

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (C) No. 1837 of 2017

Loyola School, Through its Principal, Rajiv Vihar, SECL Post, Bilaspur, Bilaspur District, Chhattisgarh.

---Petitioner(s)

Versus

1. State of Chhattisgarh Through Secretary, School Education Department, Secretariat, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh.
2. The District Education Officer, Bilaspur, Chhattisgarh.

---Respondents

Writ Petition (C) No. 1797 of 2017

St. Francis Higher Secondary School through its Principal, Ameri Road, Bilaspur, District Bilaspur, Chhattisgarh.

---Petitioner(s)

Versus

1. State of Chhattisgarh Through Secretary, School Education Department, Secretariat, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh.
2. The District Education Officer, Bilaspur, Chhattisgarh.

---Respondents

For Petitioner	:	Shri KR Nair and Ms. Veena Nair, Advocates.
For State	:	Shri Ayaz Naved, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

16.03.2020

1. Since the issue involved and the facts being identical, these two writ petition are being disposed of by this common order.
2. Both the writ petitions have been filed challenging the order dated 21.06.2017 (Annexure P/1). Vide the said impugned order, the District Education Officer, Bilaspur has invoking the provisions of Sub-section 5 of Section 18 of the Right of Children to Free and Compulsory Education Act, 2009 (in short, the Act, 2009) imposed a fine of rupees one Lakh to each of the petitioners. The imposition of fine was on two grounds; firstly, on the ground of the petitioners establishment enhancing fees for the students studying in the respective schools without the permission from the District

Education Officer, Bilaspur and the second ground for which the penalty was imposed is that the Schools were being run without recognition from the District Education Officer concerned.

- 3.** At the outset, the contention of the counsel for the petitioners is that the provisions of the Act, 2009 itself is not applicable upon the petitioners on the ground that the petitioners establishment is a minority educational institution which stands exempted from the applicability of the provisions of the Act, 2009. He further submits that once when the order itself was not applicable then the whole proceedings drawn by the respondents, more particularly the order impugned in both the writ petitions is not sustainable and is void-ab-initio and deserves to be set aside/quashed.
- 4.** The State counsel on the other hand submits that the provisions of the Act, 2009 would be applicable upon all the educational institutions in the State, irrespective of its nature whether it is a minority institution or not. Referring to the objects and intention of the Act, 2009, the counsel for the State submits that considering the object for which the Act, 2009 was enacted and for proper implementation of the provisions of the said Act, the impugned order has been passed. Further referring to the impugned notice he submits that in both the writ petitions the apparent illegality on the part of the petitioners establishment was the enhancement of the fees without permission or approval of the District Education Officer and also at the same time not obtaining the recognition from the District Education Officer so far as the petitioner schools are concerned. Therefore, under the provisions of Sub-section 5 of Section 18 of the Act, 2009, the action on the part of the respondents is justified and does not warrant any interference.

5. The State counsel further submits that the status of the petitioners establishment being a minority educational institution is also doubted. According to him, the petitioners establishment has to be minority educational institution as is envisaged under Article 30 of the Constitution of India, in the absence of which, the impugned order does not warrant any interference.
6. Further the contention of the State is that, since the petitioners establishment are imparting secular education and is not in any manner imparting religious teaching, the petitioners may not get the protection as is otherwise provided under Article 30 of the Constitution.
7. Having heard the submissions advanced on either side, it would be relevant at this juncture to refer to the certificate issued in this regard by the Government of India, National Commission for Minority Educational Institutions. The certificate issued to both these establishments are verbatim same. It would be relevant at this juncture to take note of the fact that the said Commission has issued a certificate to both the petitioners establishment vide their certificate dated 31.05.2016 and 10.09.2007 respectively which have been enclosed along with the two writ petitions as Annexure P/2. In both the certificates, it has been specifically certified that the petitioners establishment are declared as Minority Institutions under Article 30 of the Constitution of India and also as per Section 2(g) of the National Commission for Minority Educational Institutions Act, 2004.
8. Given the said certificate issued by the said Commission for both the writ petitioners, this court has no hesitation in holding that the two establishments in the two writ petitions before this court are minority

educational institutions covered under Article 30 of the Constitution of India.

9. At this juncture, it would be relevant also to take note of the Constitutional Bench judgment of the Supreme Court in case of *Pramati Educational and Cultural Trust (Registered) and Others Vs. Union of India & Others*, 2014(8)SCC-1, wherein dealing with this aspect, the Supreme Court in paragraphs 55 and 56 held as under :

“55. When we look at the 2009 Act, we find that Section 12(1) (b) read with Section 2(n) (iii) provides that an aided school receiving aid and grants, whole or part, of its expenses from the appropriate Government or the local authority has to provide free and compulsory education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent. Thus, a minority aided school is put under a legal obligation to provide free and compulsory elementary education to children who need not be children of members of the minority community which has established the school. We also find that under Section 12(1) (c) read with Section 2(n)(iv), an unaided school has to admit into twenty-five per cent of the strength of class I children belonging to weaker sections and disadvantaged groups in the neighbourhood. Hence, unaided minority schools will have a legal obligation to admit children belonging to weaker sections and disadvantaged groups in the neighbourhood who need not be children of the members of the minority community which has established the school. While discussing the validity of clause (5) of Article 15 of the Constitution, we have held that members of communities other than the minority community which has established the school cannot be forced upon a minority institution because that may destroy the minority character of the school. **In our view, if the 2009 Act is made applicable to minority schools, aided or unaided, the right**

of the minorities under Article 30(1) of the Constitution will be abrogated. Therefore, the 2009 Act insofar it is made applicable to minority schools referred in clause (1) of Article 30 of the Constitution is ultra vires the Constitution. We are thus of the view that the majority judgment of this Court in Society for Unaided Private Schools of Rajasthan v. Union of India & Anr. (supra) insofar as it holds that the 2009 Act is applicable to aided minority schools is not correct.

56. In the result, we hold that the Constitution (Ninety-third Amendment) Act, 2005 inserting clause (5) of Article 15 of the Constitution and the Constitution (Eighty-Sixth Amendment) Act, 2002 inserting Article 21A of the Constitution do not alter the basic structure or framework of the Constitution and are constitutionally valid. We also hold that the 2009 Act is not ultra vires Article 19(1)(g) of the Constitution. **We, however, hold that the 2009 Act insofar as it applies to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is ultra vires the Constitution. Accordingly, Writ Petition (C) No.1081 of 2013 filed on behalf of Muslim Minority Schools Managers' Association is allowed** and Writ Petition (C) Nos.416 of 2012, 152 of 2013, 60 of 2014, 95 of 2014, 106 of 2014, 128 of 2014, 144 of 2014, 145 of 2014, 160 of 2014 and 136 of 2014 filed on behalf of non-minority private unaided educational institutions are dismissed. All I.As. stand disposed of. The parties, however, shall bear their own costs.”

- 10.** Given the aforesaid authoritative decision of the Supreme Court, this court does not have any hesitation in reaching to the conclusion that as per the Supreme Court, the provisions of the Act, 2009 would not be applicable upon a minority educational institutions. Accordingly, the impugned order passed in respect of two petitioners by the District Education Officer under the provisions of Sub-section 5 of Section 18 of the Act, 2009 would be

null and void and would be without any authority, jurisdiction or competence and deserves quashment by this court and it is ordered accordingly. The impugned order dated 21.06.2017 in both the writ petition stands set aside/quashed with consequences to follow.

- 11.** The counsel for the petitioners at this juncture submits that both the petitioners establishment have deposited the entire amount under protest before the District Education Officer. Since this court is of the opinion that the order passed by the District Education Officer was without competence and power, the amount so deposited by the establishments is ordered to be refunded back to the respective petitioners and it be done forthwith.
- 12.** Accordingly, both the writ petitions stand allowed.

Sd/-
(P. Sam Koshy)
Judge

inder