

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

WRIT PETITION NO. 3914 OF 2014

Abdul Baqui S/o. Abdul jabber
Age 19 years, Occ. Education
R/o. Near Abu Bakar Masjid,
Labour Colony, Nanded.

... Petitioner.

Versus

1. The State of Maharashtra
through Secretary,
Department of Social Welfare
2. The Saraswati Dhanwantri,
Dental college & Hospital, Parbhani
Through its Dean,
At Dr. Prafull Patil Education & Hospital
Campus, Pathri Road,
National Highway 222,
Parbhani 431 401.
3. The Maharashtra University of
Health Science,
through its Vice-Chancellor / Registrar,
Vani Road, Mhasrul,
Nashik – 422 004.
4. The College of Life Technology,
Through its Principal,
at Bodakhe Complex, Shivaji Maharaj Chowk
Pundliknagar, Aurangabad – 431 005.
5. Council of Higher Secondary
Education, Delhi,
Through its Secretary / Exam Controller,
office at Plot No.KD-10, 1st Floor,
City Centre Sector-4, Bokaro Steel City,
Jharkhand – 827 004.

6. Union of India,
Through Ministry of Human
Resources Department.

7. Council of Board of School Education
in India,
Through its Director / Secretary,
6H Bigjo's Tower, A-8,
Netaji Subhash Place,
Ring Road, Delhi – 110 034.

... Respondents.

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Mr. Quadri Tahir Ali, Advocate for the Petitioner.

Mr. K.B. Jadhav h/f Mr. R.K. Ladda, Advocate for Respondent No.2.

Mr. K.C. Sant, Advocate for Respondent No.3.

Mr. S.A. Dhumal (Tambat), Advocate for Respondent No.5.

Mr. S.B. Yawalkar, AGP for Respondent-State

Mr. S.B. Deshpande, Standing Counsel for Respondent No.6.

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**CORAM : R.M.BORDE &
SMT. VIBHA KANKANWADI, JJ.**

Reserved on : 13th December, 2017

Pronounced on : 19th January, 2018

JUDGMENT (Per R.M. Borde, J.) :

1. Heard.

2. Rule. With the consent of the parties, the petition is taken up for final decision at admission stage.

3. The petitioner, who is a student of first year of dental science degree course, is objecting to the decision of the Maharashtra University of Health Science declaring him as ineligible to pursue B.D.S. degree course. The petitioner is also praying for a

declaration that the 12th science certificate issued to the petitioner by the board to be considered as valid and recognized qualification with a view to protect his admission and for pursuing higher education.

4. The petitioner has also amended the petition at a later stage and prayed for an alternate relief against respondent nos. 4 and 5 to refund an amount of Rs.25,000/- together with interest as well as appropriate compensation on account of lost occasion to him. The petitioner has also prayed for issuance of directions to respondent nos. 4 and 5 to pay compensation of Rs.20,00,000/- for the loss of four academic years commencing from 2012 to 2016. The petitioner is also praying for issuance of directions to respondent Nos. 2 and 3 to refund an amount of Rs.95,000/- paid by him while securing admission to B.D.S. first year course together with interest and appropriate compensation.

5. The petitioner had appeared for 12th standard examination during the academic year 2013 in science faculty from the College of Life Technology, Aurangabad and was declared to have passed the said examination in first division. The Council of Higher Secondary Education had conducted the board examination and issued a certificate in favour of the petitioner. The petitioner, thereafter, appeared for the examination conducted by the Association of Management of Unaided Private and Dental Colleges, Maharashtra, i.e. ASSO-CET-2013 examination and was declared successful and eligible to secure admission to medical course. The petitioner got admission in the Saraswati Dhanwatri

Dental College, Parbhani (respondent no.2 herein) as against the seat earmarked for the OBC category. The petitioner was permitted to attend classes and participate in academic activities during the academic year 2013-2014. In the month of October, 2013, the Dental College submitted a proposal to the Maharashtra University of Health Science, Nashik for grant of eligibility. The petitioner was shocked and surprised on receiving communication from the said University dated 22.01.2014, addressed to the respondent no.2-college to the effect that the qualification secured by the petitioner i.e. 12th standard and the certificate issued to him by the Council of Higher Secondary Education, Delhi is not a recognized qualification and as such he is not eligible for admission to the medical course in the State of Maharashtra. The Health University, as such, refused to consider the petitioner as eligible to pursue medical course. The petitioner tried to gather information from the Council of Higher Secondary Education, Delhi as regards recognition of the said board either by the Human Resources Department of the Union of India or by the Council of Board of School Education, Delhi. However, there was no response from the Board. The petitioner contends that he has been put to financial loss since he was required to pay the fees for the first year B.D.S. course, so also the petitioner has lost few precious years of his academic life. The petitioner is alternatively praying for issuance of directions to the respondents to refund the amount of fees deposited by him and also praying for issuance of directions to the respondents, including the Council of the Higher Secondary Education, Delhi, to pay damages to the tune of Rs.20,00,000/-.

6. The respondent no.4-college, inspite of service of notice, has not caused appearance in the matter. The Council of Higher Secondary School Education, Delhi has caused appearance and presented an affidavit-in-reply controverting the stand taken by respondent no.3-Maharashtra University of Health Science, Nashik. It is the contention of respondent no.5-Council that, “the respondent no.5-Council of Higher Secondary School Education, Delhi is equivalent and independent to the Council of Board of School Education in India (COBSE). The respondent no.5 is not a member of COBSE and as such the name of respondent no.5-Council is not appearing in the list maintained by the COBSE. It is contended by respondent no.5 that COBSE grants membership to those Boards / Institutions which are set up under the Act of the Parliament or the State Legislature or by any executive order of the Central or the State Government, and follow the National Curriculum Framework / CBSE. The certificates issued by the member Board are equivalent to any other Board across the country. According to respondent no.5, the autonomous Councils or Boards do not have any obligation under the law to be a member of COBSE or to secure affiliation. It is the contention of respondent no.5 that the Council of Board of School Education of India is one of the Boards which have been recognised by the Ministry of H.R.D. which gives affiliation to the member Board or the Council. According to respondent no.5, the Council (respondent no.5 itself) is equivalent to COBSE and it has received recognition from the Ministry of H.R.D. Respondent no.5- Council grants affiliation to the schools and colleges. Respondent no.5-

Council is duly constituted and established under the law having recognition from the Ministry of H.R.D. It is listed at sr. no.10 in the list prepared by the H.R.D. Department maintained in book no.216. It is further contended that the issue in respect of recognition of the Council by H.R.D. Department has been dealt with by the High Court of Madhya Pradesh, Bench at Gwalior in the case of *Shash Vinod Sone Vs. Jiwaji University and others (Writ Petition No.5402/2013)* decided on 09.01.2014. The High Court of Madhya Pradesh has observed in the said judgment that, “the Central Government has extended recognition to the educational courses through the notification dated 4.5.2004 issued by the Government of India, Ministry of Human Resource Development, Department of Secondary and Higher Secondary Education.” It is thus contended that there is no substance in the contention that the Council does not have valid recognition.

7. On perusal of an Exhibit 'R-1', which is stated to be a part of the eligibility / equivalence book, at page no.216 records the name of respondent no.5 at sr. no.10. It is not clarified as to for what purpose the book was maintained. We have also perused the order passed by the Madhya Pradesh High Court, Bench at Gwalior annexed at Exhibit 'R-4' in Writ Petition No.5402/2013. The question for consideration before the High Court of Madhya Pradesh was, as to whether the petitioner before the Court who had passed 12th standard examination conducted by the Council of Higher Secondary Education, Delhi, can be considered as a recognised qualification / recognised school certificate. There is a reference to notification dated 14.09.2009, allegedly issued by

the Government of India, Ministry of Human Resource Development Department. It is recorded in the notification that, “the Government of India has decided to extend recognition granted for Council of Higher Secondary Education, Delhi to the Secondary (10th level) and Senior Secondary (12th level) examination under the Central Government for the post for which the desired qualification is a pass in matriculation and intermediate and also for further education for next notification. This has to be the approval of competent authority.” A copy of the said notification has also been produced on record on behalf of respondent no.5. The notification is signed by one Dr. G.L. Jambhulkar, Deputy Educational Adviser. It is stated to have been published in the gazette of India, Part-1, Section-1 on 14.05.2004, but there is no number to the notification. The Ministry of Human Resource Development Department or the Union of India was not party to the petition presented to the Madhya Pradesh High Court. It is the petitioner before the Madhya Pradesh Court who had produced the notification for the perusal of the said Court, and relying upon the said notification, the order was passed in favour of the petitioner before that Court. In the instant matter, the Union of India through Ministry of Human Resource Development Department as well as the Council of Board of School Education in India have been impleaded as a party respondents. An affidavit-in-reply has been presented on behalf of the Union of India represented through the Secretary, Ministry of Human Resource Development Department of School Education and Literacy, Shastri Bhawan, New Delhi by one Mahesh Pal Singh S/o Ramphal Singh functioning as Under Secretary in the Department of School

Education and Literacy, Ministry of Human Resource Development Department, Government of India, New Delhi. It is recorded in the affidavit-in-reply that the subject education falls under entry 25, Part-III i.e. concurrent list of the 7th Schedule of the Constitution of India and as such, both the Central and the State Government have powers to set up educational boards. The educational boards are set up by an Act of Parliament / State Legislature or by the executive order of the Central / State Government. It is further recorded that there are only two national level education boards, namely, Central Board of Secondary Education (CBSE) and national Institute of Open Schooling (NIOS), which have been established by Human Resource Development Department. It is further stated that the Council of Board of Secondary Education is a private organization and its membership is voluntary and COBSE has not been established by the Ministry. The membership of COBSE cannot automatically be construed conferment of status of recognised board upon any member board. The Ministry of Human Resource Development Department, in fact, had issued an advisory on 20.11.2008 to all Education Secretaries of the State Governments and Union Territories for prevention of functioning of fake boards within their defined territorial jurisdiction, as stipulated in the State Education Acts or Rules. It is imperative that every State and Union Territory shall make a provision to regulate recognition of the Educational Boards, conduct of public examination and issuance of certificates by such boards. The States / Union Territories are expected to function as watchdogs so that the fake institutions calling themselves as examination boards and issuing certificates do not operate under their territorial

jurisdiction, and if any such boards exist, the concerned States and Union Territories have mechanism to deal with such fake boards by filing First Information Report under the relevant penal provisions. It is further clarified in the affidavit presented on behalf of the Human Resource Development Department that the Council of Higher Secondary Education, Delhi (respondent No.5 herein) has neither been set up nor recognised by Ministry of Human Resource Development Department.

8. In view of the specific contentions raised by the Human Resource Development Department of the Union of India, the contention of respondent no.5-Council that the said Board has been recognised by the Ministry of Human Resource Development Department is unacceptable and deserves to be rejected. It does appear that respondent no.5-Council does not have any recognition and in fact has no authority to grant affiliation to the colleges or the educational institutions and conduct examinations and issue certificates. The respondent no.5-Board *prima facie* appears to be a fake institution and is liable for appropriate action. It is surprising as to how the State Government has failed to take any action against the said board. It is thus clear that the respondent no.4-college, in fact, was not entitled to claim affiliation from respondent no.5-Council, since the respondent no.5-Council cannot be considered to have any authentication in law. The certificate issued by respondent no.5-Council records the address of the Council of Higher Secondary Education at Delhi, whereas the Secretary / Exam Controller has an office at Bokaro Steel City, Jharkhand. It does appear that the functions of the

Board are carried from Jharkhand, whereas the Board appears to have been registered in Delhi. The Union of India as well as the State Government need to inquire as regards the legal existence of the Board. It also does appear that the Board has granted affiliation to about 32 educational institutions in India and those institutions are imparting education and issuing certificates. It is also logical to conclude that all those students are in receipt of the fake certificates issued by respondent No.5-Council does not entitle them to pursue higher studies or claim employment. It does *prima facie* appear that, as like the petitioner, thousands of students are the victims of the fraudulent activities of respondent no.5-Council. The State Government as well as the Union of India need to take appropriate steps and book the operators of the Council of Higher Secondary Education, Delhi and prosecute them under relevant penal provisions. We, therefore, direct the State Government as well as the Union of India to take appropriate steps, including penal action against respondent no.5-Board for operating unauthorized / fake institutions and fraudulently putting to disadvantage / cheating the students by issuing fake certificates. Appropriate steps also need to be taken against all the 32 educational institutions who have sought affiliation to respondent no.5 and imparted instructions to the Secondary and Higher Secondary students for number of years. Since the certificate issued to the petitioner cannot be considered as a recognised qualification, the relief as prayed by the petitioner for permitting him to continue the higher studies cannot be granted.

9. The Maharashtra Secondary and Higher Secondary Education

Boards Act, 1965 provides for establishment of State Board and Divisional Boards to regulate certain matters pertaining to secondary and higher secondary education in the State of Maharashtra. Section 2(b) defines the “Board” as the State Board or Divisional Board, as the case may be. Higher Secondary Education is defined under Sub-Section (h-1) of Section 2 to mean such general, technical, vocational or special education (including any combined course thereof), which follows immediately the secondary education and precedes immediately the education controlled by Universities established by law in the State. The State Government is empowered to establish the Maharashtra State Board of Secondary and Higher Secondary Education for the whole State by publishing notification in the official gazette and likewise by a notification, the State can also establish Boards for which all the divisions under such names as may be specified in the notification. The powers and duties of the State board and the Divisional Board are specified in Section 18 and 19 of the Act. The Divisional Board is also defined in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. Sub-Section 6(a) of Section 2 defines 'Divisional Board' as a Board established under the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965. There are schools imparting education and offering certificate course in secondary and higher secondary education in the State. The State Boards are established under the Act of 1965 and the schools are granted affiliation / recognition by the Board. Similarly, the Central Government under the Ministry of Human Resource Development Department is also empowered to recognise the Boards in the

Country including the State of Maharashtra. The Central Board of Secondary Education (CBSE) conducts secondary and higher secondary education courses and issues certificates to those who are affiliated. In the instant matter, respondent no.5-Council has not been authorised either by the State of Maharashtra under the Act of 1965 or by the Ministry of Human Resource Development Department to establish the Board and grant affiliation and issue certificates to the students.

10. As has been observed by the Supreme Court in the matter of *Sunil Oraon V. CBSE and other* reported in (2006) 13 SCC, 673, that merely because career of innocent students has fallen in the hands of the mischievous designated school authorities cannot be a ground for granting relief. It is observed in para 23 of the judgment as quoted below:

“23. Time and again, therefore, this Court had deprecated the practice of educational institution admitting the students without requisite recognition or affiliation. In all such cases the usual plea is the career of innocent children who have fallen in the hands of the mischievous designated school authorities. As the factual scenario delineated against goes to show the school has shown scant regards to the requirements for affiliation and as rightly highlighted by learned counsel for the CBSE, the infraction was of very serious *nature*. Though the ultimate victims are innocent students that cannot be a ground for granting relief to the appellant. Even after filing the undertakings the School nonchallantly continued the violations.

11. In the matter of *State of Maharashtra Vs. Vikas Sahebrao Roundale and others* reported in 1992 (4) SCC, 435, it has been

held by the Apex Court that the existence of unauthorised institutions could not have been permitted by the High Court on a writ petition being filed by those who appeared in the examination to be accommodated them in the recognised institutions. It is observed in para 12 that, “Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education.”

12. In the matter of *A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and another* reported in **1986 (2) SCC, 667**, the Apex Court observed in para 10 of the judgment that, “we cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws.”

13. In view of the observations of the Supreme Court as referred above, it is not desirable to issue directions as requested by the petitioner facilitating him to continue further higher education.

14. It is true that the innocent student like the petitioner has fallen to the mischievous business of respondent nos. 4 and 5, Respondent no.4-college got affiliated to respondent no.5-Council, whose existence cannot be considered as a legal and valid. The respondent nos. 4 and 5 are instrumental in destroying the career of students and causing irreparable loss to them. Several students like the petitioner have lost precious years of their educational life

as a result of the illegal activities of respondent nos. 4 and 5, as such, they deserve to be penalised by initiating appropriate action penal or otherwise against them by the Union of India as well as the State of Maharashtra and as recorded, we have already issued directions to the respondents to initiate action against the concerned Council as well as its affiliated colleges / educational institutions. Apart from this, respondent nos. 4 and 5 shall have to be directed to pay penalty as well as damages. The petitioner has lost two precious years of his educational life in passing 11th and 12th standard studies and has also lost two academic years in pursuing first year B.D.S. degree course. The loss occasioned to the petitioner in terms of wastage of precious years of educational life cannot be compensated in terms of money. The respondent nos. 4 and 5 cannot be allowed to go scot free. In this context, the decision in the matter of *Prabhakar Vithal Gholve vs State Of Maharashtra* reported in *AIR 2016 SC, 2292*, can be relied upon. The Supreme Court, while dealing with the matter, has directed imposition of costs of Rs.5 crores on Kalinga Institute of Medical Sciences for admitting students in excess of the quota. Though the facts giving rise to the instant petition are different, yet the consideration is the same. The same consideration has to be applied while issuing directions to compensate the petitioner. In fact, the facts giving rise to the instant matter are more grave than the case before the Apex Court. Taking note of the fact that the petitioner has lost more than three years of his academic life, we are of the opinion that respondent nos. 4 and 5 need to compensate the petitioner by paying damages to the tune of

Rs.10,00,000/-. The respondent nos. 4 and 5 are directed to pay Rs.10,00,000/- (Rupees Ten Lakhs) jointly & severally to the petitioner within a period of six months from today. In the event of failure of the concerned respondents to pay the amount, it would be open for the petitioner to take appropriate steps for recovering the same from the concerned respondents. The State Government as well as the Union of India shall also take a serious note of the illegalities and lapses committed by respondent nos. 4 and 5 and shall take penal action against those who are instrumental in operating fake / unrecognised / illegal educational institutions and thereby putting the career of thousands of students in jeopardy.

15. Rule made absolute in the above terms. There shall be no order as to costs. Pending C.As. stand disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

(R.M. BORDE)
JUDGE