



GAHC010230352022

Page No.# 1/17



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/7332/2022

BHUMIKA DAS (MINOR) AND 10 ORS.
REPRESENTED BY HIS NATURAL GUARDIAN (FATHER) NAMELY TIKEN
DAS, AGED ABOUT 57 YEARS, VILL- KUMARKATA, P.O.-
CHALLANTAPARA, P.S.-JOGIGHOPA, DIST- BONGAIGAON, ASSAM, PIN-
783384

2: HIMASHREE TALUKDAR (MINOR)
REPRESENTED BY HIS NATURAL GUARDIAN (MOTHER) NAMELY NIGAL
TALUKDAR
AGED ABOUT 40 YEARS
VILL AND P.O. AND P.S.-MANIKPUR
DIST-BONGAIGAON
ASSAM
PIN-783392

3: SUHANA SULTANA (MINOR)
REPRESENTED BY HIS NATURAL GUARDIAN (FATHER) NAMELY
SOHIDUR RAHMAN
AGED ABOUT 45 YEARS
VILL-CHEMAMARI
P.O.-BALAPARA
P.S.-JOGIGHOPA
DIST-BONGAIGAON
ASSAM PIN-783388

4: JORIFA BEGUM (MINOR)
REPRESENTED BY HIS NATURAL GUARDIAN (FATHER) NAMELY JOHIRUL
ISLAM
AGED ABOUT 46 YEARS

5: MUZZAMMEL HUSSAIN (MINOR)
REPRESENTED BY HIS NATURAL GUARDIAN (FATHER) NAMELY ABDUL
MONNAF
AGED ABOUT 40 YEARS
VILL-DHAKNABARI



P.O.-KAYETHPARA
P.S.-ABHAYAPURI
DIST-BONGAIGAON
ASSAM PIN-783389

6: RAKESH DAS (MINOR)
REPRESENTED BY HIS NATURAL GUARDIAN (MOTHER) NAMELY JONALI
DAS
AGED ABOUT 36 YEARS
VILL- BHARALK KUNDI BEEL
P.O. AND P.S.-JOGIGHOPA
DIST- BONGAIGAON
ASSAM PIN-783388

7: DEPANKAR SARKAR (MINOR)
REPRESENTED BY HIS NATURAL GUARDIAN (MOTHER) NAMELY MINOTI
SARKAR
AGED ABOUT 41 YEARS
VILL- BHARALK KUNDLI BEEL
P.O. AND P.S.-JOGIGHOPA
DIST- BONGAIGAON
ASSAM PIN-783388

8: RABIN MONDAL (MINOR)
REPRESENTED BY HIS NATURAL GUARDIAN (FATHER) NAMELY
ARAHAN MONDAL
AGED ABOUT 39 YEARS
VILL-BARIPUKHURI PT. I
P.O.-KHAGARPUR
P.S.-ABHAYAPURI
DIST-BONGAIGAON
ASSAM PIN-783383

9: RIYA RAY (MINOR)
REPRESENTED BY HIS NATURAL GUARDIAN (FATHER) NAMELY RAHINI
CHANDRA RAY
AGED ABOUT 50 YEARS
VILL- DEWRIPARA
P.O.-BONGAIGAON
P.S. AND DIST- JOGIGHOPA
ASSAM PIN-783380

10: JURI RABHA (MINOR)
REPRESENTED BY HIS NATURAL GUARDIAN (FATHER) NAMELY HARI
DAS RABHA
AGED ABOUT 54 YEARS
VILL- SANKARGHOLA PT. I
P.O.-CHALLANTAPARA



P.S.-JOGIGHOPA
DIST- BONGAIGAON
ASSAM PIN-783388

11: MOHOMMOD ALI (MINOR)
REPRESENTED BY HIS NATURAL GUARDIAN (FATHER) NAMELY ABJAL
ALI
AGED ABOUT 45 YEARS
VILL- SIBERDABRI
P.O. AND P.S.-BILASIPARA
DIST- DHUBRI
ASSAM PIN-78338

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF EDUCATION, NEW DELHI, PIN-110001

2:THE NAVODAYA VIDYALAYA SAMITI
REPRESENTED BY THE COMMISSIONER 124C
SHASTRI BHABAN
NEW DELHI
PIN-110001

3:THE DEPUTY COMMISSIONER REGIONAL OFFICE
NAVODAYA VIDYALAYA SAMITI
BARIK POINT
TEMPLE ROAD
LOWER LACHUMIERE
SHILONG PIN-793001

4:THE PRINCIPAL
JAWAHAR NAVODAYA VIDYALAYA
BONGAIGAON
P.O.-BONGAIGAON
DIST- BONGAIGAON
ASSAM PIN-783380

5:THE DEPUTY COMMISSIONER
BONGAIGAON
P.O.-BONGAIGAON
DIST- BONGAIGAON
ASSAM PIN-78338

Advocate for the Petitioner : MD. I H KHAN

Advocate for the Respondent : D.Y.S.G.I.



Linked Case : WP(C)/6653/2022

ELIAS AHMED
REPRESENTED BY HIS NATURAL GUARDIAN (FATHER) NAMELY AZIM
UDDIN SK
VILL- DHIRER CHAR PT-I
P.O. AND P.S.- CHAPAR
DIST- DHUBRI
ASSAM PIN- 783371.

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF EDUCATION
NEW DELHI
PIN- 110001.

2:THE NAVODAYA VIDYALAYA SAMITI
REPRESENTED BY ITS COMMISSIONER
124C
SHASTRI BHABAN
NEW DELHI
PIN- 110001.

3:THE DEPUTY COMMISSIONER
REGIONAL OFFICE
NAVADOYA VIDYALAYA SAMITI
BARIK POINT
TEMPLE ROAD
LOWER LACHUMIERE
SHILLONG
PIN- 793001.

4:THE PRINCIPAL
JAWAHAR NAVODAYA VIDYALAYA ALOMGANJ
P.O.- ALOMGANJ PT-IX
DIST- DHUBRI
ASSAM PIN- 783339.

5:THE DEPUTY COMMISSIONER
DHUBRI- CUM- CHAIRMAN
JAWAHAR NAVODAYA VIDYALAYA
ALAMGANJ
DIST- DHUBRI
ASSAM PIN- 783301.



Advocate for : MR. M U MONDAL
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 4 ORS

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

Dates of Hearing : **09.01.2023**

Date of Judgment : **30.03.2023**

JUDGMENT & ORDER

- 1)** In both the writ petitions, heard Mr. M. U. Mondal, learned counsel for the petitioners and Mr. G. Pegu, learned Central Government Counsel for the respondent No.1. Also heard Ms. R. S. Choudhury, learned Standing Counsel, Jawahar Navodaya Vidyalaya Samiti for the respondent Nos. 2 to 4 and Ms. D. Das Barman, learned Government Advocate, Assam for the respondent No. 5.
- 2)** As the issues involved in both the matters are identical, the Court decided to take up the matters together for consideration.
- 3)** In W.P.(C) No. 6653/2022, the petitioner appeared in the Selection Test-2022 for her admission in Class-VI at Jawahar Navodaya Vidyalaya Alomganj, District - Dhubri for the Session 2022-23. It is stated that though her name figured in the select list, was called for verification of testimonials and other relevant documents, pursuant to which she appeared and submitted all the relevant testimonials and documents, but the Principal of the said Vidyalaya did not allow her to take admission in Class-VI on the ground that she is a repeater in admission tests for her admission to Class-VI at Jawahar Navodaya Vidyalaya.
- 4)** In W.P.(C) No. 7332/2022 the petitioners appeared in the Selection Test-2022 for their admission in Class-VI at Jawahar Navodaya Vidyalaya, Bongaigaon, District - Bongaigaon for the Session 2022-23. Though their names figured in the select list and were called for verification of their testimonials and other relevant documents and inspite of producing all the required documents, but the Principal of said Vidyalaya did not allow them to take admission in Class-VI on the ground that they are repeaters in admission tests for their admission to Class-VI at Jawahar

Navodaya Vidyalaya.

5) Petitioners stated that relying on Clause 4.7 of the Navodaya Vidyalaya Scheme as provided in the Prospectus for Jawahar Navodaya Vidyalaya Selection Test for 2022 (JNVST 2022, in short) for admission to Class-VI as formulated by Navodaya Vidyalaya Samiti (NVS, in short) that stipulates as – “*No candidate is eligible to appear in the Selection Test for the second time, under any circumstances*”, the Principals of those two Vidyalayas did not allow them to take admission.

6) Indicating 13 such candidates, i.e., Arifa Yesmin, Shahinur Islam, Masud Hassan, Arif Rayhan Khan, Fardin Hussain Mondal, Moonjit Brahma, Ashiqul Habib, Hafizul Islam, Sanom Fariha Ahmed, Almina Sultana, Mehedi Hassan Ahmed, Hasibur Islam and Daisy Ray of Bongaigaon, the petitioners have alleged that many such students who passed admission test on their second or third attempts, have been allowed to take admission in Class-VI in JNVs, whereas, their admission have been rejected on the ground of Clause 4.7 of said Navodaya Vidyalaya Scheme, which is in gross violation of Articles 14 and 16 of the Constitution of India.

7) Hence by filing these writ petitions the petitioners have prayed to set aside and quash the said Clause 4.7 stipulated in the Prospectus for Jawahar Navodaya Vidyalaya Selection Test for 2022 Scheme as arbitrary, malafide, discriminatory, unfair, unjust, improper, bias and ultravires, being in violation of the provisions of Articles 14, 16, 19 and 21 (A) of the constitution of India and without authority of law as well as against the new Scheme of New Education Policy of Government of India.

8) Petitioners have also prayed for issuance of writ of Mandamus directing the respondent authorities of the JNV to admit them in Class-VI at JNV, Alomganj PT-IX, District - Dhubri and at JNV Bongaigaon, District -Bongaigaon, respectively, for the Session 2022-23.

9) The petitioners herein are minors and are represented by their natural guardians either by father or mother.

10) The petitioners read upto Class-V and left it in March 2022 on completion of their Class-V. The petitioner of WP (C) 6653/2022 being eligible to get admission in JNVs Alomganj in Class-VI for the Session 2022-23 submitted her online application form to appear in the interview/selection test along with the relevant documents like her Aadhar Card, Medical Certificate, School

Certificate, Birth Certificate etc. as well as Aadhar Card, Voter Card, Ration Card etc. of her father. Similarly, the petitioners of WP (C) 7332/2022 being eligible to get admission in JNVs Bongaigaon in Class-VI for the Session 2022-23 submitted their online applications form to appear in the interview/selection test along with the relevant documents, as noted above. The CBSE published the list of JNV selection test for admission in Class-VI for the Session 2022-23 for the District Dhubri and Bongaigaon of Assam and the name of the petitioners figured in the select list under Rural Group and in the concerned categories.

11) Pursuant to the letters of the Principals of the concerned JNVs, regarding their provisional selection for admission in Class-VI for the Session 2022-23 at JNV Alomganj and Bongaigaon, respectively, the petitioners with their respective guardians went to the Office of the Principals of those JNVs with their all relevant documents as indicated in the letters of the Principals, noted above.

12) However, on their reporting the Principal of those JNVs refused to admit them in Class-VI intimating that they are barred by Clause 4.7 of the JNVST 2022 Scheme. The petitioners submitted that though some similarly placed candidates have been considered, but they have been deprived from their admission in Class-VI at JNVs Alomganj Part-IX, District-Dhubri and Bongaigaon, District- Bongaigaon, respectively inspite of their selection, on the ground of their appearance in said admission test for the 2nd time.

13) It is contended on behalf of the petitioners that even in the Competitive Examinations like UPSC, APSC, NEET, JEE etc., a candidate is allowed to sit in a selection test more than once subject to his/her age limit, whereas, in case of admission test to Class-VI at JNVs though the maximum age is 13 years, but inspite of their proper age and on their selection in the admission test they have been restrained by the respondents in the JNVs from taking admission in Class-VI in their respective JNVs in terms of said Clause 4.7 of the JNVST 2022 Scheme, as they passed the admission test for Class-VI for the session 2022-23 being repeaters, since they appeared in such selection test for Class-VI previously on 2nd or 3rd occasion.

14) Petitioners submitted that as they were within the eligible zone/criteria they accordingly applied for 2nd time for the JNV admission test so as to get their admission at Class-VI and accordingly the JNV authorities allowed them to sit in the JNV Selection Test 2022 in which they were successful and therefore, as they fulfilled all the requisite eligibility and criteria under the



said 2022 Scheme, in spite of that they have been deprived from admission in Class-VI, though in cases of the students named in the petition, noted above, the JNV authorities have admitted them in spite of their passing such selection test in their 2nd and/or 3rd attempts.

15) It is stated that the petitioners have approached the JNV authorities of the respective Vidyalayas on many occasions with their guardians, father or mother, and were informed that their cases has been referred to the higher authorities of JNV for clearance but no such reply regarding their admission were indicated to them.

16) The petitioners further stated that considering their date of birth, in the next academic Session 2023-24, for their admission in Class-VI they would be barred by their age.

17) As they did not receive any responses, having no other alternative, the petitioner have approached the Court preferring this writ petition.

18) For all those reasons the petitioners submitted that considering their selection in the JNV Selection Test, 2022, noted above, they should be considered for their admission in Class-VI in the concerned JNVs at Alomganj Part-IX, District-Dhubri and Bongaigaon, District- Bongaigaon, respectively by setting aside the said Clause 4.7 of the JNV Selection Test, 2022 Scheme, being ultra vires.

19) In support of his argument on behalf of the petitioners, Mr. Mondal, learned counsel placed reliance on the decisions of the Hon'ble Supreme Court in the cases of – *State of Orissa and Another -Vs- Mamata Mohanty* reported in (2011) 3 SCC 436 and *Shri Sitaram Sugar Company Limited and Another -Vs- Union of India and Others* reported in (1990) 3 SCC 233.

20) The respondents in the JNVs have filed their affidavit to which the petitioners have filed their replies rejecting the contention of the respondents and reiterating their statements and submission made in their writ petitions.

21) Ms. Choudhury, learned counsel for the respondent JNVs stated that as per the provision of Clause 2.1 of the JNVST, 2022 a candidate whose name appears in the select list is required to produce the relevant documents for verification and only on verification of such documents admission of a selected candidate is confirmed and then, admission is given accordingly.

22) To conduct a fair selection process each JNVs maintained records of the candidates who

had previously appeared in the Selection Test and the names of all those candidates who had previously applied for the Selection Test appears in the Registered/Appeared candidate List maintained by the JNV authorities.

23) The respondent JNV stated that the petitioners on their selection in terms of the JNVST, 2022 Scheme were called upon for production of their relevant documents for necessary verification. Respondent JNV also stated that during such verifications, the petitioner have been found to be repeaters in the Selection Test for Admission in Class-VI in JNVs and that the said fact have already been admitted by the petitioners in the writ petitions.

24) The respondent JNV authorities stated that in order to get admission in Class-VI for the Session 2022-23, a candidate must successfully complete his/her Class-V course in the Session 2021-2022. The petitioners while filing their applications stated that they completed their Class-V in the year 2022 and as such, they could not have appeared in the Selection Test in previous years for admission in Class-VI at JNVs.

25) The respondent JNV authorities in its affidavit stated that the petitioners themselves admitted the fact that they applied for the Selection Test for getting admission in Class-VI in the JNVs for the 2nd time stating that as they were within the eligibility age and fulfilled the criteria, they applied for such admission test, they were allowed to appear in the JNVST-2022 and they came out successfully in the selection test.

26) With regard to the alleged selection and admission of thirteen numbers of candidates pointed by the petitioners that they are repeaters and have appeared in the admission test for more than one occasion, i.e. that after their 2nd/3rd attempts, on being selected they were given admission in JNV, Bongaigaon; the respondents JNV clarified that names of those candidates did not appear in the Registered/Appeared Candidate List maintained by the JNV authorities and submitted that only those candidates who fulfilled the requisite criteria and have been found eligible to get admission in JNVs, have been admitted at Class-VI in the concerned JNVs including at JNV, Bongaigaon. Ms. Choudhury on behalf of the respondent JNV submitted that if any such candidate who is found to have appeared in the Selection Test for more than once, admission of such candidate would be rejected and/or cancelled as per Clause 4.7 of the JNVST 2022 Scheme.

27) Ms. Choudhury, on behalf of the respondent JNV contended that except making allegation

against those candidates, the petitioners failed to place any material before the Court against those named candidates to establish that that they are repeaters.

28) Ms. Choudhury on behalf of the respondent JNV categorically placed before the Court that except making such allegations naming few persons, the petitioners have not made any such candidate as party respondent in their petitions, who have appeared more than once, i.e., twice or thrice in the Selection Test into Class-VI in the concerned JNVs.

29) Ms. Choudhury, learned counsel on behalf of the respondent JNVs submitted that there is limited number of seats in each JNVs and only the candidates fulfilling the eligibility criteria are eligible to get admission. She submitted that admittedly, the petitioners are repeaters and over aged compared to fresh candidates.

30) It is argued by Ms. Choudhury that the chances of repeaters seeking higher marks based on their earlier experience is much more and if the repeaters like the petitioners are allowed to get admission in a JNV then the same will steal a march over the other eligible candidates and further, by the time the petitioners appear for their Class-X examinations, they will be over aged.

31) It is submitted on behalf of the respondent JNV that the Rules framed by the Jawahar Navodaya Vidyalaya Samiti have rational nexus with the object and purpose it sought to be achieved with a balance of equities and giving fair chance to all concerned and that though the petitioners alleged that Clause 4.7 of the JNV Selection Test 2022 Scheme is ultra vires but the petitioners have failed to make out a case requiring the interference of the Court with the said provision.

32) Ms. Choudhury, learned counsel for the respondent JNVs submitted that to adjudge a policy or a regulation to be ultra vires it has to pass the three fold test, namely, (i) whether the provisions or such Regulations fall within the scope and ambit of the power conferred by the Statute on the delegate; (ii) whether the Rules/Regulations framed by the delegate are to any extent inconsistent with the provisions of the parent enactment and (iii) whether such Rules/Regulations framed have infringed any of the fundamental rights or other restrictions or limitation imposed by the Constitution.

33) Ms. Choudhury stated that the petitioners have failed to place anything before the Court to establish that said Clause 4.7 of the JNV Selection Test 2022 Scheme is in violation of the

provisions of the Constitution of India, except making a statement that it is in violation of Articles 14, 16, 21A etc. of the Constitution of India. Therefore, the respondents in the JNV submitted that the writ petitions being devoid of merit should be dismissed.

34) Ms. Choudhury, learned counsel for the respondent JNVs also placed before the Court that the said JNV Scheme regarding admission in the JNVs for the Session 2022 that was applicable for all the JNVs established in different States and Union Territories of the Country including the JNVs of Assam, was under challenge before the Hon'ble Bombay High Court in Writ Petition No. 9310/2022 (*Ku. Shubham Vijay Patil and 24 Others -Vs- The Navodaya Vidyalaya Samiti and 2 Others*) the said JNV Scheme regarding admission in the JNVs for the Session 2022, that is involved in these cases, has been upheld by a Division Bench of the Hon'ble Bombay High Court vide Judgment dated 13.10.2022. Moreover, said Judgment dated 13.10.2022 of the Division Bench of the Hon'ble Bombay High Court passed in Writ Petition No. 9310/2022 was challenged before Hon'ble Supreme Court in Special Leave to Appeal (C) No. 19285/2022 by aggrieved candidates (*Shubham Vijay Patil and Others -Vs- The Navodaya Vidyalaya Samiti and Others*), where the Hon'ble Apex Court by order dated 04.11.2022 dismissed the said appeal, thereby uphold the said the said JNV Scheme regarding admission in the JNVs for the Session 2022.

35) In support of her contentions for the respondent JNV Ms. Choudhury, learned counsel relied on the decision of the Hon'ble Supreme Court of India in the case of – *Maharashtra State Board of Secondary and Higher Secondary Education -Vs- Paritosh Bhupeshkumar Sheth*, reported in (1984) 4 SCC 27.

36) Submissions made by the learned counsels for the parties and the decisions cited by them have been duly considered.

37) The Navodaya Vidyalaya Samiti (NVS) is an autonomous organization of Ministry of Education in the Department of School Education and Literacy, Government of India, having its present Headquarters at Noida, Uttar Pradesh, registered under the Societies Registration Act, 1860. It is stated that NVS runs, manages and controls the functioning of Jawahar Navodaya Vidyalayas (JNVs) all over India through its eight Regional Offices.

38) The Government of India in accordance with the National Policy of Education have established JNVs in 27 States (including Assam) and 8 Union Territories in the Country which are

co-educational residential schools fully financed and administered by Government of India. The Government of India has also established 28 JNVS (27+1) in Assam including at Alomganj Part-IX, District-Dhubri and Bongaigaon, District-Bongaigaon as co-educational residential Schools.

39) The JNVs are fully residential co-educational Schools set with objective of providing modern quality education to talented children, predominantly from rural areas, where the students, teachers and staff live in the same campus. Most of the JNVs are set up in rural areas, far away from the district headquarters. The Teachers and the staff of JNVs are expected to exhibit exemplary moral character before the students and strict disciplinary measures are being followed to ensure high moral standard among the teachers and staff.

40) The Scheme of the JNVs are - (i) to provide good quality modern education including a strong component of culture, inculcation of values, awareness of the environment, adventure activities and physical education to the talented children predominantly from rural area; (ii) to ensure that students attain a reasonable level of competency in three languages; (iii) to promote national integration through migration of students from Hindi to Non-Hindi speaking State and vice-versa and (iv) to serve in each District as focal point for improvement in quality of School Education in general through sharing of experiences and facilities.

41) Admissions in JNVs are made through the JNV Selection Test to Class-VI and its medium of instruction is the mother tongue or regional language upto Class-VIII and thereafter, English for Mathematics and Science and Hindi for Social Science and the students of the JNVs appear for Board Examinations of the Central Board of Secondary Education. Education in the JNVs is free including boarding and lodging, Uniform and Text Books where a sum of Rs.600/- per month is collected only from the students of class-IX to XII towards Vidyalaya Vikash Nidhi. However the students belonging to the reserved categories of SC/ST, all the girls students and the students whose family income is below poverty line (BPL) are exempted from such collection of amount. Further, in respect of wards of Government employee other than exempted category of students of Classes VI to VIII, all SC/ST students, girls students and wards of BPL families, Vikas Nidhi is charged @ Rs.1,500/- per month or actual children education allowance received by the parent per month whichever is less. However, Vidyalaya Vikash Nidhi is not less than Rs.600/- per student per month.

42) For the purpose of selection test for admission to Class-VI in JNVs of the Country for the

Session 2022-2023, the Navodaya Vidyalaya Samiti (JNV) issued the "Prospectus for Jawahar Navodaya Vidyalaya Selection Test-2022 for Admission to Class-VI" where the said selection test was conducted by CBSE throughout the Country on 30th April, 2022 in one phase for all the JNVs and the result of the said selection test was declared on 06.07.2022.

43) It is seen from the said "Prospectus for Jawahar Navodaya Vidyalaya Selection Test-2022 for Admission to Class-VI" that under the heading "*Selection and Admission*" at Clause-3.1, amongst others, it is specifically provided that – *Selection in the test will not vest any right on the candidate to secure admission into the JNV. At the time of seeking actual admission, each selected candidate will have to produce all relevant certificates, as prescribed by the NVS. Until admission, the selection is provisional only. Candidates are advised to apply for TC from parent school only after the verification of documents and confirmation of admission by the respective JNV.*

44) At Clause-3.2 in the said Prospectus, it is provided that - *In case any dispute, the decision of NVS shall be final and binding on the candidates.*

45) Further in the said Prospectus of JNV Selection Test-2022 for admission to Class-VI under the Heading "*Who is Eligible*" at Clause 4.7 it is provided that "*No candidate is eligible to appear in the selection test for the second time, under any circumstances*".

46) However, the petitioners herein have challenged the said Clause 4.7 of being violative of the provisions of Articles 14, 16, 19 and 21 (A) of the constitution of India and without authority of law as well as against the new Scheme of New Education Policy of Government of India. Petitioners' contentions are that their names figured in the Select List in the JNV Selection Test for admission to Class-VI Session-2022 in the District of Dhubri for the petitioner of WP(C) No.6653/2022 and in the District of Bongaigaon for the petitioners of WP(C) No.7732/2022. Finding their application forms proper and after due process of selection, since the petitioners have been selected, they should be allowed to take admission in Class-VI in the concerned JNVs and the respondent authorities in the NVS and JNVs cannot bar them from their said admission.

47) It is seen that prior to filing of their applications for the JNV Selection Test-2022 for Admission to Class-VI, the petitioners from the said Prospectus were well aware of the fact that they were not eligible to appear in the said selection test of 2022 under any circumstances, since they had appeared in such admission test for admission to Class-VI in JNVs for earlier academic

sessions and that they are repeaters for the Selection Test-2022 for Admission to Class-VI in JNVs. In spite of that they filled up their applications for the Selection Test-2022 for Admission to Class-VI in JNVs and thereby, took chance. Since their application forms were cleared, they appeared in the selection test and also got selected in said selection test, but as the authorities in the JNVs did not allow them to take admission in Class-VI in the concerned JNVs finding them to be repeaters; the petitioners have now challenged the said Clause 4.7 of being violative of the provisions of the constitution.

48) In the case of *DDA -Vs- Joint Action Committee, Allottee of SFS Flats*, reported in (2008) 2 SCC 672, the Hon'ble Supreme Court have held as follows:

64. *An executive order termed as a policy decision is not beyond the pale of judicial review. Whereas the superior courts may not interfere with the nitty-gritty of the policy, or substitute one by the other but it will not be correct to contend that the court shall lay its judicial hands off, when a plea is raised that the impugned decision is a policy decision. Interference therewith on the part of the superior court would not be without jurisdiction as it is subject to judicial review.*

65. *Broadly, a policy decision is subject to judicial review on the grounds: (a) if it is unconstitutional; (b) if it is de hors the provisions of the Act and the regulations; (c) if the delegatee has acted beyond its power of delegation; (d) if the executive policy is contrary to the statutory or a larger policy.*

49) The Hon'ble Supreme Court in the case of *Assn. of Industrial Electricity Users -Vs- State of A.P.*, reported in (2002) 3 SCC 711 have held that – Normally a Court would refrain from interfering with a policy decision unless the power exercised is arbitrary or ex facie bad in law.

50) In the case of *State of Gujarat -Vs- Arvindkumar T. Tiwari*, reported in (2012) 9 SCC 545, the Hon'ble Supreme Court have held that – Fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the legislature / executive and cannot be the subject-matter of judicial review, unless found to be arbitrary, unreasonable or has been found to have been done at the cost of "fair play", "good conscience" and "equity".

51) The Hon'ble Supreme Court in its Constitution Bench in the case of *Subramanian Swamy -Vs- CBI*, reported in (2014) 8 SCC 682 have held that - Undoubtedly, every differentiation is not discrimination but at the same time, differentiation must be founded on pertinent and real differences as distinguished from irrelevant and artificial ones. A simple physical grouping which separates one category from the other without any rational basis is not a sound or intelligible

differentia. The separation or segregation must have a systematic relation and rational basis and the object of such segregation must not be discriminatory.

52) From the “Prospectus for Jawahar Navodaya Vidyalaya Selection Test-2022 for Admission to Class-VI” annexed to the writ petitions filed by the petitioners it can be seen that JNVs are fully residential co-educational Schools set with objective of providing modern quality education to talented children, predominantly from rural areas, far away from the district headquarters, where the students, teachers and staff live in the same campus. The Scheme of the JNVs are - (i) to provide good quality modern education including a strong component of culture, inculcation of values, awareness of the environment, adventure activities and physical education to the talented children predominantly from rural area; (ii) to ensure that students attain a reasonable level of competency in three languages; (iii) to promote national integration through migration of students from Hindi to Non-Hindi speaking State and vice-versa and (iv) to serve in each District as focal point for improvement in quality of School Education in general through sharing of experiences and facilities.

53) It is clear from the said Prospectus itself that the Government of India through the NVS established the JNVs throughout the Country with the objective to provide modern quality education to talented children, predominantly from rural areas, far away from the district headquarters. It is also seen that the CBSE conducts the admission test for all the JNVs of the Country in one phase and also declares the result for such admission in JNVs. Parents will definitely like to provide the best education to their wards/ children. If any candidate appears in a selection test for his/her admission to a particular class or course and is not successful in the test or though successful in the selection test but by his/her position in the select list could not enroll in the concerned class/course because of limitation of seats etc., if such candidates appear in the selection test for the second time or repeats such selection test for their admission in a particular class or course for the subsequent session, there is all possibility of doing better in such selection test having past experience of such admission test and thereby they will definitely march over other talented candidates, who have appeared for the first time. Moreover, age is also a factor to take admission in a particular class or course as specified, so as to pass the last class or final class of the course within the particular period and/or age.

54) From the said Prospectus this Court found that objective is to ensure modern quality education to deserving talented children of the district concerned, mostly from rural areas, by

giving admission to them in Class-VI at JNV of the respective district.

55) In that backdrop, for selection to admission in Class-VI at JNVs, the respondent NVS has incorporated the said Clause 4.7 under the Heading "*Who is Eligible*" providing that "*No candidate is eligible to appear in the selection test for the second time, under any circumstances*".

Considering all the above, this Court is of the opinion that said Clause 4.7, noted above, is not violative of the provisions of Articles 14, 16, 19 and 21 (A) of the constitution of India neither without authority nor against the Scheme of New Education Policy of Government of India, rather it is found that it very much within the scheme as prescribed and stipulated in the said Prospectus that fits in with the objective to ensure modern quality education to deserving talented children of the district concerned.

56) Separating those candidate who appeared in the selection test for second time or more or as repeaters for their admission to Class-VI in JNVs as not eligible to appear from the batch of the fresh candidates, who appear for the first time in such selection test for admission to Class-VI in JNVs, the Court is also of the view that such separation or segregation, with the object behind, has a rational basis that is reasonable, logical and not discriminatory, since the talented candidates of the district concerned who appears in such selection test for their admission in JNVs, mostly from the rural area, will not able to stand before the other talented candidates of the same district who earlier appeared in such selection test for more than one occasion or as repeaters for their admission in JNVs as they will march over the first timer talented candidates of the respective district.

57) Though the petitioners named thirteen children who passed admission test on their second and third attempts and have been allowed to take admission in Class-VI in JNVs, but it is found that except the said allegation petitioners failed to place anything before the Court that those children were repeaters of selection test for their admission in Class-VI at JNVs. Further, those thirteen have also not been made parties in the present proceedings. Moreover, petitioners remained silent against the reply given by the respondent JNVs pertaining to those thirteen children. Considering those, the Court found that such claim of the petitioners is not tenable in law.

58) It is found that the petitioners did not challenge the said provisions of Clause 4.7 of the Prospectus prior to filling up of their applications of Jawahar Navodaya Vidyalaya Selection Test to



Class-VI, 2022, but have challenged it only when they have been found to be the repeaters of such admission test to Class-VI in JNVs and were not allowed to take admission in the said class in the concerned JNV.

59) It is well settled that procedure prescribed in the Prospectus casts an obligation on the applicants to apply in terms thereof and they cannot be heard to state later on that their cases should be accepted even if they did not adhere to the conditions prescribed therein, i.e., in the concerned Prospectus.

60) For the reasons above, both the writ petitions, being devoid of merit stands dismissed.

61) Interim order passed earlier on 17.11.2022 in W.P.(C) No. 7332/2022 stands vacated.

JUDGE

Comparing Assistant