

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

WRIT PETITION NO.8260 OF 2022

Petitioner : Abhinav Dilip Thosare,
 Aged above 20 Years, Occ. Student,
 R/o. Chikali Bk. Road, Near Lady Harding
 Hospital, Ekadant Society, Washim, 444505.
 – Versus –

Respondents : 1] State Common Entrance Test Cell,
 Maharashtra State, Mumbai.
 Add: 8th Floor, New Excelsior Providing,
 A.K. Nayak Marg, Fort, Mumbai – 400001.

2] Lokmanya Tilak Jankalyan Santh's Priyadarshani
 Institute of Architecture And Design Studies,
 Nagpur.
 Add: Priyadarshini Campus, Digdoh Hills, Near
 CRPF, Hingna Road, MIDC,
 Nagpur – 440019.

3] Kavikulguru Institute of Technology and Science,
 Ramtek, District Nagpur,
 through its Principal.
 Add: KITS, Ramtek Road, Ramtek,
 Nagpur 441106.

Amended vide Court
 Order's dated
 23/03/2023.

 Mr. C.F. Bhagwani, Advocate for the Petitioner.
 Mr. N.A. Gaikwad, Advocate for Respondent No.1.
 Mr. A.S. Agrawal h/f Mr. S.W. Sambre, Advocate for Respondent No.3.

CORAM : **A.S.. CHANDURKAR & M.W. CHANDWANI, JJ.**
RESERVED ON : **27th APRIL, 2023.**
PRONOUNCED ON : **4th MAY, 2023.**

J U D G M E N T : *(Per M.W. Chandwani, J.)*

Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsel for the parties.

02] This is a glaring example of cut, copy and paste, wherein the petitioner lost his crucial one academic year of his education.

The petitioner appeared for Maharashtra State Common Entrance Test [MSCET] of Maharashtra State for getting admission to technical course of Bachelor of Architecture [B.Arch.] for the year 2022-2023. The petitioner successfully cleared the examination and the result was declared on 31/08/2022. The petitioner participated in Centralized Admission Process [CAP] Round 1. The list of allotment of colleges for CAP Round was published on 09/11/2022 and the petitioner was allotted respondent No.2-College. The petitioner uploaded the allotment letter from website of respondent No.1. The petitioner was required to report to respondent No.2 from 10/11/2022 to 12/11/2022 for taking admission in respondent No.2-College. When the petitioner approached to respondent No.2 for admission in B.Arch. course, respondent No.2 refused to admit the petitioner as in the allotment letter issued by respondent No.1, the reporting date was given as between 02/12/2021 to 09/12/2021 up to 05:00 p.m. The petitioner on 13/11/2022 communicated the said error to respondent No.1 by email, but nothing has

been done by respondent No.1. The petitioner could not get the admission for the aforesaid reason, therefore, approached this Court by way of writ petition praying for direction to correct the date and for admission to the 1st year course of B.Arch.

03] Respondent No.1, who conducts the Common Entrance Test in the State of Maharashtra, filed its affidavit contending that petitioner was allotted seat in CAP Round 1. Respondent No.1 admitted such mistake in the dates in letter of allotment of seat as contended by the petitioner. However, excuse has been given by respondent No.1 that during that time on 10/11/2022, the system of updating portal was in process. Such updating is required to be done while the server is live without shutting the server/portal. It is contended that unfortunately, before the process of updating, coincidentally the petitioner took out the printout at 09:24 a.m. on 10/11/2022 when the system was about to be updated. It is contended that after the petitioner took printout, immediately within official hours the said portal was updated and the dates were modified immediately within half an hour. It is contended that the petitioner could have taken second printout, but he waited till 13/11/2022. Therefore, the petitioner is not entitled for relief.

04] Having heard the learned Counsel Mr. C.F. Bhagwani for the

petitioner, learned Counsel Mr. N.A. Gaikwad for respondent No.1 and learned Counsel Mr. A.S. Agrawal for respondent No.3. We find that by the allotment letter, the petitioner has been allotted respondent No.2-College for pursuing the course of Architecture for the academic year 2022-2023. However, perusal of allotment letter shows that in condition No.7, the reporting dates for the admission in the allotted institution are shown between 02/12/2021 to 09/12/2021 up to 05:00 p.m. Indisputably, these dates are incorrect dates, because the allotment letter was given to the petitioner after 09/11/2022. The allotment letter is shown to be printed from the portal on 10/11/2022. Rather the reporting dates in allotment letter are of a year before. Perhaps, this is a reason why respondent No.2 did not admit the petitioner in its college for pursuing the course of Architecture. Thus, there is a clear mistake on the part of respondent No.1 and the petitioner cannot be blamed for it. Even after email dated 13/11/2022 to respondent No.1, no steps were taken by it to accommodate the petitioner in subsequent CAP rounds. Resultantly, the petitioner could not get admission in any college.

05] During course of hearing, it was pointed to us that there are various vacant seats for the course in respondent No.3-College. Respondent No.3 informed that unfortunately the examination for the second semester of

course of Architecture is going to be held in near future, rather the first semester examination is already over, therefore, respondent No.3-College, who was joined later on, where the vacancy was available, showed its inability to admit the petitioner, since considerable period has been lapsed for academic year 2022-23.

06] At this state, the learned Counsel appearing on behalf of the petitioner submits that due to passage of time, the petitioner cannot get admission for the academic year 2022-23 and suffered a setback of one academic year. The petitioner at least may be accommodated in the next year admission process for the course of Architecture without appearing in the Common Entrance Test Examination, 2023.

07] The learned Counsel appearing on behalf of respondent No.1 objected to the request of the petitioner. According to him, as per information broucher for the admission to under graduate technical course, the petitioner has to appear for the entrance examination to be conducted by respondent No.1 for getting admission in B.Arch. course in next year. According to him, there is no exemption to any student to get admission in the under graduate college for technical education without appearing in the MSCET.

08] We have noticed that the examination for first semester of B.Arch. course in respondent No.3-College is already over and the students are preparing for ensuing examination for second semester. We find it difficult to direct the respondents to admit the petitioner for the academic year 2022-23 and it will not be feasible for the petitioner as well as the respondent No.3-College to get over this situation. Therefore, we hardly find any scope for direction to the respondents to admit the petitioner for pursuing in B.Arch. course for academic year 2022-23.

09] Our attention has been drawn by the petitioner on decision of the Supreme Court in **S.Krishna Sradha vs. State of Andhra Pradesh and others – AIR 2020 SC 47**, wherein the Supreme Court has dealt with the issue of Common Entrance Examination in paragraphs 8.1, 8.2 and 9 and issued guidelines, which are reproduced :

“(i) That in a case where candidate/student has approached the court at the earliest and without any delay and that the question is with respect to the admission in medical course all the efforts shall be made by the concerned court to dispose of the proceedings by giving priority and at the earliest.

(ii) Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and

there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed – 30th September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time, i.e., within one month from 30th September, i.e., cut off date and under no circumstances, the Court shall order any Admission in the same year beyond 30th October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled.

(iii) In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and wherever it finds that the action of the authorities has been arbitrary and in breach of the rules and regulations or the prospectus affecting the rights of the students and that a candidate is found to be meritorious and such candidate/student has approached the court at the earliest and without any delay,

the court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered appropriate in the case and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated in the next academic year out of the seats allotted in the management quota.

(iv) Grant of the compensation could be an additional remedy but not a substitute for restitutorial remedies. Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to lose one full academic year and who could not be granted any relief of admission in the same academic year.

(v) It is clarified that the aforesaid directions pertain for Admission in MBBS Course only and we have not dealt with Post Graduate Medical Course.”

10] Evidently, more than five months have been lapsed from the cut off date, therefore, the direction to admit the petitioner to pursue the B.Arch. course for academic year 2022-23 will not be justifiable. However, looking into the facts that there is a mistake committed on the part of respondent No.1 and just because of this mistake, the petitioner has been denied admission to

the course of B.Arch. by respondent No.2. We find that there is no fault attributable to the petitioner, who has been denied admission in B.Arch. course illegally. Needless to say that the petitioner got the admission in first CAP Round being meritorious, in spite of this, he lost his one academic year due to mistake on the part of respondent No.1. Under these exceptional circumstances, relief can be moulded and respondent No.1 can be directed to consider the admission of the petitioner in the next academic year for admission into B.Arch. course for the academic year 2023-24 without insisting him to appear in the MSCET examination. Therefore, we proceed to pass the following direction.

ORDER

- I. The writ petition is partly allowed.
- II. Respondent No.1 is directed to be accommodated for the admission to pursue the B.Arch. course for year 2023-24 without insisting him to appear for CET, 2023.
- III. It is made clear that the marks, which have been obtained by the petitioner in MSCET-2022, shall be considered by respondent No.1 for allotment of the college to the petitioner for next academic year 2023-24.

- IV. The petitioner is free to avail the remedy available under the law for compensation for loss of one academic year.
- V. Rule accordingly with no order as to costs.

**sandesh*

(M.W. CHANDWANI, J.)

(A.S. CHANDURKAR, J.)