

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3437 OF 2021

Vinayak Shikshan Prasarak Mandal & ...Petitioners
Anr.

Versus

Maharashtra State Board of Secondary ...Respondents
& Higher Secondary Education & Ors.

Mr. Anilkumar Patil for the Petitioners.

Mr. Kiran Gandhi i/by Little & Co. for Respondent Nos. 1 and 2.

Mrs. P.J. Gavhane, AGP for the Respondent Nos. 3 to 5-State.

CORAM : R.D. DHANUKA &
R.I. CHAGLA, JJ.

DATE : 4 August 2021

ORDER :

1. Rule.

2. Learned AGP for Respondent Nos. 3 to 5 waives service. Learned Counsel appearing for Respondent Nos. 1 and 2 also waives service.

3. Heard finally by consent of the parties.

4. By this Petition filed under Article 226 of the Constitution of India, the Petitioners are seeking directions against Respondent No. 2-Board to accept the application forms for SSC examination of the 12 students studying in Petitioner No. 2-School to enable the said students to participate in the process of SSC examination and consequent results and further direction for quashing and setting aside the communication of the Respondent No. 1-Board dated 26th April 2021.

5. The Letter of Intent was granted to the Petitioners by Respondent No. 5- State of Maharashtra vide its communication dated 8th August 2019.

6. The Deputy Director Nashik thereafter granted final permission to start classes for 9th and 10th standard on 1st January 2021 on self finance/non grant basis.

7. The Petitioners had made proposal by letter dated 10th November 2020 to Deputy Director (Education) Nashik

for getting the “Board recognition” and “Index Number”. As per procedure the Respondent-Education Officer on 1st March 2021 forwarded proposal to the Deputy Director (Education) Nashik.

8. The Deputy Director on 31st March 2021 granted the said proposal of the Petitioners and informed the Respondent No. 2-Board, recommending that the Petitioners should be granted “Board recognition” and “Index Number”.

9. The Petitioners by their letter dated 1st April 2021, requested the Respondent No. 2-Board’s Divisional Secretary to do the needful and grant “Board recognition” and “Index Number”.

10. There were requisitions from the Respondent No. 2-Board who found some errors in the Application form submitted by the Petitioner. These were complied with on 6th April 2021. The Petitioners by their communication dated 17th May 2021 complied with all the requisitions of Respondent No. 2-Board.

11. The SSC Board informed the Petitioners on 11th June 2021 that the Petitioners were permitted to participate and provided the “Board recognition” and “Index Number”.

12. The Respondent No. 1 by its impugned communication/order dated 26th April 2021, informed all the boards at the division level that the application forms for the SSC students which were permitted to be accepted with late fees, should not be accepted as the examinations were cancelled for SSC and HSC by the Respondent-State. It was mentioned that since the SSC examination was cancelled, the applications for late fees should not be accepted.

13. The Petitioners through the Education institutions has thereafter made representations to Respondent No. 2-Board vide letters dated 14th June 2021 and 15th June 2021. However, no response have been received by the Petitioners to the said letters. Representation has also been made to the Minister, School Education. However, the Minister was directed the Respondent No. 2-Board to take action. However, inspite of reminder dated 22nd June 2021, there has

been no response.

14. It is the Petitioners' case that for another school from Nashik District, this Court has in similar circumstances in Writ Petition No. 2086 of 2021 allowed the Writ Petition by order dated 3rd July 2021. Since the Respondent No. 2-Board has on account of the impugned order passed by the Respondent No. 1 not accepted the application form for SSC examination of the 12 students, the present Petition has been filed.

15. Learned Counsel for the Petitioners has submitted that it was due to the procedure delay by the Respondent No. 3-Deputy Director (Education) Nashik and Respondent No. 4-Education Officer (Secondary Education), Nashik that the Petitioners were unable to submit the proposal/application for getting the said "Board recognition" and "Index Number" prior to the last date of filing the examination forms, which was dated 22nd April 2021. He has submitted that the students studying in the Petitioner No. 2-School should not be made to suffer at the hands of the Respondent Nos. 3 and 4. He has submitted that this Court in case of **Sarwajanik Seva**

Mandal & Anr. Vs. Maharashtra State Board of Secondary Education & Ors¹. had directed Respondent Nos. 1 and 2 therein to accept the examination form of 7 students and directed the Respondent Nos. 1 and 2 to permit the Petitioners therein to deposit late fees of 7 students along with the application forms and take necessary action. He has submitted that though the SSC results have been declared on 16th July 2021, there was no examination held and the results are based on internal assessment and practical evaluation scheme of the 9th and 10th standards respectively. He has submitted that in fact the Petitioner has submitted the relevant material to the Respondent No. 2-Board for the relevant years. The Respondent No. 2-Board be directed to accept the application forms of 12 students of the Petitioners for the purpose of the internal assessment and for which material have already been submitted by the Petitioner.

16. Learned Counsel appearing for Respondent Nos. 1 and 2 has vehemently opposed the Petition. He has submitted that since the SSC examination results have been declared on 16th July 2021, the Respondent No. 2-Board

1 Writ Petition No. 2086 of 2021 order dated 29th June 2021.

cannot now accept the application forms for the 12 SSC students of Petitioner No. 2-School.

17. He has submitted that last date of filing the SSC examination forms was 22nd April 2021 and that the Petitioners had not complied with the time schedule. He has further submitted that the Petitioners had belatedly applied for getting the said "Board recognition" and "Index Number". There were errors in the application form and the Petitioners only complied with the requisitions on 27th May 2021 i.e. after last date of filing of SSC examinations. He has tendered the letter of the Petitioners dated 27th May 2021 mentioning the compliance of the Petitioners with the requisition and which is taken on record.

18. Learned Counsel for Respondent Nos. 1 and 2 has accordingly, submitted that the Respondent No. 1 in the impugned order had taken the decision that the application forms for the SSC students shall not be accepted in view of the SSC examinations being cancelled. He has accordingly, submitted that there is no merit in the Petition and the same should be dismissed.

19. Having considered these submissions, it is to be noted that though the Petitioners had applied for getting the said “Board recognition” and “Index Number” on 10th November 2020, the Respondent No. 4-Education Officer (Secondary Education) Nashik and thereafter Respondent No.3-Deputy Director (Education) Nashik delayed recommendation of the Petitioners’ proposal to the Respondent No. 2-Board for being granted “Board recognition” and “Index Number” the recommendation of Respondent No. 4 was only on 31st March 2021. The Petitioners were thereafter, called upon by the Respondent No. 2-Board to comply with the requisitions which they duly complied with by on 27th May 2021. The delay has been stated to be owing to the Covid pandemic situation in Nashik District.

20. Respondent No. 2-Board had also informed the Petitioners on 11th June 2021 that they were permitted to participate and provided the “Board recognition” and “Index Number”. It is to be noted that although the last date of filing of SSC examination forms was on 22nd April 2021, Respondent No. 2-Board inspite of that date having expired permitted the Petitioners to participate and provided the “Board recognition”

and “Index Number”.

21. We find that inspite of Respondent No. 2-Board having permitted the Petitioners to participate, the Respondent No. 1 informed all the Boards at division level by the impugned communication/order dated 26th April 2021 that the application forms for the students which were earlier permitted to be accepted by payment of late fees, should not be accepted as the examination were cancelled for the SSC and HSC by the Respondent-State.

22. We are of the view that since SSC examination had been cancelled and that results have been declared on 16th July 2021 on the basis of the internal assessment of 9th standard and practical evaluation scheme of Respondent No. 2-Board, for the 10th standard the 12 students of the Petitioner No. 2-School should not be made suffer. Particularly, considering that the delay in recommending the proposal of the Petitioners for getting the said “Board recognition” and “Index Number” was at the hands of the Respondent Nos. 3 and 4 as well as the unprecedented Covid 19 pandemic situation, due to which there had been a delay in Petitioners’ complying with the

requisitions of the Respondent No. 2-Board. Further, as can be seen from material on record, the Petitioners had in fact as early as on 10th November 2020 applied for getting the said “Board recognition” and “Index Number”. We are accordingly of the view that the Respondent No. 2-Board should accept the application forms for SSC examination of the 12 students of the Petitioner No. 2-School by accepting payment of late fees as per Rules.

23. Hence, we pass the following order:-

- (i) We direct Respondent No. 2-Board to accept the application forms for SSC examination of 12 students studying in Petitioner No. 2-School within a period of three days from today.
- (ii) The Petitioners shall pay the late fees, if any, as per the Rules, which shall be paid along with the application forms submitted by the Petitioners within a period of three days from today.

(iii) Respondent No. 2-Board shall declare the results of 12 SSC students of the Petitioner No. 2-School upon there being compliance with the above directions, within a period of one week thereafter.

(iv) Rule is made absolute in the above terms.

(v) Writ Petition is disposed of.

(vi) There shall be no order as to costs.

(vii) Parties to act on an authenticated copy of this order.

[R.I. CHAGLA J.]

[R.D. DHANUKA, J.]