

ORISSA HIGH COURT : CUTTACK

W. P.(C) NOS. 3319 AND 3683 OF 2003

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

In WPC 3319/2009

Governing Body of
Ratanpur Science Degree College,
represented through it's Secretary
Sri Purandar Biswal.

..... Petitioner

-Versus -

State of Orissa and others

..... Opp. parties

For Petitioner : M/s. J.K. Rath, Sr.counsel
S.N. Rath, P.K. Rout
D.N. Rath & C.K. Rajguru.

For Opp. Parties : Add. Govt. Advocate
(For O.Ps. 1 & 2)

M/s. N.C. Sahu, S. Mohanty,
D. Mohanty & S.K. Nanda
(For O.P. No.5)

Mr. M.M. Senapati
(For O.P. No.6)

M/s. B. Pradhan, O.P. Mohanty,
Mrs. D. Mishra & S.

Mohapatra

(For Intervenors)

In WPC 3683/2003

Sri Chittaranjan Parida and others

..... Petitioners

-Versus -

State of Orissa and others

..... Opp. Parties

For Petitioners : M/s. K.K. Swain, P.N. Mohanty,
B. Jena & P.K. Mohanty.

For Opp. Parties : Addl. Govt. Advocate.
(For O.Ps. 1 & 2)

M/s. B. Pradhan, O.P. Mohanty,
Mrs. D. Mishra & S.

Mohapatra

(For Intervenors)

Decided on 28.10. 2011.

P R E S E N T :

THE HONOURABLE SHRI JUSTICE M. M. DAS

M.M. DAS, J.

Both the aforesaid writ petitions involve common questions of facts and law which were heard together and are being disposed of by this common judgment.

2. The petitioner in W.P. (C) No. 3319 of 2003 describes itself to be the Governing Body of Ratanpur Science Degree College and the petitioners in W.P. (C) No. 3683 of 2003 claimed to be the staff members of Ratanpur Science College. Similar prayers have been made in both the writ petitions seeking quashing of the letter dated 3.2.2003 issued by the Government in its Higher Education Department to the Director, Higher Education, Orissa, Bhubaneswar accepting the enquiry report of the opp. party no. 3, who was then the Commissioner-cum-Secretary, Higher Education Department. In his report, the opp. party no. 3 has come to the conclusion that Ratanpur Science College

and Ratanpur Science Degree College are two distinct educational institutions. By the impugned letter, the Government in its Higher Education Department accepted the said report and intimated the Director that the two colleges are not a composite college and Shri Kailash Chandra Pradhan is the Principal of Ratanpur Science Degree College with effect from 10.2.1994. It further appears from the said impugned Annexure -7 that the Commissioner-cum-Secretary, Higher Education Department was directed by this Court to enquire into the matter in the order dated 27.3.1998 passed in O.J.C. Nos. 3544 and 4306 of 1998.

3. The bone of contention between the parties in both the writ petitions as well as in several previous litigations before this Court is with regard to the status of the aforesaid college. One party is claiming that the Ratanpur Science College and Ratanpur Science Degree College is a composite college and the others are claiming that they are separate colleges. Pursuant to the directions of this Court in various writ petitions, several enquiries have been conducted. Acceptance of the enquiry report of the then Commissioner-cum-Secretary, Higher Education Department by the Government in its Higher Education Department and declaring the college to be not a composite college is challenged in the present two writ petitions.

4. From the records, it is seen that pursuant to the letter dated 5.8.1991 of the Secretary of the Governing Body, Ratanpur

Science College, the Deputy Director (NGC), Orissa granted the letter of permission for establishment of the Higher Secondary Institution (1991-92 academic session) under section 5 (3) of the Orissa Education (Amendment) Act, 1989 permitting the said college to admit students in the first year of higher secondary classes numbering 64 each in the subjects mentioned in the said letter with certain stipulations and conditions . For better appreciation, the said letter is quoted hereunder:

“DIRECTOR OF HIGHER EDUCATION : ORISSA : BHUBANESWAR.

No.49485 /
110-47-91

To

The Secretary, Governing Body,
Ratanpur Science College, Ratanpur,
P.O.- Udayapur, Dist. - Puri.

Sub: Provisional permission for establishment of a Higher
Secondary Institution in Arts from 1991 – 92.

Reference : Your letter No. 8 dt. 5.8.91

Sir,

I am directed to say that Director, Secondary Education, Orissa has been pleased to permit you to establish the Higher Secondary Institution during 1991 – 92 academic session under Section 5 (3) of O.E. (Amendment) Act – 1989 in pursuance of G.O. No.31941/EYS dt. 18.7.90 can admit students in 1st year class of Higher Secondary Classes in the following core courses (compulsory and elective subjects) as per the number against each subject.

English	64	Economics	64
M.I.L. (Oriya)	64	Education	64
History	64		
Pol. Sc.	64		

However the G.B. of the Institution shall satisfy the following conditions before admitting students and start the classes.

- 1(a) Requisite land to be registered in the name of the Higher Secondary Institution.
- (b) Building to be constructed on the own land registered in the name of the Institution.
- (c) A Governing Body to be registered in the name of the Higher Secondary Institution.
- (d) Security Deposit to be made by the Registered G.B. of the Institution.
- (e) Staff (both teaching and non-teaching) are to be appointed separately for the Higher Secondary Classes.

In this connection provisions in Section 7 – B (2) of the Orissa Education Act – 1969 as amended must be strictly followed in appointment of teaching staff :

- 2 (a) Construction of the Hall with 128 seating capacity in 1990 – 91 and two more halls with same capacity in 1991 – 92 exclusively for Higher Secondary Classes.
- (b) Construction of one Class room with seating capacity for 64 students.
- (c) Construction of two tutorial class rooms.
- (d) Security Deposit duly pledged as prescribed by the Council of Higher Secondary Education, Orissa.
- (e) Provision of at least 150 text books in each subject for the students in 1990 – 91 and additional of 50 text books / reference books in each subject in each subsequent year.

All the above conditions should be filled up before Government concurrence.

3. The Institution will not draw any recurring / non-recurring grant from Govt. salary of the teaching and non-teaching staff / building grant, library and infrastructure grants etc.
4. The Institution will not open 43 (Degree Classes) at any time.

Yours faithfully,

Sd/-
Deputy Director (NGC), Orissa.”

5. It would be seen from the above permission letter that the Governing Body was required to be registered in the name of the higher secondary institution and that the institution was prevented from opening of +3 (Degree Classes) at any time. The educational agency was registered under the Societies Registration Act, 1860 in the name of Governing Body of Ratanpur Science College. After such permission was granted, the college was also granted temporary recognition. The Council of Higher Secondary Education, Orissa also granted affiliation to Ratanpur Science College which is imparting education in +2 Courses and has also obtained permanent recognition in the meanwhile. From the order dated 4.4.1994 of the Director of Higher Education, Orissa, it appears that the Director in exercise of

powers conferred under Rule 17 (2) of the Orissa Education (Establishment, Recognition and Management of Private Junior Colleges/Higher Secondary Schools) Rules, 1991 (for short, “the 1991 Rules”) accorded permission for establishment of a second Degree College in +3 Arts in favour of Ratanpur Science Degree College with intake capacity as mentioned therein. In order to come to the conclusion as to whether the said Ratanpur Science Degree College is a separate or a composite college with Ratanpur Science College, the said letter according permission for establishment is quoted hereunder:

“OFFICE OF THE DIRECTOR OF HIGHER EDUCATION : ORISSA : BHUBANESWAR :

OFFICE ORDER No. 5M – 2980 /Dt. 04-4-94

In exercise of the powers conferred on the Director, Higher Education, Orissa, Bhubaneswar in Rule – 7 (2) of O.E. (ERMPC) Rules, 1991 permission is hereby accorded for establishment of *2nd Degree College in + 3 Arts* in favour of following educational Agency with subjects and session as noted below :-

Name of the Educational Agency : RATANPUR SCIENCE DEGREE COLLEGE
 Exact Location : RATANPUR
 Block : ASTARANG, District : PURI
 G.P. : UDAYPUR
 The date from which the college is to start functioning
 (academic session) 1992 – 93

Compulsory Subject Strength.		Optional Subject Strength.	
English	128	1. Education	128
MIL (O)	128	2. Sanskrit	128
		3. Pol. Science	64
		4. History	64
		5. Oriya	64
		6. Economics	64

The above permission is subject to fulfillment of following terms and conditions while admitting students for starting the classes and with the condition that the State Govt. shall not bear any financial liability at any point of time nor shall the same count towards justification for opening of new colleges in + 3 Arts or for grant-in-aid in future.

4. The degree college is to be a separate college and without any connection with + 2 institution (H.S. School) in the same name.

2. (a) Requisite land (5 Acres) is to be registered in the name of Degree college.

- (b) The college building has to be constructed on the own land registered in the name of the Degree College.
 - (c) Separate G.B. to be registered in the name of the degree college.
 - (d) Security deposit (Rs.1 lakh) should be made by the registered GP of the degree college and should be duly pledged in favour of Registrar, Utkal University.
 - (e) Appointment of qualified teaching staff as per the provision under 7 – B (2) of the O.E. Amendment Act, 1989 and amendment thereof.
- 3.(a) Construction of one Hall with 128 seating capacity in 1992 – 93 and two more halls with the same capacity in 1993 – 94 exclusively for degree students (size of the Hall – 45 ft’ X 22 ft’)
- (b) Construction of three class room with seating capacity for students (size of rooms – 30 ft X 22 ft’)
 - (c) Construction of six tutorial class rooms (20 ft’ X 22 ft’ each)
 - (d) Fixed deposit duly pledged as prescribed by the concerned University.
 - (e) Laboratories have to be constructed for degree students in subjects having practicals.
 - (f) Provision of at least 150 text Books in each subject for degree students in 1993 – 94 and addition of 50 text Book/reference Book in each subject in each subsequent year.
- (g) After establishment of the college a report should be furnished to the Director (HE) showing the details namely:
- (h) The place of location of the college (2) The classes opened and the subjects offered in each faculty and the number of students actually admitted in each faculty and subjects.
4. The date of which the college started functioning.
5. Necessary application for recognition under sub-section (1) of Section – 6 of the Act be made in duplicate in form No. II (with T.C. of Rs.1200/- within three months from the date of functioning the college as per rule 12 of O.E. (ERMPC) Rules, 1991. Simultaneously a separate application in form No. III should also be submitted to Director (HE) for approval of G.B. by the Director, (HE) under Rule 22 of OE (ERMPC) Rules, 1991.

This has got prior approval of Govt. as per OE (ERMPC) Rules, 1991.

BY ORDER OF DIRECTOR,
HIGHER EDUCATION, ORISSA.

Sd/- B. Mohapatra
DEPUTY DIRECTOR (NGC – I)”

6. The above degree college was thereafter granted temporary recognition and the educational agency, i.e., the Governing Body of Ratanpur Science Degree College has been separately registered under the Societies Registration Act. The said degree college has also been granted permanent recognition subsequently and has been affiliated to the Utkal University. The permission for establishment of the Degree College is mentioned as Second Degree

College as it is the second degree college in the block as per section 3 (d) of the Orissa Education Act, 1969.

7. The Government in its Higher Education Department, no doubt, has found that there were some colleges in the State having a composite nature, even though such composite colleges are never contemplated either in the Education Act or in the Rules framed thereunder and the 1991 Rules for Higher Secondary Colleges and the Rules for Degree Colleges are separate. Nevertheless, many colleges in the State which were initially permitted to open higher secondary classes, i.e., +2 courses and affiliated to the Council of Higher Secondary Education, Orissa, but subsequently have, in fact, been permitted to open +3 wing in the same building/campus under the same Governing Body. In the instant case, however, from the documents, it is clear that when Ratanpur Science College was permitted to be established, it was precluded from opening of +3 wing at any time in future. The degree course, i.e., the +3 course was separately permitted to be established by a separate Governing Body, which was independently registered under the Societies Registration Act bearing an independent name, i.e., Ratanpur Science Degree College.

(emphasis supplied)

8. In the case of ***D.G.B.K. Mahavidyalaya v. State of Orissa and others***, (O.J.C. No. 1486 of 1994 decided on 7.8.1995), a Division Bench of this Court analyzing the provisions of law examined

On perusal of the relevant provisions of the Act and the Rules, it is clear to us that under the scheme of things therein Junior Colleges / Higher Secondary Colleges and Degree colleges are to be managed as separate entities with separate governing body. The concept of a 'composite' college as stated by the petitioner does not appear to be contemplated under the Rules.

8. Coming to the facts of the case in hand, it is clearly stipulated in the order of Government concurrence for establishment of degree college (Annexure - 4) that the management will take steps during the academic session 1991 to run the degree college as a separate entity with separate Governing Body and that the college shall have land registered in its name ; that the college shall construct building on its own land and the college shall have furniture, fitting, laboratory equipment as required, and the college shall have qualified teaching staff and non-teaching staff as per yard stick. In the order of the Director dated 27.10.1993 approving reconstitution of the Governing Body of the petitioner's college Annexure - 6, it is specifically stated that the order was passed under Rule 27 of the Orissa Education (Establishment, Recognition and Management of Private Junior Colleges / Higher Secondary) Rules, 1991 in respect of the Governing Body of D.G.B.K. + 2 Mahavidyalaya, Kasarda. Similarly in the impugned order Annexure - 9, it is specifically mentioned that the Governing Body was constituted for D.G.B.K. Mahavidyalaya + 3 wings, Kasarda. Further, from the certificate of registration of societies, which

is filed as Annexure – A/2 to the counter affidavit of opposite party no.2 and Annexure – A to the counter affidavit of opposite party no.4, it is clear that the Governing Body of D.G.B.K. Mahavidyalaya + 3 wings, Kasarda has been registered under the Societies Registration Act, XXI of 1980 as a separate entity. In these circumstances the case of the petitioner cannot be accepted either on facts or in law. If as urged by him there is difficulty in management of the two college as separate entities it is for the Governing Body concerned to move the Director and the State Government for sorting out the problems.”

Holding thus, the Division Bench found no merit in the writ petition and dismissed the said writ petition.

9. The facts of the present case are also akin to the facts in the case of D.G.B.K. Mahavidyalaya (supra). This Court, therefore, finds that there is no reason to quash the impugned letter dated 3.2.2003 made Annexure-7 to both the writ petitions.

10. In the result, both the writ petitions, being devoid of merit, are dismissed, but, in the circumstances, without cost. All pending Misc. Cases stand disposed of.

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M. M. Das, J.

Orissa High Court, Cuttack.
October 28th, 2011/Biswal.
