

(2005) 07 BOM CK 0043

In the Bombay High Court

Case No : Writ Petition No. 1461 of 2005

Netaji Ishwar Ambegave

APPELLANT

Vs

Maharashtra State Secondary and Higher Secondary
Education Board and Another

RESPONDENT

Date of Decision : 08-07-2005

Acts Referred:

Maharashtra Secondary and Higher Secondary Education Boards Act, 1965 — Section 36(1)
Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 — Regulation 79(7)
Maharashtra Secondary and Higher Secondary Education Boards Rules, 1977 — Rule 1, 22.1, 37.1, 37.4

Citation : AIR 2005 Bom 332 : (2006) 2 BomCR 164 : (2005) 4 MhLj 778

Hon'ble Judges : S.P. Kukday, J; R.M.S. Khandeparkar, J

Bench : Division Bench

Advocate : N.B. Khandare, for N.B. Jadhav, for the Appellant; Surekha Mahajan, for No. 1 and Dilip Bankar Patil, AGP for No. 2, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Kukday, J.—In this petition, petitioner impugns decision of respondent-Maharashtra State Secondary and Higher Secondary Education Board, Aurangabad, to cancel his admission to the 12th Standard.

2. Petitioner was taking education in Military School, Satara, which has adopted C. B. S. E. curriculum having 10 + 2 pattern. Petitioner appeared in the annual promotion examination of XI Std. held in the month of March/April, 2004 and secured aggregate 42% marks. According to Rules of the School, it was necessary to secure 40% marks in each subject with aggregate of 50%. As petitioner failed to achieve requisite standard, he was declared as failed. Petitioner, therefore, withdrew from the School and took provisional admission in XIIth Std, in Godavari Junior College, Aurangabad. As the petitioner was migrating from another Board, the matter was referred to the Maharashtra

Secondary and Higher Secondary Education Board (hereinafter referred to as the Board) for confirmation of the admission. As the application was under consideration, petitioner was allowed to appear at practical examination on his giving an undertaking. Hall ticket was also issued for the annual examination. However, by letter dt. 26-2-2005 the Board intimated the petitioner that he is not eligible to enroll himself in 12th Std. in view of Regulation 79(7) of The Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 (hereinafter referred to as the Regulations). The petitioner was directed to return the Hall ticket. Being aggrieved by this communication, petitioner has filed present petition through his local guardian. During pendency of the petition, the petitioner was allowed to appear at the annual examination on an understanding that the said order will not create any equity in his favour and that the result will be subject to the decision of the petition on merit.

3. Contention of learned Counsel for the petitioner is two fold. According to him, Regulation 79(7) of the said Regulation, is not applicable to the present case as the petitioner was taking education in Maharashtra and not in any other State. Second plank of the argument is that according to Appendix Seven, Sub-rule (ii) of Rule 1, student securing not less than 35% marks in each individual head of passing is eligible for promotion to higher standard. As the petitioner has achieved this standard by securing more than 35% marks in each head of passing, he must be taken to have passed 11th Std. examination though he was declared to have failed in accordance with the Rules of the Military School. According to learned Counsel, the fact that the Principal had given no objection for taking admission in 12th Std. substantiates this inference. Therefore, decision of the Board regarding cancellation of admission taken by the respondent communicated to the petitioner by letter dt. 26-2-2005 is not in accordance with the Rules and Regulations and deserves to be quashed and set aside.

4. Learned Counsel appearing for the respondent-Board has referred to the provisions of Secondary Schools Code as well as the Regulations. According to learned Counsel, case of the petitioner is covered by Regulation 79(7) of the Regulations. Case of the petitioner is carefully considered. As there is no scope for any other interpretation, a decision to cancel admission of the petitioner in 12th Std. is rightly taken. As this is a policy decision, taken after due deliberation, no interference is called for. Hence the petitioner deserves to be dismissed.

5. In order to resolve the controversy involved in this petition, it has to be borne In mind that different recognized All India or State bodies have different curriculum and adopt different standards. Rules framed by these bodies govern the procedure for admission, promotion etc. So far as respondent is concerned, subject to admission, promotion etc. is governed by the provisions of Secondary Schools Code and the Rules and Regulations framed thereunder. Eligibility for admission to students from other State/Union Territories/countries is regulated by Rules 22.1 to 22.3 of the Secondary Schools Code and Regulation 79(7) of the

said Regulations. Principle adopted for giving admission is based on a Formula of equivalence as contemplated by Rule 22.2 of the Secondary School Code. Note (2) appended to this Rule makes it clear that the Head of an institution admitting a pupil on the basis of the above equivalence formula should inform the facts of the case, to the appropriate authority within eight days of the date of admission. The appropriate authority has to verify whether the admission given is proper in accordance with the above formula and inform the Head of the school accordingly. Criterion for promotion to higher standard is governed by Rules included in Section IV of the Secondary School Code. Rule 37.1 provides that promotion from one standard to another be given at the end of the academic year on the basis record of year's work. Rule 37.4 makes reference to the Rules for promotion laid down by the Department in Appendix Seven. Rule 1(ii) is relevant for our purpose. According to Sub-rule (ii) of Rule 1 of Appendix Seven, students securing not less than 35% marks in each individual head of passing shall be eligible for promotion to higher standard. The Rule also makes reference to the manner in which grace marks can be given to the pupil. Respondent has framed the said Regulations u/s 36(1) of the Maharashtra Secondary and Higher Secondary Boards Act, 1965.. Relevant portion of Regulation 79(7) reads as under :

"79(7). Students who have passed XI Std. examination in the new pattern of 10+2+3 adopted by different recognized All India or State Bodies from any other State or Union Territory will be held eligible for admission to the second year of a junior college, if it is the public examination. If the examination at the end of Std. XI is not a public examination, the candidates should be admitted to second year of junior college (Std. XII) on reciprocal basis...."

This sub-rule makes it clear that the pupil from the other board following same pattern of 10+2+3 can be admitted to appropriate standard as per the equivalence of the system. Learned Counsel for petitioner has strenuously argued that this sub-rule is not applicable to the present case as the petitioner was studying in Maharashtra and he is not coming from All India or State Bodies or from any other State or Union Territory. This argument cannot be sustained. This argument overlooks the fact that some of the schools from different States seek affiliation to All India Bodies and follow their curriculum. In the present case, Military School in which the petitioner was enrolled is affiliated to CBSE Board. Therefore, though the school is in Maharashtra, the body concerned being All India Body, Regulation 79(7) will be applicable to the present case. There is no dispute that both the systems have adopted pattern of 10+2. However, XIth Std. examination is not a public examination. Therefore, if the petitioner passes XIth Std. from CBSE Board, he is eligible/entitled to seek admission to XIIth. Std. of Maharashtra Secondary School Board on reciprocators basis. Considering this aspect learned Counsel for the respondent has rightly pointed out that as the petitioner has been declared as unsuccessful by the military school, as per their standard for promotions in view of Regulation 79(7) of the Regulations, he is not eligible for admission to XIIth Std. of the junior College. Learned Counsel

for the petitioner has strenuously argued that petitioner has secured 42% of marks in aggregate and more than 35% of marks in each individual head of passing. Therefore, as per the provisions contained in Rule 1(ii) of Appendix Seven, petitioner is eligible for promotion to higher standard. What is overlooked is that Rule 1(ii) is made applicable to the pupils who are appearing at the examination held by Maharashtra State Secondary Board. This rule cannot be made applicable to the pupils appearing at the examination held by any other Board or the school affiliated to these Boards. From perusal of School Leaving Certificate issued by military school, it is apparent that as per the standards prescribed by the military school, the petitioner has failed in XI Std. Therefore, It follows that the petitioner is not eligible for taking admission in XII Std in any of the institutions affiliated to the respondent Board. All these factors are taken into consideration by respondent while deciding the eligibility of the petitioner. Hence, in absence of foundations from the Rules and Regulations of CBSE Board applicable to this case, no importance can be attached to recommendation of the Principal of the School for admitting petitioner In XIIth Standard.

6. Normally, it is not for the Courts to determine whether a particular educational qualification possessed by a candidate should or should not be recognized as equivalent to the prescribed qualification in the case. These being policy decisions are left to the competent authority. This principle has now been clearly established. For this purpose, reference can be made to the Judgment of the Supreme Court reported in *State of Rajasthan and Others Vs. Lata Arun*, . In that case, respondent possessed educational qualification of Madhyama Certificate issued by Hindi Sanity a Samelan, Allahabad In 1984. Previously that qualification was recognized and the candidate possessing said qualification was eligible to take admission to XII Std. However, subsequently, recognition of that qualification was withdrawn. In view of this fact, admission given to respondent to Nursing course was cancelled. After considering earlier Rulings on the point, the Apex Court observed in para 13 of the report that : "from the ratio of the decisions noted above, It is clear that the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. It is not for Courts to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the authority...." Explaining the scope of this principle the Apex Court has observed In para 10 of the report that: this is not to say that such matters are not Justiciable. In an appropriate case the Court can examine whether the policy decision or the administrative order dealing with the matter is based on a fair, rational and reasonable consideration of relevant aspects of the matter : or whether exercise of the powers is obtained with mala fide intention. In the present case, the Competent authority has taken into consideration all the relevant aspects. Therefore, interference by the Court is not called for.

7. The competent authority, after taking into consideration all the relevant factors; Rules and Regulations; has decided to cancel admission of petitioner to

XII Std. Therefore, no fault can be found with the impugned order. Circumstances of this case do not warrant Interference by this Court under writ jurisdiction. In the result, the petition fails and the same is hereby dismissed. Rule discharged. However, considering the circumstances, there shall be no order as to costs.