
(2004) 05 DEL CK 0110
In the Delhi High Court
Case No : Writ Petition (C) 4405 of 2003

Ekta Aggarwal

APPELLANT

Vs

St. Xavier School and Another

RESPONDENT

Date of Decision : 06-05-2004

Acts Referred:

Citation : (2004) 111 DLT 562 : (2004) 75 DRJ 6

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : R.K. Saini, for the Appellant; G.D. Gupta and Gaurav Kumar, for respondent No.1, Latika Chaudhary, for respondent No.2. and Anil Kumar, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—The writ petition raises an important issue about the right of the student who has passed the class 10th Board exams of the Central Board of Secondary Education to change his subjects of study on the basis of the performance in the said Board exams.

2. The factual matrix in the present case is limited. The petitioner is the student of respondent No.1/School. In terms of the practice of respondent No.1/School, a letter was circulated to the parents of the students on 18.12.2002 asking the parents/guardians to choose the stream for their wards according to his/her aptitude and interest. Two preferences were required to be given and the allotment of preference was dependent upon the availability of the number of seats. Minimum percentage of marks are prescribed for being eligible to take a particular stream. The last date for receipt of such option was 24.2.2003.

3. In the case of the petitioner her father filled in the form and gave the first preference as Science stream without medical and the second preference as Science stream with the medical. It may be noticed that there is no date prescribed for change of this option though the letter is issued two months in advance. It appears that there was a second thought in the mind of the petitioner and on 31.03.03 the father of the petitioner met the Principal of the

respondent No.1/School with request for change of preference to the medical stream which was the second preference. It is stated that thereafter the father of the petitioner was asked to visit the School on 4.4.03, since the classes had to start on 1.4.03, but on that date the request was declined. The formal letter was sent on 8.4.03 bringing all the aforesaid facts to light and stating that the petitioner should be given the medical stream.

4. It may be noticed that the basis for assignment of the preference is dependent on the performance of the candidate over the last year. Two pre-Board exams are also held and their marks are also taken into consideration. The performance of the petitioner was not in doubt and in fact if the petitioner had put in her preference as medical stream, as per the norms of respondent No.1/School the petitioner would have been eligible for the same. The problem arose on account of the fact that the first preference given by the petitioner was of the non-medical science stream which option was assigned to the petitioner.

5. The results of the petitioner were subsequently declared on 23rd May, 2003 by the Central Board of Secondary Education and the petitioner secured 98% marks both in science and maths with an aggregate of 85% marks. The grievance of the petitioner is that the petitioner should have been given the option to change her subject at the initial stage itself since the marks were not in doubt but in any case at least after her performance in the Board examination for the 10th class.

6. Learned counsel for the respondent No.1/School states that the problem arose on account of the fact that there were already a large number of students who had applied for the medical stream and had been so assigned the stream. There is only one section of the medical stream in the respondent No.1/School and the number of students already exceeded what would be the ideal ratio in the class. In this behalf, learned counsel for the respondent No.1/School has referred to the letter of the Central Board of Secondary Education dated 29.5.2002 stating that on inspection it was found that most of the classes were of batches between 50 to 57 students while respondent No.1/School should have up to 40 candidates. It is however, not seriously disputed that this limit of 40 had been repeatedly exceeded.

7. It was also considered appropriate to have the assistance of the Standing Counsel for the Central Board of Secondary Education in this behalf and learned counsel for the CBSE stated that in terms of the examination bye-laws of Central Board of Secondary Education, Rule 26(i) permits change of subject in class XI up to 31st October of the academic session. Thus, there is no impediment insofar as the CBSE is concerned for change of the subject which in fact facilitates this change by keeping the option open till 31st October.

8. In my considered view, the issue raised in the petition is relevant not only for the petitioner but for other students studying in various schools in Delhi since it is stated that this practice is followed by a number of schools and respondent No.1 has even filed documents to show such practice of different schools. On the

other hand, it is also not disputed that there is a practice in some other schools which permits such change after the Board exams. If the contentions of the learned counsel for respondent No.1 are taken in true spirit, really speaking the counsel has not disputed that change of subject is possible but the only difficulty expressed is about the vacancy position.

9. It has to be appreciated that there may be students who may have given a preference for science stream but later on find it difficult to cope with the same and prefer to switch over to other subjects/streams. In such a case the students cannot really be compelled to continue the course of study in a stream where they find it difficult to cope with the curriculum.

10. There may be other cases where there is a change of mind of a student and option must be given to such students to change the course of study, subject to the fulfillment of the requisite criteria fixed by the school for such students to study the particular subjects. There is of course the issue also about the number of students which may be accommodated in a particular class and that aspect has also to be kept in mind by the school authorities. However, an endeavor must be made during this process by exchange of subjects to see that so far as possible students should be able to pursue the courses of study which they are desirous of so pursuing, subject to obtaining the requisite marks.

11. Another important aspect which arises is the effect of the result of the 10th class exams. The methodology adopted by the respondent No. 1/School arrived at keeping in mind the performance of the student over the last one year and taking it as the basis for assigning the stream depending upon the preference given, cannot be doubted. The said basis is certainly a more conducive method of deciding such an assignment of subject rather than only on the result of one exam. This however does not take away the importance of the result of the Board exams held for the 10th class. In case a candidate performs well in the 10th Board exams and obtains good level of marks much higher than his performance throughout the year, such a student should not be denied the benefit of the change of subject merely on the ground that he did not have requisite marks in the internal assessment. There may be other candidates who would like to switch over and have outstanding marks. Thus weightage to the Board exams must be given for purpose of permitting the student to change the subjects of study.

12. Learned counsel for the respondent No.1/School expresses his apprehension that there may be a larger number of persons who may be so eligible to apply for change of subjects when the number of seats available or the number of persons who may be accommodated even by stretching the limits, may be much smaller. Needless to say that in such a case the principal of school would exercise his discretion based on the performance level of the students and it cannot be mandated that all the candidates are bound to be accommodated irrespective of the number of students who may be accommodated in a particular class.

13. Flexibility in an education system is its hallmark. At a young age the students are still experimenting and may not be certain of their course of study. It is to care of such eventualities that even the CBSE gives breathing time till 31st October. The schools cannot take a rigid attitude in this to prevent an eligible student with the right aptitude to pursue his/her curriculum of study.

14. In the present case unfortunately the petitioner has already completed the course of study in 11th class and thus learned counsel for the petitioner states that the petitioner would not be in a position now to change to the medical stream.

15. The writ petition is disposed of in terms of the aforesaid leaving the parties to bear their own costs.