

IN THE HIGH COURT OF JUDICATURE OF BOMBAY,
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. _____ OF 2020

FROM DISTRICT : PUNE

IN THE MATTER OF ARTICLE
226 OF THE CONSTITUTION
OF INDIA

AND

IN THE MATTER OF
ARTICLES 14 AND 21 OF THE
CONSTITUTION OF INDIA

AND

IN THE MATTER
OF NOTIFICATION NO.
19/2020

DATED 10TH JULY, 2020 ISSUED
BY THE NATIONAL
INSTITUTE OF OPEN
SCHOOLING

1. AARUL SANJAY KOLTE



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...PETITIONERS

VERSUS



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1. THE NATIONAL INSTITUTE OF OPEN SCHOOLING THROUGH ITS DIRECTOR (EVALUATION) HAVING ITS OFFICE AT:
A-24-25, INSTITUTIONAL AREA, SECTOR 62, NOIDA 201309, UTTAR PRADESH.

2. THE DEPARTMENT OF SCHOOL EDUCATION AND LITERACY, MINISTRY OF HUMAN RESOURCE DEVELOPMENT, GOVERNMENT OF INDIA. HAVING ITS OFFICE AT:
SHASTRI BHAVAN, NEW DELHI.

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3. **DR. SAUMYA RAJAN**
ASSISTANT DIRECTOR (ACADEMIC),
NATIONAL INSTITUTE OF OPEN
SCHOOLING, REGIONAL CENTRE -
PUNE.
HAVING ITS OFFICE AT:
SECOND FLOOR,
4. **INDIAN INSTITUTE OF EDUCATION,**
128/2 J.P. NAIK ROAD,
KOTHRUD, PUNE 411038.

...RESPONDENTS

TO,
THE HON'BLE THE CHIEF JUSTICE OF
THE HON'BLE BOMBAY HIGH COURT
AND HIS COMPANION HON'BLE
JUDGES.

THE ABOVE-NAMED PETITIONERS MOST RESPECTFULLY
SHEWETH:

Being aggrieved and dissatisfied by the omission on the part of the Respondent No. 1 in calculating the marks of the Petitioners Students in terms of Paragraph 5(d) of the Notification No. 19/2020 dated July 10, 2020 issued by it, and the consequential violation of the Petitioners Students' fundamental rights, that the Petitioners are approaching this Hon'ble Court under Article 226 of the Constitution of India:

- (1) The Petitioners above-named are students and are citizens of India. The Petitioners were registered to appear for the March-April 2020 Secondary course Public Examination to be conducted by the Respondent No. 1 National Institute of Open Schooling ['NIOS']. Since all the Petitioners are minors, they are represented by their parents.
- (2) The Respondent No. 1 is the National Institute of Open Schooling ['NIOS'], an autonomous institute under the Department of School Education and Literacy, Ministry of Human Resource Development, Government of India. The Respondent No. 1 is



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represented by the its Director (Evaluation). The Respondent No. 2 is the Department of School Education and Literacy, Ministry of Human Resource Development, Government of India. The Respondent No. 3 is the Assistant Director (Academic) of the Respondent No. 1 NIOS' regional centre at Pune. All the Respondents are State within the meaning accorded to the term by Article 12 of the Constitution of India, and are therefore subject to the writ jurisdiction of this Hon'ble Court under Article 226.

The facts and circumstances from which the present Writ Petition arises are as follows:

- (3) The Respondent No. 1 is an "Open School" to cater to the needs of a heterogenous group of learners up to pre-degree level. The Respondent No. 2 M.H.R.D. set up the National Open School in November 1989. Through Resolution No. F.5-24/90 Sch.3 dated 14.09.1990 (published in the *Official Gazette of India* dated 20.10.1990), the National Open School was vested with the authority to register, examine and certify students registered with it up to pre-degree level courses. A true copy of the Resolution No. F.5-24/90 Sch.3 dated 14.09.1990 (published in the *Official Gazette of India* dated 20.10.1990) is annexed and is marked as **EXHIBIT-A**.
- (4) In July 2002, the Respondent No. 2 M.H.R.D. amended the nomenclature of the organisation from the National Open School (NOS) to the National Institute of Open Schooling (NIOS) with a mission to provide relevant continuing education at school stage, up to pre-degree level through Open Learning system to prioritized client groups as an alternative to formal system, in pursuant of the normative national policy documents and in response to the need assessments of the people, and through it to make its share of contribution to universalisation of education, to greater equity and justice in society, and to the evolution of a learning society.



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- (5) The Respondent No. 1 NIOS *inter alia* conducts the Secondary Education Course by providing flexibility in the choice of subjects/courses, pace of learning, and transfer of credits from CBSE, some Board of School Education and State Open Schools to enable learner's continuation. A student under the NIOS system is extended nine chances to appear in public examinations spread over a period of five years. The credits gained are accumulated till the learner clears required credits for certification. The learning stages include learning through printed self-instructional material, audio and video programmes, participating in personal contact programme (PCP), and Tutor Marked Assignments (TMA). The secondary course of the Respondent No. 1 NIOS is admittedly equivalent to 10th Standard. A true copy of the Profile of the Respondent No. 1 NIOS as published on its website www.nios.ac.in is annexed and is marked as **EXHIBIT-B**.
- (6) The Petitioners submit that one of the learning stages in the Respondent No. 1 NIOS' programme is Tutor Marked Assignments. Internal Assessment (IA) including Tutor Marked Assessment (TMA) in Secondary Examinations carries 20% weightage in the External Examination and the marks are shown separately and added to the marks obtained in the External Theory Examination and Practicals (wherever applicable). The policy for implementation of the Internal Assessment is defined by the Respondent No. 1 NIOS in its Notification No. 219/2014 dated 11.07.2014.
- A true copy of the Notification No. 219/2014 dated 11.07.2014 is annexed and is marked as **EXHIBIT-C**.
- (7) The Petitioners submit that the Petitioners Students were registered to appear for the NIOS Public Examination of Secondary in March/April 2020. Pursuant to the aforesaid, the Petitioners Tutor Marked Assessment and practical examinations were conducted by the Respondent No. 1. The aforesaid were conducted in the usual manner before the COVID19 related restrictions were imposed.



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All the Petitioners have scored satisfactory marks in the aforesaid Tutor Marked Assessments and practical examinations.

- (8) The COVID19 pandemic started affecting India in February and March 2020. Consequently, the Central Government took measures under the provisions of the National Disaster Management Act, 2005, and *inter alia* declared a lockdown all across India. The aforesaid lockdown was extended from time to time. The Petitioners request this Hon'ble Court to take judicial notice of the same and exempt the Petitioners from filing the Petitioners the notifications/orders issued by the concerned authorities under the National Disaster Management Act.
- (9) The Petitioners submit that due to the COVID19 Pandemic, the Secondary March/April Public Examination to be conducted by Respondent No. 1 was postponed. By its Notification No. 14/2020 dated 01.06.2020 the Respondent No. 1 NIOS notified that the NIOS March/April 2020 Public Examination of Secondary will commence from 17.07.2020 and conclude on 13.08.2020 for All India Exam Centres. A true copy of the Notification No. 14/2020 dated 01.06.2020 is annexed and is marked as **EXHIBIT-D**.
- (10) Subsequently, the Respondent No. 1 NIOS issued Notification No. 18/2020 dated 30.06.2020 in continuation of the aforementioned Notification No. 14/2020 notifying that the Public Examination of Secondary (Theory) stands postponed till further orders. In other words, by the Notification No. 18/2020, the Respondent No. 1 NIOS had postponed the March/April 2020 Public Examinations indefinitely.
A true copy of the Notification No. 18/2020 dated 30.06.2020 is annexed and is marked as **EXHIBIT-E**.
- (11) Ultimately, on 10.07.2020, the Respondent No. 1 NIOS issued Notification No. 19/2020 whereby it cancelled the conduct of March 2020 Secondary course Public Examination. Paragraph 2 of the aforementioned Notification *inter alia* provided that for the



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purpose of assessment of learners registered for the public examination, the same was being done in accordance with the recommendations of the Result Committee constituted by the competent authority of NIOS. The Assessment Scheme was elaborate in Paragraph 5. Since all the Petitioners herein were appearing for all the papers for the first time, the assessment scheme as provided for in Paragraph 5(d) is applicable to them. Paragraph 5(d) reads as under:

“d. For all learners who were to appear for the first time and their Tutor Marked Assignment (TMA) and/or Practical marks are available, their performance will be calculated based on the available TMA and/or Practical marks viz-a-viz performance of last three Public examination in the subjects for which the learned was registered to appear in the examination which could not be held in March-April 2020.”

[Emphasis supplied]

Since the all the Petitioners are ‘learners who were to appear for the first time’ and since their ‘Tutor Marked Assignment and Practical Marks are available’, the Petitioners’ assessment ought to have been conducted in terms of Paragraph 5(d) of the aforementioned Notification. A bare reading of Paragraph 5(d) indicates that the assessment of the Petitioners’ performance would be calculated on the basis of their available TMA and/or practical marks. In other words, as per the assessment scheme reflected in Paragraph 5(d), the Petitioners’ marks in the theory subjects would be proportionate to their performance in the TMA or practical examination. For instance, if a student has obtained 15 marks out of 20 in her TMA, she would obtain 60 out of 80 in the theory subject, totalling to 75 out of 100.

A true copy of the Notification No. 19/2020 dated 10.07.2020 is annexed and is marked as **EXHIBIT-F**.

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(12) The Petitioners submit that Paragraphs 5(a) to (c) were applicable to such student who have past performance. In other words, the aforementioned paragraphs were applicable to such students who have appeared for the public examinations in the past years/attempts. The Petitioners, it is reiterated, were appearing for the first time. Furthermore, as a matter of complete disclosure, it must also be pointed out that *vide* Paragraph 4 of the aforementioned Notification, as a one-time measure, students were given the option to appear in the next Public Examination/On Demand Examination as and when the situation would be conducive to hold such examination, to improve their performance. However, there is uncertainty as to when such examination may be conducted. The Petitioners therefore relied upon Paragraph 5(d). Furthermore, since the Petitioners had obtained good marks in their TMA and practical examinations, the Petitioners were confident that their assessment would meet their expectations and reflect their academic capabilities.



(13) The Respondents published the results on 06.08.2020. To the utter shock of the Petitioners, the marks obtained by the Petitioners were completely disproportionate to their performance in the aforementioned TMA and/or practical examinations. More importantly, the Petitioners' marks did not even reflect the true academic capability of the Petitioner Children. The Petitioners' marks were not assessed on the basis of the assessment scheme provided for in Paragraph 5(d).

True copies of the Public Examination Results March-April 2020 of all the Petitioners are annexed and are collectively marked as **EXHIBIT-G**.

(14) Being aggrieved thereby, all the Petitioners, through their parents have also made a representation to Respondent No. 3 Assistant Director (Academic) of the NIOS Regional Centre, Pune on 08.08.2020. One such representation is being brought on record for the convenience of this Hon'ble Court. The Petitioners submit that

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all the Petitioners have made a representation identical to the one annexed herewith.

A true copy of the letter dated 08.08.2020 is annexed and is marked as **EXHIBIT-H**.

GROUNDS OF OBJECTION

In the aforesaid facts and circumstances, the Petitioners are constrained to approach this Hon'ble Court on the grounds mentioned hereinbelow:

- (1) The assessment of the Petitioners' marks by the Respondents is in contravention of its own assessment scheme as provided for in Paragraph 5(d) of Notification No. 19/2020 dated 10.07.2020;
- (2) Since the Petitioners were to appear for the first time, the Respondents ought to have assessed the Petitioners' marks on the basis of the marks obtained by the Petitioners in their Tutor Marks Assignment (TMA) and Practical Marks, as the same were available;
- (3) As per the assessment scheme provided for in the aforementioned Notification, in case of students who were appearing for the first time, their marks were to be assessed on the basis of their TMA and/or practical marks. Thus, the assessment ought to be proportionate to the marks obtained by the Petitioners in their TMA and/or practical examinations;
- (4) The assessment carried out by the Respondents for all the Petitioners has not only contravened their own assessment scheme, but is completely disproportionate to the Petitioners' academic capabilities;
- (5) The conduct of the Respondents in carrying out the assessment in contravention of its own assessment scheme is completely arbitrary and violative of the Petitioners' fundamental rights, as guaranteed under Articles 14 and 21 of the Constitution of India;



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- (6) The assessment carried out by the Respondents in contravention of its own assessment scheme has grossly affected the Petitioners' right to equality before law and equal protection of law, guaranteed under Article 14 of the Constitution, and right to life, as guaranteed under Article 21 of the Constitution, as the same has severely prejudiced the Petitioners' future academic career;
- (7) The Respondents have conducted the Petitioners' assessment in a lackadaisical manner without any application of mind, and have severely prejudiced the Petitioners' futures;
- (8) Although Paragraph 4 of Notification No. 19/2020 provides for an opportunity to appear in the next Public Examination/On Demand Examination, the same is of no help to the Petitioners as there is no clarity as to when the same would be conducted. Furthermore, the admissions for further academic programmes have already begun and if the Petitioners chose to wait for the next examination, the Petitioners would lose out on an academic year;
- (9) The Respondents' assessment of first time candidates ought to be proportionate to the marks obtained by them in their TMA and/or practical marks. The reference to performance of last three public examinations in the subjects for which the learner was registered to appear is otiose, and arbitrary. The assessment has to be on the basis of the performance of the student, not on the basis of the performance of last three public examinations. To the aforesaid extent, Paragraph 5(d) is violative of Article 14 of the Constitution of India for being arbitrary and unreasonable;
- (10) The Petitioners seek liberty of this Hon'ble Court to add to and/or amend the aforementioned grounds if so advised;



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- (11) The aforementioned grounds are taken without prejudice to each other.

CONCLUDING PARAGRAPHS

1. Proper Court fees stamp is paid.
2. All the Petitioners are residents of Pune city and therefore, the Cause of action has arisen in District Pune, i.e. within the extraordinary territorial Jurisdiction of this Hon'ble Court. Therefore, this Hon'ble Court has jurisdiction to try, entertain and decide this petition.
3. The Petitioners have no other alternative or efficacious remedy and are therefore approaching this Hon'ble Court under Article 226 of the Constitution of India.
4. The Petitioners have approached this Hon'ble Court without any delay or laches on their part. The Petitioners have disclosed all the necessary facts and circumstances relating to this Writ Petition and are approaching this Hon'ble Court with clean hands.
5. The Petitioners have neither approached this Hon'ble Court at any point prior in time, nor any other Hon'ble High Court, nor the Hon'ble Supreme Court of India, in relation to the present cause of action, seeking the reliefs as claimed hereunder.



PRAYERS

**IN THE AFOREMENTIONED FACTS AND CIRCUMSTANCES,
THE PETITIONERS ABOVE-NAMED MOST RESPECTFULLY
PRAY AS UNDER:**

- [A] That this Hon'ble Court may be pleased to issue a writ of mandamus, or a writ in the nature of mandamus, or any other appropriate writ, order or direction, quashing and setting aside the Petitioners' Public Examination Results March-April 2020 for being violative of the assessment scheme provided for in Notification No. 19/2020;

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- [B] That this Hon'ble Court may be pleased to issue a writ of mandamus, or a writ in the nature of mandamus, or any other appropriate writ, order or direction, directing the Respondents to reassess and declare the Petitioners' results for March-April Public Examination 2020 on the basis of the assessment scheme provided for in Paragraph 5(d) of Notification No. 19/2020;
- [C] That this Hon'ble Court may be pleased to issue a writ of mandamus, or a writ in the nature of mandamus, or any other appropriate writ, order or direction, directing the Respondents to calculate the Petitioners' marks on the basis of the Petitioners' academic performance in Tutor Marked Assignment and/or Practical marks in the subjects for which the Petitioners were registered to appear in the examination which could not be held in March-April 2020;
- [D] That this Hon'ble Court may be pleased to decide the present Writ Petition at the admission stage itself, taking into consideration the urgency involved herein.
- [E] That this Hon'ble Court may be pleased to issue such other writ or other appropriate writ, order or direction, that this Hon'ble Court may deem fit in the facts and circumstances of this case;
- [F] That this Hon'ble Court may be pleased to award exemplary costs against the Respondents and in favour of the Petitioners.

**AND FOR THIS ACT OF KINDNESS THE PETITIONERS
ABOVE-NAMED SHALL EVER PRAY.**

ADVOCATE FOR THE PETITIONERS

BOMBAY

DATED

A. B. Bhatnagar
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