

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.19385 of 2022

***School Managing Committee
(SMC) of Government Primary
School, Patenigaon*** ***Petitioner***

Mr. K.K. Swain, Advocate

-versus-

State of Odisha and others ***Opposite Parties***

*Mr. R.C. Pattanaik,
Standing Counsel for the School and
Mass Education Department*

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

Order No.

Date of hearing: 02.11.2022

Date of order: 25.11.2022

11. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the petitioner as well as learned counsel for the opposite parties. Perused the record.
3. The present writ petition has been filed by the petitioner challenging the impugned order dated 26.07.2022 issued by the Block Education Officer, Raghunathpur directing Smt.Damanti Kuanar, I/C Head Master and Smt. Rajashree Dash, Asst. Teacher of petitioner's institution to join lead school at the Government Primary School Patenigaon as the petitioner's school has already been merged.

4. Mr. Swain, learned counsel for the petitioner submits that after amendment of Constitution the right to education has been accepted as fundamental right under Article 21-A of the Constitution of India. Accordingly, Central legislation was framed and known as Right of Children to Free & Compulsory Education Act, 2009 and further under the said Act, a set of rules have been framed. Government of Odisha has also framed a set of Rules known as Right of Children to Free & Compulsory Education Rule, 2010. Furthermore, after the aforesaid Act and Rules came into force, the rationalization and consolidation of schools were started by order of the School and Mass Education Department in terms of the Central Act and Government of Odisha Rules. Accordingly a notification dated 11.03.2020 was issued for merger of schools.

5. On perusal of the said notification, it appears that under Clause (3) of the said notification, the manner and criteria has been prescribed for selection of schools for consolidation and further perusal of it, it appears that so far as the primary schools are concerned, the criteria has been fixed and in case of primary schools consisting enrolment of students less than 40 in non-scheduled area and less than 25 in scheduled area are to be consolidated with nearby schools. Similarly, the office memorandum also issued vide Memo No.5538 dated 11.03.2020 issued by the Government of Odisha, School and Mass Education Department which is implementation guidelines for the policy of rationalization and consolidation of schools.

6. It is further submitted by Mr. Swain, learned counsel for the petitioner that pursuant to the Central Act, the State Government has framed the Odish Right of Children to free and compulsory

Education Rules, 2010. Referring to Rule-6(1)(a), learned counsel for the petitioner submits that the parameter has been formulated with regard to unification of neighbourhood within which a school would be established. Further referring Rule-6(3) Mr. Swain learned counsel for the petitioner submits that in places with difficult terrain, risk of landslides, floods, lack of roads and in general, danger for young children in the approach from their homes to the school, the State Government/Local Authority shall locate the school in such a manner so as to avoid such dangers by reducing the limits specified under sub-Rule(1).

7. On such grounds, Mr. Swain, learned counsel for the petitioner submits that the Office Order dated 20.06.2022 under Annexure-1 issued by the District Project Office Samagra Sikshya(SS), Jagatsinghpur decided to merge the petitioner's school at Patenigan with Upper Primary School, Radhanagar is not sustainable in law and the same is also contrary to the parameter laid down by the rules as well as in the notification and office Memorandum referred to hereinabove. On such ground, learned counsel for the petitioner submits that the order under Annexure-4 dated 26.07.2022 is unsustainable in law and the same needs to be quashed.

8. Learned Standing Counsel for School and Mass Education Department, on the other hand, referring to the counter affidavit submits that the decision of this Court in quashing notification dated 11.03.2020 caused huge loss to the students. Therefore, State Government has preferred Writ Appeal bearing W.A. No.417 of 2021 challenging the decision of the Co-ordinate Bench of this Court. He further contends that by order dated 20th July, 2021 a division Bench of this Court has been pleased to stay the operation of the order dared

04.05.2021 passed in W.P.(C) No.27401 of 2020 by single Bench of this Court quashing notification dated 11.03.2020.

9. In such view of the matter, learned counsel for the School and Mass Education Department submits that it is open for the petitioner, if it has any grievance regarding consolidation of school, it can activate the grievance redressal mechanism in terms of para-24 of the Office Memorandum dated 11.03.2020.

Further referring to the order dated 20.07.2021 passed by a Division Bench this Court in W.A. No.417 of 2021, learned counsel for the School and Mass Education Department submits that redressal mechanism has been provided. Accordingly, the concerned authority be directed to consider the representation of the petitioner. On perusal of the order dated 20.07.2021 passed in W.A. No.417 of 2021, it is seen that while granting stay of the operation of order of the Single Judge an observation has been given to the effect that it is open for the parties to approach before the grievance redressal mechanism in terms of the paragraph 24 of the Office Memorandum dated 11.03.2020.

10. Mr. Swain, on the other hand, contends that the facts of the present case are different than the case referred to by the Standing Counsel for the School and Mass Education Department. He further contends that in W.P.(C) No.19385 of 2022 the School Managing Committee had approached this Court challenging the order of merger of Government Primary School, Patenigaon with Government Upper Primary School, Radhanagar. Mr. Swain further submits that this Court by its order dated 04.03.2021 passed in W.P.(C) No.27041 of 2021 has quashed the Notification No.5465 dated 11.03.2020 and

subsequent Office Memorandum No.5538 dated 11.03.2020 for implementation of guidelines for rationalization and consolidation of school.

11. Having heard contentions of the learned counsel for the respective parties and upon careful consideration of the factual background of the present case, this Court is of the view that the argument advanced by Mr. Swain as has been indicated above requires consideration by this Court. Therefore, the same needs to be considered by the competent authority. Accordingly, the petitioner is directed to approach the District Project Office (SS) i.e. Opposite Party No.2 by filing a grievance petition highlighting all the grounds including the following :-

- I. Whether the said school is situated at distance beyond one K.M. from the new Radhanagar Upper Primary School.
- II. Existing school as per the parameters laid down does not come under the Notification No.5465 dated 11.03.2020 as well as subsequent Office Memorandum dated 11.03.2020.

In the event, the authority, after verification of the above, comes to a conclusion that the school does not fulfill the parameters of rationalization and consolidation of schools, then appropriate decision be taken by the competent authority (Opposite Party No.2). Further, it is directed that while taking decision, the Opposite Party No.2 shall provide opportunity of personal hearing to the petitioner and thereafter pass a reasoned and a speaking order without being influenced by Annexures-3 and 4 in respect of petitioner's school. It

is further directed that the school shall continue at Patenigaon till the final decision is taken. However, it is further directed that interim order passed earlier shall continue till the final decision is taken by the competent authority. The decision taken by the authorities shall be communicated to the petitioner within two weeks thereafter.

12. With the aforesaid observation/direction, the writ petition stands disposed of.

Urgent certified copy of this order be granted on proper application.

Jagabandhu

