

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST) NO. 21637 OF 2018

Anuradha Suresh Kore, since	}	
minor, through his natural	}	
guardian father Shri. Suresh	}	
Shamrao Kore and Ors.	}	Petitioners
versus		
Union of India and Ors.	}	Respondents

**WITH
WRIT PETITION (ST) NO. 23032 OF 2018**

Gurunath Shankar Patil, since	}	
minor, through his natural	}	
guardian father Shri. Shankar	}	
Pandurang Patil and Ors.	}	Petitioners
versus		
Union of India and Ors.	}	Respondents

**WITH
CIVIL APPLICATION NO. 32 OF 2019
IN
WRIT PETITION (ST) NO. 23032 OF 2018**

Soham Ramdas Nikam and Ors.	}	Applicants
in the matter of		
Gurunath Shankar Patil and Ors.	}	Petitioners
versus		
Union of India and Ors.	}	Respondents

Mr. Prashant Bhavake for the petitioners.

Mr. P. D. Dalvi with Mr. Rushikesh G. Patil
for the applicants in the civil application.

Mr. G. Hariharan with Mr. Y. P. Deshmukh
I/b. Mr. A. A. Ansari for respondent no. 1.

**CORAM :- S. C. DHARMADHIKARI &
M. S. KARNIK, JJ.**

DATE :- JANUARY 9, 2019

P.C. :-

1. After having heard Mr. Bhavake appearing for the petitioners, we do not see any reason to entertain these writ petitions.

2. A civil application was placed before us for vacating the ad-interim relief granted in the writ petitions. The court was persuaded by the petitioners to issue notice to respondent nos. 3 and 5. Prior thereto, this court was persuaded to pass the following ad-interim order on 16th August, 2018:-

“1 Issue notice to the Respondents in both the petitions, returnable after one weeks.

2 In addition to the court notice, the petitioners shall serve the respondents by alternate mode of service and file affidavit of service before the returnable date.

3 In the meantime, the admission process in Jawahar Navodaya Vidyalaya, Sangli, may continue. However, eight seats be kept vacant until further orders of this court. In the event of the success of the petitioners, those seats can be allotted to them.

4 S.O. to 23.08.2018.”

3. With the consent of all parties, we have taken up the writ petitions themselves together with the civil application. In the event a case is made out for admitting the writ petitions, then alone the issue of continuing the ad-interim order would survive, else, it cannot be continued.

4. We take the facts from Writ Petition (ST) No. 21637 of 2018. This petition is filed by nine petitioners against (i) Union of India-Ministry of Human Resources Development Department; (ii) the Navoday Vidyalaya Samiti-an autonomous organisation working under the auspices of this Ministry; (iii) the Navoday Vidyalaya Samiti having its regional office at Sheti Mahamandal Bhavan, Senapati Bapat Road, Pune; (iv) the Jawahar Navoday Vidyalaya, Kagal, Taluka Kagal, District Kolhapur and (v) Jawahar Navoday Vidyalaya, Sangeli-Sawarwad, Taluka Sawantwadi, District Sindhudurg.

5. The petitioners are students and are minors. They have filed the writ petitions through their respective natural guardians complaining that in the academic year 2017-18, the petitioners appeared for Jawahar Navodaya Vidyalaya Selection Test-2018 (for short “the test”). That test was held for admission at respondent no. 5 Vidyalaya for academic year 2018-19 in the VIth standard.

6. The grievance of the petitioners and further summarised is that there is a prospectus issued for the conduct of this test, copy of which is at Exhibit 'A'. Reliance is placed by Mr. Bhavake on clause (4.c) of this prospectus at page 21 of the paper book. That reads as under:-

“4.c) A candidate appearing for the selection test must be studying in Class-V for the whole of the academic session **2017-18** in a Government/Government aided or other recognized schools or 'B' certificate competency course of National Institute of Open Schooling in the same district where he/she is seeking admission. A school will be deemed recognized if it is declared so by the Government or by any other agency authorized on behalf of Government. Schools where students have obtained 'B' certificate under National Institute of Open Schooling should have accreditation of NIOS. A candidate must successfully complete Class-V in the session **2017-18**. Actual admission in Class-VI for the session **2018-19** will be subject to this condition.”

7. The contentions of Mr. Bhavake are that a candidate appearing for the selection test must be studying in the Class V for whole academic year 2017-18 in the Government aided or other recognised school situated in the same district where he/she is seeking admission in Jawahar Navoday Vidyalaya. Thus, it is conceded that both, the recognised schools from where Class-V has to be cleared and the admission to the Jawahar Navoday Vidyalaya school sought, ought to be located in the same district. It is claimed that before taking admission in the school situated in Sindhudurg district, the petitioners were permanently residing at the addresses mentioned in the cause title of the writ petition, but in Kolhapur district. The Aadhaar cards were relied upon, based on which the admission cards to take the test were issued. The date of the examination was 21st April, 2018. The examination centres were assigned to the petitioners out of Kolhapur district. On enquiries, it was replied that since the

addresses of the petitioners pertain to Kolhapur district, for convenience, the examination centres allotted to the petitioners are out of Kolhapur district. It was further assured that as the petitioners submitted their applications expecting admission to respondent no. 5 vidyalaya at Singhudurg district, the candidature of the petitioners will be considered for Jawahar Navoday Vidyalaya at Sindhudurg only.

8. Mr. Bhavake relies upon the requirement as set out in Condition No. (4.c) and complains that there is a patent illegality in considering the candidature of the petitioners for the Jawahar Navoday Vidyalaya in Kolhapur district (respondent no. 4) only on the basis of addresses mentioned in the Aadhaar Cards, inspite of the fact that the petitioners applied for appearance at the test to seek admission at Jawahar Navoday Vidyalaya in Sindhudurg district. It is this patent illegality which is highlighted to which there is no answer from the contesting respondents that this court granted the ad-interim relief is the final submission of Mr.Bhavake.

9. On the other hand, Mr.P.D.Dalvi appearing in support of Civil Application No. 32 of 2019 in the companion writ petition would urge that the applicants in that civil application have pointed out and on oath that they applied for admission to the

Jawahar Navodaya Vidyalaya at Palus, district Sangli. The concerned Jawahar Navodaya Vidyalaya Samiti held the selection test, the applicants appeared thereat and they have passed this test. When the applicants were awaiting the formalities to the admission to be completed, they came across the present petitions and the interim orders therein. The applicants were informed that though they are otherwise eligible for admission, they would not be able to secure it due to the interim orders passed by this court and to the above effect. In paragraph 11 of this civil application, according to the Mr.Dalvi, the applicants have highlighted that the petitioners in Writ Petition (ST) No.23032 of 2018 have not been successful in the selection test and therefore, they were not entitled to be admitted. At the instance of such candidates, the ad-interim protection could not have been granted and therefore, that should be vacated.

10. This issue is also common to Writ Petition (ST) No.21637 of 2018, in which arguments are canvassed by Mr.Bhavake. Mr.Bhavake would submit that the core issue is not the results of the test, but how the petitioners could have been considered for selection at a distinct Jawahar Navodaya Vidyalaya. They ought to have been considered for admission in the Jawahar Navodaya Vidyalaya in Sindhudurg district and not in Kolhapur district.

Alternatively and without prejudice, it is submitted that the petitioners have never been informed that they have failed in the selection test and the result is vague. The result or the document issued by the authorities only reveals the names of those who have cleared the test.

11. It is apparent from the memo of the writ petition itself that this test, reference to which has been made throughout, was held on 21st April, 2018. The writ petition (WPST/21637/2018) in para 5 says that the result of this test was declared on 18th July, 2018. It is categorically stated that after declaration of the result, the petitioners found that they are not selected for admission at respondent no. 5-Jawahar Navoday Vidyalaya at Sindhudurg district. Para 5 of this writ petition reads as under:-

“5. The Petitioners state that after the JNVST-2018, the result of the said JNVST-2018 was declared on 18-7-2018. After declaring the results, the Petitioners found that they are not selected for admission at Respondent No. 5 JNV at Sindhudurg District. Hereto annexed and marked as **Exhibit “D”** is the copy of Select List for JNV at Sindhudurg District. After making further enquiry by the parents of the Petitioners, it was realized that some of the students including one Bhushan Dattatraya Patil who had sought admission for JNV from Sindhudurg District and accordingly appeared for the Selection Test from Sindhudurg District is surprisingly selected for JNV, Kagal which is situated in the Kolhapur District. Hereto annexed and marked as **Exhibit “E”** is the copy of Select List for JNV at Kolhapur District. From the said fact, the Petitioners as well as their parents realized that on the basis of address mentioned on AADHAAR Card, the candidature of the Petitioners is considered for the selection and admission at JNV for Kolhapur District as per merit for selection for said JNV for Kolhapur District at Kagal and not for admission at Respondent No. 5-JNV at

Sindhudurg District. The Petitioners state that the said illegality is committed by the Respondents only on the basis of AADHAAR Cards on which addresses of the Petitioners pertains to Kolhapur District. However, as per the Prospectus and guidelines of JNVST-2018, it was never provided that the candidature of the students like the Petitioners will be considered on the basis of the permanent address mentioned in the AADHAAR Cards and not on the basis of the application of the candidates seeking admission to the JNV at particular District. The Petitioners state that on the contrary, it is clearly open for the candidates to apply and seek admission from any District whereat JNV is situated and only requirement is that such candidature should have studied in the same District in 5th Standard for relevant whole academic year. Therefore, being deeply aggrieved and dissatisfied by the aforesaid illegality and seeking further consequential reliefs, the Petitioners beg to prefer the present Writ Petition under Article 226 of the Constitution of India.”

12. After hearing both sides, we find that the issue raised for consideration of this court could never have been examined by it at the instance of such petitioners, who do not find their names in the list of selected candidates. Once they are not selected for admission to Jawahar Navoday Vidyalaya to either district, then, at their instance, this court could not have taken cognizance of the further issues and as highlighted in the afore-reproduced paragraph. The petitioners ought to have been candid before the court in pointing out that once their names are not appearing in the selected candidates, then, they could have been validly taken as failed or ineligible.

13. From a reading of the further paragraphs of the brochure, it is evident that the same sets out complete procedure, including

the syllabus for the examination. Once the results have been declared in the manner aforesaid, then, we do not see as to how the petitioners can have any grievance. The issue can be examined only at the instance of such candidates who have cleared the test and yet not considered for the Jawahar Navodaya Vidyalaya, to which they were seeking admission and according to them, rightly. To our mind, therefore, this court could not have assisted the petitioners in any manner. A material fact has been thus suppressed from this court. On this ground, the petitioners cannot be said to be entitled to a discretionary relief.

14. With the aforesaid discussion, the writ petitions are dismissed. The ad-interim orders are vacated forthwith. In the light of the dismissal of the writ petitions, the civil application does not survive and stands disposed of as such.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)