

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6216 OF 2021

Snehal Bhushan Deshmukh (Minor))
Age 17 years, Occu. Student,)
Through father Natural Guardian)
Bhushan Bhausaheb Deshmukh)
Age 48 yrs. Occu. Service,)
R/o. Sonal Row House, Dindori Rd.,)
Panchavati Nashik.)...**Petitioner**

Versus

1. Maharashtra State Board of Secondary & Higher Secondary Education,)
Having office at s.no. 832, plot nos. 178/179,)
Shivaji Nagar, Pune.)

2. Nashik Divisional Board,)
Maharashtra State Board of Secondary & Higher)
Secondary Education, Pune.)
Having office at Survey No. 1560/1, Besides Boys)
Samaj Kalyan Hostel, Near New English School)
Adgaon, Adgaon, Nashik-422 00.)

3. Bramha Valley Public School and Jr. College,)
The school run by Nashik Gramin Shikshan Prasarak)
Mandal, Through Principal,)
Having office at Bramha Valley Educational Campus,)
Anjaneri, Trimbak Rd. Nashik-422213.)...**Respondents**

- Mr. Anilkumar K. Patil a/w Ms. Sonal D. Rajput for the Petitioner.
- Mr. Kiran Gandhi i/by Little & Co for Respondent Nos.1 and 2.
- Mr. S.B. Deshmukh for Respondent No.3.
- Mr. S.S Panchpor, AGP for the State.

**CORAM : S.J. KATHAWALLA &
MILIND N. JADHAV, JJ.**

DATE : OCTOBER 06, 2021.

ORAL JUDGMENT (Per S.J. Kathawalla and Milind N. Jadhav, JJ) :

By the above Writ Petition, the Petitioner is seeking the following relief:

"B. That this Hon'ble Court by appropriate Writ / Order / direction, may be pleased to direct the Respondent No. 2 Divisional Board to issue corrected mark sheet to the Petitioner and consequently communication of the Respondent No. 1 Board dated 21.09.2021 - Exh. G may be quashed and set aside."

2. It will be apposite to briefly state the relevant facts:-

2.1 The Petitioner is a minor below 18 years of age and recently appeared for her HSC Board Examination (Standard XIIth) from Respondent No.2 Nashik Divisional Board (hereinafter referred to as **"the Board"**). The Petition is filed through her father / natural guardian. Respondent No. 3 is the Brahma Valley Public School and Jr. College where the Petitioner had secured Admission for Standard XIIth. The result of the Petitioner for HSC was declared on 3rd August, 2021. The Statement of Marks shows that the Petitioner has scored 84 marks out of 100 in Biology.

2.2. It is the case of the Petitioner that she has never selected nor opted for "Biology" as one of her subjects in Standard XII. According to the Petitioner, she has opted for Mathematics as a subject in place of "Biology"

and therefore “Mathematics” ought to have been stated in her Statement of Marks which is annexed as Exhibit F at Page 23 to the Petition.

2.3 The Petitioner states that due to this inadvertence/error/mistake on the part of Respondent No. 3 College in feeding the correct data online, the aforesaid mistake has occurred whereby instead of “Mathematics” the subject “Biology” appears in the Petitioner’s Statement of Marks. The Petitioner states that she has filled her examination form for HSC examination wherein she has opted for “Maths” as her optional subject and not “Biology”. This examination form is annexed as Exhibit A, Page 16 to the Petition. It is stated that since during the last academic year no examination was conducted due to COVID 19 pandemic and the consequent lockdown, necessary assessment of marks for declaration of HSC results was to be based upon the total of 30% of the average marks secured by the Petitioner during the 10th standard, 30% of the average marks secured by the Petitioner during the term tests held in the 11th standard and 40% of the average marks secured by the Petitioner during the 12th standard.

2.4. Since the Petitioner has opted for Mathematics as her subject and desires to pursue further studies in the Engineering faculty, it is contended that due to the erroneous HSC result which states that the Petitioner has obtained 84 marks out of 100 in Biology, she is unable to further apply to engineering colleges and has therefore moved this Court for seeking direction to the Respondent Nos.1 and 2 to correct her Statement of Marks and issue

the corrected mark sheet.

3. Mr. Anilkumar Patil, Learned Advocate appearing for the Petitioner has submitted that the error in the Statement of Marks stating that the Petitioner has obtained 84 marks out of 100 in Biology has occurred due to the mistake of the Respondent No. 3 College and the same has been admitted by the College.

4. Advocate Sugandh Deshmukh appearing for the Respondent No. 3 College has supported the Petitioner's case and has accepted the mistake of the College. He has placed before us copy of the Admission Form filled in by the Petitioner for the academic year 2020-21 with the College, wherein the Petitioner has selected and opted for Maths as a subject and not Biology. Perusal of the said Admission Form dated 02.09.2020 filled in by the Petitioner shows that the Petitioner has clearly opted for Maths and not Biology. He submitted that since the Petitioner had opted for Biology during her first year junior college i.e XIth standard academic year, the said mistake of feeding the subject Biology instead of Mathematics has taken place on behalf of the data entry operator of the College.

4.1. Advocate Deshmukh has also placed on record a copy of the Maths Journal written and filled up by the Petitioner with the College which bears a certificate that the experiments entered in the said Journal have been satisfactorily performed by the Petitioner studying in class XIIth during the academic year 2020-21. This Maths Journal is certified by the College

Principal and the Maths teacher on 25.03.2021.

4.2. Advocate Deshmukh has fairly submitted that based on the above documentary evidence and the documentary evidence furnished by the Petitioner at Annexure C (Page 119) of the written submissions filed by Respondent Nos. 1 and 2, it is clear that "Category 56-1" which relates to Biology has been incorrectly filled in online by the College in respect of the Petitioner resulting in Biology being shown instead of Mathematics in the Admission Card at Annexure O, Page 120 of the Writ Petition and is consequently reflected in the Statement of Marks issued to the Petitioner. He submitted that the marks appearing in the entry at Sr. No. 159 of the Assessment Sheet (Page 127 of written submissions on behalf of Respondent Nos.1 and 2) pertaining to the Petitioner are in fact obtained in the subject of "Mathematics" and not "Biology". He submitted that by Letter dated 21.08.2021, Respondent No. 3 College admitted its aforesaid mistake and requested the Board to rectify the Petitioner's result along with one another similarly placed student. The Letter dated 21.08.2021 is annexed at Page 129.

5. Mr. Kiran Gandhi, Learned Advocate appearing for Respondent Nos. 1 and 2 has placed before us written submissions dated 06.10.2021 along with several annexures and contended that in the present case, Respondent No.3 College filled up the online application form for all its students, including the Petitioner and forwarded the same to the Board; thereafter the Board forwarded the pre-list back to the College to verify and certify the details

mentioned by the College ; after verification, the College forwarded the said list back to the Board ; in the present case, the Respondent No. 3 College filled up the online application of the Petitioner for the subject "Biology" instead of "Mathematics" ; the pre-list returned to the Board after verification showed the subject as Biology ; hence based on the duly verified and certified pre-list, the Board issued admission cards to the College, wherein in the Petitioner's case, the subject Biology was mentioned in the admission card ; however, since no examination was held, the Petitioner did not have the occasion to appear for any examination as the final result of the Petitioner was based upon the assessment formula prescribed by the State ; the Petitioner did not raise any grievance at that time with respect to the admission card issued to her ; therefore in the Statement of Marks one of the subject was shown / stated as Biology. Advocate Gandhi has also fairly placed on record the unreported judgment dated 09.09.2021 passed by a co-ordinate bench of this Court at Nagpur in Writ Petition No.3354 of 2021 (Sadhana Shikshan Mandal & Anr. Vs. State of Maharashtra & Ors.) along with Writ Petition No. 3016 of 2021 (Jayant D. Mali & Ors. Vs. State of Maharashtra & Ors.), wherein a similar situation had arisen and the Court had issued directions to the Board for rectification of results.

5.1. Advocate Gandhi submitted that Respondent No. 1 State has issued Government Resolution ('G.R.') dated 2nd July 2021, wherein it is stated that there is no procedure contemplated for change of subjects after it is verified

and fed by the concerned College in the computer system of the Board and further there is also no provision for verification and revaluation of marks, hence the Board is not empowered to carry out any correction in the result of the Petitioner.

6. In rejoinder to the above submissions, Mr. Patil, Learned Advocate appearing for the Petitioner has submitted that Rule 102(2) of the Maharashtra Secondary and Higher Secondary Education Boards Regulations provide that in case where it is found that the result of the examination has been affected by **error**, malpractice, fraud, improper conduct or other matter of whatsoever nature, the Divisional Board on the recommendation of the Standing Committee has the power to amend such result in such manner as shall be in accordance with the true position and to make such declaration as it may consider necessary in that behalf, provided that except as provided in clause (3), no result shall be amended after the expiration of six months from the date of declaration of the results. He submitted that in the Petitioner's case, the Respondent No. 1 Board has issued the impugned Letter dated 21.09.2021 annexed as Exhibit G, Page 25 to the Petition, wherein it is stated that in view of the directions contained in the Government Resolution dated 2nd July, 2021, the request made by the Petitioner / Respondent No. 3 College cannot be accepted.

7. We have carefully perused the pleadings, the submissions advanced by the Advocates for the parties and the compilation of documents including the

Admission Form for 2020-21, the Examination Form filled in by the Petitioner, as well as the Maths Journal for the year 2020-21 written by the Petitioner as a student of Standard XIIth, placed before us by Respondent No. 3 College. These documents establish beyond any doubt that the Petitioner had opted for Mathematics and was a student of Mathematics in Standard XII and had not opted for Biology.

8. It therefore cannot be disputed, but is rather admitted that an error / mistake has occurred only due to the negligence of the Respondent No. 3 College. The management of Respondent No. 3 College has failed to exercise the required supervision over its staff members / data entry operators / teachers and Supervisors who are responsible for feeding the concerned data and carrying out verification and certification of the pre-list.

9. Rule 102 (2) of the Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 reads thus :

“(2) In any case, where it is found that the result of the examination has been affected by error, malpractice, fraud, improper conduct or other matter of what-so-ever nature, the Divisional Board, on the recommendation of the Standing Committee, shall have power to amend such result in such manner as shall be in accordance with the true position and to make such declaration as it may consider necessary in that behalf, provided that except as provided in clause (3) below, no result shall be amended after the expiration of six months from the date of declaration

of the results”.

10. Though the Government has issued a G.R. dated 2nd July, 2021 wherein it has been stated that there is no procedure contemplated for change of subjects after verification and certification by the College in the computer system of the Board and the Board is not empowered to make correction in the result, still the said G.R. cannot supersede the provisions of Rule 102(2) of the Regulations. Under the above Rule, Respondent No. 2 Board is empowered to amend the result if it is found that the same has been affected by any error etc. In the present case as already stated above, it is an admitted position that due to an error on part of the Respondent No. 3 College, the Statement of Marks i.e. the result of the Petitioner bears an incorrect subject "Biology" instead of "Mathematics". The Petitioner has immediately approached the Board, so also the Respondent No. 3 College has approached the Board after declaration of the result for rectification. The result was declared on 03.08.2021 and therefore, the said result being erroneous, can as per the provisions of Rule 102(2) of the Regulations, always be corrected within six months from the date of declaration of the same. The only reason stated in the Letter dated 21.09.2021 for not rectifying the Petitioner's result is the embargo placed by the G.R. dated 2nd July 2021. Even otherwise, our judicial wisdom / conscience does not permit us to accept the above reasoning of the Board which would not only result in the whole academic year of the student being wasted, but would have a cascading effect on the

entire future career of the student, and all for no fault of the student.

11. Though we would have remanded the Petitioner's case to the Standing Committee of the Respondent No.2 - Board for consideration and its recommendation under Rule 102(2), we are however not inclined to persuade ourselves to do so, especially when valuable time available to the Petitioner to apply to Engineering Colleges for better prospects and further studies will be unnecessarily lost and consequently her future life and career may get affected if there is any further delay in issuing the corrected mark sheet showing the correct subject. We therefore quash and set aside the Letter dated 21.09.2021 issued by the Respondent No.2 - Board and direct Respondent No. 2 Board to issue the Statement of Marks of Higher Certificate Secondary Examination (HSC) to the Petitioner by correcting the subject code and subject name from "56 BIOLOGY" to "MATHEMATICS" along with its relevant Code. In case if the Respondent No. 3 College is required to submit a fresh corrected assessment data sheet in respect of the correct assessment of marks of the Petitioner to the Respondent No. 2 Board, the same shall be done by the Respondent No. 3 College within a period of three days from the date of receipt of this Order. The Respondent No.2 Board is directed to issue the corrected result of the Petitioner within a period of one week thereafter. We impose cost of Rs.25,000/- on the Respondent No. 2 College for causing grave inconvenience to the Petitioner - student only because of the negligence on

the part of its concerned staff members. The said costs shall be paid by cheque by the Respondent No. 3 College to the Petitioner within a period of one week from the date of receipt of a copy of this Order.

12. In view of the above directions, Writ Petition stands disposed off. However, we are placing the matter on 21st October, 2021 to report compliance.

13. Parties to act on an authenticated copy of this Judgment.

[MILIND N. JADHAV, J.]

[S. J. KATHAWALLA, J.]