

(2005) 07 DEL CK 0009

In the Delhi High Court

Case No : Writ Petition (C) 11718 of 2005 and C.M. 8615 of 2005

N. Singh

APPELLANT

Vs

Director of Education Delhi and Others

RESPONDENT

Date of Decision : 20-07-2005

Acts Referred:

Delhi School Education Rules, 1973 — Rule 131, 132, 144, 145

Citation : (2005) 121 DLT 534 : (2005) 83 DRJ 17

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Arvind Nigam and Reetesh Singh, for the Appellant; Yunus Qureshi, for Respondent No. 1, Atul Kumar and K.C. Mittal and Puneet Mittal, for the Respondent

Final Decision : Allowed

Judgement

Vikramajit Sen, J.—This petition raises a question of great and general importance. The Petitioner is a student of Delhi Public School, Mathura Road, New Delhi, having joined it in 1993 in the Nursery. In May, 2005 the Petitioner passed the Class X Examination conducted by the Central Board of Secondary Education (CBSE) securing an overall percentage of 65.2%, with 60% in Science and Mathematics. He thereupon applied for the Science Stream in Class XI, but has been offered only the Commerce Stream without Maths. According to the averments in the petition, the Petitioner's father met the Principal of the School in the middle of June, 2005 but the renewed request for the Petitioner being permitted to join the Science Stream had not fructified. It has been asserted that as many as 90 seats are still available in the Science Stream, in respect of which admission of outside students is under consideration. Learned counsel for the School has admitted that there are some vacant seats remaining in the Science Stream. By letter dated 4.7.2005 the Principal informed the Petitioner's father that the stream of subject is offered purely on comparative merits, in the interest of the institution and the child. Since the Petitioner had secured only 60% marks

in Mathematics and Science he has not been able to fair in the merit enough for awarding the Science Stream. Accordingly, the Principal allowed the Petitioner to opt either for Commerce without Maths or Humanities.

2. By consent of parties the petition has been taken up for final hearing since disputed questions of fact, requiring a Reply have not arisen. No mala fides are attributable to the School authorities so far as the impugned decision is concerned. The School has merely followed a policy and practice which is taking roots in the metropolis.

3. Mr. Mittal, learned counsel appearing for the School has contended that the matter stands fully covered by the decision of the Division Bench in *Renuka Khurana and Others Vs. Delhi Administration and Others*, . However, in that case the disputes had arisen because of the Order of the Director of Education prescribing the eligibility criteria of 50% marks in aggregate in previous examination for admission to the Nursery Teacher Training Part-I, which was being conducted by a recognised Unaided School. The Court considered Rules 131, 132, 144 and 145 of the Delhi School Education Rules, 1973 (hereinafter referred to as 'the Education Rules'). Rule 145 is reproduced below:

145. Admission to recognised unaided schools-- (1) The head of every recognised unaided school shall regulate admissions to a recognised unaided school or to any class thereof either on the basis of admission test or on the basis of result in a particular class or school.

(2) Subject to the provisions of sub-rule(1), the provisions of this chapter shall, so far as may be, apply to admission to a recognised unaided school as they apply to admissions to an aided school.

The impugned communication of the Director of Education was set aside. This very decision came to be considered by the Hon'ble Supreme Court in *The Principal, Cambridge School and another Vs. Ms. Payal Gupta and others*, . The Court observed that the only question that had arisen in that litigation was whether the Director of Education is possessed of the power to issue instructions to unaided schools in the context of admissions of students. The Apex Court granted its imprimatur to the view of the Division Bench that it is only the Head of the School who enjoys regulatory powers with regard to admissions. It clarified that the said precedent did not cover the case of admission or readmission in the same school. Mr. Mittal cannot possibly present an interpretation contrary to that which has been given by the highest Court of the land.

4. On behalf of the Petitioner Mr. Nigam, has drawn heavily on the decision of the Hon'ble Supreme Court in *Payal Gupta's case* (supra). In that case the Cambridge School had prescribed a minimum eligibility of 50% marks in aggregate for admission to Class XI. School Circulars informed the students and their parents that persons who had obtained less than 50% in aggregate should obtain School Leaving Certificate. Such students were left with no alternative but

to seek admittance to other schools. Renuka Khurana's case (supra) was cited by learned counsel for the School. The Apex Court specifically noted Rule 138 of the Education Rules which prohibited refusal of readmission to students who had failed to pass the examination in which he had appeared. The Hon''ble Court repelled and rejected the argument put forward on behalf of School that after a student passes a particular Class there is a fresh admission to the next higher Class. Instead the Apex Court ruled that the Act and the Rules envisage that once a student is admitted to a school this admission continues until he passes the last examination for which the School gives training. It observed that "the examination of tenth Class cannot be regarded as a terminal examination for those who want to continue their study in the eleventh and twelfth classes of the said School". It also enunciated that Rule 145 does not empower or enable the School to impose fresh criteria for continuance of the students into the eleventh class.

5. The decision of the Hon''ble Supreme Court in Payal Gupta's case (supra) can be construed to indicate that a student must be permitted to continue studies in the eleventh class so long as he/she has passed the tenth class. What the School is doing in actuality is to compel the Petitioner to obtain a School Leaving Certificate because he has not secured the percentage declared by the School for admission to the Science Stream. It would be relevant to note that the Petitioner has secured 1st Division in the Xth Class. On his behalf it is stated that he could have done better but for problems which had afflicted the family in that year. Payal Gupta's case (supra), however, did not specifically deal with the legality for a School determining the number of seats available to its students for any particular stream in Class XIth. The present case is not one where all seats available in the Science Stream have been filled up. Problems, logistic or otherwise, would not be caused if it is held that a student must be offered the subjects/stream of his choice so long as there is availability, since otherwise it would tantamount to compelling a student to leave the School. The vexed situation arises where there is no vacancy in a particular stream. Let us assume that there are 300 students who have appeared in Class X and all have passed making them eligible for continuing their studies into class XI. The School Authorities may, however, decide and make arrangements for teaching faculty and infrastructure for 200 students in the Science Stream. It may maintain a merit list strictly in accordance with the results achieved in Class X by its students. If a student does not fall within the first 200 students according to merit from those who have opted for the Science Stream insists on admission only to that stream, should the School be forced to depart from its allocation even though this would necessarily entail enlarging the faculty as well as infrastructure? This question does not arise in this petition but I would venture to hold in favor of the student since the School is responsible in large measure for his academic achievements. A School exists for its students and not vice versa; it is not an industry. The problem in its many complexities which does not have to be definitely answered here.

6. There are some educational institutions who consider only Results to be of importance. In doing so they forget that their existence is for education and not for results. Their role is for bringing out the best in their students. The schools must take pride in improving the results of students who are considered weak, and not vaingloriously exult in the extraordinary marks of students who had already proved their brilliance in other institutions and were granted admittance in Class XI for this reason alone. It also fails to take into account the reality that promising students sometimes fall by the wayside, whereas some students who had disclosed no signs of excellence have gone on to positions of unsurpassable eminence. It is also equally true that parents sacrifice the natural inclination and aptitude of their children on the alter of careers which, at the time, attract highest remuneration. These parents turn a blind eye to the folly of forcing students to study subjects which they cannot cope with or find uninteresting, forcing schooling to become an agony.

7. In the present circumstances, where seats in Class XI in the Science Stream are still available for being filled up by students from the School itself, it is my opinion that the writ petition deserves to be allowed. The Respondent School is directed to permit the Petitioner to join the Science Stream in Class XI.

8. The parties shall bear respective costs.

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