

2022 LiveLaw (SC) 535

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

S. ABDUL NAZEER; PAMIDIGHANTAM SRI NARASIMHA, JJ.

WRIT PETITION (CIVIL) NO. 343/2022; MAY 27, 2022

PRAGYA HIGHER SECONDARY SCHOOL

versus

NATIONAL INSTITUTE OF OPEN SCHOOLING (NIOS) & ORS.

Education - NIOS shall endeavor to fix the examination centres, within a distance of 10 kilometers from the Accredited Institutions with which they are connected - It has duty to fix examination centres in a manner to enable students to appear in the examination with certainty and ease.

Right of Children to Free and Compulsory Education Act, 2009 - Chapter III of the Act incorporates the 'Duties of Appropriate Government, Local Authority and Parents'. Chapter IV, adopting the same rigour imposes 'Responsibilities of the Schools and Teachers'. This significant feature, imposing duties is over and above the Right to Free and Compulsory Education of every child provided in Chapter II of the Act. It is also the duty of the Constitutional Courts to recognize and interpret these Articles in the same spirit and give effect to the provisions of the Act. (Para 4.2)

For Petitioner(s) Mr. Rishi Malhotra, AOR Mr. Jaydip Pati, Adv; For Respondent(s) Mr. Shiv Kumar Pandey, Adv. Mr. Awanish Kumar, Adv. Mr. Chandrashekhar A. Chakalabbi, Adv. Mr. Anshul Rai, Adv. Mr. Abhinav Garg, Adv. Mr. D. Girish Kumar, Adv. Mr. Kumar Vinayakam Gupta, Adv. For Dharamaprabhas Law Associates, AOR

ORDER

1. By this Writ Petition under Article 32 of the Constitution of India, the Petitioner School seeks a direction from the National Institute of Open Schooling¹ to fix *examination centres* for open schooling students at a reasonable distance from their study centres, referred to as Accredited Institutions (AI). The specific prayer in the Writ Petition is for a direction to NIOS to evolve a policy of distance criteria while fixing the *examination centres* for the Public Examinations conducted by NIOS.

2. As the question has a bearing on the fundamental right to education, and more importantly, a right to free and compulsory education of children upto fourteen years, we have called upon the counsel for NIOS to examine and take instructions on the prayer in the Writ Petition and assist the Court in passing necessary directions. Shri Anshul Rai, learned counsel appearing on behalf of the NIOS has brought to our notice- '*Bye-laws, Governing Examinations and Certification 2012, (As Revised and Amended upto 2021)*' having a direct bearing on the issue. We will deal with these Bye-laws after indicating the vital role that NIOS is to perform in the context of our national mission for free and universal education for children upto the age of fourteen years.

¹ hereinafter referred to as "NIOS".

3. Inspired by Article 45, as it stood before its amendment by the Constitution, (Eighty-Sixth Amendment) Act, 2002, the National Policy of Education (NPE) announced in 1986 highlighted free and compulsory education of children below the age of fourteen years. Following the 1986 Education Policy, Government of India, Ministry of Human Resources Development, constituted a National Open School as an autonomous institution.² Apart from the other obligations, NIOS offers Open Basic Education as well as Secondary and Senior Secondary Programmes³. The Government of India, through a Gazette Notification vested NIOS with the authority to examine and certify learners registered with it up to pre-degree level in the area of academic, technical, or vocational education. The Association of Indian Universities also recognized equivalence of Senior Secondary Certificate Examination of NIOS.

4.1 Constitution (Eighty-Sixth Amendment) Act, 2002, amended Part-III, Part-IV as well as Part IVA of the Constitution and introduced Articles 21A⁴, Article 45⁵ and Article 51A(k) ⁶, in the parts relating to Fundamental Rights, Directive Principles and Fundamental Duties. A significant feature of these amendments is in the duty orientation, commencing from a parent and extending to the State and its instrumentalities, to provide free and compulsory education to all children upto the age of fourteen years.

4.2 This duty orientation obligating the State and its instrumentalities is specifically provided by the Parliament in the Right of Children to Free and Compulsory Education Act, 2009. Chapter III of the Act incorporates the 'Duties of Appropriate Government, Local Authority and Parents'. Chapter IV, adopting the same rigour imposes 'Responsibilities of the Schools and Teachers'. This significant feature, imposing duties is over and above the Right to Free and Compulsory Education of every child provided in Chapter II of the Act. It is also the duty of the Constitutional Courts to recognize and interpret these Articles in the same spirit and give effect to the provisions of the Act. It is in this context of Constitutional and statutory framework that we would consider the duties to be performed by NIOS.

5.1 In order to accomplish its objectives, NIOS, in its Norms⁷ provides that it collaborates with existing institutions to provide better services to the stakeholders by accrediting them as partners. NIOS has more than 1,800 such institutions, and they are called the Accredited Institutions⁸ spread across the Country. These AIs are recognized formal schools or other reputed agencies involved in social activities. They assist NIOS in its functions.

² The name came to be changed later as National Institute of Open Schooling (NIOS).

³ State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors. (2006) 9 SCC 1. This Court has held that Right to Education under Article 21A would cover primary as well as Secondary Education.

⁴ **21A.Right to Education.** - The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

⁵ **45. Provision for early childhood care and education to children below the age of six years.** - The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

⁶ **51A. Fundamental Duties.** It shall be the duty of every citizen of India-

(k) Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

⁷ Norms and Procedure for Accreditation of Academic Study Centre.

⁸ hereinafter referred to as "AIs".

5.2 AIs act as study centres for NIOS learners; they ensure that access to study through open schooling mode is within the reach of every member of the society. AIs provide guidance to the learners during the time of admission and also arrange orientation programmes apprising learners about all other features of NIOS. It is sufficient to say that they are not only expected to act as an *interface* between NIOS and the open school learners, but also to work as a guide in all respects, helping the students from time to time. The detailed functions and duties are clearly spelt out in the Part 2 of the Norms issued by the NIOS.

5.3 Petitioner herein is one such Accredited Institution of NIOS situated in Village Katangi, Tehsil Patan, District-Jabalpur (Madhya Pradesh). Petitioner has been assisting students of NIOS for secondary (Class-V) and Senior Secondary (Class- XII) since decades. As on date, they claim to have 155 students of NIOS enrolled for Secondary and 328 students of NIOS enrolled for Senior Secondary in their schools.

6. The stated vision of the NIOS is “*sustainable inclusive learning with universal and flexible access to quality school education and skill development*”. The constitutional document of NIOS specifies that “*any person irrespective of caste, creed and location can seek enrolment in the courses/programmes offered by NIOS*”. It is important to note that NIOS’s objectives prioritizes its duties with respect to certain classes of citizens which are identified in their document as (i) Rural people/urban poor, (ii) girls and women, (iii) underprivileged section of society, (e.g., SC/ST), (iv) disadvantaged persons of minority communities, (v) unemployed and part employed, (vi) school dropouts, (vii) people with special needs i.e., physically and mentally challenged persons.

7.1 Before we deal with the grievances of the Petitioner, it is also important to refer to the Guidelines⁹ issued by NIOS for selecting the *examination centres*. As per the Guidelines, schools to be selected as *examination centres* for NIOS Public Examinations would fall under one of the five categories ranging from A to E on a priority basis. As per Clause 7, while selecting a school for *examination centre*, the Regional Director is directed to consider the preference of sequence specified in categories A to E (in that order) which is as under:

S.No	Types of Schools	Category
1	i. Kendriya Vidyalaya and AI (KVAI)	A
	ii. Navodaya Vidyalaya and AI (NVAI)	
	iii. Central Government Organization Schools and AI (CGAI)	
	iv. Kendriya Vidyalaya (KV)	
	v. Navodaya Vidyalaya (NV).	
	vi. Central Government Organization and Defense Sector Schools (CGDS).	
	vii. CBSE /ICSE Independent School and AI (CBAI)	
	viii. State Government/ Aided Schools/Inter/ Junior College and AI (SGAI)	

⁹ Norms and Guidelines for Establishment of Examination Centre for NIOS, in accordance with Bye-Laws Governing Examination and Certification 2012. (Effective from April-May-2014 Public Examination- Revised).

	ix. State Government Independent School/Inter/ Junior College and AI (SBAI)	
2	i. CBSE independent Schools (CBSE)	B
	ii. ICSE independent Schools (ICSE)	
3	i. State Government Schools (SGS)	C
	ii. State Government Aided Schools (SGAS)	
4	i. State Government Independent School/Inter or Junior Colleges (SGIS)	D
5	i. Government Degree College (GDC)	
	ii. Government Aided Degree Colleges (GADC)	
	iii. Independent Degree / Technical Colleges (IDC)	E
	iv. Any other Colleges (COL)	

7.2 The emphasis in these guidelines is on an important aspect concerning the conduct of examination. This relates to the integrity of the examination and the examination centres, to be selected as the same should be credible and not susceptible to problems of law and order.

8. The Petitioner contends that despite the presence of either an NIOS Education Centre or other recognized institution existing within a maximum distance of 10 kilometers from the AIs, the students have to travel to the identified *examination centre* in Category A to Category E as provided in the Guidelines. The Petitioner also demonstrated that students connected with their centre, particularly Village Katangi, have to travel by road to Jabalpur or Bilpura, which is at the distance of approximately 50 kilometers to appear for examination because Kendriya Vidyalayas and other category-A schools provided as per the Guidelines are situated there. At the same time, institutions that are eligible for being selected as *examination centres* which are within a distance of 10 kilometers from Petitioner's place are mentioned in the Writ Petition. They are extracted herein below for ready reference.

Sr.No.	Name of the School	Distance
1.	Govt. Boys Higher Secondary School, Katangi	01 km
2.	Govt. Girls Higher Secondary School, Katangi	01 km
3.	Govt. High School, Sakra	10 km
4.	Govt. High School, Pola	10 km
5.	Govt. High School, Kemori	10 km
6.	Pragya Art & Commerce College	0.5 km
7.	Chaurasiya Education College, Katangi	0.5 km

9.1 Shri Anshul Rai, has brought to our notice the latest "*Bye-laws Governing Examinations and Certification, 2012, revised and amended upto 2021*". Chapter V of the Bye-laws relates to Fixation of *Examination Centres*, Appointment of Superintendents and Rules for Unfair Means Cases, as per which all matters relating to fixation of *examination centres* are provided. These amended Bye-laws to the extent that they are relevant are extracted herein below for ready reference:

5.1 FIXATION OF EXAMINATION DATES AND CENTRES – GENERAL CONDITIONS

(i) The dates of Examination of NIOS shall be fixed as per the recommendation of Director (Evaluation) and approval of the Chairperson, NIOS and is notified through a notification with Date Sheet.

(ii) Online application will be invited from schools/institutions to act as the Examination Centres of NIOS Public Examination.

(iii) Conduct of Examination in a smooth and fair manner is the responsibility of the Director (Evaluation) as well as of the Regional Directors of the Regional Centres of NIOS.

(iv) The Examinations of the NIOS shall be held at such Examination Centres as recommended by the Regional Examination Centres Fixation Committee (RECFC) out of the schools/institutions registered online and thereafter approved by the Director (Evaluation), NIOS.

(v) Fixation of Examination Centre is the prerogative of NIOS and these may be fixed in any AI of NIOS, Govt. and Govt. aided schools/ KVs/NVs Secondary or Senior Secondary Schools affiliated to ICSE/CBSE/ State Boards or any other recognized Institutions/Colleges Schools who have registered online to be selected as Exams Centres for NIOS Public Examinations as per the sequence of order given below. The Examination Centres shall be fixed as per the availability of all physical facilities like CCTV, well-lit and ventilated rooms, adequate furniture, laboratories, connectivity of public transport, separate toilets for boys, girls and Divyang learners, Bank facility etc. While fixing an Examination Centre, the NIOS will also take into account the available information (confidential or otherwise) and about the earlier NIOS Examinations conducted at the Institution. The detailed Guidelines of NIOS for fixation of NIOS Examination Centres will be followed by the Department of Evaluation, NIOS. The norms and Guidelines for fixation of examination centre shall be governed by the policy in force from time to time as per need.

(vi) Allocation of the Examination Centre is done by the system randomly to the learners near to the allotted AI on the basis of on-line mapping/geo tagging subject to availability of Examination Centre in the nearby area of AI or as decided by the Director (Evaluation) NIOS. The learner has to appear in the Examination Centre allotted to him/her by NIOS. The decision of NIOS with regard to allotment of the Examination Centre will be final.

AI need to work as Active Study Centre of NIOS for Three years for becoming Examination Centre for NIOS Public Examination.”

9.2 Having perused the revised and amended Bye-laws, we are of the opinion that there is certainly an improvement by putting in place a Regional Examination Centre Fixation Committee to determine the conduct of the examination centers for NIOS. As per Clause 5.1(iv), NIOS reserves the right to fix the examination centers and such prerogative is understandable considering the power it needs to exercise to ensure integrity in conduct of the examination.

9.3 It appears that prioritization template of A to E Category of Schools formulated by NIOS for fixing the examination centers seems to have taken the centre stage and the guidelines seem to have focused only on the credibility factor. There cannot be any doubt about the importance of this factor, in as much as the integrity of examination is of the highest value. However, the need for order to ensure quality and integrity of exams must certainly be balanced with the quest to fulfill the purpose of open schooling. This is necessary to ensure that students who have not had the privilege of going to regular schools are incentivized, accommodated, and facilitated to complete the courses that they had undertaken.

10. The need for holding an examination within a distance of a maximum of 10 kilometers seems reasonable. It is documented that a substantial number of students resorting to open schooling invariably come from rural areas. Most of these students

come from poor strata of the society, depend on unreliable public transport and in all probability are employed for their livelihood. It is not difficult to imagine the consequences of inaccessible *examination centres* for such students. There is yet another factor. The primary, secondary, or senior secondary examinations invariably involve answering multiple papers spread over a period of time. Inability to travel long distances for each examination, will only have the consequence of the student dropping out, which is the biggest challenge the Country is facing today. It is interesting to note that the New Education Policy, 2020 in Chapter 6 records the beneficial effect of reducing the burden of distance to prevent dropping outs from schools through group walks, provision of cycles etc. for the Socially and Educationally Disadvantaged groups.¹⁰

11. The grievance made out by the Petitioner is not raised for the first time in this Writ Petition. We have noticed a decision of the High Court of Madhya Pradesh¹¹ dated 27.02.2002 which considered a batch of Writ Petitions raising similar grievances. In fact, the High Court had on previous occasions given directions to reduce the burden of distance in taking the examination by fixing *examination centres* within a distance of 10 kilometers. We are referring to this decision only to indicate that the issue relating to fixing *examination centers* far away from the Accredited Institutions has been troubling the students, schools, as well as the Courts for quite some time.

12. A duty is cast upon the NIOS to fix *examination centres* in a manner to enable students to appear in the examination with certainty and ease. It is for NIOS to go an extra mile rather than expecting the students to walk long distances from villages and towns to take the examination.

13. We are conscious of the fact that fixing *examination centres* is a sensitive duty involving security and continuous monitoring. We are also conscious of the fact that integrity in the conduct of examination is as important as the education itself. Every step must be taken to prevent cheating and copying which are antithesis to education. NIOS must have the freedom, which they have retained in Norms mentioned in Chapter-5, to identify, accept or reject an application offering to be an *examination centre*. While exercising that right, NIOS will also keep in mind its duty to provide accessibility of educational certification by enabling students to reach the *examination centres*.

14. Keeping in mind the fundamental right to education, coupled with the constitutional right of free and compulsory education of children under the age of fourteen years under Article 21A, as well as the duties imposed by the Act, 2009 upon all authorities, which takes within its sweep, even NIOS for achieving the constitutional goal, we direct as follows:

¹⁰ National Education Policy, 2020, Chapter 6, Equitable and Inclusive Education: Learning for All, Para 6.5-

"It will also be essential to take into account research that ascertains which measures are particularly effective for certain SEDGs. For example, providing bicycles and organizing cycling and walking groups to provide access to school have been shown to be particularly powerful methods in increasing participation of female students-even at lesser distances-because of the safety benefits and comfort to parents that they provide. One-on-one teachers and tutors, peer tutoring, open schooling, appropriate infrastructure and suitable technological interventions to ensure access can be particularly effective for certain children with disabilities....."

¹¹ Pran Nath Patel v. Secretary, Madhyamic Shiksha Mandal, Bhopal, 2002 (2) MPLJ 579.

- a) NIOS should develop and implement criteria with respect to fixation of examination centres that would be accessible from the Accredited Institutions with which the aspirants are connected.
 - b) NIOS shall endeavor to fix the *examination centres*, within a distance of 10 kilometers from the Accredited Institutions with which they are connected.
 - c) While fixing the examination centres, NIOS shall be at liberty to take into account the credibility of the Institution offering to be an *examination centre* and such other factors as are necessary to ensure integrity of the examination including law and order.
- 15.** We have no doubt that the Evaluation Committee as well as the Competent Authority of NIOS will bestow their full attention on issues that we have highlighted.
- 16.** With these observations we dispose of the present Writ Petition.
- 17.** We place on record the assistance rendered by Shri Rishi Malhotra, AOR on behalf of the Petitioner and Shri Anshul Rai, Advocate for the Respondent.

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