

ORISSA HIGH COURT : C U T T A C K

WP(C) NOS.16762/2021, 16804/2021 & 446/2022

In the matter of Applications under Articles 226 & 227 of the Constitution of India

AFR

In W.P.(C) NO.16762 /2021

***Governing Body of Regional College
of Management, Bhubaneswar
represented through its President,
Prof.Dr.Prabir Pal & Anr.***

: Petitioners

-Versus-

State of Odisha & Others

: Opp.Parties

For Petitioner

: M/s.Asok Mohanty, Senior Adv.

For O.Ps.1 to 3

: Mr.S.Ghose, ASC

For O.P.5

: M/s. A.K.Mohapatra & A.Mohanty

For O.Ps.6, 7 & 8

: M/s. K.P.Mishra & M.K.Swain

For O.P.10

: M/s.B.R.Behera, B.Jena
& N.A. Kulraj

In W.P.(C) NO.16804 /2021

***Regional College of Management Trust
represented through its Managing Trustee,
Dr.Pritam Pal***

: Petitioner

-Versus-

State of Odisha & Others

: Opp.Parties

For Petitioner

: M/s.M/s.B.Routray, Sr.Adv.,
S.Das & A.Mohanty

For O.Ps.1 to 3

: Mr.S.Ghose, ASC

For O.P.5 : M/s. A.K.Mohapatra & A.Mohanty
For O.P.10 : M/s.B.R.Behera, B.Jena
& N.A. Kulraj
For O.P.15 : Mr.V.Mohapatra

In W.P.(C) NO.446 /2022

***Governing Body of Regional College
of Management, Bhubaneswar
represented through its President,
Prof.Dr.Prabir Pal***

: Petitioner

-Versus-

State of Odisha & Others : Opp.Parties

For Petitioner : M/s.M.Mishra, Sr. Adv.
& Mr.S.Das

For O.Ps. : Mr.S.Ghose, ASC

**CORAM :
JUSTICE BISWANATH RATH**

Date of hearing & Judgment :: 09.05.2022

1. Factual background involving the case is that pursuant to disposal of W.P.(C) No.34818 of 2020 by a Coordinate Bench of this Court, vide its order dated 18.12.2020, it is disclosed, the Regional Director, Higher Education, Bhubaneswar has undertaken an exercise in the matter of re-constitution of the Governing Body of the Regional College of Management, Bhubaneswar, in the purported exercise under the direction of this Court in disposal of W.P.(C) No.34818 of 2020 and also claiming to be in exercise of power conferred on it under Section 7(2) of the Odisha Education Act, 1969 so also in exercise of power under Rules 21, 23 & 24 of the Orissa Education (Establishment,

Recognition and Management of Private High Schools) Rules 1991, hereinafter called as, “Act 1969” and “ Rules 1991” respectively.

2. The Writ Petition bearing W.P.(C) No.16762 of 2021 involves a challenge to the impugned order of the Regional Director of Higher Education vide Annexure-11. Other two Writ Petitions also confined to same relief as claimed in W.P.(C) No.16762 of 2021.

3. Assailing the impugned order, Mr.A.Mohanty, learned Senior Counsel appearing for the Petitioner-Establishment taking through the pleadings involving the present writ petition, reading together with the development taking place in the re-constitution of the Governing Body, the very same Establishment, vide Annexure-7 on 07.01.19 and at this stage of the matter also reading through the provision at Rule 23 of the Rules 1991 advanced his submission that first of all looking to Annexure-4 directed to be disposed of in W.P.(C) No.34818 of 2020, further reading through the disclosures through paragraph-6 of the Writ Petition therein, raised following serious questions, if there is locus standi of such person ?, the contents in Annexure-4 if it already contains a proposal required to be considered ?, If it is submitted in terms of Rule 23 of the Rules 1991 ? And further if there was time for reconstitution of the Governing Body considering as Governing Body already existed, it was not due to expire? It is in the above circumstance, reading through Annexure-11 Mr.Mohanty, learned Senior Counsel contended that there has been not only mechanical but illegal consideration in taking a decision at Annexure-11 and that too by an incompetent Authority. Mr.Mohanty, further alleged that the

Petitioner in W.P.(C) No34818/2020 had absolutely no locus standi not only that the Petitioner therein filed the Writ Petition in whole suppression of material facts, it even did not involve the Parties likely to be affected by such order, further also behind back of necessary Parties. It is at this stage of the matter, bringing through the further material available in the W.P.(C) No.446 of 2022, again reading through the requirement of provision of Rule 23 of the Rules 1991, bringing to the notice of this Court through Annexure-4 in W.P.(C) No.446 of 2022, bringing reference to Annexure-7 in W.P.(C) No.16762 of 2021, Mr. Mohanty, learned Senior Counsel claimed that as per the requirement of provision of Rule 23 on the term of the existing Governing Body to expire, there is presently pendency of a claim of the Institution in the matter of reconstitution of the Governing Body, which is valid in the eye of law. It is in the circumstance Mr. Mohanty, learned Senior Counsel claimed for setting aside the impugned order at Annexure-11 and requiring appropriate direction to be passed by this Court.

4. It is here taking this Court to Annexure-4 in the Writ Petition being W.P.(C)No.446 of 2022, for there is already submission of a proposal of the Institution involved on 05.10.2021, a submission is made, in the event of reconsideration of the issue for there is already submission of proposal for reconstitution of the approved Governing Body and for being issued strictly in consonance with Rule 23 of the Rules 1991, this proposal is also required to be considered in further exercise of the Authority.

5. Mr.M. Mishra, learned Senior Counsel appearing in W.P.(C) No.446/2022 while adopting the submissions of Mr.Mohanty, learned Senior Counsel bringing to the disclosures in the Writ Petition also submitted that for the existing Governing Body constituted on 07.01.2019 vide Annexure-7 of the W.P.(C) No. 16762 of 2021, term of which was to expire on 06.01.2022 and Annexure-1 of the W.P.(C) No.446 of 2022 following provision of Rule 23 of the Rules 1991, there was requirement of submission of proposal before at least ninety days by the approved Governing Body, such proposal, vide Annexure-4 herein has been submitted to the competent Authority for its consideration and pending consideration of the Competent Authority and Governing Body officiating is in ad hoc status.

6. Mr.B.Routray, learned Senior Counsel appearing for the petitioner in W.P.(C) No.16804 of 2021 simply adopted the submission of Mr.Mohanty, learned Senior Counsel and Mr.Mishra, learned Senior Counsel and pressed for interference in the impugned order at Annexure-11 and further issuing lawful direction.

7. Mr.Mohapatra, and Mr.B.S. Tripathy, learned counsel appearing for some of the contesting opposite parties in the respective Writ Petitions in their opposition to the claim of the petitioners involved herein attempted to oppose the claim of the petitioners on the premises that there is dispute involving the Managing Committee and in the submission of the proposals. Both of them however have no answer to the allegations of the learned Senior Counsel for the Petitioners in all the Writ Petitions clandestinely and behind their back

obtained the final order therein. Both of them, however, attempted to justify the impugned order being based on direction in the disposed of Writ Petition. Both the learned Counsel, however, in their alternate prayer submitted that in the event the matter is remitted for fresh consideration, their Clients should be provided opportunity to have their case.

8. Mr.S. Ghose, learned Additional Standing Counsel appearing for the Higher Education Department adopted the submissions of Mr.Tripathy and Mr.Mohapatra, attempted to justify the order at Annexure-11 being followed by the direction of this Court in the disposed of Writ Petition bearing W.P.(C) No.34818/2020 and prayed for lawful direction in the Writ Petition. Mr.Ghose, learned Additional Standing Counsel, however, could not be in a position to oppose the submissions of the Senior Counsel under the provisions of law nor disputed the fact that while decision for reconstitution was taken up, there existed a valid Governing Body and term of such Governing Body was not to expire within six months. Further the Director was directed to take decision on Annexure-4 in disposed of Writ Petition. The Regional Director should not have taken up the issue.

9. Background involved here remains to be the Regional College of Management, Chandrasekharpur, Bhubaneswar has already got its Governing Body re-constituted for a period of three years on the decision of the Department of Higher Education Bhubaneswar vide Annexure-7. The new Governing Body started functioning since 07.01.2019. This Court here finds the term of Governing Body reconstituted was for a period of three years. It is

here taking into consideration the Rule 23 of the Rules 1991, this Court finds

Rule 23 reads as follows:-

23. Reconstitution of the Governing Body- (1) Not less than ninety days prior to the date of expiry of the term of a Governing Body, a resolution shall be passed in a meeting of the Governing Body nominating five members in accordance with Clause (g) of Sub-rule (2) of Rule 21 from among themselves or other persons in the local area interested in the field of education to be members of the Governing Body to succeed it on the expiry of its terms and to be its President and Secretary:

Provided that where a Charitable Trust had established the College, the Trust shall nominate the above persons to be members, President and Secretary of the Governing Body:

Provided further that if the outgoing Governing Body or the Charitable Trust does not pass a resolution nominating members, the Director shall be competent to reconstitute the Governing Body:

Provided also that-

- (i) no person shall be the Secretary for more than two terms; and;
- (ii) no person shall be a member of the Governing Body for more than two consecutive terms except of ex officio members, donors and those nominated by a Charitable Trust in case of such a Trust established the College.

(2) The outgoing President shall furnish the Director for his approval the names and the details granting the proposed reconstruction of the Governing Body including the name of the representative to be elected by the teachers the name of one representative duly elected from non-teaching staff and the name of the Principal of the College along with the names of the persons to be the President and the Secretary of the Governing Body.

(3) The Director shall be competent to substitute any name in the proposed Governing Body to bring it in conformity with the provision of these Rules or with a view to improve the efficiency of the management of the College;

Provided that the Director shall consult the outgoing Governing Body in the matter before making such substitutions.

Reading through the aforesaid Rule, this Court finds, the Rule prescribes submission of proposal by the existing Governing Body having a resolution to such proposal in the matter of re-constitution of the Governing Body to succeed it on the expiry of the term of the existing Body undisputedly expiring on 06.01.2022. Getting into the pleadings in W.P.(C) No.446 of 2022, this Court

finds in terms of Rule 23 of the Rules 1991, there is already a proposal submitted to the Competent Authority by the existing Governing Body on 05.10.2021 appears to be pending consideration of the Competent Authority.

10. It is, in a development in disposal of the W.P.(C) No.34818 of 2020 at the instance of one Mr. Brajakishore Dash, this Court while keeping in view the dispute of all the Petitioners here on the locus standi of such persons leaves it open to be agitated and adjudicated in the appropriate proceeding. However, keeping in view the scope of consideration in W.P.(C) No.34818/2020, this Court finds, the above Writ Petition involved the following prayer :-

In the circumstance the petitioner prays that this Hon'ble Court will graciously be pleased to issue Rule Nisi calling upon the Opp. Parties to show cause as to why the proposed Governing Body of the Regional College of Management, Bhubaneswar under Annexure-4 shall not be approved forthwith;

AND

If the Opp. Parties fail to show cause or show insufficient cause, the said Rule may be made absolute;

AND

Issue any other writ(s)/direction(s)/order(s) as this Hon'ble Court deems fit and proper;

AND

For which act of kindness the petitioner as in duty bound shall ever pray.

11. This Court also records the submission of learned Senior Counsel for the petitioner that this Writ Petition undisputedly did not involve the whole background and developments by the time of disposal of Writ Petition by the time of filing such Writ Petition. This Court, however, finds the matter was decided at the admission stage without issuing notice, further also in no involvement of the Institution involved herein as well as Parties likely to be affected. Naturally there was no scope for the Institution and/or the Parties likely to be affected by the finalization of such Writ Petition to bring the facts

already existing by the time of disposal to the fold of consideration. Be that as it may, this writ petition was disposed of on admission stage only involving the State Counsel passing the following order :-

“This matter is taken up through Video Conferencing because of COVID-19.

Heard Mr.Amitav Mohanty, learned counsel for the petitioner and Mr.A.K.Sharma, learned Additional Government Advocate.

In the present writ petition, the petitioner has sought for a direction to the opposite party No.2 to approve the proposed Governing Body of the Regional College of Management, Bhubaneswar under Annexure-4.

Learned Counsel for the petitioner submits that pursuant to the General Body meeting held on 06.09.2020 the Governing Body of the Regional College of Management has been reconstituted and the College authority by its letter dated 27.11.2020 has submitted the reconstituted Governing Body of the College to the Director, Higher Education, opposite party no.2 for approval. But the opposite party No.2 sat over the matter without approving the reconstituted Governing Body.

Learned counsel for the petitioner further submits that if a direction would be issued opposite party no.2 to consider the proposed Governing Body of the Regional College of Management Bhubaneswar under Annexure-4, and take a decision on the same on its own merit in accordance with law within a stipulated time, then the grievance of the petitioner shall be redressed.

Mr.A.K.Sharma, learned Additional Government Advocate, however has no serious objection to that course of action.

Considering the limited nature of grievance and without delving into the merits of the matter, the writ petition is disposed of with a direction to the Director of Higher Education, opposite party No.2 to consider and take a decision on the proposed Governing Body of the Regional College of Management, Bhubaneswar under Annexure-4 in accordance with law as expeditiously as possible preferably within a period of four weeks on production of certified/authenticated copy of this order along with a copy of the writ petition.

The opposite party no.2 shall act on production of certified/authenticated copy of this order along with a copy of the writ petition.

As restrictions are continuing for COVID-19, learned counsel for the parties may utilize the soft copy of this order available in the High Court's Website or print out thereof at par with certified copies in the matter prescribed, vide Court's Notice No.4587, dated 25.03.2020.”

Reading through the aforesaid order, this Court finds, there is innocuous direction in the disposal of the writ petition directing the Director therein,

opposite party No.2 to consider the representation involved therein at Annexure-4 but however in accordance with law. It appears, Annexure-11 is a progress involving such direction. Considering the contest of the parties involving Annexure-11 being an outcome of consideration of Annexure-4 in W.P.(C) No.34818 of 2020, this Court finds in the event the Director of Higher Education was directed to take a decision on Annexure-4, since it was aiming for re-constitution of Governing Body, in the above of Writ Petition since the request involved re-constitution of the Governing Body of an Establishment, this Court finds strange in the attitude of the Regional Director of Higher Education Department even without having such power, as under the provisions at Rule 22 and Rule 23 herein making it clear, the Director alone has such power entering into the re-constitution of a Governing Body without even ascertaining if Annexure-4 therein involved a proposal for re-constitution of Governing Body and further if it was by the competent person and further if there was any such contingency at all in getting into re-constitution aspect, more particularly in absence of any head and tail in the proposal, if any, in Annexure-4 and the parties likely to be affected taking a decision in reconstitution of the Governing Body. This Court here also records the statements made by the learned counsel that the Regional Director not only illegally stepped into such matter but has concluded such proceeding on his last date of officiating in such Post.

12. Further since this Court has already recorded hereinabove that there already existed a Governing Body duly constituted, vide Annexure-7 was to

expire on 06.01.2022, this Court finds, there was no requirement under the Rule for having the exercise of re-constitution of the Governing Body existing at least commencing such exercise much prior to the expiry of such Governing Body. In the event there was direction of this Court to take a decision on Annexure-4, first of all there was direction to the Director, thus the Regional Director has unnecessarily and illegally exercised his power when Rules 21, 22 & 23 of the Rules 1991 unequivocally gives such power to the Director. There was no business with the Regional Director to poke his nose except leaving it to the decision by the Director. Further, looking to the provision at Section 2(e) in the Orissa Education Act, 1969, this Court observes, the Director may include the Deputy Director with authorization for the purpose but in no circumstance, can include the Regional Director.

13. In the circumstance, this Court finds, there is gross abuse of power by the Regional Director, Higher Education Department in deliberate avoidance of direction of the High Court in the disposed of Writ Petition bearing W.P.(C) No.34818/2020 and in complete ignorance of the legal provisions taken note hereinabove and as a consequence, the impugned order at Annexure-11 of W.P.(C) No.16762 of 2021 must fail. In the result, this Court declaring order at Annexure-11 as bad in the eye of law and even without authority, finds, in the natural process, following the provision of Rule 23 of Rules 1991 and the existing Governing Body has already sent a proposal with the approval of the Governing Body by virtue of letter dated 5.10.2021 finds place as Annexure-4 in W.P.(C) No.446/2022 even though addressed to the Regional Director but at

Page-32 there appears to have also been served on the Director, Department of Higher Education and in the event no copy of such proposal is placed in the Office of the Director, the Regional Director, O.P.3 shall forward copy of Annexure-4 to the Director for the Director, O.P.2 taking decision on the same in terms of Rule 23 of the Rules, 1991. Since there is already time for considering the re-constitution of the Governing Body, the Director, O.P.2 shall take decision on the pending proposal but however involving the parties likely to be affected and, if necessary, inviting their objections, if any.

This Court here from the counter affidavit of opposite party No.5 finds, there has been a dispute with regard to the management continuing. This Court expresses its inability to go to such extent and leave such aspect, if agitated to be indicated by the Competent Authority at appropriate time.

Since the proposal is already pending consideration, this Court directs opposite party No.5 in W.P.(C) No.16762 of 2021, if any other party is interested in such approval process, to appear before the Direction on 20th May, 2022 along with his objection with service of copy on the other side and the Petitioner herein will accordingly get at least two weeks' time to file response involving objection, if any, and the decision in the matter of recognition of the Governing Body shall be taken within a period of two months from today.

14. For quashing of Annexure-11 in W.P.(C) No.16762 of 2021 and the other directions hereinabove, other Writ Petitions do not require any further

direction. All the Writ Petitions stand disposed of accordingly but in the circumstance, there is no order as to cost.

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(Biswanath Rath, J.)

Orissa High Court, Cuttack.
The 9th May, 2022/MKR, A.R.-cum-Sr.Secy.

