

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 2689 OF 2020

1. Aditya s/o. Ramrao Bhoyar,
Aged 18 years, Occ. Student,
r/o. Ward No.16, Mu. Brahman
Pipla Post, Paradsinga,
Chhindwara, Madhya
Pradesh-480108.

2. Abhishek s/o. Dipak Gayki.
Aged 18 years, Occ. Student,
r/o. Near Railway Station,
Gayki Layout, Saoner,
Nagpur-441107.

..... PETITIONERS

// VERSUS //

1. State of Maharashtra,
Through the Secretary,
Secondary and Higher
Secondary Education,
Department, Mantralaya,
Mumbai.

2. Maharashtra State Board of Secondary and Higher Education, Pune through its Secretary, Near Balchitrawani, Bhamburda, Shivaji Nagar, Pune.

3. Maharashtra State Board of Secondary and Higher Education, Nagpur Board, Through its Secretary, Nagpur.

4. Saraswat Jr. College of Science and Commerce, Saoner through its Principal, having its address at Kalmeshwar Road, Tq. Saoner, Distt. Nagpur.

..... RESPONDENTS

Ms Sejal Lakhani, Advocate for the petitioners.
 Mr.D.P.Thakare, A.G.P. for respondent no.1.
 Mr.Rohit Vaidya, Advocate h/f. Mr.Anand Parchure,
 Advocate for respondent nos.2 and 3.

CORAM : SUNIL B. SHUKRE &
 AVINASH G. GHAROTE, JJ.

DATE : 16.12.2020.

ORAL JUDGMENT (Per Sunil B. Shukre, J) :

1. Rule. Rule made returnable forthwith. Heard finally by consent.

2. The petitioners are students of respondent no.4 Junior College. Respondent no.4 is a college which runs Commerce and Science courses for 11th and 12th Std. examinations recognized by the Maharashtra State Board of Secondary and Higher Education, Pune and regulated by the Divisional Office at Nagpur, which is respondent no.3. In the 10th Std. examination, both the petitioners have secured about 33% marks in the Science Stream and therefore, they were not eligible for securing admission to the Science Stream of 11th Std. Course. However, they were eligible for being admitted to Commerce Stream. Accordingly, as the petitioners made their applications for getting admission to the Commerce Stream, they were indeed granted admission to 11th Std. Course in Commerce stream by respondent no.4. Later on, the petitioners applied for change of their course from Commerce stream to Science stream and made such a request to respondent no.4. Respondent no.4 gladly granted the request and allowed the petitioners to change their course accordingly and admitted them to 11th Std. Course in Science stream. Respondent no.4 allowed the petitioners to take 11th Std.

examination. Thereafter, the petitioners were also allowed to appear at the 12th Std. examination in the current academic year. However, their results were withheld. The petitioners, by filing this petition, have sought direction to respondent nos. 2 and 3 to declare their results.

3. From the reply filed to this petition on behalf of respondent nos. 2 and 3, it is seen that now the admissions of the petitioners to 12th Std. course in Science Stream have been cancelled by the order passed on 24.7.2020, about three days after this petition was filed. So, it is submitted by the respondents that now there would be no question of issuing any direction to respondent nos. 2 to 4 to declare results of examination of the petitioners taken by the Board.

4. In this case, the basic issue is of eligibility of the petitioners to secure admission to 12th Std. course in Science Stream affiliated to State Board. It is not in dispute that minimum criteria for admission to Science Stream of 12th Std. course affiliated to State Board is of 35% marks. It

is also not in dispute that both the petitioners had secured 33% marks in Science Stream at 10th Std. examination. It was a State Board examination. So, from day one, the petitioners were not eligible for getting admission to 11th and 12th Std. course in Science Stream affiliated to State Board and yet the petitioners, on their applications, were allowed by respondent no.4 to change their admissions from Commerce Stream to Science Stream. This was in clear violation of eligibility criteria adopted by respondent nos. 2 and 3 for admissions to 11th and 12th Std. course in Science stream. Now, by the order passed on 24.7.2020, the State Board has directed to cancel admissions of the petitioners to Science Stream and same have been cancelled.

5. So far as eligibility criteria is concerned, it is not for this Court to issue any direction to the State Board for changing the streams and particularly, in a way so as to bring these petitioners within the zone of eligibility. Fixation of eligibility criteria is a policy matter and it is entirely for the State Board to take decisions about framing of it's

policy. Respondent nos. 2 and 3 have already framed policy which indicates that minimum eligibility criteria for admission to Science Course is of 35 % marks in Science subjects. Such being the criteria, no fault with the order dated 24.7.2020 could be found by this Court.

6. Now that the admissions of the petitioners to 11th and 12th Std. course in Science stream have been cancelled and in a legal way, there is very little that can be done by this Court at this stage. Nodoubt this could result in loss of precious academic years of petitioners and even though the petitioners contend that there is no mistake on their part, but the eligibility criteria being a policy matter, no further directions can be issued by this Court to respondent nos. 2 and 3 so as to compel them to relax the eligibility criteria, just because the petitioners submit that they are not at fault for this unfortunate turn of events. Of course, we do not wish to enter into merits of the controversy regarding whose fault it is in the whole episode. We are of the opinion that the students - the petitioners were also expected to read the instructions carefully about qualifying marks for

securing admission to any stream whether Arts, Commerce or Science before trying their luck as regards getting admission into a particular stream of subjects. It appears to us that the petitioners have not done this exercise and so, atleast a part of fault would also be lying at their doorsteps.

7. There is, however, some thing for which respondent no.4 would have to be held responsible and i.e. loss of academic years of the petitioners. Respondent no.4 being a Junior college is presumed to know and be aware of eligibility criteria. It was for this reason that we would say that respondent no.4 ought not to have entertained any application for change of subjects relating to Science stream from Commerce stream when the petitioners did not qualify for such a change. Yet, respondent no.4 entertained the request of petitioners and allowed them to change their admissions from Commerce Course to Science Course and then respondent no.4 further allowed the petitioners to take 11th Std. as well as 12th Std. examinations. In such a case, the larger share of fault would have to be owned by respondent no.4 and respondent no.4 would also be

required to be made accountable for the same. If this is not done, such activities; undesirable and unethical as they are, would continue. Therefore, respondent nos. 2 and 3 would have to initiate appropriate action against respondent no.4 for cancellation of its affiliation and recognition in accordance with law.

8. In the result, no relief can be granted to the petitioners, although the petitioners can proceed against respondent no.4 by pursuing appropriate remedy for receiving compensation.

9. The petition thus stands dismissed. Respondent nos. 2 and 3 are directed to initiate appropriate action regarding cancellation of affiliation and recognition of respondent no.4, in accordance with law, after giving due hearing.

The petitioners are given liberty to pursue the appropriate remedy for getting compensation from the respondents regarding loss of their academic career.

Rule is discharged. No costs.

JUDGE

JUDGE

[jaiswal]

