

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 09TH DAY OF NOVEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO. 10051 OF 2020 (EDN-EX)

BETWEEN:

MASTER BHARATH. S.
S/O B. SAMPATH,
AGED ABOUT 16 YEARS,
REPRESENTED BY HIS NATURAL
GUARDIAN FATHER SRI. B. SAMPATH,
R/A NO.32, 6TH BLOCK,
N. T. I. STAFF QUARTERS,
BENGALURU - 560 003. ...PETITIONER

(BY SRI. H.C. SHIVARAMA, ADVOCATE)

AND:

1. THE SECRETARY
EDUCATION DEPARTMENT,
GOVERNMENT OF KARNATAKA,
M. S. BUILDING,
BENGALURU-560 001.
2. THE DIRECTOR
KARNATAKA SECONDARY
EDUCATION EXAMINATION BOARD,
6TH CROSS,
MALLESHWARAM,
BENGALURU-560 003.
3. PRINCIPAL
BHARAT VIDYANIKETAN SCHOOL,
KUMARA PARK,
BENGALURU-560 020. ...RESPONDENTS

(BY SMT. PRAMODINI KISHAN, AGA FOR R1 & R2;
BY SRI. S.N.HATTI, ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 22.06.2020, VIDE ANNEXURE-A. (II) DIRECT THE R-2 TO CONSIDER THE REPRESENTATION DATED 20.06.2020 AND 10.09.2020 AT ANNEXURE-B AND C GIVEN BY THE PETITIONER IN THE BACKGROUND EXPLAINED IN PARA 2 OF THE WRIT PETITION TO PROMOTE THE PETITIONER TAKING INTO CONSIDERATION HIS SSLC PREPARATORY EXAMINATION MARKS SECURED BY THE PETITIONER AND PROMOTE FROM 10TH STANDARD.

THIS PETITION COMING ON FOR *PRELIMINARY HEARING* THIS DAY THROUGH VIDEO CONFERENCE, THE COURT MADE THE FOLLOWING:-

ORDER

Petitioner, a minor student pursuing his studies in Standard X in the third respondent – School is knocking at the doors of Writ Court, in substance seeking a direction to the second respondent-Examination Board to dispense with the requirement of final examination, treating his performance in the Preparatory Examination itself as the final one, since he is a chronic patient of “OSTEOGENESIS IMPERFECTA”, with 75% physically disability.

2. After service of notice, the respondents having entered appearance through their counsel resist the writ petition by filing separate Statement of Objections and making submission in justification of the impugned order and the reasoning on which it is structured.

3. Having heard the learned counsel for the parties and having perused the writ petition papers, this Court grants a limited indulgence in the matter as under & for the following reasons:

a) "OSTEOGENESIS IMPERFECTA" (OI) is explained by standard medical text books as a group of genetic disorders that mainly affect the bones; the term literally means an imperfect bone formation, since it results in bones that break easily; this is believed to be caused by defective genes that affect how the body makes collagen, a protein that is associated with the formation and strengthening of the bones; the medical science groups the patients of this disease under four groups ie., Type I to Type IV depending upon its severity; the associated symptoms and disability levels vary from patient to patient and at times the disorder can be debilitating; a diagnosis of this disease is made based upon a thorough chemical evaluation, a detailed patient history, identification of characteristic symptoms and a variety of specialized tests; the medical evidence placed on record shows that the petitioner is one such victim of this acute disease.

(b) The examination of X Standard is conducted by the respondent-Board under the provisions of Karnataka Secondary Education Examination Board Act, 1966 and that the same does not authorize dispensing with the crucial examination like this, whatever be the circumstances; it is a matter of statutory policy and therefore a writ court cannot intervene for granting a relief *dehors* the law if not contrary to.

(c) The above having been said, this Court cannot turn Nelson's Eye to the suffering of the students who are struck with this tortuous disease that lasts for the life, medication for its mitigation arguably not yielding much relief; the authentic medical literature which the counsel for the petitioner has produced warrants a soft approach to the students who are victimized by this disease; the Apex Court in **STATE OF RAJASTHAN vs. OM PRAKASH, (2002) 5 SCC 745** has stressed the need for a sensitive approach when dealing with the matter relating to children; the Office Memorandum dated 26.02.2013 issued by the Government of India empowers the school/examination authorities to accord reprieve to such students by making appropriate provision; a relevant part of paragraph II in the said O.M. reads as under:

*“The words ‘extra time or additional time’ that are being currently used should be changed to ‘compensatory time’ and the same should not be less than 20 minutes per hour of examination for persons who are making use of scribe /reader /lab assistant. All candidates with disability not availing the facility of scribe **may be allowed additional time of minimum of one hour for examination of 3 hours duration which could further be increased on case to case basis.**”*

(d) The Government being the guardian of the citizens vide *parens patria* has shown an appreciable gesture in formulating a humane policy through the said O.M.; consistent with this policy, the authorities responsible for conduct of examinations have to show relaxation and reprieve to the suffering students of the kind; analogous provisions are also found in the foreign circulars referable to **‘No Child Left Behind Act of 2001’** and its improved version ie., **‘Every Student Succeeds Act, 2015’** enacted by the US Congress (Parliament), keeping with the Human Rights Jurisprudence; there are several international conventions which deal with Child Rights and more particularly differently abled juveniles; the United Nations Convention on the Rights of People with Disabilities, 2006 is ratified by India; Article 24 of the same provides that education shall be without discrimination

and shall be on the basis of equal opportunity and further that the Government shall ensure an inclusive education system at all levels; the UN Millenium Development Goal (MDGs) includes access to and completion of universal primary education by 2015 providing a basic policy framework for including the children with special needs and disabilities till the age of 18 years; in fact the Central Government through the Ministry of Human Resource Development has initiated a new scheme called 'Integrated Education for Disabled Children in Secondary Schools' (IEDSS) with the main objective of providing equal educational opportunities even for children with disabilities in the regular school system from 9th Std. to PUC; such protective measures ensure that the diseased/disabled children do not lag behind in the academic race, which *neo* educationists often brand as 'mad rat race of life'.

In the above circumstances, this writ petition succeeds in part; a Writ of Mandamus issues to the second respondent to extend to the petitioner and other similarly circumstanced candidates the relaxation by elongating the duration of final examination of X Standard through

additional two hours; discretion lies with the authorities to grant longer extension as well keeping in view the degree of disability, subject to the rider that this concession is not abused by the unscrupulous.

No costs.

**Sd/-
JUDGE**

Bsv/Snb