

**IN THE SUPREME COURT OF INDIA
(ORIGINAL CIVIL JURISDICTION)
PUBLIC INTEREST LITIGATION
WRIT PETITION (C) NO. 739 OF 2020**

IN THE MATTER OF:

Yuva Sena

Petitioner

Versus

University Grants Commission & Ors

Respondents

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Shibashish Misra
Advocate for the Respondent No. 18 (State of Odisha)

New Delhi

Date: 15.08.2020

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WITH

**COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT NO. 18
(STATE OF ODISHA)**

**PAPER BOOK
(FOR INDEX KINDLY SEE INSIDE)**

Advocate for the Respondent No. 18 (State of Odisha): Shibashish Misra

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**COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT NO. 18
(STATE OF ODISHA)**

I, Surya Narayan Mohapatra,

, at present working as Deputy Secretary to Government, Higher Education Department, Government of Odisha, Secretariat, Bhubaneswar, Odisha do hereby solemnly affirm and state as under:

1. That I am working as Deputy Secretary to Government, Higher Education Department, Government of Odisha, Secretariat, Bhubaneswar, Odisha and have been duly authorized by the Respondent No. 18 (State of Odisha) to swear the present Counter Affidavit being well acquainted with the facts and circumstances of the present case.
2. That I have gone through the Writ Petition filed by the Petitioner and have understood the contents thereof.

3. That the present Writ Petition has been filed by the Petitioner praying for issuance of a Writ of Certiorari or appropriate writ/order/direction setting aside the revised Guidelines dated 06.07.2020 passed by the Respondent No. 1 (University Grants Commission) and the Office Memorandum dated 06.07.2020 issued by the Respondent No. 2 (Ministry of Human Resource Development, Government of India).
4. That it is respectfully submitted that the Government of Odisha, Higher Education Department on 18.06.2020 in a letter addressed to the Vice Chancellors (All State Public Universities coming under Higher Education Department) and Principals (All Government/Non-Government/Self-Financing Colleges coming under Higher Education Department) has issued instructions relating to adoption of an alternative evaluation method in respect of Under Graduate and Post Graduate Final Year/Final Semester, 2020 students. The relevant portion of the aforesaid letter reads as under:

“(A) For UG and PG Final Year/ Final Semester’ 2020 students:

(1) All pending UG and PG Final Year/ Final Semester Theory and Practical Examination, 2020, excepting Medical/Paramedical/ Pharmacy Courses, of all State Public Universities and Autonomous Colleges coming under the

administrative control of Higher Education Department are hereby cancelled.

- (2) *Universities and Autonomous Colleges will adopt an alternative evaluation method in place of cancelled examinations and declare result by August, 2020.*
- (3) *The alternative evaluation method for each paper will be made as given below*

Marks to be awarded for Final Year/Final Semester papers

(Internal Mark as per Prescribed Weightage)

+

(Practical Mark as per Prescribed Weightage, if applicable)

+

(Average of marks obtained in all previous semester/years in the corresponding papers of that subject, for the remaining weightage).

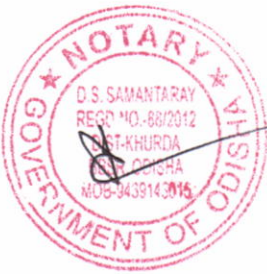
(N.B. : Where Practical examination has not been conducted, the average of marks obtained in Practical Papers of all previous semesters/years in the corresponding Practical

Papers of that subject will be awarded as the Practical examination mark for Final Year/Final Semester)

- (4) Dissertation/Project/Internally Evaluation Papers shall be evaluated by the internal examinations out of full marks allotted for the papers. There will be no Viva Voce/Presentation for these papers. These Papers shall be collected from the students either by Post/e-mail/Whatsapp.*
- (5) If a student feels that s/he could have secured higher marks than the marks awarded to him through alternative evaluation method, then s/he can appear in a special examination, which will be conducted by Universities/Autonomous Colleges by November, 2020 and the results of the same will be declared by December, 2020. The final result mark sheet shall be revised as per the student's performance in the special examination, irrespective of whether s/he secures more or less mark than what is awarded to him through alternative evaluation method. To that effect, an undertaking must be obtained from the student before allowing him to appear in the special examination.*
- (6) The alternative evaluation method shall not be applicable if the UG and PG Final Year/Final Semester Examination, have*

already been conducted. In such cases, the normal evaluation method shall be followed.

- (7) *Pending Back Paper examination for Final Year/Final Semester UG and PG students shall be cancelled if a student has maximum two Back Papers. Instead, the University/Autonomous College may adopt the proportionate quotient method or any other acceptable method to evaluate the student. However, if a student has more than two Back Papers, then s/e has to appear regular examination in all the Back Papers as and when will be conducted. It is hereby clarified that if a student has already appeared in Back Paper examination, but result is awaited, then normal evaluation will be done in case of those papers.*



- (8) *Already passed out UG and PG students willing to appear in Improvement Examination in any paper shall have to appear in such examination as and when will be conducted.”*

A true copy of the letter dated 18.06.2020 issued by the Government of Odisha, Higher Education Department is enclosed herewith as **ANNEXURE R1.**

5. That after the letter of the Government of Odisha dated 18.06.2020, the University Grants Commission issued the impugned Revised Guidelines

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dated 06.07.2020. It is respectfully submitted that the UGC Revised Guidelines dated 06.07.2020 is not implementable in the current situation when the Covid 19 condition is worsening in the State of Odisha and in the entire country. The Office Memorandum of the University Grants Commission dated 06.07.2020 speaks of maintaining academic sanctity and goes on to direct that final term examination must be compulsorily conducted while relaxing the examination pattern for intermediate/semester examinations of other students other than the final term examination. In the said Revised Guidelines, University Grants Commission has permitted for cancellation of intermediate year/semester examinations and adopt alternative evaluation system. Therefore, alternative evaluation system (in lieu of cancelled examinations) is an acceptable concept to the University Grants Commission. In such a scenario, what is acceptable to the University Grants Commission in the case of intermediate year/semester, should have also been acceptable in case of final term examinations.

6. That it is further respectfully submitted that the impugned Revised Guidelines of the University Grants Commission fails to notice that the sanctity of such final examinations, if held, will be greatly compromised while holding the examinations inasmuch as (1) there will be single sitting examination for all subjects; (2) the duration of the examinations will be short; (3) the assessment will be made on the basis of multiple choice

questions in place of subjective questions; (4) there might be unfair practices, which may include an open book examination etc taking into account the current Covid 19 situation. Therefore, the examinations should not be conducted just for the sake of conducting it. Apart from that the University Grants Commission has completely failed to appreciate that if the examinations are conducted in the present Covid 19 scenario lakhs of students/teachers/staff/family members of the students/teachers/staff will be exposed to the risk of Covid 19 infection.

7. That the University Grants Commission has not taken note of the Government of Odisha, Higher Education Department letter dated 18.06.2020 wherein the alternative evaluation method for Under Graduate and Post Graduate Final Year/Final Semester 2020 students was spelt out. The aforesaid letter categorically spelt out that *“if a student feels that s/he could have secured higher marks than the marks awarded to him through alternative evaluation method, then s/he can appear in a special examination, which will be conducted by Universities/Autonomous Colleges by November, 2020 and the results of the same will be declared by December, 2020. The final result mark sheet shall be revised as per the student’s performance in the special examination, irrespective of whether s/he secures more or less mark than what is awarded to him through alternative evaluation method. To that effect, an undertaking must be*

obtained from the student before allowing him to appear in the special examination.” The aforesaid letter also indicated that “*already passed out UG and PG students willing to appear in Improvement Examination in any paper shall have to appear in such examination as and when will be conducted.*” With such provision in the letter of Government of Odisha dated 18.06.2020, the Revised Guidelines of University Grants Commission dated 06.07.2020 ought not to have issued a deadline for conducting the final year examinations.

8. That pursuant to the impugned Revised Guidelines of the University Grants Commission dated 06.07.2020 the Hon’ble Minister, Higher Education, Government of Odisha has written a letter to the Hon’ble Union Minister, Ministry of Human Resource Development, Government of India on 09.07.2020 bringing to his notice the various difficulties in the present Covid 19 scenario and requesting him to re-examine the entire issue and to allow the State Government to implement its own decision by not making the MHRD/UGC Revised Guidelines dated 06.07.2020 mandatory on the State Government. A true copy of the letter dated 09.07.2020 written by the Hon’ble Minister, Higher Education, Government of Odisha is enclosed herewith as **ANNEXURE R2**.

It is pertinent to mention here that the aforesaid letter of the Hon’ble Minister dated 09.07.2020 has not been responded to, till date.

9. That it is humbly submitted that since there was no response to the letter of the Hon'ble Minister, Higher Education, Government of Odisha dated 09.07.2020, the Hon'ble Minister, Higher Education, Government of Odisha wrote another letter on 23.07.2020 to the Hon'ble Minister, Ministry of Human Resource Development, Government of India highlighting eight important points for which the Revised UGC Guidelines cannot be implemented by the State of Odisha, which are as follows:

“1. The number of UG & PG final semester/year students in Odisha is about 2 lakhs. Most of them belong to low and middle income group and do not have desktop or laptop or decent smart phone at home. Most of them also stay in rural areas not having reliable internet connection. Therefore, conducting online examination for such a large number of students is simply not possible.

2. Conducting physical examination will expose the students, the college staff and their family members to the risk of Covid – 19.

3. As public transportation is now virtually non-existent, it is not possible on the part of the students to come to their college.

4. For hostellers, it will be a herculean task to accommodate them in hostels maintain all the Covid-19 protocols.

5. *As the hostel accommodation is limited, many students used to stay in private rented hostels/houses around colleges. As colleges were closed down since 24th March, 2020, all of them have gone back to their native places. The house owners will now not allow the students to come and stay in their houses/hostels considering the Covid-19 risk.*
6. *A number of colleges are presently being used by District Administrations for Quarantine Centre, Covid Care Home, Covid Care Centre, Covid Care Hospital, etc. Students coming to these colleges for writing examination will be exposed to the Covid-19 risk.*
7. *Conduct of examination in September' 2020, as advised by UGC, will get further delayed as the Covid-19 situation is worsening in India. In that case, the academic calendar will go off the rail completely jeopardizing the future career of lakhs of students.*
8. *If the alternative evaluation system can be accepted for intermediate year/semester students, it should also be accepted for final semester/year students. Students not happy with the alternative evaluation system (the number will be very less) will anyway get a chance to appear in physical examination to be conducted in*

November/December once the Covid -19 situation improves. Through the alternative evaluation system, the final semester/year result can be published by 31st August, 2020 which will not derail the academic calendar at all."

A true copy of the letter dated 23.07.2020 written by the Hon'ble Minister, Higher Education, Government of Odisha is enclosed as **ANNEXURE R3**.

10. That the letter of the Hon'ble Minister dated 23.07.2020 has also not been responded to by the Government of India, which ought to have been taken note of especially when vital issues had been raised therein. The Government of India on the wake of Covid – 19 pandemic has earlier taken drastic measures under the Disaster Management Act and has issued Notifications from time to time which includes closure of schools and colleges from 25.03.2020, cancellation of pending examinations of Class X and Class XII and adopting alternative evaluation system, substantial reduction of syllabus upto Class XII and conducting online teaching, though it does not reach more than 50% of the students and the teaching – learning efficiency is greatly compromised through this online mode of teaching. However, the aforesaid Guidelines is the call of the hour due to the extraordinary situation created by the Covid 19 pandemic, which has gripped the whole world in its clutches.



Sanya nayan notary

Therefore, under similar circumstances the final term examination may be cancelled and the result can be published on the basis of the alternative evaluation system as devised by the Government of Odisha in its letter dated 18.06.2020, based on the average marks obtained in the previous semesters. It is pertinent to mention here that the Higher Education Department, Government of Odisha is the Controlling Department of all Public Universities and Colleges within the State of Odisha.

11. That in view of the submissions/pleadings made hereinabove, the Revised Guidelines of the University Grants Commission dated 06.07.2020 is not implementable in the current situation when the Covid – 19 cases are worsening in the State of Odisha. It is further respectfully submitted that the State of Odisha is not shying away from holding the final examinations but only prays that during the present time the holding of final examinations should be kept in abeyance and the alternative evaluation system should be adopted. The letter of the Hon'ble Minister, Higher Education, Government of Odisha dated 23.07.2020 categorically spells out the valid impediments which the State would face if the final examinations are held in compliance to the Revised Guidelines of the University Grants Commission dated 06.07.2020.
12. That as on 14.08.2020 there are 54,630 confirmed positive Covid 19 cases in the State of Odisha, out of which 37,901 have recovered and as on

14.08.2020 there are 16,352 active cases. There have been 324 deaths due to the Covid 19 infection. The number of active cases, in the State of Odisha, has increased by more than 12 times since 18.06.2020.

13. That due to the facts mentioned hereinabove, the Writ Petition filed by the Petitioner deserves to be allowed and the impugned Revised Guidelines of the University Grants Commission dated 06.07.2020 and the Office Memorandum of the Ministry of Human Resource Development dated 06.07.2020 is liable to be quashed.

That the Annexures R1 to R3 filed along with the present Counter Affidavit are true copies of their respective originals.

That the facts stated herein above are true to the best of knowledge and belief.

Λ~

DEPONENT

VERIFICATION

Verified at Bhubaneswar on this day 15th of August, 2020 that the contents of paragraphs 1 to 15 of the present Counter Affidavit are true and correct and nothing material has been concealed therefrom.

DEPONENT 15-08-2020