

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.13756 OF 2019

(An application under Articles 226 and 227 of the Constitution of India)

**Managing Committee of
Jayanti Patnaik Girls' High School
Borigochha, Nayagarh.**

... Petitioner

-versus-

State of Odisha & others ... Opposite Parties

Advocates appeared in the case through hybrid mode:

For Petitioner : Mr.D.N.Rath,
Advocate

-versus-

For Opposite Parties : Mr.R.N.Acharya,
Standing Counsel
(S & M.E. Deptt.).

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

24.08.2022.

Sashikanta Mishra,J. This is the fifth Journey of the Petitioner Institution to this
Court for redressal of the same grievance namely, grant of

recognition to it under Section 6 of the Odisha Education Act, 1969 (for short, “the Act”).

2. Bereft of unnecessary details, the facts of the case are that the Petitioner institution was permitted to function for the academic Session 1999-2000. It applied for grant of recognition soon thereafter. Such application was considered by the Director, Secondary Education, Odisha (Opposite Party No.2) who directed the District Education Officer, Nayagarh (Opposite Party No.3) to conduct inspection. The report of inspection was placed before the Opposite Party No.2 who in turn, placed the same before the High Power Committee (Opposite Party No.4). Recognition was not granted on the ground that Government had issued a resolution on 21st June, 2013 to the effect that unless the Institution obtained NOC and fulfils all the conditions, it will not be considered for recognition. Challenging the resolution dated 21st June, 2013 and the decision not to grant recognition, the Institution approached this Court in WPC No.18945/2014, which was disposed of by order dated 17th July, 2017 observing that the resolution in question had been kept in abeyance by the Government and, therefore, the concerned authorities were directed to consider the claim for grant of recognition as per Section 6 of the Act. By order dated 29th

March, 2018, the Opposite Party No.2 rejected the prayer for grant of recognition on the ground of deficiencies. Such order was challenged by the Petitioner before this Court in W.P (C) No.14415/2018. During pendency of the said Writ Petition, the Petitioner filed an affidavit before this Court enclosing documentary proof to show that the deficiencies as pointed out by the High Power Committee (HPC) had already been removed. Accordingly, the Writ Petition was disposed of on 20th November, 2018 granting liberty to the Petitioner to approach the appellate authority for necessary relief. The Petitioner filed an application on 25th January, 2019 before the HPC specifically submitting that the deficiencies have been removed and grant of temporary injunction may also be considered. Since no action was taken in the matter, the Petitioner again approached this Court in W.P(C) No.13368/2019, which was permitted to be withdrawn on 1st August, 2019 with liberty to file better application. The present Writ Petition has been filed pursuant to such order.

During pendency of the present Writ Petition, order dated 2nd August, 2019 passed by the HPC was communicated by the Opposite Party No.2 wherein the prayer for grant of recognition was rejected again and the Petitioner Institution was directed to

close down the facilities and not to enroll any students in future.

The said order is enclosed as Annexure-12 to the Writ Petition.

3. On the above facts, the Petitioner has claimed the following relief:-

“Under the above circumstances, it is therefore humbly prayed that this Hon’ble Court may be graciously pleased to issue a writ in the nature of writ of mandamus or any other appropriate writ, direction, or order by directing the opposite party no.4 to dispose of the application of the petitioner under Annexure-11 within a stipulated period and to grant permanent/temporary recognition to the petitioner’s institution in accordance with Section 6 and sub-Section 9 of Section 6 of the Orissa Education Act, in order to save the institution and the career and future of the students;

And this Hon’ble Court be further pleased to quash the order passed by the Opposite Party No.2 vide Annexure-12 so also the decision taken by the High Power Committee dated 19.2.2019 and to take a decision giving opportunity of hearing to the petitioner.”

4. A counter affidavit has been filed on behalf of the State- Opposite Parties mainly stating that originally, in the HPC held on 2nd February, 2018, the claim for grant of recognition of the Petitioner Institution was rejected because of several deficiencies including non-availability of adequate lands, class rooms, teachers, roll strength, playground, library, electrification and furnitures etc. It is further stated that pursuant to order dated 20th November,

2018, passed by this Court in WP(C) No.14415/2018, the matter was again placed before the HPC in its meeting dated 19th February, 2019. The HPC carefully examined the proposal on the basis of the latest report of the Opposite Party No.3 and found that the Institution does not have basic minimum infrastructure and facilities and, therefore, does not fulfil the conditions for being eligible for recognition as per the Act. The impugned order under Annexure-12 is, thus sought to be justified.

The Petitioner filed a rejoinder specifically averring that the deficiencies pointed out earlier had already been removed and even if there are some deficiencies, the same are not a bar at least for grant of temporary recognition as per sub-section (9) of Section 6 of the Act. The above aspect was, however, not considered by the HPC. It is further specifically averred in the rejoinder that no opportunity of hearing was granted to the Petitioner before taking the decision to reject its claim.

5. Heard Mr. D.N.Rath, learned counsel for the Petitioner and Mr.R.N.Acharya, learned Standing Counsel for the School and Mass Education Department.

6. Mr. Rath, at the outset, has drawn attention of this Court to the provision under Sub-section (10) of Section 6 of the Act to contend that the impugned order was passed in violation thereof as no opportunity of hearing was granted to the Petitioner Institution before passing the same. Mr. Rath further contends that the HPC has not taken into consideration the provision under Sub-section (9) of Section 6 of the Act in view of the specific stand taken by the Petitioner Institution that it had removed the deficiencies pointed out earlier and even if some still remained to be removed, the same would not stand on the bar to at least confer temporary recognition.

7. Mr. R.N.Acharya has contended that the impugned order contains specific reasons for rejection of the Petitioner's claim for recognition namely, lack of basic minimum infrastructure and facilities. Further as per the policy of the Government the viability of running large number of educational institutions is being considered either by closing them down or merging them with nearby Government Schools. It is further argued by Mr. Acharya that the Petitioner Institution's real intention is for receiving grant-in-aid in future. Even otherwise, the locality is well served by two Institutions within a short distance and, therefore, the claim of the Petitioner is not justified and was rightly rejected.

8. From the facts placed before this Court, it is evident that the claim of the Institution for grant of recognition was originally rejected by the HPC in its meeting held on 2nd February, 2018 after noting certain deficiencies. It is claimed on behalf of the Petitioner Institution that the said deficiencies have since been removed. In support of such claim, an affidavit was filed by the Institution on 27th August, 2018 in the previous Writ Petition i.e., W.P (C) No.14415/2018 stating all the steps taken by it to remove the deficiencies pointed out by the HPC. It is further claimed that being granted liberty by this Court in W.P. (C) No.14415/2018, the Petitioner submitted an application on 25th January, 2019 before the HPC, which is enclosed Annexure-11 to the present Writ Petition. It was specifically indicated in the said application that in so far as the deficiencies pointed out under Sl. Nos.2 to 6 in the earlier rejection order dated 29th March, 2018 are concerned, the same had been complied with and only the deficiency with regard to the recording of the land in favour of the School remained to be complied. It was also specifically prayed to consider grant of temporary recognition as per Sub-section (9) of Section 6 of the Act. The affidavit referred to above was also enclosed to the application. A reading of the impugned order however, reveals that

the HPC supposedly examined the proposal on the basis of the latest report of the Opposite Party No.3 and other records placed before it and found that the School lacked basic minimum infrastructure and facilities. It is claimed that the report of the Opposite Party No.3 and 'other records' were never supplied to the Petitioner Institution nor was it granted any opportunity of hearing in this regard. A reference to Sub-section (10) of Section 6 of the Act would be apposite at this stage:-

“6. Recognition of Educational Institution.

XXXX XXXX XXXX XXXX

(10) Any applicant aggrieved by an order refusing to accord recognition may within one month from the date of communication of such order file a review petition before the Committee constituted under Sub-section (4). The Committee after calling for such information and causing such further inquiry as may be necessary and after giving an opportunity of being heard to the petitioner shall take decision and dispose of the petition.

XXXX XXXX XXXX XXXX”

Two things are apparent from a bare reading of the provision quoted above; firstly, the Committee (HPC) may cause such further enquiry as may be necessary and secondly, opportunity of hearing must be given to the Petitioner.

Obviously, by ‘inquiry’ is implied a fact finding exercise to be undertaken if considered necessary.’ In the instant case, the impugned order purports to have undertaken such an exercise as a report was called for from the Opposite Party No.3 and was utilized, but evidently without causing a copy of the same to be served upon the Petitioner Institution. Incidentally, a copy of the report of the Opposite Party No.3 dated 4th March, 2021 has been placed on record as Annexure-C/3 by the Opposite Parties, which reveals that he had conducted an inquiry in the matter and had offered his ‘Personal Views’ after observation of the present Institution. Thus, what has happened is the report of Opposite Party No3 has been treated as sacrosanct and unilaterally accepted. Therefore, this Court is constrained to observe that the so called enquiry conducted by the HPC cannot be treated as an inquiry as contemplated under Sub-section 10 of Section 6 of the Act. That apart, the statute mandates that the Petitioner must be granted an opportunity of hearing. This is based on the salutary principle of *audi alteram partem*, which literally means to hear the other side. It is well settled that when the statute requires a thing to be done in a particular manner, the same is to be done in that manner or not at all. A quasi-judicial authority like the HPC obviously cannot give a

go-bye to the aforementioned principle of law and if it does, its order becomes vulnerable to attack. Viewed in the light of the position of law referred above, this Court is of the considered view that the impugned order suffers from serious infirmities and therefore, cannot be sustained in the eye of law.

9. In the result, the Writ Petition is allowed. The impugned order under Annexure-12 is hereby quashed. The matter is remitted to the HPC to consider the application of the Petitioner strictly as per the procedure laid down under Sub-section (10) of Section 6 of the Act and to pass a lawful order within a period of two months from the date of communication of this order or on production of certified copy thereof by the Petitioner. It goes without saying that the Petitioner Institution shall be granted with opportunity of hearing as required by the statute.

Ashok Kumar Behera

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Sashikanta Mishra,
Judge





