

Amrut

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 486 OF 2023**

MAST. MADHURAJ BHUPESH
PRABHU DESSAI THR FATHER
AND NATURAL GUARDIAN
BHUPESH PRABHU DESSAI
AND ANR

..... Petitioners

Versus

STATE OF GOA
THR THE CHIEF SECRETARY
AND ANR.

..... Respondents

Mr S. G. Desai, Senior Advocate with Mr Laximan Pednekar, Advocate for
Petitioners.

Mr D. Pangam, Advocate General with Ms Maria Correia, Additional
Government Advocate for the Respondents.

**CORAM: M. S. SONAK &
 BHARAT P. DESHPANDE, J J.**

DATED : 8th AUGUST 2023

P.C.:

- 1.** Heard the learned counsel for the parties.

- 2.** The Petitioners, minors, have instituted this petition through their
parents (father) questioning the cut-off date of 01.06.2023 in the impugned
circulars dated 13.12.2022 and 24.05.2023. The impugned circulars
provide that only students aged 3+ as on 01.06.2023 would be eligible for

admission to the first year of Nursery/Preschool for the Academic Year 2023-2024.

3. Upon hearing the arguments, we were not impressed with the challenge to the cut-off date because the cut-off date was based on the requirement in the Right of Children to Free and Compulsory Education Act, 2009 (Said Act), which provides that a child must be at least six years old to be admitted to the first class of elementary education. Any tinkering with the cut-off date might have implications on the statutory requirement in the said Act, which would be impermissible.

4. Mr Desai learned Senior Advocate for the Petitioners, however, pointed out that the Deputy Director of Education, by communications dated 20.06.2023 and 22.06.2023 (Exhibit 10 Colly), had granted relaxation in two cases for admission to the Nursery class for the Academic Year 2023-2024.

5. Upon our query to the learned Advocate General as to how this was done, the learned Advocate General, on instructions, stated that the Deputy Director granted this relaxation because the two students missed the cut-off date by only one day. The learned Advocate General, however, admitted that the Deputy Director should not have granted such relaxation given the cut-off date prescribed in the impugned circulars. The learned Advocate General submitted that strict instructions will now be issued to the officials of the Directorate of Education not to grant such relaxation. The learned Advocate

General submitted that the Deputy Director of Education would also make it clear to the parents of the students admitted to the Nursery that, based upon such relaxation, the students cannot claim admission to the first class of elementary education (first standard) until they complete the age of six years as provided under the RTE. The Deputy Director must issue such clarification within 15 days from today.

6. The parents (father) of the Petitioners before us have filed identical undertakings before us today. One such undertaking by Advocate Bhupesh Prabhu Dessai (Petitioner No.1) is transcribed below for the convenience of reference:

“UNDERTAKING

*I, Advocate Bhupesh Madhukar Prabhu Dessai, son of Madhukar Bhiku Prabhu Dessai, 42 years old, Indian National, Married, Advocate, resident of A6, F2, New Essar Galaxy, 1st Floor, Shankar Wadi Taleigao Goa 403 002 do hereby undertake on behalf of the Petitioner no. 1 above named and as his father and natural guardian that the Petitioner no. 1 on the basis of the order being made today by this Hon'ble court in the above Writ Petition. The Petitioner no. 1 shall not claim any right to admission to class I, until Mast Madhuraj Bhupesh Prabhu Dessai complete the age of 6 years.
Solemnly undertaken at Porvorim Goa on 8th August 2023.*

Sd/-

Adv. Bhupesh Madhukar Prabhu Dessai

Sd/-

Advocate for the Petitioners

Adv. Laxman S. Pednekar”

7. Mr Dessai, on instructions, stated that if similar relaxation is granted to the Petitioners, they will not claim admission to the First standard until they complete six years of age. We accept the undertakings tendered by the guardian of the two Petitioners as undertakings to this Court. Now that the relaxation is granted by the Deputy Director of Education to two students and there is no difference between the said two students and the minor Petitioners before us, we direct the concerned Nursery/Preschool where the Petitioners wish to be admitted not to deny the Petitioners admission to the Nursery class, based upon the cut-off date in the impugned circulars. However, we clarify that such admission will not be the basis for claiming any admission to the first standard until the Petitioners complete the age of six years. The undertaking of the Petitioners’ guardian in this regard is accepted.

8. The above relief is granted in the present case's peculiar facts and circumstances, given the Deputy Director's action in his communications at Exhibit 10 Colly. However, we clarify that we found no good ground to otherwise interfere with the impugned circulars or the cut-off date

introduced by the impugned circulars. The learned AG states that no such relaxations would be granted in future.

9. The petition is disposed of in the above terms. There shall be no order for costs.

10. All concerned are to act based on the authenticated copy of this order.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

TARI AMRUT NAGESH Digitally signed by TARI AMRUT NAGESH
Date: 2023.08.09 11:24:57 +05'30'