

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION NO.1550 OF 2006

IN THE MATTER OF :

UNION OF INDIA

PETITIONER

VERSUS

STATE PUBLIC INTEREST PROTECTION

COUNCIL AND ORS.

RESPONDENTS

COUNTER AFFIDAVIT FILED ON BEHALF OF THE RESPONDENT NO. 1.

I, Prasanta Kumar Das, ,aged about 61 years ,son of Late Shri Birendra Kumar Das, President, State Public Interest Protection Council, 204 Sunamani Apartments, Tala Telenga Bazar, P.S. Purighat, Town / Dist.Suttack-9 do hereby solemnly affirm and state as follows:

1. That I am the President of the Respondent No.1 in the present case and as such I am competent to swear and depose to the contents of the present Counter Affidavit
2. That I have gone through the Special Leave Petition (herein after referred to as SLP) and understood the contents thereof.
3. That I am born and brought up in Orissa and as such am a permanent resident of Orissa and have been aware of its historical background in the field of industrial, economic, educational and cultural growth since the independence of India. It is respectfully submitted that before attempting to respond to the contents of the present SLP the Deponent craves leave and it is imperative to briefly narrate the background of Orissa in the present day scenario of its backwardness particularly when several other states in the Country enjoy the privilege of positioning themselves in the limelight for development and growth be it with the aid and assistance of the Centre and or otherwise. Therefore the Deponent herein craves to introduce the background of Orissa to this Hon'ble Court for a better appreciation of the present case:

- I. The state of Orissa, albeit its beauty, serenity, natural and cultural wealth, is one of the most economically disadvantaged states in India. Income poverty in Orissa is 12 times that of the best performing Jammu and Kashmir (J&K) which stands at 4%. Poverty level in Sikkim stands at 36% with Bihar, MP and Assam coming in before the last place finish for Orissa at 47%. Orissa had only 270 hospitals as against 2,100 in Kerala. While Kerala had one hospital bed for every 330 people, Orissa had one per 3,000. While Karnataka had 30 medical colleges and Maharashtra had 36, Orissa had only three. Orissa, considered a backward state along with UP, MP, Bihar, and Rajasthan, has the worst infant and maternity mortality rates and malnutrition. The proportion of women undernourished is highest in Orissa (48%, according to Mr. Padam Singh, ICMR). Women who are undernourished are more likely to have children who are under-nourished. Orissa is one of the poorest states with the second lowest per capita income after Bihar as per the East India Human Development Report, 2004.

- II. Orissa is also one of the low literacy states, ranking 13th among the sixteen major states in the country. Less than 64% of the population has been enumerated as literates in the 2001 census. It is also one of the least urbanized states in India. The infrastructure, higher education, access to health facilities, and family income areas in South-West Orissa are yet more deplorable.

- III. The Indian Govt.'s per capita development expenditure in the Northeast was Rs 4,622, almost double of the all-India average of Rs 2,645. In contrast, Bihar and Orissa, the two poorest states of the Union of India, had only Rs 1,211 and Rs 2,101 per capita, respectively, as development expenditure. Moreover, it is estimated that the central Human Resources spending per head in Karnataka is Rs. 25 versus Rs. 4 in Orissa and Bihar.

Based on a study by Dr. Sarvalingam and Dr. M. Siva Kumar of the Department of Economics, Chikkaih Naicker College, Erode, Tamil Nadu, the State wise Human Deprivation Index is tabulated below with the respective state ranks. This will show that Orissa's rank culminating from the past decades is worst.

STATEWISE HUMAN DEPRIVATION INDEX

Sl.No	States/UT	Poverty line	Illiteracy 2001	IMR 2001	Deprivation Index	Rank
1	AndhraPradesh	15.77	38.89	66	40.21	9
2	ArunachalPradesh	33.47	45.26	44	40.89	7

3	Assam	36.09	35.72	78	49.93	5
4	Bihar	42.60	52.47	67	54.02	3
5	Goa	4.40	17.68	36	19.35	27
6	Gujrat	14.07	33.57	64	37.21	12
7	Haryana	8.74	31.41	69	36.38	16
8	HimachalPradesh	7.63	24.09	64	31.90	18
9	Jummu&Kashmir	3.48	45.54	45	31.34	19
10	Karnataka	20.04	32.96	58	36.99	13
11	Kerala	12.72	9.08	16	12.59	30
12	MadhyaPradesh	37.43	35.92	97	56.77	2
13	Maharastra	25.02	28.73	49	34.24	17
14	Manipur	28.54	31.13	25	28.21	21
15	Meghalaya	33.87	36.69	52	40.85	8
16	Mizoram	19.47	11.51	23	17.98	29
17	Nagaland	32.67	32.89	N/A	N/A	N/A
18	Orissa	47.15	36.39	98	60.50	1
19	Punjab	6.16	30.05	54	30.06	20
20	Rajasthan	15.28	38.97	83	45.74	6
21	Sikkim	36.55	30.32	52	39.61	10
22	Tamilnadu	21.12	26.58	53	23.54	23
23	Tripura	34.44	29.36	49	36.59	15
24	UttarPradesh	31.15	42.64	85	52.92	4
25	WestBengal	27.02	30.78	53	36.92	14
26	Andaman&Nicobar	20.99	18.81	30	23.06	24
27	Chandigarh	5.75	18.24	32	18.65	28
28	Dadra&NagarHaveli	17.14	39.97	61	39.36	11
29	Daman&Diu	4.44	18.91	N/A	N/A	N/A
30	Delhi	8.23	18.18	51	25.80	22
31	Lakshadeep	15.60	12.48	30	19.36	26
32	Pondicherry	21.67	18.51	21	20.39	25
33	India	26.10	34.80	71	43.96	

It is submitted that the data collated herein above are from:

1. National Human Development Report 2001 in India
2. National Human Development Report 2001. Literacy rate in India
3. Economic and political report 2003.

IV. It is further submitted that Orissa, despite being rich in various natural resources, particularly mineral deposits, forest products, a 450 kms long sea shore, mythological and historical tourist spots etc., it continues to be the most backward economically owing to the sole reason of central negligence. Such unfortunate situation stands substantiated from a series of factual matrix that are spread over the past decades.

V. The state, only because of it's existence in between, stands touched by the rail and road routes, that too during the pre-independance days of British rule under 'Bengal - Nagpur Railways and 'Calcutta - Bombay' and 'Calcutta - Madras' roads. A little has been added thereafter, whereas sea changes have been affected at several places. The long

cherished demand for East Coast Railways too is neither fully functional nor controls several strategic stretches even after all these years of its formation. Almost all new projects are under execution for decades.

- VI. Similarly, in case of tourism and pilgrimage too the state stands severely discriminated out of either political or otherwise vested interests, so much so that the two most vital places like the 'Sun temple at Konarka' and 'Lord Jagannath Temple at Puri' too stand unattended. Another significant example being, 'Digha in West Bengal is a busy and well organised tourists complex, whereas 'Chandaneswar' in Orissa situated only 7 kms away added with its mythological distinction is forlorn, even till this day. The long standing demand for not only accordance of special category but grant of special package, as has been a regular practice in case of a number of vested interest states, too stands a long cherished dream for Orissa. This has resulted in mounting as much as 40,000 crores of debt for the State as a result of which almost 95 percent of the State's revenue is being met to pay up the interest only on the incurred loans plus the administrative liabilities. Plenty of its valuable water resources not only stand unutilised and allowed to flow down to Bay of Bengal but creates devastation almost every year, thereby adversely affecting state's economy.
- VII. It is also important to mention that the Indian Institute of Technology at Kharagpur in West Bengal, the first of its kind in the country was actually due to come up in Orissa but nasty political developments came up in way and it was constrained to be set up in West Bengal during 1949-50. Furthermore the MIG factory at Sunabeda is only a part of the Original Plan, as parts of it had to be shared for Nasik and Bangalore, all owing to political considerations. To add to these a high power Broadcasting Transmitter was scheduled to be set up at 'Khuntuni' under Athagarh Sub.Division. of Cuttack District during 1960s but this was also abandoned due to political considerations. Such discriminatory considerations are in galore through the H.R.D. Department yet again this time and the State is totally deprived from any Central Institution worth its name the least an I.I.T. or a Central University.
- VIII. While India is "Shining", it is unfortunate to state that Orissa is admittedly at the bottoms of the performance lists. In a post-industrial, knowledge society, higher-education, sane and sustainable regional planning hold the greatest promise for socio-economic progress, balanced and long-

term growth, and national unity. Today's market economy transforms a large nation such as India into a true microcosm of the globe: each region/state must compete and fend for itself much like a country within a Union except that a lot of fiduciary, regulatory control and power is concentrated with the Central Government. Thus, equity and thoughtful strategies are extremely important. Hence especially, the State and the Central Government planners, the educationists, and the civil-society, must take prudent actions and make long term investments now in order to compete with the global economy.

- IX. It is further submitted that in 2006-2007 budget, the UPA Government has allocated Central Universities of Calcutta, Mumbai and Madras a grant of Rs.50 crores each to mark the beginning of their 150th year celebrations, with another Rs.50 crores each to be given at the conclusion of the year; Punjab Agricultural University, Ludhiana to get grant of Rs.100 crores; status of an autonomous National Institute to be accorded to Rajiv Gandhi Centre for Biotechnology, Thiruvanthapuram, Kerala. In terms of "*Funding Disparity Index*", Kerala is 5th, Punjab is 8th, Maharashtra is 11th, and West Bengal is 15th. In the 2005-2006 budgets, the UPA Government had allocated Indian Institute of Science (IISc), Bangalore an additional grant of Rs.100 crores to make it a world class institute. In terms of "*Funding Disparity Index*", Karnataka is 14th.
- X. Similarly during the NPA government, the Central Government had decided to establish four National Institute of Sciences in Pune (Maharashtra), Chennai (Tamil Nadu), Bhubaneswar (Orissa), and Allahabad (Uttar Pradesh). When the NPA government was replaced with UPA, the NIS scheme was repackaged at IISER and the committee under Prof Rao recommended Calcutta and Pune. So the government decided to move a proposed institute from Orissa with "*Funding Disparity Index*" of 2nd to a state where the "*Funding Disparity Index*" is 15th. Later the UPA Government has decided to build a third IISER in Chandigarh. It is imperative to consider that the decision to grant a new IISER was not recommended by the Scientific Advisory Committee headed by Prof C.N.R Rao but was a clear political decision.
- XI. While the existence of regional imbalance or disparity in the field of higher education is highlighted on the "Indian Science Report" and noted by the President and Prime Minister, it needs explanation how the same

leaders agreed to move a proposed institute from Orissa with “*Funding Disparity Index*” of 2nd to a state where the “*Funding Disparity Index*” is 15th.

- XII. In summary, successive governments have paid only lip service to shrink the regional imbalance or disparity in the field of higher education and in fact have actively pursued plans to expand the regional imbalance or disparity in the field of higher education. Over the last two years, the UPA Government has exceeded the previous NPA Government in assigning additional provisions in union budgets to fund more money to the centers of excellence in relatively more advanced states and has actively expanded the regional imbalance and disparity in the field of higher education. It is quite strange that the actions of the leaders of the government are in sharp contrast to the opinions expressed as policy directives. Politics is used to decide the locations for centers of excellence. It is unfortunate that politics has been and still is used to play a major role even in the world of education.

Preliminary Objections

4. At the outset it is stated that the aforesaid SLP is premature, misconceived and is an outcome of suppression of various material facts which are relevant and incidental to the cause of action of the present case, hence the same is not maintainable and as such is liable to be dismissed.
5. It is stated that the Writ Petition out of which the present SLP has purportedly arisen was ready for final hearing and disposal before the Hon'ble High Court of Orissa, in as much as the pleadings therein were complete and the Hon'ble Court had fixed the matter for final hearing on 22.02.2006. In the meanwhile the petitioner herein in order to justify and implement its malafide and arbitrary action, has attempted to foil the restraint order passed by the Hon'ble High Court of Orissa with the pretext that the UGC has no powers to decide the establishment of the alleged NIS/IISER. The subsequent decision for establishment at Kolkata is a policy decision and frustrates the very purpose of the Writ Petition pending before the Hon'ble High Court of Orissa for a verdict on the allegation of malafide and politically motivated decision of shifting the site from Bhubaneswar to Kolkata.
6. The factual matrix which has given rise to the present dispute is set out herein below for the kind reference of this Hon'ble Court:

LIST OF DATES

a) 28.12.2002

The then Hon'ble Prime Minister while inaugurating the celebration of the Golden Jubilee year of the Universities Grants Commission (herein after referred to as the **UGC**), announced the creation of facilities which will fulfill the quality of human resource and their input into resource and development system. The said letter also covered the version of the Hon'ble Minister Human Resources & Development which stated as

“The undergraduate education in pure science is a matter of serious concern. We are going to face shortage of good researchers in a few years time particularly in our premier research institutes in the field of Atomic Energy, Space, Bio-technology, Energy, Oil Exploration, Communication and so on. We will have to focus at 10+2 level and “catch those young” for integrated 5 years teaching programme with a possibility of exit after three years”

b) 23.07.2003

The Chairman UGC (Dr. Arun Nigavkar) wrote a letter to Vice-Chancellor of Utkal University in Orissa stating therein that out of four inter alia N.I.Ss, Bhubaneswar is the select centre concerning East Zone. This letter reveals amongst others, the appointment of a High Power Committee for the materialization of the Projects and also provision of rupees hundred crores during the tenth plan period and approaching the Planning Commission for additional hundred crores of rupees. Further more the U.G.C had requested the Utkal University at Bhubanewar to identify/make available 50 acres of land for the establishment of the NIS/IISER for which the entire project cost will be borne by the UGC which is provided under section 12(ccc) of the University Grants Commission Act (hereinafter referred to as the UGC Act). The said letter is annexed hereto and marked as **Annexure A**. This is the basis of the Hon'ble Prime Minister's address on 28.12.2002. It is pertinent to mention that UGC had written the letter to the Vice Chancellor of Utkal University in Orissa, in exercise of the powers conferred to it by the U.G.C Act, 1956 as amended up to date and which is enacted under entry 66 of the Union List of the Constitution of India.

c) 10.12.2003

To further substantiate the factum of establishment of the NIS/IISER at Bhubaneswar, the Hon'ble Minister of HRD informed in a meeting of the Consultative Committee of the Ministry of HRD and had announced that four National Level Institutes are also being established at Bhubaneswar, Chennai, Pune and Allahabad. The said address of the Minister of HRD as has been

preserved by the Press Information Bureau of India is annexed hereto and marked as **Annexure B.**

d) 18.12.2003

In response to the letter issued by the Chairman of UGC, the Govt. of Orissa in the Department of Higher Education promptly confirmed the availability of 75 acres of land for the purpose. This letter was addressed to the Chairman, U.G.C at the behest of the Vice Chancellor of Utkal University in response to the earlier letter of UGC to Utkal University.

e) 28.12.2003

On the occasion of the year long closure ceremony of the Golden Jubilee Celebration of UGC the Hon'ble President of India has gone to the extent of declaring the following

"It is good UGC is creating 4 National Institute of Sciences at Chennai, Pune, Allahabad and Bhubaneswar for promoting excellence in science education in collaboration with CSIR, DBT, ISRO, DAE, DST, DRDO and Department of Oceanography".

This is in accordance with the Government Program for upgrading Science, Education and research facilities to meet the global requirements. This announcement made by the Hon'ble President of India also happens to be the version of the Government of India in the Ministry of HRD with regard to the augmentation/up-gradation and development of Science & Technology in the country. It is pertinent to mention that the speech of the Hon'ble President is always prepared by the Union Government and approved by the Cabinet and presented to the Hon'ble President of India for delivery. A typed copy of the transcript of the speech of the Hon'ble President of India is annexed hereto and marked as **Annexure C.**

f) 23.02.2004

The U.G.C in exercise of its powers under the U.G.C. Act, prepared a detailed Project Report for establishment of NIS/ISER and communicated the same to the Vice-Chancellor of Utkal University under the cover of a letter which also mentioned about the meeting of a High Power Committee to plan the establishment and structure of the National Institute on 3/3/2004. A copy of the detailed Project Report is annexed hereto and marked as **Annexure D.**

The matter had substantially progressed at the end of the UGC and the State Government had adhered to all the intimations of the UGC to help facilitate and

observe the formalities to establish NIS/IISER in the Eastern Region at Bhubaneswar.

g) 17.8.2005

Suddenly a News Item appeared in the local daily "Samaja" with the heading "Proposed Indian Institute of Science shifted from Bhubaneswar to Kolkata, Center's Step Motherly Attitude". This item in the News Paper moved the sentiments of the people of Orissa in as much as the very decision of establishing NIS/IISER in Kolkata is apparently malafide and uncalled-for for the simple reason that Kolkata already has 4 National Level Institutions of the said nature and Orissa had/has none of the kind. Besides this, the very assurance and communications made by the Hon'ble Prime Minister, the Hon'ble President of India and the Chairman UGC to Orissa for the establishment of the NIS/IISER had created a legitimate expectation among the people of Orissa in this regard in as much as under political motivation the UPA Government at the Centre has shifted the site to West Bengal where its supporting party is ruling.

h) 23.8.2005, 29.9.2005, 11.11.2005

After the news item came to lime light the Chief Minister of Orissa immediately wrote letters to the Prime Minister of India expressing his concern over the alleged shifting of NIS/IISER from Bhubaneswar to Kolkata. The Prime Minister also acknowledged one such letter and communicated a response on 27.8.2005 to the Chief Minister of Orissa that the issue was in active consideration. However the subsequent letters issued by the Chief Minister of Orissa to the Prime Minister remained unanswered and no action was taken in this regard whereas the Prime Minister had assured that the issue was in active consideration. Copies of such letters are annexed hereto and marked as **Annexure E (colly)**.

i) 29.8.2005

The Respondent No 1 herein although equipped with most of such correspondences and materials, filed the writ petition (PIL) assailing the alleged decision of the Central Government in the Department of Human Resources & Development by annexing only the News Item awaiting for the Petitioner to produce the material before the Hon'ble Court upon direction. It is pertinent to mention that the Respondent had made preparations to rely on the materials at the time of final hearing.

j). 30.8.2005

Notices in the matter were duly served on the Union of India the Petitioner herein and the State Government the Respondent No 2 herein.

k) 25.10.2005

Notice having been duly served on the Union of India in the said Writ Petition, the Learned Counsel appeared for the Petitioner herein when the same was called for hearing. The Hon'ble High Court of Orissa directed the Respondent to serve 2 extra copies of the writ petition on the Counsel for the State and the Central Government. The Hon'ble Court also directed the Petitioner herein to produce the decision taken by the Government of India for opening of the NIS/IISER in Bhubaneswar and subsequent decision taken for shifting the same to West Bengal. The matter was fixed for further proceedings on 31.10.2005.

l) 30.10.2005

An advertisement was issued by the Ministry of Human Resources and Development in the Economic Times stating that the Prime Minister would lay down the Foundation Stone of NIS/IISER at Kolkata. This action of the Union of India inflicted yet another blow to the already aggravated grievance of the Respondent herein and the people of Orissa. A copy of the said advertisement as published in the Economic Times is annexed herewith and marked as **Annexure F**. However the so called foundation ceremony was cancelled as the Hon'ble Prime Minister had to return back from Kolkata as there were a serial bomb blasts in Delhi at various places.

m) 31.10.2005

When the matter came up for hearing before the High Court of Orissa, the Counsel appearing for the Petitioner stated that he needs some more time to seek instructions from the Central Government about the matter. The matter was again adjourned to 3.11.2005 for further proceedings.

n) 3.11.2005

The matter was further adjourned to 7.11.2005 as the Counsel for Union of India prayed for some more time to seek instructions and the Counsel for Union of India was again directed to seek instructions in the matter.

o) 7.11.2005

Again the learned Counsel for the Union of India sought further time to seek instructions in the matter and assist the Hon'ble High Court. The Court was however was pleased to call the matter on 8.11.2005.

p) 8.11.2005

Respondent No 3 herein was issued notice and again the learned Counsel for Union of India prayed for 4 weeks time to seek instructions in the matter and file a counter. This was an ultimate tactics of the Union of India to delay the matter and go ahead with the malafide action in establishing the NIS/IISER in Kolkata. However the Hon'ble High Court of Orissa was pleased to grant time for the Counter and stayed the shifting of the site to any other place in the Eastern Zone. Thereafter the matter was fixed for further proceedings on 7.12.2005.

q) 25.11.2005.

The Union of India who is the Petitioner herein filed the Counter Affidavit in the matter wherein there was no specific denial of the allegations made by the Respondent herein. It took a specific stand that UGC has no powers to decide and establish NIS/IISER as per the opinion of the Department of Law and Justice in the Union of India. The Institute is decided to be established at Kolkata as per a policy decision of Union Government as recommended by the Scientific Advisory Council of the Prime Minister. Besides, a Petition for vacation of the interim order passed by the Hon'ble High Court of Orissa was also filed by the Petitioner herein. However with this the matter was ripe for hearing as the pleadings in the matter were complete.

r) 6.12.2005

The Respondent herein filed a Rejoinder to the Counter Affidavit of the Union of India before the Hon'ble High Court of Orissa in order to ensure an effective adjudication of the Writ Petition. Apart from this the Respondent had also filed applications for impleadment of Utkal University and for production of Government records with regard to the cause of action of the Writ Petition.

s) 7.12.2005

Although the Respondent herein was present in person in the Court, there was a mistake in the order that none appeared. However the Hon'ble Court was pleased to call the matter on 18.1.2006 for final disposal.

t) 18.1.2006

The Hon'ble Orissa High Court was pleased to fix the matter for final disposal on 22.2.2006 as the Respondent No 3 had not filed the Counter Affidavit in the matter.

u) 1.2.2006

Respondent No 3 filed a paradoxical Counter Affidavit in the matter wherein it was stated that it does not have the powers to establish such an Institute. It also mentioned that the Union of India has communicated to UGC regarding the decision of the Law Department of the Union of India that UGC has no powers to

take such decision. It is pertinent to mention that there was no clear mention as to what necessitated the Union of India to refer the matter to the Law Department at this stage regarding the clarification of the powers and functions of the UGC. When the UGC is a statutory body and governed by the UGC Act, there is no sanctity of the purported opinion of the Law Department which cannot override the very UGC Act. More so when the UGC has been empowered under the Act for development of Higher Education, there is no authority of the Scientific Advisory Council of the Prime Minister to decide/change the location of the proposed NIS/IISER.

v) 27.1.2006

Thereafter the Union of India without making an endeavor to contest the matter on merits in the High Court of Orissa, on the assigned date i.e. 22.2.2006, preferred an SLP in this Hon'ble Court assailing the interim order passed by the said Court on 8.11.2005. It is worthwhile to mention that the Petitioner herein while in doing so has attempted to suppress several material facts which are moot and relevant for the purpose of an effective adjudication of the matter herein. It is also submitted that the stay granted by this Hon'ble Court on 27.1.2006 has enabled the Petitioner herein to go ahead with there malafide action in justifying there arbitrary and uncalled-for attitude in forcefully establishing the NIS/IISER at Kolkata.

6. In the SLP the Petitioner has allegedly taken a stand that NIS and IISER are two different concepts and has no semblance with each other. It is respectfully submitted that be it as it may there is no cogent clarification as to why was the matter at all referred to the Law Department when there was no dispute between the UGC and the Central Government in this issue. Furthermore, the Union of India and the UGC had unanimously decided to establish the NIS/IISER as is evident from the speech given by the Prime Minister and the President of India, the Union Minister HRD and also the Chairman of UGC. Further the question of defining the powers of UGC could only have arisen in the circumstance when the Central Government disputes the decision of the UGC. But in the present case, as it is evident, no such eventuality or occasion had arisen to do so save for the fact the Union of India was hell-bent to deprive Orissa and its people for reasons best known to the Petitioner herein. It is pertinent to mention that the purported IISER at Kolkata is nothing but a different name of NIS on order to justify the so called policy decision taken by the Petitioner herein.
7. It is submitted that the merits of the matter are all before the Hon'ble High Court of Orissa and the Writ Petition and the application for vacation of the interim order would have proceeded for hearing on 22.2.2206 as regards the merits of the matter. Instead of waiting for the same and in order to justify the action

perpetrated by the Union of India the Petitioner herein, in rendering a step motherly attitude to a larger section of people belonging to the State of Orissa, the Petitioner herein has approached this Hon'ble Court for stay of the operation of the impugned order passed by the Hon'ble High Court of Orissa. The reasoning given by the Petitioner and the averments made in the SLP are incredible as they are based on falsity. It is respectfully submitted that be it as it may the Respondent herein has no grievance against the policy decision made by the Union of India to establish NIS/IISER in Kolkata or any where in India but at the same the Respondent is entitled and therefore seeks a clarification through the Hon'ble Court of Law as to what is the status of the policy decision as regards Bhubaneswar which policy was announced by the esteemed Prime Minister, the President of India as well as the Minister of HRD much earlier to the implementation of the alleged policy in question by the UPA Government.

8. It is further submitted that In the writ petition before the Hon'ble Orissa High Court, the answering respondent has clearly made out a case for the exercise of judicial review under Article 226 of the Constitution of India. It is settled law that when an 'alleged' policy decision making process of the executive is malafide, motivated, arbitrary, unjust and based on irrelevant and extraneous considerations, a writ Court is empowered to interfere, especially in a case when the legitimate interests of a large section of the society is adversely effected as a result of such a motivated policy.
9. In the present case, the erstwhile Union Government (NDA) had taken a policy decision to set up 4 education institution of higher and specialised technical education in the 4 zones of the country, including, inter-alia, at Bhubeneshwar in Orissa. These institutions, which were to be fully financed by the Union Government, were patterned in the lines of Indian Institute of Sciences, Bangalore. This policy decision is apparent from the following which was stated by the Hon'ble President of India in the Golden Jubilee Celebration of the UGC:

" It is good UGC is creating four National Institute of Science at Chennai, Pune, Allahabad and Bhubaneswar for promoting excellence in science education in collaboration with CSIR,DBT,ISRO,DAE,DST,DRDO and Department of oceanography".

Such an institution would have been a great boon and interest to the people and the State of Orissa, in as much as such a specialised institution would have created an environment of higher technical education and achievement for the students of Orissa.

- 10.. It has been admitted by the petitioner herein that the University Grants Commission (UGC), which is a central government authority operating under a central statute i.e. UGC Act, had also submitted a proposal to the Human Resources and Development Ministry, Government of India, for setting up of such an institute at Bhubeneshwar in Orissa, as far back as in November 2002 and January 2003. The proposals, which were in exercise of powers conferred on the UGC under sections 12(ccc) and 12(j) of the UGC Act was obviously in pursuance of and to give effect to the said policy decision of the Union Government. It is further submitted that under the UGC Act, the UGC is the only body which is empowered to take all steps necessary for advancing the cause of higher education in India and not the Scientific Advisory Council to the Prime Minister who is just an advisory body and has no legal powers to decide save for the fact that the same was politically motivated and pressurized.
11. From the above facts it is apparent that a legitimate expectation had arisen amongst the people of Orissa with regard to the institute to be set up. However, for no apparent reason, other than political expediency and vendetta, the new Union Government (UPA), has decided to reverse the earlier policy decision as well as reject the proposal of the UGC, by setting up a centrally funded Indian Institute of Sciences in Calcutta, instead of Bhubeneshwar. It is clear that since Orissa has no representation in the present Union Government, the Union Government has chosen to simply oblige the supporting Left Front, which is in power in West Bengal. The said act of political expediency, at the cost of the interests of the people of Orissa, is sought to be supported by an alleged recommendation of the Prime Minister's Scientific Advisory Committee in March 2005. In the Counter Affidavit filed by the Union of India in the Hon'ble Orissa High Court there is not even a whisper as to reasons why the said Advisory Committee has chosen Kolkata instead of Bhuneneshwar, thus not only reversing an earlier policy decision but also rejecting the proposal of the UGC. It has not been stated as to whether the said Committee was even aware of the fact that there was an earlier proposal to set up the said Institute in Bhubeneshwar.
- 12.. It is further submitted that, in any case, the recommendation of an Advisory Committee can never have precedence over or be made the basis for rejecting a proposal of the UGC, which is a statutory authority under the UGC Act, and is solely empowered to take a decision with regard to setting up of institutions of higher education, funded by the Union Government. It is further submitted that the Scientific Advisory Council is neither competent nor has powers to recommend / decide the establishment of Institutes for higher education.

13. From the above it is apparent that the alleged policy decision of the Union Government is ex-facie illegal, malafide, arbitrary and deserves to be set aside. It is submitted that the interim order passed by the Hon'ble Orissa High Court was within its discretionary power. In view of the prima facie case made out by the answering respondent, the grant of the said interim order cannot be faulted. The interim order only ensures that no new equities are created, pending the disposal of the writ petition. The malafide decision is crystal clear from the admitted facts that the Cabinet decided to establish the Institute in November 2005 whereas the Union of India the Petitioner herein fixed 30.10.2005 as the date for laying down the foundation stone at Kolkata.
14. In any case, the pleadings before the Hon'ble High Court in the pending writ petition are complete and the matter is ripe for hearing. Therefore, the petitioner herein will not be prejudiced if the matter is finally heard and adjudicated by the Hon'ble High Court. The parties will have recourse to their legal remedies against such final adjudication order.
15. The present petition which challenges the said interim order of the Hon'ble High Court would only have the effect of delaying the final hearing of the said writ petition. Therefore, the answering respondent submits that instead of confirming the interim order dated 27.1.2006 passed by this Hon'ble Court and/ or admitting the present petition for hearing, it would be in the interest of justice if the present petition is disposed of, with a direction to the Hon'ble Orissa High Court to expeditiously hear and dispose of the pending writ petition.
16. In reply to the specific paragraphs of the Special Leave Petition it is stated that the Respondent craves leave of this Hon'ble Court to file a detailed Counter Affidavit if felt relevant by this Hon'ble Court.
17. That the Respondent herein craves leave of this Hon'ble Court to permit him to rely on documents and materials which are relevant for the purpose of an effective adjudication of the present matter.
18. That the facts stated in the present Counter Affidavit are true to my knowledge. No part of it is false and nothing material has been concealed therefrom.

DEPONENT

VERIFICATION

Verified at New Delhi on this the day of March 2006 that the facts stated in the affidavit are true to my knowledge. No part of it is false and nothing material has been concealed there from. The Annexures are true copies of their respective originals.

DEPONENT

New Delhi

Date

VERIFICATION

Verified at New Delhi on this the day of March 2006 that the facts stated in the affidavit are true to my knowledge. No part of it is false and nothing material has been concealed there from. The Annexures are true copies of their respective originals.

DEPONENT

New Delhi

Date