HIGH COURT OF JUDICATURE AT BOMBAY

BDPSPS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5363 OF 2015

1) Mr. Rajendra G. Kulkarni)
Age: 52 years, Adult, Residing at)
R/2-204, Shreeram Residency,)
Behind Panvelkar Plaza Station Rd,)
Ambernath (East) – 421501.)
)
2) Mr. I. Sircar,)
Residing at Plot No.63, Sulabh Society,)
Vadavali Section, Ambernath (East))
-421501.)
)
3) Mr. V.Z. Rane)
Residing at C-543, Sec. 25,)
Room No.1085, Behind Venus,)
Ulhasnagar.)
)
4) Mrs. V.S. Nadagauda,)
Residing at B/404-405, Yugandhar)
Sadan, Manapada Road,)
Dombivali (East).)
)
5) Mrs A.A. Waghmare,)
Residing at L7/104 Lokkedar CHS,)
JSD Road, Cement Company,)
Mulund (West))
)
6) Mrs B.C. Atre,)
Residing at A-1, 203, Lakecity Towers,)
Near Tip Top Plaza, Thane (West))
)
7) Mrs Neha R. Korde,)
Residing at Flat No.103, Atlantis Tower,)
Kashish Park, LBS Road, Near Mulund)
Check Naka, Thane (West))

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)

8) Mrs. S. R. Lachhani,)
Residing at 202, Attam Dham,)
Plot No. B-52, Chopra Court, Ulhasnagar))

9) Mrs. Beenarani S. Karutharan,)
Residing at Flat No.103, Atlantis Tower)
Kashish Park, LBS Road, Near Mulund)
Check Naka, Thane (West))

10) Mrs. Shilpa Ingoley)
Residing at A26/1103, Happy Valley)
Manapada, Near Tikujan Wadi,)
Thane (West))

11) Mr. D.K. Pawar,)
Residing at C2/402 Neeyog Apartments,)
Ghatkopar (East) – 400075)

12) Mrs Sandhya S. Bhavsar,)
Residing at BK A-116/232,)
Suryadarshan, Samata Nagar -1,)
Kurla Camp, Ulhasnagar.)

13) Miss K.B. Choudhary,)
Residing at 101 'A' Wing,)
Sai Baug Sane Wadi, Badlapur (West))

14) Mr. Deepak G. Joshi,)
Adult, Residing at 64-A Bansilal Bldg.,)
2nd floor, Room No.6 Girgaum Road)
Opera House – 400004)

15) Mrs Jalaja Nair,)
Residing at 21/4 Sai Deepmala,)
Dindayal Road, Dombivali (West),)

16) Mrs N.R. Chavan)
Residing at 260/2, Kranti Nagar)
1st Floor, Room No.21,)

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Mumbai 400 004.)
)
17) Mrs. J. P. Mirani,)
Residing at A-702 Arrona CHS,)
HDFC Bank Kopar Colony,)
Thane (East).)
)
18) Mrs N.P. Lalwani,)
Residing at 203, Saraswati Sagar)
Apts, Near Jhulelal Mandir,)
Ulhasnagar.)
)
19) Mrs Tanaya Matkar,)
Residing at B-205, Yugandhar,)
Sudama, Opp. Nana Nani Park,)
Manpada Road, Dombivali)
421201)
)
20) Mr. Raju B. Sachdev,)
Residing at 201, Kailash Apts,)
O.T. Section, Ulhasnagar.)
)
21) Miss Kiran C. Chandnani,)
Residing at 102, Saraswati Sagar,)
Near Shivneri Hospital,)
Ulhasnagar.)
)
22) Mr. Gajanan V. Rane,)
Residing at Block No.1409,)
Room No. 8, Maratha Section,)
Near Aashirwad Hospital,)
Ulhasnagar.)
)
23) Mr. Lalchand R. Vishwakarma)
Residing at 302, Kasturi Apts,)
Manwle Pada Rd. Virar (East))
24) Mr. Jokhuprasad D. Sharma)
Residing at Ayodhya Nagar,)
Nr. Bk. No.1060, O.T. Section Rd.)
Ulhasnagar.)

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)
25) Mr. Rajaram G. Batwal)
Residing at Plot No.8,)
MHADA Colony, Near Mahalaxmi)
Nagar, Behind Kailashnagar)
Ambernath (East))
)
26) Mr. Gangaram Ramdulare,)
Residing at Ayodhya Nagar)
near Bk. No.1060, O.T. Section Rd)
Ulhasnagar.)
)
27) Mr. Sanjay N. Pawar,)
Residing at House No.1701,)
Shrikrishna Nagar, Vadawali)
Sector, Nr. Jai Shankar Building,)
Ambernath (East).)
)
28) Mr. Ramesh R. Varma,)
Residing at Ayodhya Nagar,)
Near Bk. No.1060, O.T. Section)
Rd. Ulhasnagar.)
)
29) Mr. Munshi Deshraj,)
Residing at Next to Bk. No.1132)
Follower Lane, Imli Pada,)
Ulhasnagar.)
)
30) Mr. Jitendra Kudia,)
Residing at Bk. No.1101,)
Kawaram Colony, O.T. Section,)
Opp. Navjivan Bank, Ulhasnagar)
)
31) Mr. Ramdev Varma,)
Residing at Ayodhya Nagar,)
Near Bk. No.1060, O.T. Section)
Road, Ulhasnagar)
)
32) Mr. Manohar Chawla,)
Residing at Bk. No.1027, Room)

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No.13, Sector 23, Ulhasnagar.)
)
33) Mr. Mohan Shivalingappa)
Mahant,)
Residing at A/204, Jai Shiv)
Shambhu CHS Ltd., Shiv Shrushti)
Complex, Mohane, Kalyan-421102) .....Petitioners.

V/s

1) The State of Maharashtra)
Through the Secretary,)
Higher Technical Education and)
Employment Department,)
Mantralaya, Mumbai 400 032)
)
2) The Director of Technical)
Education, 3, Mahapalika Marg,)
Mumbai – 400 001.)
)
3) All India Council for Technical)
Education (A.I.C.T.E.))
Through the Member Secretary,)
Represented by the Regional)
Officer (Western Region), India)
Assurance Building, Second Floor,)
Opp. Churchgate Station,)
Mumbai – 400 020)
)
4) Maharashtra State Board of)
Technical Education, Through its)
Director, 49, Khenwadi, Ali Awar)
Jung Marg, Bandra (East))
Mumbai – 400 051.)
)
5) Hyderabad (Sind) National)
Collegiate Board, Through its)
President Kishinchand Chellaram)
College Bldg., Vidyasagar Principal)
K. M. Kundani Chowk, 124)

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Dinshaw Wachha Road,)
Churchgate, Mumbai – 400020)
)
6) Hyderabad (Sind) National)
Collegiate Board, Through its)
Director & Secretary Kishinchand)
Chellaram College Bldg.,)
Vidyasagar Principal K.M. Kundani)
Chowk, 124, Dinshaw Wachha)
Road, Churchgate, Mumbai-)
400 20.)
)
10) Smt. S.H. Mansukhani)
Institute of Technology (SHMIT),)
Through its Principal)
Opp. Railway Station, Ulhasnagar,)
Thane – 421 003.) ..... Respondents.

Mr. Sureskh S. Pakale with Mr. Saurabh S. Pakale, Ms. Manisha Devkar, Advocates for the Petitioner Nos. 1 to 8 and for Applicant in Civil Application Nos.1633/2017, 1634/2017, 1914/2017.

Mr. T.V.K. Raman, Advocate for Petitioner No.9.

Mr. C.R. Sadashivan, Advocate for Applicant in Civil Application No.1913 of 2017.

Mrs Rupali M. Shinde, AGP for Respondent Nos. 1 and 2.

Mr. Mihir Desai, Senior Counsel, a/w Ms. Meenal J. Chandanani i/b Mr. J.S. Chandanani, for Respondent Nos. 6 and 7.

Mr. R.V. Govilkar with Ms. Shaba N. Khan, Advocates for Respondent No.4.

Mr. Abhijeet A Joshi, Advocate for Respondent No. 3.

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CORAM: B. R. GAVAI &
SANDEEP K. SHINDE, JJ.

DATE: 12th JANUARY, 2018

ORAL JUDGMENT: ***(Per B. R. Gavai, J.)***

1] This Petition takes exception to the communication dated 24/02/2015 addressed by Respondent No.4 - MSBTE to Respondent No.3 – AICTE and Government Resolution dated 25/05/2015 insofar as it applies to Respondent No.7 – Institute under the Management of Respondent Nos. 5 and 6.

2] Facts, in brief, giving rise to the present Petition, are as under:-

3] All the Petitioners in this Petition are employed on different posts with Respondent No.7 – Institution. Respondent No.7 is a Polytechnic, imparting Diploma Courses in Information Technology, Electronics and Telecommunication Engineering and Computer Technology. It appears that since 2014, Respondent Nos. 5 and 6, on account of certain difficulties faced by them, were intending to close Respondent No.7 – Institute. Some of the Petitioners, apprehending such closure, had approached this Court by way of Writ Petition

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No.2792 of 2014. It is the case of the Petitioners that, in the said proceedings, a statement was made on behalf of Respondent Nos. 5 and 6 that services of the Petitioners would not be terminated, as approval for closure was not granted. It further appears that, an attempt was made on behalf of the Petitioners on one hand and Respondent Nos. 5, 6 and 7 on the other hand to explore the possibility of settlement. However, it appears that nothing could be worked out. During the pendency of the Petition, Respondent No.5 made an application on 28/1/2015 to Respondent No.4, seeking its no objection for Progressive (Phasewise) Closure of Respondent No.7 – Institute. Respondent No.4, vide its communication dated 24/02/2015 addressed to Respondent No.3 granted its no objection for phasewise closure of the Institute. It appears that Respondent No.3 has granted its approval on 30/04/2015 for closure of the Institute. Consequently, vide Government Resolution dated 25/05/2015, Respondent No.1 granted permission to Respondent Nos. 5 and 6 to close the Courses of Diploma in Computer Engineering, Electronics, Telecommunication, and Information Technology. Being aggrieved thereby, the present Petition.

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4] Mr. Pakale, learned Counsel appearing on behalf of the Petitioners submits that, no objection granted by Respondent No.4 to Respondent No.3 and permission granted by Respondent No.1 are totally in contravention with the provisions of the Maharashtra State Board of Technical Education Act, 1997 (For short "the said Act"). He submits that, a detailed procedure is prescribed under the provisions of the said Act, which undisputedly, has not been followed and therefore the impugned orders are liable to be quashed and set aside. Learned Counsel further submits that, Respondent No 3 – AICTE is also required to follow certain procedure for granting its approval, as is provided in Approval Process Hand-Book. It is submitted that, even the said procedure is not followed.

5] Mr. Mihir Desai, learned Senior Counsel appearing on behalf of Respondent Nos. 5 to 7 submits that, firstly, procedure as prescribed under Section 35 of the said Act, would not be applicable to the said Respondents. He submits that, the said procedure would be applicable only to the Polytechnics, which are receiving grant-in-aid from the State Government. He submits that, Respondent Nos. 5 and 6 are minority Institutions. It is therefore submitted that, Respondent No.7

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which is run by Respondent Nos. 5 and 6, which are minority Institutions and which are not receiving grant-in-aid, would not be covered by the provisions of the said Act. Learned Senior Counsel submits that, the undertaking, which was given by the said Respondents was on the basis that they would receive permission from AICTE for starting Community College and would receive grant-in-aid for its functioning. It is however submitted that, since the Government changed its decision and it was not possible to start Community College, the undertaking would not be binding on the said Respondents.

6] Mr. Desai, learned Senior Counsel further submits that Respondent Nos. 5 to 7 had given cogent reasons as to why closure was found unavoidable. It is submitted that, on account of spiral requirements of funds for making payments of salary and increments to be paid to the employees and the fact that revenue of Respondent No.7 was lesser than its expenditure which was required to be incurred, Respondent Nos. 5 and 6 had taken a considered decision to close Respondent No.7 – Institute in a phasewise manner. Learned Senior Counsel further submits that Section 35, insofar as it permits

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minority Institutions to be taken over either by Government or to be transferred to some other management is concerned, would be violative of the rights available to minority Institutions under Article 30 of the Constitution of India.

7] Mr. Desai, learned Senior Counsel, further submits that, as a matter of fact, the Institution has been closed almost for a period of two years and, as such, any adverse order by this Court at this stage would have very serious consequences.

8] We find that, the present Petition requires to be decided on a pure question of law. Facts in the present case are undisputed. It has to be noted, that the legislature found it necessary to provide for establishment of a State Board, to regulate matters pertaining to Diploma Level Technical Education in the State of Maharashtra. It was further found that, certain other matters connected therewith should also be regulated and a Statutory Board for discharging certain functions should be constituted. Clause (b) of Section 2 of the said Act, defines "Board", which means, the Maharashtra State Board of Technical Education established under section 3. Clause (f) of Section

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2, defines "Government", which means the Government of Maharashtra. Clause (h) of Section 2, defines "Polytechnic or Institution", which means an Institution imparting Diploma or Post-Diploma or Post-Graduate Diploma or Advanced Diploma in Engineering or Technology or Management Education recognized by the Board under the said Act.

9] Chapter-II of the said Act deals with constitution of the Board. It has to be noted that the Board consists of various Ex-officio Members, including Director of Technical Education, Director of Maharashtra State Board of Technical Education, other Senior Officers of the State Government and certain nominated members are to be from the category of Principal from Government Engineering Colleges in the State, from the category of the Principals and Heads of Institutes from Government or aided and unaided Polytechnics, from the category of teachers, again from Government or aided and unaided Polytechnics, from the professional bodies and from the associations of Industries.

10] Chapter-III of the said Act deals with powers and duties of the Governing Council and Board. Section 23 of the said Act deals with

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duties of the Board. Perusal of Section 26 would reveal that for opening an Institute, application has to be first made to the Board, which is required to be scrutinized by the Board and thereafter forwarded to the Government. Under sub-section (6) of Section 26, there is a direct bar for entertaining an application for opening any Institution by the Government. Section 27 of the said Act deals with affiliation to the institution. Decision of the Board in this regard has been given finality. The other provisions of the Act deals with continuation of affiliation, extension of affiliation, grant of permanent affiliation and recognition etc.

11] Section 4 of the said Act empowers the Board to contract, to acquire, hold and dispose of property, both movable and immovable and to do all things necessary for the purpose of the Act.

12] Perusal of Section 32 would reveal that, if Institution fails to comply with the conditions of affiliation as provided under the statute, the Board is empowered to issue notice to the management to show cause as to why privileges conferred on the Institution by affiliation should not be withdrawn. The provisions of the said section would

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reveal that, after following the principles of natural justice, the Board is empowered to take action for withdrawal or modification of such privileges. The Board is required to make recommendations to the Government for action to be taken in that behalf and the Government is mandated to proceed to implement the recommendations of the Board.

13] It could thus be seen that, important role has been provided by the statute to Respondent No.4 – Board and right from grant of permission to open a new College and affiliation, Respondent No. 4-Board plays a vital role.

14] Insofar as the contention of Mr. Desai, learned Counsel for the Petitioners, that the said Act is not applicable to the minority Institutions is concerned, we find that the said submission is without substance. The provisions of clause (h) of Section 2 of the said Act, as discussed hereinabove, would apply to all Institutions imparting Diploma or Post-Diploma or Post-Graduate Diploma or Advanced Diploma in Engineering or Technology or Management Education recognized by the Board under the said Act. Undisputedly,

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Respondent No.7 is affiliated to Respondent No.4. The contention that the said Act is not applicable to the unaided Institutions, in our view, is also contrary to the legislative intent. Perusal of Section 5 would reveal that, so far as nomination of members on the Board is concerned, representation is to be granted not only to the employees of Government or Government aided Polytechnics, but also to the employees of unaided Polytechnics. In our considered view therefore the legislative intent is clear that the said Act would be applicable to all the Institutes which are affiliated to Respondent No.4, whether they are run by Government or they are aided or unaided.

15] So far as the contention of Mr. Desai, learned Senior Counsel for the Petitioner, that the provisions of Section 35 insofar as they are made applicable to minority institutions being violative of Article 30 of the Constitution of India is concerned, such a challenge cannot be heard at the behest of the Respondents in a Petition filed on behalf of the employees. If it is the contention of Respondent Nos. 5 to 7 that, any of the provisions of the said Act are ultra vires to any of their rights guaranteed under the Constitution, they are not precluded from challenging the vires of the said provisions. However, so long as the

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said provisions remain on the statute book, Respondent Nos. 5 to 7 are bound to follow the same.

16] In the light of this background, firstly, we will have to consider the most important provisions of the said Act, which have a bearing on the lis in the present Petition. It will be relevant to refer to Section 35 of the said Act, which reads thus:-

> "35. (1) No management of an institution shall be allowed to close down the institution without prior permission of the Government.
>
> (2) The management desires of closing down the institution shall apply to the Board on or before the [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.
>
> (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.

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> (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.
>
> (5) If the Board has recommended the closure of the affiliated Institution the Government may issue the order for closure.
>
> (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."

It could thus be seen that, no management of the Institution shall be allowed to close down the Institution without prior permission of the Government. It could thus be clearly seen that legislative intent is very

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clear that no management can close down the Institution without there being prior approval from the State Government.

17] Sub-section (2) of Section 35 of the said Act requires the management, which desires to close down the Institution, to apply to the Board on or before the 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 far received by it from the Government or from public funding agencies.

18] No doubt that Respondent Nos. 5 and 6 have made an application under the provisions of sub-section (2) of Section 35 on 28/1/2015. Respondent Nos. 5 and 6 have also pointed out difficulties, which are found by them for running Respondent No.7 – Institute. It could thus be seen that, so far as requirement of sub-section (2) of Section 35 is concerned, the same has been partly complied with by Respondent Nos. 5 and 6. However, the requirement with regard to pointing out the assets in the form of building and equipments, their original costs, the prevailing market

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value and grants so far received by them from the Government or from public funding agencies, has not been complied with by Respondent Nos. 5 and 6. It is the contention of Mr. Desai that, the said provision is not applicable to Respondent Nos. 5 and 6. We are not inclined to accept the said contention. If the said Respondents are not receiving any grant-in-aid from the Government, they could very well mention in the application that they are not receiving any grant-in-aid. However, data regarding public funding agencies is also required to be mentioned in the application made under sub-section (2) of Section 35, which has not been done by the said Respondents.

19] The most important section is sub-section (3) of Section 35, which mandates that Respondent No. 4 – Board, on receipt of the application, shall cause to make enquiries as it deems fit to assess and determine whether the Institution be permitted to effect the closure. It is also required to examine, whether the closure should be avoided by providing necessary assistance by Government or taking over of the Institute by the Government or transferring it to another management. It could thus be seen that, the legislative intent appears to be that, as far as possible, closure of running Institute should be avoided. Firstly,

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upon enquiry, the Board is required to go into subjective satisfaction as to whether closure can be avoided by taking assistance from the Government. Secondly, it is required to arrive at a subjective satisfaction, whether Institute should be taken over by the Government and, thirdly, it is also required to examine as to whether Institute can be transferred to another management.

20] After complying with the procedure prescribed under sub-section (3) of Section 35, if the Board decides to recommend the closure, it is required to prepare and submit 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.

21] At the cost of repetition, we may state that the words which are used in the statute are not restricted to the funds provided by the Government. However, the scope is widened by using the words "other public funding agencies". Again, the legislative intent appears

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to be that, such of the Institutions which are established by utilizing the funds from public funding agencies, should not be permitted to enrich themselves but their properties be utilized for productive purposes. Respondent No.4 – Board is also mandated to assess the payment of compensation to be made to teachers and the staff to be retrenched. Sub-section (5) of Section 35 requires that, if the Board has recommended the closure of the affiliated Institution, the Government may issue the order for closure.

22] Sub-section (6) of Section 35 requires that, 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. Sub-section (7) of Section 35 provides that, while permitting the closure in phasewise manner, procedure should be such 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.

23] As already discussed hereinabove, after an application for closure is made by the Institution, an important duty is cast upon

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Respondent No. 4 – Board. The legislative intent is that, Respondent No.4 – Board should first make an attempt to see to it as to whether closure can be avoided by providing Government assistance. If it is not possible, it has to apply its mind and decide as to whether the Government can take over the Institution and, thirdly, it has to subjectively decide as to whether the Institution can be transferred to another management. Respondent No.4 – Board is also required to prepare a report and point out various aspects as provided in sub-section (4) of Section 35 of the said Act, including payment of compensation to be made to the teachers and the staff retrenched. Sub-section (5) of Section 35, therefore could come into play only after the procedure prescribed under sub-sections (2) to (4) are followed by Respondent No. 4 – Board.

24] In this background, let's examine as to what has been done by Respondent No.4 – Board in the present matter.

> "We are forwarding herewith the No Objection Certificate for Phase wise Closure of Institute (Institute Code – 0112) Hyderabad Sind National Collegiate Board, Mumbai, Smt. S. H. Mansukhani Institute of Technology, Opposite Ulhasnagar Railway Station, CHM Campus, Ulhasnagar – 421

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> 003 from the Academic year 2015-16 as per the prescribed format provided by A.I.C.T.E.
>
> The undertaking submitted by the institute mention about starting of community college and absorption of Permanent and Eligible teaching and non-teaching staff of Smt. S. H. Mansukhani Institute of Technology in this community college managed by Hyderabad Sind National Collegiate Board, Mumbai.
>
> Enclosed copy of No Objection Certificate for phase wise closure of institute and undertaking by Hyderabad Sing National Collegiate Board, Mumbai for further necessary action."

25] It could thus be clearly seen that Respondent No.4 – Board, without following the mandate as provided in sub-sections (3) and (4) of Section 35 of the said Act, has acted as a postman of Respondent Nos. 5 and 6, recommending closure. We have therefore no hesitation in holding that Respondent No.4 – Board has totally abdicated its function.

26] Likewise, we find that the impugned Government Resolution is also unsustainable in law. While taking a decision under sub-section (5) of Section 35, while dealing with important issue regarding closure of the Institution, least that is expected of the State Government was

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to give brief reasons supporting its decision. Nothing of that sort has been done. By one stroke, the impugned Government Notification notifies various Institutions which have been granted permission to start the process, so also the Institutions who have been permitted to close the Courses. We have no hesitation to hold that this has been done without application of mind and in a most mechanical manner.

27] One another aspect that needs to be taken into consideration is that, the Petitioners, while making representation to the various authorities, had also expressed willingness to take over management of Respondent No.7, either through themselves or their Association viz Teachers' Association for Non Aided Polytechnics (TAFNAP). We find that if Respondent No.4 – Board would have followed the procedure as prescribed under sub-sections (3) and (4) of Section 35, the said proposal could also have been considered. If Respondent No.4 – Board would have followed the provisions of sub-sections (3) and (4), may be, it could have come to a subjective satisfaction that closure was not necessary if certain Government assistance was provided or that the Institution could be taken over by the Government or that Institution could be transferred to other management.

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28] We may gainfully refer to the observations made by Their Lordships of the Apex Court in the case of *Central Coalfields Limited and another vs. SLL-SML (Joint Venture Consortium) and others*[1] in paras 52 and 53, which read thus:-

> "52. There is a wholesome principle that the Courts have been following for a very long time and which was articulated in Nazir Ahmad vs. King Emperor [AIR 1936 PC 253] namely "Where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden." There is no valid reason to give up this salutary principle or not to apply it mutatis mutandis to bid documents. This principle deserves to be applied in contractual disputes, particularly in commercial contracts or bids leading up to commercial contracts, where there is stiff competition. It must follow from the application of the principle laid down in Nazir Ahmed that if the employer prescribes a particular format of the bank guarantee to be furnished, then a bidder ought to submit the bank guarantee in that particular format only and not in any other format. However, as mentioned above, there is no inflexibility in this regard and an employer could deviate from the terms of the bid document but only within the parameters mentioned above."
>
> "53. Nazir Ahmed has been followed in dozens of decisions rendered by this Court and by other constitutional Courts in the country. The Central

1 AIR 2016 SC 3814

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> Vigilance Commission has accepted this principle in a modified form as a guiding principle in its circular dated 31st December, 2007 wherein it is mentioned that all organizations ought to evolve a procedure for acceptance of bank guarantee that is compatible with the guidelines of banks and the Reserve Bank of India. One such requirement is that the bank guarantee should be in a proper prescribed format and should be verified verbatim on receipt with the original. Adherence to this principle of verbatim verification would not only avoid undue problems for the employer but would also virtually eliminate subjectivity on the part of the employer."

It could thus be seen that the same principle would apply aptly in the present case viz. where statute requires a particular thing to be done in a particular manner, it has to be done in that manner alone or not at all. When statutory requirement, as provided under sub-sections (3) and (4) of Section 35 require Respondent No.4 – Board to discharge its duties in a particular manner, it was required to follow the mandate of the said provisions and comply with the same. That having not been done, we find that entire proceedings stand vitiated. The impugned orders are therefore not sustainable in law.

29] In the result, Rule is made absolute in terms of prayer clause (a). Needless to stay that all consequences shall follow.

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30] In view of disposal of the Petition, all Civil Applications taken out therein are also disposed of.

31] At this stage, Mr. Desai, learned Senior Counsel appearing on behalf of Respondent Nos. 5 to 7 requests for stay of the order passed by this Court for a period of 12 weeks. Mr Pakale, learned Counsel appearing on behalf of the Petitioners vehemently opposes the prayer. However, taking into consideration the peculiar facts and circumstances of the present case, we direct that status quo which was operating during pendency of the Petition, including payments to be made to the Petitioners shall continue to operate for a period of six weeks from today. On the said condition, the effect and operation of our judgment shall stand stayed for a period of six weeks from today.

(SANDEEP K. SHINDE, J.) **(B. R. GAVAI, J.)**

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