iv) of the Act.

- 3) Section 13 of Act provides a prohibition that no school, meaning thereby any of the schools which fall under the different categories in Section 2(n), or person, shall, while admitting a child, collect any capitation fee or subject the child or their parents or guardian to any screening procedure. Section 13(2) of the Act provides for the penalty by way of punishment that could be imposed for contravention of the provisions contained in Section 13(1) of the Act. They get classified into two categories. The first category, dealt with in clause (a) of that subsection, relates to receiving capitation fee. That is punishable with fine which may extend to 10 times the capitation fee charged. Proceedings were initiated to impose the penalty referable to Section 13(2)(a) of the Act. The respondents- 5 and 6 sought redressal from this Court. Noticing that penalties were proposed to be imposed without any show cause notice, this Court intervened. This obviously means that if there is any proposal to impose penalty in terms of Section 13(2) of the Act on the cause of action referable to such earlier proceedings, that is to be carried forward only in accordance with law. Section 13 or other provisions of the Act do not provide for any procedure to be carried while imposing any penalty in terms of Section 13(2) of the Act. The Right of Children to Free and Compulsory Education Rules, 2010 also do not provide any such procedure. We also see that barring the sweeping rule making authority which may be available in Section

38(1) of the Act, the particular rule making powers which are enumerated in Section 38 (2) of the Act, notwithstanding the generality of the power traceable to Section 38(1) of the Act, do not include the power to make any rule referable to Section 13 while Clauses (d) and (e) of Section 38(2) refer to the rule making authority as may be relevant for Sections 12 and 14. This obviously means that in accordance with any imposition of a punishment by way of penalty under Section 13(2) of the Act will have to be only in accordance with due and lawful procedure as enjoined by the laws. We therefore direct the official respondents to consider whether further action is to be carried forward notwithstanding the judgments through which this Court had intervened and quashed the earlier proceedings. We leave it to the wisdom of the jurisdictional officers in governance to decide the course of action to be followed. This writ petition is ordered accordingly.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge