

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO.4755 OF 2021

(Bhartiya Vidya Prasarak Sanstha through its Secretary-Ramesh B.Bakshi
and another.

Vs.

State of Maharashtra and others.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.K.Mishra, Senior Advocate with Shri N.D.Khamborkar, Advocate for
petitioners.

Ms T.H.Khan, Assistant Government Pleader for respondents.

CORAM :- A.S.CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE :- SEPTEMBER 26, 2022

Heard.

Challenge raised in this writ petition is to the action of the Deputy Director of Education, Nagpur of reducing one section of Classes XI and XII of Science stream of the petitioner no.2 - College being run by the petitioner no.1 - Society. A challenge is also raised to the order dated 07.09.2021 in that regard.

2. The respondent no.2-College was granted permission to open one section each of Class-XI in Science and Commerce faculties on 03.06.1975. On 20.11.1999 permission was granted for an additional section of Class-XI in the Science stream. By 2008 the additional section started receiving 100% grants. On 13.08.2021 one of the sections of Class-XI in Science stream was shown to be reduced by the Deputy Director of Education as a result of which the petitioners were prevented from making

admissions to the second section of Class-XI under the Centralised Admission Process (for short, CAP). According to the petitioners, in the Academic Session 2019-20 they were running two sections of Class-XI having 66 students. In the Academic Session 2020-21 the number of students shown for Class-XI were 93 and for Session 2021-22 there were 77 students. As per the norms prescribed for the students strength between 50 to 80 one section was admissible and for the strength from 81 to 140 students two sections were admissible. Though the strength of the students in the Academic Session 2019-20 was 66, the staff justification with regard to that year of two sections was continued even in the next Academic Session 2020-21. In that Session, as 93 students had been admitted which was above the norm of minimum 80 students for one section, it was not permissible for the Deputy Director of Education to have reduced the number of sections to one in Academic Session 2021-22. In effect, retrospective application was being sought to be given to the staff justification in the Session 2021-22. In this backdrop, the petitioners have filed this writ petition.

3. Shri S.K.Mishra, learned Senior Advocate for the petitioners submitted that though in the Academic Session 2019-20 the number of students had been reduced to 66 which entitled the College to have one section of Class-XI, no steps were taken in that Academic Session for reducing such sections from two to one. On the contrary, by communication dated 28.07.2021 the staff justification for the Academic Session 2019-20 was continued in the next Academic Session 2020-21. Such decision having

been taken by the Deputy Director of Education and in the light of the admitted fact that 93 students had been admitted in Class-XI for the said Academic Session 2020-21, there was no justification on the part of the Deputy Director of Education to again reduce the sections to one. Inviting attention to the additional affidavit filed on behalf of the Deputy Director of Education, it was submitted that the position that the staff justification for 2019-20 was continued for the next Academic Session. Having decided to continue that staff justification, it was not permissible for the Authorities to subsequently reduce the number of sections in the light of the students admitted in the Academic Session 2019-20. It was thus submitted that the impugned action of reducing one section was bad in law. In fact, on 06.05.2022 a recommendation was made for additional third section of Class-XI in the Science stream. The impugned action was therefore liable to be set aside.

4. Ms. T. H. Khan, learned Assistant Government Pleader for the respondents supported the impugned action. According to her the staff justification for the Academic Session 2019-20 was continued for the next Session 2020-21 only for the reason that there was an onslaught of COVID-2019. In the fresh staff justification dated 13.11.2020 it was noted that in the Academic Session 2019-20 there were only 66 students in the Science stream of Class XI and thus as per the prescribed norms as the number of students was between 50 to 80 one section alone was admissible. It was clearly stipulated in the norms that on reduction of strength of students, the number of sections would also be reduced and hence it could not be said

that any illegality had been committed by the respondents. As a result of reduction in the number of students, steps were also taken to protect the services of surplus teachers. There was no question of any retrospective effect being given to the staff justification and the action was taken as per the strength of students in the Academic Session 2019-20. Attention was invited to the communications dated 07.09.2021 and 29.06.2022 in that regard and it was submitted that if a fresh proposal for increase in the number of sections was submitted by the College, necessary steps would be taken by the Authorities. It was submitted that no illegality was committed by the respondents.

5. We have heard the learned counsel for the parties and we have perused the documents on record. The facts which are not in dispute indicate that though in the Academic Session 2019-20 two sections in the Science stream of Class-XI were sanctioned, the number of students admitted were only 66. As per the prescribed norms only one section for Class-XI was admissible for the strength of students between 50 to 80. By virtue of the communication dated 28.07.2021 the staff justification of the Academic Session 2019-20 was continued for the Academic Session 2020-21 in view of prevalent COVID-2019 situation. Thereafter when a fresh staff justification was sought to be prepared it was noticed that in the Academic Session 2019-20 as only 66 students were admitted, one section of Class-XI would be admissible though in the subsequent Session 93 students were admitted and thereafter 77 students were granted admission through the CAP in 2021-22. As a result, in the Academic Session 2020-21 only one

section of Class-XI in Science stream was admissible. Once this position was arrived at, merely because the staff justification for 2019-20 was permitted to be extended for the next Academic Session would not be a reason to hold that two sections of Class-XI were not liable to be reduced to one. What is required to be considered is the strength of students in each Academic Session. As a consequence of there being only 66 students in the Academic Session 2019-20, it would not be open for the petitioners to contend that since there were 93 students in the subsequent Session, the reduction of sections from two to one was not justified. The reduction in the number of students is an independent matter and the consequences of such reduction below the prescribed norms for two sections has its own consequence. An advantage cannot be taken of the fact that in the subsequent Academic Session since there was an increase in the number of students to justify two sections, the reduction in the number of sections that has occurred in the previous year stands nullified. Once a section is reduced then the prescribed procedure for reviving the same would be required to be undertaken and subject to that there could be an increase in the number of students/sections.

6. We therefore find that no illegality has been committed by the respondents in holding that by virtue of reduction in the number of students to 66 in the Academic Session 2019-20, one section of Class-XI alone was admissible. It was submitted on behalf of the petitioners that the admissions for Class-XI are undertaken through the CAP and the fact that 93 students were admitted in session 2020-21 is because the names of such students

were sent by the Authorities. We find that this aspect alone cannot be a reason to automatically revive one section that was reduced as a consequence of reduction in number of students in the previous academic session.

7. Hence for aforesaid reasons, we do not find that any case is made out to interfere in writ jurisdiction. It is however clarified that in accordance with the communication dated ~~29.06.2022~~ 27.05.2022 the ~~Education Officer (Secondary)~~ Deputy Director of Education, Nagpur is free to consider the proposal for restoring one section of Class-XI in Science stream in accordance with law.

Corrected as per Hon'ble Court's order dated 02.05.2023 passed in CAW No.1027 of 2023

The writ petition stands dismissed with no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

Andurkar.

