

## HIGH COURT OF ORISSA: CUTTACK

### **W.P.(C ) No.13940 of 2014**

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

-----  
Dr.Sukanta Ku.Dwibedi and others .... Petitioners

Versus

State of Orissa and others .... Opposite parties

For Petitioner -- M/s.N.M.Praharaj & M.K.Mishra

For Opp. Parties -- Addl. Government Advocate  
(For OPs.1 to 4)

**PRESENT:**

**THE HONOURABLE DR. JUSTICE A.K.RATH**

-----  
Date of hearing: 26.8.2014 : Date of judgment: 26.8.2014  
-----

**Dr.A.K.Rath, J.** The petitioners are teaching and non-teaching staff of Mayurbhanj Law College in the district of Mayurbhanj. They have approached the portals of this Court under Article 226 of the Constitution for issuance of mandamus to opposite party no.1 to transfer the funds to the new governing body and to declare the Mayurbhanj Law College as a Constituent College of North Orissa University.

**2.** Shorn of unnecessary details, the short facts of the case of the petitioners is that they had earlier approached this Court in W.P.(C) No.10552

of 2004 praying for a direction to hand over the Mayurbhanj Law College (hereinafter referred to as 'College') to the North Orissa University as a constituent college along with its assets, funds and infrastructure etc. The said writ petition was disposed of on 15.1.2009 with an observation that the newly approved governing body may consider whether in the best interest of the institution, it would be proper to hand over the institution to North Orissa University for better management. It was further observed that if the governing body takes a decision in this regard, such decision may be intimated both the North Orissa University as well as the State Government and in such a situation, the State Government is to consider as to whether it would be appropriate to take over the management of the institution as a constituent college of the North Orissa University. The further case of the petitioners is that opposite party no.1 dissolved the governing body of the College, Baripada, Mayurbhanj on 14.7.2004, whereafter the Additional District Magistrate, Mayurbhanj became the President of the governing body of the College. Funds of the college kept in six bank accounts are not being utilized for the development of the college or for the welfare of the students. While the matter stood thus, opposite party no.1 in its letter dated 6.10.2010 requested opposite party no.2 to furnish view in the matter for taking further action at the end, vide Annexure-3. The governing body of the College had taken a decision on 12.7.2010 authorizing the Principal to communicate the matter to the Government regarding transfer of funds deposited in the name of the college. The Principal-cum-Secretary of the governing body of the

college requested the opposite party no.1 in its letter dated 28.10.2010 for transfer of funds enclosing a copy of the resolution of the governing body meeting held on 12.7.2010. On 9.12.2010, the President of the governing body of the College requested opposite party no.1 to transfer the funds deposited in different banks in the name of the College to enable the present governing body to utilize the funds for the welfare of the students as well as development of the college. By letter dated 13.9.2011, office of opposite party no.2 requested the President of governing body to furnish a copy of the resolution held on 12.7.2010. Thereafter, the President of the governing body sent the same by registered post on 17.9.2011. Again the College requested opposite party no.2 on 19.6.2012 to transfer funds to governing body of the college. It is further submitted that the then Secretary of opposite party no.5 expressed his desire before the President of governing body on 12.6.2013 that he had no hesitation to transfer the funds pending in different accounts. The Principle of the college also informed opposite party no.1 on 27.8.2013 enclosing the letter dated 12.6.2013 to transfer the funds. The further case of the petitioners is that the College is one of the oldest law college in the State of Orissa. It was established in the year 1978. The governing body in its meeting dated 22.1.2010 unanimously decided to transfer the College to North Orissa University for better management and for the best interest of students.

**3.** Heard learned counsel for the petitioners and learned Additional Government Advocate for the State.

**4.** The seminal point that hinges for consideration of this Court is as to whether a writ of mandamus can be issued to the State of Orissa to treat the Mayurbhanj Law College as a Constituent College of North Orissa University.

**5.** By virtue of the notification dated 13.7.1998 published in the extraordinary Gazette, the State Government in exercise of the powers conferred by sub-sections (1) and (2) of Section 32 of the Orissa Universities Act, 1989 (Orissa Act 5 of 1989) altered the territorial jurisdiction of the Utkal University by exclusion of the revenue districts of Balasore, Bhadrak, Mayurbhanj and Keonjhar (erstwhile districts of Balasore, Keonjhar and Mayurbhanj) and established a new University called as the “North Orissa University” having jurisdiction over the revenue districts of Balasore, Bhadrak, Mayurbhanj and Keonjhar with effect from the 13<sup>th</sup> July, 1998. The Orissa Universities Act, 1989 was enacted by the State legislature to consolidate and amend the laws relating to certain Universities in the State of Orissa. After the North Orissa University was created, the college in question came under the direct control of the said University. The constituent college defined in Section 2 of the Act means a college managed by a University. The legislation of the State may amend the Orissa Universities Act, 1989 to declare the college as a constituent college of the North Orissa University.

**6.** In ***State of Himachal Pradesh Vrs. A Parent of a Student of Medical College, Shimla***, AIR 1985 SC 910, the Chief Justice of Himachal

Pradesh High Court received a letter dated 4<sup>th</sup> April, 1984 from the guardian of a student of the medical college in Shimla complaining about the ragging of freshers by senior students within as also outside the college campus and the hostel. The guardian of the student had annexed along with his letter to the Chief Justice a letter dated 25<sup>th</sup> March, 1984 received by him from his son. The Division Bench of the High Court treating these two letters as a Writ Petition registered them as Civil Writ Petition No.155 of 1984. The Division Bench issued a direction to the State Government to constitute an Anti Ragging Committee consisting of the Vice-Chancellor of the Himachal Pradesh University and the Secretary to the Government, Health Department to make recommendations in regard to the curative, preventive and punitive measures to be taken by the College authorities to control and curb the evil of ragging and the machinery to be set up to enforce these measures. The Anti Ragging Committee submitted its report to the High Court. Basing on the recommendation of the Anti Ragging Committee, the High Court directed the Chief Secretary to the State Government to file an affidavit as to what action was taken pursuant to the recommendation of the Anti Ragging Committee. The said order was challenged by the State of Himachal Pradesh. In the wake of the aforesaid, the apex Court held that the directions given by the Division Bench was really nothing short of an indirect attempt to compel the State Government to initiate legislation with a view to curbing the evil of ragging, for otherwise it is difficult to see why, after the clear and categorical statement by the Chief Secretary on behalf of the State Government that the

Government will introduce legislation if found necessary and so advised, the Division Bench should have proceeded to again give the same direction. Thus the Division Bench was clearly not entitled to do. It is entirely a matter for the executive branch of the Government to decide whether or not to introduce any particular legislation. Of course, any member of the legislature can also introduce legislation but the court certainly cannot mandate the executive or any member of the legislature to initiate legislation, howsoever necessary or desirable the court may consider it to be. That is not a matter which is within the sphere of the functions and duties allocated to the judiciary under the Constitution. It was further held that the court cannot usurp the functions assigned to the executive and the legislature under the Constitution and it cannot even indirectly require the executive to introduce a particular legislation or the legislature to pass it or assume to itself a supervisory role over the law-making activities of the executive and the legislature.”

**7.** In *Asif Hameed and others Vrs. State of Jammu and Kashmir and others*, AIR 1989 SC 1899, the apex Court held that the Constitution has laid down elaborate procedure for the legislature to act thereunder. The legislature is supreme in its own sphere under the constitution. It is solely for the legislature to consider as to when and in respect of what subject matter, the laws are to be enacted. No directions in this regard can be issued to the legislature by the courts.

**8.** In *Mullikarjuna Rao and others Vrs. State of A.P. and others*, A.I.R. 1990 S.C.1251, the apex Court held that it is neither legal nor proper for the High Courts or the Administrative Tribunals to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution. The Special Rules have been framed under Article 309 of the Constitution. The power under Article 309 of the Constitution to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution. The Courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule-making power in any manner. The Courts cannot assume to itself a supervisory role over the rule-making power of the executive under Article 309 of the Constitution.

**9.** In *Union of India and another Vrs. Deoki Nandan Aggarwal*, AIR 1992 SC 96, the apex Court observed as under:-

“It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislature has not been conferred on the courts.”

In view of the authoritative pronouncement of the apex Court in the decisions cited supra, a writ of mandamus cannot be issued.

**10.** The next question survives for consideration is as to whether a direction can be given to opposite party no.1 to transfer the funds of the college lying in different banks. It is open to the opposite party no.1 to take a decision in the matter if there is no other impediment. The opposite party no.1 is directed to take a decision in the matter within a period of six months from the date of production of certified copy of this order.

The writ petition is accordingly disposed of.

.....  
***Dr.A.K.Rath, J.***



