



244-J-WP-1731-24

1/13

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

WRIT PETITION NO.1731 OF 2024

Amartya Rajkumar Meshram,  
Aged: 20 years, Occu. Student,  
r/o Near Deshmukh Saw Mill Bidgaon,  
Tq. Kamptee, Dist. Nagpur ... Petitioner

-vs-

1. The Director of Technical Education  
State of Maharashtra, 3, Mahapalika Marg,  
Fort, Mumbai
2. Joint Director, Directorate of Technical Education,  
Departmental Office, Nagpur
3. Sikh Education Society,  
through its President, Bezonbagh,  
Nagpur 440004
4. Gurunanak Technical Institute  
(Diploma in Pharmacy), through  
Principal, Nari, Nagpur – 440026
5. Pharmacy Council of India through its  
Chairman, NBCC Centre, 3<sup>rd</sup> Floor,  
Okhla Phase 1, Near Hotel Crown Plaza,  
New Delhi-110020
6. Maharashtra State Board of Secondary  
and Higher Secondary Education, Nagpur  
Divisional Board, through Divisional Chairman,  
Civil Lines, Nagpur 440001 ... Respondents

Shri Akshaya M. Sudame, Advocate with Shri Ibrahim A. Fidvi, Advocate for petitioner.

Shri N. R. Patil, Assistant Government Pleader for respondent Nos.1 and 2.

Shri Nitesh Samundre, Advocate for respondent Nos.3 and 4.

Shri Nandesh Deshpande, DSGI for respondent No.5.

Shri Anand Parchure, Advocate with Shri Kalyan Chiwarkar, Advocate for respondent No.6.

**CORAM** : NITIN W. SAMBRE AND MRS VRUSHALI V. JOSHI, JJ.

**DATE** : November 19, 2024.

Oral Judgment : (Per : Nitin W. Sambre, J.)

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

The challenge in the petition is to the decision of respondent No.1 thereby not recommending/approving the candidature of the petitioner for admission to the Diploma course in Pharmacy for the academic session 2023-2024.

2. The petitioner was held to be not eligible by the respondent No.1 as the petitioner has neither admitted nor cleared 11<sup>th</sup> standard examination though it is admitted that the petitioner was holding qualification of 10+2 pattern.

3. The facts necessary for deciding the petition are as under :

Vide Exam Seat No.NO64898 the petitioner cleared his Higher Secondary School Examination (HSSC). The certificate and mark-sheet issued by the respondent No.6-Board indicate that the petitioner has passed HSSC examination in February 2023 under 10+2 pattern. The petitioner cleared his HSSC examination in Science stream with Mathematics, Physics, Chemistry and Biology subjects and in aggregate

has 370/600 (61.67%) marks i.e. First Class.

4. Based on the above, the petitioner applied for the admission in respondent No.4-Institution run by respondent No.3-Education Society for Diploma in Pharmacy course. The petitioner, accordingly was granted admission from 'Scheduled Caste' reserved category in the CAP round. However, after verification of documents and noticing that the petitioner has not cleared 11<sup>th</sup> standard (Science) qualifying examination, the respondent No.1 disapproved the candidature of the petitioner.

5. The petitioner accordingly approached this Court questioning the same alleging that the relevant eligibility criteria for Diploma in Pharmacy prescribed by the Government of Maharashtra Higher & Technical Education Department for Full Time (Diploma in Pharmacy) Technical Courses, Admission Information Brochure for Academic Year 2023-2024 is as under:

|   |                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|---|---------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2 | Diploma in Pharmacy | <p><b>(1) Maharashtra State Candidature Candidate</b></p> <p>a. The Candidate should be an India National;</p> <p>b. pass in 10+2 examination (science academic stream) with Physics, Chemistry and Biology or Mathematics</p> <p>OR</p> <p>Any other qualification approved by the Pharmacy Council of India as equivalent to the above examination</p> <p>Note: Other than Maharashtra State Candidates shall be eligible for Institution quota only.</p> <p>(2) .....</p> |
|---|---------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

6. According to Shri A. Sudame, learned counsel appearing for the petitioner, the petitioner was holding appropriate qualification of passing 10+2 examination/pattern having cleared HSSC examination in Science stream with Mathematics, Physics, Chemistry and Biology subjects. So as to substantiate the claim, the learned counsel would invite our attention to HSSC certificate and the marks-sheet issued by the respondent No.6-Board so as to urge that said certificates sufficiently establish that the petitioner holds requisite qualification of passing 10+2 pattern prescribed by the respondent No.1. According to him, Notification dated 09/10/2020 of the Pharmacy Council of India also prescribes minimum qualification for the candidate is passing of 10+2 examination (Science academic stream) with Physics, Chemistry and Biology or Mathematics subjects or any other qualification approved by the Pharmacy Council of India as equivalent to the above examination for admission to Diploma in Pharmacy (Part-I and Part-II). According to Shri Sudame, Notification dated 10/12/2014 prescribes minimum qualification for admission to First year B. Pharm viz. should have passed 10+2 examination conducted by the respective state/central government authorities recognized as equivalent to 10+2 examination by the Association of Indian Universities (AIU) with English as one of the subjects and Physics, Chemistry, Mathematics/Biology as optional subjects individually.

“However, the students possessing 10+2 qualification from non-formal and non-class rooms based schooling such as National Institute of Open school systems of States etc. shall not be eligible for admission to B.Pharm Course.” The learned counsel would claim that as and when it is the intention of the Pharmacy Council of India, Central Government to disqualify a particular qualification to be insufficient to consider for admission, an expressed provision is made in the regulation dealing with eligibility criteria for such admission. As such, he would claim that the petitioner is entitled for approval and continuation of admission in B. Pharm course and the respondent No.1 be directed to recommend the candidature of the petitioner to be qualified for such admission.

In addition, the learned counsel would claim that the eligibility/qualification of the petitioner is duly substantiated by the stand taken by the HSSC Board which has in its reply in categorical terms stated that the qualification of passing 10+2 pattern can be held to be sufficient. That being so, he would claim that the impugned decision is liable to be quashed and set aside.

7. As against above, the learned Assistant Government Pleader Shri N. R. Patil appearing for the respondent Nos.1 and 2 would urge that the petitioner since has not cleared 11<sup>th</sup> standard examination and

has directly appeared for 12<sup>th</sup> standard examination after clearing 10<sup>th</sup> standard examination, it cannot be said that the petitioner holds requisite qualification of 10+2 pattern and as such his candidature was rightly so rejected. So as to substantiate the aforesaid stand, Shri Patil has invited our attention to the Admission Brochure for academic session 2023-2024 and particularly Clause (2) thereof which deals with qualification required for admission to Diploma in Pharmacy course so as to claim that a student after 10<sup>th</sup> standard must attend 11<sup>th</sup> and 12<sup>th</sup> standard and only after clearing both the standards, he/she can be said to be fully qualified under 10+2 pattern as has been prescribed. As such, it is urged that the impugned decision is based on the eligibility/qualification prescribed in the Information Brochure based on the directives/clarification prescribed by the Pharmacy Council of India.

Shri Nandesh Desphande, learned Deputy Solicitor General of India for the respondent No.5-Pharmacy Council of India would adopt the same line of argument. In addition, he would claim that the Pharmacy Council of India in response to the query raised by the respondent No.1-State Government has already clarified their stand thereby stating that the student who has passed 10+2 pattern in Science stream with Physics, Chemistry and Biology/Mathematics subjects in the academic session, can be said to be qualified for

admission to B. Pharm course. He would claim that the Pharmacy Council of India vide communications dated 30/07/2015 and 07/09/2015 has clarified the position as regards considering the candidature of the students who have passed the examination from open schools. As such, he would submit that the Court may pass appropriate orders in the matter.

8. We have considered the rival submissions. It is not in dispute that the petitioner holds the qualification of passing 10+2 pattern with Mathematics, Physics, Chemistry and Biology subjects with aggregate 61.67 %. Based on above, in the CAP round against the seat reserved for Scheduled Caste category candidate, his admission was recommended by the respondent Nos.1 and 2 to the respondent No.4-Institution managed by the respondent No.3-Society. After submitting all the relevant documents to respondent Nos.3 and 4, same were forwarded to the respondent Nos.1 and 2 for verification. During such verification having noticed that the petitioner after passing 10<sup>th</sup> standard examination has not appeared for 11<sup>th</sup> standard examination and has directly appeared for 12<sup>th</sup> standard examination, respondent Nos.1 and 2 took the impugned decision of not recommending the candidature of the petitioner for admission to B. Pharm course in the respondent No.4-Institution.

9. If we consider the stand taken by the respondent No.6-Board, in its reply it has in categorical terms stated that the petitioner not only has filled Form No.17 but it is also claimed that the certificate issued by the HSSC Board does not distinguish between a regular student and a student appearing for the HSC examination as a private student. It is also stated that all students passing the HSC examination are treated equivalent under the 10+2 pattern. The stand taken by the respondent No.6-Board in paragraphs 6 and 7 of its reply is worth referring to which read thus :

*“ 6. In the instant case, from the available record of the petitioner, it was verified that he has completed SSC examination conducted by the Maharashtra State Secondary and Higher Secondary Board, Pune in July 2021 and he has duly filled in the Form No.17 as is required as per the Information and Procedure Brochure issued by the Maharashtra State Board of Secondary and Higher Secondary Education, Pune. A copy of the said duly filled in form alongwith the relevant documents is already annexed with the petitions as Annexure-IV. Further upon finding the same form in order and in consonance with the mandates in the Information and Procedure Brochure, the petitioner was allowed to appear for the HSC examination conducted in February 2023. The said candidate has also passed the HSC examination and a certificate to that extent is also issued to him in May 2023.*

*7. It is submitted that the Certificate issued by the Board does not distinguish between a regular student and a student appearing for the HSC examination as a private student and all students passing the HSC are treated equivalent under the 10+2 pattern. Further, the regulations of 1977 or the Information and Procedure Brochure do not strictly mandate a student who desires to appear as a Private candidate by filling up Form No.17 to pass 11<sup>th</sup> standard from a junior college, exam*

*of which is not conducted or governed by the Maharashtra State Board of Secondary and Higher Secondary Education.”*

10. A perusal of the pleadings referred above in paragraphs 6 and 7 alongwith the information and guidelines issued to the private students like the petitioner so as to draw the benefit of Form No.17 reflects that such benefits are available to the students who have passed 10<sup>th</sup> State Board Examination or have passed equivalent examination from other State and after gap of two years of such examination was held eligible to appear for the 12<sup>th</sup> Standard Examination. It further provides that such candidates who have passed or failed 11<sup>th</sup> standard examination can appear for 12<sup>th</sup> Standard Examination provided their name should not be on the roll of the junior college post 31<sup>st</sup> of May and they should have cleared 10<sup>th</sup> Standard Examination with English subject. The benefit under Form No.17 is available even to the science stream students provided they have secured minimum 35% of marks in the Board Examination. In this backdrop, it ought to be observed that the respondent no.6-Board within its statutory powers has permitted the students like petitioner to appear in 12<sup>th</sup> Standard Examination though they have not passed 11<sup>th</sup> Standard Examination provided as they have qualified prescribed conditions as reflected in Annexure-R-6(1). The respondent no.6-Board has stated that the petitioner has qualified the requisite

condition and as such was permitted to draw the benefit of Form No.17 thereby permitting him to appear for 12<sup>th</sup> Standard Examination which he has cleared in First Class. Once the statutory Board recognizes the qualification of 10+2 pattern, even if the petitioner has not appeared in 11<sup>th</sup> Standard examination, we fail to understand as to under which authority the respondent No.2 can sit in an appeal over the decision of the Board to re-assess the qualification of the petitioner and infer that the petitioner has not passed 10+2 in Science stream.

Section 18 of the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965 provides that the powers and duties of the State Board which is pertaining to extending advice to the State Government in the matter of policy relating to the Secondary or Higher Secondary education in general. Section 19 of the Act of 1965 deals with the powers and duties of the Divisional Board. As such the highest policy making authority i.e. the respondent no.6 who is entrusted to advice the Government to ensure uniform pattern of secondary and higher secondary education has already opined that the petitioner can be said to have cleared 10+2 pattern. Furthermore, the Regulations framed under the Act of 1965 also in express terms does not prescribe any different 10+2 pattern.

11. In that view of the matter and having regard to the certificate issued by the Board, it has to be inferred that the petitioner holds the qualification of HSSC pass under 10+2 pattern in Science stream with Mathematics, Physics, Chemistry and Biology subjects which is required for the purpose of applying for admission to B. Pharm course. The Information Brochure published by the respondent No.1 in categorical terms prescribes the required qualification for B. Pharm course of passing examination of 10+2 pattern in Science stream with the subjects referred above.

12. After holding that the petitioner has passed 10+2 pattern in Science stream with Mathematics, Physics, Chemistry and Biology subjects, we are required to adhere to the provisions of qualification which are prescribed by the Pharmacy Council of India.

13. The Pharmacy Council of India in its notification dated 09/10/2020 in Chapter 2 Clause 4 has prescribed that minimum qualification for admission to Diploma in Pharmacy-A is to pass under 10+2 examination (science academic stream) with Physics, Chemistry and Biology or Mathematics or any other qualification approved by the Pharmacy Council of India as equivalent to the above examination. The petitioner has not only secured qualifying marks in Science stream

with Physics, Chemistry and Biology subjects but has also passed in Mathematics subject. The said qualification is duly endorsed by the Pharmacy Council of India in response to the query raised by the respondent Nos.1 and 2 as could be inferred from the communication which is produced at Annexure-5 to the reply of respondent No.1.

14. Apart from above, the fact remains that in the Government Resolution dated 18/06/2021 issued by the respondent No.1-State, it is aptly clarified that such candidates who hold HSSC qualification of 10+2 pattern in Science stream with Physics, Chemistry and Biology or Mathematics, are eligible for obtaining admission to Diploma B. Pharm course.

15. Rightly so, the counsel for the petitioner has invited our attention to the Notification dated 10/12/2014 issued by Central Government of India which is also termed as The Bachelor of Pharmacy (B.Pharm.) Course Regulations, 2014, whereby eligibility criteria for admission to Bachelor of Pharmacy (B. Pharm) course is prescribed. In the said regulation, an embargo is specifically created for the students seeking admission in the B. Pharm course who are possessing 10+2 qualification from non-formal and non-class rooms based schooling such as National Institute of Open Schooling, open

school system of states etc., and as such, as and when it was the intention of the respondent No.6-Pharmacy Council of India not to recognize a particular qualification to be sufficient enough for admission in Pharmacy course, in expressed terms such an embargo or conditions have been incorporated in the Regulation.

16. In this backdrop, for the aforesaid reasons set out, we hold that the petitioner holds requisite qualification of 10+2 pattern and as such he is eligible/qualified for the admission to Diploma B. Pharm course. That being so, the impugned order passed by the respondent No.1 thereby not recommending the candidature of the petitioner (Annexure-XII to the petition) is hereby quashed and set aside only to the extent whereby the petitioner is concerned. It is declared that the petitioner is eligible and qualified for admission to Diploma B. Pharm course. The consequential orders shall be issued by the respondent No.1 forthwith.

17. Rule is made absolute in above terms with no order as to costs.

(Vrushali V. Joshi, J.)

(Nitin W. Sambre, J.)