

राष्ट्रीय मुक्त विद्यालयी शिक्षा संस्थान

(पूर्वतः राष्ट्रीय मुक्त विद्यालय - रा.मु.वि.)

(मा.सं.वि.मं., भारत सरकार)

ए-24-25, इंस्टीट्यूशनल एरिया, एन.एच.-24,

सेक्टर-62, नोएडा, जिला गौतम बुद्ध नगर (उ.प्र.)



NATIONAL INSTITUTE OF OPEN SCHOOLING

(Formerly, National Open School - NOS)

(M.H.R.D., Government of India)

A-24-25, Institutional Area, NH-24, Sector-62,

NOIDA, Distt. - Gautam Buddha Nagar (U.P.)

डॉ. सितांशु शेखर जेना

अध्यक्ष

Dr. Sitansu S. Jena

Chairman

E-mail : cm@nos.org

Web Site : www.nios.ac.in

www.nos.org

NIOS/Acad./PCI/2010

Dated : 9th December, 2010

The Secretary of Technical Education (All States and UTs)

**Subject: Judgement of Hon'ble High Court of Gujarat in S.C.A. No. 7406 of 2010 at Ahmedabad holding recognition and equivalency of NIOS certificate for taking admission in Professional Courses.**

Please find enclosed herewith a copy of the judgment in the above captioned matter.

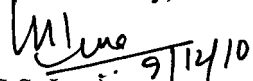
As you may be aware, the issue of recognition and equivalency of NIOS (National Institute of Open Schooling) certificates at Secondary and Senior Secondary level is being raised at various fora; this is also a common query of students and parents. In this context, the Hon'ble Gujarat High Court at Ahmedabad, while delivering the decision on the petitions of Sidharth Jagdishbhai Panchal on 23-08-2010, for not admitting him in the course of Diploma of Polytechnic College for academic session 2010-2011, even though he has passed Xth standard examination from NIOS. In the decision for Special Civil Application No. 7406 of 2010, Hon'ble Chief Justice observed that it has not been disputed that all the 3 Boards CBSE, CISCE and NIOS have been constituted by the Education Department, Govt. of India. Therefore, for all purposes, certificates issued by them are equivalent.

The Hon'ble High Court has further held that as NIOS has been constituted under a Notification issued by the Ministry of Human Resource Development, Education Department, Government of India (similar to CBSE), non-consideration of the case of the petitioner on the ground that he has not passed from the Central Board is arbitrary and violation of Article 14 of the Constitution. Since the NIOS certificates are recognized for all purposes by the State of Gujarat, the Hon'ble High Court directed the respondents to consider the case of petitioner for admission in the academic session 2010-2011 to any Institution/Diploma Courses.

In the light of the above facts and circumstances, a suitable direction may be issued to all concerned in the Department dealing with the admission process for professional/technical courses in the State, so that the students passed out from NIOS are not prohibited from admission and not treated differently.

Your kind co-operation will go a long way for providing justice to the students passed out of NIOS.

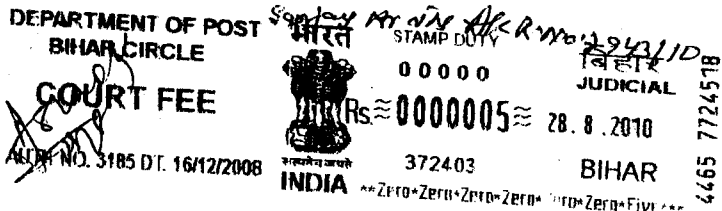
Yours sincerely,

  
(S.S. Jena) 9/12/10

Encl: as above

Copy for information to:

1. The Joint Secretary, Elementary Education & Literacy MHRD, Shastri Bhawan, New Delhi.
2. The Chairman of CBSE, New Delhi.
3. All Regional Directors of NIOS.
4. All HODs of NIOS.
5. Sh. S.K. Prasad, SAP, NIOS for placing it on the website.



IN THE HIGH COURT OF JUDICATURE AT PATNA

CWJC No.5014 of 2010

1. BABLU KUMAR S/O RAM SURESH RAM R/O VILLAGE - URDA, P.S. - CHENARI  
DISTRICT - ROHTAS.

Versus

1. THE STATE OF BIHAR
2. THE MAGADH UNIVERSITY, BODH GAYA, THROUGH ITS VICE CHANCELLOR
3. THE SECRETARY, BIHAR COMBINED ENTERANCE COMPETITIVE EXAMINATION BOARD, I.A.S.BHAWAN, AIRPORT ROAD, PATNA
4. THE PRINCIPAL GOVERNMENT PHARMACY, INSTITUTE, GULZARBAGH, PATNA

For the Petitioner : Dr. Subodh Kumar Jha, Mr. Amrendra Kumar  
and Mr. Krishna Kumar, Advocates  
For Respondent No. 4: Mr. Gyan Prakash Ojha, AC to GA 7  
For Respondent No. 2: Mr. Hansraj, Advocate  
For the Board : Mr. Vikash Kumar, Advocate

4. 24.08.2010

Heard learned Counsel for the petitioner, for the Bihar Combined Entrance Competitive Examination Board (hereinafter referred to as 'the Board') and for the Magadh University.

Notice was issued to the Pharmacy Council of India (respondent no. 5). The office report is of a valid service of notice notwithstanding which no one appears on behalf of the said respondent to oppose the application. This Court therefore proceeds on the premise that having been made aware of pendency of the writ application and the relief sought herein, the Pharmacy Council of India does not oppose the same, and therefore does not consider it necessary to enter appearance.

The petitioner is stated to have completed his 10 + 2 Senior Secondary School Course from the National Institute of Open Schooling in the session 2006-2007. From the counter affidavit of the Board annexing a letter dated 20.3.2010 at Annexure 'B' issued by the National Institute of Open Schooling under the pen of its Director it is apparent that it is run under the aegis of the Ministry of Human Resources Development, Department of Education, Government of India. The institute from which the petitioner has passed is therefore not an

unrecognized below standard institution, but one run by the Government of India itself through an agency.

The petitioner appeared at the combined competitive examination conducted by the respondent Board and on competing successfully was called for counseling and has been granted admission in the Bachelor of Pharmacy Course at Government Pharmacy Institute, Gulzarbagh at Patna. The Principal of the Institute however denies him admission by relying upon a communication by the Pharmacy Council of India constituted under the Pharmacy Act, 1948, dated 17.7.2009 that the Central Council had decided to clarify that it does not approve the qualification of 10 + 2 from National Open School for admission to the pharmacy course for the purpose of registration as a Pharmacist under the Pharmacy Act.

Learned Counsel for the board and the Government Pharmacy Institute find it difficult to make any submission questioning the credibility of the institution run by the Government of India from where the petitioner has acquired his secondary school qualification.

This Court finds it peculiar that the Central Council of the Pharmacy Council of India seeks to raise issues against the Central Government itself. The Director of the National Institute of Open Schooling asserts that it is an institution run under the aegis of the Ministry of Human Resources Development, Department of Education, Government of India. The Pharmacy Council of India says that it will not admit students from the National Open School. The actions of the Pharmacy Council of India when questioned before the Court, the Pharmacy Council

of India decides to keep quiet. This Court therefore draws an adverse inference against the Pharmacy Council of India. This Court holds that the communication dated 17.7.2009 of the Pharmacy Council of India is obviously restricted and confined in its application to those category of National Open School which may fall under the category of an unrecognized and sub standard institution, but not one run under the aegis of the Government of India itself.

This Court therefore holds that the communication dated 17.7.2009 of the Pharmacy Council of India has no application to the secondary course run by the National Institute of Open Schooling. It is indeed peculiar to notice as to the manner in which the government institutions appear in conflict with each other, and at the receiving end is the student who has obtained his qualification from a government institution. Had the National Institute of Open School not been run under the aegis of Government of India matters may have been different.

The Government Pharmacy Institute at Gulzarbagh is directed to grant admission to the petitioner in pursuance of the counseling done and allow him to attend classes. After the petitioner successfully completes the course, the Pharmacy Council of India is precluded from raising any objection with regard to the registration of the petitioner only because of petitioner having studied from the National Institute of Open Schooling.

The writ application is allowed.

Snkumar/-

*sdf*  
(Navin Sinha, J.)

IDENTIFIED TO THE PHOTO COPY  
For Joint Registrar (J) 28/8/10  
Patna High Court  
Authorized U/S 74 of 1977  
*S. K. Sinha*  
28-8-2010  
28-8-2010

Requisition Number : CWJC/34223/2010				
Date Of Requisition	Stamp Notification Date	Stamp Deposit Date	Date of Copy Ready	Date of Copy Delivered
27-08-2010	28-08-2010	28-08-2010	28-08-2010	28-8-2010

35984

Memo Of Case	
Application Fee for Copy	Rs.0.33
Searching Fee	Rs.1.00
Extra Fee for Urgency	Rs.1.50
Folios Fee	Rs.3.30
Other Items If Any	Rs.0.00
Total	Rs.6.13
XAFDF2BAFX	

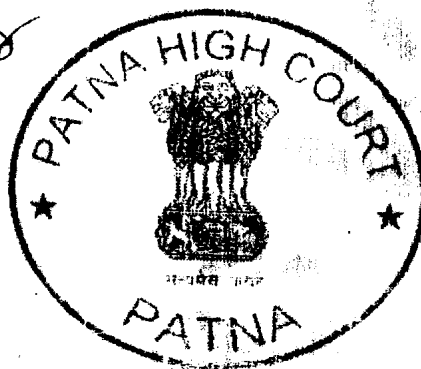
The Authentication Fee Payable Under the Court Fee Act - Rs.2.90

*[Handwritten Signature]*  
28/8/10

Section Officer  
Copying Department

*[Handwritten Signature]*  
28-8-2010

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28-8-2010



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CHARGE : 37.800003

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Read By :

Prepared By : MS NENCY M CHRISTIAN

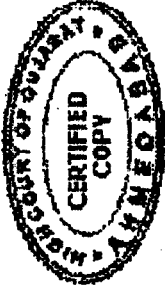
Applied on : 25/08/2010

Examined By :

Prepared on : 26/08/2010

Notified on : 26/8/10

Delivered on : 30/08/10



Dy. S.O.

Decree Department

Section Officer

Decree Department

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION 7406 of 2010

( Under Articles of the Constitution Of India )

1.1.0 SIDHARTH JAGDISHBHAI PANCHAL T-  
HRO FATHER JAGDISH D PANCHAL  
D/8, SHYAM APARTMENT,  
NEAR GAYATRI MANDIR,-  
SHAHIBAUG, AHMEDABAD 380 004

Petitioner(s)

Versus

1.1.0 ADMISSION COMMITTEE FOR PROFES-  
SIONAL DIPLOMA COURSE (ACFDC)  
THROUGH CHAIRMAN  
PLASTIC ENGINEERING BUILDING-  
GOVERNMENT POLYTECHNIC  
AHMEDABAD 380 015

2.1.0 DIRECTOR OF TECHNICAL EDUCATION  
2ND FLOOR, BLOCK NO.2,  
DR. JIVRAJ MEHTA BHAVAN,-  
GANDHINAGAR 382 010

As desired, a copy of certified copy of order is herewith submitted for your kind personal use.

Dir. (VED)

Sw. E. O. (2)

NATIONAL INFORMATICS CENTRE

COGNITIVE INSTITUTE

3.1.0 NATIONAL INSTITUTE OF OPEN SCH-  
COLING (NIOS)  
D-11/12, ROOP VIHAR COLONY,  
MOHAN MARG, OFF: KAROLI-  
GARDEN, NEW SANGANER ROAD,  
SODALA, JAIPUR, RAJASTHAN

4.1.0 UNION OF INDIA  
THROUGH SECRETARY  
MINISTRY OF HUMAN RESOURCES-  
DEPARTMENT, NEW DELHI.

5.1.0 STATE OF GUJARAT  
THRO' SECRETARY,  
EDUCATION DEPARTMENT-  
SACHIVALAYA, GANDBINAGAR.

Respondent (s)

**Apperance on Record :**

MR PR NANAVATI as Advocate for the Petitioner(s) no.1  
GOVERNMENT PLEADER for the Respondent(s) no.2,5  
NOTICE SERVED BY DS for the Respondent(s) no.1-3  
MR HRIDAY BUCH as Advocate for the Respondent(s) no.4  
MS ANUJA S NANAVATI as Advocate for the Respondent(s)  
no.3

**COURTS ORDER:**

**Coram :**

HONOURABLE THE CHIEF JUSTICE MR. S.J. MUKHOPADHAYA  
HONOURABLE MR.JUSTICE K.M.THAKER

Date of Decision: 23/08/2010

(COPY OF ORDER ATTACHED HEREWITH)



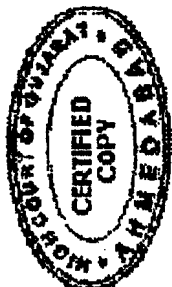
**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 7406 of 2010.**

**For Approval and Signature:**

**HONOURABLE THE CHIEF JUSTICE MR. S.J. MUKHOPADHAYA** 54

**HONOURABLE MR.JUSTICE K.M.THAKER** 9a



- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

Jy  
no

**SIDHARTH JAGDISHBHAI PANCHAL THRO' FATHER JAGDISH D PANCHAL - Petitioner(s)**

**Versus**

**ADMISSION COMMITTEE FOR PROFESSIONAL DIPLOMA COURSE (ACPDC) & 4 - Respondent(s)**

**Appearance :**

MR PR NANAVATI for Petitioner : 1.  
 MR PK JANI GP with Pranav S Trivedi, AGP for Respondents : 2, 3,  
 MR SUDHIR NANAVATI  
 Senior Advocate with  
 MS ANUJA S NANAVATI for Respondent : 3.  
 MR HRIDAY BUCH for Respondent : 4.

**CORAM : HONOURABLE THE CHIEF JUSTICE MR. S.J. MUKHOPADHAYA**

**HONOURABLE MR.JUSTICE K.M.THAKER**

**Date :23/08/2010**

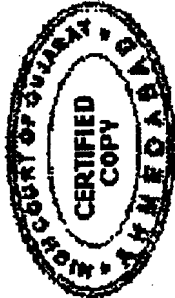
**CAV JUDGMENT**

**(Per : HONOURABLE THE CHIEF JUSTICE MR. S.J. MUKHOPADHAYA)**

1. The petitioner while challenging the decision of the respondents in not admitting the petitioner to the course of Diploma in any of the Polytechnic Colleges situated within the State of Gujarat for the academic session 2010-11, prayed for direction on respondent no.1 to admit him in the course of Diploma in any of the Polytechnic Colleges within the State



of Gujarat for the academic session 2010-11.



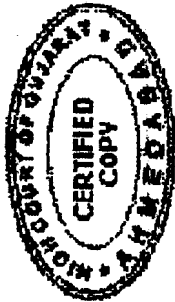
2. The case of the petitioner that he having passed X Std. Examination from Study Centre situated in Gujarat of the 3<sup>rd</sup> respondent - National Institute of Open Schooling (hereinafter referred to as 'NIOS') applied for admission in Diploma courses in any of the polytechnic colleges within the State, but in the merit list 'zero' mark was allotted. Further case of the petitioner is that he could come to know that respondents are not recognizing the certificate issued by the Board of NIOS; therefore, he has been allotted 'zero' marks and not admitted in the aforesaid course.

3. The brief facts of the case of the petitioner are as follows:-

The Government of India from its Department of Education, Ministry of Human Resources Development, New Delhi, framed a policy known as 'National Policy on Education 1986'. It was adopted by the Parliament in May 1986. The policy was introduced with a view to help the school dropouts, children from habitation without school, working children and girls who cannot attend whole day school and to strengthen and enlarge the scope of education.

4. In the year 1989, in furtherance of the aforesaid National Policy on Education, the Ministry of Human Resource Development, Government of India passed Resolution on 21.11.1989 to provide education upto pre-degree level to those who for one or other reason could not make use of the formal education system. National Open School, an autonomous organisation was set up under National Open School Society, a society registered under the Societies Registration Act. The name of the National

Open School was later on changed to National Institute of Open Schooling (NIOS).



5. The courses offered by NIOS were recognised by different State Boards including Gujarat Secondary Education Board at secondary education level and senior secondary education level. A list of Universities recognizing NIOS examinations and certification has been shown at Appendix 'B' of the Prospectus 2010-11 issued by NIOS, relevant portion of which is as follows:-

**"GUJARAT**

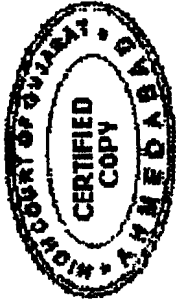
- Saurashtra University Campus, Kalavad Road, Rajkot-110007
- North Gujarat University, Rajmahal Road, F.R. No.21, Patan-384265 (N.G.)
- Bhav Nagar University, Bhavnagar
- Sardar Patel University, Vallabh Vidhya Nagar
- Gujarat University Ahmedabad"

6. On 14.09.1996, the Ministry of Human Resource Development, (Department of Education) Government of India, passed a Resolution vesting authority in the National Open School Society (for short 'NOSS') for holding certain examinations through distance and open learning system at school stage and certification thereof. The relevant portion of the Resolution reads as follows:-

*"... The Society shall also be the certifying authority for such courses and programmes and do such acts ancillary to these objects as may be necessary. The Central Board of Secondary Education which was the certifying and examining authority on behalf of the National Open School Society will cease to be so with effect from the date of issue of this Notification in the Gazette of India."*

From the aforesaid Resolution, it will be evident that power was taken away from CBSE, which was the certifying and examining authority on behalf of NIOS earlier, and vested with the NOSS itself. The aforesaid Resolution was followed by a Circular dated 11.12.2002 issued by Government of India, Ministry of Human Resource Development,

Department of Elementary Education and Literacy, whereby Secretaries of Education Departments of all the States and Union Territories, including the State of Gujarat, were informed of recognition of the examination at primary and middle level courses conducted by NOIS, with a further direction to the States to issue necessary instruction to all the concerned to consider the certificates issued by NOIS as equivalent to concerned stage of education in matters of admissions and employment, etc.



Gujarat Secondary and Higher Secondary Education Board (hereinafter referred to as 'GSHSEB') by its Resolution dated 16.06.2005 granted recognition of the examination conducted by NOIS as equivalent to examination conducted by the GSHSEB and other Boards functioning under the umbrella of Council of Board of School Education (hereinafter referred to as 'COBSE'), a parent body of various Central Boards. The said parent body recognizes examinations conducted by CBSE, ICSE, different State Boards, as also NIOS, as equivalent to passing Std. X examination for being eligible for admission in Std. XI courses offered by State Boards, including GSHSEB. The letter issued by the GSHSEB dated 16.06.2005 contains a list of Boards recognised by COBSE, wherein GSHSEB, Gandhinagar, has been shown at Sr. No. 1 and NIOS, New Delhi, has been shown at Sr. No. 34. CBSE has been shown at Sr. No. 8 and other State Boards have also been shown therein.

7. Government of Gujarat enacted a law in 2008 known as Gujarat Professional Technical Education Colleges or Institutions (Regulation of Admission and Fixation of Fees) Act, 2007 to regulate the admission to the Diploma courses. Rules have been framed under the said Act by

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issuance of a Notification dated 30.05.2005, known as Professional Diploma Courses (Regulation of Admission and Payment of Fees) Rules, 2008 (hereinafter referred to as 'the Rules'). Under Rule 2(g) qualifying examination has been defined as under:-



*"(g) "Qualifying Examination" means the Secondary School Certificate Examination, (Standard X) passed with Mathematics, Science and English or equivalent examination."*

Under Rule 5 Eligibility for admission has been prescribed, which reads as under:-

*"5. Eligibility for Admission.- (1) For the purpose of admission, a candidate shall have passed the qualifying examination from-*

- (i) The Gujarat Board; or  
(ii) The Central Board of Secondary Education Board:*

*Provided that,-*

- (a) the school in which the candidate has studied, should have been located in the State of Gujarat; or  
(b) the school in which the candidate has studied, should have been located in the Union Territories of Diu, Daman and Dadra Nagar Haveli and whose parents are origin of Gujarat; or  
(iii) the Council of Indian School Certificate Examination, New Delhi:*

*Provided that,-*

- (a) the school in which the candidate has studied, should have been located in the State of Gujarat; or  
(b) the school in which the candidate has studied, should have been located in the Union Territories of Diu, Daman and Dadra Nagar Haveli and whose parents are origin of Gujarat; and  
(iv) Sanskrit Pathshala:*

*Provided that,-*

- (a) the school in which the candidate has studied, should have been located in the State of Gujarat; or  
(b) the school in which the candidate has studied, should have been located in the Union Territories of Diu, Daman and Dadra Nagar Haveli and whose parents are origin of Gujarat; and*

*(v) A candidate who has studied under Jawaharal Navodaya Vidyalaya Scheme upto Standard VIII in any of the schools located in the State of Gujarat, thereafter studied in any of the schools located out of the State of Gujarat under the said Scheme shall be eligible for admission.*

*Explanation. - "Jawaharal Navodaya Vidyalaya Scheme" means the Jawaharal Navodaya Vidyalaya scheme started during the year 1985-86 by the Government of India in accordance with the National Policy of Education. The scheme is managed by Navodaya Vidyalaya Samiti, an autonomous organisation under the Department of Education, Ministry of Human Resource Development.*

*(2) A candidate whose parents are origin of Gujarat and who are residing out of Gujarat and who have passed the qualifying examination from Central Board of Secondary Education or the Council of Indian School Certificate Examinations, New Delhi or the respective State Boards shall be eligible for admission, subject to the condition that he shall produce his parents' domicile certificate.*

*(3) (a) A candidate whose parents are origin of Gujarat and who is living outside India and have passed the qualifying examination from outside India shall be eligible for admission, subject to the condition that he shall*

produce his parents' domicile certificate.

(b) The grade with which he has passed the qualifying examination shall be converted into the Merit Marks by considering the lowest of the mark-range on the basis of which grade is awarded.

(4) A candidate who has passed the qualifying examination and,

(i) whose parents are serving in the category of service as shown below; and

(ii) who are transferred from other States to Gujarat and have resumed their duty in the place where they are transferred in Gujarat and working in Gujarat at the time of registration shall be eligible for admission and shall remain so transferred in the State of Gujarat at the time of registration for admission.

Category of Service:-

(a) Officers or Employees of Central Government; or

(b) Officers or Employees of Public Sector Undertakings of Central Government and State Government; or

(c) Officers or Employees of nationalised banks; or

(d) Officers or Employees of United Nations, UNICEF, World Health Organisation and such other International Institutions located in Gujarat State; or

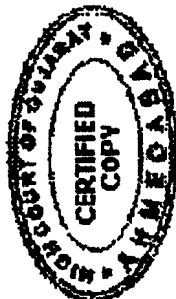
(e) Officers or Employees of Indian Administrative Service, Indian Police Service, Indian Forest Service of Gujarat Cadre working in Gujarat or working in other States on deputation from Gujarat; or

(f) Officers or Employees of Gujarat Government posted outside Gujarat State for administrative reasons.

(5) A candidate who has passed the qualifying examination after appearing in the supplementary examinations conducted by the board shall not be eligible for admission in the current academic year."

From the aforesaid Rule 5, it will be evident that while candidates passed through GSHSEB, Gujarat, CBSE, New Delhi, Council of Indian School Certificate Examination (hereinafter referred to as 'CISCE'), New Delhi, Sanskrit Pathshala have been recognised; subject to location of its School in the State of Gujarat, NIOS, New Delhi, has been excluded therefrom.

8. The petitioner appeared in the examination held by NIOS for the academic session 2009-10 and passed the examination having secured 268 marks. He applied for admission to Diploma courses, result of which was declared in June 2010, but while he had obtained the marks, he could find that in evaluation portion 'zero' marks were allotted to him, thereby petitioner was held to be ineligible for admission to the 1<sup>st</sup> year Diploma

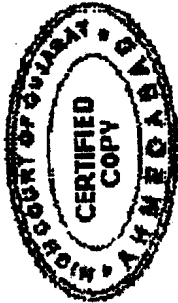


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course in the State of Gujarat.



9. The case of the petitioner is that when he presented himself on 23.06.2010 before the 1<sup>st</sup> respondent - Admission Committee with a request to consider his case having passed X examination with 268 marks from NIOS, he could come to know that his case has not been considered and provided with 'zero' marks as NIOS is not recognised under Rule 5 of the Rules.

10. On behalf of the petitioner, learned counsel would contend that the action is arbitrary, as petitioner has passed from an institution situated within the State of Gujarat run under the control of NIOS, a Board constituted by the Central Government and recognised equivalent to all other Boards, including CBSE by COBSE.

11. 1<sup>st</sup> respondent in its affidavit has also shown the petitioner ineligible having passed from NIOS, which is not a recognised Board under Rule 5.

12. On 29.07.2010, the State Government was issued notice and asked as to why Rule 5 of the Rules, so far as exclusion of candidates studied from the State of Gujarat and obtained certificate from an equivalent Board, be not declared ultravires. A petition for amendment of the petition was also filed on behalf of the petitioner.

13. The 3<sup>rd</sup> respondent, NIOS, a Board constituted by the Central Government, has supported the case of the petitioner. The stand as

SCA/7408/2010

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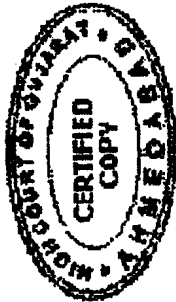
JUDGMENT



NATIONAL INFORMATICS CENTRE

taken by the petitioner with regard to Central Government's National Policy of Education, constitution of the Board (NIOS), vesting it with independent power, taking away such power from CBSE, all have been accepted. A specific stand has been taken by the 3<sup>rd</sup> respondent that CBSE and the CISCE, New Delhi, having been established under the Notification issued by the Ministry of Human Resource Development, Education Department, Government of India, being similar to NIOS, non-consideration of the case of the petitioner on the ground that he has not passed from the Central Board is arbitrary and violative of Art.14 of the Constitution of India. The State of Gujarat, 5<sup>th</sup> respondent filed an affidavit-in-reply wherein they have not dealt with paragraph-wise reply. While one plea has been taken that the petitioner has never approached the 5<sup>th</sup> respondent, who is the deciding authority, and no specific challenge of the Rules has been made, it is pleaded that observation of the Court relating to prima facie arbitrariness of Rule 5 has been considered by the State authorities and considering its policy, and as the State Government will be flooded with numerous such applications, it is decided not to accede to such applications at this belated stage, but it is pleaded that the State Government may think of initiating necessary procedure pursuant to provision of the Gujarat Professional Technical Colleges or Institution (Regulation of Admission and Fixation of Fees) Act, 2007, to include the name of 3<sup>rd</sup> respondent NIOS in the eligible institutions for admission to the professional diploma courses from the next year. That means they have agreed to include NIOS for the academic session 2011-12, and not from the current session, i.e. 2010-11.

14. We have heard counsel for the parties and perused the record.



15. It has not been disputed that CBSE, CISCE, as also NIOS, all Boards have been constituted by the Education Department, Government of India. For all purposes, they are equivalent. It is also not in dispute that there are institutions in the State of Gujarat, including the institution in which the petitioner has studied, which is recognised by the NIOS and certificate is granted by NIOS. Previously, on behalf of the NIOS, CBSE used to grant the certificate and now after the decision of the Central Government, since 2002, it has been granted by NIOS.

16. It is true that the State Government can frame Rules and confine recognition of institution located within the State of Gujarat, though the Board may be located outside the State like CBSE or CISCE. If any institution is located outside the State of Gujarat, and if the Board which grants certificate is also located outside Gujarat, it is always open to the State not to allow the students of such institutions for admission in one or the other courses within the State, but it cannot discriminate among two institutions or Board similarly situated.

17. It has already been pointed out that NIOS is constituted by the Central Government. It is also recognised for all purposes by the State of Gujarat, and the centre in which the petitioner was studying is also located in the State of Gujarat. Having noticed the aforesaid facts, the State Government has also accepted to recognize the candidates, who have passed from the institutions situated in the State of Gujarat, and are granted certificate by NIOS for the future academic session 2011-12, but the ground given for not granting such recognition to the students for the

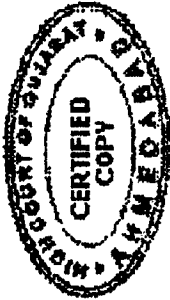


SCA/7406/2010

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academic session 2010-11 is that it will be flooded with applications, cannot be accepted as not allowing such applicants to take part in the selection for admission in the Diploma courses will render the admissions violative of Art.14 of the Constitution, and in such case, Rule 5 may be doubted.



18. In the circumstances, instead of declaring Rule 5 ultravires, we direct the State to make necessary amendment in the Rule as per the stand taken before this Court in its affidavit with further direction to respondents to consider the case of petitioner for admission in the academic session 2010-11 in any of the Diploma institutions imparting education in Diploma courses. If any person having less marks than the petitioner has been admitted, the petitioner should be given the same benefit for the present academic session 2010-11 and formalities be completed within 15 days from the date of receipt/production of a copy of this order. The writ petition is allowed with aforesaid observations and directions. but there shall be no order as to costs.

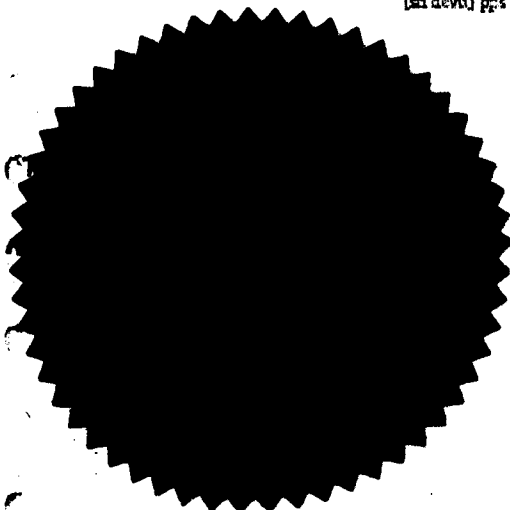
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Sd  
(S.J. MUKHOPADHAYA, C.J.)

Sd  
(K.M. THAKER, J.)  
By order of the Court

Sd. Cr. J. Judge  
26/8/2010  
Deputy Registrar

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Subject: ADMISSION IN D.PHARMACY & B.PHARMACY COURSE

From: "Gurbakhshish Dhillon" <gurbakhshishdhillon@gmail.com>

Date: Thu, August 19, 2010 7:03 pm

To: dirvoc@nios.ac.in

Priority: Normal

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With due respect, I beg to submit that I have PASSED the 12<sup>th</sup> class from NIOS during 2009-10. I have applied for admission in D.Pharmacy course in the collage but they have shown inability for admission in the said course, as per decision of the Pharmacy council of India, where in the PCI has clearly indicated That those who have passed the 12<sup>th</sup> class from NIOS are not eligible for admission the D.Pharmacy OR B.Pharmacy. Please guidance in this respect to whom I may request for the admission for the said course.

CONTACT I.D is: gurbakhshishdhillon@gmail.com

Attachments:

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pl. trace the mail given with pharmacy Council decision in CB  
ask our Sri. Anil Kumar EO to examine it & put up so that matter can be taken up to Pharmacy Council at the level of Chairman.

matter may treated as urgent.

DD (Acad) Vocl.  
PA to Director etc.

Dr.  
17/9/2010  
DVE

Anil Kumar (ORSE)

Amrta  
22.09.10



डॉ टी० एन० गिरि  
क्षेत्रीय निदेशक

**Dr. T. N. Giri**  
Regional Director

Ref. NIOS/RC/Pat/7426  
Date. 08.09.2010

To  
**The Director (Vocational)**  
National Institute of Open Schooling  
A-24/25, Institutional Area  
Sector -62, Gautam Budha Nagar,  
Noida, Pin-201309 (U.P).

**Sub: Forwarding a copy of judgement of Hon'ble High Court of Patna regarding recognition of NIOS Certificate for taking admission in Pharmacy course recognised by Pharmacy Council of India-reg.**

Sir,

Please find enclosed herewith a copy of judgement given by the Hon'ble High Court of Patna regarding admission of Mr. Bablu Kumar in Pharmacy Institute at Gulzarbagh, Patna. Earlier this Institute had denied his admission on the basis of requisite qualification for this course was obtained from NIOS by the candidate.

This is submitted for your kind information please.

With regards.

Yours faithfully

*T.N. Giri*  
8/9/10  
(T.N.Giri)

**Encl: As above**

**Copy to:**

1. PS to Chairman for kind information of the Chairman.
2. Direction (SSS), NIOS
3. EO (Legal), NIOS

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BIHAR

IN THE HIGH COURT OF JUDICATURE AT PATNA

CWJC No.5014 of 2010

1. BABLU KUMAR S/O RAM SURESH RAM R/O VILLAGE - URDA, P.S. - CHENARI  
DISTRICT - ROHTAS.

Versus

1. THE STATE OF BIHAR
2. THE MAGADH UNIVERSITY, BODH GAYA, THROUGH ITS VICE CHANCELLOR
3. THE SECRETARY, BIHAR COMBINED ENTRANCE COMPETITIVE EXAMINATION BOARD, I.A.S. BHAWAN, AIRPORT ROAD, PATNA
4. THE PRINCIPAL GOVERNMENT PHARMACY, INSTITUTE, GULZARBAGH, PATNA

For the Petitioner : Dr. Subodh Kumar Jha, Mr. Amrendra Kumar  
and Mr. Krishna Kumar, Advocates  
For Respondent No. 4: Mr. Gyan Prakash Jha, AC to GA 7  
For Respondent No. 2: Mr. Hansraj, Advocate  
For the Board : Mr. Vikash Kumar, Advocate

4. 24.08.2010

Heard learned Counsel for the petitioner, for the Bihar Combined Entrance Competitive Examination Board (hereinafter referred to as 'the Board') and for the Magadh University.

Notice was issued to the Pharmacy Council of India (respondent no. 5). The office report is of a valid service of notice notwithstanding which no one appears on behalf of the said respondent to oppose the application. This Court therefore proceeds on the premise that having been made aware of pendency of the writ application and the relief sought herein, the Pharmacy Council of India does not oppose the same, and therefore does not consider it necessary to enter appearance.

The petitioner is stated to have completed his 10 + 2 Senior Secondary School Course from the National Institute of Open Schooling in the session 2006-2007. From the counter affidavit of the Board annexing a letter dated 20.3.2010 at Annexure 'B' issued by the National Institute of Open Schooling under the pen of its Director it is apparent that it is run under the aegis of the Ministry of Human Resources Development, Department of Education, Government of India. The institute from which the petitioner has passed is therefore not an

unrecognized below standard institution, but one run by the Government of India itself through an agency.

The petitioner appeared at the combined competitive examination conducted by the respondent Board and on competing successfully was called for counseling and has been granted admission in the Bachelor of Pharmacy Course at Government Pharmacy Institute, Gulzarbagh at Patna. The Principal of the Institute however denies him admission by relying upon a communication by the Pharmacy Council of India constituted under the Pharmacy Act, 1948, dated 17.7.2009 that the Central Council had decided to clarify that it does not approve the qualification of 10+2 from National Open School for admission to the pharmacy course for the purpose of registration as a Pharmacist under the Pharmacy Act.

Learned Counsel for the board and the Government Pharmacy Institute find it difficult to make any submission questioning the credibility of the institution run by the Government of India from where the petitioner has acquired his secondary school qualification.

This Court finds it peculiar that the Central Council of the Pharmacy Council of India seeks to raise issues against the Central Government itself. The Director of the National Institute of Open Schooling asserts that it is an institution run under the aegis of the Ministry of Human Resources Development, Department of Education, Government of India. The Pharmacy Council of India says that it will not admit students from the National Open School. The actions of the Pharmacy Council of India when questioned before the Court, the Pharmacy Council

of India decides to keep quiet. This Court therefore draws an adverse inference against the Pharmacy Council of India. This Court holds that the communication dated 17.7.2009 of the Pharmacy Council of India is obviously restricted and confined in its application to those category of National Open School which may fall under the category of an unrecognized and sub standard institution, but not one run under the aegis of the Government of India itself.

This Court therefore holds that the communication dated 17.7.2009 of the Pharmacy Council of India has no application to the secondary course run by the National Institute of Open Schooling. It is indeed peculiar to notice as to the manner in which the government institutions appear in conflict with each other, and at the receiving end is the student who has obtained his qualification from a government institution. Had the National Institute of Open Schooling not been run under the aegis of Government of India matters may have been different.

The Government Pharmacy Institute at Gulzarbagh is directed to grant admission to the petitioner in pursuance of the counseling done and allow him to attend classes. After the petitioner successfully completes the course, the Pharmacy Council of India is precluded from raising any objection with regard to the registration of the petitioner only because of petitioner having studied from the National Institute of Open Schooling.

The writ application is allowed.

Snkumar/-

*Sd/-*  
(Nayin Sinha, J.)

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Patna High Court  
Established U/S 76 of 1877  
28/8/10  
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 Section Officer  
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*Sunil Kumar*  
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*[Signature]*  
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