

(2003) 09 BOM CK 0061
In the Bombay High Court
Case No : Writ PetitionNo. 3385 of 2003

Jayant Chudaman Nitnavare

APPELLANT

Vs

Maharashtra State Board of Secondary and Higher Secondary
Education

RESPONDENT

Date of Decision : 11-09-2003

Acts Referred:

Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 —
Regulation 52
Secondary School Code — Rule 20(2)

Citation : (2004) 1 ALLMR 244 : (2004) 4 BomCR 298 : (2004) 1 MhLj 301

Hon'ble Judges : S.B. Deshmukh, J;R.M. Lodha, J

Bench : Division Bench

Advocate : Trupti Udeshi, for the Appellant; Anand Parchure, for the Respondent

Final Decision : Allowed

Judgement

R.M. Lodha. J.

1. Rule. Returnable forthwith. Mr. Parchure, Advocate waives notice for the respondent. By consent, Rule is heard finally at this stage.

2. Jayant Chudaman Nitnavare is the petitioner before us and his prayer is for setting aside the communication dated 15th July, 2003, issued by the Maharashtra Board of Secondary and Higher Secondary Education, Nagpur, through its Divisional Secretary (for short, the "Divisional Board"), and for further direction to the Divisional Board to give him benefit of grace marks upto seventeen marks in the subject Mathematics and by adding the said grace marks, declare the petitioner as successful in the S.S.C. Examination held in March 2003.

3. Jayant appeared for Secondary School Certificate Examination conducted in the month of March, 2003. The result of the said examination was declared on 22nd June, 2003. He was declared as failed in the S.S.C. examination, as he

secured only 35 marks in the subject of Mathematics. He secured about 48.66% marks in total and passed in all other subjects, but as minimum required marks for passing in each subjects were 38, and he secured only 35 marks in Mathematics, he was declared as failed. Jayant claims to be a sportsman, having played Basket Ball at State and National level championship in the month of April and May, 2003. He made an application, in the prescribed form, along with certificate of the District Sports Officer and that application reached the concerned Divisional Secretary of Divisional Board in time as per the Rules. Jayant claims the benefit of grace marks upto 20 marks under Rule 52, and if he was given the benefit, he would pass in the subject Mathematics as well, and consequently in S.S.C. examination conducted in the month of March, 2003.

4. Rule 52 of the Maharashtra Secondary and Higher Secondary Boards Regulations, 1977 (for short, Regulations, 1977) provides for Standard for passing in a subject. Inter alia, it provides that in the case of the Optional Technical subjects (Branch 2), candidate must obtain minimum 35% marks, and in the case of Mathematics and Science, candidate must obtain at least 52 marks in each, as the said subjects have been allotted the maximum of 150 marks each. It also provides that candidate shall also be granted, for the purpose of passing in the remaining compulsory subjects of failure where the deficiency is more than the limit of 2 or 3 marks indicated in Clause (3)(a) upto the maximum of 20 grace marks limited to three subjects only, subject to the condition that in any one subject not more than ten percent (of the maximum marks for that subject) grace marks shall be granted. Amongst others, by non-obstante clause, exception is carved out by providing that a candidate, who has actually participated in any sports or games held in India or abroad on State, National, International level in the same academic year, the limit of maximum 10 per cent grace marks shall be extended upto 20 grace marks. This is however, subject to the request being made by the concerned candidate through the respective Head of the Secondary School so as to reach to the Divisional Secretary of the Divisional Board concerned upto one month from the date of the declaration results. Such application is required to be submitted in prescribed form along with certificate of the District Sports Officer to that effect to the Divisional Secretary of the concerned Divisional Board.

5. To the extent Rule 52 is relevant for our purpose, it reads thus:

"52. Standard for passing in a subject. -- In the case of the Optional Technical subjects (Branch 2) wherein the examination is taken by the Board, candidate must obtain minimum 35% marks. In the case of three language heads and Social Sciences which have been allotted the maximum of 100 marks each, a candidate must obtain at least 35 marks in each of them and in the case of Mathematics and Science, which have been allotted the maximum of 150 marks each, a candidate must obtain at least 52 marks in each.

(2)

(3) (a).....

Note 1 :--(1).....

(2) (a),.....

(b) The candidates shall also be granted for the purpose of passing in the remaining compulsory subjects of failure (wherein the deficiency is more than the limit of 2 or 3 marks indicated in Clause (3)(a) above upto the maximum of 20 grace marks limited to three subjects only subject to the condition that in any one subject not more than ten percent (of the maximum marks for that subject) grace marks shall be granted.

(c).....

(d) Notwithstanding anything, contained in Sub-clause (b) (above), a candidate who has actually participated in any sports or games held in India or abroad on State, National, International level in the same academic year, the limit of maximum 10 per cent grace marks shall be extended upto 20 grace marks, provided such request is made by the candidate concerned through the respective head of the secondary school, so as to reach to the Divisional Secretary of the Divisional Board concerned upto one month from the date of the declaration of results. All such applications shall invariably be submitted in a prescribed form along with a certificate of the District Sports Officer, to that effect, to the Divisional Secretary of the Divisional Board concerned."

6. It is not in dispute before us that the request was made by the petitioner through the respective Head of the Secondary School under Rule 52, Note 1, para (2)(d) of Regulations, 1977 in the prescribed form along with the certificate of District Sports Officer to the Divisional Secretary of the Divisional Board. The participation of the petitioner in State and National Level Basket Ball championships in the month of April and May 2003 respectively is also not in dispute before us. The controversy raised before us is in a narrow compass. According to "the petitioner, he having participated in the State and National Level Basket Ball Championship in the months of April and May 2003, he must be held to have participated in the State and National Level Sports Championship in the academic year 2003. On the other hand, the stand of the Divisional Board is that the academic year 2003 ended in the month of March, 2003 and petitioner's participation in the State and National Level Championship in the months of April 2003 and May 2003 cannot be held to be in the academic year 2003,

7. The year is used as a unit of time, divided into 12 months and the academic year ordinarily has to be the period of twelve months reckoned from the month it begins. This is reflected from Rule 20.2 (a) of the Secondary School Code, which provides that a School following the academic year from June to May may admit a pupil in the month of January or later from a school following the academic year from January to December. This aspect is further fortified by Rule 52.2 and 53.3 (a) of Secondary School Code (for short, "Code"). Rule 52.2 of Code

provides that the maximum number of holidays including all vacations in schools shall, in no case, exceed 80 days excluding Sundays and half holidays subject to the condition that the school must work for not less than 250 days and do actual full instructional work for not less than 195 days in an academic year. While Rule 52.3 (a) of Code provides that in case of Night High Schools working for 2 1/2 hours a day, the total working days shall not be less than 280 days in an academic year out of which not less than 260 days shall be instructional days. Mr. Parchure, the learned Counsel for the Respondent, however, sought to place reliance on Rule 52.1 of the Code. The said Rule 52.1 provides : the School year will be divided into two terms. First term shall be from June to October and second term shall be from November to April and there shall be a short vacation generally in October/November to fit in with the Diwali Festival and the summer vacation shall ordinarily be from May to June. He, thus submitted that academic years ends at the end of month of March. We are unable to find on the basis of Rule 52.1, that the academic year ends at the end of the month of March of an academic year. Though Rule 52.1 suggests that there shall be two terms in the School year and the first term shall be from June to October and second term shall be November to April, it does not say that the School year ends in the month of April because it provides that summer vacation shall ordinarily be from May to June. Even otherwise, we find that in Secondary School Code, two different expressions have been used; a) The "School year" that has been used in Rule 52.1 and b) the "academic year", that is used inter alia in Rule 20.2; 52.2 and 52.3. From the said Rules, namely 20.2; 52.2; and 52.3, it is clear that the academic year is of full one year either from June to May or from January to December. The expression "in the same academic year" occurring in Rule 52 of Regulations, 1977, has to be understood as a full academic year of 12 months and cannot be confined to the period from June to March, as was contended by the learned Counsel for the respondent, but shall be June to May or January to December, as the case may be. The provision for grace marks is a beneficial provision, intended for the benefit of the students proficient in the sports or games at State, National or International level in the same academic year, the expression "in the same academic year" has to be construed in a manner, that advances the purposes and enables in achieving the object for which the provisions is made. Beneficial provision, like Rule 52, Note 1 para 2(d) of Regulations, 1977, if considered narrowly, would defeat the very purpose, for which benefit is sought to be given to a particular level of sports or games in which student has participated in the academic year. We are, therefore, of the considered view that the expression "in the same academic year" has to be construed in a manner that advances the object and purpose, for which the higher grace marks have been made available to a candidate, who has actually participated in sports and games at State, National or International level. The denial of grace marks to the extent provided in Rule 52, Note 1 para 2(d) of Regulations, 1977, to a candidate, who has actually participated in sports or games, held in India or abroad at State, National or International level, in the months of April and May of an academic year, shall be unjustified. The

curtailment of the academic year from June to March is not permissible and the academic year has to be of the period of twelve months reckoned from the month of June in the present case.

8. Applying the aforesaid legal position to the facts of the present case, it would be seen that academic year 2003 started from June 2002 and ended in the month of May 2003. The petitioner participated in the State and National level Basket Ball championships in the month of April and May 2003. He made the application for extending grace marks to him upto 20 grace marks in accordance with the provisions contained in Rule 52 Note 1 para 2(d) in the prescribed form. The petitioner secured 35 marks in Mathematics and if 17 grace marks were given to him under Note 1 para 2(d) of Rule 52, the petitioner would get through in SSC examination, as he has passed in all other subjects and his total marks exceed 48%. The petitioner, thus, is entitled to 17 grace marks in Mathematics under Note 1 para 2(d) of Rule 52 of Regulations 1977.

9. Resultantly, we allow the writ petition and quash the impugned order dated 15-7-2003. We direct the respondent-Board to consider petitioner's application for concession of grace marks afresh in accordance with the aforesaid observations and issue necessary corrected Mark sheet to the petitioner.

10. The petition stands disposed of in the aforesaid terms with no order as to costs.