

FILED THROUGH:

Mayuri (Adv)

DOR - 07280

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.W.J.C. No. /2020

In the matter of an
application under Article
226 of the Constitution of
India

And

In the matter of:

Grassroot Empowerment & Development by Youth Through its Co-
Founder and Assistant Executive Program Director, Ms. Nalini Mishra

...Petitioner

VERSUS

1. State of Bihar, Through The Chief Secretary,
Department of Education,
Government of Bihar

2. Bihar Board of Open Schooling and Examination
Through The Chief Executive Officer
OSD, HRD Department,
Government of Bihar
Office at:
Chanakya National Law University
Nyay Nagar, Mithapur
Patna -800001

...Respondents

To

The Hon'ble Mr. Justice Sanjay Karol, the Chief Justice of the
High Court of Judicature at Patna and his companion Justices of the said
Hon'ble Court.

The humble application in
the interest of public at large on
behalf of the petitioner above
named.

MOST RESPECTFULLY SHOWETH:

That the present application by way of Public Interest Litigation is being filed on behalf of Grassroot Empowerment & Development by Youth (An N.G.O.) represented through its Co-Founder and Assistant Executive Program Director, Ms. Nalini Mishra

and being an organization concerned with public welfare and causes of the masses at large has ventured to raise the public cause before this Hon'ble High Court for the reliefs and directions in the interest of public at large as follows:-

RELIEFS:-

- That this is an application on behalf of the petitioner for issuance of a writ in the nature of mandamus or any other appropriate Writ(s), Order(s), Direction(s) to direct the respondents to come up with a policy regarding the promotion of the Class Xth and XIIth students in line with the other boards like CBSE, ICSE and NIOS which have already promoted their students on the basis of the internal assessment.

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- To issue a writ in the nature of mandamus or any other appropriate Writ(s), Order(s), Direction(s) to direct the respondents to take immediate action/ decision for the welfare of the students enrolled in class Xth and XIIth as the admission and enrolment in the Universities have been initiated.
 - To issue a writ in the nature of mandamus or any other appropriate Writ(s), Order(s), Direction(s) to order the Respondent authorities to promote the class Xth and XII students enrolled with the Bihar Board of Open Schooling and Examination (herein after referred as “**BBOSE**”) on the basis of the Tutor Marked Assignment (herein after referred as “**TMA**”).
 - To issue a writ in the nature of mandamus or any other appropriate Writ(s), Order(s), Direction(s) to order the Respondent Authorities to immediately announce the cancellation of the examination for the students enrolled in Class Xth and XIIth in the BBOSE.
1. That the substantial questions of law involved in the present writ application for consideration of the Hon’ble Court are as under:-

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- (i) Whether the Respondent Authority owes an obligation towards its students to conduct their examination and promotion in such a manner that it is in sync with the admission in other educational institutions?
- (ii) Whether the Respondent Authorities have the power to promote the students without conducting a physical examination?
- (iii) Whether the Respondent authorities can let the year be wasted due to their inaction and non-implementation of the methods applied by other similarly situated boards in the country?
- (iv) Whether the non-promotion of the students enrolled with the Respondent would amount to discrimination as the students of other Boards have been promoted and in some cases a scheme has been devised for their promotion?
- (v) Whether the Respondent Authority due to its inaction is violating Article 14 and 21 of the Constitution?

- (vi) Whether the Respondent Authorities would be correct in not taking any action as has been taken by the other similarly situated boards?
2. That there is no personal gain, private motive or oblique motive behind filing of Public Interest Litigation before this Hon'ble Court.
 3. That it is stated that the petitioner has no personal interest in the matter and he is only interested in the protection of rights and interests of public at large.
 4. That the petitioner does not possess any grudge against any person or any body and the instant writ petition is being filed purely in public interest of the State of Bihar.
 5. That the petitioner is a society registered in Delhi under the Society Registration Act, 1860 and has made its efforts in improving the lives of people across the country. In this view, the Petitioner was approached by some students enrolled in the Respondent No. 2 board regarding their problems of board examination and results.
 6. That it is pertinent to mention at the outset that this case relates to the act of Respondent authorities which is a classic example of how

the negligence and indifference on the part of the authorities have an adverse effect on the career and future of the students enrolled with the board. Whereas, almost all other boards in the country have taken a policy decision regarding the promotion of their students on the basis of one method or the other, the Respondent No. 2 seems to be reluctant to take any such decision as there is no information available on their website.

7. That the petitioner was approached by several students who are enrolled in the Respondent No. 2 board for the course in Class Xth and XIIth seeking help of the Petitioner in getting some information from the board regarding the conduct of the examination.
8. That in the light of the Covid-19 pandemic thousands of students have been suffering, as their future is uncertain. The Hon'ble Prime Minister declared a nationwide lockdown with the effect from 24 March 2020. A direct effect of this has been that the examinations which were to be held have not been conducted yet and postponed indefinitely.

9. That the present health crisis has caused an unprecedented chaos. On one hand everyone is a potential susceptible and a suspected carrier of Covid—19 (a virus strain which is the cause of an extremely contagious and communicable disease) hence physical examination cannot be conducted as all the schools across the country are closed and on the other hand the Institutions/ Universities have initiated the process of admission/ enrolment in their professional courses. The Class XII students of the Respondent Board are therefore stuck in a difficult situation where in absence of passing certificate of Class XII they are ineligible to apply to these colleges.
10. That it is also pertinent to mention here that several schools have also initiated the process of admission and enrolment in Class XIth because of which the students enrolled in class Xth of the Respondent No. 2 board who would want to continue regular studies from Class XIth onwards cannot do so in view of the inaction of the Respondents in the instant case.
10. That the present petition has been filed bringing to this Hon'ble Court's attention the inaction of the Respondent authorities which

would lead to a loss of an year of thousands of students across the state of Bihar as they would have to wait for another year if the Respondent No. 2 does not take quick action like all the other boards of the Country.

11. That the fact in the present scenario is that physical examinations cannot be conducted and if conducted it would amount to threat to the life and well being of the students and the same is therefore simply not feasible at this point of time. Hence, the Respondent no. 2 will have to devise a method to promote the students without conducting the physical examination.
12. That on 26.06.2020, the Hon'ble Supreme Court in Writ Petition (Civil) No. 566 of 2020 titled, "*Amit Bathla & Ors. V. Central Board of Secondary Education & Anr.*" approved the cancellation of the physical examination by the CBSE and directed ICSE to take a similar approach and promote the students on the basis of the internal assessment. This shows that Bords like ICSE and CBSE which are way larger in terms of the student strength and scale of functioning than Respondent No. 2 have decided to cancel the physical examination and promote students.

True copy of the order dated 26.06.2020 in Writ Petition (Civil) No. 566 of 2020 titled, "*Amit Bathla & Ors. V. Central Board of Secondary Education & Anr.*" is annexed herewith and marked as ANNEXURE-1 to the petition.

13. That the students who are enrolled in the Respondent No. 2 board are mostly students who could not continue their education in the regular board's for some or the other reasons. In fact, there are several students who are working in different places but since the Respondent No. 2 provided an opportunity for their further education through distance mode, they have enrolled themselves with Respondent No.2. But, at the same time there are several students enrolled with the Respondent No. 2 who would want to switch to regular course (students who are enrolled in Class Xth) and to institutions for further education (students enrolled in Class XIIth).

14. That the National Institute of Open Schooling (NIOS), which is under the aegis of the Human Resource Ministry, Central Government has centres across the country, has also decided to cancel the physical examination vide its notification No. F. 4-4/2020/NIOS/Eval/RC, dated 10.07.2020 which states that the learners shall be promoted on the basis of the methodology devised by the result committee. However, when the situation gets normal, the learners will get a one time opportunity for the improvement of their result.

True copy of the notification No.

F. 4-4/2020/NIOS/Eval/RC,

dated 10.07.2020 is annexed

herewith and marked as

ANNEXURE-2.

15. That in the instant case, the Respondent No. 2 already has a system of Tutor Marked Assignment (hereinafter referred as "TMA") wherein the students are given assignments which are to be filled and submitted to the board. The teachers have to accordingly grade the students on the basis of their performance in the TMA. This

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categorically states that the Respondent No. 2 also has a system in existence which can be used for the promotion of these students on the basis of their internal assessment like all other boards. However, the official website of the Respondent No. 2 is not updated as the last TMA available on the website is of the year 2012.

16. That the students enrolled with the Respondent No. 2 have not been informed anything regarding the policy or the decision which the board is taking regarding their results and if any information regarding the examination is asked an automated response is sent which states, "*[i]nformation Regarding Examination will be issued after lockdown is over.*"

Copy of the automated email response received from the Respondent No. 2 is annexed herewith and marked as ANNEXURE-3.

17. That there are other similarly situated boards like the Respondent No. 2 who have already taken a decision in this regard. In fact, the

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Chhattisgarh State Open School did not have a system of internal assessment like the present board and still they have decided to cancel the examination and promote the students by way of internal assessment. They have devised a method by which the assignments will be delivered on the centres already allotted, the students would pick their assignment from the centres and they will have to submit the completed assignment to the centres within two days. In this way, the students can be evaluated on the basis of their performance in the assignment.

True copy of the notification
dated 20.07.2020 is being
annexed herewith and marked as
ANNEXURE- 4.

17. That the Telangana Open School has been permitted by the Government of Telangana vide its order dated 24.07.2020 to pass all the eligible students with minimum passing marks and once the situation gets normal, the students shall be given an opportunity to improve their performance by improvement examination.

True copy of the notification
dated 24.07.2020 is being
annexed herewith and marked as
ANNEXURE-5.

18. That the petitioner was approached by some of the students enrolled with the Respondent No. 2 board, and they sought help of the petitioner in getting information as to what will happen to them. Since, most of the boards across the country have already devised a system by which they have promoted the students enrolled with them.
19. That the petitioner sent a representation dated 17.08.2020 to the Additional Chief- Secretary, Department of Education, Government of Bihar apprising him about the situation of the BBOSE students and requesting him to promote these students in the same way as has been done by NIOS by way of their internal assessment.

True copy of the representation
dated 17.08.2020 is being

annexed herewith and marked as

ANNEXURE-6.

20. That in view of the above, the Respondent No. 2 should also take immediate action and cancel the examinations which were to be held in June-July, 2020 and declare the results of the students on the basis of the internal examination. The board may thereafter, when the situation gets normal conduct an improvement examination and for those students who intend to sit in the examination and improve their results.
21. That it is submitted that the present case is being filed purely in the interest of the students of BBOSE at large.
22. That the petitioner has no other purpose for filing this PIL except for catering to the eminent public cause or for the protection of the interest of the students at large who might lose one precious year and suffer loss when compared to the students of other Board who have been promoted and are henceforth eligible to appear in Entrance examinations and take admission in Class XIth.
23. That the petitioners have not come earlier before this Hon'ble Court for the relief sought for in this application.

24. That the petitioner has no other equally efficacious remedy than to approach this Hon'ble Court for redressal of his grievance.

It is therefore, prayed that in view of the submissions made above your lordships may be pleased to admit the Public Interest Litigation petition, issue notice to the respondents whose inaction is leading to a scenario where thousands of students would lose a precious academic year

AND/ OR

Pass any other order or orders that your lordships may deem fit and proper.

And for this the petitioner shall every pray.