



Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6699 OF 2023

KRISH RAJENDRA CHORDIYA,
Age 17 years, Occ. Student,
Through his Guardian/Father,
Shri Rajendra Chordiya, Age 45 years,
Occ. Business, Residing At C-9,
Swatishree Apartment, Govind Nagar,
Nashik 422 009.

... PETITIONER**~ VERSUS ~**

- 1. THE STATE OF MAHARASHTRA,**
Through its Ministry of School
Education.
- 2. THE DIRECTOR OF EDUCATION,**
Nashik Division, Maharashtra State
Board of Secondary and Higher
Secondary Education, Nashik.
- 3. THE DEPUTY DIRECTOR OF
EDUCATION,**
Nashik Division, Maharashtra State
Board of Secondary and Higher
Secondary Education, Nashik.
- 4. MAHARASHTRA STATE BOARD
OF SECONDARY AND HIGHER
SECONDARY EDUCATION, PUNE,
PUNE.**

5. **GARGI JUNIOR COLLEGE,
NASHIK,**
Having its Registered Office address,
Plot No. 29, Sector No. 45, Patil Nagar,
CIDCO, Nashik 422 009.
Email id: garticollege@gmail.com

... RESPONDENTS

APPEARANCES

FOR THE PETITIONER	Mr YS Jahagirdar, Senior <i>Advocate, with Suresh M Sabrad, Sharvari Kanetkar, Pratik Sabrad, Amey Sawant & Gracy S.</i>
FOR RESPONDENTS NOS. 1 TO 3-STATE	Mrs AA Purav, AGP.
FOR RESPONDENT NO. 4	Mr Kiran Gandhi, i/b Little & Co.
FOR RESPONDENT NO. 5	Ms Rooshna Sayyed, i/b Kishor Gaikwad.

**CORAM : G.S.Patel &
Neela Gokhale, JJ.**

DATED : 7th June 2023

ORAL JUDGMENT (Per GS Patel J):-

1. **Rule.** Appearing Respondents waive service. Rule made returnable on 11th July 2023.
2. The Petition discloses an utterly extraordinary state of affairs. The Petitioner is a 17-year-old student is caught between the Scylla

of an utterly doctrinaire approach of the 4th Respondent, Maharashtra State Board of Secondary and Higher Education, and the Charybdis of an alleged lapse on the part of the 5th Respondent, the Gargi Junior College, Nashik. The result is that the young Petitioner's entire educational carrier and future is in jeopardy.

3. The Petitioner was a student in the Silver Oak Universal School, Nashik. He appeared for the 10th standard examination of the ICSE Board in the academic year 2020–2021. It seems that very shortly thereafter, because of the lockdown, the Petitioner could not immediately take enrolment in a college. He worked on developing a digital app relating to the Covid situation. This was a tracker for Covid conditions. Clearly, he engaged himself in a technical and science-based pursuit of his own volition.

4. On 24th July 2021, the Petitioner's results for the 10th standard examination were declared. He secured 92% marks.

5. The Petitioner began looking for a college for admission for the 11th and 12th standard in Science. He wanted one closer to his residence. He had heard of the 5th Respondent college, Nashik, located not far from this residence. The Petitioner and his father visited the college. They were asked to fill in an online application form, and, according to the Petitioner were told to indicate only the 5th Respondent as their choice. The Petitioner did so and filled in an 11th standard centralised online admission process form for 2021–2022 saying that he had passed in the Science subject and had opted for only one college.

6. In the first cap round, the Petitioner received an allotment letter from the 3rd Respondent, the Deputy Director of Education. He was allotted a seat in the 5th Respondent college in the Science stream.

7. The Petitioner completed the 11th standard in the 5th Respondent college. He appeared for 11th standard examination. He stood in the first class. He was then admitted in 2023 to the 12th standard. He paid all fees. He appeared for all internal examinations, viva and other tests and cleared them all. He was then given a hall ticket for the HSC examination of February–March 2023. He appeared for this examination. Then, on 27th March 2023 received a letter from the 5th Respondent saying that as per an order issued on 23rd March 2023 by the 4th Respondent, the Petitioner’s admission to the 11th and 12th standard was cancelled. The reason given was that the Petitioner had not “opted for the Science subject” at his 10th standard ICSE examination. The Petitioner’s father applied for a copy of the order. This order of 23rd March 2023 is not yet given to the Petitioner. That in itself is to us a cause of concern.

8. On further enquiries with the 4th Respondent, the Petitioner’s father was apparently shown two lists. One list was said to be that of HSC March 2023 examination-list of candidates appearing without getting eligibility-Nashik. The second list was of “HSC March 2023 examination list of candidates appearing without eligibility forms-Nashik”. The Petitioner’s name features in neither

of these two lists. Prima facie, this would indicate that the Petitioner is not ineligible.

9. In the meantime, the Petitioner appeared for the Joint Entrance Examination (“JEE”) of the Vellore Institute of Technology (“VITEEE”) and entrance exams of Birla Institute of Technology and Science, Pilani (“BITS Pilani”). On 29th April 2023, the JEE Main 2023 results were released. The Petitioner scored 97.346 total marks. A few days later, for the Vellore Institute, the released marks showed that of the 1.70 lakhs candidates who took the entrance examination, the Petitioner’s rank was 8830. On that basis the Petitioner obtained a provisional admission letter.

10. The HSC results were declared on 25th May 2023. The Petitioner’s mark-sheet was not uploaded. He was shown as disbarred. The Petitioner’s father made an application on 30th May 2023 pointing out these facts and asking that the mark-sheet be released.

11. The argument before us by the 4th Respondent is that the applicable regulations, which were known to the 5th Respondent, do not permit the Petitioner to gain admission to 11th and 12th standard Science at all.

12. We do not see how we can possibly refuse to exercise discretion in favour of the Petitioner in a case like this. If the regulations, to which we will presently turn, were known to the 4th Respondent and the 5th Respondent, it was for the two of them to

coordinate to ensure that the Petitioner was informed before being given admission that he was ineligible whatever the reason. It is certainly not open to the 5th Respondent, which must be deemed to know of all applicable regulations, to say that it is not at fault. If the 4th Respondent cannot control the conduct of its accredited educational institutions, then the consequences of that fault cannot be visited on students.

13. A weighty factor here is the performance of the Petitioner and the duration for which he has been allowed to study Science. This is not a case where the Petitioner just entered the 11th standard Science stream and wants to pursue it. He has in fact completed the 11th and 12th standard. He has done well above average in both. Not just that, but he has appeared for highly competitive entrance examinations to among the most prestigious engineering and technical colleges in the country and at least in one has secured provisional admission. What he is now being told is that he is *incapable* of studying Science because he did not do Science three years ago in the 10th standard.

14. Even that assertion is not established.

15. The regulations in question are of 1977 under the Maharashtra Secondary and Higher Secondary Boards Act 1965. Regulation 16 says that to be eligible to standard 11th in the Science stream of a junior college, a candidate must secure a minimum of 40% marks in Science subjects in the Secondary School Certificate (“SSC”) examination or equivalent. There is no dispute that ICSE

is regarded as equivalent. Then there is an explanation which defines 'Science subjects'. The explanation says that Science subjects will include, science, general science, physics, chemistry, biology, 'physiology and hygiene' and 'other comparable science subjects' in which the board concerned holds its own examination.

16. The Petitioner's ICSE certificate is at page 45. The subjects listed are English, Hindi, History (along with Civics and Geography), Mathematics, Commercial Studies and Physical Education. This is this certificate that were shown to the 5th Respondent and on the basis of which the 5th Respondent not only allowed but encouraged the Petitioner to take admission. This certificate is no secret. It is part of every record. We see no reason why the certificate itself could not have been examined or checked within a few days before confirming admission or, at best, a few days or a few weeks after, before the Petitioner was put to this kind of prejudice.

17. We also note that there is at least some controversy on which Mr Jahagirdar will no doubt need to address us as to what is meant by 'other comparable subjects' given that the board through which the Petitioner did the 10th standard is an equivalent board. The explanation itself includes a subject such as 'physiology and hygiene' and it is unclear to us why "hygiene" is science, but "physical education" is not.

18. Beyond this, we see no rationale why 10th students who do not take science should not be admitted to the science stream later.

In fact, the choice of subjects at the SCC/ICSE schools is not made in the 10th standard but at least a year or two earlier, around the 8th or 9th standard. It is surely unreasonable to expect that the decision of a 14-year-old will be determinative of his entire future.

19. We are fortified in this view by a look at the National Education Policy. The entire pattern is proposed to be changed. The old trifecta of *Science-Arts-Commerce* is to be done away with, and rightly so. The emphasis is now on identifying and nurturing potential and providing flexible learning options. If this is the policy trend, we are unable to see how the inflexibility — to say nothing of the tardiness — of the 4th Respondent's approach fulfils any objective at all. We were compelled to ask what the purpose of the 4th Respondent is: to assist students and provide and encourage education opportunities or to discover new ways to stymie them?

20. Further, assuming that the regulations are to be read like a statute, which is the submission that is being made before us today on behalf of Respondent No. 4, then all principles of interpretation of statutes and all aids to interpretation including the principles of *ejusdem generis* or *noscitur a sociis* will undoubtedly need to be considered.

21. *Prima facie*, however, we are unable to see that there is the possibility of a complete and blanket exclusion of the Petitioner not only having regard to the facts of the case but also the wording of the regulations.

22. At this prima facie stage, one must test the balance of convenience in addition to assessing whether a prima facie case is been made out. An important factor here is that the approach of the 5th Respondent college is one that supports the interpretation being canvassed by Mr Jahagirdar, namely that the Petitioner was indeed qualified to take admission to the science stream. If that be so, the greater prejudice is undoubtedly likely to be caused to the Petitioner if interim and ad-interim relief is refused. We see no conceivable prejudice being caused to the 4th Respondent board. On the contrary, another question that will have to be addressed is whether the actions of the Board have to be tested on the basis of the well-settled principles of Wednesbury unreasonableness and the doctrine of proportionality. There is also the question of whether it is at all 'reasonable' for the Board to undertake any form of scrutiny after a student has completed two years of the 11th and 12th standard, rather than as soon as practicable after admission to the 11th standard.

23. One of the arguments being canvassed on behalf of the 4th Respondent is that the Petitioner cannot invoke the doctrine of promissory estoppel against the 4th Respondent board. This is a question we will also consider along with its associated question of the doctrine of legitimate expectations but, to put it at its mildest, if there is to run an issue of estoppel or estoppel in pais, as Mr Jahagirdar would submit, then surely it is not unreasonable to say that it must be applied *against* Respondent No. 4.

24. We will consider all of these at an appropriate stage.

25. It is for these brief reasons that we have issued Rule and that we believe it is necessary to grant ad-interim relief in terms of prayer clause (e) which reads thus:“(e) pending the final hearing and disposal of the writ petition, this Hon’ble Court be pleased to issue marksheet and certificate to the Petitioner (Hall Ticket Set No.S004639) for 12th Standard HSC Examination 2023.”

26. All concerned will act on production of an authenticated copy of this order. The Board will not insist on production of a certified copy. In any case, the certified copy is expedited.

(Neela Gokhale, J)

(G. S. Patel, J)