

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2553 OF 2022

Sumit S/o Arvind Pawar
Age : 18, Occ : Student,
R/o Gajanan Mandir,
Aurangabad.

..PETITIONER

-VERSUS-

1. The State of Maharashtra
Through the Secretary
Department of Higher &
Technical Education,
Mantralaya, Mumbai – 32.
2. The Education Ministers
Department of Higher &
Technical Education,
Mantralaya, Mumbai-32.
3. The Secretary
State Board, Pune-34
Maharashtra State Board of
Secondary and Higher Secondary
Education, Sy.No.832-A,
Final Plot Nos.178 & 179,
Behind Agharkar Research Institute,
Bhamburda, Shivajinagar, Pune,
District Pune.
4. The Divisional Secretary,
Maharashtra State Board of Secondary,
and Higher Secondary Education,
Aurangabad.

..RESPONDENTS

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Mr.B.S. Bhale, advocate for petitioner.
Mr.D.R. Kale, Government Pleader for
respondent/State.

Mr.Kiran Gandhi h/f Mr.R.S. Wani, advocate for respondent nos.3 and 4.

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CORAM : S.V. GANGAPURWALA
AND
S.G. DIGE, JJ.

DATE : 26th February, 2022.

JUDGMENT (PER S.G. DIGE, J) :

. Rule. Rule made returnable forthwith. With consent of the parties taken up for final hearing at admission stage.

2. By this Writ Petition under Article 226 of the Constitution of India, the petitioner seeks directions against respondents to restore examination of 12th standard in online mode. The petitioner is also challenging the Notification dated 04.02.2022 issued by respondent no.3. In alternative, the petitioner seeks directions to postpone the examination of 12th standard.

3. Respondent No.1 is the State of Maharashtra through the Secretary, Department of Higher and Technical Education, Mantralaya, Mumbai. Respondent No.2 is the Education Minister, Department of Higher & Technical Education, Mantralaya, Mumbai. Respondent No.3 is the Maharashtra State Board of Secondary and Higher Secondary Education, Pune, who has issued the Notification dated 04.02.2022. Respondent

No.4 is the Divisional Secretary, Maharashtra State Board of Secondary and Higher Secondary Education, Aurangabad.

4. Brief facts of the case are as under:-

The petitioner is a student of 12th standard studying in Art faculty in Devgiri College, Aurangabad in the academic year 2021-22. Due to Covid-19 pandemic situation, the education sector has faced heavy set back as the entire system and process had to be switched to a distant mode i.e. online. Therefore, by taking help of others, the software/applications like Zoom, Google Meet, Whatsapp etc, the entire education system managed to survive in Covid-19 situation. The students around the country were bifurcated on basis of economic, geographic, digital device. The students are trying to cope up to settle with the modern approach against the traditional approach. However, there are some defects in the modern approach namely lack of infrastructure i.e. internet access, availability of devices etc. Technological lifestyle may come with adaptation and self education towards the same, however, lack of infrastructural resources continued.

5. Since March, 2020, institutions have been closed. Due to vaccination drive and death

rates have reduced, therefore, the schools are now opened partially. However, online education has inflicted a whole new approach towards classes and the grasp and attention of students, which was not the same during physical lectures. Evaluation of an academic year conducted in an online method must be restricted to the practices put forth by online methods itself. Distinct approaches towards classes and exams bring various difficulties for students as they have to spend entire year for preparing in an online mode. Despite of all these unusual circumstances, the respondents still decided to conduct offline exams. Hence this Writ Petition.

6. Mr.B.S. Bhale, learned counsel for the petitioner submits that the respondent authorities have issued the said Notification without following the various judgments of the Hon'ble Apex Court as well as the High Court. It is contention of the learned counsel that it is totally unfair to hold online classes and physical exams. If the authorities hold physical exams by a safe method then it also should have hold sufficient physical classes and they cannot approbate and reprobate at the same time. It is contention of learned counsel that the authorities have issued the impugned Notification by violating principle of equality before law guaranteed under Article 14 of the Constitution

of India. It is the contention of learned counsel that the impugned Notification is depriving the students from equal protection of law as it is forcing the students to appear for examination physically when the classes were held online. It is also contention of learned counsel for the petitioner that there are several instances wherein the students have committed suicide due to decision of the respective Boards to conduct exam in physical mode. Learned counsel further submits that in similar situation, Rajasthan Government has postponed the examination. The learned counsel placed reliance on the judgment in the case of ***Maharashtra State Board of Secondary and Higher Secondary Education and another V/s Paritosh Bhupesh Kurmarsheth etc*** reported in ***AIR 1984 SC 1543***.

7. Mr.Kiran Gandhi h/f Mr.R.S. Wani, learned counsel for respondent nos.3 and 4 submits that respondent no.3 has completed all the formalities to conduct 12th standard written examination including issuance of Hall tickets, arrangement of examination centres, paper setting of the examinations etc. The exams are scheduled to be started from 4th March, 2022. It is contention of learned counsel that even the practical, oral, grade examinations and internal assessment of the students studying in 12th standard are commenced from 14th February, 2022.

It is further contended that after conducting the meeting with the Experts in the field of education, respondent no.3 – Board has taken decision to hold the examination offline mode. Hence requested to dismiss the petition.

8. Learned Government Pleader Shri D.R. Kale for respondent/State supported the arguments of learned counsel for respondent nos.3 and 4.

9. We have carefully considered the submissions canvassed by learned counsel for the respective parties.

10. Considering the submissions of respective learned counsel, it appears that nature of writ is in public interest. The petitioner is student of 12th class, he is Art faculty student. It is main contention of the petitioner that as classes of 12th standard were held in online mode, so examination of 12th standard be taken in online mode instead of offline mode. In alternative examination be postponed. It is true that due to Covid-19 pandemic, since two years education of all classes is taken in online mode. Said education mode was adopted in the interest of students and to keep students in the flow of education. When situation was normal, in some part of the State physical classes were held. Considering the

situation of Covid-19 pandemic, the Government has taken decision about academic classes as per situation. The petitioner has annexed some news published in news paper (Annexure "C" of the petition) to show gravity of decision to take online exam. We have perused these news and Articles published in various news papers. From reading these news, it appears that some students have committed suicide due to lack of infrastructure for online classes i.e. lack of internet network, electricity, not having android mobile etc. Happening of these incidents cannot be connected to online mode of examination.

11. It appears from the record that the respondents have taken the precautionary measures for offline examination as under :-

"Examination is conducted by considering 25% reduced syllabus i.e. on 75% syllabus.

Number of practicals to be completed is minimum 40% of the total practical. Practical examination will be conducted on the same.

Flexibility is given to Jr. colleges for oral examination, internal and project work assessment within the original evaluation pattern.

Internal & External examiners for practical examination will be within the concern Jr. college.

Extended time for the written examination-

For 70 to 100 marks paper 30 minutes extra time is given

For 40 to 60 marks paper 15 minutes extra time is given.

Special guidelines for conduction of examination in covid-19 pandemic situation are given for candidates/principles chief/sub conductors of Main/sub-centre and all other concerns.

Instructions are given to all concerns to follow all instruction given by Government of Maharashtra and health Department under covid-19 pandemic situation."

12. It is apparent from record that before taking decision of offline examination, the State Board (Respondent no.3) had discussed the issue of exam mode and span with school education Department, subject teachers, experts, Head of the institution, Teachers Association and it was majority of the opinion for conducting the examination in offline mode. It also appears from the record that number of Examination Centres are increased from 3036 to 12561 including sub-centres in its own (i.e. students) Junior College. It is directed to adhere strict Covid protocol at examination centre. Time span of each paper has been increased and syllabus for the examination also reduced. All the measures taken by respondent no.3 would show that while taking decision of offline mode examination they have considered all aspects.

13. It has come on record that practical examination of 12th standard student commenced from 14th February, 2022. Respondent no.3 has set the question papers for 12th standard examination. In our view, the decision of conducting online education classes was taken considering the situation of Covid-19 pandemic. Now the situation is normalising and Covid-19 cases are reducing. Due to vaccination and medication recovery rate is higher and death rate is low. There are problems in Online mode education in rural area due to lack of internet connection and electricity. Some poor student do not have money to buy android mobile. The petitioner himself admitting these facts in his petition.

14. We are not finding any justifiable reason in support of petitioner's contention to hold online exam as classes were held online. The online classes were held due to Covid-19 pandemic situation. Now situation is normalising. It is opinion of experts that exam can be taken in offline mode. Mere say of petitioner to hold exam in online mode would not be in the interest of students, when all preparations for conducting examination is done as well as practical examinations are started.

15. The decision of offline examination has been taken in consultation with experts in that

field. We are not experts to decide mode of examination. While exercising writ jurisdiction under Article 226 of the Constitution of India, we have to safeguard the interest of student. It is duty of the State Government to see the interest of students who are appeared for examination. After perusal of record, we find that the respondents have taken adequate measures to safeguard the interest of students. Mere fear of one student i.e. petitioner can not hold the interest of 14,82,198 students, who are appearing for 12th standard examination at stake, without any reasonable, valid ground. We have gone through the case law cited by learned counsel for petitioner, the ratio laid down in the case law is not applicable to the present case as facts are different.

16. In view of above, the Writ Petition is dismissed.

17. Rule is discharged accordingly. No costs.

(S.G.DIGE, J.)

(S.V. GANGAPURWALA, J.)

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