

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WPS No. 1305 of 2015**

- Shikshak Sangh Nagar Palika Nigam Raipur A Society Duly Registered Under The Provisions Of The Chhattisgarh Society Registrikaran Adhiniyam, 1973, Having Its Office At Govt. Primary School Maharana Pratap, Nayapara, Raipur, District Raipur, Through Its Secretary Shri Pradeep Chandra Bhoi.

**---- Petitioners**

**Versus**

1. State Of Chhattisgarh, Through The Secretary, Department Of Urban Administration And Development, Mahanadi Bhawan, Mantralaya, Naya Raipur, Mandir Hasod, District Raipur Chhattisgarh
2. Department Of School Education, Through The Secretary, Mahanadi Bhawan, Mantralaya, Naya Raipur, Mandir Hasod, District Raipur Chhattisgarh
3. Department Of General Administration, Through The Secretary, Mahanadi Bhawan, Mantralaya, Naya Raipur, Mandir Hasod, District Raipur Chhattisgarh
4. Municipal Corporation, Raipur, Through Its Commissioner, Raipur, District Raipur Chhattisgarh

**---- Respondents**

**WPS No. 1498 of 2015**

- Patelram Rajwade S/o . Shivratan Ram Aged About 46 Years R/o. Katkalo, Post Karji, Police Station Darima, Tahsil Ambikapur, Civil And Revenue District Surguja Chhattisgarh, Chhattisgarh

**---- Petitioner**

**Versus**

1. State Of Chhattisgarh, Through Secretary, Tribal Welfare Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur Chhattisgarh
2. Secretary, General Administration Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur Chhattisgarh
3. Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur Chhattisgarh
4. Commissioner, Tribal Welfare, Raipur, Civil And Revenue District Raipur Chhattisgarh

**---- Respondents**

**WPS No. 1509 of 2015**

1. Ashok Kumar Rajwade, S/o Gurmairam Aged About 35 Years R/o. Ambikapur, Police Station And Post Ambikapur, Civil And Revenue District Surguja Chhattisgarh
2. Banteshwar Ram S/o Jeevnath Ram Aged About 40 Years R/o. Chhetabahr, Chhuripara, Police Station And Post Bhatthikala, Ambikapur, Civil And Revenue District Surguja Chhattisgarh

**---- Petitioners**

**Versus**

1. State Of Chhattisgarh, Through Secretary, Tribal Welfare Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur Chhattisgarh
2. Secretary, General Administration Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur Chhattisgarh
3. Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur Chhattisgarh
4. Commissioner, Tribal Welfare, Raipur, Civil And Revenue District Raipur Chhattisgarh

**---- Respondents**

**WPS No. 1512 of 2015**

1. Pramod Gupta, Sushil Gupta Aged About 50 Years R/o. Devi Ganj Road, Ambikapur, Police Station And Post Ambikapur, Civil And Revenue District Surguja Chhattisgarh.
2. Gautam Kumar S/o . Goverdhan Ram Aged About 24 Years R/o. Near Mission Hospital Ambikapur, Police Station And Post Ambikapur, Civil And Revenue District Surguja Chhattisgarh

**---- Petitioners**

**Versus**

1. State Of Chhattisgarh, Through Secretary, Tribal Welfare Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur Chhattisgarh

2. Secretary, General Administration Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur Chhattisgarh
3. Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur Chhattisgarh
4. Commissioner, Tribal Welfare, Raipur, Civil And Revenue District Raipur Chhattisgarh

**---- Respondents**

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|------------------------------|----------------------------------------------------|
| For respective Petitioners : | Shri Amrito Das and Shri Manoj Paranjpe, Advocates |
| For Respondents/State :      | Smt. Fouzia Mirza, Additional Advocate General     |
| For Caveator :               | Shri Kashif Shakeel, Advocate                      |

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**Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**

**Hon'ble Shri Parth Prateem Sahu, Judge**

**Order on Board**

**Per, Ajay Kumar Tripathi, Chief Justice**

**04.02.2019**

1. A batch of four writ applications came to be filed when vide office order dated 10.03.2015 the General Administration Department, Government of Chhattisgarh took over the administration of Primary to Higher Secondary Schools under the control of the Municipal Corporations of the State of Chhattisgarh as well as treated all such teachers of such schools to be on deputation to the Education Department of the State. The office order also applied to teachers and employees working in Scheduled Caste and Scheduled Tribe Schools under the control of Tribal Welfare Department.
2. The submission on behalf of the counsel for the Petitioners is that the office order dated 10.03.2015, Annexure P/1, is not only in the teeth of the 74<sup>th</sup> Constitutional Amendment Act, 1992 as also the corresponding legislation or Rules which have been made in furtherance to the working of the said Constitutional Amendment relating to municipalities as well as the Rules which have been framed under Article 309 of the Constitution of India with

regard to the Educational Institutions, especially, run for the benefit of Scheduled Caste or Scheduled Tribe students under Tribal Welfare Department.

3. Learned Additional Advocate General has been confronted with the legal proposition as to how by virtue of an office order, either the Municipal Corporation or the Department of Tribal Welfare could be divested of their powers of control as well as administration of such Educational Institutions. She tries to defend the decision on the ground that the object behind issuance of office order was to bringing about uniformity in standards, better administration and control of such educational institutions under one department. Effort was also made to justify such a decision in terms of the provision of Section 68 of what is known as Chhattisgarh Municipal Corporation Act, 1956.
4. The question is not the object and purpose for which such an office order came to be issued. We are not doubting the *bona fide* behind the intendment of the State Government or the need for having a unified administrative control over such educational institutions. It is the manner in which it has been done.
5. The core question however which arises for consideration and has been raised in the batch of writ applications is whether such object can be achieved by issuance of an office order which has many implications without bringing about corresponding changes either in the Act governing the Municipal Corporations or the Rules which are in place under Article 309 of the Constitution of India in relation to teachers, who are working in the Scheduled Caste and Scheduled Tribe Schools.

6. We are of the firm opinion that enactments cannot be modified or be replaced by an office order and therefore, the Office order dated 10.03.2015 is vulnerable and has to be struck down.
7. The alternative argument on behalf of the State that Annexure P/1 may be treated as a notification under Article 166 of the Constitution of India also does not satisfy the test on us because the same has not been expressed in the name of the Governor, but has been issued by a Special Secretary of the General Administration Department.
8. The alternative argument also does not meet the requirements as such because without appropriate amendments in the statutes, such vital decisions cannot be brought about or implemented or enforced against such persons having serious implications by an office order.
9. Writ applications stand allowed. The impugned Annexure P/1 dated 10.03.2015 issued by the General Administration Department stands quashed. If the State still wants do so, they must bring about suitable amendments in the statutes.

Sd/-  
**(Ajay Kumar Tripathi)**  
**Chief Justice**

Sd/-  
**(Parth Prateem Sahu)**  
**Judge**