

ORISSA HIGH COURT: CUTTACK

AFR

W.P.(C) NO. 26549 OF 2022

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Nviron Learning Foundation Petitioner

-Versus-

State of Odisha and others Opp. Parties

For Petitioner : Mr. Budhadev Routray,
Sr. Advocate along with
M/s. Shantanu Das and
R. Acharya, Advocates,

For Opp. Parties : Mr. J.P. Pattanaik,
Government Advocate
[O.Ps. 1 & 2]

M/s. B.K. Dash, S.R. Dash,
R.B. Dash, D. Mohajan,
R.K. Nayak and S. Behera,
Advocates [O.P.3]

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MR JUSTICE B.P. SATAPATHY**

Date of Hearing: 15.11.2022 :: Date of Judgment : 24.11.2022

DR. B.R. SARANGI, J. Nviron Learning Foundation, as a Public Charitable Trust represented through its Managing Trustee, has filed this writ petition seeking to quash notification no. SDTE-PDE-I-Poly-0026-2017-3622/SDTE dated 27.07.2022 under Annexure-7, as well as the order of rejection of the petitioner's application for affiliation, vide letter no. 12694 (4) dated 30.09.2022 under Annexure-10. The petitioner has further prayed to issue direction to the opposite parties to grant affiliation to its institution to run Post-Diploma in Industrial Safety (PDIS) Course from the academic session 2022-23, on the basis of the application submitted on 26.04.2022 under Annexure-3 series and the inspection report dated 21.07.2022 of the inspection team under Annexure-6. The petitioner has made an alternative prayer to direct the opposite parties to treat its institution at par with the existing institutes and make applicable the AICTE approval to it from the academic session 2025-26, as is the case for existing institutes running with PDIS course.

2. The factual matrix of the case, in precise, is that the petitioner-trust was formed through a deed registered on 18.04.2022 with its office located at Plot No. 1610, Mahanadi Villa, Cuttack. The petitioner-trust in its executive meeting held on 22.04.2022 resolved to establish a new technical institute and applied to SCTE & VT for approval to start “Nviron Institute of S.H.E.” to offer Post-Diploma in Industrial Safety (PDIS) Course. Pursuant to the aforesaid resolution, the petitioner duly applied on 26.04.2022 to opposite party no.1 for No Objection Certificate (NOC) to establish such institution to offer PDIS Course. Opposite party no.1 forwarded the petitioner's application dated 26.04.2022 to the opposite party nos. 2 and 3 requesting them to conduct a joint inspection to verify the availability of infrastructure and faculty to run the institution with PDIS courses and submit a report in that regard. The opposite party no.2 formed an inspection team, vide order dated 09.06.2022, to conduct inspection of the infrastructure, faculty and other necessary amenities of the petitioner's institution

as per affiliation norms of SCTE & VT, Odisha. Pursuant thereto inspection was conducted by the inspection team on 21.07.2022 and a report was submitted to DTET on 30.07.2022 recommending the petitioner's institution to get affiliation to run the PDIS course. The said report was forwarded by the DTET to the State Government further recommending the grant of affiliation to the petitioner's institution. As such, the petitioner's institution complied with the requirements as sought by the inspecting team in the meantime.

2.1 Opposite party no. 1 published a notification on 27.07.2022 stating that institutions intending to start a new Post-Diploma course shall have to obtain approval from AICTE, while applying for affiliation to SCTE & VT, for admitting students in any such courses and the duration shall be as per AICTE norms. With regard to running PDIS course in existing institutions, AICTE affiliation shall be made mandatory from the session 2026-27. Pending affiliation of petitioner's institution, opposite party no.2 published an admission notice on

23.09.2022 inviting applications from students for enrolment into PDIS course for the academic year 2022-23 with effect from 26.09.2022. The advertisement was published before finalizing the pending application of the petitioner's institution seeking affiliation. The opposite party no. 2 informed the petitioner, vide letter no. 12696(4) dated 30.09.2022, that its application for affiliation and establishment of new PDIS Course has been rejected by the Government. Hence, this writ petition.

3. Mr. B. Routray, learned Senior Counsel appearing along with Mr. Shantanu Das, learned counsel for the petitioner vehemently contended that in the notice dated 02.04.2022 issued by the SCTE & VT-opposite party no.2 it is clearly stated that all the institutions offering Diploma programmes approved by the AICTE, to seek affiliation from SCTE&VT, Odisha. Similarly, the institutions offering PDIS Course, if approved by the Government of Odisha, are also required to seek affiliation from SCTE&VT, Odisha before

admitting students to PDIS Course for the academic session 2022-23. Thereby, it is contended that approval from AICTE was never a pre-requisite for obtaining affiliation from SCTE&VT for running the PDIS Course and as per the guidelines issued by the Government, the petitioner's institution not only complied every paraphernalia but the inspection team constituted by the DTET has also recommended the petitioner's institution to run the PDIS Course. It is further submitted that instead of considering the case of the petitioner's institution for affiliation on the basis of the recommendation made by the inspection team, opposite party no.1 published the notification dated 27.07.2022 stating therein that the institutions intending to start new Post-Diploma Course shall have to obtain approval from AICTE, while applying for affiliation to SCTE&VT for admitting students into any such Courses, with regard to running PDIS Courses in existing institutions, as AICTE affiliation shall be made mandatory from 2026-27. Therefore, it is contended that the application

submitted by the petitioner's institution and the recommendation made by the inspection team has been rejected, referring to notification dated 27.07.2022, which amounts to non-application of mind. It is further contended that the guidelines so issued on 27.07.2022 will have prospective effect in absence of any specific rider that it should be applied retrospectively. It is further contended that since the notice was published on 02.04.2022 inviting applications for affiliation for offering PDIS Course for the session 2022-2023 and in compliance of the same the petitioner's institution made its application in terms of the existing guidelines and accordingly the inspection was conducted and recommendation was made for grant of affiliation, the same should not have been rejected on 30.09.2022 relying upon the notification dated 27.07.2022. Thereby, the impugned order under Annexure-10 dated 30.09.2022 rejecting the application of the petitioner's institution for affiliation is an outcome of non-application of mind, which is liable to be quashed.

To substantiate his contention, learned Senior Counsel appearing for the petitioner has placed reliance on the judgment of the apex Court in the case of **K. Manjusree v. State of A.P.**, AIR 2008 SC 1470 and the decisions of this Court in the cases of **Himansu Sekhar Sahoo v. State of Odisha**, 2013 (2) ILR-CUT 355 and **Dr. Sk. Fiyazul Haque v. State of Odisha**, W.P.(C) No. 24673 of 2022 disposed of on 28.09.2022

4. Mr. J.P. Patnaik, learned Government Advocate appearing for the opposite party nos. 1 and 2 contended that SCTE&VT, vide notice dated 02.04.2022 under Annexure-1, has nowhere asked any institution to start PDIS Course without approval of the Government. The petitioner has neither applied for affiliation nor paid any fees for affiliation for the year 2022-23 in response to such notice. Therefore, the petitioner's institution has not obtained any approval or NOC from the State Government for offering PDIS Courses. The petitioner has applied to the Government suo motu as per its convenience/own requirement without any invitation

from State Government or SCTE&VT. Therefore the notification issued under Annexure-1 does not create any right on the part of the petitioner nor does it saddle the opposite parties 1 and 2 with any obligation or duty. He further contended that the petitioner had applied for NOC, vide letter dated 26.04.2022 under Annexure-3, wherein the Chairman of the petitioner had intimated that in order to obtain AICTE approval, it is necessary to submit NOC of State Government. According to him, since the petitioner had requested for NOC for AICTE approval, the Government, vide Letter No.1969 dated 05.05.2022, requested DTE&T & SCTE&VT to conduct a joint inspection, along with one official from industry safety back ground, to verify on the availability of infrastructure and faculty, etc to run the institution with existing PDIS Courses and submit a report as per the procedure. The PDIS Courses being run by the SCTE&VT is of one year duration with due approval from the Government, whereas AICTE has a provision to run Post-Diploma Courses of different branches with a duration of

1.5 years. Therefore, in absence of standardization of courses, the pass-out students of these Diploma courses are finding it difficult to get employed at national level and in other States. As such, keeping in view the standardization of Post-Diploma in Industrial Safety (PDIS) Course as per AICTE norms and pass-out students of these Post-Diploma courses in the State, the Government, vide notification dated 27.07.2022, was pleased to approve the conditions stipulated therein. He further contended that the notification dated 27.07.2022 is a policy decision taken by the Government in order to create standardization of Post-Diploma courses and to give opportunity to the pass-out students of these Diploma courses to get employed at national level and in other States. Therefore, by issuing letter dated 27.07.2022 no illegality or irregularity has been committed and, as a consequence thereof, the order dated 30.09.2022 rejecting the petitioner's proposal for establishment of new Post-Diploma in Industrial Safety

(PDIS) Courses is well justified and does not require any interference by this Court at this stage.

5. Mr. B.K. Dash, learned counsel appearing for the opposite party no.3 contended that in the notice dated 02.04.2022 issued by SCTE&VT at the 1st paragraph it was clearly mentioned that institutions offering PDIS course, if approved by GOVT of Odisha, are also required to seek affiliation from SCTE&VT, Odisha before admitting students to PDIS course for 2022-23 session. It was also clarified at paragraph 2 that after grant of affiliation by the council, the institutions can participate in admission process for the affiliated courses and affiliated intake capacity for the session 2022-23. Thereafter, in paragraph-4 it was indicated that for PDIS Course, affiliation shall be granted to such institutions, which are approved by the Government and institutions must have applied for affiliation for such course with such intake capacity along with fees. The petitioner's institution had applied to the Government suo motu without any invitation from Government /SCTE&VT and,

thereby, the relief sought by the petitioner cannot be granted and the writ petition has to be dismissed. It is further contended that AICTE is a statutory body established under an Act to standardize the norms of technical education in the country. It provides the course of Post-Diploma in Industrial Safety of 1.5 years duration, but SCTE&VT provides the said course in one year. Therefore, there should be rationalization of the course so as to provide employment benefit to the candidates. Consequentially, it was decided to get approval from the AICTE with effect from the academic session 2026-27. Thereby, no illegality or irregularity has been committed by the authority by issuing such notification dated 27.07.2022 calling for interference by this Court at this stage.

6. This Court heard Mr. B. Routray, learned Senior Counsel appearing along with Mr. S. Das, learned counsel for the Petitioner, Mr. J.P. Patnaik, learned Government Advocate appearing for the State-opposite parties no.1 and 2 and Mr. B.K. Dash, learned counsel

appearing for opposite party no.3 in hybrid mode and perused the records. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties the writ petition is being disposed of finally at the stage of admission.

7. There is no dispute before this Court that the petitioner is a charitable trust registered on 18.04.2022. To establish a technical institute the petitioner-trust applied to opposite party no.3 to offer Post-Diploma in Industrial Safety (PDIS) Course. The PDIS course is being offered with an aim of ensuring safety and health at work place. In order to fulfill the need, services of qualified safety professionals in any industry is essential in order to plan, implement and monitor accident prevention environment. Therefore, it is necessary that a Safety Officer should possess appropriate qualification and required exposure in live environment in order to discharge desired duties and shoulder responsibility to ensure risk free environment in work place. Section-40B of the Factories Act, 1948, read with Rule-61 (1) of the

Orissa Factories Rules, 1950, provides the criteria for a person to be eligible for appointment as Safety Officer, if he possesses a Degree or Diploma in Industrial Safety from an institution recognized by the State Government. Keeping in view the roles & responsibility of Safety Officer, a Post-Diploma (PDIS) Course having one year duration was designed by opposite party no.3 with the support of opposite party no.2 in order to equip the students with appropriate knowledge, skill and attitude to perform various job functions effectively & efficiently.

8. The opposite party no.3 published a notice on 02.04.2022 inviting prospective institutions to apply for affiliation in order to offer PDIS courses to the students for the session 2022-23. The 1st paragraph of the said notification reads as follows:-

"In pursuance to Notification No. 2570 /SDTE dated 04/06/2018 and 2861 dt. 21/06/2018 of SD&TE Department Govt. of Odisha on Affiliation Bye-Laws of SCTE&VT, it is imperative for all the Institutions offering Diploma programmes approved by AICTE to seek affiliation from SCTE&VT, Odisha for such courses if offered by the council, before admitting students to such courses for 2022-23. Similarly, Institutions offering PDIS course, if approved by Govt. of

Odisha, are also required to seek affiliation from SCTE&VT, Odisha before admitting students to PDIS course for 2022-23 session.”

From the above it follows that all the institutions offering Diploma programmes approved by AICTE to seek affiliation from opposite party no.3 for such courses if offered by the council, before admitting students to such courses for the session 2022-23, and similarly all the institutions offering PDIS course, if approved by Govt. of Odisha, are also required to seek affiliation from opposite party no.3 before admitting students to PDIS course for 2022-23 session. Therefore, the notification is very clear that the institutions offering PDIS course, if approved by Govt. of Odisha, are required to seek affiliation from opposite party no.3 before admitting students to PDIS course for 2022-23 session.

8.1 Further, paragraph-3 of the said notification states as follows:-

“New Institution seeking Affiliation for the first time, is required to apply for Login Id and Password through the above portal by 20/04/2022 positively to mail Id secretarysctevt@gmail.com. After getting the

Login-Id and Password only, the institution can submit the application in the portal.”

Meaning thereby, a new institution like the present petitioner seeking affiliation for the first time, is required to apply for Login ID and Password through portal by 20.04.2022 positively and after getting the Login-ID and Password only, the institution can submit the application in the portal.

8.2 The notification further provides that all the Principals of the above stated institutions are required to submit the applications for affiliation online in the council website to be available from 12.04.2022 along with requisite fees online as applicable to them by 30.04.2022 positively and institutions not submitting application for affiliation in the manner prescribed or not paying fees for the purpose, shall not be considered for grant of affiliation for such courses by the council for the year 2022-23.

9. Pursuant to such notice, the executive meeting of the petitioner was held on 21.04.2022 and a resolution was passed for establishment of new technical institution and to apply to opposite party no.3 for approval to start the petitioner's institution to offer Post-Diploma in Industrial Safety in a place earmarked for proposed institution. Accordingly, on 26.04.2022 under Annexure-6 series, the petitioner applied for issuance of NOC to establish the institution to offer PDIS Course for the session 2022-23 enclosing all the documents required for the purpose. In response to the same, the Joint Secretary to Government, vide letter dated 05.05.2022, intimated to opposite party no.2 requesting to conduct a joint inspection along with one official from industry safety back ground, to verify on the availability of infrastructure and faculty, etc to run the institution with existing PDIS course and to submit a report. Opposite Party No.2, on receipt of the letter dated 05.05.2022, constituted an inspection team to conduct inspection as per affiliation norms of the opposite party

no.3 with a request to furnish the inspection report within one week from the date of issue of the order positively vide order dated 09.06.2022. Therefore, a joint inspection was conducted and report was submitted on 30.07.2022 with the following observation and recommendation:-

“Following observations are made hereunder:

1. *The Electrical Connections & required setting up of PDIS Labs as per requirements are under process. (Undertaking Furnished by the Institute)*
2. *The NVIRON Institute of S.H.E., Jagatsinghpur has applied for introduction of new course of Post Diploma in Industrial Safety (PDIS) as a new Institute with an intake of 30 during the academic Session 2022-23 with reference to Letter No. 1969/SDTE Dated 05.05.2022 of the SD&TE Deptt.*

Recommendation:

As per findings the team recommended new course of Post Diploma in Industrial Safety (PDIS) as a new Institute with an intake of 30 during the academic Session 2022-23 subject to compliance of the aforesaid observation made in Sl. No.1.”

10. Prior to such recommendation made on 30.07.2022, a notification was issued by the Government of Odisha in Skill Development & Technical Education Department stating inter alia that the institutions

intending to start a new Post-Diploma Course shall have to obtain approval from AICTE while applying for affiliation to SCTE&VT for admitting students in any such courses and the duration shall be as per AICTE norms. The above mentioned approval of AICTE for running PDIS Courses shall be mandatory from the session 2026-27 for the existing institutions. It was also stated that many seats in the PDIS Courses are lying vacant. Hence, status quo as regards number of seats and establishment of new institution and approval to new courses shall be maintained during the above mentioned 5 years grace period. It was also clarified that if any institution approaches the Department with AICTE approval, it shall be entertained. Therefore, by the time the recommendation was made by the committee on 30.07.2022, the notification dated 27.07.2022 had already seen the light of the day. In spite of such notification dated 27.07.2022, the recommendation was made by the committee in respect of the petitioner's institution for PDIS Course as a new institute with an

intake of 30 during academic session 2022-23 subject to compliance of the observation made therein, which the petitioner complied. Therefore, it is incumbent upon the State to grant NOC, but instead of doing so, vide letter dated 30.09.2022, it was communicated that the Government has been pleased to regret the proposal for establishment of new Post-Diploma in Industrial Safety (PDIS) Course and variation of intake to the existing institutes for 2022-23, pursuant to notification dated 27.07.2022.

11. Denial of issuance of NOC to the petitioner's institution is because of the notification dated 27.07.2022. When the notification dated 27.07.2022 is confined to existing institutions which require approval of AICTE for running PDIS Courses shall be mandatory from 2026-27 session and also allowed five years grace period. The petitioner's institution, being a new institution, is eligible to receive no objection from the Government as a consequence thereof the affiliation from opposite party no.3. Thereby, rejection of the claim of the

petitioner, vide letter dated 30.09.2022, is arbitrary, unreasonable and contrary to the provisions of law.

12. On perusal of the notice dated 02.04.2022 and notice dated 29.04.2022, it is made clear that the opposite parties had invited applications from the institutions seeking fresh affiliation to opposite party no.3 for PDIS Course. In response thereto, the petitioner had applied for affiliation and, as such, the NOC for such affiliation was sine qua non. Since the petitioner had at first applied for NOC, it could have paid all requisites fees after obtaining NOC. But the same was rejected on 30.09.2022 without application of mind, which cannot sustain in the eye of law. On perusal of the order dated 09.06.2022, it is further made clear that the joint inspection team was constituted for physical verification of the petitioner's institution for establishment of a new PDIS course. In view of the language employed in the aforesaid letters dated 30.09.2022 and dated 09.06.2022, it is inferred that the petitioner had indeed made an application for affiliation, which was rejected by

the authority, and not merely made an application for NOC. But fact remains, the grant affiliation to the petitioner's institution is followed by NOC to be granted by the State Government, and that though recommendation was made by the joint inspection committee, but the application for affiliation was rejected without application of mind.

13. It is of relevance to note, the petitioner's institution being a new institution when sought for NOC and consequential affiliation from the competent authority for establishment of new PDIS Course and its application was accordingly recommended by the joint inspection committee on 30.07.2022, even though by that time the notification issued on 27.07.2022 had seen the light of the day, knowing fully well that the said notification is not applicable to the petitioner's institution, the benefit claimed by the petitioner has been denied. The said notification clearly states that the institutions intending to start a new PDIS Course shall have to obtain approval from AICTE while applying for

affiliation to opposite party no.3 for admitting students in any such courses. By the time the notification dated 27.07.2022 saw the light of the day, the petitioner had already applied for grant of NOC and consequential affiliation, pursuant to the notification dated 02.04.2022. Therefore, the notification so issued on 27.07.2022 has got prospective application and as such the same cannot be applied retrospectively denying benefit to the petitioner. More so, even if AICTE approval was made mandatory by the Government, the existing institutions were granted time up to the session 2026-27. But that has nothing to do so far as petitioner's institution is concerned. As such, no discrimination can be made between the existing institutions vis-à-vis the new institutions like the petitioner's institution. The notification dated 02.04.2022 does not require the petitioner's institution to have AICTE approval for getting affiliation from opposite party no.3 for running PDIS Course. As such, AICTE approval was never the pre-requisite for obtaining affiliation from opposite party no.3

for running the PDIS Course since inception of the course. The handbook issued by the AICTE in Appendix-1 under Clause 1.2 deals with Post-Diploma, which requires a course of 18 months or 2 years, whereas the PDIS course is of one year, for which the affiliation from opposite party no.3 is required. In Annexure-12 dated 01.06.2009 the approval of guidelines and approval process for PDIS Course has been prescribed for and, as such, the session is for a period of one year, i.e. August to July. If at all any AICTE approval is required, the same has to be done from 2026-27. Since as per the AICTE term the length of course has been at least 18 months, but present PDIS course is only one year long stretched over two semesters, therefore, the present course cannot as such be required approval from the AICTE.

14. It may not be out of place to mention that for the purpose of establishing an institution, the petitioner has fulfilled all the criteria for offering PDIS course with effect from the session 2022-23 and created

infrastructure as per the prescribed norms of the opposite party no.3 in terms of the notice dated 02.04.2022, including appointment of faculties, and considering its application dated 05.05.2022 submitted to the Government, the joint inspection was done and the inspection team, having satisfied that the petitioner has fulfilled all the norms of the State Government to run PDIS course from 2022-23, recommended for grant of NOC and consequential affiliation by the competent authority. Therefore, pursuant to the notice dated 02.04.2022, since the petitioner has started the process, in view of issuance of notification dated 27.07.2022, it cannot be denied the NOC and affiliation and, thereby the process which has already been started on the basis of the norms prescribed therein cannot be changed in the mid way.

15. In **K. Manjusree** (supra), referring to **Maharashtra State Road Transport Corporation v. Rajendra Bhimrao Mandve**, (2002) 1 LLJ 819 SC, the apex Court held that the rules of the game, meaning

thereby, the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced. In this case, the position is much more serious. Here, not only the rules of the game have been changed, but they have been changed after the game has been played and the results of the game are being awaited, which is absolutely unacceptable and impermissible.

16. In **Himansu Sekhar Sahoo** (supra), this Court referred to the judgments of the apex Court in the cases of **Secretary, A.P. Public Service Commission v. B. Swapna and others**, (2005) 4 SCC 154, **K. Manjusree** (supra) and **Mohd. Raisul Islam and others v. Gokul Mohan Hazarika and others**, (2010) 7 SCC 560 and observed that it is well settled principle of law that once the process of selection has started, the prescribed selection criteria cannot be changed, and further that introducing of any change into eligibility criteria after the selection process has commenced, would amount to changing the game after the game has

been played. Similar view has also been taken by this Court in the case of **Dr. Sk. Fiyazul Hauge** (supra).

17. Keeping in view the principles of law laid down by the apex Court as well as this Court, as mentioned supra, this Court finds that in the instant case admittedly pursuant to the notification issued on 02.04.2022, necessary steps have already been taken by the petitioner for grant of NOC and consequential affiliation by opposite party no.3 to the petitioner's institution. The petitioner, having complied all the terms and conditions, a joint inspection was conducted and the inspecting team recommended the case of the petitioner's institution for grant of NOC and consequential affiliation by opposite party no.3. Needless to mention here that such recommendation was made on 30.07.2022 knowing fully well that by that time the notification dated 27.07.2022 had already seen the light of the day. May be the letter dated 27.07.2022 is a policy decision of the Government, but that *if so facto* cannot be applicable as it has got prospective effect and such prospective effect

also cannot stand on the way of the petitioner's institution, as because knowing fully well the existence of such notification the joint inspection committee had recommended the case of the petitioner's institution for grant of NOC and affiliation. Therefore, this Court, while refraining from interfering with the notification dated 27.07.2022, observes that rejection of application of the petitioner for grant of NOC and consequential affiliation vide Annexure-10 dated 30.09.2022 cannot sustain in the eye of law on the plea of issuance of notification dated 27.07.2022. Therefore, the order dated 30.09.2022 under Annexure-10 is liable to be quashed and hereby quashed.

18. As a consequence thereof, this Court directs that opposite parties no.1 and 2 shall take necessary steps for grant of NOC and consequentially opposite party no.3 shall grant affiliation to the petitioner's institution for opening of Post-Diploma in Industrial Safety (PDIS) Course from the session 2022-23. The entire exercise shall be done within a period of 15

(fifteen) days from the date of production/ communication of this judgment, so that the institution cannot lose an academic year to admit the students to prosecute their studies.

19. Thus, the writ petition is allowed. However, there shall be no order as to costs.

(DR. B.R. SARANGI)
JUDGE

B.P. SATAPATHY. I agree.

(B.P. SATAPATHY)
JUDGE

Orissa High Court, Cuttack
The 24th November, 2022, Arun/GDS