

(2011) 03 DEL CK 0141

In the Delhi High Court

Case No : Writ Petition (Civil) No. 1815 of 2011

Gagandeep Chauhan

APPELLANT

Vs

GNCT of Delhi and Others

RESPONDENT

Date of Decision : 21-03-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2011) 8 AD 127

Hon'ble Judges : Dipak Misra, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : V.P. Chaudhary and G. Tushar Rao and Atanu Mukherjee, for the Appellant; Bhupesh Narula, Atul Kumar for Respondent No. 2 and R.K. Vats, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, C.J.—By this petition preferred under Article 226 of the Constitution of India, the Petitioner has prayed for issue of a writ of mandamus directing the Respondent to read down the bye-law 43 of Examination Bye-Laws- 1995 of the Central Board of Secondary Education (for short, "the Board") so that a regular student can be permitted to undertake an examination in mathematics subject along with other subjects of Class XII which is going to take place on 22nd March, 2011.

2. It is worth noting, the matter was listed before the learned single Judge on 18th March, 2011, whereby the learned single Judge had opined that in the earlier round of litigation, i.e., W.P. (C) No. 1203/2011 the Court had expressed the view that the Petitioner is not entitled to get the relief in view of the language employed in the bye-laws. Thereafter, the learned single Judge, as is evincible from the order, thought it appropriate that the matter should be listed before a Division Bench as the prayer has been made, which comes within the ambit and sweep of challenge to the constitutional validity of the bye-law in question.

3. The basic facts, which are essential to be stated, are that the Petitioner took admission in the school, viz., Manav Bharti India International School, Panchsheel Park, New Delhi, the third Respondent herein, in Class XI, i.e., academic session 2009-10 in Commerce. He was promoted to Class XII and thereafter appeared in the entrance test which is in common parlance called pre-board examination to appear in the Board examination conducted by CBSE, as a regular student. He also appeared in mathematics and cleared the same. The Petitioner was not a regular student of mathematics. As per norms, the Petitioner's form was sent indicating his regular subjects, which were received by the CBSE but the grievance of the Petitioner remains as his form was not sent for the purpose of undertaking the examination in the subject mathematics. In view of the aforesaid factual matrix, the validity of the bye-law is called in question.

4. We have heard Mr. V.P. Chaudhary, learned senior counsel along with Mr. G. Tushar Rao, learned Counsel for the Petitioner and Mr. Atul Kumar, learned Counsel for the Respondent-CBSE.

5. In course of hearing, learned Counsel for the Petitioner has submitted that bye-law 43 of the bye-laws should be read down so that the Petitioner can appear in the examination. The formulation of the bye-law, as proposed by the learned Counsel for the Petitioner, is as follows:

43. Additional subject (s).

A candidate who is appearing or has passed Secondary/Senior Secondary Certificate Examination of the Board may offer an additional subject as a private candidate provided that the additional subject is provided in the scheme of studies and in the case of a student who has passed that examination, the additional subject is offered within three (3) of passing the examination of the Board. Exemption from time limit may be granted by the Chairman in deserving cases. Facility to appear in additional subject will be available at the Annual Examination only.

(Emphasis supplied indicating the change)

6. The bye-law in its original version reads as follows:

43. Additional Subject (s).- A candidate who has passed the Secondary/Senior School Certificate Examinations of the Board may offer an additional subject as a private candidate provided the additional subject is provided in the Scheme of Studies and is offered within three years of passing the examination of the Board. Exemption from time limit may be granted by the Chairman in deserving cases. Facility to appear in additional subject will be available at the Annual Examination only.

7. It is submitted by the learned Counsel for the Petitioner that such facility is extended to only the candidates who have passed the Secondary/Senior Certificate Examination but the same is not provided to the regular candidates as

a consequence of which the life of the Petitioner is affected and one year of valuable time is wasted. It is urged by him that if the said bye-law is read down in the manner which has been suggested by him, it would sub serve the purpose, otherwise the said bye-law is totally arbitrary, discriminatory and there is no intelligible differentia in making a classification between two category of students who have passed out and the regular students.

8. Mr. Kumar, learned Counsel for the Respondent-Board, per contra, would submit that there is a bye-law for the regular students and both the categories belong to two different classes and cannot be put on an equal platform. Learned Counsel further submits that the bye-law is neither arbitrary nor discriminatory as it is absolutely reasonable because it provides an opportunity to the passed out students which is already provided to the regular students. He has referred to certain bye-laws which we would advert to hereinafter.

9. Bye-law 40 deals with scheme of examinations (Senior School Certificate Examinations). The said bye-law reads as follows:

40. Scheme of Examinations (Senior School Certificate Examinations)

(i) The Board shall conduct examination in all subjects except General Studies, Work Experience, Physical and Health Education, which will be assessed internally by the Schools.

(ii) In all subjects examined by the Board, a student will be given one paper each carrying 100 marks for 3 hours. However, in subjects requiring practical examination, there will be a theory paper and a practical examination as required in the syllabi and course.

(iii) In Work Experience, General Studies and Physical and health Education, the schools, will maintain cumulative records of students periodical achievements and progress during the year. These records are subject to the scrutiny of the Board as and when deemed fit.

(iv) A candidate from a recognized school, who has some physical deformity or is otherwise unable to take part in Work Experience and Physical and Health Education, may be granted exemption by the Chairman on the recommendations of the Head of the Institution, supported by medical certificate from a Medical Officer of the rank not below an Assistant Surgeon.

(v) Private/Patrachar Vidyalaya and candidates sponsored by Audit Schools shall be exempted from Work Experience, General Studies and Physical and Health Education.

(vi) A candidate may offer an additional subject which can be either a language at elective level or another elective subject as prescribed in the Scheme of Studies, subject to the conditions laid down in the Pass Criteria.

(emphasis supplied)

10. Emphasis has been laid by Mr. Kumar on the bye-law (vi) which provides that a candidate may appear in an additional subject which can be either a language at elective level or another elective subject as prescribed in the scheme of studies, subject to the conditions laid down in pass criteria. The bye-law 40.1 provides for pass criteria (Senior School Certificate Examination). We need not advert to the same as there is no cavil over the same.

11. Bye-law 11 defines regular candidates. The same reads as under:

11. Regular Candidates

Definition

For the purpose of the Byelaws contained in this chapter and chapter 5 unless there is something repugnant in the subject or context, a "Regular Candidate" means a student enrolled in a school, who has prosecuted a regular course of study in a school and seeks admission as such to the All India/Delhi Senior School Certificate/Secondary School Examination of the Board.

Explanation

A candidate whose name is struck off the rolls of the School after submission of his name/application for admission to the examination to the Board, shall cease to be a regular candidate and as such will not be eligible for admission to or appearing at the examination.

12. Bye-law 12 deals with the admission to examinations, i.e., regular candidates. Bye-law 13A provides for regular course of study. There is a definition of private candidates in bye-law 16. The said bye-law reads as under:

16. Private Candidates

Definition

For the purpose of the byelaws contained in this chapter and in chapter 5, unless there is something repugnant in the subject or context, a "Private Candidate" means a person who is not a Regular Candidate but, under the provisions of these byelaws, is allowed to undertake and/or appear in the All India/Delhi Senior School Certificate Examination or All India/Delhi Secondary School Examination of the Board.

13. The question that emerges for consideration is, when there is a scheme for regular students with a stipulation that a regular candidate can take certain subjects and if he intends to take an additional subject, he must study and attend classes in the said subject. It is not disputed that the Petitioner wanted to take mathematics in the Board examination and had not studied the said subject as a regular candidate. What is contended is that once the said benefit is extended to a private student, there is no justification or warrant not to make the said permission/right available to a regular candidate. The learned senior counsel would submit because of the said extension of the benefit, the bye-law

suffers the vice of discrimination and thereby offends Article 14 of the Constitution of India. In this regard, we may refer with profit to the decision in *Madhya Pradesh Ration Vikreta Sangh Society and Others Vs. State of Madhya Pradesh and Another*, the issue that was raised before the Apex Court that giving preference to cooperative societies under Madhya Pradesh Foodstuffs (Civil Supplies Public Distribution) Scheme 1981 in replacement of the earlier scheme of running such fair price shop was violative of Article 14 of the Constitution of India. While dealing with the concept of equality before law, the Apex Court opined thus:

8. The wider concept of equality before the law and the equal protection of laws is that there shall be equality among equals. Even among equals there can be unequal treatment based on an intelligible differentia having a rational relation to the objects sought to be achieved. Consumers? cooperative societies form a distinct class by themselves. Benefits and concessions granted to them ultimately benefit persons of small means and promote social justice in accordance with the directive principles. There is an intelligible differentia between the retail dealers who are nothing but traders and consumers? cooperative societies....

14. In *National Council for Teacher Education and Others Vs. Shri Shyam Shiksha Prashikshan Sansthan and Others etc. etc.*, , the Apex Court has opined thus:

16. Article 14 forbids class legislation but permits reasonable classification provided that it is founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and the differentia has a rational nexus to the object sought to be achieved by the legislation in question. In *Re: The Special Courts Bill, 1978*, , Chandrachud, C.J., speaking for majority of the Court adverted to large number of judicial precedents involving interpretation of Article 14 and culled out several propositions including the following:

(2) The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

(3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of

circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

(5) By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognize even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.

15. In *Transport and Dock Workers Union and Ors. v. Mumbai Port Trust and Another*, 2011 AIR SCW 220 wherein it has been opined thus:

21. It has been repeatedly held by this Court that Article 14 does not prohibit reasonable classification for the purpose of legislation or for the purposes of adoption of a policy of the legislature or the executive, provided the policy takes care to reasonably classify persons for achieving the purpose of the policy and it deals equally with all persons belonging to a well defined class. It is not open to the charge of denial of equal protection on the ground that the new policy does not apply to other persons. In order, however, to pass the test of permissible classification, as has been laid down by the Supreme Court in the catena of its decisions, two conditions must be fulfilled; (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (2) that the differentia must have a rational relation to the object ought to be achieved by the statute in question, vide *Gopi Chand Vs. The Delhi Administration*, (see also Basu's "Shorter Constitution of India, fourteenth edition 2009 page 81).

22. Thus the classification would not violate the equality provision contained in Article 14 of the Constitution if it has a rational or reasonable basis.

16. In this context, we may also profitably produce a passage from *Priyambada Debi Vs. State of Orissa and Another*,

5. ...a classification made by a statute which is under-inclusive, in the sense that while giving benefit some persons who are similarly situated are left out, would be tolerated more by the Courts than one which is over-inclusive (i.e., including not only those who are similarly situated but others who are not so situated), as a legislative authority acting within its field is not bound to extend its regulation to all cases which it might possibly reach; and a legislature is free to recognize the degrees of necessities and it may confine the provision to those classes of cases where the need seems to be clearest. (See paragraphs 54 and 60 of *The State of Gujarat and Another Vs. Shri Ambica Mills Ltd., Ahmedabad and Another*, , and paragraph 12 of *Shankar Birmiwala and Another Vs. Union of India (UOI) and Others*,

17. Tested on the aforesaid touchstone of the law laid down, we are disposed to think, the submission of the learned senior counsel that once the said benefit is extended to a private student, there is no justification or warrant not to make the said permission/right available to a regular candidate and because of the said extension of the benefit, the bye-law suffer the vice of discrimination and thereby offends Article 14 of the Constitution of India, has an inherent fallacy, when there is already a scheme for regular students with a stipulation that a regular candidate can take certain subjects if he intends to take an additional subject, he must study and attend classes in the said subject. There are two categories of students, private students who have already passed the examination and regular students, who are studying in recognized schools. A regular student cannot be treated as a private student. A regular student cannot undertake an examination in a subject, on the foundation that a private student is permitted to undertake the same. In that event, the regular student would have a dual character and certain students would be treated as a regular student for the subjects which he is studying in the school and in one subject as a private candidate. That apart, a private candidate is given the facility to appear in a subject, which would be available in the annual examination only after passing out, if there is a need or necessity for the same for the student. A regular student has a choice for prosecuting the studies to choose the subjects on attending the classes. He may be brilliant in studies but he has to be guided by the law. If the provision for private candidates is made applicable to the regular students, it will be over-exclusiveness. Article 14 may tolerate under-exclusiveness but does not countenance over-exclusiveness. The two categories being different, they belong to two different classes altogether. The intelligible differentia is inherent as benefit is extended to a private student after he passes out and the benefit is offered to a regular student subject to his attending the classes. That is the discipline in academics. A private student cannot attend the

classes as a regular student and a regular student cannot be treated as a private candidate partially. Thus, the differentia is intelligible and the classification withstands scrutiny. The submission that the bye-law 43 should be read down does not impress us as we do not find any reason to invalidate the same. Hence, the principle of reading down is not attracted. In our considered opinion, the provision that has been drafted out and produced before us by the learned senior counsel for the Petitioner would tantamount to reading up of the bye-law and not reading down. Therefore, we repel the said submissions.

18. In the result, we do not perceive any merit in the present writ petition and accordingly the same stands dismissed without any order as to costs.