

HIGH COURT OF ORISSA: CUTTACK

W.P.(C) No.21732 of 2023

In the matter of an application under Article 226 of the Constitution of India.

AIMS Higher Secondary School ...
of Science, Sambalpur

Petitioner

- Versus -

State of Odisha and another ...

Opposite parties

For Petitioner

M/s. S.K. Dash, A.K. Otta,
S. Das, P. Das &
P. Harichandan

For Opposite Parties

Mr. Saswat Das,
Additional Government Advocate

PRESENT:

THE HONOURABLE SHRI JUSTICE A.K. MOHAPATRA

Date of hearing : 25.07.2023 : Date of judgment : 31.07.2023

A.K. Mohapatra, J. The Petitioner-Educational Institution has approached this Court by filing the present writ petition assailing the withdrawal of recognition in respect of

additional seats as indicated under Annexure-4 to the writ petition, i.e., from earlier sanctioned strength of 320 seats to 256 seats for the academic session 2023-24. Further, the Petitioner has prayed for a direction to the Opposite Parties to allow the Petitioner's institution to admit the students in the additional seats since increased from 256 seats to 320 seats in science stream.

2. The factual backdrop of the case leading to filing the present writ petition is that the Director of Higher Secondary Education, Odisha, Bhubaneswar (Opposite Party No.2) in exercise of power under Section-6(6) of the Odisha Education Act, 1969 vide Office Order No.4281/HPC-V-13/22 dated 19.04.2022 accorded permanent recognition to the Petitioner's school situated in Dhankuda Block of the District of Sambalpur. Further, it has been pleaded that the Petitioner's school is a renowned school of the locality and caters to the need of the local students including the residential school on self-financing mode.

3. The fact pleaded in the writ petition further reveals that the Petitioner's school was granted temporary recognition along with 14 other institutions in the district of Sambalpur as per the decision of the HPC in its meeting held on 02.07.2022 whereby the existing sanctioned strength of the Petitioner's school was increased from 256 to 320. The order according temporary recognition to the Petitioner's school along with other institution dated 15.11.2022 has been filed as Annexure-2 to the writ petition. On perusal of the said letter, it appears that the name of the Petitioner's school appears at Serial No.11 and the sanctioned strength in respect of science stream has been indicated to be 320 seats.

4. The temporary recognition granted to the Petitioner's school under Annexure-2 is subject to the conditions mentioned at the bottom of the said letter. The conditions so imposed reveal that the temporary recognition accorded to the Petitioner's school is subject to fulfillment of the conditions prescribed under Section-6(A)(1) of the O.E. Act,

1969 and the rules framed thereunder. Such temporary recognition is also subject to other terms and conditions as indicated under Clause-2 of the said letter. The proviso to Clause-2 of the letter under Annexure-2 further reveals that in the event of failure in complying with the conditions mentioned, the authorities shall impose additional restriction upon the institution in question from the next academic session, i.e., 2023-24 and that such institution will be solely responsible for the closure of the Higher Secondary Schools. Moreover, the institutions are to fulfill the conditions of recognition in all aspects as per O.E. Act & Rules within 7 year of its permission/temporary recognition, failing which, no further application for renewal of temporary recognition shall be entertained and action as deem fit shall be instituted against the institution for restriction on admission and thereby closure of the institution.

5. While this was the position, the Petitioner-Institution was included in the Student Academic Management System

(SAMS) and the number of seats indicated in the SAMS website in respect science stream of the Petitioner's school was initially 320 seats. The pleadings in the writ petition further reveals that when the online common application forms were invited on 30.06.2023, the number of seats indicated in the website of the SAMS in respect of the Petitioner's school was 320. However, all of a sudden, on 05.07.2023, i.e., just before publication of the first merit list, the seats were reduced from 320 to 256.

6. The Petitioner-Institution enquired about such abrupt and unnoticed reduction in the number of sanctioned seats in respect of the science stream of the Petitioner-Institution from the authorities. The Petitioner-Institution was intimated that since the institution could not fill up the additional seats sanctioned in respect of the previous years, as a punitive measure, the seats for the current academic year in respect of the Petitioner's school has been reduced from 320 to 256 seats. It has also been stated that in the last academic session

259 students were admitted by the Petitioner's institution through the SAMS portal.

7. The writ petition further reveals that for the current academic session, 311 students have already been opted for the Petitioner's school for taking admission in the science stream of the Petitioner's institution. Such abrupt reduction in the sanctioned strength of seats and corresponding amendment in the number of seats reflected in the SAMS portal has adversely affected the prospects of the institution as well as it has caused hardship to many local students who were interested to take admission in the Petitioner's school.

8. A counter affidavit has been filed on behalf of the Opposite Party No.2, i.e., Director of Higher Secondary Education, Odisha, Bhubaneswar. In its counter affidavit, it is also stated that in its order dated 18.07.2023, this Court had categorically directed the Opposite Party No.2 to file an affidavit clarifying the position as to whether the order passed

by the High Power Committee has been communicated to the respective institutions and further whether before taking a decision to reduce the sanctioned students strength of the institutions, any opportunity to show cause was given to the respective institutions to put-forth their case?

9. In reply to the specific query of this Court, the Opposite Party No.2 in its counter affidavit has stated that it is a fact that permanent recognition was granted in favour of the Petitioner-Institution with 256 seats for each subject in +2 science stream for the Academic Session 2020-21 vide order dated 19.2.2022 basing on the decision of the HPC in its meeting held on 05.08.2021. During Covid pandemic period, pursuant to the decision of the HPC, the student strength was increased from 256 to 320 seats owing to the fact that a large number of students had passed the Annual H.S.C. Examination during the year 2021. Consequent upon aforesaid development, the HPC took a conscious decision to grant temporary recognition to some institutions thereby

enhancing the number of seats as has been reflected under Annexure-2 to the writ petition. The counter affidavit further reveals that the Petitioner-Institution had admitted only 220 students during the Academic Session 2021-22 against sanctioned strength of 320 in the +2 science stream of the institution. The aforesaid arrangement of enhancement of the sanctioned strength by virtue of a temporary recognition also continued for the Academic Session 2022-23 pursuant to the decision of the HPC dated 02.07.2022. Further, as against a claim of 259 students were admitted to the +2 Science Stream of the Petitioner-Institution, the counter affidavit reveals that 251 students were admitted for the Academic Year 2022-23. Since the number of student admitted for the Academic Year 2022-23 is below the sanctioned strength of 256 granted by way of permanent recognition, the additional enhanced 64 seats pursuant to the decision of the HPC was withdrawn in view of the subsequent decision of the HPC.

10. The counter affidavit further reveals that the HPC in its meeting held on 26.05.2023 took a decision to withdraw the increased seats in respect of 253 institutions including the Petitioner's institution from the Academic Year 2023-24. Such a decision was taken as the Petitioner's institution and other institutions have failed to enroll a single student against increased number of seats during the Academic Year 2021-22 and 2022-23. Such decision of the HPC dated 26.5.2023 was communicated to the Orissa Computer Application Centre (OCAC) by the Officer-in-Charge, Project Management Unit, SAMS under Directorate of Higher Secondary Education with a request to upload the reduced number of seats in the SAMS portal on 30.06.2023. Accordingly, the reduced numbers of seats were uploaded and reflected in the SAMS portal by the OCAC.

11. The Opposite Party No.2 in its counter affidavit has also stated that as on 22.07.2023 upto 5.00 P.M. in the evening only 255 numbers of students have taken admission in the

Petitioner's institution after second round of counseling as against the sanctioned strength seat of 256 seats. Therefore, a contention has been raised that since the Petitioner's institution was unable to fill up the earlier sanctioned 256 seats, the enhanced number of seats have been withdrawn pursuant to the decision of the HPC. The Opposite Party No.2 has further stated that in view of the uploading of the data in SAMS portal on 30.06.2023, the Petitioner's institution as well as other similarly placed institution had knowledge about the decrease in number of seats prior to the commencement of e-admission process. It has also been stated that opportunity was available with all the institutions including the Petitioner's institution to raise their grievance before the competent authority resorting to the appeal remedies available under the Odisha Education Act and the rules framed thereunder.

12. Heard Mr. Susanta Kumar Dash, learned counsel appearing for the Petitioner and Mr. Saswat Das, learned

Additional Government Advocate for the State-Opposite Parties. Perused the pleadings of the parties as well as the materials available on record.

13. Mr. S.K. Dash, learned counsel appearing on behalf of the Petitioner-Institution submitted before this Court that the impugned decision to reduce the number of seats from 320 to 256 in the midst of the Academic Session is an illegal, arbitrary and highhanded exercise of administrative power conferred on the Opposite Parties by virtue of the provisions contained in the Odisha Education Act, 1969 and the rules framed thereunder. To further substantiate his argument, Mr. Dash, learned counsel appearing for the Petitioner contended before this Court that the HPC initially enhanced the sanctioned seat strength from 256 to 320. However, the same was reduced to 256 by the HPC in its meeting held on 26.5.2023. It was argued on behalf of the Petitioner that the reduction of seats in science stream of Petitioner's institution is in the nature of a punitive measure owing to failure of the

Petitioner's school to admit students against the enhanced seats strength. Therefore, the authorities before implementing the decision of the HPC should have afforded an opportunity of hearing to the Petitioner before taking such a punitive measure.

14. He further contended that no opportunity, whatsoever, was ever given to the Petitioner's institution to put-forth its stand before the authorities. In the said context, learned counsel for the Petitioner submitted that every administrative action visited with a punitive action on a party has to be taken in due compliance of the principles of natural justice. So far the case of the Petitioner is concerned, no opportunity whatsoever was granted to the Petitioner-Institution while reducing the sanctioned students strength of the institution. Mr. Dash in course of his argument went to the extent of submitting that even the decision of the High Power Committee and the consequential order of the authorities to reduce the additional seats was never ever communicated to

the Petitioner before implementing the said decision and thereby correcting the number of seats indicated in the SAMS web portal.

15. Learned counsel for the Petitioner also contended that the figures indicated in the counter affidavit by the Opposite Party No.2 are not correct. He further contended that during the last Academic Session, i.e., 2022-23, the Petitioner-Institution had admitted 259 students as against the claim of 251 by the Opposite Party No.2 in its counter affidavit. To substantiate his contention that the Petitioner's institution has taken admission of 256 students for the Academic Session 2020-21 and similarly 260 students for the Academic Session 2022-23, an additional affidavit was filed before this Court on 25.7.2023 after serving a copy thereof on the learned Additional Government Advocate.

16. On perusal of the additional affidavit filed on behalf of the Petitioner on 25.07.2023, this Court observed the same

reveals that for grant of recognition to any institution, be it permanent or temporary, or refusing it, has to be for reasons to be recorded in writing by the State Government. Further, the prescribed authority is under an obligation to communicate the order passed by the Committee in such manner and with such particulars as may be prescribed. Such additional affidavit further reveals that for the first time the Petitioner-Institution came to know about the reduction in the additional seats on 05.07.2023 from the SAMS portal.

17. It has also been categorically stated that the decision of the HPC was neither communicated to the Petitioner nor any opportunity to show cause was given to the Petitioner's institution before taking a decision to reduce the number of additional seats. It has also been categorically stated in the additional affidavit that 260 students were admitted in the Academic Session 2022-2023 which would be evident from Annexure-6. So far the Academic Session 2023-24 is concerned, it was strenuously argued that 256 students have

applied through SAMS portal, out of which, 255 have already participated in the first selection and one candidate did not take admission due to personal reason.

18. In course of his argument, learned counsel for the Petitioner submitted that 64 students are in the pipeline as per their first choice for the Petitioner's institution. As such, these 64 students are entitled to be admitted to the Petitioner's institution through their slide-up request and the stage of slide-up in the admission process has not yet come. Besides the above, total 71 and 116 students respectively have already exercised their second and third choice for being admitted to the Petitioner's institution. Therefore, it has been stated that there is every likelihood that all 320 seats are likely to be filled up for the Academic Year 2023-24 considering the academic excellence of the Petitioner's institution.

19. Learned Additional Government Advocate, on the other hand, contended that pursuant to the decision of the High Power Committee dated 26.05.2023, a decision was taken by the Department on 3.6.2023. Accordingly, since the Petitioner's institution is unable to meet the standards fixed by the High Power Committee, the Department has taken a decision to reduce the additional strength sanctioned in favour of the Petitioner's institution by granting temporary recognition to the Petitioner's institution.

20. Learned Additional Government Advocate appearing for the State-Opposite Parties also contended that once the information was uploaded in the SAMS portal there is no need to communicate the decision to the institutions individually. He further contended that in the event the Petitioner-Institution feels aggrieved, then they should have approached the Departmental Authorities by ventilating their grievance. Above all, learned Additional Government Advocate appearing for the State-Opposite Parties also

contended that the decision taken by the Department is an appealable one. Therefore, the present writ petition is not maintainable in view of the fact that an alternative and efficacious remedy in the shape of appeal to the Departmental Authority was available to the Petitioner.

21. Having heard the learned counsels appearing for the respective parties and on a careful examination of the pleadings as well as the materials on record, this Court observed that the decision of the High Power Committee taken in its meeting on 26.05.2023 was implemented by the Department by reducing the additional sanctioned strength of 64 seats. The question now, therefore, is that whether the decision taken by the authorities to reduce the sanctioned strength from 320 to 256 is punitive in nature? And in the event the facts of the present case demands that such a decision was required to be taken keeping in view the policy decision of the High Power Committee meeting held on 26.05.2023, whether the Opposite Parties were duty bound to

provide an opportunity of hearing before implementing the decision by reducing the sanctioned additional strength of the students?

22. In reply to the first question, this Court has no hesitation to hold that the unilateral decision to reduce the sanctioned strength of the seats in respect of +2 Science Stream of the Petitioner-Institution from 320 to 256 is punitive in nature. Moreover, the proceedings annexed to the counter affidavit as Annexure-D/2 reveals that **for the Academic Year 2023-24, it was proposed to allow the increased seats in favour of those Higher Secondary Schools who were able to enroll students against these increased seats. The increased seats shall be withdrawn from 253 HSSs who failed to enroll a single student against the increased seats (13,821) from the AY: 2023-24.**

23. In view of the aforesaid decision of the Committee, it is understood by this Court that the schools which have failed to

admit even a single student against the increased seats (so far the Petitioner's institution is concerned, one seat out of 64 seats additionally sanctioned), the entire additional sanctioned seats are liable to be withdrawn. The intention behind the decision taken by the HPC and the consequential conduct of the Department is punitive in nature as those institutions which have failed to admit any students against the enhanced strength, their sanctioned strength is liable to be reduced by withdrawing the additional strength sanctioned in their favour.

24. The proceeding of the meeting which culminated in a final decision to allow the increased seats in respect of those schools who had admitted students against the increased seats and to withdraw the sanctioned in respect of those schools who have failed to admit the students in respect of the increased seats prescribes a procedure to be followed or a decision to be arrived at before giving effect to the decision of the HPC. In the instance case, the Opposite Parties were

supposed to examine the number of students admitted by the Petitioner's school in the previous academic year against the additional sanctioned strength. Without determining the same first by giving opportunity to the Petitioner, the Opposite Parties have directly implemented the decision by withdrawing the additional sanctioned strength of the Petitioner's institution. On a careful analysis of the pleadings of both the sides, it appears that there exists a dispute/ambiguity in the number of students admitted by the Petitioner for the Academic Year 2022-23. Therefore, the Opposite Parties were duty bound to issue a show cause notice to the Petitioner-Institution before implementing the decision of the HPC.

25. With regard to the second question that whether the Opposite Parties were duty bound to provide an opportunity of hearing to the Petitioner's institution before withdrawing the additional sanctioned strength, this Court would like to observe that every administrative decision which has a civil

consequence or is likely to be visited with a punitive consequence to a party concerned is required to be passed after observing the principles of nature justice. Law in this regard is fairly well settled by a catena of judgments of the Hon'ble Supreme Court as well as this Court. This Court, however, at this juncture would like to refer to a judgment of the Hon'ble Supreme Court in ***Krishna Mohan Medical College and Hospital and Anr. v. Union of India and Anr., reported in (2017) 15 SCC 719.***

26. In the aforesaid judgment, the Hon'ble Supreme Court has categorically observed that the rule of 'fair hearing' which is no longer *res integra* is an integral part of the principles of natural justice and the same is embraced in every facet of fair procedure. The rule of fair procedure requires that the affected parties should be afforded an opportunity to meet the case against him effectively. Further, it has also been observed that the right to fair hearing takes within its sweep the right to show cause supplemented by

reasons and rationale. The Hon'ble Supreme Court further gone on to observe that a reasonable opportunity of hearing or right to 'fair hearing' casts a steadfast and sacrosanct obligation on the adjudicator to ensure fairness in procedure and action, so much so that any remiss or dereliction in connection therewith would be at the pain of invalidation of the decision eventually taken. Thus, every executive authority empowered to take an administrative action having the potential of visiting any person with civil consequences must take care to ensure that justice is not only done but also manifestly appears to have been done.

27. With regard to the contention raised by the learned Additional Government Advocate that the Petitioner did not raise any grievance or objection before the Departmental Authority, this Court is of the considered view that when decision has not been officially communicated at least there is nothing on record to show that the impugned decision has ever been communicated to the Petitioner, therefore, the

question of objecting to the same does not arise at all. Admittedly, the Petitioner came to know about the reduction in number of seats through the SAMS web portal in the midst of the admission procedure. Therefore, the Opposite Parties cannot put the blame on the Petitioner for not approaching them before coming to this Court. With regard to the next contention of the learned Additional Government Advocate that the impugned order is an appealable order, therefore, the present writ petition is not maintainable, this Court would like to observe that availability of alternative remedy is not an absolute bar. The same is practised by the Courts as a measure of caution while exercise the jurisdiction under Article 226 of the Constitution of India. In the instant case, the availability of alternative remedy would not stand as an absolute bar inasmuch as the Opposite Parties have failed to comply with the principle of natural justice. Such view of this Court also get support from the judgment of Hon'ble Supreme Court in *Whirlpool Corporation v. Registrar of*

Trade Marks, Mumbai and Ors. reported in (1998) 8 SCC 1.

The aforesaid view of this Court answers the second question formulated by this Court for adjudication of the issues involved in the preset writ petition.

28. In view of the aforesaid analysis of fact as well as the legal position, this Court is of the considered view that the conduct of the Opposite Parties in reducing the additional sanctioned 64 seats granted by way of temporary recognition is absolutely illegal and arbitrary and the same is violative of the principles of natural justice.

29. Accordingly, Annexure-4, so far as it relates to Science Stream of the Petitioner-Institution for the Academic Session 2023-24, is hereby quashed. The Opposite Parties are further directed to allow the Petitioner-Institution to admit students in the additional 64 seats by accepting the number of seats of the Petitioner's institution in the Science Stream to be 320

and, accordingly, necessary corrections be carried out in the SAMS portal.

30. With the aforesaid observation and direction, the writ petition is allowed. However, there shall be no order as to cost.

(A.K. Mohapatra)
Judge



Orissa High Court, Cuttack
The 31st July, 2023/D. Aech, Secretary.

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Signed by: DEBASIS AECH
Designation: Secretary
Reason: Authentication
Location: OHC CUTTACK
Date: 11-Aug-2023 19:21:18



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.21732 of 2023

AIMS Higher Secondary School of Science, Sambalpur ***Petitioner***

Mr. S.K. Dash, Advocate

-versus-

State of Odisha & another ***Opposite Parties***
Mr. P.C. Das, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

Order No.

ORDER
08.08.2023

I.A. Nos.11859 & 11860 of 2023

- 06.
1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
 2. These Interlocutory Applications have been filed with the prayer to expunge the remarks/ modify the order/judgment dated 31.07.2023.
 3. Heard Mr. P.C. Das, learned Additional Standing Counsel for the State-Opposite Parties.
 4. At the outset, Mr. Das, learned Additional Standing Counsel submitted that due to communication gap and paucity of time, the counter affidavit could not be drafted properly. He further submitted that this Court had directed to file the counter affidavit within a very short time, therefore the same could not be properly verified before filing the same. It was also contended before this Court that the substance of the reply affidavit meets the query raised by this Court. Although, the same might not have been answered directly as desired by this Court. In view of the aforesaid practical difficulties, the learned Additional Standing Counsel requested that the para-12 of the judgment dated 31.07.2023 be expunged from the record.

4. Considering the submission made by learned Additional Standing Counsel, further keeping in view the fact that the said para-12 does not have any bearing on the final outcome of the writ application, this Court, taking into consideration the submission made by learned Additional Standing Counsel, hereby directs that the para-12 of judgment dated 31.07.2023 be deleted from record. Further, it is directed that the copy of the judgment which has been uploaded in the website of this Court be accordingly corrected and after deletion of para-12 subsequent paragraphs be renumbered.

5. Accordingly, the both I.As. stand allowed.

Anil



Signature Not Verified

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Signed by: ANIL KUMAR SAHOO
Designation: Junior Stenographer
Reason: Authentication
Location: High Court of Orissa
Date: 14-Aug-2023 11:42:50

