

(2025) 06 CHH CK 0176
In the Chhattisgarh High Court
Case No : WPC No. 1999 of 2022

Carmel School

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 11-06-2025

Acts Referred:

Constitution of India, 1950 — Article 29, 30, 226

Chhattisgarh Non Government Schools Fees Regulation Act, 2020 — Section 2, 2(g)

Citation : (2025) 06 CHH CK 0176

Hon'ble Judges : Arvind Kumar Verma, J

Bench : Single Bench

Advocate : K.R.Nair, Poorva Tiwari

Final Decision : Allowed

Judgement

Arvind Kumar Verma, J

1. The above Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari filed Mandamus and quash the impugned order dated 18.04.2022 and has prayed for the following reliefs:

"10.1. it is prayed that this Hon'ble Court be pleased to call for the entire records of the case from the possession and custody of the respondent for its examination.

10.2. it is prayed that this Hon'ble Court be pleased to quash/set aside the impugned order dated 18.04.2022 (Annexure P/1).

10.3. it is prayed that this Hon'ble Court be pleased to direct the respondents to refrain themselves from taking any action against the petitioner which is arbitrary, discriminatory, contrary to the law laid down by the Hon'ble Supreme Court.

10.4. it is prayed that this Hon'ble Court be pleased to grant any other relief as may be fit and proper as considered by this Court in favour of the petitioner."

2. Factual matrix of the case are that the petitioners are English Medium Higher Secondary Schools, established and managed by the Christian Minority at Ambikapur and run by a society registered under the Society Registration Act, 1973, affiliated to Central Board of Secondary Education, New Delhi. The affiliation is valid upto 31.03.2023. The schools of the petitioners are unaided minority educational institutions and they does not receive any funds from the State of Central Government or its agencies and a self financing school. They manage the affairs from the funds raised by the schools themselves and has been declared as Minority Educational Institutions under Article 29 and 30 of the Constitution of India by the National Commission of Minority Educational Institutions, New Delhi by order No. 59 of 2007 dated 26.04.2007. Section 2 of the CG Non-Government Schools Fees Regulation Act, 2020 expressly states that it will not apply to the schools established by the minorities under Article 29 and 30 fo the Constitution of India. Section (2) 1 of the Act, 2020 reads as under:

" 1. Non-Government School means such a school, the fees of which is not fixed by Government of CG or Government of India or any organization of Government of CG or Government of India.

" Provided that it will not include schools established by minorities under Article 29 and 30 of the Constitution of India."

3. The Non-Government School Fees Act, 2020 was passed and came into force on 28.09.2020 and is applicable through out the State. The provisions of Right to Free Education Act, 2009 are not applicable to the petitioners, being unaided minority educational institutions as held by the Supreme Court in the case of Pramati Educational and Cultural Trust and Others Vs. Union of India reported in 2014(8) SCC 1. Therefore the DEO has no power either under the CG Fees Regulations Act of 2020 or under the RTE Act of 2009 to issue directions.

4. According to the petitioners/schools, these are some of the prominent institutions in the Ambikapur district having all sorts of modern infrastructure facilities and atmosphere required for a good educational institution. The contention of the petitioner is that for proper maintenance of the schools and the infrastructure available in the schools and also for timely payment of salary of the teaching and non-teaching staff and other employees engaged in these private institutions are to be paid and therefore the schools may be permitted to collect the fees from the student who are undertaking education in their respective schools. The substantial portion of the expense incurred by the educational institutions is recovered from the school fee/tuition fees collected from the students.

5. The District Education Officer knowing well about the all round increase in the expenditure, issued the order dated 18.04.2022 that the excess fees collected may be refunded to the students. The petitioners/schools on enquiry has come to know that these instructions have been issued only to the Christian minority educations institutions in Ambikapur and not to other non-government schools in

Ambikapur. Similarly, the DEOs' in other districts have not issued any such directions to any schools. The directions issued by the DEO and the impugned order in the present petitions are contrary to the provisions contained in Section 2 of the CG Non Government Schools Fees Regulation Act, 2020. Hence these petitions filed by the petitioners/schools.

6. Contention on the learned counsel for the petitioners is that the actions of the respondents in the issuance of the impugned order is without any authority of law and without any basis or justification. He submits that the minority educational institutions are exempted from application of the provisions of the Non-government School Fee Regulation Act, 2020 as also the RTE Act 2009 and the DEO has no power or authority or jurisdiction to exercise any control over the decision of the School Managing Committee in the matter of charging and collecting fees from the students. He submits that the DEO is usurping power, and taking action against the petitioners/schools is ultra vires the provision of the Act of 2020 and the Act of 2009 and therefore is not tenable and is liable to be set aside. He submits that the order impugned in the present petitions has been issued in contrary to the decision of the Hon'ble Supreme Court in the case of Pramati Educational and Cultural Trust Vs.UOI (supra) and therefore it is liable to be set aside.

7. Learned State counsel has opposed the submissions of the counsel for the petitioners and submit that it is no doubt, true that the private unaided educational institutions, that these schools are required to incur huge expenditure towards payment of salaries to their teachers and staff, establishment charges, rent for buildings, vehicle maintenance, ESI, EPF to its employees, etc., which is unprecedented. The object of the Order dated 18.04.2022 is to ease the burden on parents, in being required to pay the huge fees which these private institutions charge.

8. Heard the rival contentions of the learned counsels for the parties and perused the records. The impugned order dated 18.04.2022 issued by the respondent No.3/DEO, Ambikapur is not sustainable and deserves to be set aside for the reason that the DEO has issued a blanket order stating that heavy fine or penalty would be imposed on these schools if there is violation of the High Court order dated 09.07.2020 passed in WPC No. 1040 of 2020. It is pertinent to mention here that in the above writ petition, this Court has observed that since the order impugned issued by the respondent No. 2 (Annexure P/1) was during the Covid-19 lock down period and it would not apply to the present petitioners as per the provisions of Section 2 of the CG Non-Government Schools Fees Regulation Act, 2020. As the petitioners are minority educational institutions within the meaning of Section 2(g) of the National Commission For Minority Educational Institutions Act, 2004, the petitioners are exempted from the Act of 2020 and therefore the respondent No.3 has no jurisdiction to pass order (Annexure P/1). The contention of the petitioners is that they have to incur expenditure without collecting fees from its students, is understandable, in times

of crisis but the Order of the DEO binds these private schools and, as long as it continues to remain in force, they are bound to adhere to the conditions stipulated therein. This contention of the State counsel is not accepted and thus taking into consideration the fact that these are unaided minority educational institutions and depend substantially on the tuition fees that is collected for sustaining teaching, non teaching and other employees engaged in the schools which are totally unaided and further that they have to incur expenditure in the maintenance of the school infrastructure and payment towards electricity charges and security agencies and in the opinion of this court it seems justified that to undertake all such requirements and ensuring the safety measures, these schools have to make endeavour to maintain their institutions.

9. With the aforesaid observation, the petitions are allowed and the order impugned dated 18.04.2022 (Annexure P/1) is set aside/quashed.