

St. Francis Hr. Sec. School

Ameri Road, Bilaspur (C.G.)

Affiliated to C.B.S.E., New Delhi vide Affiliation No. 3330058

Ref No.:

Date: 18/05/2020

To,

The Joint Secretary (Affiliation),
Central Board of Secondary Education,
New Delhi

Subject: With respect to Recognition Certificate by the State

Ref: Affiliation website intimation with NO . CBSE/AFF/EX-01318-1920/2019-20/ Dated: 10/04/2020

Dear Sir,

Reference to your referenced letter asking us to obtain recognition certificate from the concerned authority under Section 18 of the Right to Free and Compulsory Education Act of 2009, we submit that the said section applies only to schools newly started. It does not apply to schools already established before commencement of the Act 2009. Besides, the Hon'ble Supreme court and also the high court of c g has held that RTE Act of 2009 does not apply to minority educational institutions.

Recently the Hon'ble high court of CG has also clarified that RTE Act 2009 does not apply to unaided minority educational institution. Ours is an unaided minority institution recognized as such both by the central government and State government.

Also, we have not been granted recognition by the state authorities from the time we have got affiliated to CBSE. Till now there was no objection raised by it while renewing our affiliation from time to time. The state authorities were of the opinion that since it has a composite affiliation and there was a direction to close all the classes run under other boards, we had closed all such classes and started under CBSE syllabus. We had submitted application in time for renewing our recognition to the concerned authorities but no action was taken by them. Our application is still pending and the security deposit we had furnished has not been refunded to us by the DEO as well.

In view of the above legal position, we would request you kindly to renew the affiliation without insisting on production of the recognition certificate obtained under Section 18 of the said Act as directed in the letter under reference. A copy of the order dated 16-03-2020 passed by the Hon'ble High court is sent herewith for ready reference and further necessary action that the Unaided Minority Schools Are exempted from the ambit of RTE 2009.

Thanking you


Yours faithfully,

Hoping for cooperation and support from your side

Regards

Enclosure:

1. Copy of Hon'ble High Court Decision
2. Copy of Minority Certificates


Principal
St. Francis Hr. Sec. School
Bilaspur (C.G.) PIN-495001


Manager
St. Francis Hr. Sec. School
Bilaspur (C.G.) PIN-495001

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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

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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.

[Signature]
Principal

St. Francis Hr. Sec. School
Bilaspur (C.G.) PIN-495001

[Signature]
Manager

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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



[Signature]
Principal
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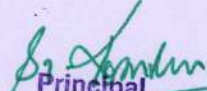
[Signature]
Manager
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educational institutions covered under Article 30 of the Constitution of India.

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


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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

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Sr. Manager
Manager
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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.

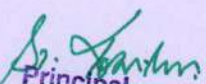
11. The counsel for the petitioners at this juncture submits that both the petitioners establishment have deposited the entire amount under protest before the District Education Officer. Since this court is of the opinion that the order passed by the District Education Officer was without competence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

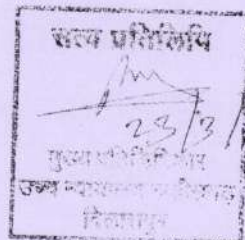
12. Accordingly, both the writ petitions stand allowed.

Sd/-

(P. Sam Koshy)
Judge

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Principal
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भारत सरकार

राष्ट्रीय अल्पसंख्यक शैक्षणिक संस्था आयोग

GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS

प्रथम मंज, जीवन तारा भवन, 5, संसद मार्ग,
पटेल चौक, नई दिल्ली-110001

F. No. 995 OF 2006-22079

1st Floor, Jeevan Tara Building, 5, Sansad Marg,
Patel Chowk, New Delhi-110001

SEPTEMBER 10, 2007
Dated.....

ON CONSIDERATION OF THE DOCUMENTARY EVIDENCE PRODUCED BEFORE THE COMMISSION, THE COMMISSION IS SATISFIED THAT ST. FRANCIS HIGHER SECONDARY SCHOOL, P.B. NO. 7, AMERI ROAD, BILASPUR, CHHATTISGARH, MANAGED BY THE SOCIETY OF SISTERS OF ST. FRANCIS, GANDHI NAGAR, BILASPUR, EXCLUSIVELY IS A MINORITY EDUCATIONAL INSTITUTION WITHIN THE MEANING OF SECTION 2 (g) OF THE NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS ACT 2004. CONSEQUENTLY, IT IS HEREBY DECLARED THAT THE AFORESAID SCHOOL IS A MINORITY EDUCATIONAL INSTITUTION COVERED UNDER ARTICLE 30 OF THE CONSTITUTION OF INDIA.

GIVEN UNDER MY HAND AND THE SEAL OF THE COMMISSION.



R. Renganath

(R.RENGANATH)
SECRETARY

S. Sankar
Principal

St. Francis Hr. Sec. School
Bilaspur (C.G.) PIN-495001

Sr. Henry
Manager

St. Francis Hr. Sec. School
Bilaspur (C.G.) PIN-495001

**कार्यालय आयुक्त,
आदिम जाति तथा अनुसूचित जाति विकास**

छत्तीसगढ़, रायपुर

क्रमांक/अ०सं०/151/2012-13/पृ०/4/ 8166

रायपुर, दिनांक 31/10/13

//आदेश//

छत्तीसगढ़ शासन, आदिम जाति तथा अनुसूचित जाति विकास विभाग के पत्र क्रमांक/9096/2007/25-2/आजावि, रायपुर दिनांक 11.10.2007 में प्रदत्त अधिकार एवं संबंधित जिला अपर कलेक्टर के स्थापन एवं जांच प्रतिवेदन के आधार पर नीचे लिखे शैक्षणिक संस्था को धार्मिक अल्पसंख्यक शैक्षणिक संस्था की मान्यता निम्नलिखित शर्तों के अधीन प्रदान की जाती है :-

क्र०	जिला	अशासकीय संस्था का नाम	पंजीयन क्र० दिनांक	शैक्षणिक संस्था का नाम	अल्पसंख्यक धार्मिक/भाषाई	प्रारम्भ वर्ष	विशेष
1	2	3	4	5		6	7
1	बिलासपुर	सोसायटी ऑफ सिस्टर ऑफ सेंट फॉसिस गांधी नगर पो. मंगला जिला बिलासपुर	9067 16.05. 1980	सेंट फॉसिस हायर सेकेंडरी स्कूल अमेरी रोड जिला बिलासपुर	किरिबयन	1983	-

शर्त :-

- 1 गैर अनुदान प्राप्त तथा अनुदान प्राप्त अल्पसंख्यक शैक्षणिक संस्था में प्रवेश केवल अल्पसंख्यक समुदाय तक ही सिमित नहीं होगा, लेकिन अल्पसंख्यक के आवेदकों को प्रवेश में प्राथमिकता दी जा सकेगी, परन्तु इस संबंध में संवैधानिक प्रावधानों के अनुरूप केन्द्र एवं राज्य शासन द्वारा निर्धारित नियम बाध्यकारी होंगे।
- 2 शैक्षणिक संस्थाओं द्वारा पूर्णतः धार्मिक निर्देश/शिक्षा प्रदाय नहीं किया जावेगा।
- 3 संस्था द्वारा यह भी अनिवार्य रूप से पालन किया जावेगा कि अल्पसंख्यकों द्वारा चलाई जा रही संस्था का (Privilege) दुरुपयोग/अनुचित लाभ किसी व्यक्ति या संस्था के लिये नहीं करेगी।
- 4 संस्था किसी विद्यार्थी को बिना उनके अभिभावकों की पूर्व लिखित सहमति के किसी विशेष धार्मिक प्रवचन/पूजा के लिये बाध्य नहीं करेगी।
- 5 संस्था में भर्ती के लिए चयन प्रक्रिया हेतु विश्वविद्यालय/मण्डल तथा राज्य शासन के नियम/निर्देश लागू होंगे, निर्धारित शैक्षणिक अहर्ता में शिथिलता नहीं दी जावेगी। योग्य शिक्षक एवं अन्य अमले हेतु भर्ती करने की स्वतंत्रता रहेगी, परन्तु सलाह दी जाती है कि शिक्षकों तथा अन्य अमलों का चयन खुली (Open) विज्ञापित से एवं पारदर्शी प्रक्रिया से किया जाये।
- 6 शैक्षणिक संस्था के प्रशासन एवं प्रबंधन के लिये नियम रहेंगे जिसमें संस्था संबंधित संचालनालय/मंडल/विश्वविद्यालय से संबंधीकरण आदि का स्पष्ट उल्लेख होगा, शिक्षकों की सेवा शर्तों तथा योग्यता निर्धारित करते समय संस्था का द्वारा सामाजिक एवं साम्प्रदायिक सद्भावना बनाये रखा जायेगा।

Vijay hod

172

S. Francis
Principal

St. Francis Hr. Sec. School
Bilaspur (C.G.) PIN-495001

Sr. Mercy
Manager

St. Francis Hr. Sec. School
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- 7 संस्था के शिक्षकीय एवं गैर शिक्षकीय अमले के लिये अनुशासन, नियम बनाते समय प्राकृतिक न्याय का ध्यान रखा जाये, संस्था के उत्कृष्ट प्रशासन का ध्यान रखा जाये, शैक्षणिक संस्थाओं के लिये जो अन्य सामान्य नियम हैं वह भी लागू होंगे।
- 8 संस्था के प्रबंधकारणी में अधिकांश अल्पसंख्यक समुदाय के सदस्य रहेंगे, यह सुनिश्चित किया जावे। साथ ही संवैधानिक प्रावधानों के अनुरूप केन्द्र एवं राज्य शासन द्वारा निर्धारित नियम भी लागू होंगे।
- 9 किसी अल्पसंख्यक शैक्षणिक संस्थाओं को विश्वविद्यालय/मण्डल से सम्बन्धीकरण के लिये प्रवेश में वरीयता का आधार, शिक्षा की उत्कृष्टता, प्रवेश की सुव्यवस्थित एवं पारदर्शी प्रणाली, आवश्यक भौतिक संरचना, पाठ्यक्रम तथा शैक्षणिक गुणवत्ता आदि की पूर्ति का ध्यान रखा जाना होगा।
- 10 गैर अनुदान प्राप्त अल्पसंख्यक शैक्षणिक संस्थाओं को इस विषय में राज्य शासन द्वारा जारी नीति तथा निर्देशों के अंतर्गत रहते हुये शिक्षण शुल्क लेने की स्वतंत्रता होगी परन्तु अनुचित लाभ अर्जन नहीं किया जा सकेगा, कंपीटेशन फीस लिये जाने की अनुमति नहीं होगी, इस संबंध में विभिन्न याचिकाओं में माननीय उच्चतम न्यायालय एवं माननीय उच्च न्यायालय द्वारा पारित निर्णय/निर्देश लागू होंगे।

यदि संस्था द्वारा उपरोक्त नियमों/निर्देशों का उल्लंघन करते पाया जाता है तो मान्यता निरस्त किया जा सकेगा।

(एम. एस. प्रमुख)
आयुक्त 12/3

आदिम जाति तथा अनुसूचित जाति विकास
छत्तीसगढ़, रायपुर

पृष्ठसंख्या/अल्पसंख्यक/151/2012-13/पार्ट 4/ 8167 रायपुर, दिनांक 3/10/13

प्रतिलिपि :-

- 1 सचिव, छोगो शासन, आदिम जाति तथा अनुसूचित जाति विकास विभाग, मंत्रालय रायपुर।
- 2 सचिव, छ.ग. उ.मा. शिक्षण मंडल रायपुर (छ.ग.)।
- 3 कलेक्टर, जिला-बिलासपुर (छ.ग.)।
- 4 सहायक आयुक्त, आदिवासी विकास, जिला-बिलासपुर (छ.ग.) को सूचनार्थ तथा आवश्यक कार्यवाही हेतु प्रेषित।
- 5 सचिव, छोगो राज्य, अल्पसंख्यक आयोग रायपुर।
- 6 अध्यक्ष/सचिव, सोसायटी ऑफ सिस्टर ऑफ सेन्ट फॉसिस गांधी नगर पो. मंगला जिला बिलासपुर (छ.ग.) की ओर सूचनार्थ।

(आयुक्त)
आयुक्त

आदिम जाति तथा अनुसूचित जाति विकास
छत्तीसगढ़, रायपुर

Vijay hod

173

Principal
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Sr. Mercy
Manager
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