HIGH COURT OF ORISSA: CUTTACK

WRIT APPEAL NOS. 148,149,215,222,223 & 226 OF 2010

From an order dated 25.03.2010 passed by the learned Single Judge in W.P. (C) No. 5640 of 2010.

W.A. No.148 of 2010

State of Orissa and another ..... Appellants

-Versus-

All Orissa Private Secondary Training Schools Management Association and another ..... Respondents

For Appellants : Mr. A.K.Mohanty, Advocate Genral & Senior Standing Counsel, School and Mass Education Department.

For Intervenor : M/s Umesh Patnaik & D.Ray

For Respondent No.1 : M/s D.N. Mohanty, P. Das, S. Das & J.N. Choudhury

For Respondent No.2 : M/s Pradipta Mohanty,D.N. Mohapatra, P.K.Nayak, J.Mohanty and S.N.Dash.

W.A. No.149 of 2010

State of Orissa and another ..... Appellants

-Versus-

Managing Committee, Chandimata Secondary Training School, Gopinathpur and another ..... Respondents

For Appellants : Mr. A.K.Mohanty, Advocate Genral & Senior Standing Counsel, School and Mass Education Department.

For Respondent No.1 : M/s G.K. Nanda, R.R.Das

For Respondent No.2 : M/s Pradipta Mohanty,D.N. Mohapatra, P.K.Nayak, J.Mohanty and S.N.Dash.

W.A. No.215 of 2010

State of Orissa and another ..... Appellant

-Versus-

Binapani Secondary Training School,
Orasaka, Bhagabatpur and others ..... Respondents

For Appellants : Mr. A.K.Mohanty, Advocate Genral & Senior Standing Counsel, School and Mass Education Department.

For Respondents No.1 to 11: None

For Respondent No.12 : M/s Pradipta Mohanty,D.N. Mohapatra, P.K.Nayak, J.Mohanty and S.N.Dash.

W.A. No.222 of 2010

State of Orissa and another ..... Appellants

-Versus-

Brahmani Secondary Training School,
Lalei, Sundargarh
and another ..... Respondents

For Appellants : Mr. A.K.Mohanty, Advocate Genral & Senior Standing Counsel, School and Mass Education Department.

For Respondent No.1 : None

For Respondent No.2 : M/s Pradipta Mohanty,D.N. Mohapatra, P.K.Nayak, J.Mohanty and S.N.Dash.

W.A. No.223 of 2010

State of Orissa and another ..... Appellants

-Versus-

Jagannath Secondary Training School,
Badakharmanga, Cuttack & others. ..... Respondents

For Appellants : Mr. A.K.Mohanty, Advocate Genral & Senior Standing Counsel, School and Mass Education Department.

For Respondents No.1 to 12: None.

For Respondent No.13 : M/s Pradipta Mohanty,D.N. Mohapatra, P.K.Nayak, J.Mohanty and S.N.Dash.

W.A. No.226 of 2010

State of Orissa and another ..... Appellants

-Versus-

Jagannath Secondary Training School, Badakharmanga, Cuttack & others. ..... Respondents

For Appellants : Mr. A.K.Mohanty, Advocate Genral & Senior Standing Counsel, School and Mass Education Department.

For Respondents No.1 to 14: None.

For Respondent No.15 : M/s Pradipta Mohanty,D.N. Mohapatra, P.K.Nayak, J.Mohanty and S.N.Dash.

P R E S E N T:

THE HON'BLE CHIEF JUSTICE MR. V.GOPALA GOWDA
&
THE HON'BLE MR. JUSTICE INDRAJIT MAHANTY.

Date of hearing: 27.09.2010 : Date of Judgment: 29.10.2010

I.Mahanty, J. The present writ appeal has been filed by the State Government and other officers of the State Government, seeking to challenge the judgment dated 25.03.2010 passed by the learned Single Judge of this Court in W.P.(C) No.5640 of 2009 and connected writ petitions filed by the All Orissa Private Secondary Training Schools Management Association,

(petitioner-respondent No.1) and others. The Association in the aforesaid writ petition had sought for a direction to the opposite parties therein, to allow the students of the member-institutions of the petitioner-association, who have completed their Certified Teachers Course (in short, 'the C.T. Course') in the sessions 1989-90, 1990-91 and 1991-92 to appear in the C.T. Examination, 2009 to be conducted by the Board of Secondary Education, Orissa, Cuttack.

2. This writ petition came to be allowed by the learned Single Judge vide order dated 25.03.2010, inter alia, by passing the following directions:-

> " This Court, therefore, while setting aside the orders passed by the Principal Secretary declining to entertain the claim of the member – institutions, disposes of the writ petition directing the Principal Secretary, School and Mass Education Departments to reconsider the reports of the Collectors which were called for and keeping in view the fact that previously the Government, as a matter of policy, decided to grant an opportunity to the students of the unrecognized Private Secondary Training Schools to appear in the C.T. examination on one time basis on two occasions and once pursuant to the orders passed by this Court in OJC No.5629 of 1991, it is felt appropriate that the Principal Secretary on reconsidering the report of the Collector, which were given pursuant to the orders of this Court, by the Collectors, at the first instance or subsequently, where the Collectors have given favourable reports with regard to infrastructure and staff and the attendance of the students, shall allow such students till the session 1991-92 to appear the C.T. examination to be conducted by the Board of Secondary Education, Orissa. The Board of Secondary Education upon being communicated shall allow such students of the petitioner-institution of 1989-90, 1990-91 and 1991-92 to appear in the C.T. Examination, which should be conducted once for all latest by the end of 2010."

3. Mr. A.K.Mohanty, learned Advocate General appearing for the appellants raised the following grounds of challenge:-

i) The students of the institutions run by the Respondent Association are not eligible to appear in the C.T. Examination since the institutions in which they purportedly studied were opened without obtaining any opening permission from the concerned authority as required under the Orissa Education Act, 1969 nor were the institutions ever granted recognition by the State Government nor Board. Therefore, it is asserted that the students of the institutions which have not been permitted nor granted recognition cannot be permitted to appear in any examination conducted by the Board.

ii) Section 7-E of the Orissa Education (Amendment) Act, 1989 prohibits establishment and recognition of certain institutions, which reads thus:

> "**Section-7E**:Notwithstanding anything to the contrary contained in this Act, on and after the commencement of Orissa Education (Amendment) Act, 1989 the State Government shall not accord permission for establishment of any Private Secondary Training School or Private Training College or recognize any such school or college established, if any, prior to the said date."

iii) Section 7-F of Orissa Education (Amendment) Act, 1989 stipulates that "Government is not bound to accord permission for establishment of or reorganize certain training schools and colleges claiming to have been established, prior to 14.8.1989 when the Orissa Education(Amendment) Act, 1989 came into force.

> "**Section 7-F**: Notwithstanding anything contained in this Act or the rules made there under or in any Judgment,

> decree or order of any Court the State Government shall not be bound to accord permission for establishment of any Private Secondary Training School or Private Training College, or recognize any school or college established, if any, prior to the 14th day of August, 1989 and non-recognition of such school or college shall not be questioned in any Court of Law or otherwise be opened to challenge."

iv) The Chapter IX of Board of Secondary Education Regulation Act, 1955 stipulates that, no school, which is not recognized by the Board shall be permitted to present candidates for any examination conducted by the Board and in the present case, since it is an admitted fact that, the respondents school is not recognized by the Board of Secondary Education, accordingly these institutions are not competent to present any students in the C.T. Examination conducted by the Board of Secondary Education Orissa.

v) The judgment of the learned Single Judge impugned hereinabove is contrary to the ratio decided in the case of **Managing Committee, Swarnachuda Secondary Training School and 39 others, v. State of Orissa and others,** reported in 77 (1994) CLT 459.

4. Mr. J.Pattnaik, learned Senior Advocate appearing for some of the respondents in the aforesaid batch of cases, raised a preliminary objection to the maintainability of the present writ appeal. He further submitted that in an earlier W.P.(C) No. 10372 of 2008 orders were passed therein on 24.9.2008, which was modified on 12.12.2008, directing the State Government to verify the infrastructure facilities of the members of the petitioner-association and to ascertain as to whether the students had completed their course in those schools. It was further directed that, if on

enquiry, findings therein are in the affirmative, the Government may consider allowing such students to appear in future examination in the C.T. course and while considering these aspects, the Government should also take into account as to whether any prior approval or affiliation was necessary of any University or Board for imparting such course.

4.1 Thereafter in Misc. Case No. 6989 of 2009 the learned Single Judge vide order dated 3.8.2009 had directed the Board of Secondary Education Department, Orissa to accept the submission of forms along with the required examination fee and to permit the students to appear in the C.T. Examination, 2009 which was scheduled to be held on 8.9.2009, but their results were directed not to be declared without leave of this Court.

4.2 A writ appeal was filed by the State Government against the aforesaid direction i.e., Writ Appeal No. 146 of 2009 in which orders were passed limiting the holding of examinations only the "regular students of Government Secondary Training Schools" and in so far as students of Private Secondary Training Schools (Members of the Respondent No.1 Association were concerned), the learned Division Bench vide order dated 3.2.2009 quashed aforesaid directions and instead held that the rights of such students of unrecognized private institutions would be decided in course of the final decision in the writ application which were then pending before the learned Single Judge.

4.3 The learned Single Judge finally decided after hearing the parties and delivered its judgment on 25.3.2010 in W.P. (C) No. 5640 of 2009, which is the subject matter of challenge in the present writ appeal. In

view of the aforesaid facts, Mr. J.Pattnaik, learned Senior Advocate submitted that by dismissal of the Writ Appeal No. 146 of 2009, the judgment passed by the learned Single Judge in W.P. (C) No. 10372 of 2008 as confirmed and since the State Government had failed to implement the decision passed by the learned Single Judge, even though, the State claimed to have implemented the same and had carried out necessary enquiry, but had rejected the claim made by the members of the Respondent No.1 Association on different ground. It is submitted that the State Government was bound by the dismissal of its earlier writ appeal and therefore a subsequent writ appeal should not be entertained.

5. Mr. Routray, Mr. J.K.Rath, learned Senior Advocates and Mr. K.K.Swain, learned counsel for the respondents submitted that, the ratio of the **Swarnachuda's** case(supra) is that, the Secondary Training Schools having no infrastructure and ill-equipped institutions cannot be permitted to present their candidates in the C.T. Examination. It is asserted that in W.P. (C) No. 5604 of 2009 decided by the learned Single Judge and the dismissal of State's challenge in Writ Appeal No. 146 of 2009, affirmed the directions issued by the learned Single Judge to make enquiry regarding infrastructure of the schools and as to whether the students have prosecuted their studies in the schools or not, and further as to whether prior permission was necessary by the Board for presentation of such candidates to appear at the C.T. Examination. All the learned counsel asserted that since the reports of the inquiry at the behest of the State were

in the affirmative, there was no justification for rejecting the prayer of the respondents seeking permission to appear at the ensuring C.T. examination.

6. It was further submitted that since no prior permission was necessary for private candidates to appear at the C.T. Examination and therefore, it cannot be said that the direction of the learned Single Judge to permit the students of the respondent association to appear at the C.T. Examination as private candidates was contrary to the ratio laid in Swarnachuda's case. It is asserted therefore that, the direction of the learned Single Judge passed in W.P.(C) No. 10372 of 2008, which was upheld by the Division Bench in the writ appeal and the subsequent order passed in W.P.(C) No. 5640 of 2009 which is the subject matter of the present writ appeal, is in the nature of implementation of an earlier order passed in W.P.(C) No. 10372 of 2008 and therefore it cannot be said to be contrary to the ratio in Swarnachuda's case in any manner, as the learned Single Judge took into consideration Swarnachuda's case and after considering the implication of the said judgment directed for enquiry with regard to infrastructure, prosecution of study by the students and also as to whether any recognition by the Board, for such candidates to appear in the C.T. examination was at all necessary.

7. It is further submitted on behalf of the respondents that the Orissa Secondary Education Act, 1953 under which the Board's Regulation has been framed i.e., Regulation-6 of Chapter 10-D stipulates, the eligibility criteria only for private candidates of "recognized" Secondary Training Schools to appear at the C.T. Examination. It is asserted that the said

provision does not state anything about eligibility of the private candidates of "unrecognized" Secondary Training Schools. Reliance was also placed on Article 437 of the Orissa Education Code, which is quoted below for the purpose of asserting that candidates of "unrecognized" Secondary Training Schools can also be permitted to appear at the C.T. Examination.

> "**437. Schools under Private Management:-**
>
> School under private Management may recognize by the Director, Secondary Training Schools and may be permitted to send of students to the Teachers Certificate Examination."

8. In this respect the learned Advocate General submitted that though Writ Appeal No. 146 of 2009 had been dismissed on the ground of delay, the directions, issued in W.P.(C) No. 10372 of 2008 was limited to, directing the Secretary, Board of Secondary Education to undertake an enquiry. The Secretary, Education complied with such directions and on conclusion of such enquiry, rejected the prayer of the petitioners to be permitted to appear in the C.T. Examination, since their institutions were neither permitted nor recognized by the State nor the Board. The directions issued by the learned Single Judge, vide judgment dated 24.9.2008/12.12.2008 in W.P.(C) No.10372 of 2008, was not only limited to an obligation to conduct an enquiry, but was also to "take into account as to whether any prior approval or affiliation was necessary of any University or Board for imparting such course". In compliance of the aforesaid direction though enquiry as directed was duly conducted, the State authorities, rejected the respondents prayer since it was concluded the Respondent-

institutions were neither permitted nor recognized as required under the Orissa Education Act and Rules thereunder. Therefore, the Respondent Association filed W.P.(C) No. 5640 of 2009, which came to be allowed vide order dated 25.3.2010 and hence, the present writ appeal filed by the State was maintainable, irrespective of the fact that the State's earlier Writ Appeal No. 146 of 2009 had been dismissed.

9. Mr. A.K.Mohanty, learned Advocate General placed reliance on a press note dated 11.05.1990, issued by the State Government in the Education Department which had permitted the students of unrecognized C.T. training institutions which had taken admission in 1988-89 or prior thereto and whose students had completed two years of study to appear at the 1990 C.T. examination, as "private candidates" and other stipulations contained therein and it was also declared therein that, this opportunity was the "last chance" and that no further opportunity would be granted either to unrecognized private institutions or their students. Mr. Mohanty, further submitted that although a number of various writ applications had been filed against the aforesaid decision of the State Government, since the C.T. examination could not be held on the date as scheduled, this Court in various writ petitions held the cut-off date of 31.05.1990 as contained in the Press Note dated 11.05.1990, for making application to be unsustainable and extended the last date of application till 21.9.1991. While extending the period for application, the High Court, at the said time uphold the decision of the State Government dated 11.5.1990, that it would be the "LAST CHANCE" for private unrecognized institutions and students thereof to

apply for the C.T. Examinations. Accordingly, learned Advocate General for the State submitted that, the C.T. examination for the year 1990 was ultimately held on 26.11.1991 and neither the member institutions of the Respondent Association nor their students made necessary applications within the time stipulated.

9.1 Thereafter on 11.3.1992 a resolution was passed in the Orissa Legislative Assembly to the following effect:-

> "That the House unanimously resolves that no body will be allowed to appear at the C.T. examination excepting the students of Government C.T. schools. Government will also take appropriate steps to deal with such fake C.T. schools including their illegal acquisition of huge assets."

10. Thus, the decision of the State Government dated 11.05.1990 directing holding of the last examination in 1990 and the Resolution of the Orissa Legislative Assembly, noted hereinabove came to be challenged by a number of institutions, inter alia, on the ground that, the decision of the Government not to hold further examination was unwarranted, particularly when the record of the petitioners institutions were being verified to find out whether the institutions were genuine or not as well as the genuineness of the students and the denial to hold further examination had affected a large number of students. Their further grievance was that restricting further opportunity to appear in subsequent C.T. examination only to those students who had appeared and failed in 1991 C.T. examination was illegal.

10.1 This contention of the petitioners was out rightly rejected by this Court in the case of Managing Committee, Swarnachuda (supra), by coming to hold as follows:-

"On 11.5.1990 the State, as indicated above, decided to have Special C.T. Examination in the year 1990'once for all'. In January, 1991, that is 28.1.1991 to be precise, the State took a decision to allow only such students who had operated as private candidates and had failed. On 2.4.1991 a notification was issued extending the date of examination. On 1.5.1991 there was again postponement of the examination. In between the legality of the Government Order dated 28.1.1991 was assailed in this Court and it was held that those un-recognized schools which had fulfilled the conditions laid down in both the Government Orders were eligible to send their students. On 17.5.1991 the Director of Secondary Education wrote to the State Government that according to G.O. dated 11.5.1990, 67 un-recognized S.T. Schools had applied on or before 31.5.1990. This cut-off date was challenged in this Court. It was held that there was no justification for fixing up the date. The last date for filling up the forms was 16.9.1991 and 21.9.1991 was the last date for submission of forms with fine. The date of examination which was originally posted to 30.10.1991 was adjourned to 26.11.1991. There was, therefore, enough notice to the institutions about the Government decision of giving one chance to the students. The process started in the year 1990 and the examination commenced from 26.11.1991. Except in one case, i.e., Olavar S.T.School, petitioner in O.J.C. No. 7305 of 1992 in all other cases institutions moved this Court for the first time either on 26.9.1991 or subsequent there to. It is hard to believe that an institutions set up for imparting teaching and preparing students to take the examination would lie in deep slumber and not even take steps for filling up forms of the students and/or to take no effective steps in that regard. A feeble plea has been taken that applications were filed before the Director or the Inspector of Schools as the case may be. That is hardly of any consequence. The institutions were aware that there was only one chance which was being granted to the institutions to present their students. Effective steps were not taken. No explanation whatsoever has been offered for the inaction. That goes a long way to prove about the non-genuineness of the institutions and the students. It is unbelievable that the students whose careers are at stake would remain dormant and act as silent spectators. We, therefore, find no scope for interference in these writ applications."

10.2 Mr. A.K.Mohanty, learned Advocate General concluded by stating that in Swarnachuda's case, a Division Bench of this Court did not even permit entertaining applications beyond the last date fixed by the Court on 21.9.1991, therefore, no question of entertaining similar applications after a period of 17/18 years from the date of the said judgment should at all arise.

11. In the light of the contentions raised by the learned counsel for the respective parties as noted hereinabove, it becomes essential to note certain undisputed facts:

(i) The member institution of the Respondents Association are admittedly all institutions who have not been recognized by the State of Orissa in the Department of Education.

(ii) The Respondents Association claim their institutions were all established prior to 1989 i.e., prior to coming into force the Section 7-E and Section 7-F of the Orissa Education Act, 1969 but have never been accorded permission for establishment of the institution.

(iii) The learned Single Judge has directed the students who have joined various private unrecognized institutions in the year 1989-90, 1990-91, 1991-92, i.e., for a period beyond those covered by the Press Note dated 11.05.1990.

(iv) In W.P.C. No.1037 of 2008 judgment dated 24.9.2008 was modified on 12.12.2008 although directions had been issued by the learned Single Judge to conduct an enquiry, at the same time, the State Government had been also directed to take

into account "as to whether any prior approval or affiliation was necessary."

(v) State Government decision published in Press Note dated 11.5.1990 granting "last chance" to institutions/students of unrecognized private C.T. Schools was known to all private unrecognized institutions and their students.

(vi) The Orissa Legislative Assembly on 11.3.1992 had resolved that, nobody will be allowed to appear at future C.T. Examination excepting the students of Government C.T. Schools in future.

11.1 In the light of the aforesaid facts that emanate from the pleadings of the parties and which remain uncontroverted, the main issue for consideration that arises in the present case is, as to whether students of unrecognized private institutions who claim to have prosecuted their studies for C.T. Examination ought to be permitted to appear in the C.T. Examination of 2010 as directed in the impugned order.

12. Now it becomes necessary to deal with the contentions advanced by the learned counsel for the respondents:

(a) In so far as the objection of maintainability is concerned, on the ground that and earlier Writ Appeal No. 146 of 2009 filed by the State Government had been dismissed and therefore the present writ appeal was not maintainable, deserves to be rejected. It is clear from the pleadings of the parties that an earlier Writ Appeal No. 146 of 2009 has been filed seeking to challenge the judgment rendered by the learned Single Judge in W.P.(C) No. 10372 of 2008. In the aforesaid writ petition, the learned Single Judge had not only directed enquiry into the infrastructure and the

genuineness of the students, at the same time, the learned Single Judge had also directed the State Government, to take a decision on the issue as to whether the Member Institution of the Respondent Association required approval and/or recognition from the State as well as the Board. Therefore, as consequence of the aforesaid direction although enquiry was carried out the State Government took a fresh decision that, the Members Institution of the respondent association could not be permitted to present their candidates in future C.T. examination, since the said institutions were neither permitted to be established nor recognized by the State or Board. This gave rise to a fresh cause of action, for which reason the Respondent Association once again filed W.P. (C) No. 5640 of 2010. This petition came to be disposed of by judgment dated 25.3.2010 and is the subject matter of the present appeal and, therefore, clearly maintainable in law. Therefore, the objection raised on the issue of maintainability of the present writ appeal stands rejected.

(b) The further contention raised by the respondent that the enquiry carried out by the State Government, pursuant to the direction issued in W.P.(C) No. 10372 of 2008, clearly establishes the "bonafide of the Member institutions of the respondent association" as well as their students and therefore the State ought not to have rejected the prayer of the respondent association to permit the students to appear at the ensuing C.T. examination for the year 2010. This objection of the respondent also deserves to be rejected.

In the case of Swarnachuda (supra) similar plea on behalf of the petitioners therein had been negatived by the Hon'ble Division Bench, upholding the decision of the State Government dated 11.5.1990 (Press Note) that the said opportunity was the "last chance" for the students for un-recognized private C.T. colleges to appear in 1990 C.T. examination and it had been made clear therein that, no further opportunity would be granted and that the institutions should undertake not to admit any students in future. This decision of the State Government has been up-held in Swarnachuda's case and the Hon'ble Division Bench has observed that, no further opportunity could be afforded to such students who while being fully aware of the decision of the State Government purportedly claim to have continued their studies. Apart from that the Court came to conclude that the unrecognized private schools as well as their students were fully aware of the aforesaid decision and therefore, prayer of the petitioners based on the existence of infrastructure and genuineness of the students cannot be accepted as the basis for granting relief to the respondents.

(c) A further contention of the respondents is that, Article 437 of the Orissa Education Code athorises the students of the C.T. schools under the private management to appear as private candidates at the C.T. examination. Article 437 of the Orissa Education Code, specifically applies only to schools under private management which have been "recognized" by the Director, Secondary Training Schools. In the present case admittedly the member institutions of the respondent association have not been recognized either by the State Government or by the Director, Secondary Training

Schools. Therefore the question of permitting such students under the guise of Article 437 of the Orissa Education Code does not arise.

(d) The further contention of the respondent and in particular the "intervenor" (the students of the opposite party respondent member institution) for being shown sympathetic consideration since they had concluded their education years ago and are not being permitted to appear at the C.T. examination has also no merit and has to be rejected. It is well settled by a series of judgments of the Hon'ble Supreme Court, in the case of **State of Maharashtra v. Vikas Sahebrao Roundale and others,** (1992) 4 SCC 435, where the Supreme Court held that, the students of unrecognized and unauthorized educational institutions could not have been permitted by the High Court on a writ petition being filed to appear in the examination since it would lead to "Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education. Time and again, therefore, this Court had deprecated the practice of educational institution admitting the students without requisite recognition or affiliation. In all such cases the usual plea is the career of innocent children who have fallen in the hands of the mischievous designated school authorities. As the factual scenario delineated against goes to show the school has shown scant regards to the requirements for affiliation and as rightly highlighted by learned counsel for the CBSC, the infraction was of very serious nature. Though the ultimate victims are innocent students that cannot be a ground for granting relief to the appellant. Even after filing the undertakings the

School non-challantly continued the violations. Students have suffered because of the objectionable conduct of the school. It shall be open to them to seek such remedy against School as is available in law, about which aspect we express no opinion.

It was also further well settled by the Hon'ble Supreme Court in the case of **A.P.Christians Medical Education Socieity v.Government of Andhra Pradesh** (1986) 2 SCC 667, where it has been held that:

> "We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine any thing more destructive of the rule of law than a direction by the court to disobey the laws."

In view of the aforesaid decisions of the Hon'ble Supreme Court this Court cannot entertain this contention of the intervenor and therefore the same stands rejected.

13. On perusal of the impugned judgment passed by the learned Single Judge it would be clear therefrom that the learned Single Judge did take note of the judgment in Swarnachuda's case but failed to discuss the same and held the same to be inapplicable merely by observing as follows in

para-8:-

> "Much water has flown in between, from the date of the said judgment of this Court in the case of Managing Committee Swarnachuda Secondary Training School and 39 others (supra) and the position as on today. xx xx"

14. It is important to note herein that no other reason or ground is noted in the impugned judgment to try and distinguish the present case

with the fact situation that arose for consideration in Swarnachuda case (supra).

15. We are of the considered view that, the learned Single Judge has failed to take into consideration the "ratio decidendi" of the judgment rendered by the Division Bench of this Court in Swarnachuda's case (supra). We are afraid that the facts of a case by themselves do not by themselves become the "ratio decidendi" of the case. No doubt, the Hon'ble Division Bench in the aforesaid judgment did refer to in adequate infrastructure and deficient teaching taking place in various schools, but this observation by itself does not form the ratio decidendi of the case. In our considered view, the conclusion of the Court was that, all private unrecognized institutions and their students had adequate notice of the Government decision published on 11.5.1990 giving one "last chance" to the students/institutions and the process had began in the year 1990 and the examinations were ultimately held on 26.11.1991. Moving the Court thereafter was not permissible, since the Court held that, it was hard to believe that an institution set up for imparting teaching and preparing students to take the examination would lie in deep slumber and not even take steps for filling up forms of the students and/or to take no effective steps in that regard. The institutions were aware that there was only one chance which had been granted to the institutions to present their students and effective steps were not taken. No explanation whatsoever has been offered for the inaction. This goes a long way to prove about the non-genuineness of the institution and the students. It is unbelievable that the

students whose careers are at stake would remain dormant and act as silent spectators.

16. From the above it is clear that the "ratio decidendi" of the aforesaid case is that, since the institutions and the students had not availed the "last chance", offered to them by the State Government, within the period as stipulated, no further opportunity could be afforded to such students, since granting such an opportunity would amount to once again granting another "God-sent" opportunity for the members of the respondent association to manipulate records to show that they had trained a large number of students in the past years, which was deprecated by this Court in Swarnachuda (supra). This, in our considered view is the ratio decidendi of Swarnachuda (supra) a judgment delivered by a Division Bench of this Court, which was binding on the learned Single Judge.

17. It is well settled by decision rendered by a Bench of the Hon'ble Supreme Court consisting of 11 Judges presided by Hon'ble Mr. M.Hidayatullah, Chief Justice of India (as his Lordship then was) in the case of **H.H.Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur and others v. Union of India** , reported in AIR 1971 SC 530 in particular para-138 it has been observed that:-

> "xx xx. It is difficult to regard a word, a clause or a sentence occurring in a judgment of this Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in hat judgment."

The aforesaid decision has been referred to and cited in various later judgments including in the case of **Commissioner of Income Tax v.**

M/s. Sun Engineering Works (P) Ltd., AIR 1993 SC 43 in which, it is stated that the ratio decidendi is the principle underlying the decision and a word or sentence in a judgment cannot be held to be a law as declared.

18. We are further to note that, it is well settled principle of law that a judgment of the Division Bench of the High court is binding on a learned Single Judge. It has been settled by the Hon'ble Supreme Court in the case of **Food Corporation of India & another v. Yadav Engineer & contractor**, reported in AIR 1982 SC 1302, that "the Judicial Unity demands that a binding decision to which attention was drawn should neither be ignore nor overlooked." Further in the case of **Jai Kaur & others v. Sher Singh & others**, AIR 1960 SC 1118, particularly in para- 10, which reads thus:-

> " One would have thought that after the pronouncement by a Full Bench off the High Court, the controversy would have been set at rest for at least the Punjab Courts, Surprisingly, however, only a few years after the above pronouncement, the question was raised again before a Division Bench of the East Punjab High court in Mohinder Singh v. Kehr Singh. The learned Judges then choose to consider the matter afresh and in fact disregarded the pronouncement of the Full Bench, in a manner, which can only be said to be unceremonious."

19. In view of the law enunciated by the Hon'ble Supreme Court and the effect of a binding precedent, in the facts of the preset case, we are of the considered view that although the learned Single Judge has resulted the judgment of the Division Bench rendered in the case of Swarnachuda (supra), yet the "ratio decidendi" therein has been clearly ignored. The issues raised in the present appeal have already been settled by a Division Bench of this Court more than 17 years ago. The learned Single Judge chose to consider the matter afresh and in fact, clearly disregarded the pronouncement of Division Bench in the case of Swarnachuda (supra) in a manner which can only be said to be unceremonious.

20. Accordingly, we allow the writ appeals, consequently hold the judgment of the learned Single Judge is not legal and set aside the same and further direct dismissal of the writ petitions, but in the circumstances without costs.

.....
I.Mahanty, J.

V. Gopala Gowda,C.J. **I agree.**

.....
Chief Justice

ORISSA HIGH COURT, CUTTACK
29th October, 2010 /AKD