

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 2459 of 2020

1. Krishna Education Society, A Society Registered Under Chhattisgarh Societies Registrikaran Act 1973, Through Its President Namely Madan Mohan Tripathi, S/o Late Shri Pauhari Sharan Tripathi, Aged About 77 Years, R/o 74/5, Nehru Nagar (East) Bhilai, District : Durg, Chhattisgarh
2. Krishna Public School Through Its Principal Namely Sabita Tripathi, W/o Alok Tripathi , Aged About 49 Years, R/o 74/5, Nehru Nagar (East) Bhilai, District Durg , Chhattisgarh.

---- Petitioners

Versus

1. State Of Chhattisgarh Through Secretary, School Education Department, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District : Raipur, Chhattisgarh
2. Director Public Education, Directorate , Raipur , Indravati Bhawan, Atal Nagar, Nawa Raipur, District : Raipur, Chhattisgarh
3. Collector Durg, District : Durg, Chhattisgarh
4. District Education Officer Durg, District : Durg, Chhattisgarh
5. Tehsildar Durg, District : Durg, Chhattisgarh

---Respondents

For Petitioners	:	Mr. Manoj Paranjpe, Advocate
For State	:	Mr. Mateen Siddiqui, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

29.10.2020

1. With the consent of the parties, the matter was heard finally at admission stage.

2. The challenge in the present writ petition is to the issuance of notices Annexure P-1 dated 19.03.2020 and the reminder notices of recovery Annexure P-2 dated 01.09.2020 issued by the District Education Officer. Vide the impugned order Annexure P-1, the respondents have imposed penalty of Rs. 2,02,95,000/- under the provisions of The Right of Children to Free and Compulsory Education Act, 2009. A plain reading of the impugned order Annexure P-1 would reveal that the said order has been passed invoking the provisions of Sub-section 2 (a) of Section 13 of the aforementioned Act of 2009.
3. At this juncture, it would be relevant to quote the provisions of Section 13 for proper adjudication of the present writ petition.

“13. No capitation fee and screening procedure for admission.--- (1)

No school or person shall, while admitting a child, collect any capitation fee and subject the child of his or her parents or guardian to any screening procedure.

(2) Any school or person, if in contravention of the provisions of sub-section (1) –

(a) receives capitation fee, shall be punishable with fine which may extend to ten times the capitation fee charged;

(b) subjects a child to screening procedure, shall be punishable with fine which may extend to twenty-five thousand rupees for the first contravention and fifty thousand rupees for each subsequent contraventions.”

4. A plain reading of the aforesaid provisions of law would clearly reveal that it deals with the charging of capitation fee and the screening procedure for admission. More particularly, clause (a) of Sub-section 2 of Section 13 specifically deals with the schools being punishable

with fine if they are found to have violated Sub-Section 1 of Section 13. Keeping the aforesaid statutory provisions in mind, if we look into the periodical notices which have been issued to the petitioner by the District Education Officer, it clearly indicates that all the correspondences that have been made from the Office of District Education Officer deals with the revising/enhancement of the fee charged by the petitioner educational institution. No where does any document enclosed in the writ petition, seems to be pertaining to any capitation fee charged from any student in the petitioner's establishment.

5. The State counsel defending the inaction on the part of the respondents submits that in the garb of fees, the respondents have been charging capitation fee in a different nomenclature which was taken note by the District Education Officer and notices were issued. The learned State counsel also refers to the correspondences made by the petitioner- establishment whereby the petitioner establishment had given the undertaking to the District Education Officer for refunding of the revised enhanced fees charged by the petitioner-establishment which according to the State counsel is the admission on their part of violating the provision of Section 13 of the Act of 2009, therefore, they cannot now turn around and challenge the order passed by the State authorities. In addition, the learned Deputy Advocate General also refers to the notification dated 13.11.2019 issued by the Secretary School Education Department of State of Chhattisgarh which empowers the Joint Director of the Education

Department to have all the authority for the enforcement of the provisions of the aforementioned Act of 2009 under which the present proceedings have been drawn.

6. Having heard the contentions put-forth on either side and on perusal of records, undoubtedly all the correspondences which have been made from the Office of the respondent no. 3 is pertaining to the revision of fees/enhancement of the fees charged by the petitioner-establishment. That clause (a) of Sub-Section 2 of Section 13 exclusively deals with the imposition of penalty in the event of charging of any capitation fees. From the notices enclosed along with the writ petition which have been issued on the part of the respondents show no whisper whatsoever as regards any capitation fees that the petitioners have charged from any student neither is there any complaint from any students nor from any guardian of the students who are studying in the school; so far as allegation of charging of capitation fees is concerned.
7. In view of the aforesaid admitted factual matrix of the case and also the legal position as it stands, so far as Section 13 of the Act of 2009 is concerned, this Court has no hesitation in reaching to the conclusion that the impugned order Annexure P-1 so also the recovery order Annexure P-2 dated 19.03.2020 and 01.09.2020 respectively would not be sustainable in the eye of law and the same deserves to be and is accordingly set-aside/quashed.

8. The quashment of the impugned order would not preclude the State authorities if they have any other power; so far as checking of any irregularities committed/conducted on the part of the petitioner-establishment and for initiating action for the same in-accordance-with law.
9. With the aforesaid observation/direction, the present writ petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge