

IN THE COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO.3718 /2016

(Parimal s/o Susheel Vairagade vs. The State of Maharashtra and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

Mr.Anand Parchure, Advocate for the petitioner
Mrs.Bharati Dangre, Government Pleader for Respondent

CORAM : SMT. VASANTI A.NAIK &
MRS.SWAPNA JOSHI, JJ.

DATED : 7th July, 2016

Heard.

By this Writ Petition, the petitioner seeks a direction to the respondent to grant additional weightage of marks to the petitioner as he possesses 'B' certificate of National Cadet Corps. (NCC).

The petitioner had passed MHT-CET examination of the year 2016 and has secured 176 marks. As per the admission-process, a candidate was required to tender the necessary certificates for grant of additional marks for various categories, such as, freedom fighters category, sports category, NCC participation, etc. from 2nd to 5th June, 2016. According to the petitioner, the petitioner possesses 'B' certificate in NCC for which, he is entitled to two additional marks and if those two additional marks are

granted to the petitioner, the petitioner would be eligible for admission in a reputed institution. It is the case of the petitioner that though a candidate was required to tender the necessary certificate for additional weightage of two marks from 2nd June to 6th June 2016, the petitioner could not do so as he had met with an unfortunate and serious accident, on 30.5.2016 and was hospitalised, with severe brain injuries in Lotus Hospital and Research Centre. It is stated that since the petitioner suffered brain haemorrhage, he was hospitalised from 30.5.2016 for a period of eleven days. It is stated that it was humanly impossible for the petitioner to tender the requisite certificate to the respondent for seeking the additional weightage of two marks. It is stated that the parents and the relatives of the petitioner were also in such a shock that they also could not think of the additional weightage of two marks and that they were required to tender the certificate on or before 5th June 2016. It is stated that since the law would not compel a person to do that, what is impossible, this Court may take a lenient view in the matter and direct the respondent to consider granting additional weightage of two marks to the petitioner.

Mrs. Bharati Dangre, the learned Government Pleader appearing on behalf of the respondent submitted that since the time to submit

the necessary certificate commenced from 2nd June to 6th June, 2016 it would not be possible for the respondent to accept the request of the petitioner. It is stated that if an order is passed in favour of one of the candidates, it would be difficult for the respondent to take a different view when some other candidate applies in a different contingency. It is, however, fairly stated that an appropriate order may be passed in the circumstances of the case.

On hearing the learned counsel for the parties, we find that in the circumstances of the case, a direction to the respondent to consider granting two additional marks to the petitioner, in view of the NCC 'B' certificate, needs to be granted. The principle of '*lex non cogit ad impossibilia*' would apply to the facts of the case. It is rightly stated on behalf of the petitioner that the law would not compel a person to do what is impossible. The petitioner had suffered severe brain injury and was hospitalised for eleven days after he met with a serious accident on 30th May 2016. As rightly stated on behalf of the petitioner, neither was the petitioner in a position to think of submitting the certificate to the respondent, nor were his family members in a position to do so. As soon as the petitioner was discharged, he made a representation to the respondent to grant additional weightage of two marks to the

petitioner, in view of the NCC 'B' Certificate possessed by him. In the circumstances of the case, it would be necessary to direct the respondent to consider granting additional weightage of two marks to the petitioner.

Hence, for the reasons aforesaid, the Writ Petition is allowed. We hereby direct the respondent to consider the claim of the petitioner sympathetically and grant him additional weightage of two marks, if the petitioner possesses the requisite certificate of NCC. The additional weightage should be granted to the petitioner if he is so eligible within a period of three days. If the said weightage is granted, it is needless to mention that the respondent should consider the candidature of the petitioner by considering his marks, to be 178. We make it clear that such a direction is issued in the peculiar circumstances of the case and in every contingency where an applicant is not in a position to produce the certificate, this order should not be pointed out, as a precedent.

Order accordingly. No costs.

JUDGE

JUDGE