

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO.58 OF 2023**

Anubha Srivastava Sahai	)
Age : 44 years, Occu. : Lawyer	)
Indian Inhabitant,	)
R/o. Arlington Roads Enclave,	)
Hiranandani Estate	)
Thane-400 607	)
Taluka : Panvel, District : Raigad.	) ... Petitioner

VERSUS

1.	National Testing Agency	)
	Through Chairperson	)
	C-20 1A/8, Sector 62	)
	IITK Outreach Center	)
	Noida-201309	)
2.	Union of India	)
	Through The Ministry of Education	)
	Through its Secretary	)
	J688+644, C Wing, Shastri Bhawan	)
	Dr. Rajendra Prasad Rd, Rajpath Area,	)
	Central Secretariat, Delhi-110001	)
3.	National Commission For Protection	)
	of Child Rights, 5 th Floor, Chanderlok	)
	Building 36, Janpath Rd,	)
	New Delhi-110001	) ... Respondents

Appearances

Mr. Joseph G. Thattil, i/b M/s. Thattil & Co. for Petitioner/ Intervener in IA No.3656 of 2023.

Anubha Shrivastava Sahai, party in person.

Mr. Anilsing ASG, a/w. Rui Rodrics a/w. Aditya Thakur a/w. Smita Thakur a/w. Jainendra Seth for Respondent.

CORAM : S. V. Gangapurwala, ACJ &
Sandeep V. Marne, J.

Date : 3rd May 2023.

1. This PIL is filed by Petitioner, a child rights activist and a lawyer, seeking twin reliefs of rescheduling JEE (Main)-2023 examination from January 2023 to April 2023 and for relaxation of minimum eligibility criteria fixed at 75% marks (65% for SC/ST) in XII Board Examination for admissions to NITs, IIITs and CFITs.

2. So far as the first prayer for rescheduling of JEE main examination, this court passed following order on 10th January 2023:

“1 In the present PIL the Petitioner prays for two reliefs, (i) to postpone the JEE (Main) exam to be held in January 2023 and (ii) to relax the eligibility criteria of obtaining 75% marks in the 12th standard examination.

2 As far as the challenge to the eligibility criteria of obtaining 75% marks in the 12th standard examination is concerned, the learned Advocate of the Petitioner submits that he has received the copy of Affidavit-in-Reply filed by the Respondent just now and seeks time to file Rejoinder and argue the matter. The eligibility criteria laid down viz. obtaining 75% marks in the 12th standard examination would be relevant at the time of seeking admission to the professional course which would be after June 2023.

3 The present apprehension of the Petitioner is that for the examinations as are scheduled to be held from 24 January 2023 to 31 January 2023, the students will have very less time for preparation. The schedule was declared only on 15 December 2022, hardly 40 days time was accorded to the students to prepare for examination. The learned Advocate for the Petitioner submits that though in April 2023 another opportunity is available to the students to appear for JEE (Main), each and every attempt is counted. Moreover, as a less time is provided for preparations, holding of examination in January 2023

would be detrimental to the interest of students. The learned Counsel submits that the examinations of JEE (Main) to be held in January 2023 may be postponed to April 2023 and the examinations to be held JEE (Main) in April 2023 may be postponed to May 2023.

4 The learned ASG submits that in the year 2019 and in the year 2020 JEE (Main) exams were held in January and April. In the year 2021 because of pandemic the examinations were held in four sessions i.e. February, March, April and May.

5 The learned ASG further submits that the Petitioner does not have locus standi to file the present PIL.

6 The JEE (Main) exams are held twice every year. Even if a student does not fare well in January exam, he can appear in April for improvement and the better marks obtained in either of the exams are taken into consideration.

7 Even if the student does not appear for JEE (Main) exam in January 2023, he can appear for JEE (Main) exam in April 2023.

8 It is not disputed that the schedule of the JEE (Main) examination of January and April is applicable pan India. The Petitioner claims to be a social activist and a child right activist. If any orders are passed today directing postponement of JEE (Main) January 2023 examination, the same may have a cascading effect on the future examination also. The next JEE (Main) examination is held in April 2023, sufficient time would be available to the students from January to April. In case, the student does not fare well in January examination, he can compete JEE (Main) in April examination.

9 The extraordinary circumstances do not appear to exist for restraining the Respondents from holding JEE (Main) examination in January 2023. Lakhs of students must have been preparing for the examination. On the basis of the present PIL on behalf of a child right activist, it would not be appropriate to direct postponement of the examination scheduled pan India.

10 As far as the another challenge to the eligibility criteria is concerned, the learned Advocate for the Petitioner has sought time to file Rejoinder.

11 Place the matter on 21 February 2023."

3. The first prayer for rescheduling the JEE (Main) examination thus no longer survives. We are accordingly considering the second prayer for relaxing the criteria of minimum 75% / 65% marks in XII Board examination.

4. Petitioner claims herself to be a child rights activist working for welfare and redressal of grievances of students. Respondent No.1- National Testing Agency has been established to conduct entrance examinations for admission / fellowship in higher educational institutions. The National Testing Agency issued public notice dated 15th December 2022 inviting online application forms for Joint Entrance Examination (JEE) (Main) – 2023 Session I (January 2023) proposing to hold JEE (Main) 2023 in two sessions in January 2023 and April 2023. JEE Main and Advanced are to be conducted for admissions to National Institutes of Technology (NIT), Indian Institutes of Technology (IIT) and CFITs. An Information Bulletin was published by the National Testing Agency for JEE (Main) 2023. In chapter 14 of the Information Bulletin dealing with 'admission' following condition in clause 14.1 has been incorporated:

14.1 Eligibility for Admission to NITs IIITs and CFITs participating through Central Seat Allocation Board (CSAB)

Admission to BE / B. Tech / B. Arch. / B. Planning courses in NITs, IIITs and CFITs participating through Central Seat Allocation Board will be based on All India Rank subject to the condition that the candidate should have secured at least 75% marks in the class XII examination conducted by the respective Boards. For SC/ST candidates the qualifying marks would be 65% in the class 12th / qualifying examination. **The candidate is also required to pass in each of the subjects of class 12 / qualifying examination.**

Petitioner is aggrieved by condition No.14.1 in the Information Bulletin.

5. The eligibility criteria of securing at least 75% marks in class XII examination or be in the top 20 percentile in class XII examination conducted by respective Boards for admissions to NITs, IITs and CFITs was first introduced during the academic year 2017-18. Irrespective of the score of candidate in JEE, they could not be granted admissions to those institutions unless they secured minimum 75% marks for General category and 65% marks for SC/ST category in XII std. examination. On account of Covid-19 pandemic, the said condition of securing minimum percentage of marks was relaxed for JEEs conducted in the years 2020-21, 2021-22 and 2022-23. The said minimum criteria is insisted upon in the JEEs held in the year 2023 (AY 2023-24). Petitioner is aggrieved by the decision of the National Testing Agency in prescription of the said criteria and has accordingly filed the present petition in public interest.

6. Interim application No.3656 of 2023 has been filed by Mr. Utpal Hazra, who is father of Ms. Sneha Hazra. Sneha appeared in class 12th examination of CBSE Board in the year 2023 and secured 71.8% marks. On account of relaxation granted for JEE (Main) 2023, Sneha was fulfilling the eligibility criteria for admission to NITs, IITs and CFITs. She

appeared for JEE (Mains) 2022 and secured 87.074% marks when cut off marks for JEE (Advanced) was 88.412438%. Therefore Sneha could not appear for JEE (Advanced) for 2022, though she was granted admission for B.Tech course in the Institute of Technology at Chandigarh. Instead of taking admission, she decided to take a drop with plans to improve her score in JEE-Mains and Advanced examinations. In Session I of JEE (Mains) held in January 2023, she scored over 91.5% marks but again opted out of the admission offered in the institute with plans to appear again in Session II of JEE (Mains). She has filed intervention application with a grouse of prescription of 75% marks in 12th Std. Examination as eligibility criteria for admission to IITs, NITs and CFITs.

7. We have heard Ms. Anubha Sahai party in person, who is also an advocate. She would submit that the condition of securing 75% marks in 12th Std. examination was not insisted upon in the years 2021 and 2022 and therefore insistence on that criteria in the year 2023 is arbitrary. That the objective behind relaxing the criteria in 2021 and 2022 was low scores by students in 12th Std. examinations due to Covid-19 pandemic. She would submit that several Covid pandemic affected students who

appeared for 12th Std. in 2021 are also eligible to seek admissions in NITs, IITs and CFITs in the year 2023. Prescription of condition of minimum 75% marks throws such students out of the fray even if they secure higher marks in JEE-Mains and Advanced.

8. Mr. Thattil, the Ld. Counsel appearing for the Intervener would submit that the intervener would not be eligible to secure admission to IIT on account of scoring 71.8% marks in the 12th Std. examination. That her marks were decided as per the calculations decided by CBSE for Covid affected students of the years 2020-21 and 2021-22 under which, a formula adopted by CBSE was grant of weightage of 30% to first semester and 70% for second semester. He would submit that there are thousands of students who could not secure minimum 75% marks in 12th Std. examinations particularly in stricter boards like CBSE. He would further submit that the other relaxation of being in top 20 percentile of the board is meaningless as in almost all the boards the criteria of minimum 75% marks is proving to be more stricter than the criteria of being in 20 percentile and therefore the said relaxation is otherwise futile.

9. Mr. Anil Singh, the Ld. Additional Solicitor General of India would oppose the petition. He would submit that the criteria of minimum 75% marks has not been introduced for the first time in the year 2023 and the same has been in existence since the year 2017-18. That the said criteria was prescribed even for the year 2020-21 and 2021-22 but by separate letters, relaxation was granted to that condition on account of Covid-19 pandemic. That petitioners cannot seek continuation of such relaxation forever. There cannot be any legitimate expectation in a hope. In support of his contentions Mr. Singh would rely upon judgments of the Apex court in **Maharashtra State Board of Secondary and Higher Secondary Education and Anr. Vs. Parisosh Bhupesh Kurmarsheth**, AIR 1984 SC 1543 and **State of Bihar Vs. Sachindra Narayan and Ors.**, (2019) 3 SCC 803.

10. We have considered the submissions canvassed before us. There is no denial to the fact that the condition of securing 75% marks (65% for SC/ST) or being in top 20 percentile of the board was incorporated in JEE (Main) 2018. The same was repeated in JEE (Main) 2019. The same was also present in JEE (Main) 2020. However on account of outbreak of

Covid-19 pandemic, the Government of India, Ministry of Human Resource Development, Department of Higher Education issued letter dated 24th April 2020 directing as under:

“2. For admissions in NITs and other Centrally Funded Technical Institutions, apart from qualifying the JEE (Mains), the eligibility is to secure a minimum of 75% marks in 12th Board exams or rank among the top 20 percentile in their qualifying examinations. Due to prevailing circumstances, as recommended by CSAB-2020 it has decided to relax the eligibility criterion for admission to NITs and other CETIs. JEE (Mains) 2020 qualified candidates will now only need to a passing certificate in class XII examination irrespective of the marks obtained.

3. Above relaxation is one time shall be applicable for the academic year 2020-2021 only. CSAB – 2020 shall follow all other conditions for admission to under graduate programmes of NITs and other CFTIs.

11. For JEE (Main) 2021, the criteria of minimum 75% marks (65% for SC/ST) or being within 20 percentile of the board was repeated. However by letter dated 21st January 2021, the Government of India extended the relaxation granted in the previous year for JEE (Main) 2021 by directing them the qualified candidates needed just passing certificate in class 12th examination irrespective of the marks obtained. For JEE (Main) 2022, similar relaxation was granted by letter dated 20th June 2022.

12. The Government of India has not extended the relaxation granted in previous 3 years owing to Covid-19 pandemic for JEE (Mains) 2023. We find that the relaxation was granted on account of existence of special circumstances by the Government of India. Petitioner and Intervener do not have any vested right to claim relaxation for the current year's examination also. Merely because relaxation in criteria of minimum 75% marks (65% marks for SC/ST) in 12th Std. was granted in the previous 3 admission processes, the same would not entitle the students to continue to claim relaxation indefinitely.

13. It would not be possible for this court to sit in judgment over the decision of the National Testing Agency in prescribing the eligibility criteria for admissions to NITs, IITs and CFITs. Though National Testing Agency has filed additional affidavit dated 26th April 2023 offering justification for prescription of criteria of 75% marks, we cannot go into the merits of the said justification. In this regards, reliance placed by Mr. Singh on the judgment of the Apex Court in ***Paritosh Bhupesh Kurmarsheth*** (supra) is apposite, wherein it is held :

“16. In our opinion, the aforesaid approach made by the High Court is

wholly incorrect and fallacious. The Court cannot sit in judgment over the wisdom of the policy evolved by the Legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The Legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution. None of these vitiating factors are shown to exist in the present case and hence there was no scope at all for the High Court to invalidate the provision contained in clause (3) of Regulation 104 as ultra vires on the grounds of its being in excess of the regulation-making power conferred on the Board. Equally untenable, in our opinion, is the next and last ground by the High Court for striking down clause (3) of Regulation 104 as unreasonable, namely, that it is in the nature of a bye-law and is ultra vires on the ground of its being an unreasonable provision. It is clear from the scheme of the Act and more particularly. Sections 18, 19 and 34 that the Legislature has laid down in broad terms its policy to provide for the establishment of a State Board and Divisional Boards to regulate matters pertaining to secondary and higher secondary education in the State and it has authorised the State Government in the first instance and subsequently the Board to enunciate the details for carrying into effect the purposes of the Act by framing regulations. It is a common legislative practice that the Legislature may choose to lay down only the general policy and leave to its delegate to make detailed provisions for carrying into effect the said policy and effectuate the purposes of the statute by framing rules/regulations which are in the nature of subordinate legislation. Section 3(39) of the Bombay General clauses Act, 1904, which defines the expression "rule" states: "Rule shall mean a rule made in exercise of the power under any enactment and shall include any regulation made under a rule or under any enactment". It is important to notice that a distinct power of making bye-laws has been conferred by the Act on the State Board under Section 38. The Legislature has thus maintained in the statute in question a clear distinction between "bye-laws" and "regulations". The bye-laws to be framed under Section 38 are to relate only to procedural matters concerning the holding of meetings of the State Board, Divisional Boards and the Committee, the quorum required, etc. More important matters affecting the rights of parties and laying down the manner in which the provisions of the

Act are to be carried into effect have been reserved to be provided for by regulations made under Section 36. The Legislature, while enacting Sections 36 and 38, must be assumed to have been fully aware of the niceties of the legal position governing the distinction between rules/regulations properly so called and bye-laws. When the statute contains a clear indication that the distinct regulation-making power conferred under Section 36 was not intended as a power merely to frame bye-laws, it is not open to the Court to ignore the same and treat the regulations made under Section 36 as mere bye-laws in order to bring them within the scope of justiciability by applying the test of reasonableness.”

14. Petitioners cannot claim relaxation in eligibility criteria as a matter of right. Whether relaxation is to be extended or not is in the realm of policy decision of the government. The government may or may not relax the eligibility conditions depending on fact situation. Undeniably, the very same eligibility condition existed during the years 2017-18, 2018-19 and 2019-20 and the students seeking admission during those years accepted the said condition and the entire process of admissions was completed by following the said eligibility criteria. We do not find the said eligibility condition to be arbitrary in any manner. Petitioner or intervener have also not challenged prescription of the said condition. What they seek is essentially relaxation of the said condition. The relaxation is sought under legitimate expectation that the government would extend relaxation for the current year as well. However in absence of any vested right, no legitimate expectation would

exist. In *State of Bihar Vs. Sachindra Narayan* (supra), the Apex Court has held :

“23. In view of the above judgments, legitimate expectation is one of the grounds of judicial review but unless a legal obligation exists, there cannot be any legitimate expectation. The legitimate expectation is not a wish or a desire or a hope, therefore, it cannot be claimed or demanded as a right”

15. The students, whose cause petitioner is allegedly espousing, neither have any vested right nor legitimate expectation to claim relaxation in the eligibility criteria for admissions to NITs, IITs and CFITs during the current year. Since grant of relaxation is a policy decision, the same can be taken by the Government of India in appropriate circumstances. This court would not be in a position to issue Writ of mandamus directing the government to grant relaxation in the eligibility criteria for admissions.

16. It is also required to be borne in mind that the JEE is held pan India and thousands, perhaps lakhs, of students participate in the same. This would be another reason why this court would be loathe in interfering in the methodology of conducting JEE and / or admission process, particularly when the two sessions of JEE 2023 has already been

conducted and JEE (Advanced) is scheduled to be held in a short while from now.

17. Resultantly, we do not find any merit in the petition. PIL Petition is accordingly dismissed without any orders as to costs. Interim Applications also stand disposed of.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)