

**ORISSA HIGH COURT: CUTTACK**

**W. P.(C) NOS. 4303, 4166, 4280, 4281, 4282, 4283, 4284, 4285, 4286, 4287, 4288, 4289, 4290, 4291, 4292, 4293, 4294, 4295, 4296, 4297, 4298, 4299, 4300, 4301, 4302, 4304, 4375, 4457 and 4458 OF 2009.**

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

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Dolagobinda Panda	(WPC 4303/09)
Narayan Sanskrit Vidyalaya	(WPC 4166/09)
Arjun Kumar Kabat	(WPC 4280/09)
Balakrushna Panda	(WPC 4281/09)
Radhashyam Ratha	(WPC 4282/09)
Sashikanta Behera	(WPC 4283/09)
Manmath Kumar Panda	(WPC 4284/09)
Arjun Pradhan	(WPC 4285/09)
Magu Charan Jena	(WPC 4286/09)
Jagadish Ch. Mohanta	(WPC 4287/09)
Nityananda Dey	(WPC 4288/09)
Hara Prasad Mishra	(WPC 4289/09)
Bibhuti Bhusan Satpathy	(WPC 4290/09)
Ashok Kumar Sahoo	(WPC 4291/09)
Kalpataru Rout	(WPC 4292/09)
Manoj Kumar Parida	(WPC 4293/09)
Suresh Chandra Sahu	(WPC 4294/09)
Birendra Kumar Sahoo	(WPC 4295/09)
Sarada Gopal Pattnaik	(WPC 4296/09)
Sanjay Kumar Panda	(WPC 4297/09)
Biswaranjan Satapathy	(WPC 4298/09)
Raj Kumar Ghosh	(WPC 4299/09)
Usharani Dwibedi	(WPC 4300/09)
Bansidhar Das	(WPC 4301/09)
Mrutunjaya Behera	(WPC 4302/09)
Bhimasen Bhuyan	(WPC 4304/09)
Trilochan Panda	(WPC 4375/09)
Guru Prasad Mishra	(WPC 4457/09)
Chittaranjan Rath	(WPC 4458/09)

..... Petitioners

**-Versus-**

State of Orissa and others (In all) ..... Opp. Parties

For Petitioners : M/s. J.K.Rath, D.N.Rath,  
S.N.Rath & P.K. Rout,

And

M/s. Sharat Kumar Das,  
S.Swain, N.N.Mohapatra &  
M. Jesthy,

For Opp. Parties : Addl. Standing Counsel,  
(For School & Mass Education Deptt.)

M/s. B. Dash & P.K.Mohanty  
(For Board of Secondary Education)

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Decided on 18.12. 2009.  
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**P R E S E N T :****THE HONOURABLE SHRI JUSTICE M. M. DAS**  
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***M.M. Das, J.***

Since common question of facts and law arise in the aforesaid writ petitions, they were heard together and are disposed of by this common judgment.

2. The petitioners in all the writ petitions represent various Private Sanskrit Vidyalayas in the State. It is the case of the petitioners – institutions that though the students of the petitioners-institutions were permitted to appear in Prathma and Madhyama examinations conducted by the Jagannath Sanskrit Viswavidyalaya, Puri till the year 2000 and thereafter by Board of Secondary Education, Orissa, (hereinafter referred to as ‘the

Board') which has been empowered by the State Government to conduct the said examination and the Board also permitted the students of the petitioners – institutions to appear in the Prathma and Madhyama examinations conducted by it from 2001 to 2008 without any interruption, the students of the petitioners – institutions were not permitted to fill up their forms and to appear in the ensuing examination which was scheduled to be held on and from 27.3.2009. This fact was brought to the notice of the Secretary, School and Mass Education Department, Government of Orissa and the Director of Secondary Education, Orissa. Considering the circumstances of the case, the said authority directed the Board to allow the students of the petitioners – institutions to appear in the ensuing examination. In spite of such direction, the Board did not respond to the same for which the petitioners – institutions have approached this Court. The petitioners – institutions were established more than a decade back as per the provisions of the Orissa Education Act, 1969. Applications for permission were made by the petitioners – institutions for opening of Madhyama Course as they were already permitted to impart Prathma Course which was also affiliated to the Jagannath Sanskrit Viswavidyalaya. Permission was accorded to impart Madhyama Course to the petitioners – institutions and temporary recognition was granted from time to

time till 2008. The students of the petitioners – institutions were allowed to appear as quasi regular students and for the year 2007 to 2008 as correspondence students in accordance with the Regulation of the Board. According to the petitioners, this was probably because, the applications for grant of recognition submitted by the petitioners – institutions were pending with the competent authority. For the examination of 2009 in Prathma and Madhyama, students on completion of their courses filled up their forms and the head of the institutions submitted such forms before the Board for acceptance of the same along with the fees and to permit the students to appear in the said examination. However, such forms were not accepted by the Board on the plea that unless a specific direction is given by the Government in this regard, the Board cannot take a decision due to the Press Note issued by the State Government in August, 2008. On the representations made on behalf of the petitioners – institutions, the State Government issued a direction to the Director, Secondary Education, Orissa for consideration of their cases for permitting the students of High Schools and Sanskrit Tolls whose cases were considered by the High Power Committee on 21.2.2009 and the High Power Committee was directed to take a decision in the matter. The said High Power Committee took a decision for permitting the students of the petitioners –

institutions to appear in the ensuing examination, 2009. The said decision was taken pursuant to the interim orders passed in these writ petitions. The Inspector of Schools was/were accordingly intimated along with the list of institutions, students of which are to appear in Prathma and Madhyama or both the examination, 2009 with copy of the said letter endorsed to the Secretary, Board of Secondary Education, Orissa. The Inspector of Schools also wrote to the Board to allow the students of the petitioners – institutions to appear in the ensuing examination, 2009.

3. Mr. J.K. Rath, learned senior counsel appearing for the petitioners submitted that the Management Rules, 1991 clearly stipulates that once the institution is permitted to be established by the Educational Authorities, such institution is to admit students, the teaching and non-teaching staff are to be appointed, the institutions should have the necessary infrastructures for its existence and thereafter, such institutions are to apply for grant of recognition. According to Mr. Rath, undisputedly, the students were admitted in the permitted institutions, they completed their courses and the institutions applied for grant of recognition. The competent authority has granted recognition in favour of the institutions, though provisionally, and allowed such recognitions from year to year

and, therefore, such institutions are to be treated as recognized institutions by the State Government. Hence, the requirement prescribed for allowing the students to appear as regular students having been fulfilled, there cannot be any embargo on the part of the authorities to allow students to appear as regular candidates. Mr. Rath submitted a chart showing the date on which, the institutions have been permitted by the Government and the institutions, which have been recognized by the Government in respect of 30 institutions, which stand on a different footing than the other institutions, who are neither permitted nor recognized by the State Government. According to Mr. Rath, the students of the petitioners – institutions, which come under the first category therefore, cannot be denied the benefit of appearing in the examination conducted by the Board as regular candidates.

4. Mr. B. Dash, learned counsel for the Board, however, submitted that since the decision of the State Government was communicated to the Board by the Government at a belated stage when the Board has already taken steps for conducting the examination, it was not practicable on the part of the Board to allow the students of the petitioners – institutions to appear in the said examination which was scheduled to commence from 27.3.2009.

5. Mr. Rath, however, submitted that such a letter of the Government was sent by FAX on 13.3.2009 and there was sufficient time available to the Board to accept the forms of the students of the petitioners – institutions and allow them to appear in the said examination. The order of the Government communicated to the Board having been passed by exercise of power under section 33 read with 34 of the Secondary Education Act, 1953, it was mandatory on the Board to carry out the same. Under the said Act, the State Government is the authority to see that the provisions of the Act are to be complied with.

6. Mr. B. Dash drawing the attention of the Court to the Regulation of the Board, which was framed in the year 2003 for Prathama and Madhyama known as Regulation of Prathama and Madhyama Examination, 2003 onwards, submitted that as per the said Regulation, the Board shall conduct Prathama and Madhyama Examination once in a year. As per Regulation - 6, four types of candidates are eligible to appear in the Madhyama Examination, such as, (a) Regular, (b) Ex-regular, (c) quasi regular, and (d) Private candidates. Under Regulation 12(a), there is another category, i.e., Compartmental candidates. Under Regulation - 6, 6(a) states that a regular candidate is he, who has satisfactorily prosecuted a regular course of study in Ist year, 2<sup>nd</sup> year and 3<sup>rd</sup> year Madhyama Classes (Class VIII, IX and X) in one

or more Vidyalaya/Mahavidyalaya recognized by the Biswavidyalaya or by the Board and who has been duly sent up for the examination by the Head of the institution last attended. Besides the above, the Board conducts certain examinations, if directed by the State Government invoking its power under section 34 of the Orissa Secondary Education Act, 1953. Mr. Dash further submitted that the students of the petitioners – institutions are not coming under any of the categories under the above Regulations and the State Government having not passed any order directing the Board under section 34 of the aforesaid Act to conduct the examination in respect of the students of the petitioners – institutions for the year 2009, the Board disallowed such students from appearing in the said examination. With regard to the order of the State Government issued in its letter dated 13.3.2009, Mr. Dash submitted that the said letter was received by the Board on 14.3.2009 and after receipt of the same, the President of the Board directed to place the matter before the Examination Committee. The Examination Committee on 15.4.2009 after discussing the matter resolved that the Board is not in a position to implement the order of the Government and communicated the said resolution to the Government further stating in its letter that though the Government issued the Press Note, which has been annexed as Annexure-C/4 to the counter



affidavit filed by the Board, none of the institutions responded to the same or admitted their students in the nearby recognized Schools or Tolls to enable their students to appear in the 2009 examination. .

7. It is found from Annexures-4 and 5 to the writ petition, being W.P. (C) No. 4303 of 2009 that the Government decided to permit the students of the petitioners – institutions to appear in the 2009 Examination with certain terms and conditions pursuant to the orders passed by this Court. From Annexures- 3/A and 3/B to the affidavit filed by the petitioner on 24.7.2009, it appears that the Government thereafter issued recognition letters to 30 institutions. The Board after issuance of such recognition letters cannot have any objection for allowing the students of the petitioners – institutions to appear in Prathama and Madhyama Examinations, 2009 which it should have done pursuant to the interim orders passed by this Court. Such candidates are entitled to appear in the examination for the year 2009 as regular candidates.

8. However, since the said examination has already been over, the Board is directed to allow the students of the petitioners – institutions to appear in the examination to be conducted in the year 2010 and shall accept the forms along with the examination fees which shall be submitted by the students of

the petitioners – institutions. This examination of such students shall be construed to be an examination of the year 2009 and in the certificates to be granted to the successful candidates, it should be mentioned that the examination is of the year 2009.

9. The above direction is issued, since in all probabilities, the examination for the year 2010 will be conducted by the end of March, 2010 and it is not equitable to issue a direction to conduct a special examination for the students of the said 30 institutions.

10. With the aforesaid directions, the writ petitions are disposed of.

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***M.M. Das, J.***

*Orissa High Court, Cuttack.  
December 18th , 2009/Biswal.*





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