

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1413 OF 2021

Anaya Yogesh Patki, Age 16 (Minor),)
 through her natural guardian (father))
 Yogesh Santosh Patki)
 residing at Flat No.8, Poorti Building,)
 135, Senapati Bapat Marg,)
 Matunga Road, Mumbai – 400 016.) .. Petitioner

Versus

1. State of Maharashtra)

2. The Maharashtra State Board of)
 Secondary & Higher Education)
 Survey No.832-A, Final Plot No.178 & 179)
 Near Balchitrawani, Behind Agarkar)
 Research Institute, Bhamburda,)
 Shivajinagar, Pune – 411 004.)

3. The Council for the Indian School)
 Certificate Examinations having its)
 Registered office at Pragati House,)
 3rd Floor, 47-48, Nehru Road,)
 New Delhi - 110019.)

4. The Central Board of Secondary)
 Education Shiksha Kendra, 2,)
 Community Centre, Preet Vihar,)
 Delhi-110092.)

5. Cambridge Assessment International))
 Education conducting International General))
 Certificate of Secondary Education having)
 its office at Cambridge University Press,)
 University Printing House,)
 Shaftesbury Road, Cambridge CB2 8BS,)
 United Kingdom.) .. Respondents

INTERIM APPLICATION (L) NO.16326 OF 2021
IN
WRIT PETITION NO.1413 OF 2021

1. Kavya Bhatt, a minor through her)
 natural guardian (Mother) Aditi Bhatt)
 residing at 41, Vimal Cottage, S.V. Road,)
 Vile Parle West, Mumbai – 400 056.)

2. Manav Chopra-Jain aged 15 years)
 a minor of Mumbai, through his natural guardian)
 (mother) Ms. Sangita M. Chopra-Jain)
 residing at Ground Floor, Faroodi Mansion,)
 Cama Road, Andheri (W), Mumbai – 400 058.)

3. Jiya Shah, a minor, Mumbai Inhabitant)
 through her natural guardian (father) Atul Shah)
 residing at A/101, Sai Jyot Lallubhai Park,)
 Opp. Swayumbhu Hanuman Mandir, Near Surya)
 Hospital, Mumbai – 400 056.)

4. Rashi Agrawal, a minor, Mumbai Inhabitant)
 through her natural guardian (father) Amit Agrawal)
 residing at B4, Geetanjali Building,)
 Sai Baba Mandir lane, Jeevan Nagar, Veera Desai)
 Mumbai – 400 053.)

... Applicants

In the matter of :-

Anaya Yogesh Patki, Age 16 (Minor),)
 through her natural guardian (father))
 Yogesh Santosh Patki)
 residing at Flat No.8, Poorti Building,)
 135, Senapati Bapat Marg,)
 Matunga Road, Mumbai – 400 016.)

... Petitioner

Versus

1. State of Maharashtra)

2. The Maharashtra State Board of)
 Secondary & Higher Education)
 Survey No.832-A, Final Plot No.178 & 179)
 Near Balchitrawani, Behind Agarkar)
 Research Institute, Bhamburda,)
 Shivajinagar, Pune – 411 004.)

3. The Council for the Indian School)
 Certificate Examinations having its)
 Registered office at Pragati House,)
 3rd Floor, 47-48, Nehru Road,)
 New Delhi - 110019.)

4. The Central Board of Secondary)
 Education Shiksha Kendra, 2,)
 Community Centre, Preet Vihar,)
 Delhi-110092.)

5. Cambridge Assessment International)
 Education conducting International General)
 Certificate of Secondary Education having)
 its office at Cambridge University Press,)
 University Printing House,)
 Shaftesbury Road, Cambridge CB2 8BS,)
 United Kingdom.)

... Respondents

Mr. Yogesh Patki along with Ms. Rashna Khan and Ms. Poorva Garg i/by
 M/s. Mulla & Mulla & Craigie Blunt & Caroe, Advocates for the
 Petitioner.

Mr. Ashutosh Kumbhakoni, Advocate General along with Ms.P.H.
 Kantharia, Government Pleader and Ms. Jyoti Chavan, Asst. Government
 Pleader, State, Advocates for the Respondent No.1.

Mr. Kiran Gandhi i/by M/s.Little & Co., Advocate for the Respondent
 No.2.

Mr. Mihir Joshi, Advocate for the Respondent No.4.

Mr. Mihir Desai, Senior Advocate along with Mr. Aditya Deolekar, Mr.
 Avadhut Bidaye i/by M/s.TRSNA Legal ,Advocate for the Intervenor
 Student Applicants in IAL/16326/2021.

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

RESERVED ON : 6th August 2021
PRONOUNCED ON : 10th August 2021

Judgment (per R.D. Dhanuka, J.) :-

. By this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for a writ of certiorari for quashing and setting aside the Notification No.202105281410593929 dated 28th May 2021 issued by the respondent no.1. By Interim Application (L) No.16326 of 2021, four of the students of the respondent no.5 International General Certificate of Secondary Education (IGCSE Board) have prayed for intervention or impleadment in the writ petition and also to implead IGCSE as the party respondents. We have already permitted the impleadment of the said IGCSE Board as the party respondent no.5 in the writ petition by an order dated 28th July 2021.

2. We have permitted the applicants in the said interim application to intervene and to canvass their submissions in Writ Petition No.1413 of 2021. Interim Application (L) No.16326 of 2021 is accordingly allowed in aforesaid terms.

3. Learned counsel for the petitioner states that all the respondents are served. The respondent nos.3 to 5 are absent though served. During the course of arguments, learned Advocate General for the respondent no.1 tendered copies of the letters addressed by the respondent nos.3, 4 and 5 clarifying their stand on the subject matter of this petition. Letters addressed by the respondent nos.3, 4 and 5 are taken

on record.

4. Rule. Learned Advocate General for the respondent no.1, Mr.Gandhi, learned counsel for the respondent no.2 and Mr. Joshi, learned counsel for the respondent no.4 waives service. By consent of parties, the petition is heard finally. We have heard the parties at great length.

Following questions of law fell for our consideration in this matter :-

- (a) Whether the fundamental rights of large number of students having been violated by the impugned resolution, the writ petition filed by one of the students for quashing and setting aside such Government Resolution is maintainable or not?
- (b) Whether the Court exercising extraordinary jurisdiction has power to grant consequential reliefs to do complete justice to the parties or not?
- (c) Whether the respondent no.1-State had any power to issue the Government Resolution dated 28th May, 2021 without there being any specific provision in that regard under the Maharashtra Secondary and Higher Secondary Boards Act, 1965 (for short 'MSHSB Act') and Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 (for short 'the said Regulations') for imposing the additional conditions of eligibility in the Government Resolution contrary to Regulation 79(1) of the said Regulations or not?

- (d) Whether the respondent no.1 was required to consult respondent no.2-Board before issuing the said Government Resolution dated 28th May, 2021 or not ?
- (e) Whether the impugned Government Resolution dated 28th May, 2021 is contrary and repugnant to Standard Operating Procedure (for short 'SOPs') dated 2nd August, 2021 issued by the respondent no.1-State itself?
- (f) Whether the condition imposed by the respondent no.1-State in the impugned Government Resolution dated 28th May, 2021 directing the students who have appeared for Xth standard from the schools affiliated to the respondent nos.2 to 5 Boards or other such statutory Boards to appear in the CET examination (i) on the basis of SSC syllabus and (ii) priority being given only to such students who would appear for CET examination and not to the students not appearing for the CET examination is arbitrary, capricious, harsh and in violation of Article 14 of the Constitution of India?
- (g) Whether the right to life enshrined under Article 21 of the Constitution of India of the students who have been already promoted to XIth standard by the respective Boards and are not vaccinated but are compelled to appear in the CET examination by the impugned resolution are violated ?
- (h) Whether the respondent no.1 has rightly invoked Section

34(5) of the MSHSB Act while issuing the impugned Government Resolution dated 28th May, 2021.

Some of the relevant facts for the purpose of deciding this writ petition are as under :-

5. The petitioner is a student who was studying in IES Orion School at Dadar East, Mumbai-400 014 upto Xth standard and is represented through her father in this petition. The respondent no.2 Board is an autonomous body established under the Maharashtra Secondary and Higher Secondary Boards Act, 1965 (for short MSHSB Act) by the State Government and is responsible to conduct SSC Board examination. The respondent nos.2 to 5 are the other Boards who have conducted examination for Standard Xth. The said IES Orion School is affiliated to the respondent no.3 and follows ICSE syllabus. The respondent no.3 declared the dates for conduct of examinations in respect of Xth ICSE. The ICSE exams were supposed to be held during the period May 2021 to June 2021. The respondent no.3 however decided to cancel the examination in view of pandemic situation during that period. Vide letter dated 19th April 2021, the respondent no.3 informed the cancellation of the Xth ICSE examination. The petitioner was informed that the respondent no.3 will devise a fair and unbiased criteria for evaluation.

6. In the case of the petitioner that during the year 2020-2021, the entire schooling in respect of the petitioner was online including conduct of internal examinations. According to the petitioner, no physical classes were conducted even in respect of the SSC Board examinations and the teaching was online.

7. It the case of the respondent no.1 that usually the academic year starts from 15th June of each calendar year. However, due to outbreak of COVID-19, it was not possible to start physical classes from 15th June 2020 onwards. The respondent no.2-Board declared revised timetables for Xth and XIIth standards examinations, for the academic year 2020-2021. According to such timetable, the Board examinations for Xth standard were scheduled to commence from 29th April 2021 and XIIth standard examinations were scheduled to commence from 23rd April 2021. However, the “second wave” of COVID-19 pandemic shook the entire nation, including the State of Maharashtra. The respondent no.1 thus imposed fresh restrictions to control the “second wave” of the pandemic. Though the State Government initially issued a direction to the respondent no.2 to postpone the Xth and XIIth Board examinations till June 2021, the Xth Board examinations subsequently were cancelled by Government Resolution dated 12th May 2021.

8. On 12th April 2021, the State Government informed the respondent nos.3 to 5 Boards and other statutory Boards requesting them to reschedule their examinations as well. On 14th April 2021, the respondent no.4-CBSE and the respondent no.3-ICSE Boards announced cancellation of Xth SSC Board examinations and also prescribed certain evaluation methods for evaluating the students as a substitute for such examinations. On 19th April 2021, the State Government decided to cancel Xth Board examinations and accordingly informed the respondent no.3 Board vide communication dated 26th April 2021. Government Resolution was accordingly issued on 12th May 2021 declaring cancellation of Xth Board examinations. In the said Government

Resolution, it was mentioned that directives for evaluation of the Xth standard students, i.e. mode alternative to holding of such examinations for evaluating such students would be issued separately.

9. On 11th May 2021, Dhananjay Raghunath Kulkarni filed Public Interest Litigation No.10761 of 2021 in this Court inter alia praying for quashing and setting aside the decision taken by the respondent no.2 Board. The respondent nos.3 to 5 herein prayed for a writ of mandamus directing the respondent no.1 to take a decision within such period as this Court may deem fit and proper in respect of the exams to be held for Xth standard students after arriving at a proper formula within such period as this Court may deem fit and proper. The State of Maharashtra filed a detailed affidavit-in-reply in the said PIL on 31st May 2021 opposing the said petition.

10. On 28th May 2021, the respondent no.1 issued a Government Resolution prescribing the procedure to prepare for evaluation of Xth Standard. On the same day, the respondent no.1 issued another Government Resolution to the effect that all the students appearing for Class Xth Board examinations for the academic year 2020-2021 should be inclusively promoted to Class XI. By the said Government Resolution, the respondent no.1 prescribed the procedure for admission of the students to class XIth for the year 2020-2021.

11. The respondent no.1 introduced “Common Entrance Test (CET)” examination for admission of the students in Class XI in the entire State based on syllabus of Class Xth of the State Board. It was

provided in the Government Resolution that CET examination for the students aspiring admissions in Class XI will be entirely optional. While implementing the admission procedure for Class XIth, students who have appeared for CET examinations will be given priority in admissions in all the Junior Colleges based on the merits of marks secured by them in CET examinations in the first phase of admission procedure for Class XIth based on their merits. Subsequent to admissions given to the students who have appeared for CET examinations, the remaining vacant seats in the Junior Colleges will remain open/allocable for all such students who did not appear for the CET, and admissions will be granted to such students based on merits of marks secured by them as per the Evaluation/Assessment procedure for Class Xth.

12. The said Public Interest Litigation No.10761 of 2021 appeared before the Division Bench of this Court. Learned Advocate General for the respondent no.1 made a statement before this Court in the said PIL that the SSC examination 2021 which was to be conducted by the respondent no.2 Board came to be cancelled by the Government Resolution dated 12th May 2021. He made a statement on behalf of the State as well as for the Board that irrespective of the authorities conducting public examinations at the Secondary (Class-X) level, i.e. Central Board of Secondary Education (CBSE) or the council for the Indian School Certificate Examination or the International Board, with which a student may be registered, if he/she is declared “passed” Class X and is willing to participate in the CET to be conducted later this year by the State, he/she shall be allowed to so participate.

13. In view of the said statement made by the learned Advocate General, learned counsel for the petitioner in the said PIL did not wish to proceed with the said PIL any further. The petitioner in the said PIL, however, was granted liberty to question the Government Resolution dated 28th May 2021 issued by the respondent no.1 for declaring CET for granting admission in XIth standard and deciding the evaluation procedure for SSC examination by instituting fresh proceedings. The said PIL was accordingly dismissed as withdrawn. On 24th June 2021, the respondent no.1 issued various directions for holding CET examinations and prescribing the procedure for holding the said CET examinations.

14. On 4th June 2021, the petitioner filed this writ petition. On 10th June 2021, learned Government Pleader sought time to take instructions and made a statement that the date for CET under challenge in this petition was not yet been notified. This Court accordingly clarified that in case the date is to be notified before the date next to be assigned to this petition, the petitioner be communicated accordingly. In that eventuality, liberty was granted to apply for an earlier date. Matter was adjourned to 24th June 2021. On 24th June 2021, learned counsel for the parties sought further time. Learned Government Pleader pointed out that the position referred in paragraph 3 of the order dated 10th June 2021 still continued. This Court accordingly adjourned the matter on 22nd July 2021 and made it clear that the arrangement in the order dated 10th June 2021 to continue.

15. This writ petition thereafter appeared before this Court on 5th July 2021 when the learned AGP for the respondent no.1 made a

statement that till the declaration of SSC result which was expected to be declared on 15th July 2021, the date for holding CET examination cannot be finalized. Learned AGP made a further statement that CET exams may be conducted not earlier than 1st week of August 2021. The exam date would be notified later. This Court accordingly directed the respondent no.1 to file affidavit to deal with the issues raised in this petition. In view of the statement made by the learned AGP that till the SSC result were likely to be declared on 15th July 2021 and only thereafter the date for holding CET exam would be finalized. At that stage, this Court recorded that the Court was not inclined to grant any ad-interim relief.

16. On 22nd July 2021, this Court granted leave to implead CBSE as the respondent no.4 and directed the other respondents to file an affidavit. This Court directed the learned AGP to take instructions. This Court recorded that the respondent no.1 had already started registering the students for the purpose of CET examination since 21st July 2021 and have proposed to accept the application for registration till 26th July 2021. Learned Government Pleader made a statement that CET examinations were proposed to be held on 21st August 2021. This Court accordingly directed that no interim reliefs were warranted at that stage.

17. On 28th July 2021, learned Government Pleader made a statement that due to technical issue, the registration of the students for the purpose of appearing for CET examination proposed to be held on 21st August 2021 could not be completed. The date for registration is extended by three days. Due to such problem, the respondent no.1 could not file an affidavit in compliance with the order dated 22nd July 2021 and

sought time to file additional affidavit. This Court granted leave to amend to implead IGCSE Board as party respondent no.5. Matter was adjourned to 4th August 2021. This Court permitted the students who had passed Xth examination from other Boards to apply for registration without prejudice to their rights and contentions.

18. Matter thereafter appeared on Board on 4th August 2021 when the learned counsel for the petitioner made a statement that he seeks to argue the matter. Learned counsel appearing for the parties jointly requested this Court to hear the matter by physical mode. This Court adjourned the matter to 6th August 2021. Matter was heard at great length by this Court on 6th August 2021 and the matter was closed for orders.

19. Mr. Patki, learned Counsel for the petitioner invited our attention to various documents annexed to the Writ Petition, to the compilation of documents filed before this Court, averments made by the respondent no.1 in the Affidavits in Reply and various judgments of this Court and Hon'ble Supreme Court in support of his contentions. He submits that there is no XIth and XIIth standard in the ICSE (Orion) at Dadar (E) school in which the petitioner had studied till Xth standard. He submits that the respondent no.1 has no jurisdiction to issue the said impugned Government Resolution dated 28th May, 2021 whereby introducing the Common Entrance Test (CET) for the students of various Boards seeking admission in XIth standard / Junior College in the State of Maharashtra. He submits that under the Regulations 79(6) of the Maharashtra Secondary and Higher Secondary Education Boards

Regulations, 1977 (“the said Regulation”), the respondent no.1 Board alone is entitled to prescribe the eligibility for admission to Junior Colleges.

20. It is submitted that under the said Regulation, the respondent no.2 Board under Regulation 79(1) and (6) and under other sub regulations of Regulation 79, the eligibility for admission to Junior Colleges has been already prescribed. The Students who have passed 10 year Secondary School Certificate examination (under 10+2 education pattern) of any statutory Board in India shall be admitted to the first year of a junior college if they have offered and passed in English as one of the subjects. The petitioner having offered and passed in minimum five subjects including English as one of the subjects in the Xth standard from respondent no.3-Board thus is required to be admitted in the first year of Junior College. Respondent no.1 State thus cannot issue any such Government Resolution contrary to the Regulations 79 of the said Regulation, 1977.

21. It is submitted that no additional condition could be prescribed by the respondent no.1 in the said impugned Government Resolution dated 28th May, 2021 contrary to the Regulation 79(6) of the said Regulation by making syllabus of respondent no.2 Board compulsory for the purpose of appearing in the said CET examination and further prescribing that the students appearing in CET examination would be given priority in admission. In support of this submission, the learned Counsel placed reliance on the judgment of the Hon’ble Supreme Court in case of **Harsh Pratap Sisodia Vs. Union of India & Ors. (1999)**

2 Supreme Court Cases 575, and in particular paragraph 5 and 6.

22. It is submitted by the learned Counsel for the petitioner that the petitioner should be granted admission to the first year junior college as per the marks obtained by the petitioner in Xth standard as per evaluation method declared by the respondent no.3 and cannot be asked to appear for CET examination as a condition precedent for the purpose of getting admission in the XIth standard in the Junior Colleges in the State of Maharashtra and on the terms affecting the eligibility criteria prescribed in Regulation 79(6).

23. Learned Counsel for the petitioner placed reliance on the judgment of a **Ravindra K. Rai Vs. State of Maharashtra, (1998) 3 SCC 183**, and in particular paragraph 6 and would submit that the respondent no.1 cannot be allowed to urge that the number of students having passed Xth examination from the other Boards being small in number cannot be allowed to oppose CET examination or cannot have any say in the decision of the respondent no.1 in directing to hold CET examination for granting admission to the XIth standard / Junior Colleges in the State of Maharashtra. The learned Counsel for the petitioner placed reliance on the judgment in the case of **CBSE Vs. Khushboo Shrivastava, (2014) 14 SCC 523** and would submit that since under the provisions of the said Regulation, 1977, there is no provision for holding CET examination, the State Government has no power to order the holding of such CET examination.

24. Learned Counsel for the petitioner also relied upon Section

13(1) and 14(1) of the National Medical Commission Act, 2019 and would submit that under the said The National Medical Commission Act, 2019, there is specific provision for holding “Uniform National Eligibility-cum-Entrance Test” for admission to the undergraduate and postgraduate super-speciality medical education in all medical institutions which are governed by the provisions of the said Act. He submits that there is no such provision found in the said MSHSB Act or the said Regulations 1977 permitting the State Government to hold a CET examination. The absence of such provision would indicate the legislative intent that no CET examination can be held for granting admission in XIth standard/Junior Colleges in the State of Maharashtra by issuing such Government Resolution or otherwise.

25. It is submitted by the learned Counsel for the petitioner that CET examination for the XIth standard / Junior Colleges is unwarranted also on the ground that the said course is not professional course. He placed reliance on the judgment of **S.K. Mohd. Rafique Vs. Managing Committee Contai Rahamania High Madrasah & Ors.(2020) 6 SCC 689** and submits that there is difference between professional and non professional educational institutions. He submits that in the said judgment Supreme Court adverted to the earlier case **T.M.A. Pai Foundation V/s. State of Karnataka & 31 Ors., (2002) 8 SCC 481** has held that the merit and excellence assume special significance in the context of professional studies. Though merit and excellence are not anathema to non-professional education, yet at that level and due to the nature of education which is more general, the need for merit and excellence therein is not of the degree as is called for in the context of professional education. It is

submitted that admission to the XIth standard is for basic education and cannot be compared with the professional / speciality course wherein the merit and excellence would assume special significance. The respondent no.1 thus could not have issued any such Government Resolution introducing the CET examination for the purpose of getting admission in the XIth standard / Junior Colleges.

26. Learned Counsel for the petitioner placed reliance on the case of Mamta Sharma Vs. Central Board of Secondary Education & Ors., Writ Petition(s) (Civil) No(s). 522 of 2021 decided on 22nd June, 2021 and would submit that the respondent nos.3 to 5 Boards being an autonomous bodies are entitled to take their own decision with regard to the affairs of conducting examination by them. The respondent no.3 Board had already prescribed the norms for ICSE Xth and XIIth standards for the year 2021 examinations as per directions by the Hon'ble Supreme Court in the matter of Writ Petition No.522 of 2021. The respondent no.1 vide Government Resolution dated 28th May, 2021 cannot be allowed to interfere with the directives issued by respondent no.3 Board being an independent autonomous body.

27. It is submitted by the learned Counsel for the petitioner that not only the respondent nos.3 to 5 Boards but also the respondent no.2 Board has declared that no examination for Xth standard would be taken in view of the Covid 19 pandemic situation. The respondent no.2 – Board as well as respondent nos.3 to 5 Boards had prescribed evaluation pattern by considering the marks obtained in IXth standard and also the internal examination of Xth Standard. The admission to the Junior College under

the said Regulation 79(1) has to be granted in respect of the students having passed Xth examination from the other statutory Boards in India, if they have offered and passed in English as one of the subjects. He heavily placed reliance on the ***Christian Medical College Vellore Association Vs. Union of India & Ors., (2020) 8 SCC 705*** and would submit that Hon'ble Supreme Court in the said judgment while dealing with the admissions in the medical colleges had considered as to why CET was required as a device to standardise and for computing equivalence between different kinds of qualifications. There is no such requirement in case of a basic education being granted in XIth standard / Junior colleges.

28. Learned counsel for the petitioner placed reliance on the order passed by the Hon'ble Supreme Court in case of ***Maharashtra State Board of Secondary and Higher Secondary Education, Pune Vs. State of Maharashtra & Ors., Civil Appeal No.6256 of 2010 and in batch of Appeals*** and would submit that 'best of five method' has been accepted by the Hon'ble Supreme Court for Xth standard examination from respondent no.2 Board and from the other statutory Boards by considering respondent nos.3 to 5 at par with the State Board for the purpose of granting admission in the XIth standard / Junior Colleges. The impugned GR dated 28th May, 2021 issued by respondent no.1 however, is contrary to a principles of law laid down by the Hon'ble Supreme Court in the judgments referred to and relied upon by the petitioner and also to the order passed by the Hon'ble Supreme Court in Civil Appeal No.6256 of 2010.

29. Learned Counsel for the petitioner invited our attention to

the news item published in Times of India, Mumbai edition dated 5th August, 2021 stating that the State Higher and Technical Education Minister had announced that there would be no CET for getting admission in degree college after XIIth. The State has given exemption to the autonomous colleges, though to decide whether to conduct a CET or not, without causing any delay in the admission process. He submits that the said announcement made by the State Higher and Technical Education Minister appears to be in view of on going pandemic situation in the State of Maharashtra. He submits that the similar decision ought to have been taken by the State of Maharashtra also in case of CET examination for granting admission in XIth standard without prejudice to the contention of the petitioner that the respondent no.1 would not have such power to direct and to hold CET examination.

30. It is submitted by the learned Counsel for the petitioner that the syllabus of the Xth Standard examination undertaken by the respondent no.2 Board and the respondent nos.3 to 5 Board and the subjects therein were different. Most of the subjects which are compulsory for the SSC examination were either optional or were not part of the syllabus of the respondent nos.3 to 5-Boards. The students having passed in the results declared by the other statutory Boards, cannot be asked to appear for the CET examination on the basis of SSC syllabus. It is submitted that this part of the said GR is *ex-facie* arbitrary, discriminatory, capricious and violative of Article 14 and 21 of the Constitution of India. The said Government Resolution would not amount to a reasonable classification. The students of other statutory Boards have been already promoted to XIth standard on the basis of

evaluation of marks based on the pattern decided by each for such Boards.

31. It is submitted that the respondent no.1 could not have treated the equals as unequals. Learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court ***State of Bihar & Ors. Vs. Bihar State Plus -2 Lecturers Association and Ors., (2008) 7 SCC 231*** and in particular paragraph 11, 13 and 16 in support of the submission that Article 14 of the Constitution of India guarantees equality before the law and confers equal protection of law. It prohibits the State from denying persons or class of persons equal treatment; provided they are equals and are similarly situated. He submits that though the reasonable classification is legal, valid and permissible, discrimination is prohibitory. The students having passed Xth examination from SSC Board and the students having passed from other State Boards have to be treated equally by the State Government, assuming it is held that, the State Government has jurisdiction to introduce such CET examination for granting admission in the XIth standard / Junior Colleges in the State of Maharashtra.

32. It is submitted by the learned Counsel for the petitioner that on one hand the State Government in its Affidavit in Reply has contended that for the students who have appeared from SSC Board or from the other statutory Board in the Xth examination would be granted admission in the colleges in Maharashtra, on the other hand, the State of Maharashtra has determined to hold CET examination on the purported ground of standard within the meritorious students for the purpose of

granting admission in the XIth standard in the colleges in the State of Maharashtra.

33. Learned Counsel for the petitioner invited our attention to some of the paragraph of the Affidavit in Reply filed by the respondent no.1. He submits that in paragraph 3 it is averred by the respondent no.1 that to bring all the students from entire Maharashtra who were in standard Xth studying in various schools affiliated to different Boards for the purpose of admission to standard XIth in Junior College common method of assessment of the students by conducting CET was formulated by the GR dated 28th May, 2021. He submits that the condition prescribed in the said GR dated 28th May, 2021 for appearing for the CET examination on the basis of SSC syllabus by all the students including other statutory Boards would clearly indicate that the students from different Boards would not be treated at par for the purpose of admission to the XIth standard in various colleges in the State of Maharashtra.

34. It is submitted that in paragraph 6 of the said Affidavit the State of Maharashtra admitted that the syllabus for the SSC Board is different from the ICSE pattern. He relied upon the judgment of Kerala High Court in the case of ***Aneesh Haridas Vs. University of Kerala, Trivandrum & Ors., 2007 SCC Online Ker.22*** and in particular paragraph 1 in support of the submission that if there is a clear case of discrimination within the students, such discrimination would be in violation of Article 14 of the Constitution of India. There cannot be different conditions for different students who have qualified for the admission in the colleges. He submits that the Government Resolution

issued by the respondent no.1 is not fair and transparent. He submits that in any event, the CET exams proposed to be held by the respondent no.1 has been announced in great haste, without proper planning and in haphazard manner and would cause tremendous hardship to the students of respondent nos.3 to 5-Boards.

35. Learned counsel for the petitioner invited our attention to the roznama of this Writ Petition and would submit that there is gross delay on the part of the respondent no.1 in filing reply. Only on 19th July, 2021, the respondent no.1 issued syllabus for the said CET examination and decided the date for holding such examination on 21st August, 2021. The students of other Boards who have not opted for various subjects in the Xth standard exams conducted by other Boards can not be asked to appear for these subjects forming part of syllabus of SSC with a short notice.

36. It is submitted by the learned counsel for the petitioner that there is no clarity in the said Government Resolution dated 28th May, 2021. He submits that a student having passed Xth standard examination from the respondent no.2 Board having secured even 50% marks would get priority while granting admission to the XIth standard if he opts for CET examination whereas the more meritorious student from other Boards having secured more than 90% marks who do not opt for CET examination would have to wait till all the students having passed Xth standard examination from the respondent no.2 Board are admitted to various colleges in the State of Maharashtra. The impugned Government Resolution causes gross injustice to such students having passed from other statutory Boards and if not opted for such CET examination.

37. Learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court in case of ***Rakesh Kumar Agarwalla & Anr. vs. National Law School of India University, Bengaluru & Ors. (2021) 1 SCC 539*** and would submit that since the said Government Resolution dated 28th May, 2021 lacks transparency, it is against the concept of fair approach and is in violation of the rights of the students under Article 14 of the Constitution of India.

38. Learned Counsel for the petitioner invited our attention to the Standard Operating Procedure (SOP) dated 2nd August, 2021 issued by the Government of Maharashtra and would submit that in 11 districts, the State Government has continued the restrictions imposed through Break-the-Chain dated 4th June, 2021 and 17th June, 2021 for level 3. Though the students who have passed Xth standard are below the age of 18 and are not vaccinated, the State Government has proposed to hold CET examination offline all over Maharashtra. The said Government Resolution is thus contrary to the Standard Operating Procedure issued by the Government itself to continue the emergency measures to prevent the spread of virus in the State of Maharashtra. He submits that not only the petitioner would be affected but large number of other students who are the residents of several such districts in which such restrictions are imposed by the said SOP dated 2nd August, 2021 would be seriously prejudiced if they are not able to appear for such CET examination due to the restrictions imposed by the said SOP dated 2nd August, 2021 or by appearing for CET examination at the risk of their life.

39. Learned counsel for the petitioner invited our attention to the

order passed by the Hon'ble Supreme Court dated 25th June, 2021 in Writ Petition (C) No.620 of 2021 filed by **Anubha Shrivastava Sahai & Ors. vs. Union of India** recording the statement made by the State of Andhra Pradesh that after re-examining the situation, the State Government had been now well advised to cancel the XIIth standard examination to be conducted by the concerned State Board. He submits that the respondent no.1 however has not been advised to cancel the CET examination on the similar ground.

40. It is submitted by the learned counsel that if the Government policy is capricious, arbitrary, discriminatory and in violation of Articles 14 and 21 of the Constitution of India, the writ Court has ample power to interfere with such policy decision and to quash and set aside such policy. In support of this submission, learned counsel for the petitioner placed reliance on the judgment of Hon'ble Supreme Court in case of **Union of India & Ors. vs. M.Selvakumar & Anr., (2017) 3 SCC 504**. He submits that no valid reasons are prescribed by the respondent no.1 as to why such CET examination became necessary at this stage being contrary to the SOP issued by the respondent no.1 itself on 2nd August, 2021 imposing strict conditions to be followed by the people in the large part of the State of Maharashtra.

41. Mr. Mihir Desai, learned senior counsel for Ms.Kavya Bhatt and three other students of respondent no.5 Board states that his clients have physically appeared for the Xth standard examination held by the respondent no.4 Board in 'physical-cum-class' room format following COVID appropriate behaviour recommended by the respondent no.1 and

have already successfully cleared such examination by scoring distinctive grades. Their results have been already declared by the respondent no.5 Board in the month of March 2021.

42. It is submitted that 1993 onwards the merit based admission was introduced in the State of Maharashtra on the basis of the marks in Xth standard for getting admission in XIth standard in the colleges in the State of Maharashtra. There was no distinction made between the respondent no.2 Board and the other statutory Boards. In the year 2009, the State Government introduced the Percentile System for granting admission in the XIth standard in the colleges in the State of Maharashtra. The said percentile system introduced by the State of Maharashtra was challenged by **Viraj Maniar vs. State of Maharashtra & Ors., in Writ Petition No.1086 of 2009.** He submits that in this case, the State Government did not obtain any advice from the State Board before issuing such Government Resolution dated 28th May, 2021. He submits that since the Regulation 79 (1) of said the Regulation 1977 prescribed that the students who have passed the Indian Certificate of Secondary Education Examination shall be held eligible for admission to the first year of junior college no such Government Resolution could be issued by the State of Maharashtra contrary to the said Regulation 79 of the said Regulation 1977. He submits that this Court in the said judgment has already held that all students from other statutory Boards are also eligible for being enrolled in a junior college of those who are prescribed by the regulation.

43. It is held that under Regulation 79(16) The words

“equivalent examination” appearing therein must be seen in the backdrop of the sub-Regulations in Regulation 79 and the existence of the other Boards conducting the examinations for Xth standard. It is submitted by the learned senior counsel that the State Government cannot be allowed to override the respondent no.2 Board without prior consultation. In this case, no such prior consultation with the respondent no.2 Board was held by the respondent no.1 State before issuing such Government Resolution dated 28th May, 2021.

44. It is submitted by the learned senior counsel that the State Government has already made its position clear in the affidavit in reply that all the students in the State of Maharashtra who have passed Xth standard would get admission in the XIth standard. The CET examination would only decide the merit of the students who will get the admission in which college. The said purpose was already achieved by following Centralized Online Admission Process (CAP).

45. It is submitted that in any event if the State Government wanted to exercise any such power, such power could be exercised only after amending the relevant provisions under the said Act and the said Rules and not by issuing such Government Resolution purporting to exercise the powers under Article 162 of the Constitution of India. He submits that the Regulation 79 is a complete machinery conferring power on the respondent no.2 Board. All such steps taken by the respondent no.1 State in this case are contrary to Regulation 79. It is submitted that in the said judgment, this Court has considered the students of SCC Board and the statutory Board equally. It is submitted that best of five

method has been adopted and recognized by all the Boards including the statutory Board and thus the statutory Board cannot be treated different than the respondent no.2 by the respondent no.1 State.

46. Mr. Kumbhakoni, learned Advocate General invited our attention to the prayer clause (a) of the petition and would submit that the petitioner is one of the students out of lakhs of students who had appeared for the Xth standard through different Boards has filed this writ petition only praying for writ of Certiorari inter alia praying for quashing and setting aside the Government Resolution dated 28th May, 2021. This writ petition is neither a Public Interest Litigation petition nor is filed in representative capacity. There is no consequential prayer in this writ petition. The petitioner has not prayed for a relief seeking a direction to follow any other system for conducting examination for the purpose of granting admission to XIth standard. The jurisdiction of this Court under Article 226 of the Constitution of India is discretionary and cannot be exercised in this situation. All other students who had appeared for Xth standard examination through different Board are not before this Court.

47. Learned Advocate General produced a chart showing that out of 10,98,317 students who have applied for registration for appearing in CET examination proposed by the respondent no.1, 10,59,919 i.e. 96.5% students had passed Xth standard with the respondent no.2 State Board. Only 21,905 students i.e. 1.99% students who had passed Xth standard from the CBSE Board have applied for registration. Only 21 students, i.e. 0.001% students who had passed Xth standard from the respondent no.5 have applied for registration. 8,689 students i.e. 0.79% students who

had passed Xth standard from the ICSE Board had applied for registration. 677 students i.e. 0.06% students who had passed Xth standard from the IGCSE Board had applied for registration. He submits that none of the students out of 10,98,317 having applied for registration and are agreeable for appearing for CET examination except 5 students have opposed CET examination. This Court shall not exercise any discretionary power on this ground also.

48. It is submitted by the learned Advocate General that in view of the pandemic situation, the State Government was required to take such decision to introduce CET examination for the purpose of granting admission to the XIth standard in various colleges in the State of Maharashtra. The respondent no.1 has applied the golden rule i.e. merit cum choice. The meritorious students has to be given choice. CET examination is proposed to be conducted by determining the merits whereas the CAP method is being conducted in past till last academic year to determine choice. Both the methods are compulsory.

49. It is submitted that the petitioner and the other students who had passed Xth standard through other statutory Boards cannot be equated with the students who had passed Xth standard from the respondent no.2 Board in view of the syllabus and the marking pattern being different with the syllabus and the marking pattern of the respondent no.2 Board. The question of applicability of Article 14 did not arise. The respondent no.1 has not treated two equals or similarly situated unequally. Even according to the petitioner the subjects and the syllabus of the other statutory Board is different from that of the SSC Board from 1st standard

to Xth standard. If the student having passed Xth standard from other statutory Board want to take admission in the XIth standard in the college in the State of Maharashtra governed by the respondent no.2 Board, such student from other statutory Board will have to compete with the students having passed Xth standard examination of SSC Board and will have to appear for such exams with SSC syllabus to treat them at par with the students having passed Xth standard SSC examination.

50. Learned Advocate General placed reliance on the judgment of Supreme Court in case of ***State of Bihar & Ors. Vs. Bihar State Plus - 2 Lecturers Association and Ors.***(supra) and would submit that the said judgment relied upon by the petitioner itself would indicate that the State Government is prohibited from denying persons or class of persons equal treatment, provided they are equal and are similarly situated. In this case students appearing for other statutory Boards are not similarly situated and / or are not equal with the students having passed the examination of respondent no.2 Board. There is a valid classification made by the respondent no.1 between the students passing Xth standard from the respondent no.2 Board and the students passing from the other statutory Boards in the Government Resolution dated 28th May, 2021 which is founded on an intelligible differentia.

51. Learned Advocate General placed reliance on the judgment of Hon'ble Supreme Court in case of ***Dr.Preeti Srivastava and Another vs. State of Madhya Pradesh & Ors. along with companion cases, (1999) 7 SCC 120*** and would submit that the Hon'ble Supreme Court has clearly held that common entrance examination, provides a uniform

criterion for judging the merit of all candidates who come from different universities. He submits that since the respondent no.2 Board and the other statutory Boards follows different standards of teaching and evaluation, such common entrance test has been accepted as proper by the Hon'ble Supreme Court by holding that the purpose is also to evaluate all candidates by a common yardstick. He submits that the seats in the preferred colleges in the State of Maharashtra are limited and thus the State Government has rightly applied the golden rule 'merits and choice'. There is thus no question of the State Government Resolution dated 28th May, 2021 being held as arbitrary or discriminatory. On the contrary, the State Government has not made the said CET examination compulsory for all students who have passed the Xth standard examination from different Boards but has made it optional. He submits that if the State Government is not allowed to conduct the CET examination, it would violate Article 14 of the Constitution of India insofar as all other students who are agreeable to appear for CET examination proposed by the respondent no.1 will not be able to appear.

52. Insofar as issue of jurisdiction of the respondent no.1 challenged by the petitioner in issuing the impugned Government Resolution is concerned, it is submitted by the learned Advocate General that it is not the case of the petitioner that the State Government has no legislative competent to hold CET examination for granting admission to the XIth standard/junior college in the State of Maharashtra. He submits that the State Government has legislative competent to enact the law for holding the CET examination. The subject 'Education' falls in List III under Entry 25 and thus the respondent no.1 State is entitled to issue

Government Resolution by exercising powers under Article 162 of the Constitution of India which executive power is co-extensive with the legislative power of the State. The executive instruction can be issued to the same effect as of the legislation provided in it should not be the teeth of the existing legislation and does not encroach upon the powers of parliament.

53. Learned Advocate General placed reliance on the judgment of Hon'ble Supreme Court in case of ***Association of Medical Superficially Aspirants and Resident and others vs. Union of India and others, (2019) 8 SCC 607*** and in particular paragraphs 1, 5.1 and 17 and would submit that even in the absence of any legislation, the State Government has the competence to issue executive order under Article 162 of the Constitution on matters over which the State legislature has the power to legislate. He submits that it is held in the said judgment that the condition imposed by the State Government in that matter for execution of the compulsory bond at the time of admission of the post graduate and super Specialty courses cannot be said to be vitiated due to lack of authority or competence.

54. It is submitted by the learned Advocate General that the CET examination for junior college in the State of Maharashtra are regulated by the State Government and the respondent no.2-Board. The other statutory Boards also have XIth and XIIth standards and the admission thereof are not regulated by the State Government or by the respondent no.2-Board. Learned Advocate General for the State submits that the choice of any particular college by any student may depend on various factors such as fees charged by the individual college, other services and

benefits provided to the students apart from the standard of teaching.

55. Learned Advocate General invited our attention to Section 34(5) of the MSHSB Act, 1965 and would submit that in the opinion of the State Government in case of urgency, if any immediate action is required to be taken, such action can be taken under the said provision by the State Government even without any previous consultation with the respondent no.2-Board. In view of covid-19 situation and since the golden rule had to be applied by the respondent no.1-State for the purpose of ascertaining merits-cum-choice, the State Government had rightly exercised powers by issuing the said Government Resolution dated 28th May, 2021 under Section 34(5) of the said Act without prior consultation with the Board.

56. Learned Advocate General relied upon the judgment of Hon'ble Supreme Court in case of **Ashwani Kumar Singh v/s. U. P. Public Service Commission and Ors., (2003) 11 SCC 584** and in particular paragraph 9 and judgment of Supreme Court in case of **Union of India and Ors. v/s. Dhanwanti Devi and Ors., (1996) 6 SCC 44** in support of the submission that Court should not place reliance on the decision without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution of India. He submits that applying this principle of the Hon'ble Supreme Court, none of the judgments relied upon by the learned counsel for the petitioner or by the learned senior counsel for the intervenor can be a binding precedent on this Court.

57. Learned Advocate General distinguished the judgment of this Court in case of **Viraj Maniar** (supra) on the ground that this Court in the said judgment which was delivered in the year 2009 had proceeded on the premise that the syllabus of the SSC Board and the other statutory Boards was almost similar. Learned Advocate General distinguished the judgment of Hon'ble Supreme Court in case of **Christian Medical College, Vellore** (supra) relied upon by the learned counsel for the petitioner on the ground that the Hon'ble Supreme Court in the said judgment had reiterated the principles laid down in the earlier judgment in case of **T.M.A. Pai Foundation** (supra) in which it was held that the CET was a device to standardise and for competing equivalence between different kinds of qualifications. He submits that to avoid any malpractice in the system of evaluation of marks by internal assessment basis also, the State Government had introduced the said CET examination. He submits that if this Court sets aside the said CET examination there would be serious consequences.

58. Insofar as the submission of the learned counsel for the petitioner that since respondent no.1 has decided not to hold CET examination for the students of XIIth standard and thus on similar basis CET examination for XIth standard also should be cancelled is concerned, it is submitted by the learned Advocate General that there is no comparison between the CET examination for XIIth standard having been cancelled and the CET examination proposed for the XIth standard. If the State Government was required to hold CET examination for XIIth standard students in the pandemic situation, the State Government would have been required to hold CET examination for 800 different branches/courses available, which is not the factual situation for holding

CET examination for granting admission in XIth standard.

59. It is submitted by the learned Advocate General that due to the pandemic situation and since the State Government was required to hold CET examination urgently, there was not much time available to the State Government to plan such CET examination in advance. However, no prejudice would be caused to the students appearing for such examination even with a short-notice.

60. Insofar as submission of the learned counsel for the petitioner that since State Government had already cancelled Xth standard examination on the ground of pandemic situation, why CET examination is proposed would fall in the similar situation is concerned, learned Advocate General submits that insofar as examination of Xth standard is concerned, there were several subjects opted by the students of different Boards. The examination of all the subjects was required to be held for three hours each. The State Government would have been required to appoint paper setters, printing of question papers, distribution of question papers in secured manner, dispatch of such question papers at the examination centres, printing of answer books which would require large number of staffs to be deployed at various examination centres and other places. The answer books would have been required to be collected.

61. It is submitted that the paper examiners would have to be brought to the centres for correcting answer sheets. The parents of those students would have been required to visit the examination centres with their children appearing for such examination atleast 12 times during the course of examination. As against that in case of CET examination,

students as well as the parents would be required to visit the examination centre only once. The question paper will have to be answered within two hours of time. Checking of papers would have to be done by ORM method, which would take lesser time then holding examination for Xth standard.

62. Insofar as the issue of right to life of students raised by the petitioner for appearing in the CET examination and more particularly in this pandemic situation and students not having been vaccinated is concerned, it is submitted by the learned Advocate General that the State Government would give the students choice of the examination centres nearing their place of residence.

63. It is submitted by the learned Advocate General that the impugned resolution being not discriminatory, arbitrary or capricious, no interference with the said resolution is permissible. The State Government having taken a possible view while issuing such Government Resolution under the pandemic situation, there being no option available, no interference is warranted on this ground also.

64. Learned Advocate General tenders three letters addressed by the respondent nos.3, 5 and 7 respectively to the Additional Chief Secretary, Education and Sports Department and would submit that non of these statutory Boards have expressed any objection in the respondent no.1 conducting CET examination. This Court thus cannot interfere with the said Government Resolution only on the basis of the objection to such CET examination raised only by few students.

65. Mr. Patki, learned counsel for the petitioner in his rejoinder arguments submits that though the syllabus and contents of subjects in the Xth standard of the SSC Board and the other statutory Boards are different, the respondent no.2 Board has accepted 'best of five subjects' for the students appearing from respondent no.2-Board or other statutory Boards and the said issue also having been accepted by this Court. CET examination thus cannot be held contrary to this admitted factual position.

66. It is submitted by the learned counsel that when the regulation providing for conduct of exams and for granting admission to the students passing Xth standard from all the Boards is specifically provided under the Regulation 79 of the said Regulations, 1977, in the teeth of such provision, the respondent no.1-State had no power to issue such Government Resolution under the guise of executive instruction under Article 162 of the Constitution of India.

67. Learned counsel for the petitioner distinguished the judgment in case of ***Association of Medical Superspeciality Aspirant and Residents and Ors.*** (supra) relied upon by the learned Advocate General on the ground that in that matter there was no provision prescribed for submitting a bond by the medical students at the time of admission in a Medical College. The facts before the Hon'ble Supreme in the said judgment were totally different. In this case, the Regulation 79(1) read with sub-Regulation (6) clearly provides for admission of all the students having passed Xth standard examination from different Boards. No such Government Resolution thus could be issued by the State Government under the guise of executive instruction under Article

162 of the Constitution of India.

68. Learned counsel for the petitioner placed reliance on the judgment of Supreme Court in case of ***K. P. Sudhakaran and Anr. v/s. State of Kerala and Ors., (2006) 5 SCC 386*** and would submit that in view of the Regulation 79(6), no such Government Resolution could be issued. The eligibility for admission under the said Regulation is guaranteed to the students having passed Xth standard from other statutory Boards cannot be taken away by imposing a condition of appearing in the CET examination with SSC syllabus.

69. It is submitted by the learned counsel that even otherwise there was gross delay on the part of the respondent no.1 in issuing a notification for holding CET examination, in filing affidavit-in-reply in this petition and for declaring syllabus. There is hardly any time available to the students for preparing for the CET examination and for the subjects which were not opted by students in the Xth standard. It is submitted that in view of the students having not been vaccinated being below the age of 18 years, it would involve a risk to their life to appear for such examination. The right to life of the students cannot be affected or be violated by issuing such Government Resolution.

70. It is submitted by the learned counsel that since the petitioner had passed Xth examination with good percentage and there is no XIth and XIIth standards in the said school, she has to take admission in the best college of her choice available as per her merits. If the petitioner is insisted upon to appear for the subjects which may be compulsory in the SSC examination but optional in the Xth standard examination opted by

her, she would not be allowed to compete with the other SSC students. The rights of education of the petitioner having being affected, she has locus to file the writ petition under Article 226 of the Constitution of India.

71. Mr. Mihir Desai, learned senior counsel for the intervenor in his rejoinder arguments would submit that if this Court allows prayer clause (a) as prayed by the petitioner, the original CAP method adopted by the respondent no.1 for granting admission to the XIth standard prior to the date of the said impugned Government Resolution dated 28th May, 2021 would stand restored. He submits that in any event, the Writ Court has ample powers to grant consequential reliefs while exercising extraordinary jurisdiction under Article 226 of the Constitution of India.

72. It is submitted by the learned senior counsel that in the judgment of this Court in case of **Viraj Maniar** (supra) this Court had dealt with the power of the State Government to prescribe the syllabus. He submits that if the State Government wanted to prescribe any additional criteria for holding examination for the XIth standard the same could be done only by carrying out appropriate amendment in the said Act and the said Regulations and more particularly Regulation 79 and not by issuing such illegal Government Resolution. He submits that if the said Government Resolution is not set aside, the students of other Boards would not be able to compete with the students of SSC Board and would be ousted from such competition.

73. Insofar as the issue of locus raised by the learned Advocate General is concerned, it is submitted by the learned senior counsel that

when the fundamental rights enshrined under the Constitution are violated, even one student has locus to challenge such Government Resolution violating such fundamental rights for striking down the said Government Resolution. He submits that if the writ petition is allowed by this Court, no student including the students having been promoted to XIth standard by the respondent no.2-Board would be affected.

74. Learned Advocate General submits that if the old system of CAP is restored once again, it would amount to discrimination with the students of the SSC Board. Gross injustice to the SSC Board students would be revived, if the writ petition is allowed as prayed. The State Government has not prescribed any additional eligibility criteria for admission to junior college. The said Regulation 79(1) still holds good. The said Government Resolution dated 28th May, 2021 has been issued without affecting the said Regulation 79(1) and there is thus no question of any violation of Article 14 of the Constitution of India.

REASONS AND CONCLUSIONS :-

75. We shall first deal with the submission of the learned Advocate General that this Writ Petition is not maintainable on the ground of locus or on other grounds.

76. It is not in dispute that the petitioner was one of the students who was promoted to XIth standard by respondent no.3-Board. There are no XIth and XIIth standard in the said School which was attended by the petitioner from Ist to Xth standards. The petitioner, thus, will have to take admission in any of the colleges on her own merits as eligible and

permitted under Regulation 79(1). The petitioner has not opted for the subjects which were compulsory in the SSC syllabus except one when she was in Xth standard in the said School affiliated to respondent no.3-Board having been permitted to opt for other subject by respondent no.3-Board. The petitioner has challenged the powers of the State Government to issue such Government Resolution on the ground of violation of Article 14 and 21.

77. In our view, since such rights of education of the petitioner are violated by the State Government by issuing said Government Resolution being arbitrary, capricious, unreasonable, harsh and discriminatory, the petitioner has locus to file such Petition *inter-alia* praying for quashing such Government Resolution. Though large number of other students are aware of the pendency of this Writ Petition filed by the petitioner, except other 4 students who were promoted to Xth standard by respondent no.5-Board, they have not come forward. respondent nos. 3 to 5 Boards however have raised strong protest in the respondent no.1 holding CET examination. Be that as it may, issue of legality and validity of such Government Resolution cannot be decided on the basis of number of litigants in Court impugning such Government Resolution.

78. We are thus not inclined to accept the submission of the learned Advocate General that since other students who have been promoted to XIth standard are not before this Court, no interference is permissible in this Petition by this Court on the Writ Petition filed by one of the student. If the Court finds some illegality on the part of the State, Centre or any public authority, Court is empowered to take *suo moto* action in such circumstances. In our view this is one of the such gross

case affecting large number of students by the impugned Resolution. Even if the petitioner would not have filed this petition, this Court would have exercised its *suo moto* powers to interfere with the impugned resolution. In our view, the petitioner has thus locus to file this petition.

79. We shall now decide whether the State Government is empowered to issue such Government Resolution for prescribing additional conditions for being eligible to get admission in junior colleges in the State of Maharashtra or not.

80. By exercising the powers conferred by Section 36(3) of the said MSHSB Act, 1965, the State of Maharashtra framed the said Regulations, 1977. Regulation 79(1) of the said Regulations, 1977 clearly provides that the students who have passed 10 year Secondary School Certificate examination (under 10 + 2 education pattern) of any statutory Board in India shall be admitted to the first year of a junior college if they have offered and passed in English as one of the five subjects. Regulation 79(6) provides that the students who have passed the Indian Certificate of Secondary Education (ICSE) examination shall be held eligible for admission to first year of junior college. The said provisions provides for admission to XIth class for various students passing from various statutory Boards.

81. Section 34(1) of the said MSHSB Act empowers the State Government to issue directions, after considering the advice (if any) tendered by the State Board, to issue to that Board or a Divisional Board such directions as it may consider necessary in regard to all or any of the matters specified in clause (a) of section 18. The Board concerned shall

comply with such directions.

82. Section 34(5) empowers the State Government to take immediate action consistent with the provisions of the said MSHSB Act as it deems necessary without previous consultation with the Board concerned and shall forthwith inform it of the action taken in an emergency. It is the case of the State Government that in view of the pandemic situation, the State Government was required to issue such executive instructions under the said Section 34(5) read with Article 162 of the Constitution of India urgently. Learned Advocate General could not point out any provision in the said Regulations 1977 empowering the State Government to prescribe any additional condition for granting admission to the students of the other statutory Boards who are eligible for admission to the first year of junior college having passed the Xth standard which would affect the eligibility criteria.

83. In our view, the State Government is not empowered to impose any such additional condition for granting admission in the first year of junior college as prescribed under the said Regulations and more particularly Regulation 79 which would affect their eligibility to get admission in the first year of junior college by issuing such resolution. Be that as it may, no such additional conditions can be prescribed even by exercising such powers under Section 34(5) which would be inconsistent with or repugnant to the provisions of the said Act of 1965 and the said Regulations 1977. The respondent no.1 thus could not direct holding of CET examination under Section 34(5) contrary to the provisions of the said Act and the Regulations.

84. The question that arises for consideration of this Court is whether by exercising any powers under Article 162 of the Constitution of India, the State Government could have issued any such Government Resolution contrary to the provisions of the said Act and the Regulations or not. In our view, such power of the State Government to issue such Government Resolution by imposing additional condition for granting admission in the first year of junior college to the students from other statutory Boards has to be read with the provisions of the MSHSB Act and the said Regulations, 1977, etc. Under the guise of issuing such executive order under Article 162 of the Constitution of India, the State Government cannot override such statute or statutory rules framed under the said statute repugnant to the said Act and the Regulations. The executive powers of the State are to be co-extensive with the legislative powers of the legislature subject to the other provisions of the Constitution of India.

85. In our view, since the said MSHSB Act and the said Regulations are already in place prescribing the conditions for grant of admission to the first year of junior college to the students having passed Xth standard examination from other Boards and for their eligibility, no such executive order under Article 162 of the Constitution of India contrary to such legislation can be issued by the State Government. Even otherwise in view of the inconsistency and repugnancy between the said Government Resolution issued under the guise of exercising powers under Article 162, the provisions of the said Act and the said Regulations would prevail over such executive order. Such executive order issued in exercise of Article 162 by the State Government, has to be in consonance with the provisions of the MSHSB Act and the said Regulations and

cannot be in departure from it.

86. The Hon'ble Supreme Court in the case of ***Harsh Pratap Sisodia*** (supra) has set aside the condition imposed by the State Government to pass the qualifying examination in one and the same attempt for those students who qualify for the entrance examination against the 15% all India quota, on the ground that such condition could not have been imposed by the State Government, contrary to the Rules which did not require any such condition to be imposed. In our view the principles of law laid down by the Hon'ble Supreme Court in the said judgment would apply to the facts of the case. Neither the said Act nor the said Regulation empowered the State Government to impose any additional condition for eligibility to get admission by the students passing Xth standard examination from the other statutory Boards in the First Year Junior College under the control of the respondent no.2- Board and the State Government.

87. We are not inclined to accept the submission of the learned Advocate General that by the impugned Resolution the rights of the students having passed Xth standard examination from the other Boards to get admission in the First Year Junior College in the State of Maharashtra are intact, not taken away or would not be affected. In our view, the State Government has acted contrary to the provision of the said Act and such Rules and has exceeded its power by issuing such Government Resolution thereby putting an embargo or such condition which would affect the right of such students having been promoted to XIth standard from other Board to get admission in the First Year Junior College affiliated to the respondent no.2-Board as per their choice as per marks

secured by them.

88. In this case, both the parties are ad-idem that the syllabus of SSC Board and the other statutory Boards, was different. It is not in dispute that the schools governed by respondent no.2- Board as well as the schools governed by the other statutory Boards were allowed to promote the students who had secured the passing marks or more on the basis of their internal evaluation method. It is also not in dispute that the best of five subjects method was adopted not only by the other statutory Boards but also by the respondent no.2-Board and has been accepted by this Court. A perusal of the Regulation 79(1) also would clearly indicate that the students who are to be admitted in the First Year of Junior College including the students having passed Xth from the other statutory Boards in India, are allowed to be admitted if they have offered and passed English as one of the subjects. It is not in dispute that the petitioner is eligible for admission in first year of junior college under Regulation 79(1).

89. Respondent no.1 thus, could not have imposed a condition that students appearing for such CET examination would have to appear on the basis of SSC syllabus. The learned Advocate General could not dispute that some of the subjects which are compulsory subjects as per the syllabus of the respondent no.2-Board and the Xth examinations were optional insofar as the students of the other Boards who were promoted to XIth standard. We are not impressed with the argument of the learned Advocate General that an attempt was made by the State Government to treat all the students i.e. students of SSC Board and the other statutory

Boards at par.

90. In our view since the SSC Board and the other statutory Boards were allowed to promote their respective students who passed the Xth standard on the basis of particular marking pattern and having exercised such marking pattern decided by each of the Board separately, the State Government could not have imposed a condition in the said Government Resolution which would affect the eligibility criteria already prescribed under Regulation 79(1). In our view, such condition is thus, arbitrary, harsh, capricious and without authority of law. The rights to get admission in the First Year Junior College granted to the students passing Xth examination from other statutory Board cannot be taken away by imposing a condition which would treat them unequally with the students having passed Xth examination from respondent no.2-Board.

91. Respondent no.1 has treated the two equal as unequal by imposing such condition. In our view, if such conditions are not set aside, the students passing Xth from schools affiliated to other Boards though they are eligible to get admission in the First Year Junior College would not be able to get admission in the preferred colleges since they would not be able to compete with the students passing Xth from schools affiliated to the respondent no.2 Board. There is no reasonable classification made between the students passing Xth from the schools affiliated to the respondent no.2 Board and the students passing Xth from the schools affiliated to other Boards in the impugned resolution.

92. A perusal of the affidavit-in-reply filed by the State of

Maharashtra in the PIL filed by ***Dhananjay R. Kulkarni in Public Interest Litigation (Stamp) No.10761 of 2021*** clearly indicates the stand of the respondent no.1 that due to out break of Covid-19, it was not possible to start physical classes from 15.06.2020. The Government considered the second wave of COVID 19 pandemic which shook the entire nation. The Government had also permitted the other statutory Boards to reschedule their examinations. On the same date the Government issued Government Resolution cancelling the SSC examination. In paragraph 15 of the said affidavit it is stated by the State Government that as per the recent projection, the third wave of COVID 19 is predicted by the expert in the field to hit all of us in the months of July/August 2021. It is apprehended that the vulnerability of the newer strain of COVID 19 is to the children between the age group of 10 to 18 years. As per the official Government data published by Medical Education Department of the State, more than 5,72,371 children have been so far infected with COVID in the State as on 30.05.2021. Out of 5,72,371 children, 4,00,660 were from the age group of 11 to 20 years.

93. At this stage, it would be apposite to refer to the standard operative portion (SOP) issued by the State Government on 02.08.2021, 04.06.2021 and 17.06.2021. A perusal of latest SOPs clearly indicates that the restrictions that have been imposed in the 'Break the Chain orders' dated 04.06.2021 and 17.06.2021 for level 3 is continued in 11 Districts. It is clearly stated in the said SOP that the disaster management at the State Government is satisfied that it is necessary to continue the enforcement of the restrictions, along with certain additional restrictions, through out the State to Break the Chain of transmission effectively. In

view of the fact that the State continued is threatened with spread of COVID 19 virus, the State Government has taken such steps to continue emergency measures to prevent and content the spread of virus. Those 11 Districts fall in level 3. Several restrictions are imposed on those Districts falling in level 3 including on movement and transport.

94. It is not in dispute that maximum students who are promoted to XIth standard are from Districts in various parts of the State of Maharashtra. The only answer to this submission of the learned Counsel for the petitioner by the learned Advocate General is that those students from those Districts would be offered the examination center close to their place of residence. The State Government does not dispute that all the students who are asked to appear for CET examination are below the age of 18 and under the existing SOP issued by the State of Maharashtra, are not vaccinated till date. These students would carry the risk of their life by exposing themselves if they appear for such CET examination.

95. We are not impressed with the argument of the learned Advocate General that since the examination of the CET would be only for two hours, no prejudice would be caused to any of the students for appearing for such CET examination by taking sufficient safeguards and by following SOPs issued by the State of Maharashtra. If those students who have been already promoted to XIth standard are from remote places in various part of the State and are forced to appear for such examination to get admission in preferred colleges, it would cause tremendous hardship and injustice to them. If the impugned Government Resolution is not set aside, students from other Boards would be forced to appear

with SSC syllabus to get the admission in the colleges of their choice which syllabus would be new to them.

96. Insofar as submission of the learned Advocate General that there being no consequential prayer in the Writ Petition and thus no further directions can be issued by this Court even if prayer (a) is allowed is concerned, the petitioner has already prayed for quashing and setting aside the impugned resolution. We are inclined to accept the submission of Mr. Patki, learned counsel for the petitioner and Mr. Desai, learned senior counsel for the Intervenor that this Court has ample power to grant consequential relief if the impugned resolution is set aside. The Central Admission Process can be followed for this year also. It is not the case of the State Government that the said Central Admission Process has been deleted and substituted by the impugned resolution.

97. The Supreme Court in case of ***State of Madhya Pradesh and Anr. v/s. Bhailal Bhai and Ors., AIR 1964 SC 1006*** has held that the High Courts have the powers for the purpose of enforcement of fundamental rights and statutory rights to give consequential reliefs to the aggrieved party who comes to the Court for enforcement of such right. Further, in the judgment of the Hon'ble Supreme Court in case of ***Shangrila Food Products Ltd. v/s. Life Insurance Corporation of India and Anr., (1996) 5 SCC 54***, the Supreme Court has held that the jurisdiction of the High Court being extraordinary is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty. It is further held by the Hon'ble Supreme Court in the said judgment that the High Court in exercise of jurisdiction under

Article 226 of the Constitution of India can after taking cognizance of the entire facts and circumstances of the case passed appropriate orders to give the parties complete and substantial justice. In our view, the Writ Court under Article 226 of the Constitution of India can grant such consequential reliefs to give the petitioner before this Court a complete and substantial justice in furtherance of the reliefs already prayed and granted and to execute the relief prayed and granted.

98. A perusal of the affidavit-in-reply filed by the respondent no.2-Board clearly indicates its stand that under the said Act and the Regulation the Board has no power to issue any such notification regarding admission for XIth standard except to decide the eligibility or admission to junior colleges i.e. XIth standard in recognized schools, Junior Colleges under respondent no.2. It is also stated in the said affidavit that due to outbreak of pandemic situation, the State Government by Government Resolution dated 12.05.2021 has cancelled the Xth standard Board examination. It is thus clear that power to decide the eligibility to grant admission vests with the respondent no.2 Board and cannot be interfered with by the State Government.

99. A perusal of the affidavit-in-reply filed by the State of Maharashtra indicates the stand that all these students who seek admission in the XIth standard would be admitted. According to the State Government, the CET is meant for those students who are very keen for securing admission in the preferred educational institution for admission in the XIth standard. The submission of the State Government is that all the students may not appear in the CET examination. Considering the

chart submitted by the learned Advocate General it is clear that about 10,98,217 students have registered for the said CET examination.

100. The learned Advocate General does not dispute that these examinations are proposed to be held offline. We are not impressed with the argument of the learned Advocate General that the students promoted to XIth standard being lesser in number would not be prejudiced if they take admission in their respective schools affiliated to their respective Boards. In our view this submission of the learned Advocate General is *ex-facie* contrary to the eligibility criteria prescribed under Regulation 79(1) of the said Regulation. If according to the State Government all the students are going to be granted admission in one or the other Junior College, State Government was not required to introduce this CET examination in such a manner or otherwise.

101. We have also perused the “Centralised Online Admission Process (CAP),” Information Booklet furnished by the learned Advocate General which has been followed for last several years except this year. In the said Brochure, Clause 2.1 provides that the online admission process for Std. XI, in the defined six online admission areas i.e. Mumbai, Thane Raigad districts, Pune and Pimpri-Chinchwad Municipal areas along with Nagpur, Amravati, Nashik and Aurangabad Municipal Corporations is applicable to all recognised junior colleges affiliated to the Maharashtra State Board.

102. Clause 2.5 provides that students, who have passed SSC or equivalent examinations from any recognised Board and seeking admission to Standard XIth in any of the higher secondary school in all

those six corporation areas, must participate in the online admission process. The said brochure provides for a complete procedure of the Online Admission Process. Clauses 5.5 to 5.7 provide that if no higher secondary school/junior college is allotted in the admission round, such applicants will be considered for next round. Such applicants should not get disheartened. They would review cut-offs of Junior college of their choice again and rearrange preferences and wait for the next round. Online admission process will continue till every student gets admission. In our view, the said CAP which is in operation for last several years is based on the merit-cum-choice.

103. We are not inclined to accept the submission of the learned Advocate General that by introducing such CET examination, the case of the students on merit-cum-choice would be considered. No convincing reasons are brought to the notice of this Court by the State Government as to what purpose that would be achieved by issuing the impugned resolution by introducing CET examination and more particularly in this pandemic situation. In our view, the said Government Resolution is even otherwise vague in respect of various aspects such as percentage required for reserved category candidates and regarding minority quota and cannot be implemented.

104. We accept the statement made by Mr.Desai, learned counsel for the intervenors that his clients who were the students of the schools affiliated to the respondent no.5- IGCSE Board have already appeared in the examination of Xth standard conducted by the said Board offline and have been declared passed. That if those students are required to

appear for CET examination for the purpose of getting admission, though they have been declared passed after appearing the examination conducted by their Boards offline, there would be gross injustice to those students.

105. In our view, by imposing conditions i.e. (i) that all those students who are the students from other Boards shall appear in CET examination on SSC syllabus and (ii) that the students who have appeared for CET examinations will be given priority in first phase of admission procedure for Class XIth standard on their merit, the State Government has deprived the students from other statutory Boards to compete with the students of SSC Board. This Court in PIL has accepted the statement made by the respondent no.1 State that the students from all Boards would be eligible to get admission in the first year Junior Colleges in the State of Maharashtra. In our view, such conditions imposed by the State Government in the impugned Resolution are with a view to eliminate the students from other Boards to compete with the students of SSC Board and thus is arbitrary, unreasonable, harsh, discriminatory, capricious and in violation of Article 14 of the Constitution of India. Since the respondent no.1 has directly or indirectly compelled the students from the other Boards to appear for CET examination that also with SSC syllabus, with a rider that only such students would be given priority, the right to get admission prescribed under Regulation 79(1) is taken away or hampered by the impugned Government Resolution which is not permissible in law.

106. Similarly, since these students who have not been

vaccinated are forced to appear for CET examination in this pandemic situation and more particularly, in violation of SOPs issued by the State Government itself from time to time. Large number of minor students who are more susceptible pandemic to draconian pandemic would be forced to expose their life to a big risk which would be in gross violation of their right to life enshrined under Article 21 of the Constitution of India. It would have a serious cascading effect. Life is more important than the choice of the students to get admission in a preferred junior college which even otherwise would be secured by CAP admission method subject to the merits of each student.

107. Learned Advocate General in response to one of the query raised by this Court replied that due to pandemic situation, State Government could not give sufficient time to the students to prepare for such CET examination. We are unable to appreciate the anxiety of the State Government to hold such CET examination at any cost and that also without any such power. Learned Advocate General informed this Court that even if this Court does not interfere with the impugned notification, the entire process of conducting CET examination and to grant admission in various rounds required to be conducted, the academic year may commence not prior to 1st November 2021. We have own doubt about the correctness of this statement made by the State Government. If we allow the CET examination to be held in the haphazard manner and contrary to law, large number of the students who have been already promoted to the XIth standard by accepting certain evaluation methods would suffer. The entire academic year would not last for more than four to five months.

108. The commencement of the academic year would be further delayed without achieving any purpose and object. In our view, due to such Government Resolution issued without authority in law and by imposing such arbitrary and unreasonable conditions, large number of the students who have been waiting to start their second inning by taking admission in junior college are suffering from mental trauma, anxiety and tension. Though the Government Resolution was issued on 28th May 2021, the date for conducting such examination and syllabus have been announced recently. In our view, if this CET examination is allowed to be held in this manner at this stage, it will cause gross injustice to all the students including the students who have passed in Xth Standard through the respondent no.2 Board. There is no reasonable nexus in introducing such CET examination in such an illegal manner.

109. The learned Advocate General though attempted to distinguish the judgments cited by Mr.Patki, learned counsel for the petitioner and by Mr.Desai, learned senior counsel for the intervenors but was unsuccessful. There is no dispute about the propositions of law laid down by the Hon'ble Supreme Court on the law of precedent in cases of ***Ashwani Kumar Singh Vs. U.P. Public Service Commission & Ors. (supra)*** and ***Union of India & Ors. Vs. Dhanwanti Devi & Ors. (supra)***.

110. In so far as the judgment of the Supreme Court in the case of ***Dr.Preeti Srivastava & Anr. Vs. State of M.P. & Ors. (supra)*** relied upon by the learned Advocate General in support of the submission that the State Government is empowered to hold such CET examination for the purpose of applying golden rule i.e. merit-cum-choice is concerned,

in our view, the said judgment is clearly distinguishable in the facts of this case. In the said judgment, Supreme Court has considered the issue of admission in the Medical Colleges. It was noticed that as against the limited seats available for such super specialty course, there would be large number of the applicants. In paragraph 116 (4) of the said judgment, it is held by the Hon'ble Supreme Court that while shortlisting candidates having basic qualifications of MBBS for being considered for admission to a limited number of vacancies in postgraduate courses available at the medical institutions in the State, it is permissible for the State authorities to have common entrance tests and to prescribe minimum qualifying marks for passing such tests to enable the examinees who pass such test to be called for counselling.

111. On the other hand, in the facts of this case, admission of XIth standard being not a professional course cannot be compared with special or super speciality courses. Reliance placed by the learned Advocate General on the said judgment is totally misplaced. In this case, since State Government is of the view that there are sufficient seats available in the Colleges in the State of Maharashtra and irrespective of their Boards, all the students would be granted admission, introducing such CET examination in this situation is totally unwarranted and illegal.

112. There is no substance in the stand taken by the State Government that by the impugned resolution, the eligibility of the students having been promoted to XIth standard by the other Boards to get admission in the first year of junior college would not be affected or the impugned resolution is not repugnant to Regulation 79(1). There

may be students having secured 40% marks in SSC Board and who may appear in CET examination would get priority while getting admission in the preferred college and on the other hand, a student having secured more than 90% marks from other Boards if he does not prefer to appear for CET examination will have to wait for getting admission in the preferred colleges at the convenient location till admission of all the students who wish to appear for CET examination would be over. The possibility of getting admission in preferred colleges if such students would be remote.

113. Even if such students having been promoted to XIth standard by other statutory Boards make an attempt to appear for such CET examination under compulsion, in view of such students having different syllabus and are being asked to appear with SSC syllabus, even otherwise they will not be able to secure good marks in comparison to the students of SSC Board. This will amount to gross discrimination and injustice to those students.

114. There is no substance in the submission of the learned Advocate General that appearing in CET examination is not compulsory but is optional. The respondent no.1 has imposed such conditions in the said impugned resolution which compel the students having passed Xth examination from other Boards to appear for the said CET examination or to face consequence of being deprived of getting admission in the preferred colleges.

115. Since, such action of the State Government would affect right to life of large number of students, Court cannot be a silent spectator

in such circumstances. It is duty of the Court to intervene and to protect the people of our country by setting aside such resolution having far reaching consequences.

116. In the impugned resolution, the State Government has not rendered the purpose and objects of holding such CET examination based on the syllabus of Class Xth of State Board. In our view, even if the State Government has power to issue any such Government Resolution, the students having been promoted by the other statutory Boards having opted for different subjects than the subjects which were compulsory for the students of State Board cannot be asked to appear for CET examination based on the syllabus of SSC Board. The impugned Resolution is contrary to the principles of law laid down by the Hon'ble Supreme Court in the case of **Harsh Sisodia (supra)**.

117. The Hon'ble Supreme Court in the case of **Ravindra Kumar Rai Vs. State of Maharashtra (supra)** has rejected the contention of the State that the candidates from CBSE Board were small in number and thus were not entitled to seek relief.

118. Under Section 13(1) and 14(1) of the National Medical Commission Act, 2019, a specific provision is made for holding "Uniform National Eligibility-cum-Entrance Test" for admission to the undergraduate and postgraduate super-speciality medical education in all medical institutions governed by the provisions of the said Act. There is no such provision found in MSHSB Act for CET examination or in the said Regulation, 1977 for holding such CET examination. The

legislative intent is thus clear that the courses which require such eligibility test or CET examination, a specific provision in that regard is specially provided in the Act or in the Regulation. There being no such provision in the said Act or in the said Regulation, under the guise of exercising power under Section 34(5) of the said MSHSB Act and under Article 162 of the Constitution of India, no such additional eligibility criteria for getting admission can be provided. The admission to first year Junior College is not admission to a professional course. There is vast difference between the professional course and non-professional course.

119. In the case of ***SK. Mohd. Rafique Vs. Managing Committee*** (supra), the Hon'ble Supreme Court adverted the judgment in the case ***TMA Pai Foundation and others vs. State of Karnataka and Ors. (supra)*** in which it has been held that merit and excellence assume special significance in the context of professional studies. In our view, there is thus no merit in the submission of the learned Advocate General that the CET examination has been introduced with a view to apply golden rule of merit-cum-choice to the basic education imparted in junior colleges.

120. Supreme Court in the case of ***Mamta Sharma Vs. Central Board of Secondary Education & Ors.*** (supra) has held that the concerned Boards to conduct the XIIth standard examination are the autonomous bodies and are entitled to evolve their schemes independently. The Hon'ble Supreme Court has further held that tweaking the Scheme in any manner, as propounded by the two Boards

would result in denial of one option to the students and also delay the declaration of results indefinitely. There would be uncertainty until the examination for improvisation is actually conducted and results are declared. In our view, the principles of law laid down by the Hon'ble Supreme Court in the said judgment would apply to the facts of this case.

121. Each of the Board which are autonomous body including the respondent no.2-Board having been allowed to promote their respective students to XIth standard on the basis of their own evaluation method and having promoted to XIth standard according to such norms already decided by the respective Boards, no interference with such decisions taken by the respective Boards could be warranted by the State Government by issuance of such illegal Resolution.

122. A perusal of Regulation 79(16) of the said Regulation, 1977 indicates that the students who are seeking admission in science stream to Std. XIth of the junior college would be eligible to such admission only if such candidates secures minimum of 40% marks in science subjects at the Secondary School Certificate examination of the State Board or equivalent examination. The impugned Resolution is not clear as to whether there would be different criteria for the students seeking admission in science stream in XIth standard of Junior College having secured less than 40% marks in science subjects. Learned Advocate General did not dispute that the respondent no.1 – State has taken a decision not to hold any CET examination for XIIth standard students in view of pandemic situation.

123. The Kerala High Court in case of **Aneesh Haridas** (supra) has considered a condition ‘candidates who have passed SAY Examination of other State Boards are not eligible for admission during the same year’. The Kerala High Court declared such clause as violative of the Article 14 of the Constitution of India by holding that the students from other State Boards who qualify for admission based on the result of SAY Examination are entitled for engineering and other graduate degree courses in Kerala in the same way as students from Kerala who take SAY Examination in Kerala and became eligible for admission in the same year. We are in agreement with the views expressed by the Kerala High Court in case of **Aneesh Haridas** (supra) which apply to the facts of this case. In our view, even if the respondent no.1-State would have power to issue such Government Resolution, the respondent no.1 could not have applied different yardstick to the students of the SSC Board and the other Boards for appearing in the examination with the syllabus of SSC Board.

124. Hon’ble Supreme Court in case of **Rakesh Kumar Agarwalla and Anr.** (supra) has held that the condition prescribing the test for entrance into a premier law university of the country thereby permitting of home based online test could not have ensured transparency, fairness and integrity of the examination. In our view, if the said impugned resolution is implemented, it would not ensure transparency, fairness and integrity of such CET examination, in view of SSC students appearing for such CET examination with their own syllabus which is different than the syllabus of other Boards. The principle laid down by the Hon’ble Supreme Court in case of **Rakesh Kumar Agarwalla and Anr.** (supra) will apply to the facts of this case.

125. The Hon'ble Supreme Court in case of ***Union of India v/s. M. Selvakumar and Anr.*** (supra) has held that the Court has power to interfere with the policy decision/policy matter where policy framed is absolutely capricious and not informed by reasons or totally arbitrary offending Article 14 of the Constitution. In this case, impugned resolution is totally capricious, not informed by reasons and is *ex-facie* arbitrary offending Article 14 of the Constitution and right to life enshrined under Article 21 of the Constitution of India and thus deserves interference by this Court by exercising extraordinary jurisdiction.

126. The Hon'ble Supreme Court in case of ***State of Bihar and Ors. v/s. Bihar State 'Plus-2' Lecturers Associations and Ors.*** (supra) has held that Article 14 of the Constitution of India guarantees equality before the law and confers equal protection of laws. It prohibits the State from denying persons or class of persons equal treatment; provided they are equals and are similarly situated. It, however, does not forbid classification provided such classification is legal, valid and permissible and must fulfill the twin test, namely, (i) the classification must be founded on an intelligible differentia which must distinguish persons or things that are grouped together from others leaving out or left out and (ii) such intelligible differentia must have rational nexus to the object sought to be achieved by the statute or legislation in question.

127. In this case, the respondent no.1-State by the impugned resolution has treated the equals as unequal though all the students have been permitted by their respective Boards to the XIth standard based on their internal evaluation methods. It is not the case of the State

Government that the students from respondent no.2-Board are in any event inferior to the students from the other Boards. The State Government thus could not have treated the students from the respondent no.2-Board and the other statutory Boards differently though similarly situated. The principles laid down by the Hon'ble Supreme Court in the judgment in case of ***State of Bihar and Ors. v/s. Bihar State 'Plus-2' Lecturers Associations and Ors.*** (supra) applies to the facts of this case. There is no valid classification between the two sets of students in the said impugned resolution.

128. There is no substance in the submission of the learned Advocate General that the petitioner has not disputed the legislative competence of the State Government to issue the impugned Government Resolution. The learned Advocate General could not demonstrate as to why such impugned resolution was required to be issued urgently by invoking Section 35(4) of the said MSHSB Act. Be that as it may, the said power has to be co-extensive with the powers of the State Government to legislate upon the subject in question under the Act and shall not be repugnant thereto.

129. Insofar as the judgment of Hon'ble Supreme Court in case of ***Association of Medical Superspeciality Aspirant and Residents and Ors.*** (supra) relied upon by the learned Advocate General is concerned, in our view the said judgment would not advance the case of the State Government. There is no dispute that Schedule VII List III Entry 25 deals with 'Education, including Technical Education, Medical Education and Universities' subject to the provisions of Entries 63, 64, 65 and 66 of List I. The Hon'ble Supreme Court in that matter held that there was no

provision in the Medical Council of India Act touching upon the subject matter of compulsory bonds and thus States are free to legislate on the subject matter of medical bonds. Executive authority of the State Government is co-extensive with that of the legislative power of the State Legislature. Even in the absence of any legislation, the State Government has the competence to issue executive orders under Article 162 of the Constitution of India on matters over which the State Legislature has the power to legislate. In that context, the Hon'ble Supreme Court held that the notifications issued by the State Government imposing a condition of executions of compulsory bonds at the time of admission to postgraduate courses and superspeciality courses cannot be said to be vitiated due to lack of authority or competence.

130. However, in this case, there is a specific provision in the Regulation 79 prescribing the eligibility of the students having passed Xth standard from all the statutory Boards All Over India to be admitted in the XIth standard in the junior colleges in the State of Maharashtra. The judgment of Supreme Court in case of ***Association of Medical Superspeciality Aspirant and Residents and Ors.*** (supra) would not advance the case of the respondent no.1.

131. The justification sought to be given by the State Government to cancel the SSC examination and insistence of the State Government to hold CET examination at any cost is not convincing. The reasons rendered by the State Government in the affidavit-in-reply filed in the PIL petition for cancellation of SSC examination continues even till date as is apparent from various SOPs issued by the respondent no.1-State including last SOP issued on 2nd August, 2021 thereby imposing strict

conditions in several districts in the State of Maharashtra. Those students who are from those 11 districts and other districts affected by COVID-19 would suffer gross injustice, if the impugned Government Resolution is not set aside and those students are asked to appear for CET examination at the cost of their life. We are not convinced with the justification sought to be given by the learned Advocate General that in case of SSC examination there would have been several visits of the parents and students and in case of CET examination number of such gatherings and the attendance of the parents and the students would be less.

132. We have perused the letters addressed by some of the respondents-Boards to the Additional Chief Secretary, Education and Sports Department tendered by the learned Advocate General for perusal of this Court.

133. The respondent no.3-Board vide letter dated 3rd August, 2021 has informed that the proposal to conduct the CET for all students who wish to be admitted into the junior college, based solely on the curriculum of the State Board of Maharashtra is not only unfair but also discriminatory to say the least. Consideration has not been given to their students who are not familiar with the State Board of Maharashtra syllabus. The CISCE offers a wide range of subjects for their students to choose from. It is not mandatory for them to study the subjects Mathematics & Science, which form an integral part of the CET test syllabus. The proposed CET subjects does not provide a fair chance to some of their students who may have opted to drop the subjects Mathematics & Science at the ICSE (Class X) level. The respondent no.3 humbly suggested that in the best interest of all concerned and given the

extraordinary times of the Covid situation, the CET examination be done away with the proposed conduct of the CET and the results declared by the State-Board should not be considered for a direct admission to the junior colleges in Maharashtra for class XI.

134. The respondent no.4-Board in its letter dated 3rd August, 2021 has contended that the decision for giving preference to CET students would leave no choice before millions of students and they all will appear in this test. Organizing CET would involve assembling around 1.5 million people on the day of examination which could potentially trigger the spread of the deadly infection as all students are unvaccinated and this was the primary reason for not conducting the Board examination in the first place. The Maharashtra inter-colleges may wait for one more year to implement CET for admission to class XI. If admissions can be granted on the basis of percentages scored in the Board examinations, as was the past practice, there would be no need for any pen and paper-based CET for this pandemic afflicted year. It is further stated that however, all CBSE students in Maharashtra study Maths, Science, Social Science and English compulsorily excluding children with special needs and CBSE does not envisage any problem for its students even if a CET is organized as proposed. The Board does not have experts who can be used readily for this exercise and therefore it would not possible for the CBSE Board to contribute to the development of the CET at such short-notice.

135. The respondent no.5-Board in its letter has indicated that Cambridge International is not in a position to engage in creating a common question paper or contribute constructively in the proposed

exercise as the assessment team is not based in India. It is stated that the respondent no.5-trust that full consideration will be given to all students affected by the situation and that students will not be disadvantaged for not opting for CET. It is submitted that while the CET had been made optional, the decision to give preference to CET results over Board results has left students with very little agency in deciding whether to opt for it or not. Students are under pressure to sit for CET out of fear of losing out seats in their preferred colleges. Unlike most Indian exams Boards that required mandatory examination of specific subjects like mathematics, sciences and social sciences, all Cambridge students are unlikely to have studied these that will be tested in CET. A subject based CET will not provide a level playing field to such students, in the absence of adequate preparation time.

136. A perusal of these three letters would indicate that none of these Boards who are parties to this petition have agreed to participate in the CET examination willingly or unwillingly and have given suggestions to do away with the CET examination for various reasons already set out therein. In view of the protest made by those Boards also, in our view, no purpose and object would be achieved if CET examination is allowed to be held as canvassed by the learned Advocate General.

137. For the reasons recorded aforesaid, we pass the following order :-

- (i) Writ petition is allowed in terms of prayer clause (a).
- (ii) The impugned Notification No.202105281410593929 dated 28th

May 2021 is quashed and set aside.

- (iii) The State Government is directed to issue appropriate order in this regard cancelling the proposed CET examination for the benefit of the students and other stakeholders within 48 hours from today.
- (iv) The respondent nos.1 and 2 are directed to complete the process of admission for XIth standard to various junior colleges in the State of Maharashtra on the basis of marks secured by the students in Xth standard by evaluation method/internal assessment within a period of maximum six weeks from today.
- (v) Rule is made absolute accordingly. No order as to costs.
- (vi) Parties to act on authenticated copy of this order.

R. I. CHAGLA J.

R.D. DHANUKA, J.

138. Learned Advocate General applies for stay of the order passed by this Court. Considering the facts involved and the right to life of the lakhs of students, we are not inclined to grant stay of this order. Application for stay is rejected.

R. I. CHAGLA J.

R.D. DHANUKA, J.