

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No.27465 of 2021

AND

W.P.No.25447 of 2023

W.P.No.27465 of 2021

Between:

Satavahana Co-Educational Academy

... Petitioner

And

The State of Telangana,
Rep.by its Principal Secretary and others

... Respondents

W.P.No.25447 of 2023

Between:

M/s The HMT Employees Co.op.
House Building Society and others

... Petitioners

And

The State of Telangana,
Rep.by its Principal Secretary and others

... Respondents

JUDGMENT PRONOUNCED ON: 15.04.2024

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

SUREPALLI NANDA,J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

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> Head Note:

W.P.No.27465 of 2021

! Counsel for the Petitioner : Mr.G.Vasantha Rayadu
^ Counsel for Respondents : G.P.for Education for R1 to R3
Mr.V.Hariharan,Ld.Sr.Designated
Counsel representing Mr.
K.Veerabhadra Rao,
Learned counsel for R4.

W.P.No.25447 of 2023

! Counsel for the Petitioners : Mr.Srikanth Hariharan
^ Counsel for Respondents : G.P.for Education for R1 and R2
Mr.K.Jawahar, learned counsel
for R3 and R4.

? Cases Referred:

(1) (2022) 2 SCC 25

(2) (2023) 8 SCC 116

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P.No.27465 of 2021

AND

W.P.No.25447 of 2023

COMMON ORDER:

W.P.No.27465 of 2021:

Heard Mr.G.Vasantha Rayudu, learned counsel appearing on behalf of the petitioner and learned Government Pleader for Education appearing on behalf of respondent Nos.1 to 3 and learned Senior Designated Counsel Mr.V.Hariharan, representing Mr.K.Veerabhadra Rao, learned counsel appearing on behalf of respondent No.4.

2. The petitioner Satavahana Co-Education Academy, Kukatpally, Hyderabad filed Writ Petition No.27465 of 2021 with prayer as under:

"...to issue a Writ, Order or Direction, more so, a Writ in the nature of Mandamus, by declaring the inaction of the 2nd respondent in considering the application for renewal of recognition for the petitioner Sathavahana High School, at Kukatpally, as arbitrary, illegal and lawful and consequently to direct the 2nd respondent to renew the recognition without any further delay and may pass such other order..."

W.P.No.25447 of 2023:

3. Heard Mr.Srikanth Hariharan, learned counsel appearing on behalf of the petitioners, learned Government Pleader for Education appearing on behalf of respondent Nos.1 and 2 and Mr.K.Jawahar, learned counsel appearing on behalf of respondent Nos.3 and 4.

4. **The petitioners – The HMT Employees Cooperative House Building Society, a Registered Society under Societies Registration Act, 2001, HMT (Machine Tools Division), Hyderabad, filed writ petition No.25447 of 2023**

with prayer as under:

"...to issue Writ, Order or any other Direction more in the nature of Writ of Mandamus declaring the proceedings of the Second Respondent vide L.Dis.No.3182/B2/2022 dated 19th June, 2023 (received by the Petitioner Society in August 2023) wherein Second Respondent granted extension of temporary recognition to Classes VI to X for the period 2022-2023 to 2023-2024 in respect of Third Respondent School without consideration of the representation dated 12th December 2022 issued by the petitioner Society and contrary to the provisions of G.O.Ms.No.1 Education (PS.2) Department, dated 1st January 1994 and also contrary to the rights of the Petitioner Society under Article 14 and 300-A of the Constitution of India and pass such other orders..."

5. **PERUSED THE RECORD:**

A) The interim order dated 02.11.2021 passed in favour of the petitioner in W.P.No.27465 of 2021 reads as

under:

"Issue notice to the respondents.

Learned counsel for the petitioner is permitted to take out personal notice to the 4th respondent by Registered Post and file proof of service.

Heard learned counsel for the petitioner and learned Assistant Government Pleader for Education.

The Writ Petition is filed aggrieved by the inaction of the 3rd respondent – District Education Officer, Malkajgiri on the representation/Application dated 04.10.2021 submitted seeking renewal of recognition of the petitioner school. It is stated that as per terms and conditions of the registered lease deed between the 4th respondent - landlord and the petitioner, there is an option for renewal of the term of lease. In spite of the same, the 3rd respondent is not passing any orders on renewal Application.

There shall therefore, be interim direction to the 3rd respondent to forthwith consider the Application of the petitioner dated 04.10.2021 seeking renewal of recognition of the school for the academic year 2021-22."

B) The interim order dated 12.07.2023 passed in I.A.No.1 of 2022 in W.P.No.27465 of 2021 reads as

under:

"Taking into consideration the impugned order already passed by a co-ordinate bench of this Court on 02.11.2021 in this writ petition, there shall be interim direction, as prayed for."

6. The case of the petitioner in brief, as per the averments made by the petitioner in the affidavit filed by the petitioner in support of Writ Petition No.27465 of 2021, is as under:

a) The petitioner is a Society Registered under the Provision of A.P.(Telangana Area) Public Societies Registration Act, 1960, with Registration No.313 of 1989 which was the Society formed with the objective of imparting education to the down trodden children and the 4th respondent i.e., HMT Employees Cooperative House Building Society, Hyderabad, agreed for construction of a school building on certain terms and conditions and thereafter a registered lease deed was entered into by and between the petitioner and the 4th respondent in Writ Petition No.27465 of 2021, for a period of 30 years with a clear stipulation in the said lease deed that the petitioner herein could exercise an option for renewal of lease for a similar period of 30 years and further that the petitioner can develop the subject property to suit its convenience. The petitioner established the school in the subject premises situated in Survey Nos.148, 158 to 161 at HMT Colony, Venture-III and the petitioner started the school for classes I to V and improved the same and named the school as 'Satavahana High School'.

b) It is further the case of the petitioner that the initial lease period came to an end on 26.11.2019 and the 4th respondent's Society without intimation to the petitioner had addressed a letter to the 3rd respondent i.e., the District Educational Officer, Malkajgiri District, and that the 4th respondent will not renew the said lease in favour of the petitioner and further the 4th respondent proceeded and filed a civil suit for eviction against the petitioner herein and the 4th respondent also intimated the same to the official respondents and accordingly the 2nd and 3rd respondents did not consider the renewal application filed by the petitioner. Aggrieved by the inaction of the 2nd respondent in not considering the application for renewal of recognition, the petitioner approached the Court by filing the present writ petition and as interim relief sought a direction to the 2nd respondent to consider for renewal of recognition to the petitioner – Sathavahana High School, for the academic year 2021-2022.

c) On 02.11.2021 this Court directed the 3rd respondent to forthwith consider the application of the petitioner dated 04.10.2021 seeking renewal of recognition of the School for the academic year 2021-2022.

d) In the year 2022 the petitioner again filed I.A.No.1 of 2022 seeking the direction to the 3rd respondent to consider for renewal of the recognition of the petitioner's school for the period from 2022-2023 to 2025-2026 pending disposal of the present writ petition.

e) This Court vide its order dated 12.07.2023 in I.A.No.1 of 2022 in W.P.No.27465 of 2021 passed orders granting the interim relief as prayed for by the petitioner in I.A.No.1 of 2022 and directed the 3rd respondent herein to consider for renewal of recognition of the petitioner's school for the period from 2022-2023 to 2025-2026 pending disposal of W.P.No.27465 of 2021.

f) In the present Writ Petition vide undertaking dated 29.12.2022, filed on the file of this Court and as part of record in W.P.No.27465 of 2021, the Secretary of the petitioner – Satavahana Educational Academy, Kukatpally, Hyderabad undertook as under:

"UNDERTAKING AFFIDAVIT FILED BY THE PETITIONER
I, Smt.Y.Nalini, W/o Y.Rajagopal, aged about 76 years R/o
C/o Sathavahana Public School, HMT Sathavahana Nagar,
Kukatpally, Hyderabad, do hereby solemnly and sincerely
affirm and state as follows:

1. I am the deponent herein and Secretary of the petitioner, which was under the provisions of A.P (Telangana Area) Public Societies Registration Act, 1960, with registration No.313/1989, as such, I am well acquainted with the facts of the case.

2. I submit that I am running the school under the name and style of Satavahana Co-Educational Academy having classes from 1 to 10. The second respondent has granted permission till the Academic year 2021-22 and refused to receive my application for renewal for the year 2022-23 on the ground that the 4th respondent landlord of the school premises has not given their "No Objection". It is humbly submitted that I am still in the possession of the premises as a tenant and the landlord has initiated eviction proceedings pending before the Junior Civil Judge Court at Kukatpally, vide O.S. 46/2020. Since I continue to be in possession of the premises and under influence of the landlord the 2nd respondent has refused to renewal my application for recognition.

3. It is humbly submitted that the future of many students would be under Jeopardy. Unless the nominal rolls are submitted before the authorities on or before 31.12.2022 the students would become ineligible for appearing the public examination.

4. I hereby undertake that I shall not take admissions for the year 2024-25 and I shall suspend admissions after completion of 2 Academic years i.e.,

2022-2023 and 2023-2024. Hence the same may be accordingly ordered in the interests of justice and equity.

Solemnly affirmed and signed before me on this the 29th day of December, 2022."

7. Vacate Stay petition had been filed along with Counter Affidavit by the 4th respondent in W.P.No.27465 of 2021 vide I.A.No.2 of 2021, and in particular, paragraphs 3 and 5 of the said counter affidavit, read as under:

"3. In reply to para No.4, it is submitted that as per the Lease terms and conditions, the Petitioner has agreed to construct and run the Educational institution, duly obtaining permission from the Municipality, but the Petitioner did not follow the same. That this Respondent Society and Colony residents had cautioned the Petitioner many times to improve good quality of education and made several representations to the Education Department and MCH, then only the Petitioner had obtained necessary permissions and running the school for classes 1 to 5, due to poor quality of education this respondent Society colony residents i.e. Sathavahana Colony residents had shifted their children to other schools to provide better education to their children. That the said land allotted for community utilization, due to poor quality of education, this Respondent Society member's children were affected

greatly and the objectives and reputation of this Respondent suffered. Therefore, also this Respondent Society is not interested to renew the same in favor of the Petitioner.

5. In view of the above said circumstances that this Respondent did not execute Lease Deed after expiry of lease period on 26-11-2019, the Petitioner has no right to claim for renewal, either with this respondent or through the agency of the 2nd and 3rd Respondents. The Petitioner without making alternative arrangements or to vacate from this Respondent Society land, had mischevously filed the present writ petition i.e. W.P.No.27465 of 2021 and obtained interim directions on 02-11-2021, by misleading this court. Thus it's nothing but, the Petitioner is having ill intention to grab this Society land which is against to law. In view of the same unless this Hon'ble Court intervenes and dismiss the main writ petition by vacating interim orders passed in the above IA No.1 of 2021 in WP No.27465 of 2021, otherwise this 4th Respondent will be put to serious and irreparable loss which cannot be compensated in monetary terms. Any further continuation of order by this court or passing of any other order will gravely prejudice the cause of this respondent and permit an unauthorized person to squat on the property of this respondent. The same would be unjust and inequitable. This Respondent Society reserves its right

to raise other and further grounds at the time of hearing of the Petition."

8. The case of the petitioners in brief, in W.P.No.25447 of 2023 filed by the HMT Employees Cooperative House Building Society, a Registered Society under Societies Registration Act, 2001, HMT (Machine Tools Division), RR District, as per the averments made by the petitioners in the affidavit filed in support of the said writ petition, is as under:

The petitioners Society was established in the year 1975 with the main object of providing house sites to its members, who are the employees of HMT, Machine Tools Limited. The petitioner Nos.2 to 5 are members of the petitioner No.1 society. The petitioner Society undertook various housing projects for its members and the petitioner's society purchased property to an extent of 1,14,000 sq. yards in survey No.148, 158, 159, 160 and 161 situated at Kukatpally village and developed subject sites and further earmarked one of the plots specifically for community service i.e., for School, i.e., admeasuring 2616 sq.yards. In response to the application received by the 4th respondent herein which runs the 3rd respondent school, the petitioner executed a registered lease deed vide document

No.14503 of 1989 on 27.11.1989 for a period of 30 years agreeing to lease the subject land from 27.11.1989 to 26.11.2019 in respect of the open plot earmarked admeasuring 2616 sq. yards in the layout.

It is the specific case of the petitioner that as per the lease deed dated 27.11.1989 clause (iv) and clause (ix) after completion of the lease, the said subject land has to be reverted and handed over to the petitioner society along with the constructed buildings thereon and further that the renewal clause clearly postulates that if and only, if mutually agreed upon, but it is not mandatory or under compulsion, to renew the lease for a further period of 30 years.

It is further the case of the petitioner that even before the closure of the lease term the petitioner sent several letters to the 3rd and 4th respondent to vacate the subject land and handover peaceful possession of the subject land to the petitioner society, but however, the 3rd and 4th respondents failed to make any alternative arrangements or vacate the subject premises and instead squatted over the subject property, even though admittedly as borne on record the petitioner herein did

not execute any lease deed in favour of the 3rd respondent herein after expiry of the lease period on 26.11.2019 and the petitioner's society issued eviction notice dated 21.10.2019 against the 3rd respondent and the 3rd and 4th respondent issued letter dated 07.11.2019 in response to the said notice dated 21.10.2019 refusing to vacate the subject premises on the expiry of the lease term and further, the petitioner was constrained to file suit O.S.No.46 of 2020 on the file of the V Additional Junior Civil Judge, at Kukatpally, Ranga Reddy District, since the 3rd respondent failed to vacate the subject premises before 26.11.2019.

It is further the case of the petitioner that despite pendency of the civil suit between the petitioner and the 3rd respondent, the 4th respondent herein filed W.P.No.27465 of 2021 and without disclosing the correspondence between the 4th respondent and the petitioner's society, the 4th respondent herein has obtained interim orders dated 02.11.2021 to forthwith consider the application of the 3rd respondent dated 04.10.2021 seeking renewal of recognition of the school for the academic year 2021-2022. The petitioner society

herein soon after receipt of the said notice in the said writ petition, filed I.A.No.2 of 2021 in W.P.No.27465 of 2021 seeking to vacate the interim order dated 02.11.2021 and the 4th respondent during the pendency of the said writ petition submitted an affidavit dated 29.12.2022 on the file of this Court bringing on record its undertaking dated 29.12.2022, undertaking to suspend admissions after completion of two academic years i.e., 2022-2023 and 2023-2024. The petitioner objected to the 2nd respondent and requested the 2nd respondent not to grant any further extension of recognition to the 3rd respondent. The 3rd respondent contrary to its own affidavit dated 29.12.2022 filed I.A.No.1 of 2022 in W.P.No.27465 of 2021 seeking a direction to the 2nd respondent to consider for renewal of the recognition of the 3rd respondent school for the period from 2020-2023 to 2025-2026 and obtained interim orders dated 12.07.2023 in I.A.No.1 of 2022 in W.P.No.27465 of 2021, in favour of the 3rd respondent and the 2nd respondent issued proceedings L.Dis.No.3182/B2/2022 dated 19.06.2023 granting conditional approval to the 3rd respondent. As per clause 27 of the impugned proceedings, it is one of the terms of the approval that the

renewal lease deed is to be executed by the 3rd respondent as and when it is expired. Aggrieved by the said proceedings dated 19.06.2023, granting conditional approval to the 3rd respondent, the petitioner approached the Court by filing the present writ petition.

9. The learned counsel appearing on behalf of the petitioner in W.P.No.25447 of 2023 and appearing on behalf of 4th respondent in W.P.No.27465 of 2021 mainly puts forth the following submissions:

- (I) The petitioner's society did not execute lease deed in favour of the 3rd respondent after expiry of the lease period on 26.11.2019 and therefore the 3rd respondent has no right to claim for renewal, neither with the petitioner's society nor through the 4th respondent nor the official respondents herein.
- (II) The 3rd respondent is having ill intention to grab the petitioner society's land which is against the law.
- (III) As per Rule 6 of G.O.Ms.No.1, Education (PS.II) dated 01.01.1994, it is mandatory that

application for renewal or grant of recognition shall be accompanied by evidence of ownership of the land and building or lease of land or building as the case may be, and in the present case admittedly the said procedure for grant of recognition is not followed.

- (IV) The petitioner society was not accorded any opportunity of personal hearing prior to grant of approval to the 3rd respondent by the 2nd respondent.
- (V) The petitioner was not issued any notice prior to issuance of the impugned proceedings L.Dis.No.3182/B2/2022 dated 19.06.2023 of the 2nd respondent herein granting conditional approval to the 3rd respondent.
- (VI) The Representation/Explanation dated 12.12.2022 submitted by the petitioner society was not at all considered.

The learned counsel appearing on behalf of the petitioner society based on the aforesaid submissions contended that the writ petition No.25447 of 2023 needs

to be allowed as prayed for and W.P.No.27465 of 2021 needs to be dismissed.

10. The learned counsel appearing on behalf of the 3rd and 4th respondents and on behalf of the petitioner in W.P.No.27465 of 2021 mainly puts forth the following submissions:

- (I) As per the lease deed dated 27.11.1989 entered into between the petitioner society and the 3rd respondent, the 3rd respondent has an option to exercise for renewal of lease for a similar period of 30 years.**
- (II) The 3rd respondent has got every right to continue the school activities in the subject premises till the petitioner is evicted by competent Civil Court.**
- (III) The School buildings are constructed by the 3rd respondent and therefore, the 3rd respondent is entitled to continue the school in the same premises.**
- (IV) The 3rd respondent is entitled to continue the school in the subject premises and the**

petitioner society cannot unilaterally dispossess the petitioner.

Basing on the aforesaid submissions, the learned counsel appearing on behalf of the 3rd and 4th respondent contends that the writ petition No.25447 of 2023 needs to be dismissed and the Writ Petition No.27465 of 2021 needs to be allowed.

DISCUSSION AND CONCLUSION:

11. G.O.Ms.No.1, Education (P.S.2) 01.01.1994 issued under the Telangana Educational Institutions (Establishment, Recognition, Administration and Control of School under Private Managements), Rules 1993. Rule 6 (f) and Rule 9 clause (6) reads as under:

Rule 6 – Application for permission for Establishment of New Schools or upgradation of existing schools, clause 2:

Every application shall be accompanied by the following documents.

Clause 2(f) reads as under:

“(f) - Evidence of Ownership of the land and building or lease of land or building as the case may be.”

Rule - 9 – Recognition:

Clause (6) reads as under:

“The renewal of recognition shall be guided by the same principles as are applicable to grant of original recognition.”

12. A bare perusal of the aforesaid rules clearly indicates that the official respondents herein are duty bound to follow the same principles as are applicable to grant of original recognition for renewal of recognition, and application for permission for Establishment of new schools or upgradation of existing schools should necessarily enclose along with the said application evidence of ownership of land and building or lease of land or building as the case may be, which admittedly had not been done in the present case, even as borne on record since the impugned proceedings in Writ Petition No.25447 of 2023 i.e., the proceedings of the 2nd respondent in L.Dis.No.3182/B2/2022 dated 19.06.2023 clearly indicates at clause 27 and 30 as under:

27. The correspondent is instructed to renew lease deed time to time when it gets expired.

30. This recognition is accorded. Subject to final outcome of Judgment/orders of W.P.No.27465 of 2021.

13. It is the specific case of the petitioner in W.P.25447 of 2023 that the petitioner thereunder i.e., The HMT Cooperative House Building Society, RR District did not execute lease deed after expiry of lease period on 26.11.2019 and therefore, the 3rd respondent thereunder i.e., Sathavahana High School, HMT Sathavahana Nagar, Kukatpally, Malkajgiri District, had no right to claim for renewal.

14. A bare perusal of the contents of the undertaking filed by the 3rd respondent herein as part of the original record on the file of this Court in W.P.No.27465 of 2021 dated 29.12.2022 referred to and extracted above, clearly indicates an undertaking on oath on behalf of Sathavahana Public School, HMT Sathavahana Nagar, Kukatpally, Hyderabad, to suspend the admissions after completion of two academic years i.e., 2022-2023 and 2023-2024.

15. The Apex Court in the Judgment dated 07.10.2021 reported in 2022 (2) SCC 25 in “Union of India and others v. N.Murugesan and others” at paras 26, 27, 27.1, 27.2, 27.3 observed as under:

Approbate and Reprobate:

“26. These phrases are borrowed from the Scots law. **They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law.**

Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. **This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part.** An element of fair play is inbuilt in this principle. It is also a species of estoppels dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of

knowledge while confirming an offer through his acceptance unconditionally.

27. We would like to quote the following judgments for better appreciation and understanding of the said principle:

27.1. *Nagubai Ammal v. B. Shama Rao AIR 1956 SC 593 (para 23):*

"23. But it is argued by Sri Krishnaswami Ayyangar that as the proceedings in OS. No. 92 of 1938-39 are relied on as barring the plea that the decree and sale in OS. No. 100 of 1919-20 are not collusive, not on the ground of res judicata or estoppel but on the principle that a person cannot both approbate and reprobate, it is immaterial that the present appellants were not parties thereto, and the decision in *Verschures Creameries Ltd. v. Hull and Netherlands Steamship Company Ltd.*, and in particular, the observations of Scrutton, LJ, at page 611 were quoted in support of this position. There, the facts were that an agent delivered goods to the customer contrary to the instructions of the principal, who thereafter filed a suit against the purchaser for price of goods and obtained a decree.

Not having obtained satisfaction, the principal next filed a suit against the agent for damages on the ground of negligence and breach of duty. It was held that such an action was barred. The ground of the decision is that when on the same facts, a person has the right to claim one of two reliefs and with full knowledge he elects to claim one and obtains it, it is not open to him thereafter to go back on his election and claim the alternative relief. The principle was thus stated by Bankes, L.J.: (*Verschures Creameries Ltd. Case, KB p.611*)

".....Having elected to treat the delivery to him as an authorised delivery they cannot treat the same act as a misdelivery. To do so would be to approbate and reprobate the same act".

The observations of Scrutton, LJ on which the appellants rely are as follows: (*Verschures Creameries Ltd. Case, KB p.611-12*)

"...A plaintiff is not permitted to "approve and reprobate". The phrase is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election-- namely, that no party can accept and reject the same instrument: *Ker v. Wauchope: Douglas-Menzies v. Umphelby*. The doctrine of election is not however confined to instruments. **A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. That is to approve and reprobate the transaction"**.

It is clear from the above observations that the maxim that a person cannot "approve and reprobate" is only one application of the doctrine of election, and that its operation must be confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto. The law is thus stated in *Halsbury's Laws of England*, Vol. XIII, p. 464, para 512:

"On the principle that a person may not approve and reprobate, a species of estoppel has arisen which seems to be intermediate between estoppel by record and estoppel in pais, and may conveniently be referred to here. **Thus a party cannot, after taking advantage under an order (e.g. payment of costs), be heard to say that it is invalid and ask to set it aside, or to set up to the prejudice of persons who have relied upon it a case inconsistent with that upon which it was founded; nor will he be allowed to go behind an order made in ignorance of the true facts to the prejudice of third parties who have acted on it"**.

27.2. *State of Punjab v. Dhanjit Singh Sandhu, (2014) 15 SCC 144 (SCC pp. 153-54, paras 22-23 & 25-26)*

"22. The doctrine of "approbate and reprobate" is only a species of estoppel, it implies only to the conduct of parties. As in the case of estoppel it cannot operate against the provisions of a statute. (*Vide CIT v. V. MR. P. Firm Muar*).

23. It is settled proposition of law that once an order has been passed, it is complied with, accepted by the other party and derived the benefit out of it, he cannot challenge it on any ground. (*Vide Maharashtra SRTC v. Balwant Regular Motor Service*) In *R.N. Gosain v. Yashpal Dhir (1992) 4 SCC 683* this Court has observed as under: (*R.N. Gosain case, SCC pp.687-88, para 10*)

"10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage".

25. The Supreme Court in *Rajasthan State Industrial Development and Investment Corpn. v. Diamond and Gem Development Corpn. Ltd.*, made an observation that a party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience.

26. It is evident that the doctrine of election is based on the rule of estoppel, the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppel in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions,

or conduct, or silence when he has to speak, from asserting a right which he would have otherwise had."

27.3. *Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.*, (2013) 5 SCC 470 (SCC pp.480-81, paras 15-16):

"I. Approbate and reprobate

15. A party cannot be permitted to "blow hot-blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner so as to violate the principles of what is right and of good conscience. [Vide Nagubai Ammal v. B. Shama Rao CIT v. V. MR. P. Firm Muar, Ramesh Chandra Sankla v. Vikram Cement, Pradeep Oil Corpn. V. MCD, Cauvery Coffee Traders v. Hornor Resources (International) Co. Ltd. And V. Chandrasekaran v. Administrative Officer.]

16. Thus, it is evident that the doctrine of election is based on the rule of estoppels - the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppel in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had."

16. The Apex Court in the Judgment dated 03.07.2023 reported in 2023 (8) SCC 116 in "Workmen Through the Joint Secretary (Welfare), Food Corporation of India Executive Staff Union v. Employer in Relation to the

Management of the Food Corporation of India and another", in particular, at paras 16 and 17, read as under:

"16. In *Union of India v. N. Murugesan*, this Court pointed out that the phrases "approbate" and "reprobate" mean that no party can be allowed to accept and reject the same thing, as the principle behind the doctrine of election is in-built in the concept of approbate and reprobate, that is, a person cannot be allowed to have the benefit of an instrument while questioning the same. It was noted that an element of fair play is in-built in this principle and it is a species of estoppel dealing with the conduct of a party.

17. In the case on hand, the management of FCI filed a writ petition challenging the award passed by the Tribunal but having secured conditional interim relief therein, the management chose to implement the impugned award though it was under no compulsion to do so. As pointed out hereinbefore, the management did not stop short at just reinstating the workmen in service but went further and absorbed them in regular service. Such absorption in service was not at all required under the interim order dated 5-8-1999 and was, therefore, squarely attributable to the will and volition of the management of FCI itself. In effect, the management of FCI, be it for whatever reason, chose to acquiesce with and accept the award in its entirety, though it made such compliance subject to the result of the writ petition. Its somnolence, thereafter, in

taking timely measures for expeditious disposal of the writ petition compounded the matter further, leading to the passing of 18 long years, which conclusively weighed with the learned Judge and, in our considered opinion, rightly so. **A party to a proceeding cannot be permitted to challenge the same but thereafter abide by it out of its own free will; garner benefit from it; get the opposite party to effectively alter its position; and then press its challenge after the passage of a considerable length of time.**

17. A bare perusal of the terms of the lease deed dated 27.11.1989 entered into between the petitioner and 4th respondent in W.P.No.25447 of 2023 clearly indicates that the 4th respondent shall be given an option to renew the lease on mutual agreement for a similar period.

18. **But however, in the present case, admittedly as borne on record the petitioner society had issued a letter dated 31.07.2018 to the 3rd and 4th respondent bringing it to the notice of the 3rd and 4th respondent in W.P.No.25447 of 2023 that the lease shall expire on 26.11.2019 and the land should revert back and be handed over back to the petitioner society on or before that date and it is only thereafter that the 3rd respondent**

and the 4th respondent submitted a letter dated 21.08.2018 requesting for extension of lease and the petitioner society having considered the said request of the 3rd and 4th respondent had issued letter dated 03.11.2018 intimating to the 4th and 3rd respondent that the petitioner society requires the subject land for its own use and for the benefit of the members of the petitioner society and therefore would not be able to extend the lease or renew the lease in favour of the 3rd and 4th respondent, the petitioner society even issued letter dated 25.03.2019 to 4th and 3rd respondent to vacate the subject premises by 29.11.2019 and handover the physical possession of the subject premises to the petitioner society and in view of the expiry of the lease period on 26.11.2019, the petitioner society issued eviction notice on 21.10.2019 to the 3rd respondent to vacate the subject premises.

19. On perusal of record it is evident that as borne on record there is no renewal of lease in favour of the 4th respondent after expiry of the lease period on 26.11.2019 and there is a clear undertaking on record dated

29.12.2022 filed by the 3rd respondent herein on the file of this Court in W.P.No.27465 of 2021 very clearly undertaking that the Sathavahana Public School, HMT Sathavahana Nagar, Kukatpally, Hyderabad, shall suspend admissions after completion of two academic years i.e., 2022-2023 and 2023-2024.

20. The counter affidavit filed by the 2nd respondent i.e., Regional Joint Director of School Education, Hyderabad, Saifabad, Hyderabad, in W.P.No.25447 of 2023, paras 10 and 11 read as under:

10. It is submitted that the Respondents have implemented the orders of the Hon'ble Court issued on 02.11.2021 and 12.07.2023 in IA No 1 of 2022 in WP No. 27465 of 2021 by according Provisional recognition to the School for two academic years i.e., 2022-23 and 2023-24 subject to final outcome of W.P.No.27465/21 and **the Correspondent, Sathavahana High School, HMT, Sathavahana Nagar, Kukatpally in her letter dated: 31.12.2022 has submitted undertaking affidavit she shall not take admissions for the year 2024-25 and shall suspend admissions after completion of 2 Academic years i.e. 2022-23 and 2023-24.**

11. It is submitted that, Counter Affidavit has been filed in W.P.No.27465/2021 in the Hon'ble High Court that, the

HMT Employees Cooperative House Building Society who are the owners of the building where Sathavahana High School is running have submitted representation dated: 24-10-2019 to the Dist. Educational Officer, Medchal-Malkajgiri District and representation dated 12-12- 2022 to the Regional Joint Director of School Education, Hyderabad that the building was given for a period of 30 years i.e. from 27-11- 1989 to 26-11-2019 and before expiry of the said lease period, their society has cautioned them to vacate the premises after completion of School academic year 2019-20. They have also submitted that their society has no intention to extend the lease period and requested not to grant any Recognition to M/s Satahvahana Educational Academy for running the school in their society land premises from the Academic year 2022-23. **It is submitted that as per Rule 6 (2) (f), the Management have to submit evidence of ownership of the land and building or lease of land or building as the case may be and the Hon'ble High Court has been requested to vacate the interim orders in W.P.No.27465/21** and pass such other order or orders as deem fit and proper in the interest of justice. Final orders of the Hon'ble High Court are awaited."

21. **A bare perusal of Rule 6(2)(f) of G.O.Ms.No.1, Education (P.S.2) dated 01.01.1994 read with clause 27 and clause 30 of the impugned proceedings of the 2nd respondent in L.Dis.No.3182/B2/2022 dated 19.06.2023**

and the averments made in the counter affidavit filed by the 2nd respondent in W.P.No.25447 of 2023 in particular paras 10 and 11 (referred to and extracted above), clearly indicates that it is mandatory for the Management to submit evidence of ownership of the land and building or lease of land or building and in the present case, it is very clear that the said condition precedent for grant of any approval to the 3rd respondent had been converted by the 2nd respondent into a condition subsequent which is totally contrary to the terms of the Governmental Orders i.e., G.O.Ms.No.1, Education (P.S.2) dated 01.01.1994 and the same is totally an unwarranted Act done by the 2nd respondent.

22. This Court opines that the Judgment of the A.P. High Court dated 31.01.2022 passed in W.P.No.15874 of 2021 relied upon by the learned counsel for the petitioner in W.P.No.27465 of 2021 has no application to the facts of the present case in view of the undertaking dated 29.12.2022 given by the petitioner in W.P.No.27465 of 2021 i.e., Sathavahana Co-Educational Academy, Kukatpally, Hyderabad, on the file of this Court and which

is part of the record, that the petitioner Academy shall suspend admissions after completion of 2 academic years 2022-2023 and 2023-2024 and shall not take any admissions for the year 2024-2025.

23. Taking into consideration :

- (A) the law laid down by the Apex Court in the Judgment dated 07.10.2021 reported in 2022 (2) SCC 25 in “Union of India and others v. N.Murugesan and others” and the law laid down in the Judgment dated 03.07.2023 of the Apex Court reported in 2023 (8) SCC 116 in “Workmen Through the Joint Secretary (Welfare), Food Corporation of India Executive Staff Union v. Employer in Relation to the Management of the Food Corporation of India and another” (referred to and extracted above), on the principle that one cannot approbate and reprobate.**
- (B) duly considering the contents of the undertaking filed by the petitioner in W.P.No.27465 of 2021 dated 29.12.2022 (referred to and extracted above),**
- (C) further duly considering the averments made in the counter affidavit filed by the official respondent No.2 at paras 10 and 11 in W.P.No.25447 of 2023 (referred to and extracted above),**

(D) Taking note of Clause 27 and 30 of the impugned proceedings L.Dis.No.3182/B2/2022 dated 19.06.2023 of the 2nd respondent in W.P.No.25447 of 2023,

The Writ Petition No.27465 of 2021 is dismissed and the Writ Petition No.25447 of 2023 is allowed. The interim order dated 12.07.2023 passed in I.A.No.1 of 2022 in W.P.No.27465 of 2021 stands vacated. However there shall be no order as to costs.

Miscellaneous petitions, if any pending, in this writ petition shall stands closed.

SUREPALLI NANDA, J

Date: 15.04.2024

Note: L.R.copy to be marked.
B/o. *Yvkr*