

012

IN THE HIGH COURT OF ORISSA : CUTTACK.

REVIEW PETITION NO. 59 /2019

(Arising out of F.A.O. No. 673 of 2015)

code no - 010901

State of Orissa and others. ...Review Petitioners.

- Versus -

Managing Committee of Jagabandhu


Uchha Bidyapitha ... Opp. Party.

I N D E X

<u>Sl.No.</u>	<u>Description of documents.</u>	<u>Pages.</u>
1.	Review Petition	01-17
2.	<u>Annexure-1</u> Copy of order dtd. 9.3.2018	18-24
3.	<u>Annexure-2</u> Copy of order dtd. 1.9.2017	25-26

Cuttack,

Date; -27-2-19


Standing Counsel,
School & Mass Education.

IN THE HIGH COURT OF ORISSA: C U T T A C K.

REVIEW PETITION NO. 59 /2019

(Arising out of F.A.O. No. 673 of 2015)

Code No. 010901

In the matter of:

- An application under Chapter-VIII Rule 23, Orissa High Court Rules, 1948 read with order XLVII Rule-1 of the C.P.C.

AND

In the matter of:

- An application seeking review of the order Dtd. 9.3.2018 of this Hon'ble Court passed in misc. Case No. 1027 of 2015 arising out of FAO No. 673 of 2015.

AND

In the matter of:

1. State of Orissa represented through its Commissioner-cum-Secretary, School and Mass Education Department, At/P.O.-Bhubaneswar, Dist. Khurda.
2. The Director, Secondary Education, At: Heads of Department Building, Odisha, At/PO:, Bhubaneswar, Dist: Khurda.

3. The Inspector of Schools, Balasore Education Circle, At/Po/ Dist.-Balasore, now redesignated as District Education Officer, Balasore, At/Po/Dist.-Balasore. (Appellants in the FAO Petition)

... **Review Petitioners.**

-Versus-

Managing Committee of Jagabandhu Uchha Bidyapitha, Aghirapada, represented through its Headmaster-cum-Secretary, Mukunda Chandra Biswal, aged about 53 years, Son of late Pranabandhu Biswal, At/Po-Aghirapada, Cia- Oupada, Dist.-Balasore.

(Respondent in the FAO petition)

.... **Opp. Parties.**

TO

THE HON'BLE SHRI K.S. JHAVERI, BSC LL.B., THE CHIEF JUSTICE OF THE HON'BLE HIGH COURT OF ORISSA AND HIS LORDSHIP'S OTHER COMPANION JUSTICES OF THE SAID HON'BLE COURT.

The humble petition of the Review Petitioners named above;

MOST RESPECTFULLY SHEWETH;

1. That, the review petitioners above named, who are the functionaries of the State of Orissa, have filed the present review petition seeking review of order dtd. 9.3.2018 of this Hon'ble Court passed in Misc. Case No. 1027 of 2015 arising out of FAO No. 673 of 2015, wherein the Hon'ble Court was pleased to pass the following order;

"The appellants were contesting the proceeding before the Education Tribunal. So it is not permissible to say that they were not aware of the result of the proceeding at the time of its conclusion. The Tribunal was under no legal obligation to send a copy of its judgment to the appellants as the concept of communication is not provided in the Act and the Rules made there under. Nothing is stated as to which documents had gone without being examined, during the pendency of the original proceeding giving rise to further need for collection of those for further examination in order to take a decision in the matter of filling the appeal. The appellants are found to have not acted promptly even after receipt of the information about result of the case and have rather dealt it in casual manner.

The time consumed in the total process is stretching for a period of more than one year and seven months, The explanations are rather casual and do not at all appear to be satisfactory. Therefore, testing the present case through the spectrum of the ratio of the decision in case of Office of the Chief Post Master and others (supra) and other decisions referred to therein, this court finds no justification to say that sufficient causes stood on the way of filing the appeal late, i.e., after lapse of about one year and seven months from the date of expiry of the period of filing the appeal."

2. That, the present opp. Parties approached the State Education Tribunal by way of filing a Grant-in-Aid case bearing No. 586 of 2011 praying therein for a direction to the Opp. Parties to release entitled Grant-in-aid at the rate of 60% of the salary cost w.e.f 1.6.96 and at the rate of 100% of the salary cost w.e.f 1.6.98 under provisions of grant in order 1994 by giving a declaration that the applicant's school and all the teaching and non teaching staff are entitled to the aforesaid grant in aid from the above date under the grant in order 1994 by directing the opp. Parties to notify the said school as aided school w.e.f 1.6.1996.

3. That, the above said GIA case was disposed of by the learned State Education Tribunal vide Judgment dtd. 24.4.2013 with a direction to the opp. Party Nos. 1 and 2 are being directed to the applicant-school @ 60% of the salary cost w.e.f 1.6.1996 and full salary cost (100%) w.e.f 1.6.1999 strictly in accordance with grant in aid order, 1994. The differential salary components be accordingly paid to all the staff of the applicant-school.

4. That, the state authorities filed an appeal U/s 24 (C) of the Orissa Education Act before this Hon'ble Court bearing F.A.O. No. 673 of 2015 along with a petition U/s 5 of the Limitation Act for condonation of delay of 876 days and stating the grounds in the limitation petition for cause of delay which were bonafied and not deliberate.

5. That, a Misc. Case bearing No. 1027 of 2015 which was filed U/s 5 of the limitation act for condonation of delay was taken up for hearing on 9.3.2018 and this Hon'ble Court was not inclined to condone the delay of 876 days and was pleased to dismiss the limitation petition and as a consequence the F.A.O. was also dismissed. *Copy of above said order dtd. 9.3.2018 is filed herewith and marked as **Annexure-1**.*

6. That, it is humbly submitted that although the present review petitioners (appellants in the FAO petition) had made out very good grounds in the FAO for kind interference of this

Hon'ble Court, but this Hon'ble Court without considering the merit of the FAO was pleased to dismiss the petition U/s 5 of the limitation act for being not inclined to condone the delay in approaching the Hon'ble Court in filing the FAO No. 673 of 2015.

7. That, it is humbly submitted that so far the merit of the FAO No. 673 of 2015 is concerned the following legal aspects were not considered by the learned Tribunal while adjudicating the GIA case and the same resulted in grave miscarriage of justice and abuse of the process of court.

8. That, the learned Tribunal did not take into consideration the provision of Section 7-C (1) of the Orissa Education Act, 1969 which clearly states that the State Government shall within the limits of its economic capacity, set apart a sum of money annually for being given as grant in aid to private educational institution in the State, which clearly reveals that the Government is not bound to provide grant in aid to any private educational institution on merely attaining/acquiring the eligibility.

9. That, it is humbly submitted that in the grounds of challenge to the Judgment dtd. 24.4.2013, it has been averred by the appellants that the Respondent's institution does not satisfy the conditions of the Resolution dtd. 17.3.1979, particularly the result of the school did not satisfy the

prescribed requirement under Clause-10 of the Resolution dtd. 17.3.1979 and in order to satisfy this Hon'ble Court as regards the percentage of result in the relevant year for being eligible to get grant in aid w.e.f 1.6.1994, the present additional affidavit is filed for kind appreciation of this Hon'ble Court, which may kindly be accepted.

10. That, it is humbly submitted that prior to coming into force of Orissa Education (Payment of Grant in Aid to High Schools, Upper Primary Schools) Order, 1994, there was no statutory order as regards principle of non-Government aided High Schools. Prior to coming into force of above said grant in aid order, 1994, the Resolution dtd. 17.3.1979 of the Government of Odisha, the then Education and Youth Service Department was governing the field.

11. That, it is humbly submitted that as per Clause 7 of the above said grant in aid order, 1994 the Educational Institutions which have become eligible to grant in aid on the basis of the executive instructions in force immediately preceding the date of commencement of this order, but have not received any grant in aid so far, may get minimum grant in aid at the rate of 60 percent of the salary cost of the teaching and non teaching employees (hereinafter called minimum grant) from the 1st June 1994, irrespective of the date from which such educational institution would have become eligible under the

said executive instructions. Grant-in-aid payable shall be worked out with reference to the initial pay in the relevant scale of pay as on the 1st June 1994. No such arrear shall be paid.

Provided that in the event of any educational institution would have become eligible for 100 percent grant in aid from any date prior to the 1st June, 1994 grant in aid may be sanctioned at 100 percent of the salary cost of the teaching and non teaching employees (hereinafter called full grant) from 1st June, 1994.

12. That, it is respectfully submitted that in order to get the benefit of Clause-7 of the grant in aid order, 1994, one has to satisfy the conditions stipulated in Resolution dtd. 17.3.1979 and Clause 10 (1) of the Resolution dtd. 17.3.1979 prescribes that a recognised High School will be eligible to receive the minimum grant in aid after four years from the year of presentation of candidates in the final High School Examination subject to the following conditions;

(a) If it is a six class High School, it must have at least 200 students on its rolls, and if it is a four class High School, must have at least 140 students on its rolls.

(b) the result of the school must not be, at any rate below State average in the Annual High School

Examination for three consecutive years, by the time it qualifies to receive the minimum grant.

NOTE- (1) The result of the school shall be judged on the basis of the total number of students on the roll in Class-XI at the beginning of the academic session, but not on the basis of the number of students, sent up to appear in the Annual Certificate Examination.

NOTE- (2) J.C.D block having half or less than half the State in literacy is to be treated as an educationally backward area.

NOTE-(3) Loss of fees income would mean loss sustained by Educational institutions for not collecting fees from Girl Students, or Scheduled Castes and Scheduled Tribes children of Class IV of Government employees, and primary school teachers and free students.

However in educationally backward areas the minimum grant will start after one year of presentation candidates in the final High School Certificate Examination and the roll strength in the final High School and a four class High School must be at least 140 and 100 students respectively and the result of the school must not be at any rate, less than 25% below the State average in the Annual High School Certificate Examination.

13. That, it is humbly submitted that Clause-16 of the grant in aid order, 1994 prescribes that sanction of grant in aid for all categories of institution shall also be subject to the following general stipulations and as per the sub-clause (iv) no grant in aid shall be payable to an institution which has not achieved such minimum enrolment as may be prescribed by Government for different courses and for different areas. Similarly no grant in aid shall be payable to an educational institution which has failed to achieve such results in the public examinations as may be determined by the Government, during the unaided period or such further period as may be extended from time to time.

14. That, it is humbly submitted as per Clause 7 of the above said grant in aid order, 1994 the Educational Institutions which have become eligible to grant in aid on the basis of the executive instructions in force immediately preceding the date of commencement of this order, but have not received any grant in aid so far, may get minimum grant in aid at the rate of 60 percent of the salary cost of the teaching and non teaching employees (hereinafter called minimum grant) from the 1st June 1994, irrespective of the date from which such educational institution would have become eligible under the said executive instructions. Grant in aid payable shall be worked out with reference to the initial pay in the relevant sale

of pay as on the 1st June 1994. No such arrear shall be paid. But as regards the institution those who have attained the eligibility after 1.6.1994 no date has been prescribed under the grant in aid order, 1994 from which date they will get the grant in aid on attaining the eligibility and the same has already been held by the Full Bench of this Hon'ble Court in the case of Laxmidhar Pati and others Versus State of Odisha and others, wherein it has been held that no date has been prescribed under any of the executive instructions or grant in aid order, 1994 and accordingly the institution merely attaining the eligibility after 1.6.1994 can not claim grant in aid as a matter of right unless the said institutions is notified by the Government as an educational institution and further the institutions those who have only satisfies the Clause-7 of the grant in aid order, 1994 as well as the executive instruction existing prior to that i.e the Resolution dtd. 17.3.1979 read along with Clause-16 of the Grant in aid order, 1994 can only get the benefit of grant in aid w.e.f 1.6.1994.

15. That, the Judgment dtd. 24.4.2013 passed in GIA Case No. 586 of 2011 is contrary to the law laid down by this Hon'ble Court in a Full Bench in case of Laxmidhar Pati and others Versus State of Orissa and others reported in 1996 (I) OLR-152 wherein this Hon'ble Court held as follows:

"22. The ratio of the aforesaid decisions is not in doubt or in dispute in any manner whatsoever. By construing and interpreting the Government resolutions and the Government circular as indicated above, we shall have to consider whether the scheme as framed by the State Government entitles the recipients to receive grant-in-aid from the date of their achieving the eligibility criteria and/or from the date of notification to indicate that such eligible schools or their teaching and non-teaching staff are eligible to receive grant-in-aid by approving their eligibility, or whether the date of release of grant-in-aid to eligible schools and/or their teaching and non-teaching staff from the date of actual order of release having no nexus to the date of approval of the eligibility criteria. Looking at the scheme and in particular the provision of law that there is no absolute right to claim grant-in-aid and the financial capacity, the economic potentiality and other development work of Government have to be considered in interpreting Art. 41 of the Constitution of India. We are of the considered view that the Bench decision of this Court reported in 1993(I) OLR 77 is correct. The view taken by the subsequent Division Bench as to entitlement to grant-in-aid from the date of approval and/or from the date of

achieving the eligibility criteria does not appear to be good law. The reference is answered accordingly.

We hasten to add here that we may not be understood to have laid down the law that the Government is a free-lancer in ordering release of grant-in-aid arbitrarily and denying fair play and by encouraging favouritism. Its decision/order in the matter of grant/refusal of grant-in-aid must be based on sound principles and should not be whimsical or arbitrary."

16. That, as per the settled position of law as laid down by this Hon'ble Court in the case of Laxmidhar Pati and others versus State of Orissa and others reported in 1996 (I) OLR-152 merely an institution is eligible to receive grant in aid no institution has right to receive the same , the said principle was not considered by the learned Tribunal while adjudicating the case. Hence the order passed by the learned Tribunal directing the petitioners to release grant in aid in favour of the opp. Parties w.e.f 1.6.1994 is per se illegal and unless the delay in filing of the appeal be reconsidered by this Hon'ble Court and the Hon'ble Court review the order passed on 16.3.2018 , there would be huge loss to the Government exchequer and the same will affect the interest of the public at large. In such view of the matter the Hon'ble Court may review

the order dtd. 9.3.2018 passed in Misc. Case No. 1027 of 2015 arising out of FAO No. 673 of 2015.

17. That, it is humbly submitted that in a similar case i.e FAO No. 125 of 2016 this Hon'ble Court passed the order of dismissal of the limitation petition on 25.1.2017 and as a consequence the FAO No. 125 of 2016 was also dismissed since this Hon'ble Court did not incline to condone the delay of 1101 days in filing the FAO U/s 24(C) of the Orissa Education Act.

18. That, the State appellants approached the Hon'ble Supreme Court against the order of dismissal dtd. 25.1.2017 in Civil Appeal No. 11180 of 2017 and the Hon'ble Supreme Court vide order dtd. 1.9.2017 passed the following order;

"Having regard to the peculiar facts and circumstances of the present case, we condone the delay in filing the appeal before the High Court. Accordingly, we set aside the impugned order of the High Court and remand the matter to the High Court for fresh decision in accordance with law.

The appeal is accordingly disposed of.

Parties are directed to appear before the High Court for further proceedings on October 9, 2017."

A down loaded copy of the above said order dtd. 1.9.2017 is filed herewith and marked as **Annexure-2**.

19. That, it is humbly submitted that the Hon'ble Supreme Court in a very similar nature of case has been pleased to condone the delay of 1101 days in filing the FAO and remanded the matter to the Hon'ble High Court for fresh decision in accordance with law, which reveals that the Hon'ble Supreme Court is inclined that the matter of said nature should be heard on merit.

20. That, it is humbly submitted that in view of the above said decision of the Hon'ble Supreme Court in Civil Appeal No. 11180 of 2017, the present review petitioners filed the present review petition for review of order dtd. 9.3.2018 passed in Misc. Case No. 1027 of 2015 arising out of FAO No. 673 of 2015, which has been dismissed on the ground of delay.

21. That, in view of the aforesaid facts and circumstances, this Hon'ble Court may be pleased to review the order dtd. 9.3.2018 passed in misc. Case No. 1027 of 2015 (arising out of FAO No. 673 of 2015) on merit and further may be pleased to hear the FAO on merit.

PRAYER

Therefore, in view of the facts and circumstances narrated above, it is must respectfully prayed that this Hon'ble Court may graciously be pleased to allow this petition by reviewing and recalling the order dtd. 9.3.2018 passed in misc. Case No. 1027 of 2015 (arising out of FAO No. 673 of 2015);

And further this Hon'ble Court be kind enough decide the FAO on its merit;

And pass any such other order/orders as may be deemed fit and proper;

And for this act of kindness the petitioners as in duty bound shall ever pray.

Cuttack

Date : 27-2-19

By the petitioners through


Standing Counsel.

AFFIDAVIT

I, Sri Pramod Kumar Sarangi, aged about 52 years, Son of Dhruba Charan Sarangi, at present working as District Education Officer, Balasore, At/Po/ Dist: Balasore, do hereby solemnly affirm and state as follows :-

1. That I am the petitioner No.3 in this petition & I have been duly authorised by other petitioners to swear this affidavit on their behalf.
2. That the facts stated above are true to the best of my knowledge and based on official records.

Identified by :

ASO,,
A.G.'s Office

Pramod Kumar Sarangi
Deponent,
District Education Officer
BALASORE

CERTIFICATE

Certified that due to want of cartridge papers, plain papers have been used.

Cuttack
Date : 27-2-19

Sgt
Standing Counsel.
School & Mass Education Cell,
Cuttack.



18

IN THE HIGH COURT OF ORISSA

CUTTACK

Annexure-1

F.A.O. NO. 673 /2015

Code No. 010901

In the matter of :

An application under Section 24-C of the
Orissa Education Act, 1969.

AND

In the matter of :

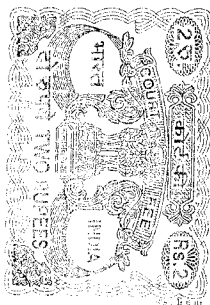
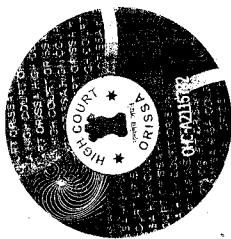
An application challenging the judgment
dt.24.4.2013 of the learned State
Education Tribunal, Orissa, Bhubaneswar
passed in G.I.A. Case No.586 of 2011.

AND

In the matter of :

1. State of Odisha, represented through its
Commissioner-cum-Secretary, School &
Mass Education Department, Odisha, at
Secretariat Building, Bhubaneswar, Dist:
Khurda.
2. The Director, Secondary Education, Odisha,
At-Heads of Department Building, PO:
Bhubaneswar, Dist. Khurda.
3. Inspector of Schools, Balasore Education
Circle, now redesignated as District
Education Officer, Balasore, At/PO/Dist:

Presented on. 20-11-15
Registrar (Judicial)



District Education Officer
BALASORE

Balasore. (Opposite Parties before the learned Tribunal)

... Appellants.

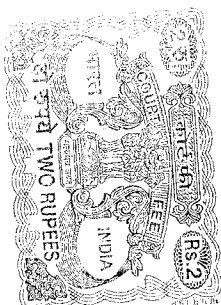
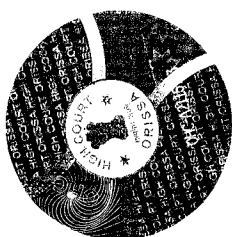
-Versus-

Managing Committee of Jagabandhu Uchha Bidyapitha, Aghirapada, represented through its Headmaster-cum-Secretary, Mukunda Chandra Biswal, aged about 50 years, son of Pranabandhu Biswal, At/PO: Aghirapada, Via- Oupada, Dist: Balasore. (Petitioner in the learned Tribunal)

.... Respondent.

The matter out of which this


District Education Officer
BALASORE





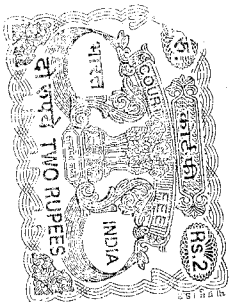
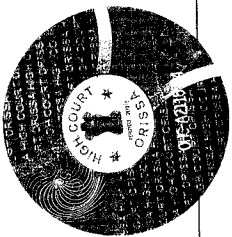
[O. H. C.-98]

FAO NO.673 OF 2015

Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
02.	09.03.2018	<p style="text-align: center;"><u>MISC. CASE NO.1027 OF 2015</u></p> <p>This is an application under section 5 of the Limitation Act for condonation of delay in filing the appeal under section 24-C of the Orissa Education Act, 1969. The appellants i.e. the State of Odisha and Director, Secondary Education, Odisha in the appeal have questioned the judgment dated 24.04.2013 passed by the learned Education Tribunal in GIA Case No.586 of 2011 in the matter of an application under section 24-B of the Orissa Education Act filed by the respondent.</p> <p>2. As provided in Section 24-C of Orissa Education Act, 1968, the appeal has to be preferred within a period of 60 days from the date of passing of the judgment and not from communication, as the said concept of communication has neither been mandated in the Act nor in the Rules. In the instant case, the judgment having been passed on 24.04.2013, the memorandum of appeal before this Court has been presented on 20.11.2015 and it is after delay of 880 days, i.e., after two year, five months.</p> <p>3. First of all, it is stated that the copy of the impugned judgment was received by the D.E.O., Balasore on 29.08.2013 who then sought for necessary instruction from the Director with regard to the implementation of the impugned order. It is next stated that the Government in the Department of School and Mass Education then authorized the District Education Officer to file an appeal after obtaining permission from the Law Department. It is further stated that the District Education Officer, Balasore then contacted</p>	

0,000-14-7-2016

District Education Officer
BALASORE



[O. H. C.-98]

Sl. No. of Order	Date of Order	= 2 = ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
		<p>the learned Senior Standing Counsel and after further examination, the process culminated by way of presentation of memorandum of appeal.</p> <p>4. Learned counsel for the State submits that the delay in filing the appeal was neither deliberate nor intentional and it has so occurred because of the time consumed in the official process, which is inevitable. So he urges for condonation of delay.</p> <p>5. In Office of the Chief Post Master & Others vs. Living Media India Ltd. & Another, (2012) 3 SCC 563, after survey of the earlier decisions, the apex Court in paragraphs 27, 28, 29 and 30 held as follows:-</p> <p>“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.</p> <p>28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The</p>	

1-7-2016

District Education Officer
BALASORE

[D. H. C.-98]

Sl. No. of Order	Date of Order	= 3 = ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
		<p>law of limitation undoubtedly binds everybody including the Government.</p> <p>29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.</p> <p>30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay."</p> <p>6. The appellants were contesting the proceeding before the Education Tribunal. So it is not permissible to say that they were not aware of the result of the proceeding at the time of its conclusion. The Tribunal was under no legal obligation to send a copy of its judgment to the appellants as the concept of communication is not provided in the Act and the Rules made thereunder. Nothing is stated as to which documents had gone without being examined, during the pendency of the original proceeding giving rise to further need for collection of those for further examination in order to take a decision in the matter of filling the appeal.</p>	

2016

District Education Office:
BALASORE

Sl. No. of Order	Date of Order	= 4 = ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
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The time consumed in the total process is stretching over a period of two year, five months. The explanations are rather casual and do not at all appear to be satisfactory. Therefore, testing the present case through the spectrum of the ratio of the decision in case of **Office of the Chief Post Master & Others** (supra) and other decisions (supra), this Court finds no prima facie justification to entertain the petition for condonation of delay. The explanation that the delay is because of consumption of time in the official process are very casual and per se not acceptable to say that the same stood on the way of filing the appeal late, that too after lapse of two year, five months from the date of expiry of the period of filing the appeal.

7. Accordingly, the petition giving rise to the Misc. Case is dismissed.

Consequently, the FAO stands dismissed.

30/1-10. DASH. J.

F.A.O. NO.673 OF 2015

03. 09.03.2018

In view of above order in Misc. Case No. 1027 of 2015, the F.A.O. stands dismissed.

30/1-10. DASH. J.

PTS-U 1 (H. C.) 6-1,00,000-14-7-2016

**District Education Officer
BALASORE**

Date of Application:- 6
 Date of Notification:- 14
 Date of Supply:- 16
 Date of Ready:- 16
 Date of Delivery:- 19

11-18

C.A No- 63181/18		
MEMO OF COSTS		
	Rs.	P.
Application Fee	—	50
Searching Fee	—	—
Extra Fee for Copying	9	00
Folios 12	6	00
Hologram	6	00
Other items	3	90
Total	25	40

(Rupees Twenty five & Paise forty only)

EXAMINER OF COSTS
CUM
SUPERINTENDENT
COPYING DEPARTMENT

16-11-18

CERTIFIED TO BE A TRUE COPY
 Assistant Registrar (Estt.)
 ORISSA HIGH COURT
 Authorised Under Section-76 Act-I of 1972

District Education Officer
 BALASORE

ITEM NO.18

COURT NO.11

SECTION XIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (Civil) No.....of 2017
(Diary No(s). 23544/2017)

(Arising out of impugned final judgment and order dated 25-01-2017
in FAO No. 125/2016 in FAO No. 219/2016 passed by the High Court Of
Orissa At Cuttack)

THE STATE OF ODISHA & ORS.

Petitioner(s)

VERSUS

AJAY KUMAR BEHERA & ORS.

Respondent(s)

(IA No.76842/2017-CONDONATION OF DELAY IN FILING)

Date : 01-09-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Petitioner(s) Mr. Pawan Upadhyay, Adv.
MR. Sarvjit Pratap Singh, Adv.
Ms. Sharmila Upadhyay, AOR

For Respondent(s) Mr. Bharat Sangal, Adv.
Ms. Isha Gupta, Adv.
Ms. Vidushi Garg, Adv.
Ms. S. Spandana Reddy, Adv.
Ms. Anindita Deka, Adv.
Ms. Vernika Tomar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is disposed of in terms of the signed
order.

Pending application(s), if any, shall also stand
disposed of.

(MADHU BALA)

Valid
COURT MASTER (SH)

Signed order is placed on the file

Digitally signed by
Date: 2017.09.01
16:57:11
Reason:

(PAPVEEN KUMARI PASRECHA)
BRANCH OFFICER

District Education Officer
BALASORE

District Education Officer
BALASORE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.11180-81 OF 2017
(@ SLP(C) NO.23181-23182 OF 2017 @ D.NO. 23544 OF 2017)

THE STATE OF ODISHA & ORS. ...APPELLANT(S)
VERSUS
AJAY KUMAR BEHERA & ORS. ...RESPONDENT(S)

O R D E R

Delay condoned.
Leave granted.
Heard learned counsel for the parties.

Having regard to the peculiar facts and circumstances of the present case, we condone the delay in filing the appeal before the High Court. Accordingly, we set aside the impugned order of the High Court and remand the matter to the High Court for fresh decision in accordance with law.


The appeal is, accordingly, disposed of.


Parties are directed to appear before the High Court for further proceedings on October 9, 2017.

.....J.
[ADARSH KUMAR GOEL]

NEW DELHI
1st SEPTEMBER, 2017

.....J.
[UDAY UMESH LALIT]


District Education Officer
BALASORE


District Education Officer
BALASORE

IN THE HIGH COURT OF ORISSA : CUTTACK.

I.A NO. 41 OF 2019.

(Arising out of REVWEPT No. 59 of 2019)

In the matter of:

An application under Section 5 of the
Limitation Act for condonation of delay.

A N D

In the matter of:

State of Orissa and others. ...Review Petitioners.

- Versus -

Managing Committee of Jagabandhu

Uchha Bidyapitha ... Opp. Party.

TO

THE HON'BLE SHRI K.S. ^{JHAVERI, BSC} JHAVERI, LLB., THE CHIEF JUSTICE
OF THE HON'BLE HIGH COURT OF ORISSA AND HIS
LORDSHIP'S OTHER COMPANION JUSTICES OF THE SAID
HON'BLE COURT.

The humble petition of the
petitioners named above ;

MOST RESPECTFULLY SHEWETH ;

1. That the petitioners above named who are the
functionaries of the State of Orissa have filed the present

review petition seeking review of order dt.9.3.2018 passed in Misc. Case No. 1027 of 2015 (arising out of FAO No. 673 of 2015) of this Hon'ble Court, wherein the Hon'ble Court was pleased to pass the following order;

"The appellants were contesting the proceeding before the Education Tribunal. So it is not permissible to say that they were not aware of the result of the proceeding at the time of its conclusion. The Tribunal was under no legal obligation to send a copy of its judgment to the appellants as the concept of communication is not provided in the Act and the Rules made there under. Nothing is stated as to which documents had gone without being examined, during the pendency of the original proceeding giving rise to further need for collection of those for further examination in order to take a decision in the matter of filing the appeal. The appellants are found to have not acted promptly even after receipt of the information about result of the case and have rather dealt it in casual manner.

The time consumed in the total process is stretching for a period of about three years and three months. The explanations are rather casual and do not at all appear to be satisfactory. Therefore, testing the present case through the spectrum of the ratio of the

decision in case of Office of the Chief Post Master and others (supra) and other decisions referred to therein, this Court finds no justification to say that sufficient causes stood on the way of filing the appeal late, i.e, after lapse of about three years and three months from the date of expiry of the period of filing the appeal."

2. That the averments made in the review petition may be read and treated as part and parcel of this application and those are not reiterated for the sake of brevity.

3. That, it is humbly submitted that in a similar case i.e FAO No. 125 of 2016 this Hon'ble Court passed the order of dismissal of the limitation petition and as a consequence the FAO No. 125 of 2016 was also dismissed since this Hon'ble Court did not incline to condone the delay of 1101 days in filing the FAO U/s 24(C) of the Orissa Education Act.

4. That, the State appellants approached the Hon'ble Supreme Court against the order of dismissal dtd. 25.1.2017 in Civil Appeal No. 11180 of 2017 and the Hon'ble Supreme Court vide order dtd. 1.9.2017 passed the following order;

"Having regard to the peculiar facts and circumstances of the present case, we condone the delay in filing the appeal before the High Court. Accordingly, we set aside the impugned order of the High Court and

7

4

remand the matter to the High Court for fresh decision in accordance with law.

The appeal is accordingly disposed of.

Parties are directed to appear before the High Court for further proceedings on October 9, 2017."

5. That, it is humbly submitted that the Hon'ble Supreme Court in a very similar nature of case has been pleased to condone the delay of 1101 days in filing the FAO and remanded the matter to the Hon'ble High Court for fresh decision in accordance with law, which reveals that the Hon'ble Supreme Court is inclined that the matter of said nature should be heard on merit.

6. That, it is humbly submitted that in view of the above said decision of the Hon'ble Supreme Court in Civil Appeal No. 11180 of 2017, the present review petitioners filed the present review petition for review of order dtd. 9.3.2018 passed in Misc. Case No. 1027 of 2015 arising out of FAO No. 673 of 2015, which has been dismissed on the ground of delay.

7. That, after receipt of the above said order dtd. 9.3.2018 of this Hon'ble Court, the Government in the Department of School and Mass Education vide letter dtd.20.12.2018 have directed this deponent to file review petition challenging the order dtd. 09.03.2018 passed in the FAO No. 673 of 2015.

8. That, it is humbly submitted that after receipt of the above said instruction from the Government, this deponent moved the Office of the Senior Standing Counsel, School and Mass Education, Cell; Cuttack for drafting of review petition and after necessary discussion Review petition was prepared and filed on 28.2.19,

9. That it is humbly and respectfully submitted that the delay caused for filing of Review petition is bonafide, unintentional and not willful, on the other hand the delay caused for filing of the review petition is due to observation of the official formalities:

10. That in the given sets of facts and circumstances, it is humbly prayed that this Hon'ble Court may graciously be pleased to condone the delay in filing the review petition.

11. That it is humbly submitted that in the interest of justice, equity and fair play the delay in filing the review petition may be condoned and the same may be heard on merit.

. **P R A Y E R**

Therefore, in view of the above facts and circumstances, it is humbly prayed that this Hon'ble Court may graciously be pleased to allow this petition by condoning the delay of days in filing the review petition;

And pass any such other order/orders as this Hon'ble Court may deem fit and proper;

And for this act of kindness, the petitioners shall as in duty bound ever pray.

By the petitioners through

CUTTACK.

Dt. 27-2-19


Standing Counsel.


AFFIDAVIT

I, Pramod Kumar Sarangi, aged about 52 years, Son of Dhruba Charan Sarangi, at present working as District Education Officer, Balasore, At/Po/Dist: Balasore, do hereby solemnly affirm and state as follows :-

1. That I am the petitioner No.3 in this petition & I have been duly authorised by other petitioners to swear this affidavit on their behalf.
2. That the facts stated above are true to the best of my knowledge and based on official records.

Identified by :

ASO, A.G.'s Office.



Deponent.
District Education Officer
BALASORE

CERTIFICATE

Certified that due to want of cartridge papers, plain papers have been used.

Cuttack

Date : 27-2-19


Standing Counsel.
School & Mass Education Cell,
Cuttack.

IN THE HIGH COURT OF ORISSA : CUTTACK.

REVIEW PETITION NO. 59 /2019

(Arising out of F.A.O. No. 673 of 2015)

code no. 010901

State of Orissa and others.

...Review Petitioners.

- Versus -

Managing Committee of Jagabandhu

Uchha Bidyapitha


... Opp. Party.

I N D E X

<u>Sl.No.</u>	<u>Description of documents.</u>	<u>Pages.</u>
1.	Review Petition	01-17
2.	<u>Annexure-1</u> Copy of order dtd. 9.3.2018	18-23
3.	<u>Annexure-2</u> Copy of order dtd. 1.9.2017	24-25

Cuttack,

Date;- 27-2-19


Standing Counsel,
School & Mass Education.

IN THE HIGH COURT OF ORISSA: C U T T A C K.

REVIEW PETITION NO. 59 **/2019**

(Arising out of F.A.O. No. 673 of 2015)

Code No. 010901

In the matter of:

- An application under Chapter-VIII Rule 23, Orissa High Court Rules, 1948 read with order XLVII Rule-1 of the C.P.C.

AND

In the matter of:

- An application seeking review of the order Dtd. 9.3.2018 of this Hon'ble Court passed in misc. Case No. 1027 of 2015 arising out of FAO No. 673 of 2015.

AND

In the matter of:

1. State of Orissa represented through its Commissioner-cum-Secretary, School and Mass Education Department, At/P.O.-Bhubaneswar, Dist. Khurda.
2. The Director, Secondary Education, At: Heads of Department Building, Odisha, At/PO:, Bhubaneswar, Dist: Khurda.

3. The Inspector of Schools, Balasore Education Circle, At/Po/ Dist.-Balasore, now redesignated as District Education Officer, Balasore, At/Po/Dist.-Balasore. (Appellants in the FAO Petition)

... **Review Petitioners.**

-Versus-

Managing Committee of Jagabandhu Uchha Bidyapitha, Aghirapada, represented through its Headmaster-cum-Secretary, Mukunda Chandra Biswal, aged about 53 years, Son of late Pranabandhu Biswal, At/Po-Aghirapada, Cia- Oupada, Dist.-Balasore.

(Respondent in the FAO petition)

.... **Opp. Parties.**

TO

THE HON'BLE SHRI K.S JAVIAR, LL.B., THE CHIEF JUSTICE OF THE HON'BLE HIGH COURT OF ORISSA AND HIS LORDSHIP'S OTHER COMPANION JUSTICES OF THE SAID HON'BLE COURT.

The humble petition of the Review Petitioners named above;

MOST RESPECTFULLY SHEWETH;

1. That, the review petitioners above named, who are the functionaries of the State of Orissa, have filed the present review petition seeking review of order dtd. 9.3.2018 of this Hon'ble Court passed in Misc. Case No. 1027 of 2015 arising out of FAO No. 673 of 2015, wherein the Hon'ble Court was pleased to pass the following order;

"The appellants were contesting the proceeding before the Education Tribunal. So it is not permissible to say that they were not aware of the result of the proceeding at the time of its conclusion. The Tribunal was under no legal obligation to send a copy of its judgment to the appellants as the concept of communication is not provided in the Act and the Rules made there under. Nothing is stated as to which documents had gone without being examined, during the pendency of the original proceeding giving rise to further need for collection of those for further examination in order to take a decision in the matter of filling the appeal. The appellants are found to have not acted promptly even after receipt of the information about result of the case and have rather dealt it in casual manner.

The time consumed in the total process is stretching for a period of more than one year and seven months, The explanations are rather casual and do not at all appear to be satisfactory. Therefore, testing the present case through the spectrum of the ratio of the decision in case of Office of the Chief Post Master and others (supra) and other decisions referred to therein, this court finds no justification to say that sufficient causes stood on the way of filing the appeal late, i.e., after lapse of about one year and seven months from the date of expiry of the period of filing the appeal."

2. That, the present opp. Parties approached the State Education Tribunal by way of filing a Grant-in-Aid case bearing No. 586 of 2011 praying therein for a direction to the Opp. Parties to release entitled Grant-in-aid at the rate of 60% of the salary cost w.e.f 1.6.96 and at the rate of 100% of the salary cost w.e.f 1.6.98 under provisions of grant in order 1994 by giving a declaration that the applicant's school and all the teaching and non teaching staff are entitled to the aforesaid grant in aid from the above date under the grant in order 1994 by directing the opp. Parties to notify the said school as aided school w.e.f 1.6.1996.

3. That, the above said GIA case was disposed of by the learned State Education Tribunal vide Judgment dtd. 24.4.2013 with a direction to the opp. Party Nos. 1 and 2 are being directed to the applicant-school @ 60% of the salary cost w.e.f 1.6.1996 and full salary cost (100%) w.e.f 1.6.1999 strictly in accordance with grant in aid order, 1994. The differential salary components be accordingly paid to all the staff of the applicant-school.

4. That, the state authorities filed an appeal U/s 24 (C) of the Orissa Education Act before this Hon'ble Court bearing F.A.O. No. 673 of 2015 along with a petition U/s 5 of the Limitation Act for condonation of delay of 876 days and stating the grounds in the limitation petition for cause of delay which were bonafied and not deliberate.

5. That, a Misc. Case bearing No. 1027 of 2015 which was filed U/s 5 of the limitation act for condonation of delay was taken up for hearing on 9.3.2018 and this Hon'ble Court was not inclined to condone the delay of 876 days and was pleased to dismiss the limitation petition and as a consequence the F.A.O. was also dismissed. *Copy of above said order dtd. 9.3.2018 is filed herewith and marked as **Annexure-1**.*

6. That, it is humbly submitted that although the present review petitioners (appellants in the FAO petition) had made out very good grounds in the FAO for kind interference of this

Hon'ble Court, but this Hon'ble Court without considering the merit of the FAO was pleased to dismiss the petition U/s 5 of the limitation act for being not inclined to condone the delay in approaching the Hon'ble Court in filing the FAO No. 673 of 2015.

7. That, it is humbly submitted that so far the merit of the FAO No. 673 of 2015 is concerned the following legal aspects were not considered by the learned Tribunal while adjudicating the GIA case and the same resulted in grave miscarriage of justice and abuse of the process of court.

8. That, the learned Tribunal did not take into consideration the provision of Section 7-C (1) of the Orissa Education Act, 1969 which clearly states that the State Government shall within the limits of its economic capacity, set apart a sum of money annually for being given as grant in aid to private educational institution in the State, which clearly reveals that the Government is not bound to provide grant in aid to any private educational institution on merely attaining/acquiring the eligibility.

9. That, it is humbly submitted that in the grounds of challenge to the Judgment dtd. 24.4.2013, it has been averred by the appellants that the Respondent's institution does not satisfy the conditions of the Resolution dtd. 17.3.1979, particularly the result of the school did not satisfy the

prescribed requirement under Clause-10 of the Resolution dtd. 17.3.1979 and in order to satisfy this Hon'ble Court as regards the percentage of result in the relevant year for being eligible to get grant in aid w.e.f 1.6.1994, the present additional affidavit is filed for kind appreciation of this Hon'ble Court, which may kindly be accepted.

10. That, it is humbly submitted that prior to coming into force of Orissa Education (Payment of Grant in Aid to High Schools, Upper Primary Schools) Order, 1994, there was no statutory order as regards principle of non-Government aided High Schools. Prior to coming into force of above said grant in aid order, 1994, the Resolution dtd. 17.3.1979 of the Government of Odisha, the then Education and Youth Service Department was governing the field.

11. That, it is humbly submitted that as per Clause 7 of the above said grant in aid order, 1994 the Educational Institutions which have become eligible to grant in aid on the basis of the executive instructions in force immediately preceding the date of commencement of this order, but have not received any grant in aid so far, may get minimum grant in aid at the rate of 60 percent of the salary cost of the teaching and non teaching employees (hereinafter called minimum grant) from the 1st June 1994, irrespective of the date from which such educational institution would have become eligible under the

said executive instructions. Grant-in-aid payable shall be worked out with reference to the initial pay in the relevant scale of pay as on the 1st June 1994. No such arrear shall be paid.

Provided that in the event of any educational institution would have become eligible for 100 percent grant in aid from any date prior to the 1st June, 1994 grant in aid may be sanctioned at 100 percent of the salary cost of the teaching and non teaching employees (hereinafter called full grant) from 1st June, 1994.

12. That, it is respectfully submitted that in order to get the benefit of Clause-7 of the grant in aid order, 1994, one has to satisfy the conditions stipulated in Resolution dtd. 17.3.1979 and Clause 10 (1) of the Resolution dtd. 17.3.1979 prescribes that a recognised High School will be eligible to receive the minimum grant in aid after four years from the year of presentation of candidates in the final High School Examination subject to the following conditions;

(a) If it is a six class High School, it must have at least 200 students on its rolls, and if it is a four class High School, must have at least 140 students on its rolls.

(b) the result of the school must not be, at any rate below State average in the Annual High School

Examination for three consecutive years, by the time it qualifies to receive the minimum grant.

NOTE- (1) The result of the school shall be judged on the basis of the total number of students on the roll in Class-XI at the beginning of the academic session, but not on the basis of the number of students, sent up to appear in the Annual Certificate Examination.

NOTE- (2) J.C.D block having half or less than half the State in literacy is to be treated as an educationally backward area.

NOTE-(3) Loss of fees income would mean loss sustained by Educational institutions for not collecting fees from Girl Students, or Scheduled Castes and Scheduled Tribes children of Class IV of Government employees, and primary school teachers and free students.

However in educationally backward areas the minimum grant will start after one year of presentation candidates in the final High School Certificate Examination and the roll strength in the final High School and a four class High School must be at least 140 and 100 students respectively and the result of the school must not be at any rate, less than 25% below the State average in the Annual High School Certificate Examination.

13. That, it is humbly submitted that Clause-16 of the grant in aid order, 1994 prescribes that sanction of grant in aid for all categories of institution shall also be subject to the following general stipulations and as per the sub-clause (iv) no grant in aid shall be payable to an institution which has not achieved such minimum enrolment as may be prescribed by Government for different courses and for different areas. Similarly no grant in aid shall be payable to an educational institution which has failed to achieve such results in the public examinations as may be determined by the Government, during the unaided period or such further period as may be extended from time to time.

14. That, it is humbly submitted as per Clause 7 of the above said grant in aid order, 1994 the Educational Institutions which have become eligible to grant in aid on the basis of the executive instructions in force immediately preceding the date of commencement of this order, but have not received any grant in aid so far, may get minimum grant in aid at the rate of 60 percent of the salary cost of the teaching and non teaching employees (hereinafter called minimum grant) from the 1st June 1994, irrespective of the date from which such educational institution would have become eligible under the said executive instructions. Grant in aid payable shall be worked out with reference to the initial pay in the relevant sale

of pay as on the 1st June 1994. No such arrear shall be paid. But as regards the institution those who have attained the eligibility after 1.6.1994 no date has been prescribed under the grant in aid order, 1994 from which date they will get the grant in aid on attaining the eligibility and the same has already been held by the Full Bench of this Hon'ble Court in the case of Laxmidhar Pati and others Versus State of Odisha and others, wherein it has been held that no date has been prescribed under any of the executive instructions or grant in aid order, 1994 and accordingly the institution merely attaining the eligibility after 1.6.1994 can not claim grant in aid as a matter of right unless the said institutions is notified by the Government as an educational institution and further the institutions those who have only satisfies the Clause-7 of the grant in aid order, 1994 as well as the executive instruction existing prior to that i.e the Resolution dtd. 17.3.1979 read along with Clause-16 of the Grant in aid order, 1994 can only get the benefit of grant in aid w.e.f 1.6.1994.

15. That, the Judgment dtd. 24.4.2013 passed in GIA Case No. 586 of 2011 is contrary to the law laid down by this Hon'ble Court in a Full Bench in case of Laxmidhar Pati and others Versus State of Orissa and others reported in 1996 (I) OLR-152 wherein this Hon'ble Court held as follows:

"22. The ratio of the aforesaid decisions is not in doubt or in dispute in any manner whatsoever. By construing and interpreting the Government resolutions and the Government circular as indicated above, we shall have to consider whether the scheme as framed by the State Government entitles the recipients to receive grant-in-aid from the date of their achieving the eligibility criteria and/or from the date of notification to indicate that such eligible schools or their teaching and non-teaching staff are eligible to receive grant-in-aid by approving their eligibility, or whether the date of release of grant-in-aid to eligible schools and/or their teaching and non-teaching staff from the date of actual order of release having no nexus to the date of approval of the eligibility criteria. Looking at the scheme and in particular the provision of law that there is no absolute right to claim grant-in-aid and the financial capacity, the economic potentiality and other development work of Government have to be considered in interpreting Art. 41 of the Constitution of India. We are of the considered view that the Bench decision of this Court reported in 1993(I) OLR 77 is correct. The view taken by the subsequent Division Bench as to entitlement to grant-in-aid from the date of approval and/or from the date of

achieving the eligibility criteria does not appear to be good law. The reference is answered accordingly.

We hasten to add here that we may not be understood to have laid down the law that the Government is a free-lancer in ordering release of grant-in-aid arbitrarily and denying fair play and by encouraging favouritism. Its decision/order in the matter of grant/refusal of grant-in-aid must be based on sound principles and should not be whimsical or arbitrary."

16. That, as per the settled position of law as laid down by this Hon'ble Court in the case of Laxmidhar Pati and others versus State of Orissa and others reported in 1996 (I) OLR-152 merely an institution is eligible to receive grant in aid no institution has right to receive the same , the said principle was not considered by the learned Tribunal while adjudicating the case. Hence the order passed by the learned Tribunal directing the petitioners to release grant in aid in favour of the opp. Parties w.e.f 1.6.1994 is per se illegal and unless the delay in filing of the appeal be reconsidered by this Hon'ble Court and the Hon'ble Court review the order passed on 16.3.2018 , there would be huge loss to the Government exchequer and the same will affect the interest of the public at large. In such view of the matter the Hon'ble Court may review

the order dtd. 9.3.2018 passed in Misc. Case No. 1027 of 2015 arising out of FAO No. 673 of 2015.

17. That, it is humbly submitted that in a similar case i.e FAO No. 125 of 2016 this Hon'ble Court passed the order of dismissal of the limitation petition on 25.1.2017 and as a consequence the FAO No. 125 of 2016 was also dismissed since this Hon'ble Court did not incline to condone the delay of 1101 days in filing the FAO U/s 24(C) of the Orissa Education Act.

18. That, the State appellants approached the Hon'ble Supreme Court against the order of dismissal dtd. 25.1.2017 in Civil Appeal No. 11180 of 2017 and the Hon'ble Supreme Court vide order dtd. 1.9.2017 passed the following order;

"Having regard to the peculiar facts and circumstances of the present case, we condone the delay in filing the appeal before the High Court. Accordingly, we set aside the impugned order of the High Court and remand the matter to the High Court for fresh decision in accordance with law.

The appeal is accordingly disposed of.

Parties are directed to appear before the High Court for further proceedings on October 9, 2017."

A down loaded copy of the above said order dtd. 1.9.2017 is filed herewith and marked as **Annexure-2**.

19. That, it is humbly submitted that the Hon'ble Supreme Court in a very similar nature of case has been pleased to condone the delay of 1101 days in filing the FAO and remanded the matter to the Hon'ble High Court for fresh decision in accordance with law, which reveals that the Hon'ble Supreme Court is inclined that the matter of said nature should be heard on merit.

20. That, it is humbly submitted that in view of the above said decision of the Hon'ble Supreme Court in Civil Appeal No. 11180 of 2017, the present review petitioners filed the present review petition for review of order dtd. 9.3.2018 passed in Misc. Case No. 1027 of 2015 arising out of FAO No. 673 of 2015, which has been dismissed on the ground of delay.

21. That, in view of the aforesaid facts and circumstances, this Hon'ble Court may be pleased to review the order dtd. 9.3.2018 passed in misc. Case No. 1027 of 2015 (arising out of FAO No. 673 of 2015) on merit and further may be pleased to hear the FAO on merit.

P R A Y E R

Therefore, in view of the facts and circumstances narrated above, it is must respectfully prayed that this Hon'ble Court may graciously be pleased to allow this petition by reviewing and recalling the order dtd. 9.3.2018 passed in misc. Case No. 1027 of 2015 (arising out of FAO No. 673 of 2015);

And further this Hon'ble Court be kind enough decide the FAO on its merit;

And pass any such other order/orders as may be deemed fit and proper;

And for this act of kindness the petitioners as in duty bound shall ever pray.

Cuttack

Date : 27-2-19

By the petitioners through


Standing Counsel.

AFFIDAVIT

I, Sri Pramod Kumar Sarangi, aged about 52 years, Son of Dhruba Charan Sarangi, at present working as District Education Officer, Balasore, At/Po/ Dist: Balasore, do hereby solemnly affirm and state as follows :-

1. That I am the petitioner No.3 in this petition & I have been duly authorised by other petitioners to swear this affidavit on their behalf.
2. That the facts stated above are true to the best of my knowledge and based on official records.

Identified by :

ASO,,
A.G.'s Office

Pramod Kumar Sarangi
Deponent.
District Education Officer
BALASORE

CERTIFICATE

Certified that due to want of cartridge papers, plain papers have been used.

Cuttack
Date : 27-2-19

[Signature]
Standing Counsel.
School & Mass Education Cell,
Cuttack.



18

IN THE HIGH COURT OF ORISSA

F.A.O. NO. 673 /2015

Annexure -1

Code No. 010901

In the matter of :

An application under Section 24-C of the Orissa Education Act, 1969.

AND

In the matter of :

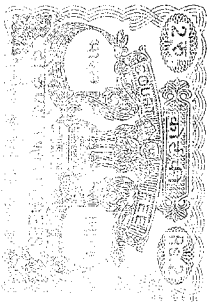
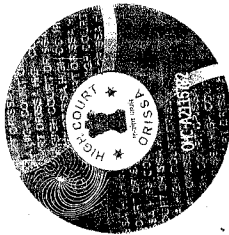
An application challenging the judgment dt.24.4.2013 of the learned State Education Tribunal, Orissa, Bhubaneswar passed in G.I.A. Case No.586 of 2011.

AND

In the matter of :

1. State of Odisha, represented through its Commissioner-cum-Secretary, School & Mass Education Department, Odisha, at Secretariat Building, Bhubaneswar, Dist: Khurda.
2. The Director, Secondary Education, Odisha, At-Heads of Department Building, PO: Bhubaneswar, Dist. Khurda.
3. Inspector of Schools, Balasore Education Circle, now redesignated as District Education Officer, Balasore, At/PO/Dist:

Presented on. 20-11-15
Registrar (Judicial)



District Education Officer
BALASORE

Balasore. (Opposite Parties before the
learned Tribunal)

... Appellants.

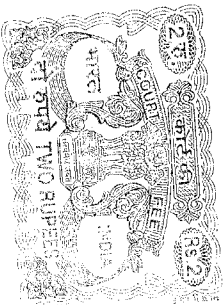
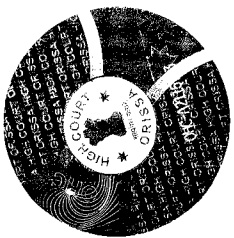
-Versus-

Managing Committee of Jagabandhu Uchha
Bidyapitha, Aghirapada, represented
through its Headmaster-cum-Secretary,
Mukunda Chandra Biswal, aged about 50
years, son of Pranabandhu Biswal, At/PO:
Aghirapada, Via- Oupada, Dist: Balasore.
(Petitioner in the learned Tribunal)

.... Respondent.

The matter out of which this


District Education Officer
BALASORE





[O. H. C.-98]

FAO NO.673 OF 2015

Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
02.	09.03.2018	<p style="text-align: center;"><u>MISC. CASE NO.1027 OF 2015</u></p> <p>This is an application under section 5 of the Limitation Act for condonation of delay in filing the appeal under section 24-C of the Orissa Education Act, 1969. The appellants i.e. the State of Odisha and Director, Secondary Education, Odisha in the appeal have questioned the judgment dated 24.04.2013 passed by the learned Education Tribunal in GIA Case No.586 of 2011 in the matter of an application under section 24-B of the Orissa Education Act filed by the respondent.</p> <p>2. As provided in Section 24-C of Orissa Education Act, 1968, the appeal has to be preferred within a period of 60 days from the date of passing of the judgment and not from communication, as the said concept of communication has neither been mandated in the Act nor in the Rules. In the instant case, the judgment having been passed on 24.04.2013, the memorandum of appeal before this Court has been presented on 20.11.2015 and it is after delay of 880 days, i.e., after two year, five months.</p> <p>3. First of all, it is stated that the copy of the impugned judgment was received by the D.E.O., Balasore on 29.08.2013 who then sought for necessary instruction from the Director with regard to the implementation of the impugned order. It is next stated that the Government in the Department of School and Mass Education then authorized the District Education Officer to file an appeal after obtaining permission from the Law Department. It is further stated that the District Education Officer, Balasore then contacted</p>	

0,000-14-7-2016


District Education Officer
BALASORE

[O. H. C.-98]

Sl. No. of Order	Date of Order	= 2 = ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
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the learned Senior Standing Counsel and after further examination, the process culminated by way of presentation of memorandum of appeal.

4. Learned counsel for the State submits that the delay in filing the appeal was neither deliberate nor intentional and it has so occurred because of the time consumed in the official process, which is inevitable. So he urges for condonation of delay.

5. In **Office of the Chief Post Master & Others vs. Living Media India Ltd. & Another**, (2012) 3 SCC 563, after survey of the earlier decisions, the apex Court in paragraphs 27, 28, 29 and 30 held as follows:-

"27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The

1-7-2016

District Education Officer
BALASORE

FAO. 673/15

23

[O. H. C.-98]

Sl. No. of Order	Date of Order	= 3 = ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
		<p>law of limitation undoubtedly binds everybody including the Government.</p> <p>29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.</p> <p>30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay."</p> <p>6. The appellants were contesting the proceeding before the Education Tribunal. So it is not permissible to say that they were not aware of the result of the proceeding at the time of its conclusion. The Tribunal was under no legal obligation to send a copy of its judgment to the appellants as the concept of communication is not provided in the Act and the Rules made thereunder. Nothing is stated as to which documents had gone without being examined, during the pendency of the original proceeding giving rise to further need for collection of those for further examination in order to take a decision in the matter of filling the appeal.</p>	

2016

District Education Officer
BALASORE

Sl. No. of Order	Date of Order	= 4 = ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
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The time consumed in the total process is stretching over a period of two year, five months. The explanations are rather casual and do not at all appear to be satisfactory. Therefore, testing the present case through the spectrum of the ratio of the decision in case of **Office of the Chief Post Master & Others** (supra) and other decisions (supra), this Court finds no prima facie justification to entertain the petition for condonation of delay. The explanation that the delay is because of consumption of time in the official process are very casual and per se not acceptable to say that the same stood on the way of filing the appeal late, that too after lapse of two year, five months from the date of expiry of the period of filing the appeal.

7. Accordingly, the petition giving rise to the Misc. Case is dismissed.

Consequently, the FAO stands dismissed.

341-D. DASH. J.

F.A.O. NO.673 OF 2015

03. 09.03.2018

In view of above order in Misc. Case No. 1027 of 2015, the F.A.O. stands dismissed.

341-D. DASH. J.

PTS-U 1 (H. C.) 6-1,00,000 -14-7-2016

**District Education Officer
BALASORE**

Date of Application:- 6
 Date of Notification:- 14
 Date of Supply:- 16
 Date of Ready:- 16
 Date of Delivery:- 19

C.A No- 63181/18		
MEMO OF COSTS		
	Rs.	P.
Application Fee	—	50
Searching Fee	—	—
Extra For Station copy	9	00
Folios 12	6	00
Hologram	6	00
Other items	3	90
Total	25	40
(Rupees Twenty five & Paise Forty only)		
EXAMINER OF COPIES CUM SUPERINTENDENT COPYING DEPARTMENT		

CERTIFIED TO BE A TRUE COPY
 Assistant Registrar (Estt.)
 ORISSA HIGH COURT
 Authorised Under Section-76 Act-I of 1972

District Education Officer
 BALASORE

ITEM NO.18

COURT NO.11

SECTION XIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (Civil) No.....of 2017
(Diary No(s). 23544/2017)

(Arising out of impugned final judgment and order dated 25-01-2017
in FAO No. 125/2016 in FAO No. 219/2016 passed by the High Court Of
Orissa At Cuttack)

THE STATE OF ODISHA & ORS.

Petitioner(s)

VERSUS

AJAY KUMAR BEHERA & ORS.

Respondent(s)

(IA No.76842/2017-CONDONATION OF DELAY IN FILING)

Date : 01-09-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Petitioner(s) Mr. Pawan Upadhyay, Adv.
MR. Sarvjit Pratap Singh, Adv.
Ms. Sharmila Upadhyay, AOR

For Respondent(s) Mr. Bharat Sangal, Adv.
Ms. Isha Gupta, Adv.
Ms. Vidushi Garg, Adv.
Ms. S. Spandana Reddy, Adv.
Ms. Anindita Deka, Adv.
Ms. Vernika Tomar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is disposed of in terms of the signed
order.

Pending application(s), if any, shall also stand
disposed of.

(MADHU BALA)

Validated by COURT MASTER (SH)

Digitally signed by
MADHU BALA
Date: 2017.09.01
16:57:11
Reason:

Signed order is placed on the file

(PARVEEN KUMARI PASRECHA)
BRANCH OFFICER

District Education Officer
BALASORE

District Education Officer
BALASORE

22 26

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.11180-81 OF 2017
(@ SLP(C) NO.23181-23182 OF 2017 @ D.NO. 23544 OF 2017)

THE STATE OF ODISHA & ORS.

VERSUS

...APPELLANT(S)

AJAY KUMAR BEHERA & ORS.

...RESPONDENT(S)

O R D E R

Delay condoned.

Leave granted.

Heard learned counsel for the parties.

Having regard to the peculiar facts and circumstances of the present case, we condone the delay in filing the appeal before the High Court. Accordingly, we set aside the impugned order of the High Court and remand the matter to the High Court for fresh decision in accordance with law.

The appeal is, accordingly, disposed of.

Parties are directed to appear before the High Court for further proceedings on October 9, 2017.

.....J.
[ADARSH KUMAR GOEL]

NEW DELHI
1st SEPTEMBER, 2017

.....J.
[UDAY UMESH LALIT]

and
District Education Officer
BALASORE

g
District Education Officer
BALASORE

IN THE HIGH COURT OF ORISSA : CUTTACK.

I.A NO. 41 OF 2019.

(Arising out of REVWEPT No. 59 of 2019)

In the matter of:

An application under Section 5 of the
Limitation Act for condonation of delay.

A N D

In the matter of:

State of Orissa and others. ...Review Petitioners.

- Versus -

Managing Committee of Jagabandhu

Uchha Bidyapitha ... Opp. Party.

TO

THE HON'BLE SHRI K.S. JAVIR^{JHAPARI, B.S.C.}, LLB., THE CHIEF JUSTICE
OF THE HON'BLE HIGH COURT OF ORISSA AND HIS
LORDSHIP'S OTHER COMPANION JUSTICES OF THE SAID
HON'BLE COURT.

The humble petition of the
petitioners named above ;

MOST RESPECTFULLY SHEWETH ;

1. That the petitioners above named who are the
functionaries of the State of Orissa have filed the present

review petition seeking review of order dt.9.3.2018 passed in Misc. Case No. 1027 of 2015 (arising out of FAO No. 673 of 2015) of this Hon'ble Court, wherein the Hon'ble Court was pleased to pass the following order;

"The appellants were contesting the proceeding before the Education Tribunal. So it is not permissible to say that they were not aware of the result of the proceeding at the time of its conclusion. The Tribunal was under no legal obligation to send a copy of its judgment to the appellants as the concept of communication is not provided in the Act and the Rules made there under. Nothing is stated as to which documents had gone without being examined, during the pendency of the original proceeding giving rise to further need for collection of those for further examination in order to take a decision in the matter of filing the appeal. The appellants are found to have not acted promptly even after receipt of the information about result of the case and have rather dealt it in casual manner.

The time consumed in the total process is stretching for a period of about three years and three months. The explanations are rather casual and do not at all appear to be satisfactory. Therefore, testing the present case through the spectrum of the ratio of the

decision in case of Office of the Chief Post Master and others (supra) and other decisions referred to therein, this Court finds no justification to say that sufficient causes stood on the way of filing the appeal late, i.e, after lapse of about three years and three months from the date of expiry of the period of filing the appeal."

2. That the averments made in the review petition may be read and treated as part and parcel of this application and those are not reiterated for the sake of brevity.

3. That, it is humbly submitted that in a similar case i.e FAO No. 125 of 2016 this Hon'ble Court passed the order of dismissal of the limitation petition and as a consequence the FAO No. 125 of 2016 was also dismissed since this Hon'ble Court did not incline to condone the delay of 1101 days in filing the FAO U/s 24(C) of the Orissa Education Act.

4. That, the State appellants approached the Hon'ble Supreme Court against the order of dismissal dtd. 25.1.2017 in Civil Appeal No. 11180 of 2017 and the Hon'ble Supreme Court vide order dtd. 1.9.2017 passed the following order;

"Having regard to the peculiar facts and circumstances of the present case, we condone the delay in filing the appeal before the High Court. Accordingly, we set aside the impugned order of the High Court and

remand the matter to the High Court for fresh decision in accordance with law.

The appeal is accordingly disposed of.

Parties are directed to appear before the High Court for further proceedings on October 9, 2017."

5. That, it is humbly submitted that the Hon'ble Supreme Court in a very similar nature of case has been pleased to condone the delay of 1101 days in filing the FAO and remanded the matter to the Hon'ble High Court for fresh decision in accordance with law, which reveals that the Hon'ble Supreme Court is inclined that the matter of said nature should be heard on merit.

6. That, it is humbly submitted that in view of the above said decision of the Hon'ble Supreme Court in Civil Appeal No. 11180 of 2017, the present review petitioners filed the present review petition for review of order dtd. 9.3.2018 passed in Misc. Case No. 1027 of 2015 arising out of FAO No. 673 of 2015, which has been dismissed on the ground of delay.

7. That, after receipt of the above said order dtd. 9.3.2018 of this Hon'ble Court, the Government in the Department of School and Mass Education vide letter dtd.20.12.2018 have directed this deponent to file review petition challenging the order dtd. 09.03.2018 passed in the FAO No. 673 of 2015.

8. That, it is humbly submitted that after receipt of the above said instruction from the Government, this deponent moved the Office of the Senior Standing Counsel, School and Mass Education, Cell; Cuttack for drafting of review petition and after necessary discussion Review petition was prepared and filed on 28.2.19.

9. That it is humbly and respectfully submitted that the delay caused for filing of Review petition is bonafide, unintentional and not willful, on the other hand the delay caused for filing of the review petition is due to observation of the official formalities:

10. That in the given sets of facts and circumstances, it is humbly prayed that this Hon'ble Court may graciously be pleased to condone the delay in filing the review petition.

11. That it is humbly submitted that in the interest of justice, equity and fair play the delay in filing the review petition may be condoned and the same may be heard on merit.

• **PRAYER**

Therefore, in view of the above facts and circumstances, it is humbly prayed that this Hon'ble Court may graciously be pleased to allow this petition by condoning the delay of days in filing the review petition;

And pass any such other order/orders as this Hon'ble Court may deem fit and proper;

And for this act of kindness, the petitioners shall as in duty bound ever pray.

By the petitioners through
CUTTACK.

Dt. 27-2-19


Standing Counsel.

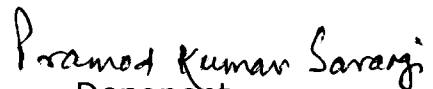
AFFIDAVIT

I, Pramod Kumar Sarangi, aged about 52 years, Son of Dhruba Charan Sarangi, at present working as District Education Officer, Balasore, At/Po/Dist: Balasore, do hereby solemnly affirm and state as follows :-

1. That I am the petitioner No.3 in this petition & I have been duly authorised by other petitioners to swear this affidavit on their behalf.
2. That the facts stated above are true to the best of my knowledge and based on official records.

Identified by :

ASO, A.G.'s Office.



Deponent.
District Education Officer
BALASORE

CERTIFICATE

Certified that due to want of cartridge papers, plain papers have been used.

Cuttack

Date : 27-2-19


Standing Counsel.
School & Mass Education Cell,
Cuttack.