

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5570 OF 2022

1. Potdar Foundation's
Sumantai Institute of Pharmacy (D)
At Bamrud (Kh), Tq. Pachora,
District Jalgaon
Through its President
Shri Kishor s/o. Murlidhar Sonar,
Age 61 years, Occu. Agri. & Pensioner,
R/o. Malegaon, District Nashik.
2. Sameer Feroz Khan
Age 19 years, Occu. Education
R/o. Nagardevla, Tq. Pachora
District Jalgaon.
3. Darshan Dattatraya Kothawade
Age 22 years, Occu. Education
4. Aashika Dhruvaraje Sonar
Age 19 years, Occu. Education
5. Jayashree Kishor Potdar
Age 26 years, Occu. Education

Petitioner Nos. 3 to 5
R/o. Sumantai Institute of Pharmacy
Hostel, At Bamrud (Kd.)
Tq. Pachora, District Jalgaon.

...Petitioners.

Versus

1. The State of Maharashtra
Through the Secretary for
Technical Education Department
Mantralaya, Mumbai.
2. The Maharashtra State Board of
Technical Education Mumbai
Government Polytechnic Building

49, Kherwadi, Bandra (E)
Mumbai 400 051
Through its Secretary

3. The Deputy Secretary,
Maharashtra State Board of
Technical Education,
Near Deogiri College
Aurangabad, Dist. Aurangabad.

....Respondents.

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Mr. V. D. Hon, Sr. Counsel i/b. Mr. A. V. Hon, Advocate for petitioners.

Mr. A. R. Kale, AGP for respondent No. 1/State.

Mr. Santosh S. Jadhavar, Advocate for respondent Nos. 2 and 3.

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**CORAM : R. D. DHANUKA &
ANIL L. PANSARE, JJ.**
DATED : 07/06/2022.

ORAL JUDGMENT :

1) Rule. Mr. A.R. Kale, learned AGP waives service for respondent No. 1/State. Mr. Santosh S. Jadhavar, learned counsel waives service for respondent Nos. 2 and 3. By consent of parties, rule is made returnable forthwith.

2) By this petition filed under Article 226 of the Constitution of India, the petitioners seek writ of mandamus against the respondent Nos. 2 and 3 to issue hall tickets forthwith to all the students of the Sumantai Institute of Pharmacy (D) at Bamrud (Kh), Tq. Pachora,

District Jalgaon by cancelling the earlier hall tickets giving the center at Gulabrao Deokar Polytechnic College at Jalgaon, for summer 2022 examination.

3) Petitioner No. 1 is running institute at Bamrud (Kd.), Tq. Pachora, District Jalgaon. Petitioner Nos. 2 to 5 are the students who are taking education in the Pharmacy College run by petitioner No. 1. It is the case of the petitioners that the online examinations for last two years were conducted from the premises of the petitioner No. 1 – Institute. The respondent No. 2 – Board issued the examination time table for summer 2022 examination, which is scheduled to be conducted between 9th June 2022 and 30th June 2022. So far as petitioner No. 1 - Institution is concerned, according to the petitioners, the examination center allotted to the petitioners is 75 k.m. away and according to respondent nos. 2 to 5, examination center is 50 k.m. away from campus of petitioner No. 1.

4) Mr. V.D. Hon, learned Senior Counsel for the petitioners invited our attention to the statement at page No. 31 of the petition showing the details of the students who would be appearing for examination for the academic year 2021-22 and would submit that out

of the first batch of 67 students, 26 students are female and out of the second batch of 65 students, 19 students are female. It is submitted that it would cause great inconvenience to the students of petitioner No. 1 – Institute to travel for more than 50 k.m. for appearing for this examination, which would be conducted between 9th June 2022 and 30th June 2022. He submits that the examination can be conducted under the supervision of the officers that would be appointed by respondent No. 2 - Board.

5) It is submitted that petitioner No. 1 cannot arrange a separate bus for these students. These students, if are required to appear for the exams at the center allotted by the respondent No. 2, they will have to travel by public transport. The travel time would not be less than one and half hour. These students will have to reach the center by 9.00 a.m. on each day of the examination.

6) The learned Senior Counsel invited our attention to clause Nos. 6.2 and 7.2 of the the Manual For Conduct Of Examination issued by respondent No. 2 - Board and would submit that the board is required to recommend the institutes in their respective regions, to be designated as examination center. He submits that the examination

center has to be decided based on the availability of the infrastructure and supporting amenities for the safe, secure and smooth conduct of examination. The learned Senior Counsel invited our attention to the affiliation certificate granted to petitioner No. 1 and would submit that the petitioner No. 1 has appropriate infrastructure for not only conducting the studies, but also examination. In support of this submission, the learned Senior Counsel invited our attention to various documents at page Nos. 28 and 29 of the writ petition.

7) It is submitted by the learned Senior Counsel that to settle the personal score with the managing committee of the petitioner No. 1 - Institute the respondents have deliberately selected the examination center to cause maximum inconvenience to the institution as well as the students of petitioner No. 1. He submits that the respondent Nos. 2 and 3 have created additional documents against the petitioner No. 1 - Institute after filing of this petition by the petitioners.

8) Mr. S. S. Jadhavar, learned counsel for respondent Nos. 2 and 3, on the other hand, invited our attention to some of the averments made in affidavit in reply and would submit that several

irregularities have been committed by petitioner No. 1 while conducting the earlier examination. There are allegation of charging exorbitant fees from the students by petitioner No. 1 - Institute. According to the learned counsel for respondent Nos. 2 and 3, in earlier online examination some of the students who were though absent, were shown present which is a serious lapse committed by petitioner No. 1. In view of these alleged irregularities of the petitioner No. 1 - Institute, respondent Nos. 2 and 3 were justified in allocating the examination center to petitioner No. 1 away from the campus of the petitioners.

9) It is submitted that not only petitioner No. 1 - Institute, but several such institutes are allotted such centers other than the campus of such institutes itself and thus, no interference is warranted with the allotment of the center by respondent Nos. 2 and 3. It is submitted by the learned counsel that the hall tickets were already issued to the students of petitioner No. 1 in the month of April 2022 itself and thus, this court shall not interfere in this petition at this stage.

10) Perusal of the clause 6.2 read with clause 7.2 indicates

that respondent No. 2 has to recommend the institutes in their respective regions, to be designated as examination center which has to be decided based on the availability of the infrastructure and supporting amenities for the safe, secured and smooth conduct of examination. Respondent Nos. 2 and 3 have not pointed out any such unavailability of infrastructure or supporting amenities for the safe, secured and smooth conduct of examination by petitioner No. 1. Though there are certain allegations made in the affidavit in reply regarding alleged irregularities committed by petitioner No. 1 regarding excess charging of fees collected from some of the students or that some of the students who were absent, were shown as present so far as online examination is concerned, it is not in dispute that respondent Nos. 2 and 3 have not taken any action against petitioner No. 1 in that regard till date. Infrastructure of the petitioner No. 1 - Institute has been approved by various authorities.

11) Perusal of the chart annexed by the petitioners giving details of the students which are likely to appear for the said examination commencing from 9th June 2022 indicates that about 45 students out of 132 students are female. Even according to the respondent Nos. 2 and 3, the examination center allotted to the

petitioner No. 1 is at the distance of 50 k.m. from the campus of the petitioner No. 1. The time table issued by respondent No. 2 indicates that the examination would commence at 9.30 a.m. every day during the entire period between 9th June 2022 and 30th June 2022. Students are required to remain present at the examination center by 9.00 a.m. on each day of examination. Even if this statement made by the learned counsel for respondent Nos. 2 and 3 in affidavit in reply that examination center is not at the distance of 75 k.m. from the campus, but only at the distance of 50 k.m. is accepted, the students are required to travel by general public transport. The students will have to commence their journey before 7.00 a.m.

12) We are inclined to accept the submission of the learned Senior Counsel for the petitioners that the examination center has to be decided strictly in accordance with clause 7.2 read with clause 6.2 of the Manual issued by respondent No. 2 and 3 by considering the convenience of the students. Several such institutions are allowed to conduct the said examination from their own premises. We are, thus, not inclined to accept the explanation rendered by the respondent Nos. 2 and 3 in the affidavit in reply, alleging various irregularities at this stage. Be that as it may, the irregularities pointed out by respondent

Nos. 2 and 3 in affidavit in reply has no connection with the allotment of center for conducting the examination. If there are any such irregularities committed by petitioner No. 1, respondent Nos. 2 and 3 are always at liberty to take any appropriate action in accordance with law against petitioner No. 1. Convenience of the students while conducting the examination has to be considered.

12) In our view, the examination center allotted to the petitioners is not in consonance with clause 7.2 read with clause 6.2 of the Manual issued by respondent Nos. 2 and 3.

13) The apprehension of respondent Nos. 2 and 3 that considering the previous alleged irregularities committed by petitioner No. 1 there would be no fair examination if petitioner No. 1 is allowed to conduct the examination from its own premises is concerned, we are inclined to accept the statement made by the learned Senior Counsel for the petitioners that if any supervisor or any other staff as may be appointed by respondent Nos. 2 and 3 for supervising the conduct of the examination, the examination process would not be interfered by petitioner No. 1 in any manner whatsoever and such staff as respondent Nos. 2 and 3 would be allowed to supervise the

examination independently without any interference from the staff members of petitioner No. 1 - Institute.

14) The learned counsel for respondent Nos. 2 and 3 does not dispute that in examination hall supervisor or any other superior staff as may be deputed by the respondent Nos. 2 and 3 would remain present in the examination hall. If such supervisor or any other superior staff as may be deputed by respondent Nos. 2 and 3 would be appointed, notices any irregularity by any of the students or on the part of the staff members of the petitioner No. 1 institute, such supervisor or such staff can take appropriate action in that regard immediately. Apprehension of the respondent Nos. 2 and 3 is taken care of in view of the statement made by the learned Senior Counsel for petitioner No. 1.

15) Respondent Nos. 2 and 3 while allotting particular center far away from the campus of the petitioner No. 1 does not communicate any such reason as sought to be recorded for the first time in the affidavit in reply. Be that as it may, we are not required to go in to the alleged irregularities at this stage since prayer in this petition is for limited relief seeking permission to conduct examination

in the premises of the petitioner No. 1 itself to avoid any inconvenience that would be caused to the students of petitioner No.

1. We accordingly pass the following order.

ORDER

- I. Writ petition is allowed in terms of prayer clause 'B'.
- II. Hall tickets shall be issued by respondent No. 2 to the students who are going to appear for the examination in issue by 3.00 p.m. tomorrow without fail, allotting the center at the premises of the petitioner No. 1. Respondent Nos. 2 and 3 would be at liberty to depute the supervisor or any other competent person for supervising or to conduct the examination on the day on which the examinations are going to be conducted.
- III. Petitioner No. 1 is directed not to interfere in the examination process and shall allow the officers of the respondent No. 2 who would be deputed to supervise the examination impartially and in fair and transparent manner. The concerned officer would be at liberty to bring on record the interference with the examination by any of the staff members or management of petitioner No. 1 to the knowledge of the respondent No. 2.
- IV. In view of this order directing the respondent Nos. 2 and 3 to make a proper arrangement by shifting the center at this juncture, if

any additional expenses are required to be born by respondent Nos. 2 and 3, the same shall be brought to the notice of petitioner No. 1 within one week from the date of conducting the examination. Petitioner No. 1 shall reimburse such expenses to the respondent No. 2 within two weeks thereafter.

V. Writ petition is allowed in aforesaid terms. Rule is made absolute in aforesaid terms. There shall be no order as to costs.

The parties to act on authenticated copy of this operative order.

[ANIL L. PANSARE, J.]

[R. D. DHANUKA, J.]

ssc/