

(2008) 04 GAU CK 0012
In the Gauhati High Court
Case No : Writ Petition (C) No. 96 of 2007

Master Jitender Sharma

APPELLANT

Vs

Govt. of India, Ministry of Human Resource Development and
Others

RESPONDENT

Date of Decision : 09-04-2008

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2009) 2 GLR 783 : (2009) 5 GLT 520

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Advocate : P.C. Prusty and Joel J. Denga, for the Appellant; Lalremtluanga, W. Sam Joseph and Zochhuana, for the Respondent

Final Decision : Dismissed

Judgement

H. Baruah, J.—The short question which requires consideration is whether the denial to the writ Petitioner to prosecute the subject Mathematics in Class XI in the Kendriya Vidyalaya, Aizawl by the Kendriya Vidyalaya Sangathan (the Respondent-authorities) is violative of legal or fundamental rights of the writ Petitioner.

2. In answer to the question it is thought appropriate to put the case of the writ Petitioner in short. The writ Petitioner Jitender Sharma, son of Deepak Rai Sharma appeared in the Secondary School Examination 2007 under Central Board of Secondary Education and was declared to "have passed the said examination by the Controller of the Examinations of the Board. Said Jitender Sharma obtained 68,62,44, 65 and 66 marks in the subjects namely, English, Hindi, Mathematics, Science and Technology and Social Studies respectively. The Petitioner applied for admission in Class XI of the said school in the stream of science subject with mathematics. But to his surprise, he was admitted in Class XI in science stream without mathematics. Being deprived of the subject as aforesaid, his father made several representations before the appropriate

authorities including the Principal of the School requesting them to allow mathematics subject to his son since his son is interested in the subject and has ambition to commence his career as an engineer. Further the writ Petitioner also had proficiency in sports pertaining to various sports both Regional and inter-District. On 16th August 2007, the writ Petitioner's father also submitted an application to Respondent No. 5, who in turn, forwarded the said application to Respondent No. 3 with recommendation for consideration of the Petitioner's case in the context of allotment of the subject mathematics which, however, did not yield any result from the appropriate authority. As per Admission Guidelines of Kendriya Vidyalaya which regulates the admission in the Vidyalaya of the Academic Session 2007-08 also speaks for the guidelines in respect of admission to Class XI in the science stream with mathematics. For the purpose of registration of eligible students where a number of eligible children are less than 40, a minimum of 52 per cent in science and mathematics a minimum of 57 per cent of science and mathematics taken together and a minimum of 52 per cent aggregate in all subjects have been provided. In view of the guidelines above, it is contended in the writ petition that the writ Petitioner, having secured 61 per cent marks in aggregate in all subjects, the concerned Respondent authority ought to have offered the subject mathematics to the writ Petitioner. There are all total 40 seats in class XI in science stream with mathematics in the Kendriya Vidyalaya, Aizawl, out of which only 34 seats were filled up and 6 seats are still lying vacant due to non-availability of eligible students. The Respondent-authorities, in spite of such existing vacancies in class XI could have accommodated the writ Petitioner since he fulfilled the norms of the guidelines as formulated by the Kendriya Vidyalaya Sangathan.

3. Writ Petitioner's father preferred an application after the declaration of result for rechecking of the Petitioner's mathematics examination paper of 10th Class by depositing requisite fee, but despite such application there was no change in the marks in mathematics subject. The result of rechecking was communicated by the Section Officer, Gauhati. It is further alleged that a student by name Sahil Rana also got his mathematics paper checked by Regional Officer which was, however, not done in the case of the writ Petitioner. It is contended that the writ Petitioner become prejudiced since his mathematics subject was not checked by the Regional Officer as done in the case of Sahil Rana.

4. The Petitioner, having considered his future prospect and career, filed this writ petition seeking for an appropriate writ or direction to the Respondent-authorities to offer the subject mathematics to him under CBSE in Class XI and Class XII.

5. Mr. P.O. Prusty, learned Counsel for the writ Petitioner and Mr. Lalremtluanga, learned CGC assisted by Mr. Zochhuana, learned Counsel for the Respondents were heard at length for and against.

6. In the counter affidavit and additional affidavit filed by the Respondents Nos. 1 and 2, it is contended that since the writ Petitioner failed to secure 52 per cent of marks in mathematics subject and 57 per cent marks in mathematics and

science taken together as per guidelines provided for admission of a student in Class XI in the science stream with mathematics, mathematics subject could have been offered if weightage of 7 marks that obtained showing proficiency in sports could have achieved the required percentage. Even after addition of weightage of 7 marks, the total marks stands at 51 per cent, one mark short of the limit prescribed in the guidelines. It is also contended in the affidavit-in-opposition that the process of rechecking is done by a group of experience teachers so that no injustice is done to the candidate/candidates. In spite of due diligence, the Petitioner's mark in mathematics subject remained unchanged which had been conveyed by the Section Officer. When after rechecking mark gets changed, the result is generally conveyed to the concerned student by the Regional Officer or Assistant Secretary. Since in case of the writ Petitioner, after rechecking marks did not get changed, result conveyed by the Section Officer, however, caused no prejudice to the writ Petitioner. Marks criteria for allotment of a particular subject is based on sincere experience by which it has been seen that capability of a science to cope with the subject possible only after he or she has reached a certain level of competency. The interest of the writ Petitioner has, thus, been jeopardized by not securing the minimum marks so fixed at the admission criteria. Availability of vacancy in Class XI therefore, cannot make any relaxation of minimum marks in favour of the writ Petitioner. The Respondents, therefore, in view of the facts and circumstances and the criteria in the guidelines pray this Court to dismiss the writ petition.

7. Mr. P.C. Prusty, learned Counsel for the Petitioner referring to the Admission Guidelines, 2007, under the head "admission of Class XI" in particular submitted before this Court that the Kendriya Vidyalaya Sangathan prescribed two sets of provisions for admission of a student in Class XI in science stream with science and mathematics. For admission of Class XI under the said stream, a minimum of 55 per cent marks in mathematics, a minimum of 55 per cent marks in science, a minimum of 60 per cent marks in mathematics and science taken together and a minimum of 55 per cent marks in aggregate in all subjects are provided where adequate eligible children are available and applied for. Where no such eligible children are available, the Sangathan prescribed the following percentage of marks as under:

a minimum of 52 per cent marks in mathematics

a minimum of 52 per cent marks in science

a minimum of 57 per cent marks in mathematics and science taken together

a minimum of 52 per cent marks in aggregate in all subject.

Since the writ Petitioner, according to Mr. P.C. Prusty obtained 52 per cent of marks in aggregate in all subjects, the writ Petitioner became eligible to have the mathematics subject as one of his subject in Class XI. The Respondent-authorities, however, did not take into consideration this aspect of the matter although the writ Petitioner obtained 61 per cent marks in aggregate in all

subjects. Having, thus, situated, it was argued by Mr. P.C. Prusty that it was unfair on the part of the Respondent-authorities by not offering the subject mathematics to the writ Petitioner. Since the writ Petitioner had/has a desire to build his career as an engineer, his desire has been nipped in the bud by refusing the subject mathematics.

8. Opposing the submissions advanced by Mr. P.C. Prusty, Mr. Lalremtluanga, learned CGC assisted by Mr. Zochhuana submitted that the provisions for admission in the situations, where adequate eligible children are not available, the criteria mentioned in the head "admission to Class XI" will be also applicable. For the purpose of getting admission in Class XI under this head where eligible children are not available, the eligible children are required to obtain a minimum of 52 per cent marks in mathematics and science and a minimum of 57 per cent marks in mathematics and science taken together and a minimum of 52 per cent marks in aggregate in all subjects. According to learned Counsel for the Respondents, eligible children shall have to obtain a minimum of 52 per cent marks in mathematics and science, a minimum of 57 per cent marks in mathematics and science taken together, if these three criteria are not fulfilled by any of the children, the minimum of 52 per cent marks in aggregate in all subjects will not come in help of the children. Since the writ Petitioner did not obtain the required percentage of marks in mathematics and 57 per cent marks in mathematics and science taken together, the average percentage of marks obtained by him cannot be taken into consideration for offering the subject mathematics to the writ Petitioner.

9. It was further argued by the learned Counsel for the Respondents that the admission criteria, 2007 was formulated with an aim to get enrolment of eligible children. Children who do not qualify by securing the required percentage of marks cannot expect a desired subject while getting an admission into a higher class. Admittedly, the writ Petitioner secured 44 per cent of marks in mathematics and even after weightage given, he was unable to secure accepted percentage of marks for having the subject mathematics as one of the subjects in Class XI. Mr. Zochhuana, in support of the case of the Respondents relied in a decision reported in *Ombir Singh and Ors. v. State of Uttar Pradesh* and *Anr. 1992 AIEC 748* wherein paras 7 and 8 of the judgment, the hon'ble Supreme Court held as under:

7. Thus, we are clearly of the view that once having held that the rule prescribed by the State Government laying down minimum qualifying marks in the entrance examination is valid and the State Government having followed the aforesaid rule in granting admission in Post Graduate courses, it cannot be held that such action is illegal. There is no infringement of any legal right much less of any fundamental right of the Petitioner.

8. We can only recommend that the State Government may take suitable steps for redressing the long felt grievance of the doctors to fill up all the vacant seats for Post Graduate courses and which would be a step in the larger public interest

also. The State Government may do so for admission to Post Graduate courses for 1992 and in that case, the State Government would take immediate steps without any loss of time so that the candidates may also join the 1992 academic session for Post Graduate studies without any disadvantage. It is further made clear that in doing so such candidates who having secured more than 50 per cent marks and having already been allotted the specialities would not be disturbed in any manner. The vacant seats would, however, be filled strictly in accordance with merit in the entrance examination and according to the combined merit list of the whole State of Uttar Pradesh, The State Government would be free to issue fresh order relaxing the requirement of minimum marks to such extent which may meet the necessity of maintaining academic standards for admission to Post Graduate courses as well as the regulations prescribed by the Medical Council of India in this regard. This, in our view, would be perfectly within the powers of the State Government and would not be violative of Article 14 of the Constitution. The above observations relate only in respect of the vacant seats of Post Graduate courses of 1992 and not in relation to any vacancies for the earlier years of 1990 or 1991. With the aforesaid observations, we dismiss all these petitions with no order as to costs. The application for intervention No. 2 in Writ Petition No. 454 of 1992 also stands dismissed automatically.

10. Since the Respondent-authorities formulated the admission criteria for admission to various classes including Class XI in the science stream, the factum of seats lying vacant till date in Class XI in the science stream with science and mathematics cannot allow the authorities to let loose the criteria for admission. A minimum qualifying mark(s) for admission to Class XI in the science stream with the subject science and mathematics being provided in the guidelines itself, a mandamus or a direction in this regard would not be opened for the court since no legal or fundamental rights of the Petitioner were infringed.

11. This writ petition has no merit and is dismissed. No order as to cost.