

JUST IN

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By The Way

"Lawyers: Persons who write a 10,000 word document and call it a brief" - Czech Novelist - Franz Kafka

ANALYSIS OF THE 'ICSE - SSC - BEST OF FIVE' JUDGMENT

Current Status

The case discussed and analysed herein is the judgment passed by the Hon'ble Bombay High Court and the matter currently is pending in appeal before the Hon'ble Supreme Court. As reported in the Times of India (Mumbai Edition) on 14 July 2010, after hearing the matter, the Supreme Court granted interim relief by ordering the State of Maharashtra to extend the 'best of five' policy for ICSE Board students too. Further hearing of the matter will take place in October 2010.

Parties & Citation

Bombay High Court O.O.C.J.
Writ Petition No. 1109 of 2010
Mrs. Sangita Shah & Ors. ... Petitioners
Vs.
The State of Maharashtra & Ors. ... Respondents

Coram

The Division Bench of their Lordships the Hon'ble Acting Chief Justice J.N. Patel and Justice S.C. Dharmadhikari

Date of Judgment

22/23 June 2010 (per Justice Dharmadhikari)

Statutes considered

- Constitution of India
- Maharashtra Secondary and Higher Secondary Education Boards Act, 1965
- Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977

Brief facts, cause of action and dispute before the Court

- By way of a Government Resolution dated 25th February 2010 ('said GR'), the Respondent No. 1 implemented a policy meant to benefit only the students of the State Board (SSC) whereby marks of five highest scoring subjects out of six attempted subjects would be considered to calculate the aggregate percentage, based on which admissions to Junior College (Std. XI) would be considered.
- However, this benefit was not extended to any other students of any other Educational Board. If and when the said GR would have been implemented, the best of five policy would have upgraded the percentage of the SSC students considerably, which would enable them to get admission into some of the top colleges. As other Educational Board students were excluded from the policy's benefit, their percentage may have reflected as lower, which would impair their chances of seeking admission into better colleges.
- The Petitioners, all concerned parents, filed a Writ Petition challenging the said GR and the Corrigenda dated 14th and 16th June 2010 issued by Respondent No. 1 on the grounds that it was discriminatory, arbitrary and violative of Article 14 of the Constitution which provides that all equals must be treated equally.

Arguments tabled

Arguments favouring the Petitioners as well as the other Educational Boards

- The Petitioners' arguments started by contending that the State had, all throughout, treated all examinations conducted by different Boards as equivalent and therefore, all students, irrespective of the Educational Board. The Petitioners put forth that the said GR violated the mandate of Article 14 of the Constitution of India which places all equals equally.
- Further, the Petitioners stated that the 'best of five policy' was not really a measure to achieve uniformity and in fact created further discrimination between Boards and students and gave unfair advantage to the students appearing through the SSC Board. The impugned Government Resolution was vitiated by total non-application of mind.
- The Petitioners criticised the State policy asserting that merit took a back seat and discrimination and inequity was writ large in such policies. Students were presented with a fait accompli when without consultation of all stakeholders; such policies were proposed and carried out.
- The Petitioners went a step further and contended that the issuance of the said GR was nothing but an attempt to get over the judgments of this Court rendered in the cases of :
 - *Francisco D. Luis Vs. The Director, Board of Secondary and Higher Secondary Education, Maharashtra & ors.*¹ , (AKA - Percentile case)
 - *Viraj Maniar Vs. State of Maharashtra & ors.*,² (AKA - 90:10 case)
- In the percentile case, the Respondent No. 1 regulated admissions on the basis of a student's percentile which was calculated by dividing a student's percentage by the average of the top 10 percentages from that particular board and then multiplying by 100.
- In the 90:10 case, the Respondents announced 90% reservation in Junior Colleges for students of the SSC Board.
- Petitioners argued that when the Respondent No. 1's actions were tested before this Court on the above-stated two occasions, neither the State nor the SSC Board could place any data justifying the alleged classification or reservation in favour of SSC Board students. In both above-mentioned cases, the Court held that the basis on which the Respondents proceeded

was not only unreasonable but also wholly irrational, arbitrary and artificial.

- Finally, Petitioners put forth that if the said GR is not quashed, then a similar benefit of best of five be given to the students who have appeared for the qualifying test and examination of other Educational Boards too.

Arguments favouring the State and the SSC Board

- The other side arguments began by stating that the Petition was filed after considerable delay as the said GR was published and widely-circulated on 25th February 2010. It was also available on the internet. The Petition should not be entertained as admission process was to commence.
- It was further argued that the State's intent to implement this policy was with a view to bring about uniformity and thereby take away a disadvantage faced by SSC Board students. The curricula, exam and marking pattern of other Educational Boards was much less cumbersome and lenient which helped their students secure better marks while the students of the SSC Board were disadvantaged.
- There was no intention to unfairly target any category of students but the decision was taken to treat all the students alike and in any event no mala fides could be attributed when the exercise of implementation of the said GR was made.
- The Petition questioned the powers of the Board to amend its own regulations, when the same is unconstitutional, unjust and without keeping in mind principles of natural justice. To this contention, it was rebuffed by saying that if the Regulations were a subordinate piece of legislation, an amendment thereto could be carried out without adherence to the principles of natural justice. It was further contended that the State and the Board performed legislative function and principles of natural justice did not have any place in such an exercise.
- The said GR was implemented simply to lessen the rigour for the SSC students who were passing through severe stress and tension and further, since SSC Board students constituted the majority of the students passing out of Maharashtra, the State could not have ignored their academic interest. Thus, without diluting the requirement of passing in all subjects, the Government had simplified the computation and calculation by the best of five policy.
- Respondents also contented that the Petitioners sought to raise the issue of equivalence which was something only experts in the field could do and it was not for the Court in its jurisdiction under Article 226 of the Constitution of India to go into such question.

Decision/Judgment and its reasoning

- After hearing all the parties, Justice S.C. Dharmadhikari delivered the judgment, partially in open Court and partially in Chambers.
- The Judgment began by reiterating observations made by the Court in its previous Judgments and why such a view was taken against the State.
- The Court pointed out that broad based effective and meaningful consultation could not be carried out hastily and at the last moment. Such changes and amendments to the Rules and Regulations by academic bodies must be notified by the Government before the academic sessions commence so that the students know where they are placed. It is not when they appear for examinations and after giving their papers and awaiting their results, that the State and Statutory Authorities take decisions with far reaching consequences.
- The Court observed that the authorities were aware that they need to hold consultations and take the parents and students into confidence and to do

so they ought to have commenced the exercise well in advance. In the present case, the academic interest of the students was sacrificed and given a go-bye by the authorities.

- The Court considered that the benefit of the best of five policy is restricted to the students who appear for qualifying 10th standard examination from the institutions affiliated only to SSC Board. In the garb of bringing uniformity for the assignment of marks, their computation and allocation of grades, what has been done is that a policy is evolved which enables picking up of five subjects of the SSC Board examination in which the best marks have been attained. The State while evolving the best of five policy has discriminated between the students who are similarly placed for admissions to Junior Colleges.
- The court rejected the Respondents' oral assertion that the SSC Board students have suffered and are disadvantaged as it was not supported by any material and in the teeth of binding Judgments of the Court.
- To the argument raised by the Respondents questioning the Court's jurisdiction to decide an issue of equivalence, the Court held that it intervened only because it was necessary to set right a legal violation and constitutional infraction.
- The Court reiterated its observations in the Percentile case, that despite attaining merit, if the students were to be subjected to such competition for determining a rank which shall prejudicially affect the very basic concept of merit, such method would be unjust, unfair and unconstitutional.
- The Court also referred to the case of Saurabh Chaudhary Vs. Union of India ³, wherein the Supreme Court laid down that the right of a meritorious student to get admission to a better Institution is a fundamental right and such a right cannot be whittled down at the instance of less meritorious students. The Supreme Court had emphasised all throughout that the rule of merit must prevail. There cannot be any discrimination between students appearing in the same qualifying examination and less meritorious ought not to steal a march by any back-door method. The Court announced that it followed the same dictum and principle in the present case.
- The Court further pointed out that recommendations and proposals of academic bodies like the SSC Board are forwarded to the State to be accepted, approved and sanctioned by the State. In this case, when the best of five policy was forwarded to the State for acceptance, approval and sanction, the State decided that the best of five policy should be made applicable to the students of SSC Board exclusively. Thus, the benefit of this policy will not be available to the students of ICSE Board. While conferring a benefit on one set of students and excluding the other, it is the State which has lost sight of the mandate of Article 14 of the Constitution of India and the guarantee of equality enshrined therein. The discrimination is clear and on the face of it.
- As laid down in the Supreme Court decisions, no attempt to lower the merit should be tolerated in academic matters. It was for these reasons that the said GR was quashed by the Court.

Consequences of this Judgment

- This Judgment has put to rest the third attempt of the State to implement a policy to aid the supposedly disadvantaged students of the SSC Board. The repeated change in the admission process by the State over the past three years has stressed the students to no end.
- The Judgment has relieved the students of other Educational Boards who suffered discrimination at the hands of the State's best of five policy.

- On the other hand, it has disappointed the students of the SSC Board who, after implementation of the best of five policy, studied for five subjects only and now regret for not concentrating on all subjects equally. The drop in their percentage will hamper their chances of getting into reputed colleges.
- Further, the admission process for Junior Colleges will be delayed indefinitely as mark sheets issued to the students of the SSC Board under the best of five policy will have to be changed.

Analysis

India, as we are aware, is a highly populous country. Further, the demographic profile of India consists mainly of the young generation. This leads to a situation where there is cut-throat competition in order to obtain quality education. Even a fraction of a mark can make a difference in getting admission to reputed colleges and institutions where the merit-cum-preference rule is followed.

Under such circumstances, the State's best of five policy which came to be enforced out of the blue, stretched the competition further. It was left on the students to bear the brunt of the State's hasty and rash decision.

The Court's fair judgment has indeed come as a breather. This Judgment is unarguably a well-drafted one. The Court has reiterated its observations made in the previous two judgments and rightly upheld the fundamental right of a meritorious student to obtain admission in a better institution. By quashing the said GR, the Court has affirmed that State cannot abuse its legislative powers and act contrary to the mandate of the Constitution of India.

Conclusion

A heedless decision of the State tried to jeopardise students' future course for the third time. By quashing and thereby invalidating the State's best of five policy, the Court has very rightly upheld the Rule of Merit in its true sense.

By - Shraddha Kalra

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1. 2008 Vol. 110 (8) Bom. L.R. 2892
 2. Writ Petition No. 1086 of 2009 decided on 6 July 2009 – Bombay High Court
 3. (2003) 11 SCC 146

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