IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 788 OF 2023

Jayshree Ashok Gotmare & others -Vs- State of Maharashtra &others

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr. A.D. Mohgaonkar, Adv.for the petitioners.
Mr. N.R. Patil, AGP for the respondent Nos.1 to 3.
Mr. P.R. Puri, Adv.for the respondent Nos.5 and 7.
Mr. N.P. Lambat, Advocate for the respondent No.6.
Mr.Akshay A.Naik, Sr.Adv. a/b Mr.P. D.Meghe, Adv. for the respondent Nos.8 and 9.

CORAM : AVINASH G. GHAROTE AND ABHAY J. MANTRI, JJ.
DATE : 7^{TH} MAY, 2025

Heard the learned counsel for the respective parties.

2. The petition questions the order dated 19/05/2022 (Pg.67), issued by the respondent No.2 (*Annexure-1*); the order dated 24/05/2022, issued by the respondent No.5 (*Annexure-2*); the order dated 30/09/2022 by respondent No.6 (*Annexure-3*) and the GR dated 27/10/2022 issued by the respondent No.2 (*Annexure-4*) on account of which, the institution run by the respondent Nos.8 and 9, has been permitted to be closed, being contrary to the mandate of section 35 of the Maharashtra State Board of Technical Education Act 1997 (hereinafter referred to as “Act of 1997” for the sake of brevity).

3. Mr.Mohgaonkar, learned counsel for the petitioners, invites our attention to provisions of Section 35 of the Act of 1997, which deals with the manner in which closure of an institution has to be effected. It is contended that under Section 35(1), the closure is prohibited without prior permission of the Government. In terms of Section 35(2) an application for closure by the management has to be made to the Board before the last day of April of the preceding year, indicating the grounds of closure, the assets movable and immovable and their market value, the grants received from the Government or public funding if any. In terms of Section 35(3), the Board has to make an enquiry to assess and determine, whether the institution be permitted to effect the closure, including the position whether the closure can be avoided by providing necessary assistance or taking over of the institution by the Government or transferring it to another management. He therefore, contends that the paramount duty of the Board would be to examine the application for closure with an intention to ensure that the closure needs to be avoided.

4. He further relies upon Section 35(4), which deals with the recommendation of the Board, in case it deems that closure is necessary and a report submitted to the State in that regard, which has to include the extent of damages or compensation to be recovered from the management and whether assets created utilizing the fund of the Government, need to be transferred to the

Government and so also the payment of compensation to the teacher and the staff retrenched. Reliance is also placed on Section 35(5), which deals with the power of the State, to consider the recommendation of the Board for closure. It is contended, that the word "may" as used therein would indicate that the recommendation of the Board would not be binding upon the State, but in case the State feels otherwise, it may ignore the recommendation and deny granting permission for closure.

5. He further relies upon Section 35(6), which deals with the position where State decides to take over the institution or transfer the same to another management, in which case the procedure to be followed is as prescribed in that regard.

6. Reliance is also placed on Section 35(7), which indicates that the procedure of closure has to be effected in phases, so as to ensure that the students already admitted are not adversely affected and the first year shall be closed first so that no new admission is taken.

7. He further invites our attention to the communication dated 19/05/2022 (page 67), by which the State granted permission to the Board to issue NOC for permitting closure of the institution, the communication 24/05/2022 (page 68) by which the Maharashtra State Board of Technical Education granted NOC for closure, however, subject to the undertaking

(page 309) submitted by the institution. He also invites our attention to the order of the AICTE dated 30/09/2022 (page 70), by which it granted approval for progressive closure and finally to the GR dated 27/10/2022 (page 72), by which the institution was permitted to close the courses in (a) Civil Engineering, (b) Electrical Engineering (c) Mechanical Engineering (d) Computer Engineering.

8. It is not disputed, that consequent to order dated 10/07/2022 the polytechnic college, run by respondent Nos.8 and 9 is no longer functioning. It is however, contended that while passing the aforesaid four orders, leading to the closure of the polytechnic college, the procedure as prescribed has not been followed nor is an enquiry conducted by the Board u/s.35(3) with an intention to ensure that the closure should be avoided. It is also contended that in terms of 35(5) it was open for the State to have refused to accept the recommendation made by the Board on account of non-compliance with the requirement of Section 35(2), (3) and (4) of the Act of 1997 and therefore are required to be quashed and set aside.

9. By inviting our attention to the communication dated 6/5/2022 by the Director of Maharashtra State Board of Technical Education (pg.319) specifically paras 1 to 4 (pg.321 to 322), it is contended, that the provisions of section 35(3) of the Act of 1997 has not been complied. It is also contended, that in terms of

provisions of Section 41(2) of the Act of 1997, the application for closure has to be made before the last day of April of preceding year, which in this case would be 30/4/2018 on account of the fact that the application for closure is for the academic year 2019–20. However, since the application has been made on 19/12/2018 (pg.191), the same is not within the aforesaid time frame. Reliance in support of this is placed upon ***Barun Kumar Manmohan Choudhary and others Vs. State of Maharashtra and others in Writ Petition No.5134/2018*** and specifically paras 39 and 40. It is further contended by inviting our attention to the application at page 67, that it does not disclose satisfaction of any of the requirements as contemplated by section 35 (2) and (3) of the Act of 1997.

10. It is further submitted, that though section 35 (3) and (4) of the Act of 1997 speaks about the receipt of the application by the Board, enquiry thereupon and recommendation of the Board, which would be the Board as defined under Section 2(b) of the Act of 1997, the communication dated 6/5/2022 (pg.319) would indicate, that it is by the Director as defined under section 2(d-a) of the Act of 1997, and therefore cannot be considered to be opinion of the Board, as there is nothing on record to point out that this was ever placed before the Board for its consideration and the Board having applied its mind, has recommended the closure. By inviting our attention to the order dated 19/5/2022

(pg.67), which accepts the plea of closure, it is contended, that the communication dated 6/5/2022 is the only document, which has been considered by the State for the purpose of grant of closure. Thus, it is contended that, the recommendation by the Board, the impugned communication dated 19/5/2022 and all other consequent communications/orders permitting closure, are contrary to the provisions of Section 35 of the Act of 1997. It is further submitted that the application at page 191 dated 19/12/2018 also does not satisfy the requirement of the criteria as indicated by the language of Section 35 of the Act of 1997. It is also submitted that in spite of the representation by the petitioners dated 31/1/2019 (pg.198), indicating that the revival has to be first considered, the same has not been taken into consideration. It is, therefore, submitted that the decision dated 19/5/2022 (pg.67) permitting closure to the State is merely based upon the report of the Director dated 6/5/2022 (pg.319) and not on the opinion or recommendation of the Board and therefore cannot be sustained. In support of the aforesaid, reliance is placed upon ***Rajendra Kulkarni and Ors., Vs. State of Maharashtra Writ Petition No.5363/2015 decided on 12/1/2018***.

11. It is also contended that the entire action reeks of *mala fides* as even before the receipt of the order of closure, the respondent-institution had stopped accepting application for admissions to the various

courses run by it. It is submitted that on all the above grounds the closure is illegal and cannot be sustained.

12. Mr.Naik, learned Senior Counsel for the respondent Nos. 8 and 9/Institution submits, that there has been broad and substantial compliance with the requirements of Section 35 of the Act of 1997. He invites our attention to the ground in the petition to contend, that there is no ground *vis-a-vis* section 35(1) regarding the date of the application. He further submits, that all that Section 35 of the Act of 1997 requires, is the filing of an application and it is not necessary that the requisite data as indicated in Section 35(2) of the Act of 1997 ought to be contained in the application, but the same can be included as an enclosure. He has tendered across the bar, the copy of the application dated 19.12.2018, as was submitted to the Authorities for closure, which is taken on record and marked as **'X'** for the purpose of identification, which has two accompaniments to it, the resolution dated 22.10.2018 by the Managing Committee and the resolution for closure in Format-6, whereby the institution has undertaken to meet the liabilities on account of such closure, which according to him, satisfy the requirement of the application.

13. It is his further contention, that in pursuance to the said application, there was an inspection conducted on 25.01.2019, the report of which is at page 193, which declined to grant an NOC. The second inspection (page 221) also declined to grant an NOC. The third

inspection dated 20.01.2021 (page 226) also declined to grant NOC, which came to be challenged before this Court by way of Writ Petition No.4444 of 2021, in which by the order dated 10.03.2022 (page 235), the rejection of the communication dated 20.01.2021 was set aside and the matter was remitted back to the MSBTE for reconsideration with liberty to the petitioners to place additional documents on record in support of their application. It is therefore submitted, that on 11.04.2022 (page 498), additional documents were placed on record, whereupon a Committee was constituted by the MSBTE and upon receipt of the report of the Committee and after considering it and further considering, that the State had refused to grant financial support to the continuation of the institution, nor had any other Management come forward to take over the institution, that the Board had taken a decision to grant NOC.

14. He therefore submits, that the parameters of Section 35 of the Act of 1997, which were required to be subjectively satisfied, were so done, on account of which, the permission by the State was granted on 19.05.2022 (page 67). He also invites our attention to the communication dated 24.05.2022 (page 68), which indicates the constitution of the Committee. He further lays stress on the language of Section 35 (3) of the Act of 1997 and specifically to the expression "*shall cause to make enquires*", to contend that such enquiry can be

made by the Board by constituting a Committee for that purpose and then considering the report submitted to it.

15. It is contended, that since this has been done, the contra contention by the learned counsel for the petitioners, that the Board has not made any enquiry is not well founded. He further submits, that as of date, there are only 18 teachers on the roll, inspite of the fact, that since last more than one and half years, the strength of students is zero, inspite of which, the petitioner/Institution has paid the salary of these teachers till December 2024 and cannot be now permitted to face with a situation where there is no student, still the petitioner/Institution is forced to run the institution for the benefit of the teachers.

16. He further submits on instructions insofar as the compensation to be granted to the staff, the petitioner/Institution has already given an undertaking that it will grant adequate compensation to the staff as may be determined by the Board, however, that cannot be a ground to continue the running of an institution, which the petitioner is being forced to do in view of the order of *status quo* granted by this Court 02.02.2023 in the present petition.

17. In relation to the judgment in ***Rajendra Kulkarni*** (supra) relied upon by the learned counsel for the petitioners, it is contended, that what is necessary to note, that it is not literal, but a subjective satisfaction

regarding the necessity to continue with the institution, based upon multiple factors which is germane. He further submits, that it was a case in which there was no compliance of Section 35(3) of the Act of 1997, which compliance has been done in the present case. He further placed his reliance upon the decision in the case of ***Mr.Mithilesh Gyanprakash Pande & Ors. Vs. State of Maharashtra & Ors., Writ Petition No. 6692/2018 decided on 08.12.2020***, which was under a case of closure under the Maharashtra Public Universities Act, to contend, that the opinion of the experts regarding closure ought not to be easily interfered by this Court and an institution which does not have any students strength, which is not getting any grant-in-aid, cannot be forced to run the institution. Reliance is also placed upon ***C.R. Reddy Law College Employees' Association Vs. Bar Council of India, 2004 (5) ALD 180 (DB)*** to contend, that the petitioners, cannot be forced to face an impossible task of running an institution without any students at all.

18. Reliance is also placed upon ***Kanoria Chemicals and Industries Ltdd., & Ors. Vs. U.P. State Electricity Board & Ors., (1997) 5 SCC 772*** to contend, that since the respondents have been receiving salary under the order of *status quo* passed by this Court, in case the petition is dismissed, the same would be required to be deducted from the compensation, which may be become payable to them.

19. He also relies upon the judgment of the Division Bench of this Court in ***Satish Wasudeorao Manjre & Ors., Vs The State of Maharashtra, Writ Petition No.4364/2018 decided on 05.03.2020*** (page 511), in which challenge to the closure of the Electronics Engineering and Electronics Communication courses as permitted by the State, was turned down and in ***Mahendra Bapurao Shinde & Anr., Vs. The State of Maharashtra & Ors., Writ Petition No. 3556/2019 decided on 16.02.2021***, wherein also challenge to the closure of two other courses in the same institutions, was turned down (page 517), further challenge to both of these judgments having been turned down by the Hon'ble Apex Court in SLP No. 10302/2020 on 19.12.2024 keeping open the contentions regrading compensation payable to the teachers.

20. Mr.Puri, learned Counsel for the respondent Nos.4, 5 and 7 adopts the argument of Mr. Naik, learned Senior Counsel for the respondent Nos.7 and 8/ Institution.

21. Mr. Lambat, learned counsel for the respondent No.6 and Mr.Patil, learned AGP for the respondent Nos.1 to 3/State, are supporting the closure on the ground, that since there are no students available with the respondent Nos.7 and 8/Institution, the application for closure has rightly been allowed, since it is an unaided institution and there is no stake of the State involved financially and permission for progressive closure has

been granted, subject to the undertaking by the Management, that they would take care of the compensation to be paid to the employees.

22. The entire issue revolves around the language of Section 35 of the Act of 1997, which for the sake of convenience is reproduced as under:

> "35. (1) No management of an institution shall be allowed to close down the institution without prior permission of the Government.
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> (2) The management desires of closing down the institution shall apply to the Board on or before the 1[last day of April of the preceding year], stating fully the grounds for closure, and pointing out the assets in the form of building and equipments, their original costs, the prevailing market value and the grants so for received by it from the Government or from public funding agencies.
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> (3) On receipt of such an application, the Board shall cause to make enquiries as it may deem fit, to assess and determine whether the institution be permitted to effect the closure. The Board may, examine whether the closure should be avoided by providing necessary assistance or taking over of the Institute by the Government or transferring it to another management.
>
> (4) If the Board decides to recommend the closure, it shall prepare and submit to the Government, a report on the extent of damages or compensation to be recovered from the management and whether the assets created utilising the funds provided by the Government or other public funding agencies, be transferred to the Government or other management, and the payment of compensation to the teachers and the staff retrenched.
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> (5) If the Board has recommended the closure of the affiliated Institution the Government may issue the order for closure.
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> (6) If the Government decides to take over the institution or transfer the same to another

> management the procedure to be followed shall be such as may be prescribed by the Government.
>
> (7) The procedure to effect the closure shall be in phases, so as to ensure that the students already admitted to the institution are not affected, and that the first year shall be closed first and no new admissions shall be effected. The procedure to phase out the closure shall be such as may be prescribed by the Government."

23. In the context of language of the aforesaid provision, what is necessary to consider, is the entitlement, of an employee. If we see the language of Section 35 (1) to (7) of the Act of 1997, we find, that all that it provides, vis-a-vis, the employees are concerned, is to consider (a) whether the closure could be avoided by providing necessary assistance and (b) taking over of the Institute by the State or by transferring it to another management and even when their closure is recommended, to ensure payment of compensation to the staff retrenched. It would be, therefore, apparent, that the provisions of Section 35 of the Act of 1997, do not as such, provide any right, to the employee, to object to the closure and all that it provides for is what is indicated above.

24. In another petition ***Satish Wasudeorao Manjre & Ors., Vs The State of Maharashtra*** (supra), challenge to the closure permitted, in respect of the (A) Electronics Engineering and (B) Electronic and Communication courses, granted to the respondent Nos.8 and 9 was also turned down by this Court (page 511), which was based

upon the statement made that the employees retrenched shall be paid the salary arrears for the last three years, as per the recommendations of the 5th and 6th pay Commissions within a period of three months and steps shall be taken to absorb them suitably as far as possible, in the other organizations run by the Society or in the alternative to pay them appropriate compensation as would be determined by the Board under the Act of 1997.

25. It is further necessary to note, that the learned Division Bench of this Court while considering the challenge to the closure in respect of the two of the courses in the same Institute in ***Writ Petition No. 3556/2019 Mahendra Bapurao Shinde Vs. State of Maharashtra***, while rejecting the petition, which was at the behest of the employees, has held as under:

> "3) We are not shown any right vested in the Petitioners in a statute governing their relationship with the College to oppose grant of approval to closure of institution and insist upon continuation of the institution akin to a right conferred under Labour Jurisprudence. The no-objection postulates that the closure of various Courses is conditional upon teaching and non teaching staff to be absorbed suitably in another Organization or upon payment of appropriate compensation."

26. Needless to reiterate as indicated above that a common challenge to the Hon'ble Apex Court, against the aforesaid two decisions has been turned down in SLP Civil No. 10302/2020 in which by the order dated

19.12.2024, only the contentions, with respect to compensation by the staff were kept open. Needles to mention, the SLP was at the behest of the employees of the Institution.

27. Thus, if the employees or staff do not have any vested right in a Statute governing their relationship with the college to oppose grant of approval to closure of Institution and insist for the Institution to continue, then we are afraid that any challenge to the closure at their behest, ought not to be entertained. This position is also considered by the learned Division Bench of the Hon'ble Andhra Pradesh High Court in ***C. R. Reddy Law College Employees' Association Vs. Bar Council of India***, (supra), which is as under :

> "12. Firstly, the question that arises for consideration is whether the Management of the College is under any constitutional or legal obligation to provide legal education irrespective of its inability to manage the Law College ? Is there any corresponding right vested in any of the appellants/ petitioners to insist for continuance of the Law College to impart legal education ?
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> 13. <u>It is pertinent to note that no student had approached the Court seeking any directions as against the Management of the College to run the Law College</u>, The Management Committee, in fact protected the interest of the student community by undertaking that it will run 5 year LL.B. degree course until the present batch of students who were already admitted in the College complete their studies in order to avoid any inconvenience to them although it involves huge financial commitment to the Management of the College, since College is an un-aided and self-financing institution.

14. It is true that running of management of educational institutions cannot be equated to that of any trade or commerce. The managements of educational institutions are not expected to derive any profits by converting the educational institutions into profit making bodies. But in the absence of any grant-in-aid and financial assistance, the managements are entitled to make an appropriate and pragmatic assessment for themselves as to whether it would be feasible to run any particular educational institution in the absence of financial viability. The managements may not be allowed to make any profits but they cannot be compelled to run the institution irrespective of financial implications.

15. There is no right vested in the appellants/petitioners to insist for continuance of the Law College nor the Management of the College is under any legal or constitutional obligation to run the Law College irrespective of the financial viability. The complaint of the Management of the College is that it has become impossible to run the Law College on account of ever decreasing admission of students into the course resulting in huge financial loss. The appellants/petitioners cannot insist the Management of the College to run the Law College notwithstanding the financial implications involved and its inability to efficiently and prudently run the College.

Scope of writ of mandamus:

35. That under the guise of challenging the orders passed by the Bar Council of India, the appellants/petitioners are virtually asking for a writ of mandamus directing the Management of the College to continuously run the Law College irrespective of the inconvenience and financial implications involved. The Court cannot issue any such mandamus compelling any private management to perform an impossible act. Even in the absence of the so-called permission granted by the Bar Council of India, the Management of the College could have as well closed down the Law College as it was finding difficulty to manage the Law College any more. Directions cannot be issued by this Court compelling

any private management to run the educational institution for the sake of its employees.

36. It is very well settled that a writ of mandamus is not a writ of course or writ of right, but is, as a rule discretionary. Unless the right, which the applicant seeks to enforce is, a performance of duty of public nature cannot be secured at all by a mandamus.

37. A writ of mandamus will lie to compel to perform any public duties, which the public bodies have failed to perform.

38. It is not a case where the Management of the College is entrusted with any public duty to impart legal education and failed to perform any such public duty. Therefore a writ of mandamus does not lie.

39. The maxim lex non coget ad impossibilia which is founded upon justice, good sense and equity is well accepted in Indian Constitutional Law and invoked even in cases where the performance of duties prescribed by a Statute has been rendered impossible by circumstances over which the persons interested had no control. The circumstances will be taken as valid excuse. The principle was even applied in the matter of enforcement of public law duties as well.

40. The maxim impotentia excusat legem is that when there is a necessary or invincible disability to perform the mandatory part of the law that impotentia excuses. The law does not compel one to do that which one cannot possibly perform. [For proposition see : Raj Kumar Dey and Ors. V. Tarapada Dey and Ors and in re Presidential Election, 1974, AIR 1974 SCC 1682].

41. In Mohammed Gazi vs. State of M.P. and Ors. 2000 (5) ALD 14 (SC) -(2000) 4 SCC 342, the Supreme Court observed:

"This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other maxim is, lex non cogit ad impossibilia - the law does not compel a man to do what he cannot possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of

> compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases."
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> 42. This maxim applies in all its force to the fact situation on hand.
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> 43. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot issue any mandamus compelling the Management of the College to perform an impossible task."

28. We find, that the position in the present petition is somewhat akin to what was found to be in existence, in **C. R. Reddy Law College** (supra), inasmuch as, the earlier position regarding drastic reduction in the intake of the students in the Institution, as indicated in the application dated 13.2.2021 (page 557) which demonstrates that against the total intake capacity of 300 students for the academic year 2019-20, there were only 116 admissions, which amounted to 38.66% which would indicate that for a non grant-in-aid Institution it would be verily impossible to function financially. It is also an admitted position on the record, that the Respondent Nos. 8 and 9, are not receiving any grant, either from the State or from any public funding agency, which would in fact add to the woes of the Institution, having found that the total number of admissions have been reduced to even less than 50%.

29. Before we proceed ahead, it is necessary to note, what has been held by the learned Division Bench in ***Rajnednra Kulkarni*** (supra), is that there has to be a subjective satisfaction, as to the requirement of

provisions of Section 35 of the Act of 1997. While on the issue it is also necessary to note, that in ***Rajendra Kulkarni*** (supra), it was held, that there was no compliance, as required in sub-section 35(3) and (4) on account of which, it was held, that the permission granted for closure was not justifiable.

30. Insofar as the plea regarding the satisfaction of requirement of Section 35 of the Act of 1997 is concerned, it is not in dispute, that on three occasions, the authorities have declined to grant NOC to the respondent nos. 7 and 8 for closure. This is reflected form the recommendation dated 06.5.2022, (page 319) by the Director of the respondent no. 4. What is however, necessary to note, is that the recommendation dated 06.05.2022, was as a consequence of the judgment of this Court dated 10.03.2022 in **Nagar Yuvak Shikshan Sanstha Vs State in Writ Petition No. 4444/2021** (page 230) by which a challenge to the order dated 20.01.2021 passed by the Board, refusing to grant NOC, was set aside and the matter remitted to the Board to consider the application for closure dated 19.12.2018 (page 191), in accordance with the provisions of Section 35 of the Act of 1997 whereas, at the same time, permitting the Institution to place on record additional documents in support of the application. It is in pursuance of this order, that the respondent Institution, had submitted the communication dated 11.04.2022 to the Board (page 498) detailing the reasons, for the closure. This is what has been taken into consideration

by the Board, while make the recommendation dated 06.05.2022.

31. Testing the recommendation dated 06.05.2022 on the anvil of the arguments advance by Mr.Mohagaonkar, learned counsel for the petitioners, we find, that the recommendation speaks about constitution of a Committee by Board for affording an oral hearing, to the Institution, in support of its application for closure. The fact of the constitution of the committee, is spelt out from the recommendation dated 06.05.2022 (last para page 320) and so also speaks about the hearing accorded by the Committee on 21.04.2022 to the respondent nos. 8 and 9 and so also the further documents, which were placed before it thereafter. It also speaks about, regarding the report of the Committee, which is in fact was indicated to have been enclosed with the recommendation dated 06.05.2022. It would, therefore, be apparent, that the plea by the petitioners, that there has been a violation of the mandate of Section 35(3) of the Act of 1997, cannot be sustained, more so, in view of the language of Section 35(3) which indicates, that it is not necessary for the Board itself to conduct an enquiry, rather on the contrary as rightly contended by the respondents, the expression "shall cause to make enquirers as it may deem fit", as contained therein would indicate that it was permissible for the Board, to cause an enquiry to be conducted by constituting a committee or by nominating someone to

make an enquiry, which report then could be considered by the board, for forming an opinion.

32. It is equally necessary to note, that later part of Section 35(3), which states, that the Board may examine whether the closure should be avoided by providing necessary assistance or taking over the Institute by the Government or transferring it to another management, is a question which has to be considered in the light of the report of the enquiry. A perusal of the recommendation dated 06.05.2022 (page 322) in para 4 thereof, indicates a communication dated 05.04.2019 written by the Board to the State in this context and the reply of the State dated 13.06.2019 indicating that the options of making grant available or transfer of management or taking over the Institution by the State were not available, in the light of which, the requirement as indicated by the later part of Section 35(3) of the Act of 1997, clearly stood satisfied. It is also necessary to note, that nothing has been brought on record to indicate, that there was any other Institution willing to take over the Institution or the courses run by the respondent Nos.8 and 9 or for that matter, to take over the management, in the light of which, no exception can be taken to the recommendation of the board in this regard. This is also for the reason that the role of the board is merely recommendatory in nature and it is not permissible for it to provide any funds to the Institution seeking closure, so as to ensure its continuation and any such assistance, which would be basically financial assistance has to flow

through the State which already stood declined. It is therefore, apparent, considering the above position, that the later part of Section 35(3) of the Act of 1997, has been appropriately addressed by the Board as is reflected from para 4 of the recommendation dated 6.5.2022 (page 322), as by issuing communication dated 4.5.2019 to the State, the possibility of exploring the position of avoiding closure has been duly considered by the Board.

33. Insofar as the first part of Section 35(3) is concerned, the position of the intake, as indicated in para 2(b) of the communication dated 11.4.2022 by the respondent nos. 8 and 9, to the Board, which indicates, a dwindling number of admissions, since the academic session 2012-13 at which point of time, the total intake was 780 students and the total admission were 638 had gone down in 2018-19, to a total intake of 300 students against which, there were only 116 admission which was a figure of 38.66%, has not been disputed by the petitioners by bringing on record any figures, documents, which would controvert the above position. Thus the dwindling nature of the total admissions against the total intake, was logically bound to make the continuation of the course by the Institution, financially unviable, which is the basic reason for the respondent Nos.8 and 9 to seek closure. It is also necessary to note, that the respondent No.9-Institution is run by the respondent No.8, which is a Society registered under the provisions of the Bombay Public Trusts Act, and therefore, the question of financially viability for running

a course, would be very much germane, in absence of any grant-in-aid, being received by it either from the State or any other public funding agency. As indicated above, it is an admitted position, that the respondent Nos.8 and 9 are not receiving any aid from the State of any nature whatsoever. It is also not been brought on record, by the petitioners, that any funds are being provided to the respondents Nos.8 and 9 by any public funding agencies, which was necessary in the light of the contention by the respondent no. 8 and 9 that this was not so.

34. The requirement of Section 35(4) will have to be construed in a subjective manner as indicated in ***Rajendra Kulkarni*** (supra). When there is no funding, either by the State, or any public funding agency, the question of transferring of the assets of such Institution either to the Government or other management, would not arise at all, as such assets would be continued to be owned by the Society and the Institution. In the light of the admitted position of absence of any Government aid or aid by the public funding agencies, in our considered opinion, later part of Section 35(4) which speaks about securing the funds provided by the Government or such public funding agencies by transferring the assets of the Institution would be attracted at all. Section 35(4) of the Act of 1997 also speaks about the recommendation by the Board to indicate the payment of compensation to the Teachers and staff retrenched. In this context, It is also necessary to see para 3 of the recommendation

(Page 322), which records that respondent Nos.8 and 9 have undertaken to have pay whatever compensation which may be determined by the board in case permission for closure was granted. Mr. Naik, learned Senior Counsel for the respondent Nos. 8 and 9, on instructions, reiterates the above statement which would indicate that the question of compensation, to be granted to the employees and staff to be retrenched, was also considered by the Board while recommending the closure, for which an assurance was taken from the respondent Nos. 8 and 9.

35. That takes us to the consideration of the plea, that the recommendation dated 06/05/2022 (Pg.319) was not by the Board, but was by the Director, as is being contended by the learned counsel for the petitioners. In this context, as already indicated above, the recommendation dated 06/05/2022, itself speaks of a Committee being appointed and the report of the Committee being considered for the purpose of forming an opinion. It is only that opinion in the form of a recommendation, which has been conveyed by the Director to the State, on account of which, it cannot be said, that there was no recommendation by the Board.

36. It is also necessary to note, that though section 35(2) speaks about the filing of an application by the Management for closure, indicating the ground of closure, the assets in the form of building and equipments, their original cost, the prevailing market

value and the grants received so far from the Government or from the public funding agencies, this is a requirement, which can always be supplemented by filing additional documents and the mere plea, that the original application dated 19/12/2018, did not contain this information, alone cannot be a ground, for rejection of the application. This is more so, when the learned Division Bench of this Court while deciding Writ Petition No.4444 of 2021 by its judgment dated 12/03/2022, had specifically permitted, the institution to place before the authorities additional documents in support of their application.

37. The further contention, by the learned counsel for the petitioners, that the recommendation of the Board, would not bind the State in view of the word “may” as occurring in section 35(5) of the Act of 1997, though legally correct, does not change the scenario in any manner, as in the instant case, the State itself, has found the possibility of providing any financial assistance for revival/continuation of the institution or taking over of the same to be unviable on account of which, by its communication dated 13/06/2019, it has already informed the Board, that no financial assistance or take over of the institution was acceptable to it. This being the stand of the State, then by accepting the recommendation of the Board dated 06/05/2022 and granting permission for closure by its order dated 19/05/2022 (Pg.67), it has continued to stand by its stance, as is reflected from the communication dated

13/06/2019. It would therefore be apparent, that the grievance, in this regard, by the petitioners, cannot be considered to be well founded.

38. Section 35(6) of the Act of 1997, in the context of the present matter would not be applicable altogether, as it would be attracted only in a case where the Government decides to take over the institution or transfer the same to another management, which is not the case in hand at all.

39. Insofar as the plea regarding section 35(7) of the Act of 1997 is concerned, since it is an admitted position on record, that the number of students, in the first year, of the above courses had dwindled to 38.66% in 2019 itself and since nothing has been brought on record, that the students thereafter, have been enrolled in the first year of the said courses, it would be difficult to consider the plea of closure in phases, considering the passage of time from 2018-19 till now and the admitted position, that there are no students enrolled in the first year of these courses or any student being available, in any of the academic years, for which the courses are to run. Directing the institution, to run in such a situation, would be tantamount to asking it to continue to pay the salary of the staff without the staff being required to impart education or to perform other duties, in absence of students, which in such a position would clearly be untenable.

40. The further plea, that the application for closure was not within the time frame, as contemplated by Section 35(2) of the Act of 1997, has, now considering the passage of time and the litigation, lost its significance.

41. Though the **Barun Kumar** (Supra) has been relied upon, we are unable to comprehend, how a mere delay in making an application would forfeit the right of the management for closure.

42. All that is now required to be considered, is the interest of the staff of the institution. Though Mr.Naik, learned Senior Counsel for the respondent Nos.8 and 9, places reliance upon ***Kanoriya Chemicals*** (supra) however, we feel, that since in the instant matter, the staff have been continued under the order of this Court dated 02/02/2023, whereby *status quo* was directed to be preserved regarding the employment of the petitioners, we do not deem it appropriate, for the principles indicated therein, to be applied in the present case, which would mean, that the salary which already stands paid till December, 2024 to the staff will have to be protected and so also the same will have to continue till the date of this judgment and the same shall be paid within a period of two weeks from today.

43. We, therefore, dismiss the petition by upholding the order of closure dated 19/05/2022 (Pg.67) and the consequent GR dated 27/10/2022 (Pg.72). We however, direct the respondent Nos.4, 5 and 7 to undertake the

exercise and calculate the compensation to be paid to the staff of the respondent Nos.8 and 9-Institution, on account of the closure. The same shall be done within a period of three weeks from today. We also make it clear that since petitions seeking emoluments, to which petitioners claim to be entitled, bearing Writ Petition Nos.7365 and 1999 of 2018 are pending they shall be decided on their own merits.

44. Pending application(s), if any, stands(stand) disposed of.

(Abhay J. Mantri, J.) **(Avinash G. Gharote, J.)**