

(2019) 10 UK CK 0030
In the Uttarakhand High Court
Case No : Special Appeal No. 842 Of 2019

Utkarsh Bora (Minor)

APPELLANT

Vs

Council For The Indian School Certificate Examinations And
Another

RESPONDENT

Date of Decision : 15-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 12, 226

Citation : (2019) 10 UK CK 0030

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Avtar Singh Rawat, Charanjeet Kaur, Piyush Garg

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. The application, seeking condonation of delay in preferring this Appeal, is not opposed by Mr. Piyush Garg, learned counsel for the respondents and the delay is, therefore, condoned.
2. This appeal is preferred by the petitioner in WPMS No. 884 of 2019 aggrieved by the order passed by the learned Single Judge dismissing the writ petition on 20.06.2019.
3. WPMS No.884 of 2019 was heard along with three other writ petitions by the learned Single Judge. All the petitioners therein were the students of St. Joseph's Academy, Rajpur Road, Dehradun. They were promoted to class 11th after having successfully completed their class 10th examination. For the internal examination in class 11th, as per Chapter II of the Regulations of the ICSE, a candidate was required to have obtained at least 35% marks in four subjects including English, with minimum 75% attendance of working days, for being considered for promotion to the next higher class. The petitioner did not secure the minimum 35% marks, and was detained in Class 11th as he did not fulfill the

criteria prescribed in the Regulations. The petitioner's father requested the Principal to permit the petitioner to appear for the compartment examination, for the subjects for which he has been detained by the school, for being promoted to Class 12th; and, since his request was not acceded to, the jurisdiction of this Court was invoked.

4. In the counter affidavit filed in the writ petition, the second respondent raised a preliminary objection regarding the maintainability of the writ petition contending that the second respondent was neither a 'State' nor an 'Instrumentality of the State' falling within the meaning of Article 12 of the Constitution of India; it was a private institution, not receiving any grant-in-aid from the Government; and, therefore, no mandamus can be issued to it. The learned Single Judge referred to a judgment of Division Bench of this Court in *Master Gurvijay vs. Union of India* (order in SPA No. 38 of 2008 dated 29.04.2008) wherein the Division Bench observed that, since conditions no.5 permitted compartmental examination to be held for candidates who failed to secure the pass mark of 35% in one subject, it is only if the candidate had secured the pass marks in English, and two other subjects, could they claim to be extended the benefit of the compartmental examination; and, since the petitioner therein did not fulfill the criteria set forth under the Regulations, he was not entitled to claim the benefit of compartmentalization.

5. The learned Single Judge, thereafter, relied on the judgment of the Supreme Court in *Marwari Balika Vidyalaya Vs. Asha Srivastava* in Civil Appeal No.9166 of 2019 17.02.2019, wherein the Supreme Court observed that the writ petition was maintainable against private educational institutions. The learned Single Judge observed that, since the second respondent was recognized by the Regulations of the I.S.C.E. Board, it was an authority amenable to the jurisdiction of the High Court under Article 226 of the Constitution of India, since it was discharging public functions by way of imparting education. The learned Single Judge was, however, satisfied that, since the petitioner had not secured pass marks in four subjects, other than English, he was not entitled to appear for the compartmental examination; and, since the petitioner had failed to make out a case of failure on the part of the respondents to discharge their statutory obligations and no fundamental rights of theirs could be said to have been breached by not permitting them to appear in the compartmental examination, no mandamus could be issued to the respondents to conduct the compartmental examination, for the petitioners, for all the subjects.

6. While Mr. A.S. Rawat, learned Senior Counsel appearing on behalf of the appellant-writ petitioner, would submit that the petitioner was an extremely bright student, and had secured first division in his 10th class; and it is evidently because of the failure of the respondents to properly evaluate the answer sheets, was he not given 35% marks in the subjects, Mr. Piyush Garg, learned counsel for the second respondent, would submit that, except in English in which the petitioner had secured the pass marks of 35%, in none of the other four relevant

subjects could the petitioner secure the minimum 35% marks; and since it is only students, who have failed to secure 35% marks in one subject, who were alone entitle to appear in the compartment examination, the petitioner was not entitled to the said benefit.

7. It is well settled that, in absence of a specific provision in the Regulations for revaluation of answer sheets, no mandamus can be issued to the respondents to have the answer sheets re-evaluated. The entire case of the petitioner, as is evident from a bare reading of the writ affidavit, is that a compartmental examination should be conducted. As noted hereinabove the petitioner is ineligible for being extended the benefit a compartmental examination since he failed in four subjects (other than English), and did not secure the minimum 35% marks in any one of them.

8. While we see no reason to interfere with the order under appeal, we must express our anguish regarding the pressure which parents put on their children expecting them to fulfill their unfulfilled dreams. Failure, it is said, is a stepping stone to success. The perception that a single failure in the career of a student would entirely destroy his future is wholly misconceived. Parents should be more supportive of their children, and should encourage their children to do better, instead of either chiding them or in blaming the institution which had failed to promote them. We say no more.

9. The Special Appeal fails and is, accordingly, dismissed. No costs.