

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

94 WRIT PETITION NO.8282 OF 2022

ROHIT ACHYUT PAWAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND
OTHERS

...
Advocate for Petitioners : Mr. Girase Amarjitsing B.
AGP for Respondent No.1 : Mr. P. K. Lakhotiya
Advocate for Respondent Nos.2 and 3 : Mr. M. D. Narwadkar
...

**CORAM : RAVINDRA V. GHUGE
AND
ARUN R. PEDNEKER, JJ.**

DATE : 12th August, 2022

PER COURT :

1. The six petitioners before us are engineering students who have appeared for their final year last semester examination. They have put forth prayer Clauses 'B', 'C', 'D', 'E' and 'F', as under :-

(B) By way of appropriate writ order or direction in the like nature, this Hon'ble High Court may kindly direct the respondent authorities to extend the date for filling the online registration and confirmation for the Common Entrance Test for MBA / MMS Courses.

(C) By way of appropriate writ order or direction in the like nature, this Hon'ble High Court may kindly direct the respondent authorities to allow the petitioners to appear for the Common

Entrance Test for MBA/ MMS Courses, which is scheduled in between 23rd August 2022 to 25th August 2022.

(D) Pending hearing and final disposal of this Writ Petition, this Hon'ble High Court may kindly direct the respondent authorities to extend the date for filling the online registration and confirmation for the Common Entrance Test for MBA/ MMS Courses.

(E) Pending hearing and final disposal of this Writ Petition, this Hon'ble High Court may kindly direct the respondent authorities to allow the petitioners to appear for the Common Entrance Test for MBA / MMS Courses, which is scheduled in between 23rd August 2022 to 25th August 2022.

(F) Ad-interim relief in terms of prayer clause 'D' and 'E' may kindly be granted in favour of petitioners.

2. This matter has been listed today in the fresh urgent admissions category. The learned AGP has caused an appearance on behalf of respondent No.1. The learned Advocate Mr. M. D. Narwadkar has caused an appearance on behalf of respondent Nos.2 and 3. With the consent of the parties and considering the conspectus of the matter, we have taken up this petition for a hearing as we were of the view that we could not grant ex-parte ad-interim relief in the nature of allowing the petitioners to appear for

their exams without filling in their online examinations forms and without hall-tickets.

3. We have permitted the learned Counsel for the respective sides to extensively canvass their submissions. The petitioners have formulated eight grounds in the petition, which read (verbatim) as under :-

I. That, the impugned action on the part of the respondent authorities in not extending the date for filling the online registration and confirmation for the Common Entrance Test for MBA/ MMS Courses, is required to be dealt with appreciating the difficulties that being faced by the petitioners and similarly situated students.

II. That, the last year, due to the delay in conducting the examination by the various universities and boards, the State Government as well as Common Entrance Test Cell took a conscious decision thereby extending the online registration and confirmation of application form on website in the month of June and July on account of COVID-19 pandemic.

III. That, this year also, due to the COVID-19 pandemic situation, the academic calendar of the universities are collapsed and as such, the universities are not in a position to conduct the examinations from February to May 2022. As a result, Examinations conducted in the month of June and till

the end of July 2022. As such, on the ground of parity, it is legitimately expected from the State Government as well as Common Entrance Test Cell to allow the students who appeared for last year examination in the month of June and July to appear for the examination by extending online registration date. As the State Government as well as Common Entrance Test Cell not taken any steps.

IV. That, the students who are otherwise eligible to appear for the examination conducted by the CET Cell are deprived due to the said approach of the Common Entrance Test Cell. The eligibility condition mandates to appear for the final year examination to fill up the form for the CET Examination. If the examinations of final year delayed without any fault of the students, generally, all CET Cell extended the date so as to facilitate the students to appear for the examination.

V. That, in view of the schedule of the examination, if the petitioners are allowed to fill up the form by extending the date, there would be no disturbance to the scheduled examination. The examination scheduled from 25th August to 28th August 2022. On the contrary, if the petitioners and similarly situated students are not allowed to appear for the examination by extending the date, they would suffer great hardship and loss in the nature of academic career, which would not be compensated in terms of money.

VI. That, the said cut of date of CET Cell Examination is

arbitrary and violative of Article 14 of the Constitution of India. The said action on the part of the CET Cell is of a such a nature to lead the conclusion that, it has been fixed without any rational basis whatsoever or is manifestly unreasonable so as to lead to a conclusion of a violation of Article 14 of the Constitution. Due to the said act on the part of CET Cell, the students may face hardship and loss in the nature of academic career. On one hand, the eligibility criteria prescribed to appear for final year examination and on the other hand, those students who appear for final year examination not allowed to fill up the form without any fault on their part as the examinations conducted at late point of time due to COVID-19 situations.

VII. That, the Hon'ble Apex Court in the matter of Poulami Mandal Vs. All India Institutes of Medical Science and others held that, the institute of national importance combined admission test for admission to the post graduate courses for July 2021 Session was directed to be postponed on the ground that, it is impossible for the candidates to reach the examination centres due to COVID-19 pandemic.

VII. Even otherwise, the impugned in-action on the part of respondents is required to be dealt with by allowing the petitioners to appear for the examination.

4. The contention of the petitioners is that the Government of Maharashtra has published an information brochure 'MAH-MBA/MMS-

CET 2022', for the State Common Entrance Test. The relevant condition, which is the basis for bringing this petition, is Clause 3.0, which reads as under :-

"3.0 Eligibility for Appearing Online MAH-MBA/MMS CET 2022

Passed minimum Three-year Duration Bachelor's Degree awarded by any of the Universities recognised by University Grants Commission or Association of Indian Universities in any discipline with at least 50 % marks in aggregate or equivalent (at least 45 % in case of candidates of backward class categories, Economically Weaker Section and Persons with Disability belonging to Maharashtra State only) or its equivalent ; **OR**

Appeared for the final year examination of any bachelor's degree to be awarded by any of the Universities recognised by University Grants Commission or Association of Indian Universities in any discipline.

Note:

- . Aggregate marks means the grand total of marks obtained by the candidate in subjects on which the class declaration is made in the particular University from which the candidate is passing the qualifying examination.
- . In case the candidates are awarded grades/CGPA instead of marks, the conversion of grades/CGPA to percentage of marks would be based on the procedure certified by the University/institution from where they have obtained the

bachelor's degree.

. The percentage of marks shall be calculated by rounding off to two places after decimal.

. The candidates belonging to SC, VJ/DT (NT(A)), NT (B), NT(C), NT(D), OBC, SBC categories should produce "Caste Validity Certificate" issued by Scrutiny Committee of Social Welfare Department and the Candidate belonging to ST category should submit "Tribe Validity Certificate" issued by Scrutiny Committee of Tribal Department and valid Non Creamy Layer certificate except SC, ST candidates at the time of verification of documents."

5. The learned Advocate for the petitioners has conceded that they were admittedly yet to acquire their bachelor's degree. They were in the final year of their engineering course and the only eligibility criteria for appearing for the exams, was the second option reproduced above i.e. **"appeared for the final year examination of any Bachelor's degree to be awarded by any of the universities recognised by the University Grants Commission or Association of Indian Universities in any discipline."** Since they have not appeared for the final year examination, they were disqualified from appearing for the State CET.

6. It is vehemently canvassed that there has been a delay in

completion of the academic curriculum all over the State. Last year, due to COVID-19 pandemic, the academic curriculum was postponed and readjusted. Consequentially, last year the cut-off date for filling in the CET form was July 2021. The final year exams are normally held in March-April/ April-May of the year and because of the COVID pandemic the examinations of these petitioners were held on 07/07/2022.

7. It is then canvassed that the cut-off date for applying for the CET-MBA course, was 11/05/2022. That was much prior to the final year examinations of these petitioners. The petitioners have preferred this petition in a representative capacity and there could be hundreds of such students all over the State who could not appear for the MBA-CET on account of delayed exams.

8. It is further submitted that due to the COVID-19 pandemic situation, the academic calender of the universities had collapsed and exams were not held in time. Exams which could have been conducted in the month of April/May, were not held and were postponed till July. The competent authority dealing with the State CET should have postponed the cut-off date till the month of July so as to enable the petitioners to apply for the State CET. Having

closed the portal on 11/05/2022, led to the deprivation of opportunities to these petitioners for appearing for the said exams.

9. Reliance is placed upon the Judgment delivered by the Hon'ble Supreme Court in ***Hirandra Kumar Vs. High Court of Judicature at Allahabad and Another, (2020) 17 SCC 401***, and especially paragraph No.21, which reads as under :-

"21. The legal principles which govern the determination of a cut-off date are well settled. The power to fix a cut-off date or age-limit is incidental to the regulatory control which an authority exercises over the selection process. A certain degree of arbitrariness may appear on the face of any cut-off or age-limit which is prescribed, since a candidate on the wrong side of the line may stand excluded as a consequence. That, however, is no reason to hold that the cut-off which is prescribed, is arbitrary. In order to declare that a cut-off is arbitrary and ultra vires, it must be of such a nature as to lead to the conclusion that it has been fixed without any rational basis whatsoever or is manifestly unreasonable so as to lead to a conclusion of a violation of Article 14 of the Constitution."

10. It is, therefore, prayed today i.e. 12th August, 2022 that the Court may direct the respondents to reopen the portal and permit the petitioners to apply. Similarly situated students could also apply. Hall tickets may be granted. Exam centers may be allotted and the

examination may be held on 23/08/2022, which is the schedule date of the said examination for the Maharashtra CET-MBA.

11. The learned Advocate representing respondent Nos.2 and 3 authorities tenders across the Bar, a screen shot of the online form page, which would indicate two options available to the students, who intend to appear for the exam. One option is, that their status is 'graduation passed'. The second option is, 'graduation-status-appearing'. Those students who were appearing for the final year engineering final semester examinations, could have applied as they were appearing for the exams. He concedes that though clause 3.0 (second option) indicates 'appeared for the final year examination', the online form would permit a student who was appearing for the final exams, to fill in the form.

12. The learned Advocate then refers to the request application made by a similarly situated student namely Prasad Digamber Naik, to the Secretary Higher and Technical Education, State of Maharashtra, dated 25/07/2022, wherein he has stated that there are about 375 similarly situated students who are in a dilemma as to whether they should opt for the engineering PG-CET or MBA-CET. With this dilemma in mind, they have now decided to appear for the

MBA-CET and hence, they are willing to fill in the forms, pay the requisite fees, and appear for the exams. They requested that the portal may be opened so as to enable these students to apply online. Mr. Prasad Naik has appended a signed list of 375 students to his representation. Since it was impossible for the authorities to entertain such a request as this would be a unending process, that the respondents did not grant the said application and the respondents, therefore, are unable to assist the petitioners.

13. The learned Advocate further submits that none of the petitioners or even these 375 students, ever attempted to fill the online form. None of them even tried to fill in the form. The earlier cut-off date was 07/04/2022. By notice No.1, dated 04/02/2022, the cut-off date was settled at 07/04/2022, 11.59 p.m. By notice No.2, dated 30/03/2022, the cut-off date was extended to 23/04/2022, 11.59 p.m. Vide the last notice, by way of a special extension, the cut-off date was extended for the period 04/05/2022 till 11/05/2022, 11.59 p.m. Despite this aspect, these petitioners or even those 375 students, did not apply.

14. The learned Advocate further submits that, 05/07/2022 was the date on which the authorities settled the examination centres all

over the State for the MBA-CET. The question paper was uploaded online in between 11/07/2022 to 22/07/2022. The question papers were scrutinized by the experts in between 13/07/2022 to 22/07/2022. The CBT Mock-Test took place between 28/07/2022 to 01/08/2022. The Hall tickets are to be issued tomorrow i.e. 13/08/2022 and the examination is scheduled on 23/08/2022.

15. The learned AGP submits that the online portal of the State CET indicates that those students who were planing to appear for the examination, could have applied in view of the graduation status option being "appearing" for those students whose graduation status was not "passed". However, from the representation tendered by the 375 students to the Secretary Higher and Technical Education State of Maharashtra, it is obvious that they were in a dilemma as to whether they should take the Engineering PG exam or the MBA-CET, after graduation. Despite three extensions, they did not opt to even apply online.

16. The petitioners have canvassed that the rationale behind the cut-off date is unreasonable. They rely upon paragraph No.21 in *Hirandra Kumar (Supra)*, that if the cut-off date is fixed without any rational basis, or is manifestly unreasonable so as to lead to a

conclusion of a violation of Article 14 of the Constitution, such cut-off date deserves to be quashed and a fresh cut-off date can be granted.

17. From the said CET information brochure, we find that the CET Cell and admission regulating authority were dealing with not only the MBA Course, but were delaing with several other courses. The COVID pandemic situation, as it prevailed in 2020 and which brought the world to a stand still, thereby, resulting in postponement of the exams and the academic sessions, was not the situation in the later half of 2021. It was an unprecedented situation when the whole world practically having come to a stand still from February / March 2020 till around November/December 2020. In all walks of life, the people and institutions were grappling with the situation in order to ensure that normalcy is restored. It was in this backdrop that the State CET-2021 was conducted with the cut-off date set out in July 2021. Situation thereafter has improved and academic sessions and curriculum have been normalised.

18. In the above backdrop, there were three extensions granted by the State CET authority. All these students cannot be said to be unaware or oblivious of the fact that the dead line was extended

three times until 11/05/2020. These petitioners as well as the 375 students could have approached the authorities in the month of May, making out a case that their exams were likely to be held in June or July. However, after the last extension till 11/05/2022, these petitioners remained silent and approached this Court on 05/08/2022. The 375 students approached the authorities on 25/07/2022. The hall tickets would be available on 13/08/2022 and the exams are scheduled on 23/08/2022.

19. We are of the view that at this stage when the hall tickets are to be issued tomorrow, and examination centres have already been settled and students have been allotted such examination centres, directing the authorities to reopen the portal and and publicise this aspect all over the State, so as to enable all similarly situated students, who could be in hundreds or thousands, to apply and thereafter direct the authorities to select further examination centres to accommodate such chunk of students and hold the exams on 23/08/2022, appears to be an impossible situation.

20. The students may then contend that the exams be postponed. This would put the entire exam schedule out of gear and cause hardships to 1,60,781 students (one lakh sixty thousand seven

hundred eighty-one students). By putting 1,60,781 students to hardships by postponing the exams, would have a cascading effect on the entire State CET exams which are scheduled at particular intervals/dates and the examination centres appear to be common. This would, therefore, affect 11,78,161 students (eleven lakh seventy eight thousand one hundred sixty-one students).

21. In view of the above, we find that the request put forth by the petitioners cannot be entertained in the facts and circumstances before us. This petition is dismissed.

(ARUN R. PEDNEKER, J.)

(RAVINDRA V. GHUGE, J.)

vjg/-.