
(2018) 02 BOM CK 0040
In the Bombay High Court
Case No : 14524 of 2017

Master Siddhant Pankaj Manudhane

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 20-02-2018

Acts Referred:

Citation : (2018) 02 BOM CK 0040

Hon'ble Judges : S. V. Gangapurwala, A. M. Dhavale

Bench : Single Bench

Advocate : Rashmi S. Kulkarni, S. B. Deshpande, Bhushan Kulkarni, Swapnil S. Patoonkar

Final Decision : Partly Allowed

Judgement

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal.

2. In this petition, the petitioner suffering from learning disability challenges the decision of CBSE Board to change the groups of subjects and optional subjects in midterm for the 10th std. examination.

3. Heard Mrs Rashmi S. Kulkarni, learned counsel for the petitioner, Mr Bhushan Kulkarni, learned advocate for respondent no. 1, Mr S. B. Deshpande, learned advocate for respondents no. 2 and 3 and Mr Swapnil Patoonkar, learned counsel for respondent no. 4.

4. The petitioner seeks a) quashing of Circular dt. 17.10.2017 to the extent of deletion of vocational subjects having code Nos. 461 to 467 and transfer of subjects nos.165 and 166 in optional category with request that the policy to change the subjects should be made applicable from new academic year for the students entering 9th std.

b) To refrain the Board from changing curriculum in the midst of academic year of 10th std students in view of the integrated course of 9th and 10th year course.

c) To accept the corrected final registration slip dt. 17.11.2017 of the petitioner submitted by respondent no. 4 for class 10th examination in March 2018.

d) Respondents to allow the petitioner to appear for 10th std examination with subjects chosen for by him for 9th std. examination and other interim reliefs.

5. The petitioner, a minor boy, on 25.12.2017 filed this petition through his father. Admittedly, he is certified to be suffering from dislexia, disgrafia and discalculia, which is disability in reading, writing and understanding arithmetic which is known as learning disability. He is the only student studying in 10th std. in Kashinath Palod Public School at Jalgaon (R4) in CBSE pattern examinations. The regional office of CBSE is at Chennai (R3) and the main Board is at Prit Vihar, Delhi (R2). It is under the control of Union of India (R1).

6. In Writ Petition No. 1744 of 2005, by mutual agreement between the State Government Educational Authorities and all schools, scheme as per annexure "X" was agreed for giving exemptions, concessions and special facilities to the students suffering with learning disability. It is consistent with the constitutional mandate of adopting beneficial and conducive policies for people of weaker section and the enactment of Persons with Disabilities Act, 1995. There is no dispute that CBSE has accepted the policy and has issued general instructions for giving exemptions, concessions and facilities like extended time limit or services of scribe at the time of examinations as per general instructions circulated vide letter dt. 28.08.2016 (page 32). It lays down that the students suffering from learning disability were exempted from taking a subject of third language. They were supposed to study only one compulsory language as against two. Besides, they were supposed to opt for four out of the following subjects as against five for others.

Math Science

(i) Social Science (i) Foundation of Information Technology.

(ii) Commerce (Elements of Book Keeping And Accountancy)

(iii) Epublishing and Eoffice (English)

(iv) Epublishing and Eoffice (Hindi)

(v) Information and Communication Technology

7. On 24.01.2017, CBSE (R2) issued fresh guidelines in this regard. In addition to the above referred subjects (Annexure I), as per these guidelines, the persons suffering from dislexia and other disabilities were given option of one compulsory language and four additional subjects out of the following. "Mathematics, Science, Social Science, another language, Music, Painting, Home Science, Foundation of Information Technology, Commerce (Elements of Business), Commerce (Elements of Book Keeping and Accountancy), EPublishing and EOffice (English), EPublishing and EOffice (Hindi), Information and Communication Technology (ICT166), any one out of Retail (NSQF) and

Information Technology (NSQF)"

8. The subjects etypewriting English and etypewriting Hindi and introduction to Computer Technology were deleted.

9. Besides the words "any one out of" were added before the subject Retail (NSQF) and Information Technology (NSQF). At the time of this change, the petitioner was yet to appear for the examination of 9th std. Standard Operating Procedure for availing exemption was laid down as per annexure "2" as above.

10. The petitioner had opted for and passed with good marks following subjects for the 9th std. examination.

Sr. No. Subject Code No.

(i) English Communicative 101

(ii) Information of Communication Technology 166

(iii) Foundation of Information Technology 165

(iv) Information Technology 462

(v) Elements of Book Keeping and Accountancy (IInd semester). 254

[(vi) Elements of Business (1st semester only) 154]

11. It is not disputed that, 9th std. and 10th std. examinations are integrated courses. Rule 26 provides that, the students appearing for 10th std. examination have to choose subjects which were opted by him in 9th std. examination. In the 9th std. examination, initially, the petitioner had opted for subject no. 154 (Elements of Business). He had made query about the choices for him for selection of subjects but there was no response from respondent no. 2. Thereafter he dropped Subject No. 154 and chose subject of Information Technology having code no. 465 and passed the 9th std. examination in all above subjects with good marks. Respondent No. 4 School sent hard copy of registration of the petitioner with changed subjects to respondent no. 2 as per the prevailing practice. Normally the procedure was online registration for 9th std. examination and 10th std. examination. Respondent No. 4 had requested respondent no. 3 to register the petitioner as handicapped "C" category and as per communication by respondent no. 3, all the details along with medical certificate and report of respondent No. 4 class teacher of the petitioner were sent. There is no dispute about his learning disability.

12. The petitioner chose the same subjects for 10th std examination and studied them. He got familiar with those subjects. Then on 17.10.2017, respondent no. 2 issued circular to all the Heads of the Institutions. As per this circular, subject Nos. 461 to 467 were discontinued (petitioner's subjects no. 462 Information Technology was amongst them). The students were given option to choose the subjects having code Nos. 401 to 407 in place of their earlier subjects from 461 to 467.

13. The circular also provided for selection of group of subjects divided into five categories for examination of Class 10th std. which provided that out of subjects having code nos. 165 and 166, only one subject can be chosen and subject no. 462 was introduced as 402 but in vocational optional category under NSQF.

14. The petitioner had problem of choosing a totally new subject as alternative for subject having code no. 165 or 166 and also to select one more subject in place subject code no. 462. It provided that, the common option of subjects should be as per list of valid :: Uploaded on - 20/02/2018 :: Downloaded on - 22/02/2018 10:30:53 :: 8 WP14524.2017 combinations. The schools were directed to complete the registration process through online entry option only and list of candidates submitted on line could be corrected subject to penalty by late submission of hard copy. It provided that, no entry shall be accepted after the date of closure of on line submissions except as provided by way of penalty.

15. The petitioner had approached the school and put forth his difficulty in selecting new subjects and then appearing for SSC examination with new subjects within a short time. The petitioner claimed that, it was a rule that school was bound to submit list of all the candidates and even in case of single failure to register the entry, it invited nonregistration of the school. The respondent no. 4 wrote a letter to R3 requesting to help the petitioner but there was no communication. The petitioner reluctantly in order to avoid inconvenience to other students chose following two subjects.

Subject & Code In place of

(i) Painting 49 Information Technology 462

(ii) Home Science 69 Information and Communication Technology 166.

16. Mrs Rashmi Kulkarni, learned counsel for the petitioner submitted that the circular dt. 17.10.2017 is contrary to the rules of respondent no. 2 that 9th and 10th stds. are integrated courses and the students cannot appear for class 10th std examination with subjects which were not taken up in 9th std. She submitted that even for ordinary students, it is very difficult to change the subjects in the midst of academic year when the new subjects are totally unknown to him. In the present case, the petitioner is suffering from learning disability and his parents have tried hard to teach the subjects to him. He had become familiar with the subjects selected by him for 9th std examination. It will be practically impossible for him to prepare himself for the new subjects. The act of CBSE (R2) to change the subjects in the midst of academic year is arbitrary, unreasonable and against the public policy. No proper attention is paid to the problems of weaker sections of the society. Therefore, the circular dt.

17. 10.2017 should be quashed and the petitioner should be permitted to select the subjects for which he had appeared in the 9th std. exam. 17. Respondent no. 4, the Principal of the School has filed affidavit totally supporting the petitioner.

18. Shri. S. B. Deshpande, the learned ASG for CBSE submitted that, the CBSE is

conducting exams throughout the country and they have a fixed schedule. They are conducting the exams as per the scheme, policy and guidelines declared earlier. The groups of subjects formed by CBSE would be governing the examinations all over the India and it will not be possible to permit the petitioner to appear for subjects different than the groups formed. He also submitted that, on line list of candidates have been already submitted and it cannot be changed. He has all the sympathies for the petitioner but the petitioner has opted for the subjects, she cannot turn back and claim to appear for different subjects.

19. We have heard the learned advocates at length and have gone through the papers. The main issue for our consideration is whether CBSE can change the curriculum or the option of subjects for 10th std examination in the month of October and that too affecting the differently abled students as has been done.

20. The circulars of CBSE disclose that 9th and 10th std examinations are integral course. It is mandatory for the students to select the subjects for 10th std. which were opted by them in the 9th std. It is obvious that, it will be extremely difficult for the students to select a subject for the first time in the mid term of 10th std and appear for the examination. That is why the above rule is provided.

21. The CBSE circulars disclose various guidelines which consists of general instructions to ordinary students and guidelines for differently abled candidates. the CBSE has principally accepted that the student suffering from physical or mental disabilities need to be treated differently by providing them various exemptions, concessions and facilities as set out in the guidelines. General instructions are circulated vide circular no. 18.02.2016. This circular was prevailing when the petitioner entered 9th std. The specific exemptions for Class X at Sr. No. 2 is flexibility in choosing the subjects for candidates with visual and hearing impediment, spastic, dyslexic, autistic and other disabilities as defined under Persons with Disabilities Act, 1995, which reads as follows :

They have option of studying one compulsory language as against two. This language should be in consonance with over all spirits in the three language formula prescribed by the Board. Besides the subjects referred to in para 9 can be offered. These subjects included Foundation of Information Technology, Commerce (Element of Business), Commerce (Element Book Keeping and Accountancy) which were the subjects chosen by the petitioner in 9th std., besides compulsory subject English Communicative.

22. By circular dt. 24.01.2017, the CBSE issued revised instructions of concession and exemptions being extended to differently abled candidates for class 10th std. In this circular, there was similar flexibility in choosing the subjects. Only one language was compulsory and four subjects were to be selected from several subjects as shown in para 7. In addition to the earlier referred three subjects chosen by the petitioner, it also included Information and Communication Technology 166. These subjects were chosen by the petitioner. It

seems that, the petitioner while starting study in 9th std has taken subject of Element of Business 154, which was changed by him midterm and he chose for the 9th std examination Information Technology. The report card Exh. G shows that, the petitioner has passed in all the subjects chosen with good percentage. In the first semester, he had appeared for elements of business and in the second semester he appeared for Information and Technology in 9th std. It is obvious that, the respondent no. 4 had allowed him to appear for these subjects and it is implied that, respondents no. 2 and 3 must have not objected for choosing these subjects by the petitioner for the 9th std. These subjects were in consonance with the option provided by the school to the petitioner vide circular dt. 18.02.2016 and modified by circular dt. 24.01.2017.

23. It is relevant here to mention that, the petitioner was a sole candidate of handicapped category "C" and was not certain about the choice of subjects and he had written letters seeking clarification from respondent no. 3 on 22.09.2016. He was informed about the requirements of registration as dyslexic candidate but was not informed about his query regarding the options available to him.

24. The petitioner was studying the same subjects which he had passed in the 9th std while studying in 10th std.

25. On 17.10.2017, Controller of Examination of CBSE (R2) sent a letter to all the Principals and Head of the Institution affiliated to CBSE under the caption online submission of list of candidates for class 10th std examination for 2018. This circular reiterated that for candidate registered for 9th class for academic year 201617 there will be mandatory board examination in class 10th std. and 9th and 10th standards are integral courses. It gives guidelines for selection of two languages Math, Science and Social Science and vocation subjects and language 3 as optional subjects but these guidelines are meant for general students and not to differently abled persons. The guidelines provides for valid combination of subjects for class10th indicating thereby the students do not have any option to select subjects which do not fall in any group of subjects. Again this is a general provision and no specific provision has been made with regard to differently abled persons. Then there are rules regarding on line submissions before the last date and nonacceptance of entries after last date except by way of penalty for correction of subjects and late submission of hard copy of LOC.

26. It is obvious that, the petitioner must have been reluctant to change the subjects as contended by him at such a late stage but as per circular he felt that he had no option but to change the two subjects one out of Code No. 165 and 166 and other subjects at code nos. 462 and take two others subjects as per groups formed. This circular reiterates that, Class 9th and 10th stds is an integrated course.

27. Unfortunately, these rules do not make any special reference of options for differently abled persons. It provides for guidelines for general students.

28. The discontinuation of vocational subjects code nos 461 to 467 and

substitution thereof as subject code nos. 401 to 407 on 17.10.2017 is certainly arbitrary, unreasonable and shocking. On one hand the guidelines provide that the students should appear for 10th year examination with such subjects which he had passed in 9th std and then thereafter forming different groups of such subjects thereby making it impossible for him to choose the same subjects which he had taken at the 9th std., is anomalous and does not stand to reason.

29. We agree with the arguments of Mrs Rashmi Kulkarni that even for students of ordinary intellect, it is very difficult to change the subjects after 15th October in an academic year (Xth std.) and select totally new subjects unknown to him, study them and appear for the examination with such subjects. It is common knowledge that 10th std exam is one of the most important stages in the life of students. It determines the intellectual status of a student on a larger canvass and the students make all efforts to score well in the 10th std examination so that bright and prosperous avenues will be open for them in the further studies. It is obvious that, if the other students from various branches are studying a particular subject right from 1st to 10th std, they will definitely score better marks whereas a student choosing a subject for the first time in 10th std after October month will find it extremely difficult to get through in the said subjects much less to score good marks in such subjects so as to compete with other students in various branches available to him in the colleges.

30. In the light of the rules of CBSE, if the CBSE desires to change the curriculum or options of the subjects, it should be introduced for the students getting admission in 9th std and thereafter only they should be compelled to choose those subjects for 10th std. examination. The circular dt. 17.10.2017 taking away the options provided to the petitioner to select the subjects with which he was well acquainted with, is very harsh on him and even many other students both from general category as well as differently abled category. Once the petitioner was allowed to appear for choosing particular 5 subjects for the examination of 9th std., respondents no. 2 to 4 are bound to allow him to appear for those subjects for the 10th std as well. He cannot be compelled to choose new subjects and study them and appear for the exams even if no teaching is available in such subjects.

31. We find no reason to disbelieve the petitioner when he stated that he selected two subjects Home Science and Painting out of compulsion as if he would not have filled in his form by registration, there could have been great inconvenience to all others students from his school.

32. Mr S. B. Deshpande, Id. ASG has drawn our attention to the date sheet for main examination of 2018 declared. The examinations begin from 05.03.2018. The exam of subjects Information and Communication Technology Code No. 166 and Information Technology 402 is scheduled on 05.03.2018 at 10:30 a.m. He submitted that, it is not possible to change the timing of these subjects. As far as other subjects are concerned, the dates are as follows: (i) 08.03.2018 Code No. 165 Foundation of IT.

(ii) 10.03.2018 Code No 254 Elements of Book Keeping & Accountancy.

(iii) 12.03.2018 Code No. 101 English Communicative.

33. Thus there is a problem of only one subject. If the petitioner is permitted to opt for the same subjects which he had opted for and passed in the 9th std, he will not be in a position to appear for subjects no. 166 and 402 simultaneously on 05.03.2018. Otherwise, there is no difficulty in permitting him to opt for the subject of his choice.

34. Considering all the facts and circumstances of the case, we find that the decision of the CBSE to take away the option of subjects provided to the petitioner to take the subjects for which he had appeared in 9th std examination abruptly after completing 9th std. is harsh, arbitrary, unreasonable and unacceptable. The respondents no. 2, 3 and 4 cannot cause irreparable loss to the future of the students by changing the subjects for the 10th std in the mid October.

35. Since the CBSE exams are held throughout India and since we are considering the case of the petitioner only, who is differently abled and for which he had special exemptions, concessions and facilities and since the letter dt. 17.10.2017 is silent with regard to the effect of the said circular on the options provided to the persons with disabilities, we refrain from striking down the circular dt. 17.10.2017 sent by respondent no. 2 except to the extent of the petitioner.

36. We feel that, if the other students have similar difficulties, respondents no. 2 and 3 should sympathetically consider the same and take appropriate decision. As far as the petitioner is concerned, we direct that the respondent no. 2 to 4 shall permit the petitioner to appear for 5 subjects which he had opted at the examination of 9th std and in which he had passed.

37. The circular dt. 17.10.2017 will not affect rights of the petitioner to the said extent. We also direct that respondents no. 2 to 4 shall make necessary arrangement to hold exam of following two subjects at different time/date (may be on the same day one after other) so that the petitioner can appear for both the papers. (i) Information and Communication Technology Code 166.

(ii) Information Technology 402

38. We accordingly partly allow the prayers A, B, D & E. The respondents shall also permit the facility of the scribe to the petitioner. Admit card be issued accordingly.

39. Rule is made absolute in above terms. No order as to costs.

40. Parties to act upon authenticated copy of this order.