

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.411 of 2019

Shyam Kumar Behera and others

Appellants

Mr. Upendra Kumar Samal, Advocate
-versus-

State of Odisha and others

Respondents

Mr. P. M. Pattajoshi, Standing Counsel
for School and Mass Education Department

CORAM:

**THE CHIEF JUSTICE
JUSTICE M. S. RAMAN**

ORDER

10.11.2022

Order No.

M. S. Raman, J.

04. 1. The intra-Court Appeal styled under Clause 10 of the Letters Patent read with Rule 2 of Chapter VIII of the Odisha High Court Rules, 1948, has been preferred by Appellants (Petitioners in the writ petition, staff of V.S.S. Panchayat High School, Bargaon in the district of Sambalpur) assailing the Order dated 30.08.2019 passed by learned Single Judge of this Court in W.P.(C) No.15252 of 2019 on the ground that the Judgment rendered by the Hon'ble Supreme Court of India in the case of ***Director, Elementary Education v. Dibakar Pradhan, Civil Appeal No.2104 of 2004***, vide Order dated 16.02.2010, laying down that “it is in the discretion of the State Government to take over a school or not, it cannot be compelled to do so. After all, taking over of a school has financial and other implications” has been misplaced on the facts and in the circumstances of the instant case.

The writ petition:

2. The Petitioners approached this Court by way of writ petition W.P.(C) No.15252 of 2019 invoking provisions of Article 226/227 of the Constitution of India questioning the propriety of decision of Principal Secretary to the Government *vide* Office Order bearing No.9973d-XIV-SME-(IX)-LC-I-79/2015/SME, dated 08.05.2019, whereby the subject-school has been denied to be taken over by the Government taking shelter of Letter No.20645, dated 24.06.1994.

2.1. The Petitioners' school became eligible to come within the fold of minimum Grant-in-Aid (for short, "GiA") during 1991-92 with effect from 01.03.1991 and accordingly required information was supplied to proper quarter. It is asserted by the Petitioners that the Letter dated 24.06.1994 of the Government showing intention to take over all non-Government fully aided High Schools was not communicated, as a consequence of which even though the Petitioners' school received full salary cost with effect from 01.06.1994, and eligible to be taken over by virtue of Letter dated 24.06.1994, the same was discriminated.

2.2. The Government of Odisha in School and Mass Education Department *vide* Letter dated 24.06.1994 (Annexure-4 to the writ petition) has communicated its decision to take over non-Government fully aided High Schools, which is reproduced hereunder:

"Government of Orissa

*Department of School & Mass Education No VIII-SM (M)-
03/94 (Pt.)-20645/SME, dated 24.06.1994*

From

*Sri P. Rout,
Additional Secretary to Government*

To

*The Director, Secondary Education,
Orissa, Bhubaneswar.*

*Sub: Taking over all Non-Government fully aided High
Schools by the State Government.*

Sir,

I am directed to say that Government have decided on 07.06.94 to take over all the Non-Government aided High Schools in receipt of full salary cost. To implement the Government decision, the Management of the concerned institutions may be informed to pass unanimous resolutions if they so desire to hand over the management of their respectively institutions alongwith the approved teaching and non-teaching staff including all assets as on 07.06.94 to Government.

2. It should be made clear that Government will not take over any liability whatsoever while taking over the management of institutions.

3. Further the managements may also be asked to obtain written consent of each approved-regular teaching and regular non-teaching staff, existing on their rolls as on 07.06.94 to the effect that he/she will abide by the conditions of services applicable to Government servants in all matters including age of superannuation.

4. The resolutions along with the written consent referred to above should reach, the Department latest by 31.07.94.

5. You are, therefore, requested to take adequate steps to ensure submission of resolutions of the fully aided Government High Schools along with written consent of the teaching and non-teaching staff to this Department by 31.07.1994 positively.

6. You are further requested to furnish proposal indicating requirement of funds for the purpose of keeping in view the financial liability in respect of around 981 Section Teachers so that steps may be taken at this end to provide funds by augmentation of provision.

*Yours faithfully,
Sd/-
Additional Secretary to Government*

2.3. At this juncture, it is pertinent to take note of the Resolution dated 16.12.1994, whereby the Government have decided to take over the management of all non-Government Full Aided High Schools. Said Resolution runs as follows:

“No. 38522/SME-VIII-SM(M)-3/94

*Government of Orissa
School And Mass Education Department
Resolution
Bhubaneswar Dated 16-12-1994*

Sub: Taking over the management of all non-Government fully aided High Schools by Government—

Service conditions of the employees.—

Government had decided in principle on 7-6-1994 to take over the non-Government aided High Schools in receipt of full salary cost. The Managing Committee of these institutions were informed to comply with the terms and conditions of take over as laid down in this Department Letter No. 20645 dated 24-6-1994. The non-Government aided High Schools (as per the list enclosed) in receipt of full salary cost, have resolved to hand over the management along with approved teaching and run-teaching staff including assets as on 7-6-1994 and have furnished written consent of each of such staff. Accordingly it has been decided to take over the management of these schools along with approved teaching and non-teaching staff and assets with effect from 7-6-1994. Government would not be liable to clear any liability whatsoever relating to the period prior to and/or as, on and after 7-6-1994 incurred by the Managing Committee.

2. The taken over employees would be treated as Government servants with effect from 7-6-1994 only and their service conditions would be as follows :

2.1. Seniority:

The seniority of the taken over employees in respective cadres under the State Government will be determined taking into account 7-6-1994 as the date of entry into Government service and the inter se seniority of the taken over employees prior to 7-6-1994 will be determined in accordance with the guidelines prescribed in this Department letter No. 27236 dated 26-8-1994 subject to decision of competent Court of law where pending on the date of take-over.

2.2. Fixation of pay and date of increment:

As the teachers are entitled to salary in the scales of pay applicable to their counterparts in the State Government, their pay shall be protected on their coming over to Government service without any change in the date of increment.

2.3. Pensionary benefits:

Pensionary and other retirement benefits admissible to State Government servants shall be admissible to such employees for the period of their service under Government with effect from 7-6-1994. The remaining aided service shall be governed by the Orissa Aided Educational Institutions 'Employees' Retirement Benefit Rules, 1981.

2.4. Provident Fund:

Such employees shall subscribe to the State Government Provident Fund and shall be governed by the General Provident Fund (Orissa) Rules.

2.5. Leave:

Leave benefit as admissible to Government servants shall be admissible to such employees on the basis of service rendered by them with effect from 7-6-1994.

2.6. House Rent Allowance:

House Rent Allowance as admissible to Government servants shall be admissible to such employees with effect from 7-6-1994 but instead of the entitlement being paid to them shall be invested In shape of National Saving Certificate in the name of concerned individual teachers quarterly till the end of the financial year 1995-96.

2.7. Age of superannuation:

The employees other than Class-IV employees will retire on completion of 58 years of age. The age of superannuation for Class-IV employees shall be 60 years. The teaching and non-teaching staff other than Class-IV employees who are continuing in service beyond the age of 58 years shall be relieved forthwith. Their continuance beyond 53 years after 7-5-1994 shall not count towards pension and pensionary benefits, but they shall be entitled to salary for the period they have worked beyond 58 years.

3. All service rules applicable to Government servants shall be applicable to the taken over employees.

ORDER:

Ordered that the Resolution be published in the next issue of Orissa Gazette and copies thereof be extended to all concerned with 500 spare copies to this Department for reference.

*By order of the Governor
D.N. PADHI
Commissioner-cum-Secretary
to Government.”*

2.4. It is, therefore, claimed by the Petitioners that the Managing Committee of the Petitioners' school passed a resolution on 02.12.1995 as their school received the full salary cost with effect from 01.06.1994 and was eligible to be taken over by the Government and furnished the same to the Inspector of School on

09.12.1995 along with written consent of teaching and non-teaching staff for this purpose.

2.5. It has further been urged by the Petitioners that the Government of Odisha in School and Mass Education brought out another Resolution bearing No.14258-VIII-SM(M)-3/94 (Pt.)-S.&ME, dated 13th May, 1997 showing inclination to take over 149 non-Government Aided High Schools of different districts even though these schools have exercised their option after 31.07.1994. Therefore, the Petitioners' school approached this Court by way of filing a writ petition being O.J.C. No.2922 of 2000, which came to be disposed of on 22.08.2014 with the following observation:

"Heard learned counsel for the Petitioner and Mr. B.P. Tripathy, learned Standing Counsel for School & Mass Education Department.

The Petitioner has filed this application seeking direction to take over the School by the State Government relying upon the Government Circular dt.24.06.1994 under Annexure-2 where the Government as a matter of principle decided to take over all the Non-Government Aided High School.

The Petitioners are teaching and non-teaching staffs of the V.S.S Panchayat High School, Bargaon filed this application in the year 2000 and this Court issued notice on 12.03.2004 wherein direction had been given to serve three extra copies of writ petition has already been served long since on learned Standing Counsel for the School and Mass Education Department.

On a query being made, Mr. B.P. Tripathy, learned Standing Counsel for the School and Mass Education Department sought for time to take instruction in the matter. Though notice was issued in the year 2004 and in the meantime ten years have elapsed, no steps have been taken on behalf of the State counsel either to file

counter or to take instruction or to assist the Court for just adjudication of the matter.

In the above view of the matter, applying the principles of doctrine of non-traverse, this writ petition is disposed of directing the State Authorities to take over the School in question in accordance with law in view of Government Circular under Annexure-2. The entire exercise shall be completed within a period of two months hence.”

2.6. Since there was non-compliance of said order, contempt application being CONTC No.582 of 2015 was filed which ended with following observation vide Order dated 24.07.2015:

“It is stated by learned counsel for the petitioner that the order dated 22.08.2014 passed in OJC No.2922 of 2000 has not yet been complied with. If the order has not been complied with, let the opposite parties comply with the same within a period of two months from the date of communication of this order.”

2.7. The Petitioners complained in the writ petition that instead of complying with the Order dated 22.08.2014, the Opposite Parties had filed review petition being RVWPET No.211 of 2018 on 16.11.2018, conspicuously with a delay of around 4 years, 2 months and 26 days and said review petition was dismissed on 22.04.2019. It was also brought to the notice of this Court that second contempt being CONTC No.1416 of 2015 was disposed of without providing opportunity to the Petitioners to examine the show cause affidavit. Therefore, it is contended by the Petitioners that placing reliance on the decision of the Hon’ble Supreme Court of India in the case of **Director, Elementary Education v. Dibakar Pradhan** (*supra*), the Principal Secretary to Government could not have passed order

dated 08.05.2019 denying to take over the subject-school by assigning following reason:

“5. That as per the policy decision of Government many aided High Schools had submitted their resolutions with consent for taking over their school. Accordingly, Government had decided to take over 2929 schools vide Government Resolution No.38522, dated 16.12.1994.

6. That the petitioners' school was notified as an Aided Educational Institution vide Government Notification No.12899/SME dated 02.05.1995. So, it can be safely concluded that when Government in Letter No.20645 dated 24.06.1994 had invited resolution/consent of aided schools on receipt of full salary cost the instant school was not notified to receive GiA. Thus, the Managing Committee was not eligible and not submitted resolution/consent of the employees to take over their school by 31.07.1994.

7. That the Hon'ble Supreme Court of India in their Order dated 16.02.2010 in Civil Appeal No.2104 of 2004 (Director, Elementary Education and another Vrs. Dibakar Pradhan and others have observed as follows:

‘It is in the discretion of the State Government to take over a school or not, it cannot be compelled to do so. After all, taking over of a school has financial and other implications.’

8. That in view of the facts and circumstances mentioned above and after careful consideration of the prayer of the petitioners, it is decided that the school is not eligible to be taken over by Government in accordance with law, i.e., in view of Government Letter No.20645 dated 24.06.1994 (Annexure-2).”

Decision of learned Single Judge in the writ petition:

3. The learned Single Judge was pleased to dismiss the writ petition by passing following order on 30.08.2019:

“Heard Mr. B.R. Barick, learned counsel for the petitioner and Mr. D. Varadwaj, learned Standing Counsel for School and Mass Education Department.

The petitioner has filed this application seeking to quash the order dated 08.05.2019 passed by the Principal Secretary to Government in Annexure-8, refusing to take over the school in question by the Government in accordance with law, i.e., in view of Govt. letter No.20645 dated 24.06.1994.

Mr. B.R. Barick, learned counsel for the petitioner contended that in similar situated cases though the schools have been taken over by the Government, so far as petitioner’s school is concerned, the order impugned has been passed in compliance of the dated 22.08.2014 passed by this Court in OJC No.2922 of 2000, stating that the Government has decided that the school is not eligible, which itself is arbitrary and unreasonable.

Mr. D. Varadwaj, learned Standing Counsel for School and Mass Education Department contended that the contention raised by learned counsel for the petitioner is not justified in view of the fact that the Government issued a letter on 24.06.1994 with regard to eligibility of schools to be taken over. Since the petitioner’s school does not satisfy the requirement, the order impugned has been passed. Thereby, no illegality or irregularity has been committed by the authority.

Considering the contention raised by learned counsel for the parties and after going through the records, it appears that the petitioner had earlier approached this Court by filing OJC No.2922 of 2000, which was disposed of vide order dated 22.08.2014, directing the State authority to take over the W.P.(C) No. 15252 of 2019 school in question in accordance with law and in view of Government circular under Annexure-2 therein, and the entire exercise would be

completed within a period of two months. In the said writ petition, due to non-filing of counter affidavit, applying the principles of doctrine of non-traverse, the same was disposed of vide order dated 22.08.2014. In any case, while passing the order impugned dated 08.05.2019 in Annexure-8, opportunity was given to all the parties and, as such, relying upon the judgment of the apex Court in the case of Director, Elementary Education v. Dibakar Pradhan (Civil Appeal No.2104 of 2004, disposed of on 16.02.2010), wherein it has been held that 'it is in the discretion of the State Government to take over a school or not, it cannot be compelled to do so. After all, taking over of a school has financial and other implications', the order has been passed.

In such view of the matter, since the Principal Secretary to Government has passed the order impugned relying upon the judgment of the apex Court, which is binding upon to everybody, this Court does not find any illegality or irregularity committed by the authority so as to warrant interference with the same.

Accordingly, the writ petition merits no consideration and thus the same is hereby dismissed."

The challenge in the Writ Appeal against Order dated 30.08.2019 passed in the Writ Petition:

4. Whereas this Court *vide* Order dated 22.08.2014 while disposing of writ petition being O.J.C. No.2922 of 2000 issued writ of *mandamus* to the State-Authorities to "take over the School in question in accordance with law in view of Government Circular under Annexure-2", there is no scope for the Government to wriggle out from what has been contained in terms of policy of Government as stated in Circular/Letter dated 24.06.1994. Furthermore, since certain other similarly circumstanced schools were taken over by virtue of subsequent Resolution No.14258, dated 13.05.1997, pursuant to which consent was submitted much after 31.07.1994, the

reason for refusing to take over the subject-school is untenable inasmuch as the consent was furnished in February, 1995.

4.1. Further ground of attack has been made to the Order dated 30.08.2019 passed in the Writ Petition that the dicta in ***Director, Elementary Education v. Dibakar Pradhan*** (*supra*) has no application as the facts of said case are not akin to the present case.

4.2. Resolution bearing No.14258, dated 13th May, 1997 is placed on record by the Petitioners to contend that the Government having considered 149 non-Government full Aided High Schools for being taken over, it could not have discriminated the subject-school, found entitled to GiA in 1991-92, which was released with effect from 01.03.1991 and the Petitioners have demonstrated that service of certain teaching staff was approved even prior to 24.06.1994.

4.3. Drawing attention of this Court to Resolution bearing No.7230-IX-SME-(OJC)-01/2017/SME, dated 03.04.2018 it is stated that the State Government pursuant to the Order dated 05.04.2010 of this Court passed in W.P.(C) No.14506 of 2009 and with reference to the principle enumerated in the decision taken on 07.06.1994 “to take over the non-Government Aided High Schools in receipt of full salary cost”, took over the management of Chandi High School, Balugaon in the district of Nayagarh along with approved teaching and non-teaching staff and assets with effect from 03.04.2018. The case of the Petitioners, therefore, ought to have been considered in compliance of directions issued in O.J.C. No.2922 of 2000, *vide* Order dated 22.04.2019, particularly so when RVWPET being No.211 of 2018 filed at the behest of State has been turned down on

22.04.2019 by this Court. Therefore, the Government should not have deviated from its own decision and policy.

Submission of the Opposite Parties:

5. Sri Pabitra Mohan Pattajoshi, learned Standing Counsel, School and Mass Education, reiterating what has been rendered by the learned Single Judge submitted that there is little scope to exercise powers under Article 226 of the Constitution of India in the matters of policy decision particularly when there involves financial burden on the State exchequer. Whether to take over a school is the domain of the State Government and, therefore, this Court need not show indulgence in such matter as per view expressed by the Hon'ble Apex Court in the matter of ***Director, Elementary Education v. Dibakar Pradhan (supra)***.

Question for consideration:

6. Whether learned Single Judge is justified in sustaining the Order No.9973-XIV-SME-(IX)-LC-I-79/2015/SME, dated 08.05.2019 passed by the Principal Secretary to Government, thereby dismissing the writ petition by applying the view expressed by the Hon'ble Supreme Court in the case of ***Director, Elementary Education v. Dibakar Pradhan (supra)***?

Decision in present Writ Appeal:

7. Before proceeding to delve into the merit of the matter, it is apt to bear in mind the following principle restated by the Hon'ble Supreme Court in the case of ***Union of India & Anr. v. Arulmozhi Iniarasu & Ors., (2011) 7 SCC 397:***

“12. Before examining the first limb of the question, formulated above, it would be instructive to note, as a preface, the well settled principle of law in the matter of applying precedents that the Court should not place reliance on decisions without discussing as to how the fact situation of the case before it fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of Statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Disposal of cases by blindly placing reliance on a decision is not proper because one additional or different fact may make a world of difference between conclusions in two cases. [Ref.: *Bharat Petroleum Corpn. Ltd. & Anr. Vs. N.R. Vairamani & Anr.*, (2004) 8 SCC 579; *Sarva Shramik Sanghatana (KV), Mumbai Vs. State of Maharashtra & Ors.*, (2008) 1 SCC 494 and *Bhuwalka Steel Industries Limited Vs. Bombay Iron & Steel Labour Board & Anr.*, (2010) 2 SCC 273].”

7.1. It is gleaned from Order dated 16.02.2010 of the Hon'ble Supreme Court passed in ***Director, Elementary Education v. Dibakar Pradhan*** (*supra*) that said case proceeded on the basis that directions given by Court of law on humanitarian considerations cannot be treated to be binding precedents. The Hon'ble Court emphasized that in absence of any statute, direction could not be issued compelling the State Government to “take over all the primary school/Hindi Primary Schools” situated in different collieries of the Mahanadi Coalfields Ltd. As a principle it has been laid down by said Court that it is the discretion of the State Government to take over a School or not as the same involves financial and other implications.

7.2. There is no dichotomy over the said principle.

7.3. It can be culled out from the case of ***Director, Elementary Education v. Dibakar Pradhan*** (*supra*) that there was nothing on record to indicate that the Primary Schools/Hindi Schools situated in different collieries of the Mahanadi Coalfields Ltd. with effect from 1st April, 2000 were eligible for Grant-in-Aid or availing benefit of such Aid. Further there is nothing to suggest that the teaching and non-teaching staff of said Schools situated in different collieries of Mahanadi Coalfields Ltd. were approved as required in terms of Letter dated 24.06.1994 read with Resolution dated 16.12.1994 of the Government of Orissa in School and Mass Education Department.

7.4. Nevertheless, in the instant case, it is the case of the Petitioners that they are the approved staff of V.S.S. Panchayat High School, Bargaon in the district of Sambalpur and the said school received the full salary cost as per Notification No.12899, dated 02.05.1995 with effect from 01.06.1994 and the staff received full salary from 01.06.1994. Thus, the case law in ***Director, Elementary Education v. Dibakar Pradhan*** (*supra*) cited and relied on by the Principal Secretary to Government in School and Mass Education refusing to take over the Petitioners' school is distinguishable on facts.

7.5. Undisputed fact as stated in the writ petition which remained uncontroverted *vide* Order dated 22.08.2014 passed in O.J.C. No.2922 of 2000 that the subject-school was placed in the fold of Grant-in-Aid by virtue of Notification No.12899, dated 02.05.1995 with effect from 01.06.1994. It is significant to note that the impugned Order dated 08.05.2019 *vide* Annexure-8 to the writ petition/writ appeal passed by Principal Secretary to Government in

connection with direction *vide* Order dated 22.08.2014 in *O.J.C. 2922 of 2000 [Shyama Kumar Behera and others v. State of Odisha and others]* referred to said notification, but has never disputed that such Grant-in-Aid was accorded with effect from 01.06.1994, *i.e.*, prior to 7th June, 1994.

7.6. Resolution bearing No.38522-VIII-SM-(M)-3/94/SME, dated 16.12.1994 reflects intention of the Government *qua* taking over of non-Government Aided High Schools thus:

*“Government had decided in principle on the 7th June, 1994 to take over the non-Government Aided High Schools in respect of full salary cost. The Managing Committee of these institutions were informed to comply with the terms and conditions of take over as laid down in this Department Letter No.20645, dated the 24th June, 1994. ***”*

7.7. In this connection it is beneficial to refer to following fact stated in paragraph 11 of the writ petition being W.P.(C) No.15252 of 2019 which has never been objected to by the State Government:

“11. That since the petitioners school have received the full salary cost with effect from 01.06.1994 and eligible to be taken over by Government in view of the Letter dated 24.06.1994 of Government, the Managing Committee of petitioners’ school passed a Resolution on 02.12.1995 and submitted before the Inspector of Schools, Sambalpur on 09.12.1995 along with written consent of teaching and non-teaching staff to take over the School but the same has been ignored and discriminated, whereas 149 similarly situated schools have been taken over by Government vide Resolution No.14258, dated 13.05.1997 and another School by virtue of the order of this Hon’ble Court.”

7.8. It may further be pertinent to have regard to the fact that even after 31.07.1994, *i.e.*, the date specified for furnishing resolution of the Managing Committee of the Schools along with written consent

of staff of concerned schools, in the Letter dated 24.06.1994 (Annexure-4) issued by the Additional Secretary to the Government in the Department of School and Mass Education, the Government of Odisha in said Department published Resolution bearing No.38522-VIII-SM-(M)-3/94/SME, dated 16.12.1994 [Odisha Gazette, Extraordinary No.433, dated 10.04.1995] showing that in principle the Government has taken a decision to take over “the management of all non-Government fully aided High Schools by Government”. Annexure-6 to the Writ Appeal is a Resolution bearing No.14258-VIII-SM-(M)-3/94 (Pt.)-S.&ME, dated 13.05.1997 of the Government of Odisha in the Department of School and Mass Education, published in the Odisha Gazette, Extraordinary No.899, dated 10.07.1997, wherein the caption heading indicated as follows:

“Subject— Taking over the management of 149 Non-Government fully Aided High Schools by Government— Service Conditions of the employees.”

7.9. Perusal of enclosure at Annexure-7, which is a copy of Resolution bearing No.7230-IX-SME-(OJC)-01/2017/SME, dated 03.04.2018 of the Department of School and Mass Education, indicated that pursuant to Order dated 05.04.2010 of this Court passed in W.P.(C) No.14506/2009, Government decided to take over the Management of Chandi High School, Balugaon in the district of Nayagarh, which was a Non-Government Aided High School in receipt of full salary cost. The relevant portion of said resolution is reproduced hereunder:

“Subject.— Taking over the Management of Non-Government full Aided High Schools by Government— Service conditions of the employees.

*Government had decided in principle on the 7th June, 1994 to take over the Non-Government Aided High Schools in receipt of full salary cost. The Managing Committee of these institutions were informed to comply with the terms and conditions of take over as laid down in this Department Letter No.20645, dated 24th June, 1994. The Chandi High School in receipt of full salary cost, could not resolve to handover the management along with approved teaching and non-teaching staff including assets as on 7th June, 1994 for which this High School could not be taken over at the relevant time. Now in pursuance of Order dated 05.04.2010 of Hon'ble High Court of Orissa passed in W.P.(C) No.14506/2009 Government have decided to take over the management of this High School along with approved teaching and non-teaching staff and asset with effect from the 3rd April, 2018. ***”*

[Emphasis supplied]

7.10. The Order dated 08.05.2019 of the Government refusing to take over the V.S.S. Panchayat High School, Bargaon in the Sambalpur District does not reveal the fact-situation different than the situation obtained in Chandi High School. Whereas the Government has taken into consideration the direction of this Court contained in the Order dated 05.04.2010 passed in W.P.(C) No.14506 of 2009 [qua Chandi High School after dismissal of Writ Appeal (W.A. No. 386 of 2014 filed at the behest of the State) on 14.09.2015] and has taken steps to take over the said School, it has discriminated and failed to apply discretion in proper perspective while considering the case of instant petitioners' school.

7.11. This Court finds the facts of the present case being similar to that of **Chandi High School** (*supra*). Reading of Resolution dated

13th May, 1997 indicating taking over of 149 non-Government fully Aided High Schools by the Government it is apparent that even after 31.07.1994 as specified in the Letter dated 24.06.1994, the Government had “in principle” extended the benefit to other schools which exercised option later in point of time.

7.12. Thus, this Court does not find justifiable reason ascribed by the Principal Secretary to Government in Department of School and Mass Education in his Order dated 08.05.2019 *vide* Annexure-8 rejecting the request of the Petitioners’ school for taking over. It is noticed that self-same Principal Secretary passed Order dated 03.04.2018 wherein he has allowed Chandi High School at Balugaon in the District of Nayagarh for being taken over by referring to identical facts as that of the present Petitioners’ school and relied on the same Letter dated 24.06.1994. Such discriminatory treatment having attracted *vice* of Article 14 of the Constitution of India, this Court, therefore, decides to quash Order dated 08.05.2019 passed by the Principal Secretary to the Government in School and Mass Education Department; and, accordingly, does so.

8. It has already been observed in the foregoing paragraph(s) that the context in which the Hon’ble Supreme Court has laid down the principle as to taking over Schools in the case of ***Director, Elementary Education v. Dibakar Pradhan*** (*supra*) that “*it is in the discretion of the State Government to take over a school or not, it cannot be compelled to do so. After all, taking over of a school has financial and other implications*” does not apply to the present context, where the Government has taken decision “in principle” to take over “all non-Government fully Aided High Schools” *vide*

Letter dated 24.06.1994 (Annexure-4) read with Resolution dated 16.12.1994 (Annexure-5) and Resolution dated 13.05.1997 (Annexure-6). Under such premises, this Court is inclined to show indulgence in the Order dated 30.08.2019 passed in W.P.(C) No.15252 of 2019 passed by the learned Single Judge merely relying on the afore-quoted portion contained in the Order dated 16.02.2010 passed by the Hon'ble Supreme Court of India in the matter of ***Director, Elementary Education v. Dibakar Pradhan (supra)***, without deliberating the content and the context in which such view was expressed.

8.1. The learned Single Judge ought not to have considered the matter in variance of earlier decision taken by this Court while disposing of O.J.C. No.2922 of 2000, *vide* Order dated 22.08.2014, more so when the Review Petition being RVWPET No.211 of 2018 against said order was dismissed on 22.04.2019 and contempt petitions being CONTC No.582 of 2015 and CONTC No.1416 of 2015 have been disposed of on 24.07.2015 and 13.05.2019 respectively. On the contrary the learned Single Judge could have taken cognizance of the fact that similarly circumstanced School namely Chandi High School, Balugaon in the district of Nayagarh has been taken over by the Government “in principle” as decided by the Government even though the consent of staff of said school has been furnished to the Government later to 31.07.1994 in terms of Letter dated 24.06.1994.

ORDER AND DIRECTION:

9. This Court, for the reasons stated above, sets aside the Order dated 30.08.2019 passed in W.P.(C) No.15252 of 2019 (***Shyama***

Kumar Behera and others v. State of Odisha and others) and also quashes the Order dated 08.05.2019 passed by the Principal Secretary to the Government in the Department of School and Mass Education (Annexure-8). In consequence thereof, it is directed that the Opposite Party No.1 shall pass fresh orders within a period of three months from today taking into consideration the Resolutions as referred to in this Judgment, decision taken by the Government as reflected in said Resolutions in the context of taking over of management of schools along with approved staff as also keep in view the decision taken in later point of time in the cases of similarly circumstanced schools, in particular Chandi High School, Balugaon in the district of Nayagarh (Annexure-7).

9.1. In the result, the writ appeal is allowed to the above extent, but there is no order as to costs in the facts and circumstances of the case.

(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge

Laxmikant/Jr. Steno