

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

Writ Petition (Civil)_____of 2020

(Under Article 32 of the Constitution of India)

In the matter of:

1.	Uday R Bhatt	Petitioner
	Versus	
1.	Union of India Through the Secretary, Ministry of Human Resources Development Government of India, Shastri Bhawan New Delhi-110001	Respondent No. 1
2.	National Institute of Open Schooling (NIOS) Through its Chairman Having its Head Office at A 24 / 25 ,Institutional Area Sector 62 ,Noida , Uttar Pradesh	Respondent No 2

TO:

THE HONOURABLE CHIEF JUSTICE OF INDIA

AND HIS LORDSHIPS COMPANION JUDGES

OF THE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF
THE PETITIONER ABOVE NAMED.

Writ Petition under Article 32 of the Constitution of India, 1950

1. This petition is filed under Article 32 of the Constitution of India in public interest seeking a Writ, order or direction for cancellation of all the remaining examinations/ tests/ projects/ assignments etc. for all the students enrolled in National Institute of Open Schooling (NIOS). Same method has been adopted by other Boards including CBSE, ICSE, and other Colleges and Universities in India and abroad.
2. Petitioner is a practising advocate at Ahmedabad and is the father of his minor Son Master Rutvik U Bhatt. He is the natural Guardian of his minor son and hence has joined as the petitioner. Both Petitioner Shri. Uday R Bhatt and his son Master. Rutvik U Bhatt are citizens of India. Petitioner has filed this Writ Petition in the Public interest and have no personal interest in filing of the present petition. There are no civil or criminal cases pending against the petitioners which would have any legal nexus with the issues involved in the present Public Interest Litigation.
3. The Respondent No 1 is Union of India, through the Ministry of

Human Resource Development who are responsible for monitoring education and related issues in schools and Universities in India.

4. The Respondent no 2 is National Institute of Open School (referred as NIOS herein after). It was established in November, 1989 as an autonomous organisation in pursuance of National Policy on Education 1986 by the Ministry of Human Resource Development (MHRD), Government of India. It is providing a number of Vocational, Life Enrichment and community oriented courses besides General and Academic Courses at Secondary and Senior Secondary level. It like other Boards Central Board of Secondary Education and Indian Certificate of Secondary Education, conducts Board examination for students enrolled in Open Schooling. It is under the control of Ministry of Human Resource Development i.e Respondent No.1.

Facts

5. The minor son of the petitioner had enrolled as a student of the NIOS and for which an Identity Card was issued bearing enrolment No.040003183509. The copy of the Identity card of the minor son of the petitioner is annexed hereto as **Annexure P-1 at page 15 to 16.**
6. The son of the petitioner had been issued examination admit cards for the Board exams scheduled in March-April 2020. The copy of the admit card issued to minor son of the petitioner is annexed hereto as **Annexure P-2 at page 17 to 18.**

7. On account of Covid-19 lockdown, the Board examinations of NIOS scheduled in March-April 20 were postponed to July 2020.
8. On 26.06.2020, in Writ Petition (C) No. 566 of 2020 titled Amit Bathla & Ors. Vs. Central Board of Secondary Education & Anr. and other connected matters, relating to Board examination of Class X and XII, CBSE and ICSE submitted before the Honourable Supreme Court that they have decided to cancel the scheduled Board examinations for Class X and XII students and devised a scheme for allotting final marks based upon their previous performance. They further submitted before the Honourable Supreme Court that they would declare the final result by 15.07.2020 so that candidates can apply and seek admissions in Higher Education Institutions in India and abroad. The said scheme was allowed by the Honourable Supreme Court vide its order dated 26.06.2020. Pursuant to this order CBSE issued a notification cancelling the Board examination for class X and XII and ICSE is also in the process of issuing similar notification cancelling Board examinations. True copy of the order dated 26.06.2020, passed by the Honourable Supreme Court in Writ Petition (C) No. 566 of 2020 titled Amit Bathla & Ors. Vs. Central Board of Secondary Education & Anr. and other connected matters is annexed hereto as **Annexure P-3 at page 19 to 24.**
9. On 30.06.2020 NIOS vide Notification No. 18/2020 dated 30.06.2020, further postponed the examination of Secondary and Senior Secondary till further orders. The copy of the 30.06.2020

notification is annexed hereto as **Annexure P-4 at page 25 to 26.**

10. Aggrieved by the decision of NIOS postponing the Board examination without clearly mentioning the schedule vide notification dated 30.06.2020, Petitioner herein made a representation to the Ministry of Human Resource Development and NIOS, requesting for cancellation of Board examination and immediate declaration of Board results in tune with the decision of CBSE and ICSE. True copy of the representation made by the petitioner dated July 01, 2020 is annexed hereto as **Annexure P-5 at page 27 to 37.**

11. Petitioner also wrote a letter to the Lord the Chief Justice of India and his companion justices of this Honourable court, requesting Suo Motu Intervention in the matter pertaining to Board examination of students enrolled with NIOS and for the declaration of results by NIOS immediately on the basis of internal marks in view of International Pandemic of Covid 2019. However no response has been received by the petitioner till today. True copy of the letter written by the petitioner dated July 01, 2020 is annexed hereto as **Annexure P-6 at page 38 to 40.**

GROUND

12. There are about 5-6 lakhs students enrolled under NIOS. The present petition will be beneficial for the NIOS students spread all over India as the actions and inactions of the authorities being the respondents herein have been and are adversely affecting their

fundamental rights .The NIOS students, for no fault of theirs, may stand to lose one year as they will not be able to obtain admission to further studies after school unlike others.

13. The notification of the NIOS dated 30.06.2020, came after the decision of this Honourable Court allowing CBSE and ICSE to cancel the board examination. Thus authorities at NIOS very well knew that they should not have postponed the examination, but cancelled it. That was the only course of action left to the authorities (Respondent no 1 and 2 herein) and which was well known to them. This was due to the unprecedented International Covid 2019 Pandemic from time to time by the Government and the respective authorities have enforced lockdowns and other restrictions which continue till 31st July '20 for now. So nothing can be done till then and the uncertainty may still continue further which is well-known to one and all. Hence, in the face of the overwhelming facts in favor of (only option) immediate cancellation of exams and immediate declaration of results is the only way to go for the authorities. Not doing so is ex-facie illegal, Arbitrary, malicious and malafide, to say the least. Thus, deliberately jeopardising the life, wellbeing and the very existence of the NIOS students. How can such a thing be countenanced?
14. It may also be stated that the authorities at NIOS were having knowledge about the International COVID 2019 pandemic panning out for a long time. The authorities could have thus early on given some form of exam/ test/ assessment to students to satisfy

themselves, even if it is presumed for the sake of argument that such things are required (which actually is /are not required in any view of the matter, to say the least). Nationally and internationally, everywhere, exams like these have been cancelled and results are declared and promotion given. It is for instance pertinent to note that the Top International Institutions / Universities have even shown such care that Harvard, Yale and 5 other Ivy League Schools will not require scores of SAT and ACT for next year admission , as reported in the media.

15. The Petitioner have made representation to the Respondent No. 1 and Respondent No. 2, seeking cancellation of board examination and immediate declaration of results of all students enrolled with NIOS, but no response have been received till date. The delay in decision of conducting board examination by NIOS and declaration of results will adversely impact the future of students, as they would not be able to apply for higher education in absence of results of their board examination. Declaration of results by CBSE and ICSE before NIOS will discriminate the students enrolled under NIOS, as they will not be able to apply for higher examination at the same time as students from CBSE and ICSE.
16. NIOS, CBSE and ICSE are though separate entities but under the direct Control of MHRD (Respondent No.1). NIOS is equivalent to not only CBSE but also other Boards in India. NIOS is also an all India board and has students overseas just like CBSE. NIOS students have to seek and get admissions to

Colleges/Universities/ Institutions just like any other students of Board like CBSE/ ICSE/ State Boards/ Other Boards by interalia getting the mark sheet/s and participating in the admission process at different places in India and abroad.

17. MHRD and NIOS are duty bound to follow the cancellation of Exam mode as held by the Hon'ble Supreme Court decision. Even as per the information in the press a lot of states have extended the Lockdown further from 1st July '20 till at least 31st July '20. Hence examinations cannot be held. Thus NIOS should also immediately cancel the exams and declare the results on the internal marks without fail. It should not deprive the NIOS students of admissions to Colleges/ Universities/ Institutions due to the International Pandemic of Covid 2019.
18. It was the failure of duty of MHRD and NIOS to not point out to the Hon'ble Supreme Court about similar situation of NIOS students and other boards in the CBSE case. Petitioner gathered through reports that Hon'ble Supreme Court had asked Respondent No. 1 about other boards also but no clear response was given.
19. NIOS also follows, since years, system of internal marks by way of TMA (Tutor Marked Assignment) whereby 20% marks are given and for the balance 80% written examination is held. TMA is internal marks. This is so as it is a part of final marks i.e 20% as internal marks and 80% as exam paper marks. All past years also this system is followed. Hence based upon this results can easily

be and immediately announced. This being so, it is but obvious that the said internal marks are to be followed for declaring the result in the present peculiar situation due to the International Pandemic of Covid 2019 just like for CBSE and ICSE. No other mode and manner can be adopted. Hence any other procedure, additionally, cannot be imposed upon NIOS Students in any manner whatsoever (under any guise) as all students are equal as there is no additional procedure imposed upon CBSE and ICSE boards. Doing so would not only be ex-facie illegal but also a gross violation of all the fundamental, constitutional and legal rights of the NIOS students, to say the least. Also the NIOS has already, long back, declared the Internal marks by way of TMA (Tutor Marked Assignment) and was uploaded on the NIOS website.

20. The Petitioner has not approached any court or authority for redressal of the grievances and issues raised in this Petition. That the Petitioners do not have any alternative equally efficacious remedy other than to approach this Hon'ble Court than by way of filing this writ petition under Article 32 of the Constitution of India.
21. The Petitioner declares that the issue/s raised was/are neither dealt with nor decided by a Court of law at the instance of the petitioner or to the best of his knowledge, at the instance of any other person.
22. That the Petitioners have not filed any other writ petition same or similar to the present writ petition, neither in this Hon'ble Court nor in any other Court or forum across India. The Petitioners have

not approached any Court/ authority for relief for the subject matter of this petition.

Prayer

23. In light of the facts and circumstances of this case, the Petitioner pray before this Hon'ble Court as under:
- i. Pass a Writ, Order or Direction to the Respondent No. 1 and Respondent No. 2 to cancel board examinations/tests/projects/assignments etc as done by other Boards like CBSE and ICSE and other Colleges and Universities.
 - ii. Pass a Writ, Order or Direction quashing Notification No. 18 / 2020 dated 30.06.2020 issued by Respondent No. 2.
 - iii. Pass a Writ, Order or Direction directing Respondent No. 2 to declare the result of the NIOS exams (including Senior Secondary) immediately based upon the internal marks (TMA).
 - iv. Pass a Writ, Order or Direction directing Respondent No. 2 to ensure that NIOS students do not suffer in any manner whatsoever by not keeping anything pending including assessment / re-assessment /re-evaluation/ rechecking etc of the examination papers , materials etc which has a bearing on marks of students .
 - v. Pass a Writ, Order or Direction directing Respondent No. 1 to further direct and order all concerned to keep the admissions in the Colleges/ Universities /Institutions pending till the NIOS students can submit their results by way of Application/s for admission.

- vi. Pass such further order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER BE GRATEFUL.

Drawn by: Gunjan Singh

Drawn on: 05.07.2020

Filed on: 05.07.2020

Filed by: Satya Mitra

(Advocate for the Petitioner)