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REPORTABLE

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10553 OF 2022**

- 1. PRITAM VIJAY ANUSE,**
Age: 11 Years,
Occupation: Student,
Address while learning in 5th standard
a/p. Kadamwadi-Jamane, Taluka Khed,
district: Ratnagiri,
since minor through his natural
guardian father-Shri Vijay Ananda
Anuse,
R/o. A/p. Mudshingi, Taluka
Hatkanangale, District Kolhapur.
- 2. AARYAN JALINDAR NAGARE,**
Age: 11 Years, Occupation: Student,
Address while learned in 5th Standard
A/P. Kadamwadi-Jamane, Taluka Khed
District: Ratnagiri,
Since minor through his natural
guardian father:-
Shri Jalindar Krishnat Nagare,
R/o. A/P. Donavade, Taluka Karvir,
District Kolhapur.
- 3. TEJAS RAGHUNATH KUMBHAR,**
Age: 11 Years, Occupation: Student,
Address while learning in 5th Standard
A/P. Kadamwadi-Jamane, Taluka
Kehd, District Ratnagiri,

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Since minor through his natural guardian father:-
Raghunath Dinkar Kumbhar,
R.o. A/P. Hiravade (Khalasa),
Taluka Karvir, District Kolhapur.

4. **SHRIVARDHAN RAVINDRA PATIL,**
Age: 11 Yearss, Occupation: Student,
Address while learning in 5th Standard
C/o, Nanaso Masu Mane,
R/o. Karwanchwadi, Ravindra Nagar,
Kuwarbay, District. Ratnagiri,
Since minor through his natural guardian father:-
Shri Ravindra Banda Patil,
R/o. A/P. Khatangle, Taluka Karveer
District Kolhapur.
5. **OMKAR DHANAJI GURAV,**
Age: 11 Years, Occupation: Student,
Address while learning in 5th Standard
C/o. Shri Baburao Bhagoji Khondal,
R/o. At: Pushire Tarfe -Borgaon,
Taluka: Panhala, District Kolhapur.

... PETITIONERS

~ VERSUS ~

1. **THE NAVODAYA VIDYALAYA SAMITI,**
(An Autonomous organization), Under
Ministry of Human Resources
Development, Departmental of School
Education and Literacy, Government of
Maharashtra, Having Head Office at
B-15, Institution Area, Sectgor- 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,
Senpati Bapat Road, Pune 411 016,
Through its Deputy Commissioner.
3. **JAWAHAR NAVODAYA VIDYALAYA, PADAVE,**
Taluka Rajapur, District Ratnagiri,
Through its Principal.

...RESPONDENTS

APPEARANCES

FOR THE PETITIONER Mr Prasad Bhavake .

FOR RESPONDENT NO. 1 Mrs Neeta Masurkar.

**CORAM : G.S.Patel &
 Neela Gokhale, JJ.**

DATED : 17th February 2023

ORAL JUDGMENT (Per GS Patel J):-

1. There is an Affidavit in Reply. **Rule.** Rule made returnable forthwith and the. Petition is taken up for hearing and final disposal.
2. The Petition is brought by five 11-year-old students through their parents and natural guardians. Respondent No. 1 is the Navodaya Vidyalaya Samiti. This is an autonomous organisation and throughout the country it operates and administers the Navodaya Vidyalaya Scheme or project. The 2nd Respondent is the 1st

Respondent's regional office. Respondent No. 3 is the local Vidyalaya in Taluka Rajapur, district Ratnagiri.

3. The five Petitioners say that they were students of Standard V in a school in Ratnagiri. They have given their addresses in Ratnagiri district. Their families, however, originally are from Kolhapur. As we shall see, some capital is sought to be made of this in opposition to the Petition.

4. From April 2020, across the globe, humankind fell into a state it had never encountered, or possibly never imagined could come to pass: isolation, confinement, sickness and death faced us in that unprecedented Covid-19 pandemic and lockdown. In August 2020, at a time when that condition continued in its intensity, and even as we had begun to find some solutions in digital technology, the Petitioners sent in their applications to participate in what is called the JNVST-2021 for admission to the 3rd Respondent Vidyalaya in Standard V. The last date for submitting form was 30th December 2020. An examination was scheduled on 30th March 2021. The pandemic situation and its resultant administrative exigencies resulted in that examination being postponed to 16th May 2021.

5. JNVST- 2021 was again rescheduled to 11th August 2021, when it was finally held. All five Petitioners appeared. The results were declared on 28th September 2021. All Petitioners were selected for admission. Their names were in the merit list issued by the respondent in question. A copy of that merit list for Standard V

is at Exhibit “B”. Copies of the marks statements of the Petitioners are from Exhibit “C” onwards. These documents are not disputed.

6. Even in 2021, we were still very much in the online mode. On 8th August 2021, the Petitioners submitted their documents online. They were all granted admission. Copies of the admission forms and the certificates issued by the Head Master are annexed at Exhibit “D”. Again, these are undisputed.

7. Six weeks later, there came the impugned orders of 26th November 2021 assailed in the Petition, one for each Petitioner. Copies are compiled in Exhibit “E” collectively from page 68. The subject line of each order is about the ‘cancellation’ of admission for each of the five Petitioners. The admission granted is thus undisputed.

8. The impugned orders set out four distinct reasons for cancellation, and all five impugned orders are identical. The first reason is arguably the strangest. It says that Petitioners obtained admission ‘in the middle of’ Standard V. That reason cannot be sustained. It would have been a reason for a threshold rejection of the Petitioners’ applications in August 2020, denying each of them a right even to participate in JNVST-2021. Far from any such denial, the Petitioners seem to have been led down the garden path: allowed to participate, appear for the examination or screening test, qualify, have their names on the merit list, be issued mark sheets and even granted admission.

9. The second reason for cancellation is that there is no 'inward stamp' of the Tehsildar's office for the Standard V. Again, this is hardly a reason for cancellation. If that was a pre-requisite, it had to precede admission. It could not be a 'discovery' made post-admission.

10. The third reason given is that the admission document for Standard V does not 'mention the month'. This is of the same class as the second reason.

11. The fourth is the lack of a stamp on a caste document. This falls in the same category as the second and third reasons.

12. On this basis, and on this basis alone, the admission was sought to be cancelled.

13. At the cost of repetition, this was all during a lockdown period.

14. The Affidavit in Reply by the Principal of the 3rd Respondent first sets out the background to the Jawahar Navodaya Vidyalaya and the National Policy of Education. Amongst other things, it says that to obtain admission to the 6th Standard students have to meet 'eligibility criteria'. The argument is that the students are not from Ratnagiri but from Kolhapur, i.e., not from the same district. But that is not the ground given in the cancellation letter. Reasons for cancellation cannot be retrofitted to the prejudice of the Petitioners. It is not explained how the Petitioners' forms were accepted or they

were granted admission without an eligibility check or scrutiny in the first place. Merely reciting that the parents stay in Kolhapur district is insufficient. There is no law that a child may not be sent away from his home town for the purposes of Education.

15. Then further eligibility requirements are set out in sub paragraph (X) at page 117. It is unclear what the submission is in this regard. But paragraphs 6 and 7 at pages 119 to 120 say:

“6. In view of aforesaid legal position given in para 4 herein above I deny that based on result of 6th standard the petitioners, who could not secure admission in 6th standard in 2021-22, can be granted admission in 6th & 7th Std in JNV as prayed by the petitioners. I say that admissions are given in 6th std in JNV based on JNVST class-VI admission called **Navodaya Vidyalaya Selection Test (entrance Test)**, thereafter it is granted in IXth standard by Lateral Entry Selection Test and then LE Admission (11th). **Thus admission is given based on the strength of class in 6th, 9th and 11th standard and not in between.** It is therefore submitted that the petition filed by the petitioners is devoid of any merit without any corresponding right in the petitioners and hence the petition is liable to be dismissed with cost.

7. **Without prejudice to my aforesaid submissions I deny that the petitioners are entitle to relief claimed by them and I submit that in any case the petition is liable to be dismissed on the ground of delay and laches. As per Exhibit H to the petitioner i.e. the judgment of this Hon’ble court was given in the April 2022. On the basis of judgment petitioners have approached this Hon’ble court in the month of August 2022 seeking admission to next class VII for academic year 2022-23. I deny that judgment at Exhibit H given petitioners right to seek**

admissions for VIIth standard. I say that VIIth standard has already completed 50% of academic year 2022-23. I further state that the judgment is in personam and not judgment in rem and depending on facts of the said case and therefore also it does not apply for seeking admission for VIIth standard in JNV. I therefore also submit that the petition is liable to be dismissed with cost.”

(Emphasis added)

16. Paragraph 6 misses the point entirely. The cancellation is of the five Petitioners’ initial entry. Even the subject line says so. Also, the argument in paragraph 6 is circular reasoning. If there is no admission to Standard VI and VII directly, then there can be no cancellation of a Standard VI and VII enrolment.

17. Admission to Standard V was, as we have noted, delayed and the exam was not held until 11th August 2021. The submission that this was ‘an attempt to get admission in between’ is incorrect. If the reasons given in the Affidavit in Reply are to be accepted, then the Petitioners could never have been allowed to appear for the test at all.

18. The Petition challenges the *cancellation of an admission already granted*. In this entire Affidavit the 3rd Respondent does not explain its own conduct in granting admission in the first place.

19. As to the question of delay and laches, we are unable to understand how this can ever be taken by a body that is set up to promote education and to use it against students seeking an

education. There is no question of delay, and paragraph 7 of the Affidavit in Reply only says that there is a High Court judgment of April 2022 but the Petitioners came to Court only in August 2022. That is hardly the kind of delay that would warrant the dismissal of Petition.

20. The reference is to a judgment order dated 29th April 2022 (AS Chandurkar and GA Sanap JJ) in, *Anushka Sambhaji Patil & Ors v Navodaya Vidyalaya Samiti & Ors*, a copy of which is from page 92.¹ In the *Anushka Patil* decision, there is a detailed discussion inter alia on the very same point involved in the present Petition, viz., the charge that the students had not completed ‘one full year of education’. Paragraphs 4 to 10 of that judgment at pages 97 to 106 read thus:

“4. Shri Prashant S. Bhavake, learned counsel for the petitioners submitted that the reasons assigned by the respondent No.3 in the communication dated 15/03/2022 that the petitioners could not substantiate their claim of having pursued on 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

1 Writ Petition No. 2926 of 2022 : MANU/MH/1532/2022

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 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 dated therein, instruction 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 eight class. Section 2(n) defines the term “school” to mean a recognized 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 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 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 from 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 lockdown 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 petitioner 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.”

(*Emphasis added*)

21. This is precisely our view. That decision is indistinguishable from the present case. It fully analyses the statutory and policy framework, and it is for that reason that we do not re-visit it again. To do so would be jurisprudentially impermissible.

22. We find it exceedingly odd that the Affidavit in Reply says the decision in *Anushka Patil* is “*in personam*” and not “*in rem*”. The deponent has obviously no idea what these legal terms mean. Merely invoking them in an Affidavit in Reply gives them no additional heft. We presume that the deponent of the Affidavit in Reply seeks to say that the *Anushka Patil* decision is confined to the facts of that case, and constitutes no precedent. But even that is incorrect, for several reasons. *First*, we are concerned with the *ratio decidendi* to be discerned, and this is squarely applicable as seen from the portions emphasized above. Shortly stated: once admission is granted, it cannot be cancelled on the basis that one year has not been completed (because the year began late). *Second*, the facts in the *Anushka Patil* case are an almost exact mirror to the facts in the

present case (even the counsel were the same). Indeed, Ms Masurkar makes no attempt to distinguish the facts in the present case from those appearing in the *Anushka Patil* decision. *Third*, only the Supreme Court can say that one of its decisions constitutes no binding precedent.

23. But there is yet more in the *Anushka Patil* decision, on which Mr Bhavake correctly and justifiably relies. The observations in the second unnumbered paragraph of paragraph 11 at page 107 reads thus:

“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.”

(Emphasis added)

24. This is exactly our view. We are not only in entire and respectful agreement with the observations and findings of the Division Bench in the *Anushka Patil* decision, in which we find much to admire (the sedulous attention to detail, the careful analysis of law, and the clear-eyed vision of where lies justice), but we are in every way *bound* by that decision. There is no possibility of distinguishing it on facts. There is no possibility of confining it to the facts of that case. There is no possibility of holding that it does not constitute precedent.

25. Finally, we express our agreement with observations of the Division Bench in paragraph 12:

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.

(Emphasis added)

26. Mrs Masurkar's reliance on the Division Bench judgment of 13th October 2022 in *Ku Shubham Vijay Patil & Ors v Navodaya Vidyalaya Samiti & Ors*² does not, in our view assist the Respondents. That decision is clearly distinguishable on facts and will not constitute a binding precedent for us. That was not a case involving the Covid period. It was a case where the ground taken was that the applicants were from different districts. What was canvassed was that the restriction or requirement of being from the same district was unreasonable and should not be insisted on. That plea was negatived and the challenge to the policy itself failed.

27. Notably, the decision in *Anushka Patil*'s case was of 29th April 2022. It would have been binding on the Court hearing *Shubham Vijay Patil*, a later decision of 13th October 2022 — had the two cases being on the same footing on law. In fact, in *Shubham Vijay Patil*'s case, the *Anushka Patil* decision was not even cited or noted; and for good reason. The challenge was entirely different. We fail to understand how a decision squarely on point, with facts that are on all fours, viz., the *Anushka Patil* decision, can be said not to be binding, and, instead, we are asked to follow the later decision in *Shubham Vijay Patil* (in which *Anushka Patil* is not even cited or noted), which is on a completely different challenge.

28. There is no logic in this submission. If the *Shubham Vijay Patil* judgment is binding on us, then it must follow that the *Anushka Patil* judgment was binding on the Division Bench that decided *Shubham Vijay Patil* — the argument from Mrs Masurkar being that

2 Writ Petition No. 9310 of 2022 : 2022 SCC OnLine Bom 3637.

all three cover the same ground. That would result in the *Shubham Vijay Patil* decision having to be held as one rendered per incuriam since it does not note the earlier binding decision in *Anushka Patil*. But nobody suggests that *Shubham Vijay Patil* is a judgment delivered per incuriam. The reason is plain: both decisions are correctly decided on *distinct* questions of law. Both are binding precedents for what they actually decide. The ratio of *Shubham Vijay Patil* has no application to the facts of the present case, but the decision in *Anushka Patil* is squarely applicable to the present Petition. It is, therefore, the *Anushka Patil* decision that is binding on us, and not the one in *Shubham Vijay Patil*.

29. As we noted, that the Petitioners are not from Ratnagiri is emphatically *not* the reason for cancelling the admission. If the cancellation is to be on the grounds that the persons in question were not from the district and therefore not eligible, that had to be a stated ground for rejection or cancellation in the cancellation document itself. It is not to be found in anywhere in the impugned letters. It is not shown to us that there was any other communication issued to the Petitioners or their parents pointing out this ineligibility. This ground is taken for the first time only in the Affidavit in Reply and is now argued across the bar.

30. The cause title of this Petition shows the every single one of the five Petitioners has given an address “while learning in the 5th standard at Ratnagiri”. Every single one of the five Petitioners has a family home in district Kolhapur. But it is not the case stated in the cancellation letter that there was suppression or that anybody was

misled. If there was a suppression of material documents or information none of the five Petitioners could have been cleared to even appear for eligibility test.

31. This argument also does not explain — rather it attempts to cover up — why admission was granted in the first place and how it could have been granted if there was, according to the 3rd Respondent, the so-called ‘threshold ineligibility’.

32. An administrative action will tested for what it says and what it does, not what it might have done. The reasons in that administrative decision must withstand scrutiny on their own. The decision cannot be supported by *subsequent* reasons invoked only once the administrative decision is challenged before a Court exercising a power of judicial review.

33. We are also unable to understand in a case like this whether the objective of Respondents is to assist students in getting an education, particularly in stressful and unprecedented time such as Covid or to blindly adopt some hyper-technical approach to deny education to those entitled in law to it. We must ask the questions as to what purpose is being serve by this action and whether the object of the Jawahar Navodaya Vidyalaya Scheme is in fact being fulfilled. For, as Mr Bhavake tersely points out, there are vacant seats even now. This is a telling point. Nobody has been adversely affected by the admission granted to the five young students. Nobody will benefit from the cancellation of those seats. All that will happen is that five additional seats will also fall vacant. It is entirely unclear to

us how this is in advancement of this scheme, the policy or any objective of education.

34. Accordingly, the Petition succeeds. Rule is made absolute in terms of prayer clause (b) which reads thus:

“(b) By a suitable Writ, Order or direction, this Hon’ble Court be pleased to quashed and set aside the impugned orders dated 26.11.2021 and which are served upon the Petitioners on 13.12.2021, thereby cancelling the admissions granted to the Petitioners for 6th Std. At the Respondent No. 3-Jawahar Navodaya Vidyalaya pursuant to their selection in JNVST-2021 and accordingly be pleased to direct the Respondents to forthwith grant the admissions of Petitioners for 7th Std. At the Respondent No.3-Jawahar Navodaya Vidyalaya for the academic year 2022-23”.

35. The Petition is disposed of in these terms. There will be no order as to costs.

(Neela Gokhale, J)

(G. S. Patel, J)