

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2926 OF 2022

1. Anushka Sambhaji Patil
Age: 11 Years, Occupation: Student,
Address while learning in 5th Standard
C/o Kamalakar Salvi, Shantinagar,
Ekta Vasahat Nachane, Taluka and
District: Ratnagiri, Since minor
through his natural guardian father
Shri Sambhaji Sadashiv Patil
2. Kanishk Sagar Desai,
Age: 11 Years, Occupation: Student,
Address while learning in 5th Standard
A/P. Bimhavane, Tal. Dapoli,
Dist. Ratnagiri, Since minor through his
natural guardian father
Shri Sagar Shivaji Desai
3. Anup Rajaram Naik,
Age: 11 Years, Occupation : Student,
Address while learning in 5th Standard
C/o Omkar Abhay Karve,
A/o Gimhavane, Tal. Dapoli
Dist. Ratnagiri Since minor through his
natural guardian father :-
Shri Rajaram Hari Naik,
4. Kartik Krushnat More,
Age 11 Years, Occupation Student,
Address while learning in 5th Standard,
Kamaljabai Pandurang Mulye
Vasatigruh, Kolambe, A/P. Kolambe,
Tal. Samgameshwar, Dist. Ratnagiri,
Since minor through his natural guardian
father:- Krushnat Dinkar More,
5. Rajveer Jalandar Kamble,
Age: 11 Years Occupation : Student,

Address while learning in 5th Standard
 A/p. Alasure, Tal. Khed,
 Dist. Ratnagiri, Since minor through
 his natural guardian father :-
 Jalandar Ramchandra Kamble,

6. Sharvari Vishwas Magdum,
 Age: 11 Years, Occupation : Student,
 Address while learning in 5th Standard,
 A/p. Shrungar, Mohala, Singar Tale,
 Tal. Guhagar, Dist. Ratnagiri.
 Since minor through his natural guardian
 father:- Vishwas Bapu Magdum ... Petitioners

Vs.

1. The Navodaya Vidyalaya Samiti
 (An Autonomous Organization),
 Under Ministry of Human Resources
 Development, Department of School
 Education and Literacy,
 Government of Maharashtra, Having
 Head Office at B-15, Institutional Area,
 Sector-62, Noida, Gautam Buddha Nagar,
 Uttar Pradesh – 201 317
 Through its Commissioner
2. The Navodaya Vidyalaya Samiti,
 Having its Regional Office at,
 Sheti Mahamandal Bhavan, Senapati
 Bapat Road, Pune 411 016,
 Through its Deputy Commissioner
3. Jawahar Navodaya Vidyalaya, Padave,
 Tal. Rajapur, District Ratnagiri
 Through its Principal ... Respondents

Shri Prashant Bhavake, Advocate of petitioners.

Mrs Neeta Masurkar, Advocate for respondents.

CORAM : A. S. Chandurkar and G. A. Sanap, JJ.

Arguments were heard on : April 21, 2022

Judgment is delivered on : April 29, 2022.

Judgment (Per: A. S. Chandurkar, J.)

Rule. Rule made returnable forthwith and heard learned counsel for the parties.

The petitioners are young students who have been deprived of education in the academic year 2021-22 despite having passed the eligibility test for admission to Class-VI as according to Jawahar Navodaya Vidyalaya-respondent No.3, the petitioners have failed to substantiate their claim of having undertaken one year study during 2020-21 in Class-V in a recognised school in Ratnagiri district. By this writ petition the petitioners pray that they be granted admission in Class-VI at the respondent No.3-School for the academic session 2021-22 by setting aside the order dated 25/03/2022 cancelling their admission which was earlier granted.

2. It is the case of the petitioners that they have pursued education in Class-V in the academic session 2020-21 in various schools in Ratnagiri district. They sought admission in Class-VI at the respondent No.3-School which is conducted by the Navodaya Vidyalaya Samiti, an

autonomous organization. The petitioners appeared for the JNVST-2021 results of which were declared on 28/09/2021. The petitioners' names were shown in the list of eligible candidates published by the respondent No.2. Thereafter the petitioners through their parents took steps to submit all necessary documents from 08/10/2021 onwards through Online mode. The petitioners duly submitted the admission form along with a certificate issued by the School from which they passed the Class-V examination in April 2021. The date on which these petitioners were admitted in that School was also mentioned in the said certificate. However on 26/11/2021 the Principal of the respondent No.3-School informed the guardian of each petitioner that in view of Clause 4.3 of the Navodaya Vidyalaya Scheme which refers to the prospectus for admission to Class-VI, each petitioner was not eligible. The deficiency in their documents was stated to be absence of date on which each petitioner was admitted to Class-V. The petitioners along with some other students who were similarly situated challenged the aforesaid communication by filing Writ Petition No.9451/2021 (*Harshvardhan S. Kubade and Ors. vs. The Navodaya Vidyalaya Samiti and Ors.*). This Court on 23/12/2021 accepted the statement made on behalf of the respondents therein that the impugned orders would be

withdrawn and a fresh order considering the request for grant of admission in Class-VI would be passed in accordance with law. The petitioners were also permitted to cure the deficiencies if any in the documents submitted by them within a period of ten days from communication of such deficiencies. With these directions the aforesaid writ petition was disposed of.

3. It is the case of the petitioners that despite these directions the respondents without giving notice of ten days to the petitioners for curing the deficiencies, issued a notice of hearing on 29/12/2021 stating therein that the parents of the petitioners could meet the Principal of respondent No.3 School on 31/12/2021 with documents to substantiate the claim that each petitioner had completed one year study during the academic year 2020-21 in a recognized School in Ratnagiri district. Since this notice was received through e-mail, the petitioners' parents also submitted their replies through e-mail. As no decision was taken with regard to petitioners' admission to Class-VI, the petitioners have filed this writ petition on 14/03/2022. While issuing notice in the writ petition on 15/03/2022 the respondents were permitted to take an appropriate decision in accordance with law as regards admission of the petitioners. Thereafter on 25/03/2022 the respondent No.3-School

informed the petitioners that there was no document submitted on behalf of the petitioners to substantiate their claim of completion of “one whole year’s study” in Class-V in a recognized school in Ratnagiri district during 2020-21. It was further stated that it had been verified that the concerned School was functioning from 15/06/2020 and there was no modification/relaxation in the notifications issued by the respondent No.2 on account of pandemic condition. While hearing the writ petition today, leave was granted to amend the writ petition and raise a challenge to the communication dated 25/03/2022 issued to each petitioner by which their admission in Class-VI at the respondent No.3-School came to be cancelled.

4. Shri Prashant S. Bhavake, learned counsel for the petitioners submitted that the reasons assigned by the respondent No.3 in the communication dated 25/03/2022 that the petitioners could not substantiate their claim of having pursued one year’s study during 2020-21 in Class-V in a recognized school in Ratnagiri district was without any substance and by ignoring the contents of the admission form submitted by each petitioner. He submitted that all petitioners namely Anushka Sambhaji Patil, Nanishk Sagar Desai, Anup Rajaram Naik, Kartik Krushnat More, Rajveer Jalandar Kamble and Sharvarti Vishwas

Magdum were admitted in Class-V on 08/08/2020, 31/08/2020, 04/08/2020, 18/08/2020, 15/09/2020 and 01/10/2020 respectively in a recognized school. Said fact had been specifically mentioned in the admission form of each petitioner which was duly signed by the Head Master of the School where such education was taken. Referring to the provisions of the Right Of Children To Free And Compulsory Education Act, 2009 (for short, the Act of 2009) and especially the provisions of Section 2 (a), (f), (h), (n) and (p) along with Section 15 thereof, it was submitted that no child could be denied admission in a School even if the same was sought subsequent to any extended period as may be prescribed. The petitioners having cleared the eligibility test in the form of JNVST 2020-21 they could not have been denied admission on the ground that they had not completed one whole year's study in Class-V. He also referred to the Government Resolution dated 11/06/2010 in the matter of grant of admission under the Act of 2009 wherein it was stipulated that the extended period for seeking admission was 30th September of the relevant academic year. That date was not very relevant for the academic year 2021-22 in view of the pandemic situation coupled with the fact that the result of JNVST itself was declared on 28/09/2021. The petitioners had submitted their requisite

documents on 08/10/2021 and the refusal to admit the students was on 26/11/2021. Attention was also invited to the Government Resolution dated 15/06/2020 in the matter of re-opening of Schools after relaxation of the lock-down guidelines as framed by the State of Maharashtra. The academic year 2020-21 was to commence in the State of Maharashtra excepting the Vidarbha region from 15th June of that academic year. The schools were permitted to function in the digital mode and before starting schools in a phased manner, it was required to be ensured that there were no patients in the village or the city suffering from Covid-19. As per the schedule of dates therein, instructions to Classes-III to V were to commence from September 2020. Considering these circumstances coupled with the certificate issued by the respective Head Masters of the schools where each petitioner undertook education in Class-V in academic session 2020-21 it was clear that the cancellation of the petitioners' admission was wholly unjustified and not supported by Clause-4.3 of the Navodaya Vidyalaya Scheme. It was thus submitted that for no justifiable reason the petitioners had been deprived of their education for a substantial portion of their academic career in Class-VI and hence the petitioners were entitled to grant of appropriate reliefs.

5. Mrs Neeta Masurkar, learned counsel for the respondents vehemently opposed the aforesaid submissions. She submitted that in view of Section 2(p) of the Act of 2009 the respondent No.3-School falls in the “specified category”. The documents produced by the petitioners did not support their contention that they had undertaken studies in Class-V in the whole academic year. On the petitioners’ own showing the academic session 2020-21 began on 15/06/2020. Merely because admissions could be made by September 2020, the same would not mean that the academic session would commence from that date. Inviting attention to paragraph 7 of the affidavit in reply it was urged that the petitioners had taken education up to Class-IV in different schools in Kolhapur district and therefore they were entitled to seek admission in the vicinity of any neighbouring school in Kolhapur district itself. After verifying the matter with the schools where the petitioners claimed that they had pursued education in Class-V it was found that the claim made by the petitioners was not accepted. It was thus submitted that after considering all relevant documents, the admission of the petitioners was cancelled in accordance with Clause 4.3 of the Novoday Vidyalaya Scheme. For these reasons no interference in writ jurisdiction was called for. It was submitted that the writ petition was

liable to be dismissed.

6. We have heard the learned counsel for the parties and we have also perused the documents on record. After giving due consideration to the rival submissions we are of the view that the petitioners are entitled to be granted admission to Class-VI at the respondent No.3-school for the academic session 2021-2022.

7. At the outset we may refer to certain relevant undisputed facts on record. The petitioners pursued education in Class-V in various schools in Ratnagiri district during academic year 2020-21. For seeking admission in Class-VI at Jawahar Navodaya Vidyalaya the last date for submission of the application form for JNVST-2021 was 30/12/2020. Each petitioner submitted his/her admission form prior to that date. The examination was scheduled on 30/03/2021 but in view of the pandemic situation the said examination was postponed to 15/05/2021. On 15/05/2021 it was again postponed and the said examination was ultimately held on 11/08/2021. Each petitioner appeared in that examination results of which were declared on 28/09/2021. Each petitioner was declared to have passed the said examination and the names of the petitioners have been mentioned in the select list as

published. Thereafter on 08/10/2021 the petitioners submitted various documents through Online mode. The petitioners were granted admission pursuant to their selection but subsequently on 26/11/2021 the said admission came to be cancelled. The petitioners had filed Writ Petition No.9451/2021 challenging cancellation of their admission and the present respondents agreed to withdraw the orders dated 26/11/2021 and pass fresh orders with regard to the admission of the petitioners. It is thereafter that on 25/03/2022 the impugned communication was issued by the Principal of the respondent No.3-school stating therein that each petitioner failed to substantiate his/her claim of “one whole year study” during 2020-21 in a recognized school in Ratnagiri district.

8. At this stage it would be necessary to refer to the relevant provisions of the Act of 2009. Section 2(f) defines terms “elementary education” to mean education from first class to eighth class. Section 2(n) defines the term “school” to mean a reconized school imparting elementary education . In the present case, the respondent No.3-school where the petitioners seek admission is a school belonging to specified category as per clause (iii) of Section 2(n). Section 2(p) defines the term “specified category” to mean a school known as Kendriya Vidyalaya, Navodaya Vidyalaya Under Section 3(1) of the Act of

2009 every child of the age of six to fourteen years has a right to free and compulsory education in a neighbourhood school till the completion of his/her elementary education. Section 15 of the Act of 2009 is relevant and the same reads as under :

15. No denial of admission : A child shall be admitted in a school at the commencement of the academic year or within such extended period as may be prescribed :

Provided that no child shall be denied admission if such admission is sought subsequent to the extended period :

Provided further that any child admitted after the extended period shall complete his studies in such manner as may be prescribed by the appropriate Government.

From the aforesaid provisions it becomes amply clear that each child between the age of six to fourteen years has a right to free and compulsory education and that admission shall not be denied to any child even if the same is sought beyond the extended period as prescribed. On the contrary, admission of the child after the extended period is permissible and a child so admitted shall be permitted to complete his/her studies in such manner as may be prescribed by the appropriate Government. As clarified by Section 1(4) of the Act of 2009 the Act confers such right on children to free and compulsory education. That the respondent No.3 school is also governed by the Act of 2009 is

not in dispute.

9. The respondents have relied upon the Navodaya Vidyalaya Scheme as contained in the prospectus for admission to Class-VI by prescribing JNVST-2021. The manner in which an application for appearing in the said test is to be made as well as the manner of selection and admission thereto has been prescribed. The eligibility for appearing in the said test is prescribed by Clause 4.1 to 4.7 for all candidates. Clause 4.3 which appears to be the basis for denying admission to the petitioners reads thus :

4.3 : A candidate appearing for the selection test must be studying in Class-V for the whole of the academic session 2020-21 in a Government/Government aided or other recognized schools or 'B' certificate competency course of National Institute of Open Schooling in the same district where he/she is seeking admission. A school will be deemed recognized if it is declared so by the Government or by any other agency authorized on behalf of the Government. Schools where students have obtained 'B' certificate under National Institute of Open Schooling should have accreditation of NIOS. A candidate must successfully complete Class-V in the session 2020-21. Actual admission in Class-IV for the session 2021-22 will be subject to the mentioned condition.

10. It is thus clear from a reading of Clause 4.3 that a candidate who appears for a selection test must have studied in Class-V for the

“whole of the academic session” in 2020-21. In this context if the application form of each petitioner is perused it indicates that the same is supported by a certificate issued by the head of the school where the applicant had taken education in Class-V. The date on which the student has been admitted in Class-V has been stated therein. The petitioner Nos.1 to 5 were admitted in Class-V prior to 30/09/2020 while petitioner No.6 was admitted in Class-V on 01/10/2020. The impugned communication also makes a reference to the Government Resolution dated 15/06/2020 issued by the State Government prescribing the manner in which schools in the State were to start functioning in a phased manner after relaxation of lock-down restrictions. Though the academic year was stated to commence from 15/06/2020 the date for commencement of schooling activity for Class-III to V was from September 2020. In this context the provisions of Section 15 are material and any child admitted even after the extended period as prescribed is permitted to complete his/her studies in the manner as prescribed by the appropriate Government. Each petitioner having been certified to have passed the Class-V examination after pursuing education in that Class for academic session 2020-21, the fact that each petitioner was granted admission sometime after the commencement of

the academic session on 15/06/2020 would hardly matter when the aspect as to whether each petitioner had studied in Class-V for “the whole of the academic session” 2020-21 is considered. Clause 4.3 of the said prospectus cannot be read in a manner contrary to the spirit of Section 15 of the Act of 2009. The date when each petitioner was admitted in Class-V having been clearly indicated in the certificate filed by the Principal of the respective school and each petitioner having passed the Class-V examination, it would be illogical to hold that despite the provisions of Section 15 of the Act of 2009, the petitioners were to be held ineligible for admission to Class-VI on the ground that they were admitted to Class-V shortly after commencement of the academic session on 15/06/2020 and had not completed study in Class-V for “whole of the academic session”. Such conclusion would also result in ignoring the certificate issued by the Head Master of the respective schools that the petitioners had been admitted in Class-V and had passed the Class-V examination.

11. In the light of various documents on record it is clear that the petitioner Nos.1 to 5 were admitted in Class-V on various dates prior to 15/09/2020. The petitioner No.6 was admitted in Class-V on 01/10/2020. The successful completion of education in Class-V is

certified by the Head Master of the respective schools attended by these petitioners. Ordinarily, the certificate issued by the head of the school would be sufficient proof of the fact that the concerned student was admitted in Class-V and had thereafter on completion of the academic session passed the said examination. Clause-4.3 on which considerable reliance was placed by the respondents merely requires a candidate who has appeared for the selection test to have studied in Class-V for the whole of the academic session 2020-21 in a recognized school. The insistence of the respondents that each petitioner ought to have been admitted in Class-V at the commencement of the academic session 2020-21 is not supported by the provisions of Section 15 of the Act of 2009. Under Section 15 no child can be denied admission even if the same is sought subsequent to the extended period. Even when a child is admitted after the extended period it is the responsibility of the concerned school to ensure that his/her studies are completed in the manner prescribed.

Moreover, the pandemic situation that was prevailing during academic year 2020/21 cannot be lost sight of. The Government Resolution dated 15/06/2020 seeks to take care of this situation. Even the Government Resolution dated 11/06/2010 issued by the State

Government for complying with the provisions of Section 15 of the Act of 2009 specifies that the extended period of admission would be 30th September of the concerned academic year and even after that date admission was not be refused to any child. We find that on a harmonious reading of the provisions of Sections 3 and 15 of the Act of 2009 along with the Government Resolutions dated 11/06/2010 and 15/06/2020 in the context of Clause 4.3 of the Navodaya Vidyalaya Scheme, the denial of admission to the petitioners despite passed the Class-V examination and having cleared the qualifying test under JNVST-2021 is wholly unjustified. There is no legal justification in the action of the respondents in denying admission to the petitioners by ignoring the provisions of Section 15 of the Act of 2009 and taking a hyper-technical view of the matter. The respondents ought to have been more sensitive in the matter before depriving the petitioners of their legal right conferred by the Act of 2009. The petitioners are thus entitled for the relief as claimed by them.

12. We find that the petitioners have been put in an avoidable situation by denying them admission to Class-VI at the commencement of academic session 2021-22. The petitioners are not at fault and it is only on account of the pedantic approach of the respondents that they

have held that the requirement of Clause-4.3 had not been met. The petitioners cannot be deprived of their right to education in the academic year 2021-22 especially when such right is protected by the Act of 2009. In the light of aforesaid discussion the following order is passed :

The communication dated 25/03/2022 issued by the Principal of the respondent No.3-school to each petitioner is set aside.

Each petitioner is held eligible to be admitted to Class-VI in academic year 2021-22. The respondents are directed to take all the necessary steps to ensure that the petitioners complete their curriculum in Standard VI for academic year 2021-22 if necessary by taking extra efforts for which the petitioners would co-operate.

Rule is made absolute in aforesaid terms with costs.

(G. A. SANAP, J.)

(A. S. CHANDURKAR, J.)