

All Children in Private Schools to have access to Free Education – Karnataka High Court

Private Universities under Tax Scanner

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In a recent far-reaching order dated February 12, 2013, passed by Justice H. G. Ramesh, in the matter Sarvodaya School Students v. State of Karnataka [Writ Petition No. 18809/2012] (the “Order”), the Karnataka High Court (the “Court”) has stated that the right to free and compulsory education under Article 21A of the Constitution of India is available to all students in private schools of the age of 6 (six) to 14 (fourteen) years and not merely the 25% prescribed and selected by the State under the Right of Children to Free and Compulsory Education Act, 2009 (the “RTE Act”). The Court remarked that private schools are entitled to claim reimbursement from the State government, of the foregone fee for all the students who claim the benefit of fee concession. The State and the Central government were called upon by the Court to ensure that proper arrangements were made by them to indemnify the private institutions in this regard.

Further, the Court directed the government to conduct a seminar with all interested parties (including private managements, teachers associations, parents association and education boards like CBSE and ICSE) to reach a fair and reasonable fee determination, on the basis of which, the rights of all stakeholders could be preserved. The Court also directed the Central and State governments to earmark funds for reimbursements to the private schools, if there is paucity of funds.

Taking notice of the plight of the parents that private school managements are refusing to entertain their children from attending the classes, the Court directed private managements not to prevent children from attending classes or taking tests/examinations, recommending to the private managements that they can approach the State government for reimbursement of the requisite fee. The Court also entitled them to approach the Court for redressal of their grievances, if they are unsatisfied with the reimbursement/fee-fixation. Thus, the Order is attempting to strike a balance between the right of children to free and compulsory education, the rights of the private institutions’ managements, teachers and the staff employed thereat and those of the government.

Finally, the Court directed the government and the private management associations to take note of the observation of the decision of the Hon’ble Supreme Court in the case of Society for Unaided Schools of Rajasthan v. Union of India and Others [(2012) 6 SCC 1] and further instructed the State and Central government to prepare a report on further deliberations to be held and submit the same to the Court on the next date of hearing, i.e., February 26, 2013.

This Order (if implemented) may have far-reaching implications on how private schools would organize fee structure, manage expenses and engage in expansion plans. The ability of the State government to make education available free of cost and reimburse the schools would also be a huge burden considering that even the implementation of the RTE Act is itself posing a substantial financial and administrative challenge. Managing the expectations of the parents seeking free education for their wards would also pose an additional challenge and encourage potential litigation. Further, it would be rather interesting to witness how the Court suggests enforcement of this

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Order vis-à-vis private unaided schools operating in Karnataka since a conflicting provision is found under Rule 8(2) of the Karnataka Right of Children to Free and Compulsory Education Rules, 2012. The said rule lays down that no private unaided school shall be entitled to any reimbursement in respect of child admitted therein, over and above the quota for the disadvantaged group and weaker section. That being the case, there would be an apparent conflict between the Order and the said rule, which, if not resolved by the Court, may encourage further potential litigation. It is yet to be seen how private school managements would react to this Order, especially in view of the rising demand for quality education prevalent in all strata of the society and the investments and expansion required for the growth of the education sector.

Private Universities under Tax Scanner

In wake of depleting revenue reserves, the government has set out on a march to probe the alleged service tax evasion by private universities and education institutes. Taking note of the practice of the private universities to open off-shore campuses, off-campus centres and study centres allegedly flouting norms of the University Grants Commission (the “UGC”), the Central Revenue Department has initiated a probe in the matter with support of the UGC to unearth the unauthorised opening and operation of the said centres.

The incidence of tax arises from Section 66D(I) of the Finance Act, 1994, under which, services by way of ‘education as a part of a curriculum for obtaining a qualification recognised by law for the time being in force’ are excluded from the applicability of service tax. The government is proceeding on the negative interpretation of section 66D(I) that the conduct of degree courses by colleges, universities or institutions which lead to grant of qualifications recognised by law, would be exempt from service tax implication, only if such grant of qualifications is in accordance with the laws; however, if such conduct/grant is violative of the UGC norms, the same would not be deemed as per law and therefore, would be liable for the charge of service tax. Accordingly, the present position is that off-campus study centres, if not affiliated to the UGC (which is the natural outcome when the relevant permissions are not sought from the UGC/its norms are not followed), would attract a service tax implication of 12.36% of their total income.

If the consequence of the ongoing investigation is imposition of service tax on these private universities, the burden of the service tax implication would then have to be borne by the students over and above the existing fees.

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