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**(1998) 12 OHC CK 0042**  
**In the Orissa High Court**  
**Case No : O.J.C. No. 12335 of 1998**

Ramesh Ch. Bhuyan

APPELLANT

Vs

The State and Others

RESPONDENT

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**Date of Decision :** 14-12-1998

**Acts Referred:**

Constitution of India, 1950 — Article 30

**Citation :** (1998) 12 OHC CK 0042

**Hon'ble Judges :** R.K. Patra, J;R.K. Dash, J

**Bench :** Division Bench

**Advocate :** B.K. Mohanty, G. Tripathy, A.K. Swain, A.P. Mishra, P.K. Behera and N.P. Rath, for the Appellant; Milan Kanungo, S. Das, S. Satpathy, D. Pradhan, L. Kanungo, Y.S. Babu for O. P. No. 3, P. Panda and S. Pattnaik for O. P. No. 2, for the Respondent

**Final Decision :** Allowed

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## Judgement

R.K. Patra, J.—The Petitioner has filed this writ petition for a direction to the Principal, New Stewart School, Cuttack (opposite party No. 3) to allow admission of his son and daughter in Standard IX of his school during the current academic session.

2. The Petitioner's case is that after coming to know that some seats are lying vacant in Standard-IX of New Stewart School, Cuttack, he applied, to the Principal of that school for getting his son Sidharth Bhuyan and daughter= Prachi Pratikshya Bhuyan admitted in Standard-IX of the said school on getting them transferred from Woodlands School, Cuttack, where they were reading and were promoted to Standard-IX and Standard-X respectively. An entrance test was accordingly conducted by the Principal in which they came out successful. Thereafter the Principal (opposite party No. 3) required the Petitioner to submit the pupils' progress reports in support of the proof that they have been promoted to Standard-IX in Woodlands School and the Transfer Certificates duly countersigned by the competent authority, Petitioner thereafter requested the

Principal in writing on 14-5-1990 (Annexure-5) to let him know as to when the documents etc. were to be submitted and how much fees were to be deposited. The Principal informed the Petitioner that clearance in the matter of admission would be obtained from the Council for the Indian School Certificate Examination, New Delhi (herein after referred to as "the Council") - opposite party No. 2. The Council in its letter dated 21-5-1998 (Annexure-3) addressed to the Principal granted permission to the concerned students for admission to Class-IX of New Stewart School for the academic session 1998-99 subject to production of Class-VIII Annual Promotion Report Cards and Transfer Certificates duly countersigned by the competent authority. The Principal on 2-6-1998 transmitted the xerox copy of the aforesaid letter of the Council to the Petitioner requiring him to submit the Annual Promotion Report Cards of the concerned students and the Transfer Certificates countersigned by the competent authority. So far as the competent authority to countersign the Transfer Certificate was concerned, the Deputy Director (Hindi, Sanskrit and Special Education) in his letter dated 28-7-1998 (Annexure-4) on the representation made by the Petitioner instructed to the Inspector of Schools, Cuttack Circle, Cuttack that under Rule-249 of the Education Manual, he is the competent authority to countersign the Transfer Certificates issued by the English Medium Schools. The Petitioner got the Transfer Certificates duly countersigned by the concerned Inspector of Schools and -after getting the Annual Progress Reports from Woodlands school submitted the same to the Principal on 30-7-1998. Although the Petitioner duly complied with all the requirements indicated in the letter dated 21-5-1998 of the Council, the Principal did not intimate any decision in the matter despite repeated requests made to him by the Petitioner. The Council all on a sudden in its letter dated 11-8-1998 (Annexure-C/7) informed the Principal that since Woodland school, Cuttack, from which the Petitioner's son (Sidharth Bhuyan) and daughter (Prachi Pratikshya Bhuyan) passed Class-VIII is an unregistered institution, no permission can be accorded to be admitted to Class-IX of New Stewart School, which is a school affiliated to the Council.

3. The Principal, New Stewart School has filed counter affidavit. His case is that the Petitioner applied for admission of his son (Sidharth) and daughter (Prachi Pratikshya) in Standard-IX of New Stewart School, Cuttack. On receipt of the application, the petitioner -was informed that since Woodlands School is not a recognised institution, there might be difficulty in obtaining necessary permission from the Council and until necessary permission is given by the Council, it would not be possible to admit them in New Stewart School. The averment of the Petitioner that an entrance test was conducted for his son and daughter in which they claimed to have come out successful is emphatically denied in the counter affidavit. However, on receipt of the Petitioner's application, the Council was moved in letter dated 15-5-1998 (Annexure-C/2) requesting to accord permission for admission of these students in Standard-IX of New Stewart School. The Council in its turn instructed the Principal in letter dated 21-5-1998 (Annexure-3) to submit to it the certified photo copies of Standard-VIII Annual

Promotion Report Cards of the concerned students and Transfer Certificates duly countersigned by the competent authority to enable it to take a decision in the matter. On receipt of the aforesaid letter, he (the Principal) informed the Petitioner about the contents of the Council's letter and the Petitioner was requested to submit the required documents as per the letter dated 30-9-1998 (Annexure-C/4). The Petitioner consequently submitted the Report Cards and the countersigned Transfer Certificates on 30-7-1998 and on the same day those documents were fixed to the Council along with the enclosing letter dated 30-7-1998 at Annexure-C/5. A telegram was also sent on 12-8-1998 (Annexure-C/6) requesting the Council for immediate action.

The Council, however, refused to accord permission for admission in letter dated 11-8-1998 (Annexure-C/7) which was received by the Principal on 20-8-1998. The Petitioner was immediately informed about the decision of the Council over telephone and was requested to take back the Transfer Certificates etc. of his children. As he did, not do so, letter dated 20-8-1998 (Annexure-C/8) was sent.

Although the Council has not filed any counter affidavit, Shri Panda, learned Counsel appearing for it has submitted an exhaustive written note of submission and prayed to treat it as a counter affidavit. We have accepted the said prayer.

4. There is no dispute that the Woodlands School in which the Petitioner's son and daughter were reading and were promoted to Standard-IX and X respectively is neither recognised by nor affiliated to the Council. To our specific query whether the Council has any Regulation or Rule prohibiting admission of students from an unrecognised or unaffiliated school to a recognised or affiliated institution on transfer. Shri Panda appearing for the Council submitted that although there is no such prohibition under the Regulations framed by the Council, no such admission is permissible in a recognised and affiliated institution without taking permission/clearance from the Council. According to him, granting of permission/clearance to students of an unrecognised or unaffiliated school to take admission in an affiliated institution rests completely on the discretion at the Council. He submitted that Council will be justified in refusing permission if the relevant Regulations are not complied with or the conditions mentioned therein are not fulfilled. With regard to Petitioner's case, he contended that permission was refused as communicated in letter dated 11-8-1998 (Annexure-C/7) because of non-compliance of Paragraph-B of Chapter-I of the Regulations of the Council and Para-10 of Chapter I of the Guidelines for Affiliation framed by the Council. Learned Counsel strenuously urged that this Court in exercise of the writ jurisdiction should not interfere in the matter as it would encourage unrecognised and unaffiliated institution which are otherwise "ill-housed, ill-stocked and ill-equipped" to establish schools at the cost of the standard of education.

5. It is an undisputed fact that on receipt of the applications seeking admission from the Petitioner, the Principal informed him that he would write to the Council for grant of necessary permission and unless and until such permission is

obtained, the students cannot be admitted to the School. The Principal accordingly on 15-5-1998 moved the Council for grant of permission to admit the son and daughter of the Petitioner as well as to one Sayed Najib Ahmed in Standard-IX of his school. In the letter of request, the Principal also indicated that seats are available for admission in Class-IX because of the fact that against the capacity of 50 only 38 pupils were on the roll. The Council in response to the aforesaid letter replied to the Principal in letter dated 21-5-1998 (Annexure-C/3), the relevant part of which reads as follows:

Dear Sir/Madam, This has reference to your letter No. 80/98 dated 15-5-98 requesting us for clearance of admission (s) of three pupil(s) from School (s) not affiliated to the council, to Class-IX of your School;

xx xx xx xx

2. To unable us to take decision regarding clearance of admission(s) of the student(s) \_whose name(s) is/are shown below to Class-IX of your School, kindly send us certified photo copies of the documents tick marked (/);

1. PRACHI PRATIKSHYA BHUYAN 2. SIDHARTH BHUYAN 3. SAYED NAJIB AHMED  
(i) Class-VIII Annual Promotion Report Card(s) indicating that the pupil(s) has/have been promoted to Class-IX by the previous institution(s);

(ii) Transfer Certificate(s) duly counter-signed by the competent authority of the respective examination Board/State Education Department. This is mandatory because the student(s) has/have come from institution(s) not affiliated to the Council and we need to establish the affiliation/recognition status of the school (s).

Kindly note that irrespective of the fact that student(s) is/are migrating within the same State or other State(s) the Transfer Certificate(s) must be countersigned, as the pupil(s) has/have come from school(s) not affiliated to the Council.

3. Kindly note that clearance for admission(s) of pupil(s) from School(s) not affiliated to the Council to Class-IX of the Academic Year 1998-99 must have been positively obtained by 31st July, 1998. Hence no admissions is/are to be made after the expiry of the above stipulated date. This is necessary because candidate(s) for preparation for the I.C.S.E. (10) Examination must put in at least 75% attendance of the total working days in each of the two Academic years.

4. In view of the above mentioned Minimum Attendance Requirement the student(s) cannot be admitted to Class-IX of your school for the Academic year 1998-99.

5. Class-X It is clarified that student(s) who has have passed Class-X from School(s) not affiliated to the Council, cannot be admitted directly to Class-X for immediate preparation for the I.C.S.E. (10) Examination. Such students must

also study and complete the Class-IX portion of the I.C.S.E. (10) syllabus before being promoted to Class-X for entry for the I.C.S.E. (10) Examination.

Yours faithfully Sd.

Mohan Chandran Education Officer.

Note: Kindly refer to the paragraph(s) tick marked (/ ).

The Principal accordingly vide letter dated 30-5-1998 (Annexure-C/4) sought the following documents from the Petitioner which were required, by the Council to take decision;

(1) Class-VIII Annual Promotion Reports indicating that the pupils have been promoted to Class-IX by the previous Institution; and (2) Transfer Certificates duly countersigned by the Government Authority of the respective Examination Board State Education Department.

The Petitioner after obtaining the Progress Reports of his son and daughter and the Transfer Certificates duly counter-signed by the competent authority, i.e., Inspector of School, Cuttack, submitted to the Principal who on 30-7-1998 vide Annexure-C/7 transmitted them to the Council for grant of necessary permission. The Council has declined to accord permission to the students as communicated in letter dated 11-5-1998 (Annexure-C/7). As may extract the relevant part of the letter hereunder:

...the documents have been examined and permission cannot be granted for the students referred to above to be admitted to Class-IX of your School since Woodlands School, Cuttack from where they passed Class-VIII is an unrecognised institution....

(emphasis added)

6. Shri Panda by referring last sub-para of para-10 of the-Guidelines for Affiliation submitted that prior clearance for admission of pupils to Classes-IX, X, XI and XII is to be obtained from the Council and without such clearance, pupils will not be admitted to sit in the Council's examination. Para-5 of Chapter-I of the Regulations requires that such candidates for entry to the examination must put in at least 75% attendance of the total working days in each of the two academic years. Relying on the aforesaid para-8, Shri Panda contended that in the present case the clearance from the Council in this regard ought to have been taken by 31-7-1998 as referred to in para-3 of the letter dated 21-5-1998 (Annexure-C/3) and the Petitioner having not got any such clearance by the stipulated date, the Council refused to accord permission. Learned Counsel put the blame on the Petitioner for the delay in making available the documents to the Council for taking decision. He submitted that although the Petitioner got Transfer Certificates from the previous institution on 8-6-1998, submitted the same to the Principal on 30-7-1998 after getting them counter signed by the Inspector of Schools on the same day. The Principal on that day sent the

documents to the Council after their verification took the decision and communicated the same in letter dated 11-8-1998 (Annexure-C/7).

7. We may state that this ground urged by Shri Panda in support of the impugned decision of the Council has no legal basis. Firstly, the Council has not rested its decision on any of the grounds urged by Shri Panda. By the impugned decision, as extracted above, the Council refused permission for admission to Class-IX only on the ground that Woodlands School, Cuttack, from where the students passed Class-VIII is an unregistered institution. This new ground, urged by Shri Panda in support of the impugned decision is neither here nor there. We have also considered the validity of the aforesaid grounds urged by Shri Panda. Last sub-para of para-10 of the Guidelines for Affiliation issued by the Council provides that prior clearance for the admission of pupils to Classes-IX, X, XI and XII is to be obtained from the Chief Executive and Secretary of the Council and pupils admitted without due clearance will not be accepted for the Council examination. The aforesaid is one of the conditions for grant of affiliation to the schools by the Council which provides that before a student is admitted to Classes-IX, X, XI and XII. the Head of the Institutions to obtain necessary clearance from the Chief Executive and Secretary of the Council and if no such prior clearance is taken, such student will not be permitted to take the Council's examination. The aforesaid paragraph of the Guidelines of the Council has no bearing on the point at issue. Regarding Paragraph- B of Chapter-I of the Regulations of the Council, it may be stated that it is one of the conditions of entry to the I.C. S.E. examination. It provides that a candidate in order to be eligible for the first time to sit in the examination is required to have a minimum of 75% attendance of the working days during each year of the two-years course at the School affiliated by the Council. According to Shri Panda, if the Petitioner's son and daughter will be admitted at this length of time in Class-IX, they would fall short of the required minimum attendance because the last date for obtaining clearance from the Council expired on 31-7-1998. We may again state that the Council in its impugned decision has not indicated this to be a reason for refusal of permission. Besides this, Shri Panda seems to have lost sight of paragraph-C of Chapter-I of the Regulations which provides that candidate whose attendance is below 75% of the working days, are not ordinarily eligible to sit in the examination. However, the Chief Executive and Secretary has the authority to condone the shortage in case of candidates whose minimum attendance is not less than 60 per cent of the working days. Heads of School may represent to the aforesaid authority of the Council the cases of such candidates who deserve special consideration. This makes the Position close that although 75% attendance of the working days during each year of the two years course is the requirement, in deserving cases the Council has the authority to condone the shortage in attendance, Thus, the aforesaid paragraph-B of Chapter-I of the, Regulations does not ex facie stand on the way of admission to Class-IX. At this stage, we may mention that Shri Panda advanced another argument that the Progress Report of Prachi Pratikshya (Annexure-5 series) would show that

although she was promoted to Standard-IX in 1996-97, there was no explanation as to what she was doing during 1997-98. The aforesaid doubt or apprehension raised by the learned Counsel is without any foundation. It would appear from her School Leaving Certificate and the Progress Report that she read in Standard-VIII during the academic session 1996-97 and was promoted to Standard-IX which means she was promoted to read in Standard-IX during the academic session 1997-98 and in Standard-X during the current academic session and she now intends to be admitted to Standard-IX in New Stewart School by foregoing one year's study.

8. The Council, as already mentioned, required the following documents for taking decision regarding "clearance" of admission of the concerned, students:

(i) Class-VIII Annual Promotion Report Cards indicating that the pupili(s) has/have been promoted to Class-IX by the previous institution; and (ii) Transfer Certificate (s) duly countersigned by the competent authority, The Progress Reports of Sidhartha and Prachi Pratikshya are at Annexure-5. There is clear endorsement by the Principal of the Woodlands School that Sidhartha was promoted to Standard-IX in 1997-98 and Prachi Pratikshya was promoted to Standard-IX in 1996-97. The Progress Reports of both the candidates clearly indicate that they have been promoted to Standard-IX in Woodlands School. The aforesaid reports are in conformity with the requirement of the Council. Similarly, the Transfer Certificates have been duly countersigned by the Inspector of Schools who is the competent authority as clarified by the Deputy Director (Hindi, Sanskrit & Special Education) in letter dated 28-7-1998 (Annexure-4) It may be indicated here that although the Transfer Certificates were issued on 8-6-1998, the counter signature from the competent authority could be obtained on 30-7-1998 after necessary clarification was issued by the Deputy Director in his letter dated 28-7-1998 (Annexure-4). On consideration of the contentions urged by Shri Panda and on perusal of documents, we are of the opinion that the Progress Reports of the two students and their Transfer Certificates are in order which the Council required for its examination to accord permission to admit them to Class-IX. The Council in the impugned decision have not expressed any opinion on those documents. It refused permission solely on the ground that Woodlands School from which they passed Class-VIII is an unregistered institution. As already stated, it is not the case of the Council that in no case a student from an unregistered/unaffiliated institution can be admitted to Class-IX of an affiliated school. The grounds urged by Sri Panda in support of refusal of permission are non-existent. Those grounds are not otherwise valid for the reason aforesaid.

9. Shri Panda relying on the decisions of the Supreme Court in A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, ; State of Tamil Nadu and Others Vs. St. Joseph Teachers Training Institute and Another, ; Guru Nanak Dev University Vs. Parminder Kr. Bansal and another, and C.B.S.E. and Another Vs. P. Sunil Kumar and Others, urged that since the

concerned students are from an unaffiliated school, this Court should not direct for their admission to an affiliated institution. In all those cases either the bye-laws of the Board or the University Regulations prohibited students of unaffiliated schools to appear in the public examinations conducted by the Board or the University. In those cases students of unaffiliated schools/colleges were permitted by the High Courts to appear in the examinations conducted either by the Board or the University. The Hon'ble Supreme Court while setting aside the orders of the High Court observed that the students of unrecognised unaffiliated institutions who were admitted to the examination in violation of the bye-laws of the Board or the Regulations of the University, should not be shown any sympathy. The facts of the case at hand are quite different. Shri Panda clearly stated that there is no prohibition of admitting the students of Standard-IX of an unaffiliated school like the Woodlands School to an affiliated institution on transfer. Only embargo according to him is that prior clearance or permission of the Council is necessary. As we have already noted, in fact, clearance permission was sought for which was refused on the ground which is not tenable.

10. In the result the impugned decision of the Council communicated in its letter dated 11-8-1998 at Annexure-C/7 refusing permission to Sidhartha Bhuyan and Prachi Pratikshya Bhuyan cannot be sustained in law and is hereby quashed. The writ petition is allowed. The Council is directed to grant permission forthwith to the Principal, New Stewart School, Cuttack, to admit Sidhartha Bhuyan and Prachi Pratikshya Bhuyan in Class-IX of his school. The Principal, New Stewart School opposite party No. 3 is directed to provisionally admit the above named students immediately on receipt of the writ from this Court pending receipt of permission from the Council.

11. Before parting with the case, it may be stated that we fully share the anxiety expressed on behalf of the Council with regard to the recent trend of admitting students by unauthorised/recognised/unaffiliated educational institutions. Although under Article 30 of the Constitution, a minority community has fundamental freedom to establish and administer educational institutions of their own choice, the State has a right to prescribe regulatory provision for ensuring educational excellence. In the recent past, large number of English medium schools in the State have come up which are neither affiliated nor recognised by the competent authority. The net result is that innocent students are made to suffer as they are not permitted to appear at the public examinations conducted by the concerned educational authorities. The State, therefore, in consultation with the concerned examining bodies should formulate guidelines according to law so that innocent students would not fall pray.

R.K. Dash, J.

12. I agree.

Writ petition allowed.