

(2008) 03 DEL CK 0163

In the Delhi High Court

Case No : Writ Petition (Civil) No. 1551 of 2008 and CM No. 3032 of 2008

Ajay Sampson

APPELLANT

Vs

Council for the Indian School Certificate Examinations and
Others

RESPONDENT

Date of Decision : 05-03-2008

Acts Referred:

Citation : (2008) 102 DRJ 536

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : R.K. Saini and Nikhil Bhalla, for the Appellant; Jaideep Bedi and Anjna Masih, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—This writ petition has been filed by master Ajay Sampson through his father and natural guardian Sh. Sampson Samuel contending that the petitioner is a student of the Ingraham Institute English School at Ghaziabad, (arrayed as respondent No. 2 herein) since 1999 when he joined class III onwards. In April, 1996 the petitioner was promoted to class X by the school. The petitioner's submission is that as he was eligible to take the examination and had also paid the examination fees for appearing in the class X board examination in March, 2007 which was to be held by the Council of the Indian School Certificate Examination-respondent No. 1 herein, to which the respondent No. 2 was affiliated.

2. As per the writ petition in March, 2007, the principal of the respondent No. 2 school called the petitioner's father and informed him that though the role number/admit card of his ward had been received by the school from the council-respondent No. 1; despite shortage of attendance as the same was condonable, it would be desirable for him not to let his son appear for his class Xth board examination for the reason that he was weak in studies. As a result of this advice, the petitioner dropped the class Xth board examination for the year 2007

and continued studying in class Xth of the school for one more year so that he could improve and secure good marks. The petitioner relies on an alleged oral representation on behalf of the respondent No. 2 for the examination fee paid by the petitioner would be adjusted against examination fee of the next year.

3. The grievance of the petitioner is that despite his continuing to attend class Xth in the school for the academic year 2007-08 and his having appeared in the pre-board examination conducted by the school in January, 2008, he was informed by the principal of the school in January, 2008 that his pre-board examination result would not be issued as his examination form for the class Xth board examination 2008 to be held by the respondent No. 1 in the month of March, 2008 had not been sent by the school. The submission is that the petitioner was informed that the roll number and admit card had not been received by the school.

4. The writ petitioner's grievance is that as per regulation D of the Council for the Indian School Certificate Examinations, the petitioner was entitled to refund of 50% of the examination fee as he had withdrawn his candidature in accordance with the regulations and syllabuses issued by the Indian Certificate of Secondary Education Examination. According to the petitioner, this money was not refunded for the reason the same was to be utilised towards his examination fee for the next year. It is further submitted that regulation B(ii) of the aforementioned regulations, which would apply to the petitioner, did not specify any percentage of required attendance of a candidate.

5. The petitioner has assailed the failure of the respondent in not forwarding the petitioner's examination form for appearance in the class tenth board examination to be held by respondent No. 1 for the year 2008 and has sought issuance of a writ of mandamus commanding the respondent No. 1 to adjust the examination fees paid by the petitioner for the class Xth board examination of the year 2007-08 for the examination of this year and to allow him to appear therein as a regular student of the respondent No. 2 school, or in the alternative as a private candidate.

6. The respondents have appeared in answer to the notice issued by this Court and filed the counter affidavits. I have heard learned Counsel for the parties and carefully perused the available record. I find that the petitioner has failed to disclose the period for which he was short of attendance for the academic year 2007-08. Further more the petitioner's father had addressed a letter dated 28th February, 2007 to the respondent No. 2 for withdrawal of the petitioner from taking the class Xth examination to be held in March 2007 on medical grounds. It is noteworthy that the petitioner's father had enclosed a medical certificate dated 28th February, 2007 wherein it was stated that the petitioner was suffering from typhoid fever and was consequently advised rest of 15 days with effect from 28th February, 2007. This letter was stated to have been forwarded to the respondent No. 2 by the respondent No. 1 under the cover of its letter dated 2nd March, 2007.

7. In the next year, the petitioner is stated to have continued to study in class Xth of the school. However he was most irregular in attending the classes in the academic year 2007-08. On 30th August, 2007 the petitioner sent a leave application submitting that he was suffering from viral fever and had Therefore sought leave for one week from 23rd August, 2007 to 29th August, 2007. The record of the petitioner's attendance has been placed before this Court. I find there from that the petitioner was most irregular in attending his classes from August, 2007. In August, 2007 the petitioner was absent on 12 days. Again in September, 2007, the petitioner was irregular and did not attend after 18th September, 2007. He did not attend a single class in October, 2007 and November, 2007. Even in December, when classes were held till 19th December, 2007, he failed to appear on a single date. As per the extract of the attendance register, the petitioner did not attend school at all in January or February, 2008.

8. The respondent No. 2 has placed before this Court not only the attendance register but has also pointed out that a letter dated 6th November, 2007 was addressed by the principal of the respondent No. 2 school informing the petitioner's father that his ward the present petition was not attending school since 18th September, 2007. It was further informed that the petitioner had been irregular even before that and the petitioner's parents were requested to meet the principal immediately in the interest of the school discipline. It is pointed out that at this stage the petitioner's attendance was only 36%.

9. The principal of the school has sworn an affidavit that neither the petitioner nor his father came to meet her despite receipt of this letter. They also made no effort to improve the attendance position of the petitioner or to ensure that he attended classes thereafter. The petitioner neither filled the mandatory class Xth proforma nor paid the requisite fee of the respondent No. 1 to appear in the class Xth examination. It is stated that the petitioner also did not pay the school fees.

10. I find that the petitioner has not disputed that the manner in which examinations have to be held have been notified in the regulations and syllabus notified by the respondents. The petitioner has placed reliance on regulation B, C and D which read thus:

B. Conditions of Entry

1. Entry to the examination, in the case of candidates who are being entered for the first time, is restricted to candidates with a minimum of 75% attendance of the working days during each year of the two year course at schools affiliated to the Council and registered for the Indian Certificate of Secondary Education Examination. The last date for computing attendance at school is February 15, of the year of the Examination. Candidates can be entered only by the school they are attending and, in this respect, the decision of the Head of the school is final.

2. Candidates who were entered as school candidates, in accordance with 1 above, and who were not awarded Pass Certificates may be entered by a school on the document entitled "Conformation/Correction of Entries", provided that

such candidates are in attendance at an affiliated and registered school in the year of the examination.

3. Candidates entered as school candidates in accordance with 1 or 2 above and who appeared for one or more of the written papers set by the Council, but were not awarded Pass Certificates will be permitted to re-appear for the examination once only in the year following their failure, but not thereafter, without further attendance at an affiliated and registered school.

They must apply on the special form provided for the purpose, which will be obtainable from the Council 's office through the Principals of schools from which the candidates appeared for the examination and failed in the previous year.

4. Candidates who have been awarded Pass Certificates will be permitted to enter for a Supplementary Pass Certificate without further attendance at an affiliated and registered school. They must apply on the special form for the examination, provided for the purpose, which will be obtainable from the Council's office through the Principals of schools from which the candidates appeared originally.

5. There is no age limit for candidates taking the examination.

C. Minimum Attendance Requirement

Candidates whose attendance is below 75% of the working days are ordinarily not eligible to sit for the examination. However, the Chief Executive and Secretary has the authority to condone the shortage in the case of candidates whose minimum attendance is not less than 60% of the working days. This is inclusive of illness and other special circumstances. Heads of schools may represent, to the Chief Executive and Secretary, cases of candidates who deserve special consideration for condensation, provided that the attendance of such candidates is not less than 60% of the working days, during each year of the two year course. Heads of schools are not to refer condensation of attendance in cases of candidates having below 60% attendance. The last date for computing attendance at school is February 15, of the year of Examination.

D. Withdrawal of Candidates

Candidates may be withdrawn at any time prior to the commencement of the examination, provided that, once the entries have been acknowledged as accepted by the council's office, Heads of schools may only withdraw candidates:

(a) on account of illness of the candidates, duly certified by a registered medical practitioner,

OR

(b) at the express written request of the parents/ legal guardians of the candidates.

Applications for withdrawals will have to be submitted on the special form to to

be supplied by the Council's office.

Refunds in the case of candidates duly withdrawn as permissible will be made in accordance with the conditions laid down under the heading "Refunds" on page 9 of these Regulations.

11. In the writ petition a vague averment has been made in para 8 that after receipt of the letter dated 6th November, 2007, the petitioner's father met the principal of the school and explained that he was seriously ill since 18th September, 2007 and that it is for the reason he could not attend the school. It has been vaguely averred that a medical cum fitness certificate was also submitted to the principal of the school and the petitioner started attending classes thereafter.

12. This submission is a complete misrepresentation, to say the least. The respondent No. 2 has placed the petitioner's letter dated 30th August, 2007 wherein it had been stated that he was only suffering from a viral fever and has been advised to take rest for a week. The petitioner has not cared even to disclose the nature of sickness which prevented him from attending school since 18th September, 2007 and for the several months thereafter. No date on which the petitioner's father allegedly met the principal of the respondent No. 2 has been set out.

13. The respondent No. 2 has placed a complete photocopy of the attendance register which also does not support the petitioner's contentions in this writ petition. No representation in this behalf has been made to either of the respondents to justify the failure to attend classes or to assert a right to take to the examination. The facts stated by the respondents on affidavit have not been disputed by any rejoinder by the petitioner.

14. The school has also denied that the petitioner appeared in the pre-board examination held in January, 2008. It has been submitted that the pre-board examination lasted till 24th January, 2008 and pointed out that in the entire month of January, 2008 the petitioner came to school only on five days.

The petitioner has also failed to disclose in the writ petition the leave application dated 30th August, 2007 which he had submitted. This amounts to concealment of material fact.

15. Additionally Mr. Rakesh Saini, learned Counsel for the petitioner has sought to levy allegations of callousness and arbitrariness upon the respondent No. 2 based on the argument that the communication from the respondent No. 2 was addressed on 6th November, 2007 which according to was belated. As noted hereinabove, the father of the petitioner had withdrawn the petitioner from taking the examination in the year 2007. According to the writ petitioner, the same was on the ground that he was weak in his studies. Normal conduct would have expected a father of such a student to be actively concerned about his performance and to be diligently following the progress of his son if at all he was

sincere about his progress and studies. The instant case displays total indifference about the child's studies and attendance in school. Certainly, the child could not be expected to improve his performance without attending classes which were scheduled by the school. No fault can be attributed to or foisted by upon either of the respondents in the manner in which they have conducted themselves.

16. I find that the writ petitioner also does not state that he attended classes despite receipt of the letter dated 6th November, 2007 from the school. The petitioner, if absent for genuine medical reasons, would have taken prompt steps to produce his medical and fitness certificate before the school to seek the benefit thereof and would have also taken steps to attend every class held by the respondents thereafter to ensure that he was not short of attendance and also, in order to improve his attendance.

17. So far as the submission that the respondent No. 1 was bound to refund the examination fee and that in any case, the petitioner cannot be prevented from taking the examination as the examination fee was lying with the respondent No. 1 is concerned, from a reading of regulation D and the provisions relating to refunds, it is noteworthy that even as per regulation 9, the petitioner was entitled to only 50% of the examination fees, that too, only if the other conditions were satisfied. In the instant case, there is nothing to show that the petitioner had satisfied the other conditions and consequently it cannot be held that the fact that part of the fees had not been refunded conferred any benefits on the petitioner. Even if the petitioner's contention was accepted, the admitted position would be that the petitioner would still be required to make payment of 50% of the examination fees which he has admittedly not done.

18. So far as the requirement of the attendance is concerned, Mr. Jaideep Bedi, learned Counsel for the respondent No. 1 has pointed out that as per the examination regulation of the council, a candidate is required to have a minimum attendance of 75% of the working days during each year of the two year course. The last date for computing attendance at the school is 15th February, 2008. Since the petitioner had not attended school after 18th September, 2007, the petitioner is not eligible to sit for the ICSE 2008 Examination which have commenced from 29th February, 2008. It has also been pointed out that there is prohibition to any private candidate appearing in the examination and that candidates can be entered only by the school they are attending in respect of which the decision of the head of school is final. According to respondent No. 1, the examination fee paid for a particular examination is not adjustable against subsequent examinations.

19. In view of the above discussion, the petitioner was clearly not eligible to sit for the ICSE 2008 Exam and no fault can be found for his candidature not being forwarded to the council by the respondent No. 2.

20. The foregoing discussion would show that instead of maintaining education

discipline and devoting importance to improving his academics, the petitioner has resorted to not even attending his classes and has levied all kinds of misconceived allegations against the principal of the respondent No. 2. Despite the care shown by the respondent No. 2, who even notified the petitioner's father about his failure to attend classes by the letter dated 6th November, 2007, the petitioner and his father failed to take any remedial action. Certainly the concern shown by respondent No. 2 deserves to be commended as against the mischievous allegations which have been leveled by the petitioner against it. The lack of diligence on the part of the petitioner and his father is apparent from the fact that neither the school fees nor charges payable to respondent No. 1 have been deposited.

21. This writ petition was filed on 25th February, 2008 on the eve of examination which were then to commence on 28th February, 2008. The petitioner has compelled prioratisation in the hearing of this misconceived writ petition which time was required to be devoted to serious and urgent judicial matters. Having regard to the fact that the matter related to board examinations, the writ petition was given priority over other matters which were listed on the board. Valuable judicial time has been caused to be expended in a matter in which the petitioner has concealed material facts and has failed to make out any case in law. The petitioner has compelled the Indian School Certificate Examinations and his Alma mater to contest this baseless and misconceived writ petition when the Board and the school would be at their busiest in the conduct of examinations. Irresponsible and false allegations have been leveled against the Principal and school authorities. The writ petition displays scant respect for education as well as the legal system.

In this background, this writ petition is found to be wholly devoid of merit and is hereby dismissed with costs.

22. So far as quantification of costs is concerned, in view of the above discussion, the petitioner should be required to pay punitive costs to the school/respondent No. 2 as well as compensate the judicial system for the judicial time which it has caused to waste. In this view of the matter, the petitioner shall pay costs of Rs. 10,000/- to the Delhi High Court Legal Services Committee and an amount of Rs. 5,000/- to each of respondent Nos. 1 & 2 as costs to the respondent No. 2. Such costs shall be positively paid within a period of two weeks from today.

Copy of this order shall be forwarded to the Delhi High Court Legal Services Committee who shall bring non-compliance, if any, of this order to the notice of this Court.