
(2013) 07 BOM CK 0201
In the Bombay High Court
Case No : Writ Petition No. 5667 of 2013

Sonia Damley

APPELLANT

Vs

The Principal and Others

RESPONDENT

Date of Decision : 11-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 5 ALLMR 578 : (2014) 4 BomCR 612 : (2013) 6 MhLj 435

Hon'ble Judges : Mohit S. Shah, C.J.; M.S. Sanklecha, J

Bench : Division Bench

Advocate : Sheetal Kumar, Mr. Amit Karkhanis instructed by Kay Legal and Associates, for the Appellant; H.G. Wakshe for Respondent No. 1, Mr. Jaydeep Deo, AGP for State and Mr. Kiran Jain, for the Respondent

Final Decision : Allowed

Judgement

Mohit S. Shah, C.J.—In this petition under Article 226 of the Constitution, the petitioner, who is the mother and guardian of a minor boy Kumar Randhir, has prayed for declaration that the result of Randhir declared by respondent No. 2- Maharashtra State Board of Secondary & Higher Secondary Education for the H.S.C. (Higher Secondary Certificate - Standard XII) examination for the academic year 2012-13 be revised in light of its policy, which provides for granting 20 grace marks to students afflicted with learning disability. There is no dispute about the fact and it is reflected in the affidavit filed on behalf of respondent No. 2-Board itself that concessions are granted to students suffering from learning disabilities, which are broadly classified into three categories as under:-

(i) Dyslexia: The affliction connotes difficulty with words and skills associated with the process of learning such as reading, comprehension, spelling, speaking and listening.

(ii) Dysgraphia: This connotes difficulty in writing.

(iii) Dyscalculia: This connotes difficulty in skills associated with mathematical computations and reasoning.

Such students are granted concessions as under:-

- i) Concessions in respect of curriculum.
- ii) Concessions in respect of the pattern of the Examinations.
- iii) Concession in respect of the appearance at the Examinations.

Initially such concessions were granted by the Board only for the students studying upto to 10th standard. However, from 1998 onwards such concessions are given to students at the 12th standard examination also.

2. In Writ Petition No. 1744 of 2005 this Court considered the issue and by order dated 20 July 2006 sanctioned a scheme formulated by the Expert Committee appointed by the Court and directed as under:-

In the light of the discussion in the matter on earlier dates of hearing, the senior counsel for respondent Nos. 1 to 4 handed in the Scheme to provide facilities to the students with learning disabilities of dyslexia, dysgraphia and/or dyscalculia. The Scheme is marked "X" for identification purposes. The counsel for the petitioner and the counsel for other respondents are agreeable to the said scheme.

2. Having considered the said scheme, we find it adequate, proper and beneficial to the students with learning disabilities. We, accordingly, accept the Scheme and observe that the said Scheme becomes operative with immediate effect.

3. The State Government, Education Authorities and all Schools in the State of Maharashtra having affiliation with any of the Boards viz., Secondary School Certificate Board (SSC), Indian Council of Secondary Education (ICSE) and Central Board of Secondary Education (CBSE) shall abide by the said Scheme in relation to the students with learning disabilities. The schools in the State of Maharashtra are also directed to abide by the circulars issued by the State Government from time-to-time not inconsistent with the Scheme "X" approved by us today. The disobedience or non-compliance of the Scheme in relation to the students with learning disabilities by any of the schools in the State of Maharashtra shall be treated as disobedience of the order of this Court and they shall be proceeded with accordingly.

4. We direct the three Boards viz., SSC, ICSE and CBSE to circulate the Scheme to all the schools under their jurisdiction and having their affiliation.

3. In view of the above order of this Court, respondent No. 4-State of Maharashtra also issued a circular dated 7 September 2006 and made it applicable to all Boards upto standard XII examination (Exh. L).

4. The affidavit of the Board in terms states that consequent to the order of this Court the following provision for grace marks was extended to students of Class

XII which is quoted in the affidavit as under:-

Students with learning disabilities of Std. I to IX who fail to obtain minimum prescribed marks to determine promotion to higher students shall be granted a maximum of an aggregate of 20 grace marks instead of 15. The 20 grace marks can be given in one subject or may be divided in one or more subjects.

5. A circular dated 5 June 2009, Exh. A to the affidavit on behalf of respondent No. 2-Board issued by the Board informs all the authorities that the circular about giving 20 grace marks to students suffering from various disabilities including learning disabilities be brought to the notice of students, parent/guardian and to the educational institutions under the authorities.

6. In view of the above general policy of the State Government and the respondent No. 2-Board, respondent No. 2-Board has been issuing circulars every year stipulating the date by which the certificates about students suffering from any such disabilities should be brought to the notice of respondent No. 2-Board. For the academic year 2012-13, a circular was issued on 20 July 2012 informing all authorities and schools under respondent No. 2-Board to require the students to submit their certificates about disabilities by 31 August 2012 and that in case of any default, such certificates would be accepted upto 30 September 2012 upon payment of fine of Rs. 200/-. It was further stated in the circular that certificates received after 30 September 2012 will not be taken into consideration. In the case of private students with disabilities, the last date was stipulated as 15 September 2012 alongwith a fine of Rs. 200/-. The circular ended with instruction that the circular be brought to the notice of all concerned teachers, students, parents/guardians and administrative officers in the educational institutions.

7. It is the case of the petitioner that the above circular was not brought to the notice of the petitioner, but when the 12th standard examination results were declared by respondent No. 2-Board, the petitioner found that her son Randhir was declared to have failed at the examination in the subject of Mathematics & Statistics, wherein he was shown to have obtained only 23 out of 100 marks as against his overall aggregate percentage being 46.48% in all six subjects including Mathematics & Statistics. The petitioner, therefore applied for revaluation of marks in Mathematics/Statistics. The report dated 31 May 2013 of Mr. Dnyaneshwar Suryawanshi (Exh. O to the petition) indicated that there was scope for additional marks. However, the petitioner was informed that there was no change in the marks. The petitioner's case is that Mr. Dnyaneshwar Suryawanshi, who looked into the answer-book of Randhir for the subject of Mathematics/Statistic himself suggested that the petitioner's son needs to be sent for assessment of his learning disability. It was at this point of time that the petitioner became aware of the likelihood of Randhir suffering from a learning disability. The petitioner, therefore, approached Niramay Guidance Clinic, which submitted its report about Randhir's learning disability in the following terms:-

A qualitative and quantitative analysis of various assessment conducted on Randhir does show features of specific learning disability in reading spellings and math, i.e. Dyslexia and Dyscalculia.

RECOMMENDATIONS:

It is therefore recommended that Randhir is given the following:

? Individual and parental counseling

? Certification from the Learning disability clinic at KEM Hospital, LTMG Hospital or Nair Hospital

? Recommendations as per the Board policy for specific Learning Disabilities

8. The petitioner's case is that when the petitioner approached the respondent No. 2 with the above assessment report, the respondent No. 2 did not accept the same as it was issued by a private agency. The petitioner, therefore, approached the Learning Disability Clinic, Seth G.S. Medical College and K.E.M. Hospital, Mumbai. On assessing Randhir for learning disability Dr. Sunil Karande, Professor, Paediatrics, at the Learning Disability Clinic of the said K.E.M. Hospital issued certificate dated 14 June 2013 (Exh. C) certifying disability as under:-

Educational Assessment

Date 14 June 2013

Dyslexia, Dysgraphia and Dyscalculia

Diagnosis: Learning Disability with Attention Deficit Disorder

Recommendations

Remedial Educational Treatment of ADD Provisions for L.D.

9. In view of the above certificate issued by Dr. Sunil Karande, Professor of Paediatrics at the Learning Disability Clinic at KEM Hospital, the petitioner requested the respondent No. 2-Board to grant 20 grace marks to the petitioner's son Randhir. Respondent No. 2-Board has rejected the petitioner's request only on the ground that the learning disability certificate was submitted by the petitioner beyond last date stipulated in the aforesaid circular of July 2012.

10. In view of the above, the petitioner has moved this Court challenging the aforesaid decision of respondent No. 2-Board, which was communicated to the petitioner orally.

11. Learned counsel for the petitioner has submitted that the statutory regulation requires respondent No. 2-Board to grant 20 grace marks to a student suffering from disabilities including Dyslexia, Dysgraphia and Dyscalculia, which the petitioner's son Randhir is suffering from. It is submitted that looking the marks obtained by Randhir in various subjects including English & Hindi, it is clear that it is only in Mathematics/Statistics that the petitioner's son Randhir has got 23

out of 100 marks, though Randhir has obtained total 46.83% in six subjects including Mathematics/Statistics. It is submitted on behalf of the petitioner that when the statutory regulation provides giving grace marks to the student suffering from learning disability, the student cannot be denied benefits of such regulation on the ground that the learning disability certificate is produced after the results of the examination are declared.

12. Without prejudice to the above submissions, it is also submitted that the petitioner was never informed about the circular requiring the learning disability certificate to be submitted by 30 September 2012.

13. It is also contended that the stand of the respondent No. 1-school that the circular was displayed on the notice-board on 26 July 2012 and that students were also informed in the classrooms regarding benefits of the said circular, was not sufficient compliance with the circular dated 20 July 2012 of the respondent No. 2-Board.

14. On the other hand, learned counsel for respondent No. 2-Board has opposed the petition and submitted that the Board had given sufficient time to students and their parents by issuing the circular in July 2012 and requiring them to submit the learning disability certificate by 30 September 2012. Learned counsel submits that if the said time limit is not considered as mandatory, there will be flood of applications by parents of students, who have failed in examinations.

15. Learned counsel for respondent No. 1-school management submits that display of the circular on the notice-board on 26 July 2012 and also informing the students in the class-rooms was sufficient compliance with the instructions issued by respondent No. 2-Board of bringing the circular to the notice of students. The counsel submits that besides putting the notice on the notice board, nothing more could be expected from the school management.

16. Having heard the learned counsel for parties, we are of the view that it would be too much to expect that students, who are themselves suffering from learning disabilities, would be able to appreciate the purport and impact of the circular of respondent No. 2-Board. The very fact that students suffering from learning disabilities are required to be given concession is prudent acknowledgement of the change in attitude of the policy makers, the educational experts and authorities that such students are required to be given special treatment and are not to be treated as dull students, which was the philosophy prevailing earlier. Apart from the report of Niramay Guidance Clinic, which is a private institution, the report of the Professor of Paediatrics at the Learning Disability Clinic at KEM hospital also certifies that the petitioner's son Randhir is suffering from all three disabilities i.e. Dyslexia, Dysgraphia and Dyscalculia. None of the respondents have challenged or doubted the contents of the said certificate dated 14 June 2013 issued by the Professor of Paediatrics at the Learning Disability Clinic at KEM hospital nor is it the case of the respondents that Randhir was not suffering from learning disability at the time he gave the standard XII examination.

17. At this stage, we may also note the marks obtained by Randhir at the H.S.C. (12th standard) examination conducted in 2013:-

A bare perusal of the above mark-sheet would indicate that while Randhir has high proficiency in Languages and average proficiency in Science subjects viz. Physics, Chemistry & Biology, it is only in Mathematics & Statistics that his performance is unsatisfactory. Learned counsel for the petitioner also informs the Court that Randhir has otherwise secured provisional admission to a course in International Hospitality and Tourism Management. It is submitted that Randhir will be able to prosecute the said course, where he will not be required to study Mathematics & Statistics. However, if the grace marks are not given, Randhir will not be able to obtain any qualification as a graduate, as no University will grant him admission much less confer any degree on Randhir without being declared successful at H.S.C. Examination.

18. Having seen the above certificates and the marks obtained by Randhir at the H.S.C. Examination, we have considered the question whether Randhir should be denied the benefit of statutory regulation only on the ground that his Learning Disability Certificate was not submitted within the last date stipulated in the Board circular.

19. It is true that if such learning disability certificates are not submitted within reasonable time, the Board would face several administrative difficulties. However, in the facts of the present case we find that the parents of Randhir were not informed about the aforesaid circular requiring the student and parents to submit the learned disability certificate by a stipulated date. It would be too much to expect that a boy of around 18 years of age would be able to comprehend the purport and impact of the circular granting concession to students suffering from learning disability. Teachers also are expected to detect students suffering learning disabilities. We are informed that there were 103 students in each Division in which Randhir was studying in 12th standard at respondent No. 1-school. Such a large number of students in a class-room would never permit a teacher to give individual attention to students, much less to make efforts to find out who are the students with learning disabilities. We may take note of the policy of the Government to give grants for teachers' salaries on the basis that each division should have about 80 students. This policy itself requires reconsideration as teachers cannot be expected to pay individual attention to students, if they have to look after 80 students in the class-room. Be that as it may, we are satisfied that in the facts of the present case, the circular dated 20 July 2012 of respondent No. 2-Board was not brought to the notice of parents of Randhir, who is found to have learning disability, as certified by the Professor of Paediatrics, at Learning Disability Clinic at KEM Hospital.

20. In order to ensure that the circular is brought to the notice of parents also, respondent No. 2-Board should take necessary steps to impress upon all school managements that the copy of the circular stipulating the last date for submitting learning disability certificate be sent by the school management to parents of

each student at appropriate time. Petition is accordingly allowed with the aforesaid directions. Respondent No. 2-Board is directed to give Randhir Vijay Damley the benefits of the circular by giving grace marks. Respondent No. 1-school shall co-operate with the petitioner to enable Randhir to get benefits of the aforesaid circular and these directions are to be complied with utmost expedition.

Parties to act on an ordinary copy of this order duly authenticated by the Court Associate.