

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 16527 of 2022

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

AFR **Managing Committee of Saraswati**
Sishu Vidya Mandir, Jagatpur **Petitioner**

-Versus-

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

Advocate(s) appeared in this case:-

For Petitioner : M/s. D.N Rath, A.K. Saa,
S.S. Rath, Advocates

For Opp. Parties : Mr. P.K. Panda, Standing
Counsel for School and Mass
Education Department.

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

30th August, 2022

SASHIKANTA MISHRA, J.

The petitioner is an institution imparting education to students. It was established in the year 1993 and was registered on 20.03.2001 under the Societies Registration Act. The Siksha Vikash Samiti granted

permission to the institution on 04.12.2008 to function in the name of Saraswati Sishu Vidya Mandir. The institution started imparting teaching in classes-I to VIII being permitted by the Siksha Vikash Samiti. On 06.05.2015, the Director of Elementary Education, Odisha granted NOC in favour of several schools including the petitioner's school for running the same. Thereafter, the students regularly appeared in the examinations and in the year 2015, the institution submitted list of students of Class-III and Class-V to appear in the Scholarship Examination for the session 2015-16. The students were allowed by the Block Education Officer to appear in the examination and some of the students were also awarded with scholarship on 15.11.2016. The petitioner institution applied for certificate of recognition(COR) as required under the Right of Children to Free and Compulsory Education Rules, 2010 for the period from academic session 2017-18 to 2021-22, i.e., for a period of 5 years as per the norms. Such application was made online on 29.03.2018 bearing No.15219/2017. The petitioner

institution submitted names of some students appearing in Class-III and Class-V examination, which was duly received by the opposite party No. 4, who also issued Admit Cards on 14.08.2018 permitting them to appear in the scholarship examination, held on 18.08.2018. While the matter stood thus, in the year 2019, the Pradhan Acharya of the institution submitted a list of students of Class-III and Class-V on 02.07.2019 before the opposite party No.4 to appear in the scholarship examination scheduled to be held in the month of August, 2019. However, the opposite party No.4 did not receive the said list. On query made by the Institution regarding non-acceptance of the descriptive roll by the opposite party No.4 for the scholarship examination of 2019, it was intimated that the institution had not received recognition pursuant to the application made by it earlier and therefore, the descriptive roll would not be accepted. Since the scholarship examination was due to be held in the 2nd week of August 2019, finding no other way, the petitioner institution approached this Court in W.P.(C) No. 13255

2019. This Court, as per order passed in the said writ application directed the authorities to allow the students to appear in the scholarship examination of 2019. Since no action was taken on the application submitted by the institution for grant of recognition, the managing committee of the petitioner institution filed a representation before the Director of Elementary Education (opposite party No.3) on 29.08.2019, which was followed by a reminder on 14.09.2019. Since no decision was taken, the petitioner approached this Court in W.P.(C) No.18955 2019 praying for necessary direction to the opposite parties. By order dated 22.10.2019, this Court directed the opposite party No. 3 to consider and dispose of the representations of the petitioner in accordance with law within a period of three months. Despite such order being passed by this Court no action whatsoever was taken by the opposite party authorities, for which the petitioner was compelled to file a contempt petition bearing CONTC No.1689 of 2020. The contempt petition was disposed of by order dated 08.06.2020 by directing

the opposite parties to comply with the order of this Court within a period of six weeks. Even then the opposite parties did not comply with the direction of this Court for which the petitioner filed another contempt petition bearing CONTC No.3554 of 2020. The said contempt petition was disposed of on 16.10.2020 again granting opportunity to the opposite party authorities to comply with the order, failing which suo motu contempt would be registered by the registry. During pendency of the contempt application, the opposite party No.3, by order dated 30.09.2020 rejected the application of the petitioner institution for grant of certificate of recognition, which was received on 15.10.2020. The said order, which is enclosed as Annexure-12, was passed without application of mind for which the petitioner institution filed another writ application before this Court during W.P.(C) No.13255 2019 to allow the students to appear in the scholarship examination of 2019. An order was passed by the opposite parties to allow the students to appear in the said examination during pendency of the writ application,

which was accordingly disposed of. In view of the rejection of its application for grant of certificate of recognition, the petitioner challenged the same before this Court by filing another writ application being W.P.(C) No. 29916 of 2020. By order dated 13.09.2001, this Court remitted the matter to the District Education Officer, Cuttack to consider the application of the petitioner with further direction that if any defect is found the same should be communicated to the petitioner to comply the same within a period of three weeks from the date of communication of the order. Accordingly, the petitioner institution communicated the order of this Court to the opposite parties by letter dated 29.09.2021. The opposite party No. 3 thereafter issued a letter to the Secretary of the petitioner institution vide letter dated 29.11.2001 asking it to remove the defects as mentioned in the said letter within 15 days and informing that after removal of the defect, on-site inspection would be conducted and thereafter final decision would be taken as regards grant of certificate of recognition in favour of the school. It is clarified that the Secretary of the

petitioner institution complied with all the deficiencies pointed out by the opposite party No.3 and communicated the same vide letter dated 13.12.2021. In spite of removal of the deficiencies, as pointed out by the opposite party No.3, no action was taken for which the petitioner was constrained to file another contempt application bearing CONTC No.2579 of 2022, which is still pending before this Court. While the matter stood thus, the opposite party No.3 issued order dated 26.5.2022 stating that though the deficiencies pointed out were said to have been removed, but since the same were not available at the time of submitting online application, the subsequent developments cannot be taken as a part of the online application and therefore, the institution was directed to submit its application through online mode. Being thus aggrieved by order dated 26.5.2022, enclosed as annexure 20 to the writ application, the petitioner has approached this Court again in the present writ application seeking 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 quashing the order dated 26.05.2022 passed by the opposite party no.3 vide Annexure-20 to the writ application.

And this Hon'ble Court be pleased to direct the opposite party no.2 to extend the Certificate of Registration in favour of the petitioner's institution from the session 2017-18 to 2021-22 pursuant to the application made by the petitioner's institution vide Annexure-5 to the writ application.

And the Hon'ble Court by pleased to pass any further order or orders s deem fit and proper in the facts and circumstances of the case"

2. A counter affidavit has been filed by the District Education Officer, Cuttack (opposite party No.3). While referring to all the undisputed facts mentioned in the writ application, the opposite party No.3 has also referred to several provisions of the Right of Children to Free and Compulsory Education Act, 2009 to contend that there is no provision for grant of recognition retrospectively and that the same is always prospective in nature. It is further stated that the petitioner institution does not fulfill the required criteria laid down in the Act and the Rules. It is further stated that grant of permission to the students to appear in the scholarship examination in the past cannot be treated as waiver of the defects which are required to

be removed as per the mandatory provisions of the statute. Since the petitioner did not remove the defects, the certificate of recognition cannot be granted to it. It is further stated that the subsequent developments cannot be taken as part of the online application, which has already been submitted by the institution earlier.

3. The petitioner institution has filed another affidavit clarifying the particulars mentioned in its letter indicating removal of the deficiencies pointed out by opposite party No. 3. It is basically stated that all the teaching staff of the institution at the relevant time had possessed training qualification and the details thereof were given for appreciation of the Court.

4. Heard Mr. D.N. Rath, learned counsel for the petitioner and Mr. P.K. Panda, learned Standing Counsel for School and Mass Education Department.

5. It is argued by Mr. Rath that this Court having specifically directed the authorities to point out the deficiencies to the petitioner with further direction to the petitioner to comply with the same, the impugned order

passed in holding that the subsequent development cannot be taken into consideration, amounts to violation of such order of this Court. Further, the claim for recognition has to be considered in accordance with law and in this context, the authorities are required to see if the deficiencies pointed out have been actually removed or not. The authorities have instead harped upon technicalities and shut their eyes to the material produced by the petitioner institution showing removal of the deficiencies. The authorities should have kept in mind the pious intent of the Act, 2009 as also the fact that such approach can adversely affect the career of the students belonging to the relevant period.

6. Per contra, Mr. P.K. Panda has argued that there is no provision whatsoever in the Act, 2009 to grant recognition retrospectively. Secondly, unless the deficiencies have been pointed out, no recognition can be granted. As per the guidelines, applications are to be considered only through the online mode and therefore, all subsequent developments taking place after submission

of the application earlier, cannot be considered. It is for the School to apply afresh through the online mode, if it seeks recognition, but the same can only be prospective in nature.

7. The basic facts of the case are not disputed inasmuch as the petitioner institution had applied for certificate of recognition for the period from the academic session 2007-18 to 2021-22 for a period of 5 years through online mode on 29.03.2008. No action was taken on such application for a long time. It required the intervention of this Court in W.P.(C) No.18955 of 2019, and CONTC No.1689 of 2020 for the opposite authorities to wake up from their long slumber and to take up the application of the petitioner institution for consideration only to reject it by order dated 15.10.2020. The said order of rejection was passed on several grounds, which being challenged before this Court in W.P.(C) No. 29916 of 2020, were adequately dealt with and the matter was remitted to the District Education Officer to reconsider the application for recognition. For immediate reference, the operative

portion of the order passed by this Court in the aforesaid writ application is quoted herein below:

“.....If there is any non-compliance of the Rules, or any defect in the application, the authority should have pointed out the same, so that the petitioner could have made good of the same in accordance with law. Without indicating the same, because the petitioner approached this Court by filing writ petition, and contempt petitions, abruptly without application of mind, the order impugned in Annexure-12 has been passed, thereby, the same cannot sustain in the eye of law. Accordingly, the same is liable to be quashed and is hereby quashed. The matter is remitted back to the District Education Officer, Cuttack to consider the application filed by the petitioner under Annexure-5 and if any defect is there, the same should be communicated to the petitioner to comply the same within a period of three weeks from the date of communication of this order and thereafter the authority shall apply its mind and pass appropriate order in accordance with law.”

8. Thus considering all the aspects, this Court specifically directed that if any defect is noticed, the same should be communicated to the petitioner institution to comply within a period of three weeks, and thereafter the authority shall apply its mind and pass appropriate orders in accordance with law. The deficiencies were pointed out by letter dated 29.11.2021. In response, the petitioner institution submitted compliance on 13.12.2021. Such being the case, it does not at all stand to reason that the

application would not be considered on the ground that the facts furnished by the petitioner institution were subsequent developments, which cannot be taken as part of the online application and that the Secretary of the School has to apply afresh through online portal with all the required information and the same will be considered accordingly. When this Court had specifically directed the authorities to communicate the defects and the same was acted upon by the authorities by making such communication, which the petitioner institution duly complied, it is no longer open to the authorities to turn around and take a stand that the compliance being relatable to subsequent developments cannot be considered. This Court is persuaded to accept the contention of Mr. Rath that the impugned order amounts to indirect violation of the order passed by this Court. Another significant aspect to be noted is that in their counter the opposite party authorities while taking several pleas, have also taken the stand that the recognition cannot be granted retrospectively. In this regard, two

aspects are to be considered, firstly, the petitioner institution had applied for grant of recognition way back in the year 2018 and it is the opposite party authorities who slept over the matter till 15.10.2020. Subsequently, this Court passed a detailed order and issued specific direction to the authorities, which was never challenged in the higher forum. Secondly, there is nothing in the Act to prohibit grant of recognition retrospectively. In such view of the matter, the stand taken by the opposite parties cannot be accepted. Even otherwise, it is noticed that the impugned order simply mentions that the subsequent developments cannot be taken note of and that the institution has to apply afresh in the online portal. The opposite party authorities in their counter have taken several other stands that are obviously improvements upon the specific ground taken in the impugned order. It is well settled that the stand which is not taken in the original order cannot be taken subsequently in the counter.

9. For the forgoing reasons therefore, this Court is of the considered opinion that the impugned order is contrary to the directions of this Court issued earlier and therefore, cannot be sustained in the eye of law. In the result, the writ application is allowed. The impugned order under Annexure-20 is hereby quashed. The opposite party authorities are directed to take into account the compliance furnished by the petitioner institution and to pass necessary orders in accordance with law in the matter of grant of certificate of recognition to the petitioner institution within a period of four weeks from the date of communication of this order or on production of certified copies thereof by the petitioner institution.

10. The writ petition is disposed of accordingly.

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Sashikanta Mishra,
Judge

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