

(1995) 07 GUJ CK 0035
In the Gujarat High Court

Case No : Spl. Civil Application No"s. 10653 and 11058 of 1994

Brij Kishore Garg and Others etc.

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 15-07-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1996 Guj 157 : (1996) 1 GLR 114

Hon'ble Judges : M.R. Calla, J

Bench : Single Bench

Advocate : Mohit S. Shah, for the Appellant; L.R. Pujari, A.G.P., for the Respondent

Judgement

M.R. Calla, J.—The Special Civil Application No. 10653 of 1994 was initially filed by two petitioners, namely, Brij Kishore Garg and Dr. Jagjit Singh Panjarath on 1-9-94. On 2-9-94 notice returnable on 6-9-94 was issued with the order that two seats shall be kept vacant in the Medical College till then. Thereafter, on 17-9-94 petitioner No. 2 Dr. Jagjit Singh Panjarath filed a separate petition being Special Civil Application No. 11058 of 1994 and, therefore, Special Civil Application No. 10653 of 1994 is maintained by petitioner No. 1 Brij Kishore Garg only. It is submitted by learned Counsel Mr. Mohit Shah, who is also appearing for Dr. Jagjit Singh Panjarath in Special Civil Application No. 11058 of 1994 that the son of Dr. Jagjit Singh Panjarath has already got the admission somewhere else and, therefore, virtually separate Special Civil Application No. 11058 of 1994 filed by Dr. Jagjit Singh Panjarath has become infructuous.

2. Petitioner-Brij Kishore Garg was transferred as Sr. Executive in the set up of the National Dairy Development Board at Anand in the month of August, 1992 from Jaipur. His daughter, namely, Sweta Garg . was prosecuting her studies in the Standard 11 at Kendriya Vidyalaya at Jaipur. On account of the transfer of petitioner No. 1, his daughter Sweta Garg was also required to seek admission in a School in 11th Standard affiliated to the Central Board of Secondary Education,

because she was already a student of a School associated with Central Board of Secondary Education at Jaipur, where she was studying earlier. She, therefore, sought admission in the middle of the term in 11th Standard at Central School of Vallabh Vidyanagar, which was the only school available in the vicinity of Anand affiliated to the Central Board of Secondary Education. At the time When she had sought admission in the 11th Standard in a School affiliated to the Central Board of Secondary Education at Jaipur, she was required to opt between Mathematics and Biology. She intended to join the discipline of Medicine. She opted for the subject of Biology as per the Scheme of the Central Board of Secondary Education; where Science stream had the group of Physics, Chemistry and Biology and Physics, Chemistry and Mathematics. Accordingly, upon her admission in the 11th Standard at the Central School at Vallabh Vidyanagar near Anand in Gujarat, she continued with the subjects Physics, Chemistry and Biology. The petitioner's daughter having passed 11th Standard, continued her studies in the 12th Standard and appeared at the 12th Standard Examination of All India Senior School Certificate Examination conducted by the Central Board of Secondary Education in the month of May, 1994, with the subjects of Physics, Chemistry and Biology as permitted to be opted. The petitioner Sweta Garg passed the 12th Standard Examination i.e. Senior School Certificate Examination held by the Central Board of Secondary Education with , 83.4% marks in aggregate and in the Science i.e. Physics, Chemistry and Biology (only theory papers, without practical) she secured 81.9% marks. She then applied for her admission to the discipline of Medicine, Dental and Physiotherapy in any of the Medical Colleges in the State of Gujarat. On or about 26-8-94 merit list of the students, who would be eligible for seeking admission to the discipline of Medicine, Dental and Physiotherapy came to be published by the respondent No. 2 i.e. Dean, B. J. Medical College, Central Degree Admission Cell in order of preference. But name of petitioner's daughter Sweta Garg did not appear in the merit list prepared by respondent No. 2. On inquiry it was revealed to her that as per Rule 1.3 of the relevant Rules, namely, "The Rules for Admission to First MBBS/First BDS/First B Physio Courses at the Government Medical Colleges and other Colleges" the marks obtained by the concerned student in the subject of Mathematics are also computed for the purpose of deciding as to whether the concerned student would qualify to seek admission to the said discipline and as the petitioner had no subject of Mathematics in the Central Board of Secondary Education Examination of 12th Standard, she was not regarded as eligible for being admitted to the disciplines for which she had applied and, therefore, her name was not included in the merit list despite the above referred higher percentage to her credit in the 12th Standard examination of the Central Board of Secondary Education held in 1994. At this juncture, aggrieved from this action of the respondents, the present Special Civil Application was filed.

3. On 17-9-94 ad interim relief, to keep seats vacant, was vacated and the matter was fixed for 26-9-94. Rule was issued on 17-2-95 returnable on 24-2-95. On 9-3-95 it was recorded that it was not possible to hear and dispose

of the matter finally on that day and, therefore, it was left open for the counsel for the petitioner to make a mention before Vacation Judge. However, the matter has come up today for final hearing.

4. The learned Counsel for the petitioners Mr. Mohit Shah has submitted that during the pendency of this petition, the petitioner's daughter Sweta Garg has also appeared in the subject of Mathematics in the Senior School Certificate Examination of 1995 held by the Central Board of Secondary Education and has passed the same with A-I Grade i.e. 88% marks out of 100. He has also placed on record the photostat copy of the mark-sheet in which it has been typed in Capital Letters that "APPEARED IN ADDITIONAL SUBJECT/S".

5. So far as the year 1994 is concerned that is already gone and now the only question is about her admission in the following year i.e. 1995. The learned Counsel for the petitioner has submitted that he apprehends that in case she has applied or applies this year, still her candidatures may not be considered and even if it is considered, while preparing the merit list, 15 marks may be deducted in terms of Rules 1 and 5.2 respectively. Rules 1 and 5.2 are reproduced as under:

"1. Qualifying examination for admission shall be higher secondary certificate examination (Science Stream) taking Physics, Chemistry, Biology, Mathematics and English under the 10 + 2 education pattern conducted by the Gujarat Higher Secondary Examination Board or Central Board of Secondary Education, New Delhi or Council for the Indian School Certificate Examination, New Delhi from any of the recognised institutions located in the Gujarat State in the month of March/ April of the current year or October/ November of the preceding year; or insofar as candidate referred to in Rules 1.1, 3.2 and 3.3 are concerned other equivalent qualifications with science subjects specified above during the corresponding period.

5.2 Fifteen marks shall be deducted for each failure or drop at the qualifying examination. For this purpose non-appearance in the qualifying examination when due or appearance at the qualifying examination in part will be treated at par and entail deduction of fifteen marks."

6. Last year i.e. in the year 1994 the petitioner's daughter Sweta Garg was denied admission in the discipline of Medicine on the ground that she had not opted the subject of Mathematics in Central Board of Secondary Education Examination of Senior School Certificate Examination conducted by the Central Board of Secondary Education, New Delhi. Now she has already passed in the subject of Mathematics also as an additional subject as is clearly evident from the mark-sheet issued by the Central Board of Secondary Education and, therefore, it can be said without any hesitation that she has acquired the eligibility now even if it is taken that she was not eligible last year, although from the language employed in Rule I it is not discernible as to how she was not eligible only on the ground that she had not opted subject of Mathematics in the

Central Board of Secondary Education Examination. According to Rule 1, which has been quoted herein above, qualifying examination for admission is higher secondary certificate examination (Science Stream) taking Physics, Chemistry, Biology, Mathematics and English under the 10 + 2 education pattern conducted by the Gujarat Higher Secondary Education Board. Therefore, under the 10 + 2 education pattern of the Gujarat Higher Secondary Education Board, where Mathematics is essentially included in the entire scheme of Science Stream Examination, it may be necessary to have Biology as well as Mathematics with Physics and Chemistry. So far as the education pattern of Central Board of Secondary Education is concerned, it is not the essential requirement that along with Physics and Chemistry, Biology and Mathematics both must be opted and rightly so because the Central Board of Secondary Education has" considered that there is no purpose to overburden such candidates with Mathematics, who intend to go in for the course of M.B.B.S., such is not even the requirement of Medical Council of India and similarly the candidates desirous for the discipline of Engineering should not be overburdened with the requirement of passing in Biology. Merely because the Gujarat Board in its pattern has provided for both, it cannot be pressed against the pattern of Central Board of Secondary Education or other equivalent qualifying examination. The fact situation and the practice prevailing in various States all over the country cannot be denied that Mathematics is not at all germane for the discipline of Medicine and so is the Biology for the discipline of Engineering. A student can pass 12th Standard examination conducted by Central Board of Secondary Education by opting Biology or Mathematics with Physics and Chemistry. I need not go into the details of this aspect of the matter, because the petitioner has already passed Mathematics as additional subject in the year 1995 from Central Board of Secondary Education and; therefore, that objection is not open to be taken against her now.

7. Learned A.G.P. Mr. Pujari has submitted that even if Rule 1.3 is irrelevant as she has passed Mathematics from Central Board of Secondary Education in 1995 as additional subject, yet, she cannot be considered to be eligible now because Rule I relating to qualifying examination require that she must have passed the qualifying examination in the current year and since she had passed 1994 examination without Mathematics and 1995 examination in Mathematics only as an additional subject. It will be sufficient to say that so far as the mention about the month March/April of the current year or October/ November of the preceding year are concerned, they cannot be applied with that rigour, as has been submitted by Mr, Pujari, for the simple reason that different institutions conduct examination at different points of time and Rule 1 does include the students of the higher secondary certificate examination on the pattern conducted by the Gujarat Higher Secondary Education Board, as also Central Board of Secondary Education, New Delhi and Council for the Indian School Certificate Examination, New Delhi from any of the recognised institutions located in the Gujarat State and, therefore, the eligibility cannot be determined

on strict calendrical basis, when the students, coming from different examining bodies, are coming to compete for the purpose of pursuing the course. The affected student, namely, Sweta Garg has already suffered one valuable year of her life merely because her father was transferred to Gujarat and this she has suffered despite her higher merit in the Examination and, therefore, no embargo can be put against the eligibility of a candidate in the year 1995 merely because she could not be admitted in the year 1994. It is of course true that her admission will depend upon her merit compared to other candidates, who may apply this year also. But cannot be that a candidate of highest merit of year 1994, if not admitted in the year 1994, will be left out in the year 1995 and will be denied eligibility and the consequential admission to the course. If in the merit list the petitioner is having higher position, she cannot be elbowed-out at the stage of eligibility itself by saying that she has not passed the qualifying examination in the current year.

8. As a matter of fact, those students, who compete for 15% seats of C.P.M.T. in accordance with the Supreme Court decision in *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, are not required to pass Mathematics and yet they are considered eligible and admitted in the same colleges in the same class and such double standard of eligibility for admission to the same class cannot be applied, as has been held in the case of *K.Sujatha Vs. Marathwada University and Others*, wherein it has been held that there cannot be different eligibility rules for the candidates admitted from different sources and it is for the University to remove the ambiguity in the operation of the Rule, if any. For 15 per cent of the seats in the same colleges, passing in Mathematics is not essential, then how the requirement of essentially passing in Mathematics can be pressed for rest of the 85 per cent seats in the same colleges for the same course by the very same authorities. Such double standards of eligibility for the same course in same colleges by the same authority cannot be countenanced.

9. Learned A.G.P. invited my attention to an unreported decision of the High Court in Special Civil Appln. No. 5070 of 1984 decided on 9-10-84. The facts of this case are entirely different. In this case, the petitioner had not passed the Pre-Degree Science group examination of the Kerala University with Mathematics as one of the subjects whereas in the case at hand, the petitioner's daughter Sweta Garg has already passed Mathematics from the Central Board of Secondary Education as an additional subject and in the other case, which has been referred therein, the student had failed in the subject of Biology. Thus, the case relied upon by learned A.G.P. is clearly distinguishable on facts itself and hence it is of no avail to him. Moreover, *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, was decided way back in 1984 and it appears that the concerned authorities have not taken notice of 15% quota of C.P.M.T. and the eligibility for the same although some observations were hopefully made in the abovereferred order dated 9-10-84 in Special Civil Application No. 5070 of 1984 i.e. the case relied upon by the learned A.G.P.

10. The apprehension of the learned counsel for the petitioner is that even if she is considered eligible for this year i.e. 1995, the authorities may deduct 15 marks because she has passed Mathematics this year i.e. in the year 1995. It is very clear from the language of Rule 5.2 itself that 15 marks are to be deducted from each failure or drop at the qualifying examination. The petitioner's daughter Sweta Garg had neither failed in Mathematics nor had dropped in the qualifying examination in the year 1994. It is an accepted fact that in the Senior School Certificate Examination conducted by Central Board of Secondary Education, the subjects in Science Stream are only three and one can have either Physics, Chemistry and Biology or Physics, Chemistry and Mathematics. It may be that a student may choose to appear in Physics, Chemistry and Biology as also Mathematics at the time when he/she seeks admission in the 11th standard because in case he/she wants to keep the cards open as to whether he/she would prefer to pursue the discipline in Engineering or discipline in Medicine, but a student, who had made up his/her mind that he/she has to pursue Engineering discipline, that candidate would opt Mathematics with Physics and Chemistry and a student, who had made up his/her mind to go in for the discipline of Medicine would opt for Biology with Physics and Chemistry and it is not necessary for such a candidate to opt for Mathematics in the Central Board of Secondary Education Examination. In such circumstances, when petitioner's daughter Sweta Garg sought admission initially in the 11th standard, she opted Biology with Physics and Chemistry and passed the examination in due course of time, may be with the change of the School from Jaipur to Vallabh Vidyanagar, but the fact remains that she passed the Senior School Certificate Examination from the Central Board of Secondary Education and, therefore, it cannot be said that she had either dropped the qualifying examination or failed in the qualifying examination. It also can not be said to be a case of non-appearance because non-appearance in a particular subject in the qualifying examination would mean that he/she was required to appear and did not appear. In fact, according to the scheme of the examination of the Central Board of Secondary Education, Sweta Garg was not required to appear in Mathematics Examination and, therefore, her appearance in Mathematics was not at all due. It also cannot be said that she has passed the qualifying examination in part because the mark-sheet issued by the Central Board of Secondary Education clearly shows that she had passed the Mathematics as an additional subject. In this view of the matter, in my opinion, the apprehension of the learned counsel for petitioner that 15 marks may be deducted from the marks of Sweta Garg, while preparing the merit list does not appear to be well founded. The apprehension that 15 marks may be deducted is unfounded and even if there is such apprehension, the same stands washed off and removed in the light of the interpretation given hereinabove. In this view of the matter, it is held that petitioner's daughter Sweta Garg is eligible to be considered for the admission to the First M.B.B.S./First B.D.S./First B. Physio Courses in any of the Medical Colleges in the State of Gujarat according to her merit on the basis of her performance in the qualifying examination of 1994 and that in the additional subject of Mathematics in 1995 from Central Board of

Secondary Education and she cannot be made to suffer any prejudice on account of Rules 1 and 5.2, referred to above so as to suffer the deduction of 15 marks.

11. Thus, the prime object in such case is that merit should not suffer and the matters have to be considered in the manner so that it advances the object sought to be achieved rather than to defect the same. What cannot be done directly cannot be permitted to be done in an indirect manner and hence the higher merit cannot be elbowed out and sacrificed at the altar of pretended eligibility and an unreasonable norm which not only shocks the conscience but militates against Article 14 of the Constitution of India. It would be an irony of fate to exclude more meritorious candidates as compared to the candidates with lesser merit by beating them with the stick of impermissible, arbitrary and unreasonable provision and condition of eligibility. Therefore, if the petitioner's daughter Sweta Garg attains high position in the merit, on the basis of the marks, obtained by her at the Central Board of Secondary Education Examination in 12th Standard, coupled with her credit in Mathematics as additional subject in 1995, she would be given her due position in the merit list without being prejudiced on account of Rules 1 and 5.2 so as to save the casualty of higher merit. Accordingly, Sweta Garg's eligibility stands determined in her favour in the light of the observations made above.

12. Special Civil Application No. 10653 of 1994 is allowed in the terms as indicated above. Rule is made absolute accordingly with no order as to costs.

13. Special Civil Application No. 11058 of 1994 has become infructuous and the same is disposed of accordingly.