

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

WRIT PETITION NO.11517 OF 2023

1. Aaditya s/o Satish Patil,
Age : 10 years, occ: Class V Student,
Minor, represented through his
father Shri. Satish s/o Madhukar Patil
Age: 45 years, occ: private service,
Both resident of Avdhan,
Tq. and District Dhule-434 006.
2. Aashish s/o Satish Patil,
Age: 13 years, occ: Class VIII student,
Minor, represented through his Father
Shri. Satish s/o Madhukar Patil,
Age: 45 years, oce: private service,
Both resident of Avdhan,
Tq. and District Dhule- 434 006.
3. Devyani d/o Jaypal Girase,
Age: 10 years, occ: Class V student,
Minor, represented through his Father,
Shri. Jaypal s/o Ramsing Girase,
Age: 35 years, occ: agriculturist,
Both resident of Vikharan, Tq. Shindkheda,
District Dhule- 425 408.
4. Harshad s/o Rohit Marathe,
Age: 10 years, occ: Class V student,
Minor, represented through his Father,
Shri. Rohit s/o Santosh Marathe,
Age: 35 years, occ: agriculturist,
Both resident of House no.67.
Ward no.7, Hanuman Chowk,
Pansemal Taluka, District Barwani,
Madhya Pradesh State.
5. Hemant s/o Darbarsing Girase,
Age: 10 years, occ: Class V student,
Minor, represented through his Father,
Shri. Darbarsing s/o Lotan Girase,
Age: 44 years, occ: agriculturist,
Both resident of At Varzadi,
Tq. Shindkheda, District Dhule- 425 408.
6. Jaydev s/o Keshav Kalyankar,
Age: 11 years, occ: Class V student,
Minor, represented through his Father,
Shri. Keshav s/o Dnyanobaraao Kalyankar,

- Age: 45 years, occ: agriculturist,
Both resident of At post Pimpalgaon
Mahadev, Tq. Ardhapur,
District Nanded - 431 602.
7. Krushna s/o Mangalsing Girase,
Age: 10 years, occ: Class V student,
Minor, represented through his Father,
Shri. Mangalsing s/o Dhansing Girase,
Age: 36 years, occ: agriculturist,
Both resident of at Vadne Burjad,
Tq. and District Dhule 424 307.
 8. Krupal s/o Jitendrasing Girase,
Age: 10 years, occ: Class V student,
Minor, represented through his Father,
Shri. Jitendrasing s/o Divansing Girase,
Age: 40 years, occ: agriculturist,
Both resident of Balsane, Tq. Sakri,
District Dhule- 423 404.
 9. Krushna s/o Mahesh Girase,
Age: 10 years, occ: Class V student,
Minor, represented through his Father,
Shri. Mahesh s/o Vijaysing Girase,
Age: 39 years, occ: agriculturist,
Both resident of Aarave, Tq. Shindkheda,
District Dhule- 425 407.
 10. Lokesh s/o Dnyaneshwar Patil,
Age: 10 years, occ: Class V student,
Minor, represented through his Father,
Shri. Dnyaneshwar s/o Bapu Patil,
Age: 38 years, occ: agriculturist,
Both resident of At Mukti,
Tq and District Dhule- 424 301.
 11. Mahavir s/o Nayansing Girase,
Age: 10 years, occ: Class V student,
Minor, represented through his Father,
Shri. Nayansing s/o Dadabhai Girase,
Age: 49 years, occ: agriculturist,
Both resident of Degaon, Tq. Shindkheda,
District Dhule-425 407.
 12. Manav s/o Jaywant Patil,
Age: 13 years, occ: Class VIII student,
Minor, represented through his Father,
Shri. Jaywant s/o Dadaji Patil,
Age: 44 years, occ: agriculturist,
Both resident of Vikharan Devache,
Tq. Shindkheda, District Dhule- 425 408.

13. Manish s/o Jaywant Patil,
Age: 13 years, occ: Class VIII student,
Minor, represented through his Father,
Shri. Jaywant s/o Dadaji Patil,
Age: 44 years, occ: agriculturist,
Both resident of Vikharan Devache,
Tq. Shindkheda, District Dhule- 425 408.
14. Premraj s/o Vitthalsing Girase,
Age: 10 years, oce: Class V student,
Minor, represented through his Father,
Shri. Vitthalsing s/o Shanabhau Girase,
Age: 41 years, occ: agriculturist,
Both resident of Balsane,
Tq. Sakri, District Dhule 424 304.
15. Rishabh s/o Vadrya Pawara,
Age: 10 years, occ: Class V student,
Minor, represented through his Father,
Shri. Vadrya s/o Chhagan Pawara,
Age: 40 years, occ: agriculturist,
Both resident of At post Ambapur,
Tq. Shahada, District Nandurbar-425 409.
16. Tanmay s/o Rahul Choudhari,
Age: 10 years, oce: Class V student,
Minor, represented through his Father,
Shri. Rahul s/o Tanku Choudhari,
Age: 37 years, occ: agriculturist,
Both resident of at Padhavad,
Tq. Shindkheda, District Dhule-425 406.
17. Vaibhav s/o Purushottam Patil,
Age: 10 years, occ: Class V student,
Minor, represented through his Father,
Shri. Purshottam s/o Khandarav Patil,
Age: 45 years, occ: agriculturist,
Both resident of
18. Vanraj s/o Sagar Patil,
Age: 11 years, occ: Class V student,
Minor, represented through his Father,
Shri. Sagar s/o Girdhar Patil,
Age: 41 years, occ: agriculturist,
Both resident of at Tarhadi,
Tq. Shirpur, District Dhule- 425 427.
19. Yadnesh s/o Bhausaheb Patil,
Age: 10 years, occ: Class V student,
Minor, represented through his Father,
Shri. Bhausaheb s/o Kailas Patil,
Age: 36 years, occ: agriculturist,

- Both resident of At post Nandale (Bk),
Tq and Dist. Dhule - 424 308.
20. Yash s/o Dhansing Girase,
Age: 10 years, occ: Class V student,
Minor, represented through his Father,
Shri. Dhansing s/o Bhimsing Girase,
Age: 34 years, occ: agriculturist,
Both resident of At Tavkheda,
Tq. Shindkheda, District Dhule- 425 408.
21. Yash s/o Shyamkant Sonawane,
Age: 10 years, occ: Class V student,
Minor, represented through his Father,
Shri. Shyamkant s/o Pandit Sonawane,
Age: 41 years, occ: agriculturist,
Both resident of At post Chunchale,
Tq. Chopda, District Jalgaon - 425 107
- ... PETITIONER

VERSUS

1. The Union of India
 2. The Navodaya Vidyalaya Samiti,
through its Chairman,
having its office at B-15,
Institutional area, Sector - 62,
Noida, Uttar Pradesh 201 307.
 3. The Jawahar Navodaya Vidyalaya,
Akkalkuwa, Tq. Akkalkuwa,
District Nandurbar, Through its
Headmaster/Principal.
 4. The Jawahar Navodaya Vidyalaya,
Nandurbar, District Nandurbar,
through its Headmaster/Principal.
 5. The Navodaya Vidyalaya Samiti,
through its Deputy Commissioner,
Pune Regional office, BSNL Building,
Guru Nanak Nagar, near Poona College,
Bhavani Peth, Pune, Maharashtra- 411042
- ... RESPONDENTS

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Advocate for Petitioners : Mr. Amit A. Mukhedkar
DSGI for respondent Nos.1 to 5: Mr. A.G. Talhar

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**CORAM : MANGESH S. PATIL &
NEERAJ P. DHOTE, JJ.**

DATE : 02.11.2023

ORDER (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. At the joint request of the parties, the matter is heard finally at the stage of admission, after the learned advocate for the respondents tenders across the bar an affidavit-in-reply.

2. The petitioners who are taking education in V Standard during the current academic year i.e. 2023-24 are aspiring to take admission in the respondent Nos.3 and 4 - Jawahar Navodaya Vidyalayas (JNVs) which situate in Nandurbar District. By invoking the powers of this Court under Article 226 of the Constitution of India they are questioning the sustainability of clause No.4.1(a) of the brochure published by the respondents for selection test 2024, wherein, candidates were supposed to apply for admission to the JNVs in the academic year 2024-25. Learned advocate for the petitioners submits that this clause is arbitrary and discriminatory, inasmuch as, it mandates that only the students of a particular district who complete V standard examination from the same district are eligible to appear for the test and seek admission in the JNV from that very district. He would submit that if for whatever reasons a student who is a permanent resident of one district but is required to take education from some other district in the V standard is deprived of taking benefits of this benevolent project as he can neither apply for admission in the district of which he is a permanent resident or even the district where he completes the education in the V standard. These twin conditions are onerous and

discriminatory and are liable to be struck down. He would submit that the selection test is to take place on 20.01.2024 for the students in the Maharashtra State and the petitioners are unable to take it since their place of residence is elsewhere but they are taking education in V standard in the current academic year in Nandurbar district.

3. Per contra, Mr. Talhar for the respondents by referring to the affidavit-in-reply would submit that considering the object of the scheme to provide for better education to the natives of particular district, in order to avoid mischief that the stipulation regarding the twin test is justified. It is aimed at avoiding the mischief. The petitioners who are admittedly residents of different districts are seeking to take advantage of the fact that Nandurbar being a predominantly tribal area where there are two JNVs and perceiving that there would be less competition, designedly the petitioners have taken admission and are studying in the V standard in Nandurbar district. Precisely for this reason, to avoid such misuse of the scheme that this twin tests are incorporated. There is no arbitrariness or discrimination. If the petitioners *bona fide* desire to seek admission in the JNVs, it would always be open for them to undertake education in V standard in their native districts and apply for the JNV from that district.

4. He would further submit that a similar challenge was put up earlier by some students at the Principal Seat and a coordinate bench having considered all the aspects and having interpreted the clause justified the twin test and has dismissed the petition, **Shubham Vijay Patil Vs. Navodaya**

Vidyalaya Samiti and Ors.; 2022 DGLS (Bom.) 3290. He would also pointed out that the order was challenged before the Supreme Court in Special Leave to Appeal (C) No.19285/2022 but it declined to interfere with the order and dismissed the SLP on 04.11.2022. He would further submit that there is no merit in the petition and it be dismissed.

5. The learned advocate for the petitioners would then submit, in the alternative, that if the Court is not inclined to grant the relief at least they may be permitted to seek admission in the JNVs of the native districts in the next year as was permitted by the Supreme Court in the matter of **Shubham Vijay Patil** (supra).

6. The rival submissions now fall for our consideration.

7. Obviously, there is no dispute about the fact that the petitioners' native places or permanent residences are, as mentioned in the petition, outside Nandurbar district. Petitioner No.6 is a permanent resident of Nanded district. Petitioner No.4 is from District Barwani of Madhya Pradesh State. Petitioner No.21 is a resident of District Jalgaon. Except petitioner No.15, the rest of the petitioners are residents of Dhule district. The petitioner No.15 is in fact resident of district Nandurbar.

8. One wonders how the impugned clause as it stands and its interpretation made by a coordinate bench in the matter of **Shubham Vijay Patil** (supra) could affect the petitioner No.15 adversely. If he is a permanent resident of Nandurbar district and is also taking education in the V standard in the same district, we cannot comprehend and neither could

the learned advocate for the petitioners satisfied us as to how he would not be eligible to apply for the JNV test for a school from that district.

9. Be that as it may, indeed, we are in respectful agreement with the interpretation placed on the clause 4.1 in the matter of **Shubham Vijay Patil** (supra). After considering a similar argument, the clause has been held to be justified in following words :

- “5. *The substratum of the matter for adjudication is “whether the students not residing in the District can seek admission in the JNV situated in the said District”. The Petitioners it appears have passed 5th standard from Sangli District. They seek admission in the JV at Sangli. They appear to be residents of Kolhapur District.*
6. *Clause 4.1 of the Prospectus for JNVST 2022 provides that only the candidates from the District where the JNV has been opened are eligible to apply for admission. Clause 3.6 provides that the children selected on the basis of the test will be admitted only in the JNV located in the District from where they are studying in Class V and appearing for JNVST. The selected candidates will not be given admission to any other JNV. It further provides that no request for shifting of students on account of medium of instruction in the JNV concerned, shifting of parents/guardians to other Districts/States etc. will be entertained. Clause 4.3 further provides that a candidate appearing for the selection test must be studying in Class V for the whole of the academic session 2021-2022 in a Government/Government aided or other recognized schools or B Certificate competency course of NIOS in the same District where he is seeking admission.*
7.
8. *The object of the scheme along with all clauses will have to be read in harmony to arrive at a conclusion. The clauses cannot be read in a manner that one of the clauses is rendered redundant or a dead letter. All the clauses will have to be read in a manner that none of the clause is rendered nugatory or otiose. The object of the scheme is to provide quality modern education to the children predominantly from the rural areas. Keeping in mind the said objective, 75% of the seats in a District are reserved for the candidates from rural areas and remaining seats*

are filled in from the urban area of the District.

9. *Clause 4.1 under the caption 'Who is Eligible' also provides insights for interpreting the clauses. It states that only the candidates from the District concerned where the JNV has been opened, are eligible to apply for admission. The general rule under the said Prospectus is that only the candidates from the District concerned where the JNV has been opened, are eligible to apply for admission. Clause 3.6 further provides that the children selected on the basis of District will be admitted only in the JNV located in the District from where they are studying in class 5 and appear for the JNVST. Reading clause 3.6 and 4 conjointly and harmoniously, irresistible conclusion that can be drawn is that a candidate will be required to satisfy the twin test for being eligible to get admission in the JNV; (i) the candidate should have passed 5th standard from the District where the JNV is located; and (ii) only the candidates from the District concerned where the JNV is opened, are eligible to apply for admission. The condition of residence certificate in the prescribed proforma in case of NIOS i.e. the candidates should obtain 'B' certificate and residence should be in the same district where he is seeking admission, as provided in clause 2.1 is an additional condition imposed for clarification purpose. NIOS is a correspondence course for the students who are not able to pursue regular classes. For the said purpose, additional precautions appears to have been undertaken. The general rule of eligibility has been laid down in clause 4.1. Clause 4.1 starts with the term 'only'. It states that 'only the candidates from the district concerned where the JNVs are opened are eligible for admission'. The word 'only' implies that the students other than the District where the JNV is situated are excluded. No other interpretation is possible. We cannot persuade ourselves to accede to the arguments of the Mr. Bhavake, the learned Advocate for the Petitioners that even though the student may not be the resident of the same District where the JNV is situated and if he has passed 5th standard from the district where the JNV is situated is eligible to be admitted. Such an interpretation would be against the object and the tenor of the clauses in the prospectus. The aforesaid discussion leads us to conclude that the candidate seeking admission to the JNV must satisfy the twin test (i) he must be studying in class V in Government/Government aided or other recommended schools or B Certificate Competency Course of NIOS in the same District where the JNV is situated and (ii) he must be resident of the same district where the JNV is situated and is seeking admission."*

10. True it is that though not expressly, the petitioners are questioning the vires of clause No.4.1(a). Whereas, in the matter of **Shubham Vijay Patil** (supra) there was no similar challenge and only the dispute was regarding interpretation. Therefore, we are independently considering the issue regarding vires as well. Clause 4.1(a) reads as under :

WHO IS ELIGIBLE

FOR ALL CANDIDATES :

*4.1(a). Admission of candidate to class VI in a JNV is district specific. A candidate who is studying class V in a district is allowed to apply for admission to JNV in the same district only. **Only the bonafide resident candidates from the district concerned** where the Jawahar Navodaya Vidyalaya has been located and studying class V in the same district are eligible to apply for admission. The valid residential proof as notified by Govt. of India of the parent of the same district where the candidate has studied class V and appeared for the JNVST is to be submitted by the provisionally selected candidate at the time of admission. However, if the district where JNV is opened is bifurcated at a later date, the old boundaries of the district are considered for the purpose of eligibility for admission into JNVST. in case a new Vidyalaya is not opened in the newly bifurcated district yet.*

(b) Candidate has to reside in the district where he/she is seeking admission in the JNV located in the same District. Bonafide residence certificate of the parent is to be submitted at the time of verification of documents after the provisional selection.

(c) Candidate has to study class V in any of the Govt. or Govt. recognized schools located in the same District during 2023-24.

(d) Candidates who have passed class V before the session 2023-24 or repeated candidates are not allowed. NVS has the right to compare the application data of previous year(s) to Identify the repeater candidates. If noticed, such candidates will not be allowed to appear for JNVST 2024.

11. As has been cursorily observed herein above, as far as interpretation of this clause is concerned, there can be no doubt that it is only a person who fulfills the two twin test of being a permanent resident of a particular district and completing V standard from the same district is

eligible to seek admission in the JNV situated in that district.

12. Simultaneously, one will have to read the other clauses as well, other than clause 4.1(a). Clause 4.3 would also be relevant and reads as under :

“4.3. A candidate appearing for the selection test must be studying in Class-V for the whole of the academic session 2023-24 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. The candidate who has not been promoted and admitted to class V before 31st July 2023 is not eligible to apply. The candidate who has already passed/studied class V in previous academic sessions is not eligible to appear in the selection test. A school will be deemed recognized, if it is declared so by the Government or by any other agency authorized on behalf of 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 2023-24, Actual admission in Class-VI for the session 2024-25 will be subject to the mentioned condition.”

13. As can be noticed, it is only after reading both these clauses 4.1(a) and 4.3 in juxtaposition that it can be said that the twin test criteria can be made out. However, conspicuously the petitioners are not questioning the vires of clause 4.3.

14. Be that as it may, the petitioners are 21 students who are studying in V standard in Nandurbar district in spite of being not the permanent residents of that district, as has been mentioned herein above, except the petitioner No.15 who, as stated in the title clause is a resident of Nandurbar district. Others are from Dhule, Nanded and Jalgaon districts of Maharashtra and one of them is from Madhya Pradesh. When the district like Nandurbar is predominantly a tribal one, the conspicuous absence in the petition of any pleadings as to why and how the petitioners are required to

migrate to Nandurbar district, in our considered view, as has been the stand of the respondents in the affidavit-in-reply and as has been submitted by the learned advocate Mr. Talhar, the petitioners seem to have decided to take education in the Nandurbar district designedly so that being a tribal district there would be less competition for them to get selected in the JNV, as there are two JNVs in that district. This seems precisely to be the reason, to avoid the mischief of some non-resident students getting admission in a district of which they are not residents, may be because of less competition that the impugned condition seems to have been incorporated.

15. As has been mentioned above this clause No.4.1(a) will have to be read in conjunction with clause No.4.3 and as the clauses have been interpreted in the matter of **Shubham Vijay Patil** (supra) in order to secure the interest of the residents of a particular district this twin test seems to have been incorporated. If the petitioners are keen to take education in a JNV it would always be open for them to undertake the education in the V standard in the academic year 2023-24 and get selected for a JNV situated in their native districts. It is not their stand that they cannot do so for whatever reason.

16. The upshot, the impugned clause 4.1(a) by no stretch of imagination can be said to be either discriminatory or arbitrary. The petition is therefore liable to be dismissed.

17. So far as the request of the learned advocate for the petitioners that as was done in the matter of **Shubham Vijay Patil** (supra) option may be

kept open for the petitioners to seek admission in the JNV in their respective native districts, the petitioners therein had passed V standard from Sangli district and were seeking admission in the JNV from Sangli though they were residents of Kolhapur and Ratnagiri. In that background the Supreme Court directed as under :

“However, we make it clear that the debarment qua the petitioner(s) for seeking admission in Kolhapur and Ratnagiri will not apply in the given facts of the case for the next year to work out the equities.”

Once we have noticed that the petitioners are residents of other districts other than Nandurbar, if they comply with the mandate of two tests, it would always be open for them to seek admission to JNVs from their respective districts if they are able to pass V standard from their native districts. With respect, the aforementioned direction was issued by the Supreme Court to workout the equities, in all probabilities in exercise of powers under Article 142 of the Constitution of India which this Court does not have. Therefore, the request of the learned advocate for the petitioners cannot be accepted.

18. The writ petition is dismissed.

(NEERAJ P. DHOTE, J.)

(MANGESH S. PATIL, J.)