
(2002) 08 GUJ CK 0072

In the Gujarat High Court

Case No : Special Civil Application No. 7189 of 2002

Patel Pragneshkumar Pravinchandra

APPELLANT

Vs

Director of Primary Education

RESPONDENT

Date of Decision : 28-08-2002

Acts Referred:

Gujarat Educational Institutions (Regulation) Act, 1984 — Section 13

Citation : (2002) 08 GUJ CK 0072

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : K.B. Pujara, for the Appellant; Manish Shah, for Respondent No. 1-2, for the Respondent

Final Decision : Partly Allowed

Judgement

Jayant Patel, J.

Rule.

1. Ms. Manisha Shah learned AGP waives service of notice of Rule on behalf of respondent Government.
2. With the consent of the parties, the matter is taken up for final hearing today.
3. Short facts of the case are that the petitioner passed 10th SSC examination in the year 1994. Thereafter the petitioner opted for science stream in 11th and 12th standards and appeared in March 1996 12th HSC examination and he failed. The petitioner thereafter also made attempts in October 1996 and in March 1997 for passing 12th standard HSC examination. However, he failed. Thereafter in the year 2000, the petitioner got admitted in 11th standard general stream and he prosecuted his studies. Ultimately appeared in March 2002 HSC General Stream examination and passed successfully with 79.17% marks. So far as passing of 12th standard HSC general stream, the petitioner cleared the same at the first attempt.

4. The respondents have issued an advertisement for granting admission to PTC course on the basis of marks obtained by the students concerned at the 12th standard HSC examination. The petitioner has applied on the basis of 12th standard HSC examination of general stream. However, the respondents have called for further details for the period of time gap between March 1994 and 2002 and it is the case of the petitioner that said details were already furnished; whereas the contention of the respondents is that the respondents came to know about the same only when the details were called for. Be as it may but it has come on record that the respondents had denied admission to the petitioner in PTC course on the ground that he failed on 3 attempts in 12th standard HSC science i.e. in March 1996, October 1996 and March 1997. It has been contended that for general stream, those who secured the percentage above 78.33% are found to be eligible for getting admission in PTC course; whereas the petitioner who secured 79.17% was not found eligible by the respondents since as per the respondents, for each attempt of failure in 12th standard science HSC examination, 5 marks i.e. in all, 15 marks are to be deducted and as a result thereof, the merit order of the petitioner would be pushed back and will go below 78.33%. The said decision of the respondents of deducting 15 marks at the said admissions procedure is under challenge before this court.

5. Mr. Pujara learned advocate for the petitioner has submitted that as per the as per the instruction manual, copy whereof is produced at Annexure-A to the petition, it is true that in the first column in the eligibility criteria, passing of 12th standard HSC examination is mentioned. However, he submitted that for the allocation of seats and for the purpose of considering the eligibility for obtaining admission in PTC course, separate provisions are made inasmuch as he submitted that for science stream of HSC, 30% seats are there and for other streams comprising of general, commerce, vocational and uttar buniadi , separate 70 percent seats are reserved. It is also submitted by Mr. Pujara that it is not that 70% seats are by way of combined reservation and even from amongst 70%, separate provisions are made every year on the basis of result declared on each category and the total would be 70%. Mr. Pujara submitted that the merit list of each category on the basis of the seats available is prepared separately and the student who falls in that particular category has to compete amongst inter-se merit in that category. It has been submitted by Mr. Pujara on behalf of the petitioner that since there is no provision made in the statutory rules, which are governing the field viz. Gujarat Educational Institution(Pre-Primary and Primary Teachers Training Colleges) Rules 1994 framed under the Gujarat Educational Institutions (Regulations) Act 1984 (hereinafter referred to as the Rules and the Act as the case may be), the action for deduction of 5 marks on each attempt failed, is without any authority on the part of Centralised Admission Committee. Mr. Pujara has further submitted that even if such a policy of the State Government is to be considered for the purpose of the present case, then also in his submission, since the petitioner has applied for PTC course on the basis of 12th standard general stream mark sheet and the petitioner is also

treated as a candidate in general stream, his failure at the 12th standard HSC examination in science or any attempt made there, should be considered as irrelevant since it has no nexus with the eligibility of the petitioner to get admission on the basis of marks of 12th standard HSC examination general stream. The contention raised on behalf of the petitioner is that the condition of deducting 5 marks on each attempt failed in 12th standard HSC examination has to be read as having nexus to the admission in which the student concerned has applied for in the said branch and it cannot be an absolute condition for depriving the student from getting admission even if it has no connection whatsoever with the eligibility of getting admission. Mr. Pujara has also submitted that pursuant to the impugned order passed by this court on 8.8.2002, the petitioner has been granted provisional admission in PTC course and therefore, he submitted that if the question is decided finally, it would be rather be in the interest of the student concerned.

6. On behalf of the respondent Ms. Manisha Shah learned AGP has submitted that this policy of deduction of 5 marks on each attempt failed, is in operation since 1990 and she submitted that the eligibility is on the basis of passing examination of 12th standard examination irrespective of any stream. It has been submitted on behalf of the respondent that in the year 1998, it was felt that since the eligible students of 12th standard science students are not getting admissions in PTC course, it was found by the Government that a separate reservation to the extent of 30% seats should be made for science stream and 70% seats be allocated to the other categories which would include general category. However, it is submitted that merely because seats are allocated to different streams, it cannot be said that the eligibility criteria of 12th standard examination passing is altered in any manner. The learned AGP has relied upon the judgment reported in 1990 (2) GLR 1066 in the case of Prashant Pravinbhai Kanabar vs. Gujarat University & anor. to contend that the conditions for the purpose of deduction of 5 marks on each attempt failed has nexus to the talent of a person. Aforesaid judgment is also relied upon to contend that in the matter of education, the court cannot substitute its opinion as against the opinion of the Expert Body and therefore, when the State Government has taken a policy decision in the matter of education while granting admission to the students of PTC course, the same may not be interfered with. It is also submitted by the learned AGP that since the petitioner has filed at 12th standard HSC science examination, the authorities are justified in deducting 12 marks while considering the eligibility of the petitioner in PTC course. On the question of making provisions in the aforesaid Rules are concerned, the learned AGP has fairly stated that there is no provision in the Rule. However, she submitted that the Government, by way of policy decision has adopted such a criteria for the purpose of inducting best talent and therefore, it is not in any manner in contravention of the Rules or the Act and therefore, merely because there is no express provision in the Rule, the same would not render an action invalid if otherwise it can stand on the basis of rationality, which in any case is a policy

decision. The learned AGP has also relied upon the unreported judgment of this court (Coram: R.M.Doshit-J) dated 5.10.2001 rendered in SCA No.7375 of 2001 to contend that the validity of such Rule was considered by this court and the challenge to the same is negated.

7. In view of the above, the first question which is required to be considered is whether in absence of any express provision under the Rules, can the policy decision of the State Government for deduction of 5 marks on each attempt failed, can stand in the eye of law or not ? It is true that for governing the course of educational institutions, the above referred 1984 Act is enacted and there are enabling power to the State Government of making Rule as per section 13 of the said Act. Rule 6 of the Rules provides for admission of the students in accordance with the provisions contained in Appendix-V. Clause (2) of Appendix - V provides that admission shall be given on the basis of the marks obtained in the Secondary School Certificate Examination which is now amended as Higher Secondary School Examination. Clause (5) of the said Appendix-V provides that the procedure to be followed for admitting candidates in an Educational Institution shall be such as may be specified by the Director. Rule 2 of Clause (c) of the Rules provides that the Director means the Director of Primary and Adult Education.

29.8.2002

8. The reliance placed upon Rule 6 of the Rules to contend that the Government or Director of Higher Education cannot impose any additional criteria which is not stipulated under the Rules cannot be accepted because the Rule 6 creates an embargo upon the educational institutions to admit any student. Appendix-V therefore, has got to be read putting restrictions upon the rights of the educational institutions for admission and it cannot be read as an exhaustive criteria upon the eligibility of the students who is have to admission. An overall reading of the Act read with the Rules shows that the same regulates the functioning of the educational institutions. But it does not in any manner create an exhaustive test in field for eligibility criteria of students who got himself admitted or who has to get admission in the said educational institution. When in the larger interest of the student or rather in any manner of regulating educational activity, if the Director of Higher Education or the State Government as the case may be has laid down certain additional measures for the purpose of eligibility criteria of a student while granting admission to PTC course, same would be a policy decision of the Government, which normally, will be required to be taken keeping in view of over all situation of the matter including the strength of students , seats available, standard in which the results are declared etc. and there cannot be any exhaustive list and test for such purpose. The only test would be that whether such policy has got any rationale to be achieved or not. It is a matter of record that such provisions were initially made in the matter of granting admission to the students in medical and engineering and legality and validity of the said provisions in the Rules framed for admission of medical and

engineering students are tested and they have been held to be legal and valid. One of the decisions is in the case of Prashant Pravinbhai (supra) and also the unreported decision of this Court rendered in SCA No. 7375 of 2001 and therefore it cannot be said that such provision made, may be by way of policy decision of the State Government has no nexus with the object to be achieved. When a student has made an attempt and has failed at the examination in the said branch he cannot be said to be having equal merit as with the student who has made attempt and succeeded at first attempt. It is well settled that it is not for the court to substitute or regulate the educational activities of the State Government unless such policy appears to be absurd or unreasonable or arbitrary on the face of it and therefore I cannot accept the contention of Mr. Pujara that in absence of any express provision in the Rules, the condition of deducting 5 marks on each attempt failed, cannot be maintained.

9. The above takes me to the examination of the second alternative contention raised by Mr. Pujara. there is considerable force in the said contention inasmuch as the condition of deducting 5 marks on each attempt failed, has got to be read by taking into consideration the over all scheme of the admission procedure and also the eligibility criteria. It cannot be read in isolation or in absolute as sought to be canvassed by the learned AGP that irrespective of the branch in which the student concerned has passed or irrespective of the branch on the basis of which the student concerned has applied in the 12th standard HSC examination, the failure at the 12th standard HSC examination is to be considered. On the overall reading of the said condition, for deduction of 5 marks on each attempt failed, read with the instructions which are produced at Annexure-A to the petition, it appears that the admission would be on the basis of inter-se marks of the students in the concerned branch and also on the basis of availability of the seats reserved for the said purpose. The eligibility or otherwise in different branches in my view would be an extraneous aspect and therefore, there is no rationale to link with the other branch/stream when the student is not to be considered for the purpose of admission on the basis of the said eligibility which in the present case would be 12th standard science stream. Even in the case of Prashant Pravinbhai (supra) the Division Bench of this court has observed in para 30 as under:

"...In our opinion, instead of declaring the said provision ultra vires Art. 14, if the phrase "irrespective of his actual appearance" appearing in the said provision is construed to mean, "irrespective of his actual appearance, provided that non-appearance is not as a result of reasons beyond his control", it would meet the ends of justice. Whether a candidate has not appeared at the examination as a result of reasons beyond his control or not, will have to be decided by the University in each case. If non appearance at the examination was because of the reasons or circumstances beyond his control, then obviously that non appearance cannot be regarded as a trial or an unsuccessful attempt..."

10. Therefore, it cannot be said that the court while considering the applicability

of the Rule cannot examine as to whether such application of the rule has any rationale or the purpose to be achieved. If the provision made for deduction of 5 marks on each attempt failed is read in absolute terms, then possibly, the authority would be justified in deducting the marks of the petitioner for failure at 12th standard HSC science stream. However, in the present case there is no dispute that the petitioner has secured 79.70 percent marks at HSC examination general stream and there is also no dispute on the point that the petitioner has applied for admission in PTC course in general stream and there is also no dispute on the point that the merit order is prepared by the authority on the basis of inter se merit amongst the students who passed HSC general stream. In the above view of the matter it can be said that the performance or passing or failure of the petitioner at 12th standard HSC science stream, has no connection or the same is of no relevance for the purpose of testing the eligibility criteria of the student who has passed 12th standard HSC examination in general stream and who is to be considered amongst inter se merit of the students of 12th standard HSC examination in general stream. If the petitioner had failed at any attempt in 12th standard HSC general stream examination, possibly the matter would have been different. But such is not the case in the present petition. In view of this I cannot accept the contention of the respondent authority that irrespective of the stream if the petitioner has failed in any attempt even in science stream, the authorities are justified in deducting 5 marks on each attempt failed even for considering the eligibility criteria in 12th standard general stream for the purpose of granting admission in PTC course. In my view aforesaid ground appears to be extraneous and there is no rationale to be achieved for the purpose of policy to be achieved. In view of the above, the contention of Mr. Pujara deserves to be accepted that the performance of the petitioner at the 12th standard HSC stream is wholly irrelevant even if rules or provisions made for deduction of marks is to be maintained.

4.9.2002

11. Even otherwise also on the over all reading of the aforesaid rule read with the scheme of granting admission in PTC course it appears that the provisions of deduction of 5 marks at each attempt failed is to be applied in that respective category and not in other categories and that Rule itself has no applicability qua granting admission in PTC general category. I am also of the view that the decision or rather the stand of the authority over the said rule appears to be arbitrary and without proper application of mind.

12. In view of the above discussion the petition is allowed by giving directions to the respondents to finalise the admission in PTC course of the year 2002-2003 on the basis of marks obtained by the students at 12th standard HSC examination general stream. Since the petitioner has been granted admission pursuant to the interim order and it has been reported that the admission is provisionally granted to the petitioner, the respondents are directed to finalise the same within a period of one month from the date of receipt of the copy of this order. Rule is

made absolute to the aforesaid extent. No order as to costs.