

Serial No.01
Supple List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC (WA) No.41 of 2023 in
WA No.20 of 2023

Date of Decision: 06.12.2023

The Principal/Principal-in-charge Vs. Shri. Langpoklakpam Kamal &
Of Naorem Birahari College, Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Chief Justice (Acting)
Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Applicant(s) : Mr. H.S. Paonam, Sr. Adv with
Mr. A. Arunkumar Singh, Adv
For the Respondent(s) : Mr. B.P. Sahu, Sr Adv. with
Ms. A. Pradhan, Adv.
Mr. M. Rarry, Adv. (for profoma R:3 – 7)

i)	Whether approved for reporting in Law journals etc:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

(As per B. Bhattacharjee, J)

This application under Section 151 of the Code of Civil Procedure has been filed by the applicant seeking closure of the Writ Appeal No. 20 of 2023 on the ground of same being infructuous.

1. The applicant contends that pursuant to the order dated 31-08-2023 passed in the Writ Appeal, the State Government has cancelled the

impugned order dated 29-09-2021 by the order dated 01-09-2023 and 03-09-2023. It is submitted that in terms of the liberty given in the said order dated 31-08-2023, the State Government by another order dated 12-09-2023 declared the Governing Body of Naorem Birahari College constituted vide order dated 02-03-2021 as null and void on the grounds unrelatable to the cause of action involved in the present matter. It is, thus, contended that since the Governing Body of the college became non-existent, the cause of action basing on which the writ petitions were filed, does not survive and the writ appeal has become unnecessary. It is further submitted that in view of the issuance of the orders dated 01-09-2023 and 03-09-2023 by the State Government, challenge to the impugned orders dated 29-09-2021 and 18-12-2021 do not survive and resultantly the writ appeal has become pointless and requires to be closed forthwith. It is also contended that if the writ petitioners/respondents in this present application have any fresh cause of action, they can assail the same by filing separate writ petition before the jurisdictional High Court as this Court will have no jurisdiction over any fresh cause of action. In support of the contentions, reliance has been placed on the decisions of the Apex Court reported in (2004) 11 SCC 168, (2012) 9 SCC 310, and (1996) 6 SCC 291.

2. The respondents, per contra, contend that the orders, basing on which the closure of the writ appeal is sought for by the applicant, were passed by the State Government consequent to the orders passed by this Court and, as such, are not independent orders and are connected to the issues pending adjudication before this Court in the writ appeal. By referring to the various orders passed in the writ appeal, it is submitted that the cause of action still survives as no remedial action has been taken by the State Government as required and expected. It is further contended that the actions basing on which the closure of the writ appeal is sought for by the appellants, are all an eye-wash and aimed at by-passing the main issue involved in the matter. It

is also contended that the order dated 12-09-2023 passed by the State Government is not consistent with the various orders passed in the writ appeal by this Court and the same can be questioned in the present proceeding. The decisions reported in (2011) 6 SSC 199, (2012) 9 SCC 310 and (1997) 1 SCC 621 have been pressed in service to support the contention of the respondents.

3. The proforma-respondents support the contentions made on behalf of the applicant.

4. For a just and proper adjudication of this application, it is important to take note of the relevant orders passed by this Court during the course of hearing of writ appeal No. 20 of 2020. The first such order dated 31-08-2023 reads as follows: -

“Prima facie, upon hearing both the appellants and the State, it does not appear that the impugned judgment and order can be sustained or there could have been any justification for the impugned dissolution notice of September 29, 2021 having been issued. At any rate, the relevant notice of dissolution appears to be contrary to the provision of the grant-in-aid code that it quotes.

In such a scenario, the State of Manipur is afforded an opportunity to take remedial measures as suggested and which need not be recorded. However, considering the gravity of the matter and the colossal illegality in the issuance of the relevant notice, the time afforded to the State is till September 4, 2023.....”

5. Thereafter, the matter was listed on 04-09-2023 on which date this Court after noticing that the State of Manipur in compliance of the order dated 31-08-2023 passed an order dated 01-09-2023, passed the following order:-

“It is heartening to note that following the order dated August 31, 2023, the State of Manipur has graciously passed an order on September 1, 2023 by which the impugned government order

of September 29, 2021 pertaining to the dissolution of the governing body of the Naorem Birahari College, Khundrakpam has been cancelled.

2. Paragraph 4 of the recent government order of September 1, 2023 issued by the Joint Secretary (Higher and Technical Education), Government of Manipur expressly records as follows:

“Now therefore, the Governor of Manipur is hereby pleased to cancel the said Government Order no. 10/26/2017-(HE)(Pt.) dated 29-09-2021, with immediate effect and convey the approval to the Directorate of University & Higher Education, Government of Manipur to issue an appropriate order in this regard.”

3. Doubtless, the relevant appropriate order from the Directorate of University and Higher Education will follow. Since the governing body of the relevant college stood dissolved by the government order of September 29, 2021, which has now been cancelled, the governing body stands restored.

4. However, it will be open to the State of Manipur to take further steps in respect of the relevant college in accordance with law particularly in terms of the provision of the grant-in-aid code operating in such State.

5. Since the appellants says that the appeal should be kept pending to await the immediate future steps taken by the State, let the appeal now appear four weeks hence.

6. The pendency of the appeal will be without prejudice to the rights and contentions of both the appellants and the State.

7. List on October 4, 2023.”

6. On 04-10-2023, when the writ appeal was taken up for further hearing, this Court took notice of the fact that by subsequent action of the State, the impact of the order of cancellation dated 01-09-2023 stood negated. The relevant part of the order dated 04-10-2023 is reproduced hereinbelow: -

“5. In the order dated September 4, 2023, the operative part of the order of cancellation was set out and it was observed that the appropriate consequential order from the Directorate of University and Higher Education would follow. It was also recorded that as a consequence of the cancellation of the notice of dissolution, the governing body of the college stood restored.

6. It, however, transpires that despite cancelling the notice of dissolution of September 29, 2021, subsequent steps taken by the State, in effect, negated the impact of the order of cancellation of September 1, 2023. The appellants complain that despite the order of cancellation, the governing body was not allowed to function nor was it recognised to have been restored. Applications have been filed for contempt.

7. The State seeks some time and says that there is a good explanation to justify how the State acted after issuing the order of cancellation. Prima facie, it appears that the State may never have been interested in effectively annulling the illegal notice of dissolution of September 29, 2021 to restore the governing body of the college for such governing body to continue to run the educational institution. This would make the act of the State an act of contempt as the State may have deceived the Court into believing that a state of things had been brought about without such state of things being put in place.

8. Accordingly, since the State seeks some time to explain its subsequent conduct, it is afforded a fortnight to file an affidavit in such regard. All actions taken by the State subsequent to the order dated September 4, 2023 will abide by the result of the appeal and may be scrutinised in this appeal, particularly considering the State's representation to the Court as recorded in the order dated September 4, 2023.

9. Let the appeal and the connected matters appear three weeks hence.

10. List on November 2, 2023."

7. It transpires from the above that on the basis of the initial observation of the Court with regard to the merit of the case, the State of Manipur was afforded an opportunity to take remedial measure in the matter. The State Government acted on the basis of the said observation and issued an order dated 01-09-2023 by which the order impugned in the connected writ petition as well as the instant writ appeal was cancelled. However, with the issuance of subsequent order dated 12-09-2023, the situation took a different turn and it appears that the remedial action which was taken by the State by issuing the order dated 01-09-2023 stood diluted, in other words the impact of the order dated was negated.

8. This Court by order dated 04-10-2023 made it clear that all actions taken by the State subsequent to the order dated 04-09-2023 passed in the writ appeal, will abide by the result of the appeal and may be scrutinized in the appeal, particularly considering the State representation to the Court as recorded in the order dated 04-09-2023.

9. In view of the above, it cannot be held at this stage that there remains no cause of action surviving in the present writ appeal and the same has become infructuous.

10. The present application, as such, is devoid of any merit and stands rejected.

(B. Bhattacharjee)
Judge



(H. S. Thangkhiew)
Chief Justice (Acting)

Meghalaya
06.12.2023
"Biswarup-PS"