

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) No. 497 OF 2015

Partha Jayesh Vidhani	...	Petitioner
VS.		
The State of Maharashtra & Ors.	...	Respondents

Mr. Ameya Gokhale a/w. Deepan Dixit i/b. Kartikeya & Associates,
Advocate for the petitioner.

Mr. J.S. Saluja, AGP for respondent no. 1.

Mr. Kiran Gandhi i/b. Little & Co., Advocate for respondent no. 2.

**CORAM : SMT. VASANTI A. NAIK &
C.V. BHADANG, JJ.**

DATE : 25th February, 2015.

P.C.

By this Petition, the petitioner impugns the communication of the respondent no. 2, dated 25th January, 2015 by which the Maharashtra State Secondary and Higher Secondary Education Board declined permission to the petitioner to appear at the examination through a writer.

The petitioner is a student of K.C. College, Mumbai and was taking education in 12th Standard in the Commerce stream during the academic session 2014-15. The Board exams were scheduled on 23rd February, 2015. The petitioner claims to be a slow learner and is diagnosed as such. The petitioner had passed the 10th Standard examination from the National Institute of Open Schooling and he was provided a writer for writing the Secondary School examination from the National Institute of

Open Schooling. Since the petitioner is a slow learner, the petitioner sought permission to appear at the examination through a writer and also sought for additional time to answer the papers. The Board, by the impugned communication dated 25th January, 2015 declined permission to the petitioner to appear at the examination through the writer, though the Board granted an additional time of 20 minutes per hour to answer each of the papers. The impugned communication is challenged by the petitioner so far as it declines permission to the petitioner to avail the facility of the writer.

It is stated on behalf of the petitioner that since the petitioner was permitted to appear at the 10th Standard examination from the National Institute of Open Schooling and the College had also permitted the petitioner to appear at the College examination through a writer, the respondent-Board ought to have permitted the petitioner to appear at the examination with the assistance of the writer. The learned counsel for the petitioner has relied on the judgment reported in **2003 (4) Mh. L.J. 698** to substantiate his submission. It is stated that the certificate of Professor of Paediatrics & In-charge, Learning Disability Clinic that the petitioner is merely a slow learner and does not suffer from dysgraphia is incorrect, in as much as, no tests were conducted on the petitioner for forming an opinion whether the petitioner suffers from dysgraphia. It is stated that when the Board provides for a writer to the deaf, dumb, blind, physically

disabled and spastic students, there is no reason why the Board should not provide a writer to a slow learner. It is stated that the handwriting of the petitioner is extremely bad and it would be necessary for the respondent-Board to permit the petitioner to avail the assistance of a writer.

The learned counsel for the Board submitted on the basis of the affidavit-in-reply tendered in the Court today that the concession of providing writer at the time of examination is granted only to deaf, dumb, blind, physically disabled and spastic students as per the regulations of the Board. It is stated that a slow learner is provided extra time of 20 minutes per hour as per the circular dated 3rd March, 2012. It is stated that in pursuance of the circular dated 3rd March, 2012, the petitioner is provided extra time, but the petitioner cannot be provided a writer in the absence of any regulation in that regard. It is stated that the petitioner does not have a right to seek the assistance of a writer on the ground that the petitioner is a slow learner, as the concession of providing a writer is not granted to a slow learner and could be granted only to a student falling in the categories referred to herein above. It is stated that the expert doctor has clearly opined that the petitioner does not suffer from dysgraphia and is merely a slow learner, so a writer cannot be provided to him. The learned counsel sought for the dismissal of the Writ Petition.

On hearing the learned counsel for the parties and on perusal of the documents annexed to the petition and also the affidavit-in-reply filed on behalf of the Board, it appears that the relief sought by the petitioner cannot be granted. No fault can be found with the action of the Board in declining permission to the petitioner to avail the assistance of a writer to appear at the Higher Secondary School Certificate examination merely because the petitioner was granted that facility in view of the regulation in that regard, by the National Institute of Open Schooling when the petitioner appeared at a Secondary School Certificate examination. The certificate of Professor of Paediatrics, dated 20th February, 2015 clearly records that the petitioner does not suffer from dysgraphia and is only a slow learner. The petitioner cannot dispute or challenge the certificate of the Professor of Paediatrics in a Writ Petition filed under Article 226 of the Constitution of India. The question whether the petitioner actually suffers from dysgraphia could be decided only after permitting the parties to tender evidence. The petitioner has annexed the certificate of the Professor of Paediatrics, which discloses that the petitioner does not suffer from dysgraphia. The regulations of the respondent-Board clearly provide that a writer could be provided only to the deaf, dumb, blind, physically disabled and spastic students. It is not the case of the petitioner that the petitioner falls in any of the aforesaid categories of students. The petitioner claims to be a slow learner and in view of the

circular dated 3rd March, 2012, a slow learner can be granted only a concession of extra time for writing the examination. On the basis of the circular, the respondent-Board granted extra time to the petitioner and refused the assistance of the writer. Merely because the petitioner was permitted to appear at the examination conducted by the National Institute of Open Schooling through a writer, it cannot be said that the respondent-Board was also obliged to grant the same facility to the petitioner. There was a provision in the rules of National Institute of Open Schooling to grant such a facility but in the absence of any rule or regulation of the Board in that regard, the Board has rightly declined the assistance of the writer. The judgment reported in **2003 (4) Mh. L.J. 698** and relied on by the counsel for the petitioner cannot be made applicable to the facts of this case. Also, it cannot be said that the bad handwriting of the petitioner is referable to dysgraphia and, hence, he should be provided with a writer.

In view of the aforesaid, we dismiss the Writ Petition, with no order as to costs.

(C.V. BHADANG, J.)

(VASANTI A. NAIK, J.)