

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4978 OF 2022

- 1) Nanasaheb Babasaheb Dharbale,
Age 35 years, Occ. Service,
R/o. C/o. Dattatray More,
Plot No. 43-44, House No. 15,
Sarvodaya Housing Society,
N-6, CIDCO, Aurangabad.
- 2) Dr. Aquil Ur Rahim Siddiqui,
Age 56 years, Occ. Service,
R/o. Plot No. 15, Shabistan Housing
Society, Near Ikon Hospital, VIP Road,
Rashidpura, Aurangabad.
- 3) Ganesh Kaduba Gajare,
Age 40 years, Occ. Service,
R/o. Pushpak Garden,
In front of New Civil Hospital,
Jalna Road, Chikalthana (Airport)
Aurangabad.
- 4) Ms. Vijayalaxmi Appasaheb Chavan,
Age 35 years, Occ. Service,
R/o. Plot No. 117, Sainagar,
N-6, CIDCO, Aurangabad.
- 5) Gajanan Nandlal Parikh,
Age 37 years, Occ. Service,
R/o. Gendai, 113/1, Labh Park,
Gurusahani Nagar, CIDCO N-4,
Aurangabad.
- 6) Mahesh Tanaji Gaikwad,
Age 40 years, Occ. Service,
R/o. C/o. Pawar, Behind Kalpana
Provision Stores, Opp.SBI ATM,
D-Mart Road, Vivekanand Nagar,
N-12, CIDCO, T.V. Centre, Aurangabad.
- 7) Ashwini Uday Patil,
Age 31 years, Occ. Service,
R/o. "Samarth" 216-A, Bhaktinagar,

N-1, CIDCO, Aurangabad.

- 8) Sandeep Subhashchandra Lahoti,
Age 32 years, Occ. Service,
R/o.Flat No. E-404, Kasliwal Marval
(West), Near AGP Public School,
Beed Byepass, Aurangabad.
- 9) Miss. Snehal Nursing Pawar,
Age 32 years, Occ. Service,
R/o. Flat No. G-62, Sukhada Niwas,
Near Powerhouse N-4, CIDCO,
Aurangabad.
- 10) Vinayak Laxmanrao Gadhekar,
Age 45 years, Occ. Service,
R/o. Plot No. D-75, Renuka Nagar,
Garkheda Parisar, Aurangabad.
- 11) Santosh Pandurang Katore,
Age 45 years, Occ. Service,
R/o C-38, Police Colony,
N-7, CIDCO, Aurangabad.
- 12) Amol Balkrishna Joshi,
Age 35 years, Occ. Service,
R/o. C-60/6, Shivaji Nagar,
Garkheda Parisar, Aurangabad.
- 13) Abhijeet Sudhakar Pashan
Age 31 years, Occ. Service,
R/o. E-20/11, Sambhaji Colony,
N-6, CIDCO, Aurangabad.
- 14) Gahininath Vitthalrao Wagh,
Age 41 years, Occ. Service,
R/o. Plot No. 31, Chaudhari Colony,
Chikalthana, Aurangabad.
- 15) Nita Bharat Daund,
Age 30 years, Occ. Service,
R/o. House No. 5-8-1655,
Chaudhari Colony, Lane No. 3,
Chikalthana, Aurangabad.
- 16) Hiranman Bhausahab Kalunke,

Age 34 years, Occ. Service,
R/o. Plot No. 4/38/55,
Vishranti Nagar, Galli No. 1,
Mukundwadi, Aurangabad.

17) Rushinder Hiranman Wagh,
Age 34 years, Occ. Service,
R/o. Plot No. 111, Survey No.72/2,
Rajnagar, Mukundwai, Aurangabad.

18) Dnyaneshwar Namdeo Aglawe,
Age 29 years, Occ. Service,
R/o. At Post Georai Bk,
Tq. Paithan, Dist. Aurangabad.

19) Raju Bhagaji Pathre,
Age 31 years, Occ. Service,
House No. C-5/3, Jalgaon Road,
N-13, HUDCO, Bharat Nagar,
Aurangabad.

20) Pradip Kaduba Mokasare,
Age 28 years, Occ. Service,
R/o. House No. 51/62, Survey No. 02,
Galli No. 12, Jai Bhawani Nagar,
Aurangabad.

21) Jayram Arjun Borkar,
Age 28 years, Occ. Service,
R/o. C/o. Dahale Subhash
M-2-6-3, N-6, Sinhgad Colony,
Aurangabad.

... **Petitioners.**

VERSUS

1) The State of Maharashtra,
Through the Principal Secretary
of Technical and Higher Education
Department, Govt. of Maharashtra,
Mantralaya, Annex Building,
Mumbai-400 032.

2) All India Council for Technical Education,
Nelson Mandela Marg, Vasant Kunj,
New Delhi- 110 070,
Through its Chairman/Secretary.

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| 2A) | Pharmacy Council of India,
NBCC Centre, 3 rd Floor, Plot No. 2,
Community Centre, Maa Anandmai Marg,
Okhla Phase-I (Near Hotel Crown Plaza),
New Delhi-110 020. | |
| 3) | The Director of Technical Education 3,
Mahapalika Marg, Mumbai. | |
| 3A) | The Joint Director of Technical Education
Near Polytechnic College, Osmanpura,
Aurangabad. | |
| 4) | Dr. Babasaheb Ambedkar Marathwada University,
University Campus, Aurangabad,
Through its Registrar. | |
| 5) | Bhagwqan Shikshan Prasarak Mandal,
Dr. Y.S. Khedkar Marg, N-6, CIDCO,
Aurangabad,
Through its Secretary. | |
| 6) | Shri. Bhagwan College of Pharmacy,
Dr. Y.S. Khedkar Marg, N-6, CIDCO,
Aurangabad, Through Secretary,
Bhagwan Shikshan Prasarak Mandal. | ... Respondents. |

Advocate for the Petitioners : Mr. Pushkar S. Shendurnikar.
Additional G.P for the Respondent Nos. 1, 3, 3A : Mrs. M.A. Deshpande.
Advocate for Respondent No. 2 : Mr. C.V. Dharurkar
Advocate for Respondent No. 4 : Mr. K M. Suryawanshi
Advocate for Respondent Nos. 5 & 6 : Mr. Atul M. Karad
Advocate for Respondent No. 2A : Mr. S.B. Deshpande

**CORAM : MANGESH S. PATIL &
ABHAY S. WAGHWASE, JJ.**

RESERVED ON : 19.04.2023
PRONOUNCED ON : 23.08.2023

JUDGMENT : (PER : MANGESH S. PATIL, J.)

Heard. Rule. Rule is made returnable forthwith. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. In this petition under Article 226 of the Constitution of India, the petitioners who are some of the members of the teaching and non-teaching staff of the respondent No. 6-College of Pharmacy being run by the respondent No. 5-management (hereinafter management) are challenging the order passed by the respondent No. 3 who is the Director of Technical Education (hereinafter DTE) refusing to take over the management of the respondent No. 6-college under the provisions of Section 3 of the Maharashtra Educational Institutions (Management) Act, 1976 (hereinafter Educational Institutions Act), dated 10.02.2022.

3. Before we proceed to examine the sustainability and legality of the order under challenge it would be appropriate to narrate the history.

(a) The management is a Trust registered under the Maharashtra Public Trust Act, 1950 and Societies Registration Act, 1860 which has been running the respondent No. 6- College of Pharmacy for last around two and half decades. The petitioner Nos. 1 to 4 and few others filed Writ Petition No. 5150/2013 in this Court seeking benefit of the 6th Pay Commission. The writ petition was allowed by this Court on 15.01.2018. The management challenged that order before the Supreme Court in Special Leave to Appeal No. 10537/2018. It was dismissed on 09.05.2018. However, a liberty was granted to the management to seek review of the order in Writ Petition No. 5150/2013. Accordingly Review Application (Stamp) No. 28198/2018 was filed but it was withdrawn on 06.02.2020. Those petitioners are now claiming arrears which according to them are Rs. 4,83,22,894.18.

(b) Like the above petitioners, the petitioner Nos. 10 to 19 filed Writ Petition No. 11259/2017 and petitioner Nos. 5 to 7 and 20 and 21 filed Writ Petition No. 11343/2019, thereby claiming benefit of the 6th Pay Commission. Both these petitions were allowed on 28.08.2019 and 30.01.2020 respectively and the decisions reached finality since the management did not challenge those orders. According to those petitioners

the arrears of the pay to which they are entitled to are 2,58,41,722/- and Rs. 1,17,69,756/- respectively. The management failed to pay these arrears.

(c) On 14.09.2018, the respondent No. 2-All India Council for Technical Education (hereinafter AICTE) withdrew its approval granted to the respondent No. 6-College on account of persistent default committed by the respondent No. 5-college to remove the deficiencies pointed out by the Expert Visiting Committee which had concluded that the managing society-institute was not interested in improving the conditions that were prevalent. The management did not challenge this order.

(d) Some of the staff members preferred Writ Petition No. 12095/2018 and even some students filed Writ Petition No. 11064/2018 against the AICTE and the management and at their instance the AICTE was pleased to withdraw the order whereby it had revoked approval. The standing appellate committee of the AICTE found that the management had not bothered to respond to it and recommended on 15.05.2019 to place the college under 'No Admission' category for the academic year 2019-2020.

(e) Finding that the management was apparently not interested in running the college, the petitioners filed Writ Petition No. 13358/2019 and prayed for transfer of the management or to direct the Director of the DTE to appoint an administrator over the management and the college and for direction to the authorities to take steps for closure of the college under Section 121 of the Maharashtra Public Universities Act, 2016 by paying retrenchment compensation of Rs. 2 Crores to the members of the teaching staff and Rs. 1 Crore each to the non-teaching staff and to pay regular salary.

(f) Since some of the petitioners were relieved by the management during pendency of that writ petition, a prayer for quashing of those relieving orders/letters was also added.

(g) By the order dated 26.11.2021 in above writ petition, this Court

in detail pointed out the chequered history, the deficiencies and even commented upon the sorry state of affairs in running the college by the management and made several observations as to how there existed circumstances for the DTE to invoke the powers under Section 3 of the Educational Institutions Act. Pertinently, these observations were made in the light of the stand that was being taken by the DTE in its affidavit in reply filed in that petition.

(h) In the light of such observations and the directions of this Court, the DTE issued show cause notice dated 07.01.2022 to the management and the Principal of the college calling upon them to show cause why steps under Section 3(1) of the Educational Institutions Act be not taken. The management and the college filed their reply. Even the petitioners were allowed to participate. By the order under challenge the respondent-DTE has refused to exercise the powers under Section 3 of the Educational Institutions Act. Hence this petition.

4. The learned advocate Mr. Shendurnikar would narrate us the aforementioned chequered history and particularly the observations made by this Court in the order passed while disposing Writ Petition No. 13358/2019. He would point out that after considering the stand of all the parties and noting the deficiencies and the shortcomings in the matter of management of the college, this Court had demonstrated as to how it was imperative for the DTE to exercise the powers under Section 3 of the Educational Institutions Act. The observations were drastic and were in fact a *fait accompli* as far as the existence of the circumstances which are sufficient for invoking those powers. He would, therefore, submit that the DTE has blatantly overlooked the observations and has passed the impugned order. Once this Court had minutely examined the scope and ambit of Section 3 in the context of the fact situation, the DTE could not have arrived at a diagonally opposite conclusion. He would submit that if the aforementioned circumstances are not sufficient enough to exercise the

power, it would be a dead letter. The whole purpose of providing for such a measure for taking over the management is inability of the management to run the educational institution in the public interest. Therefore, the impugned order refusing to invoke Section 3 is clearly perverse, arbitrary and capricious and is liable to be quashed and set aside. He would, therefore, submit that question of applicability of Section 3 was not open to be decided by the DTE in view of the observations of this Court.

5. The learned A.G.P would support the order by submitting that when the college was put in 'No Admission' category by the AICTE, Section 3 of the Educational Institutions Act could not have been invoked.

6. The learned A.G.P would further submit that since the college was placed under 'No Admission' category since the year 2018-2019 only those students who were admitted prior thereto were allowed to continue for the subsequent academic years to enable them to conclude the course. However, there were no fresh admissions after 2018-2019. In the circumstances, the college was practically closed down. She would submit that unless appropriate steps are taken by the management and the college for extension/restoration of approval to the college under the All India Council For Technical Education Act, 1987 (hereinafter AICTE Act) or the Maharashtra Public Universities Act, 2016, the college cannot run. She would then submit that in view of the provision of appeal contemplated under sub section 4 of Section 3 of the Educational Institutions Act, the petition is not maintainable. She would, lastly, submit that the whole purpose and object of taking over management under Section 3 is to run an educational institution. When for whatever reason it has completely closed down for all practicable purposes, the provision cannot be invoked.

7. The learned advocate Mr. Karad for the management and the college would at the outset oppose the petition on the ground that since it is a matter of running the Pharmacy College under the provisions of the AICTE

Act and the Pharmacy Act, 1948, which are the Central legislations passed under entry 66 of list I in the Seventh Schedule of the Constitution of India, the provisions of Section 3 of the Educational Institutions Act which is a State legislation will not be applicable. When these central status provide in detail and make provisions for running *inter alia* a pharmacy college, Section 3 of the Educational Institutions Act cannot operate in view of Article 254 of the Constitution of India. To buttress his submission he would place reliance on the decisions in the matters of **State of Tamil Nadu & Anr. Etc. Vs. Adhiyaman Educational & Research Institute & Ors;** (1995) 4 Supreme Court Cases 104, **Rungta Engineering College, Bhilai and another Vs. Chhattisgarh Swami Vivekanand Technical University and Another;** (2015) 11 Supreme Court Cases 291, and **State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors.;** 2006 AIR SCW 2048.

8. Mr. Karad would then advert our attention to the decision of the Supreme Court in the matter of **The Pharmacy Council of India Vs. Dr. S.K. Toshniwal Educational Trusts Vidarbha Institute of Pharmacy and Ors.;** (2021) 10 SCC 657. He would submit that it has been held that the norms and regulations set by the Pharmacy Council of India (hereinafter PCI) and other specified 46 authorities under the Pharmacy Act would have to be followed by the concerned institutions imparting education in pharmacy, including norms and regulations in respect of increase or decrease in intake capacity. He would, therefore, submit that the PCI has been subsequently added as a respondent No. 2A. Therefore, even the stand of the PCI is relevant to be considered.

9. Mr. Karad would lastly submit that the AICTE had already withdrawn approval and only on the request of the staff and students to enable them to complete studies that the approval was restored by the order of this Court, but the college was put under 'No Admission' category and therefore the educational activities have been completely nonexistent. The management and college does not have permission to run the course either of PCI or

AICTE after 2018-2019. In spite of strenuous efforts, the management could not revive the college and the DTE was satisfied that in the circumstances, powers under Section 3 of the Educational Institutions Act could not have been invoked.

10. The respondent No. 2A (PCI) has also filed affidavit in reply. It has referred to the provisions of the Pharmacy Act and demonstrate as to how the PCI is empowered to regulate the pharmacy education. It mentions that the college was granted approval for the academic year 2013-2014 for 40 seats of B Pharmacy Course. A surprise inspection report of July 2016 was placed before 276th Executive Committee which decided to call the Principal to appear for hearing but no one appeared. After granting one more opportunity at the request of the college, the executive committee in June 2017 passed following resolution :

“It was noted that institution did not appear before PHC of PCI. In view of it, it was decided to seek explanation as to why action should not be initiated against it for considering the issuance of notice for withdrawal of approval under Section 13 of the Pharmacy Act, 1948.”

It is lastly submitted that the management and the college never ever responded to the PCI for further extension of approval at any time thereafter.

11. We have carefully considered the rival submissions and perused the papers.

12. We would first take up the preliminary objection on behalf of the DTE regarding maintainability of the writ petition in the light of availability of provision of appeal under sub Section 4 of Section 3. Since scope and ambit of Section 3 of the Educational Institutions Act is even under consideration of this Court, it would be appropriate to reproduce it.

“3. (1) Whenever the Director is satisfied that the Management of any educational institution has neglected to perform any of the duties imposed on it by or under any law for the time being in force, or the memorandum of association, or any instrument (including any rules, regulations or by-laws) which regulates its administration or is being managed in a manner detrimental to public interest, and that it is expedient in the public interest, and in particular, in the interest of education imparted in such institution to take over the management of such institution in so far as its activity relates to imparting education, he may, notwithstanding anything contained in any law for the time being in force, after giving the management of such institution, a reasonable opportunity of showing cause against the proposed action, by an order take over the management of such institution in so far as its activity relates to imparting education specified in the order for a limited period not exceeding three years :

Provided that, where the management of an institution has been taken over for a period of three years, the Director may, if he is of opinion that in order to secure proper management of the institution, it is expedient that such management should continue to be in force after the expiry of the said limited period, he may from time to time, by an order issue directions for the continuance of such management for such period not exceeding one year at a time as he may think fit, so however, that the total period for which such management is taken over shall not, in any case, exceed five years :

Provided further that, no such show cause notice shall be necessary where the Director is satisfied that the Management or a majority of persons in control thereof are members of an organisation which is or whose members or persons in control there of are or have been indulging in activities which are prejudicial to the internal security, the public safety and the maintenance of public order in the State and such activities are reflected in the course of management and administration of the institution.

(2) Whenever the management of any institution is taken over under sub-section (1), every person in-charge of the management of such institution immediately before the appointed date shall deliver possession of the property of the institution to the Director or any officer authorised by him in this behalf (being property which in the opinion of the Director is essential or necessary for the management of the institution).

(3) After taking over the management of any institution under this section, the Director may, with a view to maintaining continuity of education imparted in such institution, and in the interests of the students attending it, arrange to manage the institution through one or more Administrators appointed under section 4.

(4) Any Management, which is aggrieved by the order of a Director under sub- section (1), may make an appeal to the State Government within a period of 15 days from the date of receipt of the order of the Director. The State Government may, after considering the representation made by the Management and the order of the Director pass such orders, including an order for the restoration of the Management or for the reduction of the period during which the management of such institution shall remain vested in the-Administrator as it may deem fit.

(5) The decision of the Director, subject to the decision of the State Government in the appeal, and the decision of the State Government in the appeal, shall be final and shall not be called in question in any court.

(6) Where the management of an institution has been taken over under this section, the Administrator shall pay such rent as may be payable for the building of the institution to the person entitled to receive it as was being paid by the Management immediately before the appointed date. If the rent is payable to the Management, then such rent shall not be paid to the Management, but it shall remain at the disposal of the Administrator for the management, maintenance and administration of the institution.

(7) During such period as any institution remains under the management of an Administrator,—

(a) the service conditions, as approved by the Director, of the employees shall not be varied to their disadvantage;

(b) such educational facilities as may be approved by the Director and which the institution had been affording immediately before the appointed date shall continue to be afforded;

(c) all fees, all grants and all other receipts of the institution (being fees, grants or receipts as relate to its activity of imparting education therein) shall continue to be available to the Administrator for being spent for the purposes of the institution;

(d) no resolution passed at any meeting of the Management of such institution shall be given effect to unless approved by the Director; and

(e) it shall be lawful for the Administrator to terminate the services of any employee who in his opinion is acting in any manner detrimental to the interest of the institution or education imparted therein after giving the employee a reasonable opportunity of showing cause against the proposed action;

(f) the employee who is aggrieved by any order of the Administrator may, within 21 days of receipt of the order terminating his services, appeal to the Director whose decision in the matter shall be final and conclusive and shall not be called in question in any court.”

13. As can be noticed the provision contemplates an action by the director of taking over management and apparently it would be an issue between the two of them. There is no role for the staff members or the students for participation in the enquiry to be undertaken by the director. We are merely pointing this out to demonstrate that the only aggrieved party by the order under sub section 1 of Section 3 could be management. It has been provided remedy of a statutory appeal under sub Section 4. This is conspicuous by the use of the word ‘any Management’ at the beginning of

that sub section. For whatever reasons, the petitioners who are the teaching and non-teaching staff members of the college were allowed and had participated in the enquiry which ultimately resulted in passing of the impugned order. Right to appeal has to be provided by a statute. When the petitioners do not represent the management which alone has been conferred with such a right under sub section 4 of Section 3, it would not operate as a bar for the petitioners to approach this Court under Article 226. Therefore, this objection is not sustainable in law and is accordingly discarded.

14. Now, turning to the issue as to the vires of section 3 of the Educational Institutions Act, in the light of the challenge being put up by the learned advocate Mr. Karad in the light of the decision in the matter of **Adhiyaman Educational & research Institute (supra)**, though the submission is attractive at the first blush, in our considered view, the vires of the Educational Institutions Act has not been subjected to any challenge. It is a petition by the staff members questioning the order passed by the DTE under Section 3 of the Educational Institutions Act. As is observed above, the management and the college were heard while deciding Writ Petition No. 13358/2019 and for the reasons mentioned in the order passed therein as to how it was a matter to be considered under that provision that this Court had directed the DTE to undertake an enquiry for taking steps thereunder. That order was never challenged by the management or the college. On the contrary, it responded to the show cause notice issued by the DTE, participated in the hearing without demur and thereafter the impugned order was passed. We are merely pointing out these circumstances to indicate that in this petition at the behest of the staff members challenging the order passed by the DTE under Section 3 of the Educational Institutions Act, the management and the college cannot be permitted to resort to an argument putting up a challenge to the vires, legislative competence of the State legislature in passing the Educational

Institutions Act more so when the issue was raised for the first time in the arguments without there being any whisper about it in the affidavit in reply. The submissions of Mr. Karad on that line referring to various decisions on the subject (*supra*) cannot be considered.

15. This brings us to the ambit and scope of the powers under Section 3 of the Educational Institutions Act in the context of the fact situation narrated herein above. It does appear from the order passed by this Court in Writ Petition No. 13358/2019 that several drastic observations were made to demonstrate as to how it was a matter to be considered by the DTE for invoking the powers under Section 3 of the Educational Institutions Act. Following are some such observations :

“1) Since the year 2018-2019, the institution is in no admission category. Except belated filing writ petition no further steps seem to have been taken by the management by representing before the AICTE or the Institute of Pharmacy of the steps undertaken and a request to bring the institute in admission category. It would appear that, the management of the respondent No. 6/college has neglected to perform the duties imposed on it. In such a scenario, it was utterly inappropriate for the Director to file an affidavit that as the management is not imparting education to the students and that students were also transferred to other institution, the respondent Nos. 1 and 3 do not find it expedient to invoke the provisions of Section 3 of the Act of 1976. It was also insensitive and irresponsible statement on the part of the Incharge Joint Director of Technical Education, Aurangabad Region on affidavit that not obtaining approval of the apex body to run a course may not be treated as negligence to perform any of the duties imposed on the management under any law or the memorandum of association of that society as mentioned in Section 3(1) of the Act of 1976 or that it cannot be said that institution is being managed in a manner detrimental to public interest.

2) We fail to understand that if the following acts (1)

members of the teaching and non teaching staff have to come to the Court for redressal of grievance for non payment of applicable pay scale, the Court requiring to issue positive directions against the management to make the payment after coming to the conclusion that management has failed to make the payment as per the applicable pay scale. The SLP filed by the management is dismissed. (2) The respondent No. 6/college being placed in no admission category. (3) Subsequently, the affiliation is withdrawn by the AICTE. In the writ petition filed by the students a statement was required to be made by the AICTE that keeping interest of the students order of withdrawing affiliation has been withdrawn. (4) No student has been admitted after 2018-2019, if are not detrimental to the public interest and interest of education, as per the affidavit filed by the Incharge Joint Director of Education then is required to explain according to him, what would constitute act of negligence or managing the institution in a manner detrimental to the public interest and detrimental to the education. The Director of Technical Education is a responsible person. He is to be sensitive to the issue and cannot in a casual manner file an affidavit shirking the responsibility imposed upon him U/Sec. 3 of the Act of 1976”.

16. With respect, we are in complete agreement with the above observations which even according to us addressed the fact situation and indicated the utter disregard of the management in running the college.

17. However, according to us, sheer lack of the management in performing the duties in the peculiar state of affairs in the matter in hand cannot be the only consideration for invoking the powers. As can be appreciated from the provision reproduced herein above, the whole purpose and object in providing for taking over of a management of an educational institution is in the public interest and is exercisable only for a limited period of three years albeit it is extendable from time to time not exceeding one year at a time but the total period cannot exceed five years. We are

precisely pointing this to appreciate the reasoning assigned by the DTE in refusing to exercise that power.

18. The sum and substance of the reasons assigned in the impugned order can be summarized as under :

“The college has been put under ‘No admission category’ since the year 2018-2019. No fresh students are admitted from that year onwards. The college was allowed to be run only for the students who were already admitted till the academic year 2020-2021. No students were left in the college. The college is non -functional since 2020-2021. A non-functional institution cannot be taken over in exercise of that power.”

19. As can be appreciated, existence of the facts which could have otherwise enabled the DTE to invoke the powers under Section 3 cannot be disputed in the light of the observations of this Court made while deciding Writ Petition No. 13358/2019. However, if the college for all practicable purposes is non-functional in any respect for last more than three years, in our considered view the stand being taken by the DTE in the impugned order that there is absolutely nothing, except perhaps, the property and the liabilities which can now be taken over, his refusal to take over the management cannot be said to be wholly illegal. It is to be noted that it is a matter of running of a college. If it has already been shut, may not be in the legal sense inasmuch it has not been closed down by resorting to the relevant provisions either under the AICTE Act or the Maharashtra Public Universities Act, expecting the DTE to take over the management would tantamount to reviving the college for all practicable purposes, when it has already been practically shut down for number of years.

20. We appreciate the fact that it seems to be entirely the fault of the management in not running the college efficiently since it had failed to even

satisfy the orders of this Court whereby it was directed to pay the staff members scale according to 6th Pay Commission which admittedly have crossed to Rs. 6 to 7 Crores. It is also apparent from the stand being taken by the PCI in its affidavit in reply that the management had even not bothered to appear before it for extension of approval since last four to five years. In our considered view, therefore, even if the management is to be blamed, one cannot overlook the circumstances discussed herein above which practically makes it impossible for the DTE to exercise the powers under Section 3 of the Educational Institutions Act.

21. We have limitations in exercising the powers under Article 226 of the Constitution. The DTE has been conferred with the powers under Section 3 of the Educational Institutions Act. We cannot sit in appeal and can only ascertain if there is any gross error and illegality in the process and the manner in which the decision has been taken. When the DTE has formed an opinion and to his subjective satisfaction the circumstances discussed herein above are not sufficient to invoke that power we cannot substitute our view by reversing that decision.

22. In the circumstances, with all sympathies with the petitioners, the writ petition cannot be allowed.

23. The Writ Petition is dismissed.

24. Rule is discharged.

(ABHAY S. WAGHWASE, J.)

(MANGESH S. PATIL, J.)

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