

CIVIL APPELLATE/ORIGINAL JURISDICTION

CIVIL APPEAL NO. 6256 of 2010

MAHARASHTRA STATE BOARD OF SECONDARY AND HIGHER ... Appellant(s)
SECONDARY EDUCATION, PUNE

Versus

STATE OF MAHARASHTRA AND ORS. ... Respondent(s)

WITH

CIVIL APPEAL NO. 6257 of 2010

STATE OF MAHARASHTRA AND OTHERS ... Appellant(s)

Versus

SANGITA SHAH & OTHERS ... Respondent(s)

WITH

CIVIL APPEAL NO. 6258 of 2010

JAN MUKTI MORCHA ... Appellant(s)

Versus

STATE OF MAHARASHTRA AND ORS. ... Respondent(s)

WITH

CIVIL APPEAL NO. 6259 of 2010

PARENTS TEACHERS ASSOCIATION UNITED FORUM ... Appellant(s)

Versus

STATE OF MAHARASHTRA AND ORS. ... Respondent(s)

WITH

CIVIL APPEAL NO. 6261 of 2010

MASTER ISHAN UMESH KULKARNI ... Appellant(s)

Versus

STATE OF MAHARASHTRA AND ORS. ... Respondent(s)

WITH

WRIT PETITION (C) NO. 7 OF 2011

DEEPA A. KOTHARI & OTHERS ... Appellant(s)

Versus

STATE OF MAHARASHTRA AND OTHERS ... Respondent(s)

O R D E R

1. These Civil Appeals have been filed by Maharashtra State Board of Secondary and Higher Secondary Education and others challenging the judgment dated 23.6.2010 passed by the High Court in Writ Petition No. 1109 of 2010. That was a petition filed by few students through their parents challenging the constitutional validity of Resolution/Order dated 25.2.2010 and corrigendums dated 14 & 16 June, 2010 issued by the State of Maharashtra. By the impugned Government Resolution, the amendments made to the regulations were granted approval.

2. Maharashtra State Secondary and Higher Secondary Education Board-appellant herein had introduced a scheme by which insofar as the examination of 10th standard is concerned though the students had to write six papers in all, the best average percentage of score in best five subjects only was to be considered for the purpose of admission to the 11th standard. Needless to say that the students had to pass in all the six subjects. This arrangement was challenged by the students who were appearing for Indian School Certificate Examinations ("ISCE" in short) because they had to write the papers in seven subjects and they felt that this was an unfair advantage given to the students of the State Board inasmuch as percentage of the State Board to the 11th standard would raise in comparison to the percentage of the students of ISCE who had to write the papers in seven subjects. The High Court accepted this contention and quashed the Government Resolution as well as the amended regulations by the Board holding the same to be discriminatory.

3. The matter came up to this Court. At that time, the whole admission process of about 16 lakhs students in the State of Maharashtra was stuck up and as the High Court in

its operative order had directed the cancellation of all the mark lists wherein the score in the best five subjects alone was shown for the purpose of admission to 11th standard. Be that as it may, when the matter came up before this Court, an interim order was passed on 13.7.2010 taking into account the state of affairs at that time. The interim

order runs thus:

"INTERIM ORDER:

By way of interim order, we issue the following directions:

1. There shall be stay of the operation of the impugned judgment insofar as the unconstitutionality regarding the impugned Resolution dated 25.2.2010 and corrigendums dated 14th & 16th June, 2010 are concerned.

2. The Division Bench has directed by way of its operative order in the following terms:

"The impugned Government Resolution/order dated 25th February, 2010 and the Corrigendum dated 14th and 16th June, 2010 issued by respondent No. 1 State are quashed and set-aside.

In view of the fact that we have quashed and set-aside the Government Resolution dated 25th February, 2010 and Corrigendum dated 14th and 16th June, 2010, the respondent Nos. 1 to 4 are directed to forthwith commence the admission process (online admission and admission process) without adherence to the best of five policy as set out in the Government Resolution dated 25th February, 2010 and the Corrigendums thereto.

Needless to state that the online admission process will commence and shall be completed without in any manner applying Rule 8 as set out in the Brochure which is issued by the State of Maharashtra and particularly Respondent No. 1. Further needless to add that respondent Nos. 1 to 4 shall make the

necessary modification/changes in the mark list of the examination of the SSC students held in March-April, 2010. Rule accordingly made absolute in the aforesaid terms.

In view of the disposal of the Writ Petition, nothing survives in Notice of Motion No. 325 of 2010 and the same is disposed of accordingly."

3. It is, therefore, apparent that the on-line admission process is directed to be proceeded without adherence to the best five rule in case of students who have appeared for SSC examination in March-April, 2010. Further, it has been directed that the fresh process will start without the application of Rule 8 as set out in the Brochure issued by the State of Maharashtra-respondent No.1 herein.

4. Taking into consideration the welfare of vast number of students who have appeared for the examination, which is reported to be about 16 lakhs, as also the students who have appeared for the examination conducted by the Council for Indian School Certificate Examinations (for short as "ICSE"), we deem it fit to direct that the best five rule shall be made applicable to the students passing the present examination of SSC for admission to junior college. However, this direction will be subject to the rider that the same best five rule shall also be made applicable even in the case of students passing ICSE examination. In their case, the best five rule shall be restricted to the subjects in Groups-I and II only (as per their curriculum) and not for the Group-III subjects. There

shall be a further rider that if the concerned student feels that he should also get the advantage of subjects of Group-III, he shall have an option to proceed on the basis of average of all the seven subjects without applying the best five rule. Thus, in case he exercises that option, his percentage shall be calculated by arriving at the average of all the seven subjects.

5. Because of these directions, it shall not be necessary for the appellant-board to cancel the format of mark-sheets granted in case of SSC students. While proceeding with the admissions generally as also by on-line process, care shall be taken to see that the options given by the ICSE students are properly honoured and meticulous care will be taken in that respect."

4. The admissions to 11th standard then proceeded on the basis of the aforesaid interim order. In order to balance the equities in the aforesaid interim order, it was directed that even the students of ICSE could give their choice for the best five subjects if they so felt. An option was also left open that if they so felt, they could also ask for the score in all the seven subjects, in which they had appeared, to be taken into consideration for deciding the percentage for the admission to 11th standard.

5. Needless to say that the admissions proceeded on that basis for the academic years 2010-2011 and 2011-2012.

6. Before the admissions for the academic year 2011-12 were started, the appellant amended their regulations and

admittedly brought them in tune with the interim order passed by this Court on 13.7.2010.

7. When the matter came up today, Mr. C.U. Singh, learned senior counsel appearing for the Maharashtra State Board of Secondary and Higher Secondary Education -appellant argued that since the amendments have now been made in tune with the interim order passed by this Court on 13.7.2010, in fact these appeals have become infructuous. Mr. Singh points out that all the petitioners/students who had filed the writ petition before the High Court got the advantage of the interim order dated 13.7.2010 and have now been admitted to class 11th standard on the basis of their score in the best five subjects or as the case may be, in all the seven subjects. Mr. Singh, therefore, prays that the appeals may be disposed of as having become infructuous.

8. Mr. Arvind Savant, learned senior counsel appearing for the students/parents, however, submits that in one sense, the appeals have become infructuous. However, even the amendments brought up by the Board to the regulations are in challenge in a Writ Petition No. 7 of 2011 filed before this Court under Article 32 of the Constitution. He apprehends that if these appeals are disposed of as infructuous, it may affect the merits of Writ Petition No. 7 of 2011.

9. Ms. Indu Malhotra, learned senior counsel appearing for the Council for ISCE submits that in fact there has been a change in the syllabi and if the appeals are disposed

of, that is likely to affect the Council-ISCE inasmuch as

the ISCE has to hold examinations in all the States and is not limited to the State of Maharashtra.

10. Considering all these contentions, we are of the clear opinion that these appeals have become infructuous and are liable to be disposed off as such. We also make it clear that this disposal is being done without considering the merits of the impugned judgment. It was contended before us that the amendments which have been made to the regulations were only limited to the period covered by these appeals meaning thereby only for two academic years. Mr. Singh makes it clear that these amendments would not be treated to be limited to two years only and would continue to be in field unless they are further amended.

11. We do not express anything in respect of the powers of the appellant/State Government to amend their regulations because that subject is not before us.

12. We, accordingly, modify the judgment of the High Court to the extent that has been indicated above in terms of the interim order dated 13.7.2011 which has now been given the final shape by way of amendments in regulations. We make it clear that this order will not be viewed as an expression of opinion on the merits.

13. Mr. Singh points out that four out of eight petitioners/students in W.P. (C) No. 7 of 2011 have already been admitted to 11th standard. He does not have instructions regarding the other four students. Mr. Savant

also does not have the instructions as to whether the petitioners in the Writ Petition No. 7 of 2011 have been admitted or not. We feel that it will not be for us to entertain this Writ Petition under Article 32 of the Constitution. We grant liberty to the petitioners to approach the High Court by way of a Writ Petition under Article 226 of the Constitution, if they so feel.

14. The Civil Appeals and Writ Petition stand disposed of

accordingly.

.....J.
(V.S.SIRPURKAR)

.....J.
(T.S.THAKUR)

New Delhi,
August 18, 2011.
ITEM NO.101

COURT NO.8

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 6256 OF 2010

MAH.STATE SE.& HIGHER SEC.EDUCATION.PUNE

Appellant (s)

VERSUS

STATE OF MAHARASHTRA & ORS.

Respondent(s)

[With appln. on behalf of respondent No. 24 for correction of order dated 26.10.2010]

WITH
Civil Appeal NO. 6257 of 2010
(With appln. For bringing on record the additional facts and with office report)
Civil Appeal NO. 6258 of 2010
(With office report)
Civil Appeal NO. 6259 of 2010
(With office report)
Civil Appeal NO. 6261 of 2010
(With office report)
Writ Petition (C) No. 7/2011
[with appln. for stay and with office report]

Date: 18/08/2011 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V.S. SIRPURKAR
HON'BLE MR. JUSTICE T.S. THAKUR

For Appellant(s) Mr. C.U. Singh, Sr. Adv.
Ms. Deepa Chauhan, Adv.
Mr. Kiran Gandhi, Adv.
Ms. Swati Sinha, Adv.
Ms. Taruna A. Parsad, Adv. for
M/S Fox Mandal & Co.

Mr. Hardik Luthra, Adv.
Mr. Pradeep Kumar Bakshi, Adv

Mr. Sanjay Kharde, Adv.
Mr. Nitin Deshpande, Adv.
Ms. Asha Gopalan Nair, Adv.
Mr. Harish Pandey, Adv.

: 2 :

For Respondent(s) Mr. Arvind Savant, Sr. Adv.
Mr. C. Rashmikant, Adv.

Mr. Mahesh Agarwal, Adv.
Mr. Piyush Raheja, Adv.
Ms. Radhika Gautam, Adv. for
Mr. E.C. Agrawala, Adv.

Mr. Vinay Navare, Adv.
Mr. Keshav Ranjan, Adv. for
Ms. Abha R. Sharma, Adv.

Ms. Indu Malhotra, Sr. Adv.
Mr. Jaideep Bedi, Adv.
Mr. Kush Chaturvedi, Adv.
Ms. Chinmayee Chandra, Adv. for
Mr. Vikas Mehta, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeals and writ petition are disposed of in
terms of signed order.

(Pardeep Kumar)
Court Master

(Shashi Bala Vij)
Assistant Registrar

[SIGNED ORDER IS PLACED ON THE FILE]