

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 16042 of 2017

An application under Articles 226 & 227 of Constitution of India.

AFR **Monika Nayak** ----- **Petitioner**

-Versus-

State of Odisha & others **Opp. Parties**

Advocate(s) appeared in this case:-

For Petitioner : M/s. S.K. Das, N. Jena S.K.
Nayak & P.K. Behera, Advocates

For Opp. Parties : Mr. H.K. Panigrahi,
Addl. Standing Counsel.

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

30th August, 2022

SASHIKANTA MISHRA, J.

The petitioner was appointed as a Lecturer in Sociology in B.N.M.A. College, Paliabindha in the district of Bhadrak by office order dated 14.12.1993. Pursuant to such order, the petitioner joined in her post on 22.12.1993. The said college was established in the year

1975 and from its inception it received concurrence and affiliation in Sociology subject at the Degree level. It got permanent affiliation and concurrence in Sociology at +3 Arts from the session 1994-95 as per notification dated 03.01.1997 of the Utkal University. The petitioner was teaching Sociology in the +2 and +3 levels in the college. The Director, Higher Education, by letter dated 20.05.2005, restricted several subjects including Sociology in the +3 Arts from the academic session 2005-2006. Since then the petitioner has been teaching Sociology in +2 classes. Several communications were made by the college with the Director for retention of the restricted subjects including Sociology on the ground that the students are deprived of getting scope for admission in the subject. Since no action was taken on the representations so submitted, the college preferred appeal before the State Government. The appeal was heard and disposed of vide order dated 22.07.2017 (Annexure-6) granting permission to open Sociology subject in the college from the academic session 2018-2019 but in self-financing mode. The petitioner claims to be holding the second post in

Sociology subject and that she has been teaching in +2 and +3 classes. The government released payment of Block Grant with effect from 01.02.2009 in respect of one post in each subject in +2 and +3 classes. Since the subject restriction was imposed on Sociology in +3 in the year 2005, the lecturer holding the first post in the +2 class was granted Block Grant and the petitioner having held the second post was deprived of getting the same. The petitioner is aggrieved by the order dated 22.7.2017 insofar as it relates to granting permission to the college to open Sociology in self-financing mode. As such, the petitioner has filed the instant writ petition seeking the following relief:

“It is, therefore, humbly prayed that this Hon’ble Court may graciously be pleased to issue Rule NISI calling upon the opp. parties to show cause to why a writ in the nature of Mandamus shall not be issued directing the opp. parties to declare the subject Sociology as Govt. Aid Mode instead of Self Financing Mode of B.N. M.A. College and further be pleased to grant continuity of the affiliation from 20.05.2005 to the subject Sociology under Annexure-6 in view of the letter dated 14.03.2012 under Annexure-7 granting affiliation from the date of restriction imposed in respect of Sri Jayadev College of Education and Technology, Naharkanta in the district of Khurda and direct the opp. parties to pay all the service benefit as admissible to her posts from the date of her appointment and on

perusal of causes shown if any or upon insufficient causes shown make the said rule absolute.

And may pass any other writ/writs, order(s), as deem just and proper.

And for this act of kindness the petitioner, shall as in duty bound ever pray.”

2. A counter affidavit has been filed on behalf of the Government. While the basic facts relating to the establishment of the college in 1975, grant of permission to it by the Government, appointment of the petitioner etc. have been admitted, it is stated that due to shortage of student strength in subject Sociology in +3 wing, the Director of Higher Education restricted the said subject as an optional subject from the academic session 2005-2006 as per law. Thereafter, the petitioner taught the optional subject Sociology only in the +2 Arts wing in the college. Thus, the petitioner having been appointed after opening of the +3 wing in the college and there being no further teaching post in Sociology against the aided +2 wing, she must be treated as holding the second post in Sociology in the +2 wing, which is not admissible to the college. The High-Power Committee of the Government in Higher Education Department constituted under Section 5 of the

Odisha Education Act, 1969 is empowered to grant permission for opening of new colleges, new subjects (pass)/honours subjects and for increase of seats in different streams as well as subjects and grant of recognition for the same. In the meeting held on 26.11.2013 under the chairmanship of the Hon'ble Minister, Finance and Public Enterprises Department with regard to the demands of non-government aided colleges for grant-in-aid in shape of Block Grant, it was decided to restrict opening of new colleges after 30.11.2013. It was categorically decided that in case of new colleges established after 30.11.2013, there shall be no grant-in-aid facility. In view of such decision, opening of the optional subject Sociology was allowed in self-financing mode in which Government will not bear any financial aid of the college and the management of the college will bear all its financial requirement without aid from Government.

3. The petitioner filed a rejoinder basically contending that the subject Sociology got Government concurrence in the Intermediate Arts with 128 seats with

effect from 1978-79 and the said 128 seats was increased to 256 seats. The Sociology subject with 256 seats in +3 Arts got permanent affiliation. The petitioner was given appointment in 1993 and two teaching staff are admissible for the workload for the subject Sociology since the institution was then a composite college. The UGC scale and State scale were given to one post of lecturer in Sociology even if two posts of teaching staff in the subject were admissible considering the workload. Though the appellate authority lifted the subject restriction but made the same self-financing without giving it continuity from the date of imposition of the restriction till its lifting. It is further stated that similar benefit was granted in case of Jaydev College of Technology at Naharkanta.

4. Heard Mr. Sameer Kumar Das, learned counsel for the petitioner and Mr. H.K. Panigrahi, learned Addl. Standing Counsel for the State.

5. Mr. Sameer Kumar Das has argued that the impugned order is bad in law to the extent permission was given to open the Sociology course but on self-financing mode and that too, without granting continuity from the

date the restriction was imposed for the first time. According to Mr. Das, either the application for lifting of the restriction should have been allowed or rejected, but the appellate authority could not have passed order for making the course self-financing. Referring to the provision under Section 6 of the Act, it is contended that the same does not contemplate any self-financing mode. It is further argued that reference to the decision taken by the High-Power Committee has got no application to the present case, inasmuch as the same relates to only new colleges established after the cut-off date but not to the existing colleges.

6. Per contra, Mr. HK Panigrahi contends that though the college was granted permission and affiliation for Sociology subject at the +3 stage, yet because of less roll strength, restriction was imposed as per law. The petitioner has though continued in service, must be held to have continued against the second post in the + 2 wing, which itself is not admissible as per the yardstick. Grant of recognition/permission for a particular course/subject depends inter alia upon the roll strength. In case the roll

strength is less than the prescribed strength, the authorities would be perfectly justified in withdrawing the recognition/permission. In the instant case, the college failed to maintain the required roll strength in the +3 level and therefore, the subject Sociology (and other similarly situated subjects) was rightly restricted. Further, grant-in-aid also depends on the financial ability of the Government to pay. Considering all the matters, a policy decision was taken by the High-Power Committee to stop the benefit to all new colleges established after the cut-off date. Since the petitioner's college was permitted to open Sociology with effect from the academic session 2018-19, it must be deemed to be a new college to such extent and therefore, no grant-in-aid would be payable. As a natural corollary, the college has to impart the course on self-financing mode.

7. A perusal of the letter dated 03.01.1997 of the Registrar, Utkal University reveals that the Vice Chancellor, exercising powers as syndicate granted permanent affiliation at +3 degree stage to the college with several subjects including Sociology with 256 seats from

the session 1994-95. The Director, Higher Education, Odisha, by order dated 20.05.2005, restricted certain subjects of the college including Sociology by stating that the same was done after careful consideration on rationalization on the basis of students enrolment and teachers strength vis-à-vis subjects taught in the colleges. It is of course not stated as to what exactly was the student strength in the restricted subjects including Sociology. Be that as it may, on appeal preferred by the institution the appellate authority by order dated 22.07.2017, allowed it to open Sociology subject from the academic year 2018-19 in self-financing mode. In the counter affidavit filed by the State such decision is sought to be justified by referring to the decision taken by the High-Power Committee in its meeting held on 26.11.2013 whereby it was decided that there would be no grant-in-aid facility for new colleges established after 30.11.2013. Firstly, B.N.M.A. College is not a new college established after 30.11.2013, but was established way back in the year 1979. Further, recognition and affiliation to the subject Sociology was granted also with effect from 1994-

95. In the meeting of the High-Power Committee it was inter alia, held that grant-in-aid would be extended to those educational institutions which have been established only with the recognition of Government and affiliation of the Council or the Universities, as the case may be on or before 1st June 2008 in educationally advanced districts and on or before 1st June 2010 in respect of educationally backward districts. It was also held under Paragraph 6 as follows:

“The Higher Education Department would restrict opening of new colleges after 30.11.2013. They would apply strict criteria for giving permission to new colleges, if found suitable. However, Higher Education Department may consider to open government colleges at the places of necessity to promote Gross Enrolment Ratio (GER) and ensure access, equity and inclusive growth but there shall be no compromise to the laid down principle of opening of new colleges. This shall be with prior concurrence of finance department in each case.

In case of new colleges after 30.11.2013 there shall be no grant-in-aid facility.

8. Significantly, though the decision taken in the High-Power Committee meeting has been referred to in the counter affidavit, yet there is not a whisper regarding the same in the impugned order. The impugned order does not at all refer to the decision of the High-Power

Committee as being the reason for passing the same. Permission was granted to open Sociology to the college with effect from 2018-2019 but on self-financing mode. As argued by Mr. S.K. Das, there is no provision in the Education Act or any Rules of the Government providing for running courses on self-financing mode by the aided colleges. In the appeal preferred by the institution, the appellate authority could have either allowed the same by granting permission or rejected the appeal by refusing it. In the instant case, the authority has purportedly allowed the appeal but in a manner as would tantamount to rejection thereof. Running the course of Sociology on self-financing mode was not sought for by the institution in the appeal preferred by it. Therefore, the appellate authority should have either allowed or rejected the appeal as it is but to allow the appeal in a manner not contemplated in law makes the same vulnerable to challenge and in the considered view of this Court, justifiably so.

9. In such view of the matter, while holding that the impugned order cannot be sustained in the eye of law, this Court is of the view that the appellate authority should consider the appeal afresh in accordance with law having due regard to all the required parameters such as student strength, grant of permission/concurrence in the past etc. and take a decision either to grant permission or refuse the same by passing a reasoned order. As regards the claim of continuity, it is also for the appellate authority to decide the same taking into account the developments as regards the student strength etc. from the date of imposition of restrictions till consideration of the appeal.

10. For the foregoing reasons therefore, the impugned order dated 22.07.2017 passed by the state Government in Appeal Case No.MHE(+3)-20/ 2017 is hereby quashed. The matter is remitted to the appellate authority to hear the appeal afresh in terms of the observations made by this Court in the present order and to pass a lawful order after granting due opportunity of

hearing to the parties within a period of eight weeks from the date of communication of this order or on production of certified copy thereof by the petitioner. It is needless to mention that this Court has not expressed any opinion on the merits of the case.

11. The writ application is disposed of accordingly.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 30th August, 2022/ A.K. Rana, P.A.

