

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 21781 of 2022

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

AFR

**Principal-in-charge of
Jateswar Dev College of Education
and Vocational, Sagada & another**

..... Petitioners

-Versus-

State of Odisha & Others

..... Opp. Parties

Advocate(s) appeared in this case:-

For Petitioner : M/s. Sameer Kumar Das &
N. Jena, Advocate.

For Opp. Parties : Mr. B. Mohanty,
Standing Counsel for S & ME
Department.

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

21st October, 2022

SASHIKANTA MISHRA, J.

Petitioner Nos.1 & 2 claim to be the Principal-in-charge and Governing Body respectively of Jateswar Dev College of Education and Vocational, Sagada in the district of Puri. The writ petition has been filed claiming the

following relief:

“Under the above circumstances, it is therefore humbly prayed that this Hon’ble Court be graciously pleased to quash the decision of the HPC dtd.05.08.2021 communicated on 09.08.2021 under Annexure-17, the consequential administrative order dtd.31.08.2021 of the Director under Annexure-18, the order of restricting admission of students in the institution by showing the status of the institution to be closed as reflected in the website of the Student Academic Management System (SAMS) under Annexure-15, the report dtd:19.07.2021 under Annexure-16 and the order dtd:01.11.2021 under Annexure-19;

And/or pass any other writ/writs, order/orders/direction/directions in the fitness of the case.”

2. The facts of the case are that Jateswar Dev College of Education and Vocational, Sagada was established by the local inhabitants in the year 1990 and application for grant permission was submitted by its founder Secretary, Agadhu Charan Senapati. Permission was however, granted in the name of “Jateswar Dev College of Education”, omitting the words, “and Vocational”. It is alleged that taking advantage of this omission, one Subash Chandra Pratihari claimed to have established the Jateswar Dev College of Education, Sagada. A series of litigations are said to have been fought between Agadhu Charan Senapati, the State Government and Subash Chandra Pratihari and

ultimately after enquiry, the Director, Higher Education effected necessary correction in the name of the institution and restored permission in the name of “Jateswar Dev College of Education and Vocational, Sagada” vide order dated 30.07.1994. By order dated 12.01.1999, after enquiry, the Government held that the institution established by Agadhu Charan Senapati is the original College and he is the real Secretary thereof. Accordingly, temporary recognition was granted to the institution by the order of the State Government dated 20.12.2001 followed by permanent recognition vide order dated 09.07.2004 of the prescribed authority. Permanent affiliation was also granted by CHSE, Odisha vide letter dated 18.07.2012 from the session 2003-04. It is stated that some miscreants attempted to create disturbance in the functioning of the institution and tried to destabilize the management and close the institution. It is further stated that the Governing Body was approved on 09.08.2018. Several litigations were fought and ultimately, after hearing all the parties, the Director, vide order dated 13.03.2020 held that the institution established by Agadhu Charan Senapati is the

real institution, which has been functioning with the approved Governing Body by order dated 09.11.2018, which was upheld and other claims were rejected. While the matter stood thus, the Director, Higher Education issued a notice dated 19.07.2021 to the institution to submit reasons for non-fulfillment of conditions of recognition regarding land and building under the threat of withdrawal of recognition. The Principal, in his letter dated 11.08.2021 submitted all necessary details of the institution specifically stating that permanent recognition was granted because all the conditions as required by the State were fulfilled but because of cyclone 'Fani', a portion of the building had collapsed, which had been reconstructed. There was no further response from the Director in the matter. While the matter stood thus, the opposite party no.3, Student Academic Management System (SAMS) in its website restricted admission to the petitioners' institution for the session 2021-22 by showing it as 'closed'. SAMS code issued in favour of the institution was also omitted from the website. As such, the institution was debarred to conduct admission of the students. The petitioners challenged such

action of the SAMS in W.P.(C) No. 25222 of 2021, in which a counter affidavit was filed by the opposite party authorities annexing a report dated 19.07.2021 by the Deputy Director and Joint Director in the Directorate of Higher Secondary Education, Odisha, wherein withdrawal of recognition was recommended on the ground that the institution had not fulfilled the conditions stipulated under Section 6-B(1)(a) of the Odisha Education Act, 1969. It was also stated that another institution in the same name is functioning 500 meters away from the petitioner institution. In view of such facts having come to light, the writ petition was permitted to be withdrawn with liberty file a better application, pursuant to which, the present writ petition has been filed.

Further, the matter relating to the petitioners' institution was placed before the High Power Committee in its meeting dated 05.08.2021, wherein a decision was taken to close down the institution. Basing on such decision, the Director, vide letter dated 31.08.2021, directed closure of the institution. Several other facts relating to inter-se dispute between the petitioners and other persons claiming

to the in-charge of the management of the institution have been averred in the writ petition at length but this Court is of the view that the same not being germane to the main issue at hand, need not be gone into in detail. It would suffice to observe that there are rival claims by several quarters relating to position of President and Secretary of the Governing Body of the institution with each side claiming to be representing the real Governing Body.

3. Originally, an affidavit was filed by the Director, Higher Secondary Education challenging the maintainability of the petitioners to file the writ application on the ground that they are not legally authorized persons to represent the institution. It was further stated that the decision of the High Power Committee and the consequential administrative order was passed more than a year back and the institution has been closed ever since. On such ground it is contended that the writ petition is not maintainable on the ground of delay and laches. It is also stated that the impugned order is appealable under Section-6-B(5) of the Act, 1969 and therefore, the writ petition is also not maintainable on the ground of

availability of alternative statutory remedy. It is further stated that the institution was closed in August, 2021. However, taking into consideration the fact that 2nd year students were prosecuting studies in the institution, the Director, vide office order dated 20.12.2021 approved reconstitution of the Governing Body as per Rule-23 of the 1991 Rules for a particular period i.e. till completion of HSC Examination, 2022. Since the reconstitution of the Governing was challenged before this Court, the Director, vide order dated 06.05.2022 appointed the Tahasildar, Nimapada to act as Special Officer of the institution till completion of the Annual +2 Examination, 2022, which has since been completed. Therefore, presently, the institution is defunct. On such ground also, the writ petition is said to be not maintainable. It is further stated that the authority, by invoking Section 6-B of the Act, 1969 closed down the institution which amounts to de-recognition since 2021 and such order cannot be said to be withdrawal of permission. It is further stated that the status of the institution being shown as 'closed' in the website of SAMS is in terms of the decision taken by the High Power

Committee. Presently, not a single student is prosecuting his studies in the institution.

4. A detailed counter affidavit was also filed by opposite party no.2 reiterating the facts stated in the earlier counter. In addition, it is stated that the writ petition deserves to be dismissed on the ground of suppression of material facts. It is further stated that two appeals have been filed before the State Government against the order dated 31.08.2021, which are pending adjudication. One of the appeals being Appeal No. 45 of 2021 has been filed by one Trilochan Sahoo claiming to be the Secretary of the Governing Body and another appeal has been filed by one Nabaghana Mallik, who is also claiming to be the Secretary of the Governing Body. Since the impugned order is already under challenge before the appellate authority, the writ petition is not maintainable.

Justifying the action taken against the institution it is stated that at the time of enquiry the petitioner no.1 could not produce the land records in original before the enquiry officers. The institution does not have the required building and infrastructure to run

classes as per Section 6-A(1)(a) of the Act. It is stated that another institution in the same name and style within 500 meters radius is running in a dilapidated building situated on Government land having no students. Though the institution received permanent recognition, till date it has failed to comply with the mandatory condition prescribed under Section 6-A for which the authority rightly decided to close it down. It is also stated that several persons claiming to be authorities of the College have come forward and that several litigations pending in the matter. It is reiterated that both the petitioners are neither the valid Principal-in-charge nor the valid Secretary of the Governing Body.

5. Heard Mr. S.K. Das, learned counsel for the petitioner and Mr. B. Mohanty, learned Standing Counsel for School and Mass Education Department.

6. Mr. Das has argued at length in his attempt to convince the Court that the impugned order which purports to close down the institution is not tenable in the eye of law for the reason that there is no provision in law by which an institution, which has once been permitted to function, can be closed down though the authority has the

power to withdraw the recognition already granted. While withdrawal of recognition is a temporary measure which can be reversed upon removal of the deficiencies, closure, on the other hand, is a permanent measure. On such ground, Mr. Das would forcefully contend that the remedy of appeal provided under Section 6-B(5) of the Act, 1969 is available only in respect of an order withdrawing or suspending the recognition of an educational institution but no remedy of appeal is provided against an order of closure. It is further contended that the High Power Committee and the Director having specifically used the word 'closure' in the impugned decision/order, the opposite parties cannot improve upon their stand in the counter to contend that it was not closure but withdrawal of recognition. It is alternatively argued by Mr. Das that even otherwise, as per the statutory mandate the High Power Committee was duty bound to grant an opportunity of hearing to the representative of the institution before taking the impugned decision. It is also contended by Mr. Das that initially temporary recognition was granted to the institution subject to fulfillment of necessary conditions

relating to infrastructure etc. Permanent recognition was granted only because the institution fulfilled all the said conditions. It is a fact that certain buildings got damaged in the cyclone 'Fani' which are being reconstructed. This, according to Mr. Das, cannot be treated as violation of the condition of recognition so as to prompt the authorities to take the impugned decision.

7. Per contra Mr. B. Mohany, learned Standing Counsel for School and Mass Education Department has raised the issue of maintainability of the writ petition on several grounds. Firstly, it is contended that there being no provision for closure as such, in the present case, it has to be construed as an order of withdrawal of recognition which is evident from the reference in order dated 31.08.2021 to Section-6-B. Therefore, if the petitioner was aggrieved he should have preferred an appeal as provided under Section 6-B(5) of the Act. Secondly, challenging the decision of the High Power Committee and the consequential order dated 31.08.2021, two appeals have been filed before the State Government and therefore, entertaining the writ application would amount to

conducting parallel proceedings by two different authorities, which is not permissible in law. Thirdly, the impugned order was passed way back on 31.08.2021. The present writ petition was filed almost after a year and that too without explaining the reasons for such delay. Fourthly, there being no Governing Body as such after conclusion of the +2 Annual Examination, 2022, the petitioners cannot be treated as authorized persons to represent the institution to question the correctness of the impugned order. Fifthly, in view of the fact that there are several claimants disputants as regards management of the institution coupled with the fact that no genuine interest was shown by any of them to act for the welfare of the students which is evident from the poor infrastructure and non-availability of the requisite facilities despite being established way back in the year 1990. The decision to close down the institution must therefore, be held to have been rightly taken and hence, the same does not warrant any interference whatsoever.

8. The question of maintainability of the writ petition having been raised, it is imperative to decide the

same at the outset as it goes to the root of the matter.

It has been argued on behalf of the petitioners that there being no provision for closure of the institution, there is no remedy of appeal against such order. On the other hand, it is contended by learned State Counsel that notwithstanding the use of the word 'closure', the impugned order is nothing but an order of withdrawal of recognition as contemplated under Section 6-B of the Act for which the remedy of appeal is provided under sub-Section (5) thereof. A reading of the minutes of the High Power Committee meeting held on 05.08.2021 reveals that the impugned decision was taken under the agenda "Closure of Higher Secondary Schools". It is stated that committee has considered and allowed closure of the Higher Secondary Schools. The consequential administrative order passed by the Director on 31.08.2022 also shows that the Government after careful consideration has been pleased to allow the closure of Jateswar Dev Higher Secondary School of Education and Vocational, Sagada, District Puri. Now the question is, whether this amounts to closure or withdrawal of recognition. The

genesis of this decision is to be treated to the show cause notice dated 19.07.2021, the copy of which has been enclosed as Annexure-12 to the writ application. In the said letter, the subject is “Show cause notice on non-fulfillment of condition of recognition”. After referring to the alleged acts of non-fulfillment of the conditions of recognition, the Management was called upon to show cause “as to why the recognition already awarded to your institution shall not be withdrawn under Section 6-B of OE Act, 1969 on the aforesaid ground”. Therefore, the notice was issued under the provisions of Section 6-B of the Act. Under the Scheme of the Act, Section 6 governs recognition of educational institutions and Section 6-A lays down the conditions for recognition. Section-6-B relates to withdrawal of recognition and provides that recognition accorded under the Act may be withdrawn on one or more the grounds enumerated therein. Clause-(a) of Sub-Section(1) of Section 6-B is the ground that the educational institution no longer fulfills the conditions for recognition.

Therefore, this matter was placed for consideration by the High Power Committee. Instead of

deciding to withdraw the recognition it was stated 'closure of the institution'. Significantly, the consequential order dated 31.08.2021 was passed in purported exercise of power conferred under Section 6-B(1) of the Act. In the said order also, instead of stating withdrawal of recognition, it was mentioned 'closure'. If the matter is considered as a whole, it would be apparent that notwithstanding the use of the word 'closure', what the High Power Committee intended to decide was to withdraw the recognition granted to the institution. In fact, the consequential order also purports to have been passed under Section 6-B(1) of the Act.

9. The word 'closure' appears to have been used loosely in view of the fact that no institution can be allowed to run without recognition and therefore, in the instant case what the authorities intended to convey is, withdrawal of recognition amounts to closure of the institution. Having regard to the grounds and the provision of law involving which the very process was initiated, i.e., alleged non-fulfillment of the conditions of recognition as provided under Section 6-B(1)(a), this Court is of the view that the

use of the word 'closure' in the impugned decision of the High Power Committee as also in the consequential order is nothing but an order withdrawing recognition. Such being the interpretation, it is evident that the impugned order is appealable as provided under Section 6-B(5) of the Act.

10. Even assuming that having misconstrued the impugned order as being closure and not withdrawal of recognition, the petitioner had wrongly approached this Court then also it is to be noted while the impugned order was passed on 31.08.2021, the instant writ petition was filed on 24.08.2022, which is after a gap of nearly a year. Not a word has been whispered in the writ petition to explain such delay.

11. It has been brought on record that two appeals have been filed challenging the very same order before the appellate authority (State Government) by two sets of persons claiming to be in-charge of the management of the Institution. While learned State Counsel submits that the appeals are pending, learned counsel appearing for the appellants, who have sought intervention in the present writ petition, submit that both the appeals have been

dismissed. The orders of dismissal of the appeals have not been produced before this Court but fact remains that two appeals were filed. If such is the case, there is no reason why this Court shall entertain the writ application to consider the correctness of the impugned order when the appropriate statutory authority is in seisin over the matter or has already rendered a finding thereon.

12. Apart from the facts narrated hereinbefore, it has also been argued at length that the petitioners are the true representatives of the institution and therefore, they only are competent to challenge the impugned order. This Court would not like to enter into the factual controversy for the reason that if such is the case as claimed by the petitioners then they should approach the competent authority (Director, Higher Secondary Education) to resolve the inter se dispute, if any, and to obtain necessary declaration as to their status as claimed. Certainly, it is not for this Court to delve into the factual disputes for the purpose of making a declaration as regards the actual status of the petitioners vis-à-vis the management of the institution.

13. Since for the reasons indicated hereinbefore, this court holds that the writ petition is not maintainable, it is no longer necessary to go into the contentions advanced by the petitioners questioning the correctness of the impugned order. The writ petition therefore, deserves to be dismissed.

14. It would be proper at this stage to decide the two applications filed for intervention in the present writ application being I.A. No. 12983 of 2022 and I.A. No.13843 of 2022. I.A. No. 12983 of 2022 has been filed by one Bichitrananda Senapati claiming to be the Principal of the institution. I.A. No. 13843 of 2022 has been filed by the Governing Body of the institution represented through its president, Jalandhar Senapati and Trilochan Sahoo. Both the proposed intervenors have claimed that they are the validly approved Governing Body members of the institution. Several claims and counter claims have been made. The common ground however, in both the applications is that the present petitioners are not authorized to represent the institution. Considering the lis involved in the present writ application this Court fails to see as to how the proposed intervenors could be treated as

necessary parties to the writ application. Furthermore, the proposed intervention in I.A. No.13843 of 2022 has referred to an order passed by a coordinate Bench of this Court in W.P.(C) No. 1226 of 2022, wherein the Director has been directed to take a decision within four months in accordance with law regarding reconstitution of the Governing Body. It is stated at the bar that the Director has not taken any decision as yet. The proposed intervenor in I.A. No. 12983 of 2022 has stated that he had filed an appeal challenging the impugned order being SME-HGS-3 of 2022, which is still pending.

Taking into consideration all the above facts, this Court finds no reason to entertain the intervention applications. I.A. No. 12983 of 2022 and I.A. No.13843 of 2022 are therefore, dismissed.

15. Before parting with the case, this Court deems it proper to observe that in the quagmire of controversies, disputes and unhealthy competition between the rival contenders to take control over an educational institution as evidenced by the spate of litigations among them a dire situation has come to pass in which the intended object

behind setting up the institution, i.e. spread of education has become the unfortunate casualty. While the warring contenders vie for the perceived lucrative control over the management of the institution, the interest and welfare of the students has been given a complete go-bye. This is an unfortunate situation which can only have a negative bearing on the development of education in the State. Having regard to the conduct of the parties as can be gleaned from the facts of the case narrated above this Court refrains from observing anything more.

16. For the foregoing reasons therefore, this Court finds the writ petition not maintainable for which, the same is dismissed.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 21st October, 2022/ A.K. Rana, P.A.