

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 30th August, 2010

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W.P.(C) No.4325/2010

MASTER ANKIT KUMAR

..... PETITIONER

Through: Mr. Rahul Gupta with Mr. Shekhar
Dasi & Ms. Ira Gupta, Advocates.

Versus

SUMMER FIELDS SCHOOL & ORS.

..... RESPONDENTS

Through: Mr. P.D. Gupta with Mr. Kamal
Gupta & Mr. Abhishek Gupta,
Advocates for R-1.
Mr. Manoj Kumar Rath, Advocate for
Mr. V.K. Tandon, Advocate for R-2.
Mr. Atul Kumar, Advocate for R-3.

AND

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W.P.(C) No.4610/2010

MS. AKSHITA GOYAL

..... PETITIONER

Through: Mr. Rahul Gupta with Mr. Shekhar
Dasi & Ms. Ira Gupta, Advocates.

Versus

DELHI PUBLIC SCHOOL & ORS.

..... RESPONDENTS

Through: Mr. Puneet Mittal & Mr. Sagar
Dhama, Advocates for R-1.
Ms. Zubeda Begum & Ms. Sana
Ansari, Advocates for R-2.
Mr. Atul Kumar, Advocate for R-3.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may
be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether the judgment should be reported
in the Digest? Yes.

RAJIV SAHAI ENDLAW, J.

1. The petitioners in both the petitions are aggrieved from the refusal of the Schools from which they have passed the Class X examination, to allot the Science stream to the petitioners in Class XI and seek a mandamus to the respondent Schools to allot the Science subject / stream to them. Both the petitioners failed to meet the eligibility criteria laid down by the respective Schools for admission to the Science stream. Notices of the petitions were issued on the basis of contention that the Supreme Court in *Principal, Kendriya Vidyalaya Vs. Saurabh Chaudhary* AIR 2009 SC 608 in para 17 of the judgment had observed that preference in favour of the school's own student has to be assumed and has been provided expressly as per judgment in *The Principal, Cambridge School Vs. Payal Gupta* (1995) 5 SCC 512. It was the contention of the counsel for the petitioners that the Schools having admitted external students i.e. students who had not passed their Class X examination from the School to the Science stream, were required to first give preference to their own students for the stream / subject of their choice and the same could be offered to the external students only if any seats remained vacant. Though originally CBSE was not impleaded as a respondent, was impleaded as a respondent. Counter affidavits have been filed on behalf of the Schools, Directorate of Education as well as the CBSE.

2. The Directorate of Education in its counter affidavit has pleaded that the Schools in the present case being unaided recognized private Schools, as

per the judgment of the Apex Court in ***T.M.A. Pai Foundation Vs. State of Karnataka*** (2002) 8 SCC 481, are entitled to maximum autonomy in management of administration including the right of appointment, disciplinary powers, admission of students and the fees to be charged; that the petitioners having not met the criteria fixed by the Schools for admission to the Science stream, cannot claim a right to admission to the said stream.

3. The counsel for the CBSE though has not filed any counter affidavit but has contended that the CBSE has no role to play in the criteria to be fixed for allotment of various streams / subjects in Class XI and the Schools are free to lay down their own criteria. Reference in this regard is also made to the Circular No.24 dated 28th May, 2010 of the CBSE annexed to the counter affidavit of the School in WP(C) No.4610/2010.

4. The counsels for the Schools and the Directorate of Education and the CBSE in unison also state that the matter is no longer *res integra* having been settled by the Division Bench of this Court in ***M.I. Hussain Vs. N. Singh*** 125 (2005) DLT 223. It is also pointed out that SLPs preferred to the Supreme Court against the Division Bench Judgment of this Court in ***M.I. Hussain*** (supra) were dismissed *in limine*.

5. The counsel for the petitioners has contended that the petitioner in WP(C) No.4610/2010 has missed the eligibility criteria for admission in the science stream laid down by the respondent Delhi Public School, Rohini,

New Delhi merely by six marks. It is contended that the School should evaluate the eligibility not merely on the basis of the marks secured in Class X exam but on evaluation of the comprehensive performance in Class X and / or in both Class IX and Class X. It is contended that the present is a case of the Schools not applying their mind to the selection criteria. It is urged that as per the judgment of the Apex Court in *Payal Gupta* (supra), there has to be no fresh admission or re-admission of a student in the School in Class XI and on the same principle, the internal students of a School ought to be given first priority in the matter of choice of subjects and only if any seats remain vacant should external students be admitted thereto. Reliance is also heavily placed on a Division Bench judgment of the Madras High Court in *Prof. Dr. S. Anandalakshmy, Convenor, Concerned Citizens' Committee Vs. Government of India* AIR 2007 Madras 310.

6. The counsel for the respondent Summer Fields School in WP(C) No.4325/2010 has also drawn attention to Rule 145 of the Delhi School Education Rules, 1973 which is as under:-

“145. Admission to recognized unaided schools – (1)
The head of every recognized unaided school shall regulate admissions to a recognized 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 recognized unaided school as they apply to admissions to an aided school.”

It is urged that under the said Rule the Head of the School has been empowered to regulate admissions to the School and thus the petitioners cannot urge that the Schools are not empowered to lay down their own criteria. It is urged that the said Rule makes the judgment of the Division Bench of the Madras High Court inapplicable to the Schools in Delhi. It is also pointed out that the petitioner has falsely pleaded that she was allowed to attend the classes in the Science stream. From the correspondence preceding the petition, it is shown that the petitioner was never allowed to attend classes of the Science stream and was protesting there-against. It is also informed that the petitioner has already taken admission in another School and has not paid fee for two semesters and having already abandoned the Summer Fields School is in any case not entitled to any relief. It is also contended that there are no averments of mala fides against the School.

7. The counsel for the respondent Delhi Public School, Rohini, New Delhi in WP(C) No.4610/2010 though disputing that the petitioner has failed to meet the eligibility criteria by only six marks has contended that the same can be no reason inasmuch as then, students failing to meet the criteria by seven and then by eight marks would also make a grievance. The petitioner in this petition also is accused of concealment. It is informed that the petitioner in June, 2010 itself got admission in another School and did not disclose the said fact. He has also relied on:-

- (i) ***Rahul Kumar Kashyap (Das) Vs. Union of India*** AIR 2001 Gauhati 123 wherein fixation of cut off marks for admission to a particular stream was upheld
- (ii) ***Maheswari Mohapatra Vs. Mahanadi Coal Field Ltd.*** AIR 2005 Orissa 101 where the Division Bench held the eligibility criteria of 60% marks in Science and Maths for admission to Science stream in Class XI to be not arbitrary and upheld the denial of admission in Science Stream to a student who secured lesser marks.
- (iii) Judgment dated 17th October, 2006 of this Court in WP(C) No.14440-41/2005 titled ***Master Abhijeet Pal Vs. The Principal, DPS, Dwarka*** holding that the jurisdiction under Article 226 of the Constitution of India cannot be exercised against the decision of the School in consonance with its policy allotting different stream other than what was opted by the student.

8. The counsel for the petitioner in rejoinder has tendered apology on behalf of the petitioners for the concealment practiced. It is contended that each of the petitioners while preferring to continue in his/her old School was also desirous of not letting go of the chance to pursue Science stream/subject if not possible in the old school, then in some other School. ***M.I. Hussain*** is

again sought to be distinguished by referring to para 10 thereof where it has been noticed that the track record of the students in that case was poor. It is urged that the petitioners in the present case have a good track record. It is also contended that *M.I. Hussain* in para 30 of the judgment itself records that jurisdiction under Article 226 of the Constitution can be exercised in certain circumstances.

9. In my opinion, the question in controversy is fully covered by the Division Bench judgment of this Court in *M.I. Hussain*. It was so held by another Single Judge of this Court in *Master Abhijeet Pal* (supra). The Division Bench held that the Schools are certainly concerned about their reputation and image in society and for this purpose the results are of great importance. In that case, certain seats in the stream / subject desired by the students were still vacant, still the Division Bench held that there is no legal principle that all vacant seats must be filled up and observed that if such contention is accepted, it would mean that vacant seats have to be filled up even by admitting students who have no aptitude for Science or Maths. The right of the School to fix the minimum criteria below which it will not admit students to a particular stream even if seats remain vacant was upheld. The students were held to have no right to get admission to the Science stream. The Judgment of the Apex Court in *Payal Gupta* case was held to have no application to the matter.

10. A Single Judge of this Court even prior thereto in ***Kanika Aggarwal (Minor) Vs. NCT of Delhi*** 93 (2001) DLT 756 had also held that it is not open to a Writ Court to determine as to how many students are to be accommodated in a given stream of study in a School. It was held to be a matter to be considered by the School authorities. It was further observed that the writ jurisdiction will be exercised only when a decision taken by the School, merely by looking at it, is shocking or so arbitrary and reeks so much of nepotism or hostile discrimination which shocks the conscience of the Court and the Writ Court would not ordinarily interfere with internal administration of a School. The writ petition in that case was dismissed.

11. In so far as the judgment in ***Saurabh Chaudhary*** (supra) is concerned, on the basis whereof as aforesaid notice of the petition was issued, I find that the same also in Para 16 also holds “One can have no objection to a school laying down cut off marks for selection of suitable stream/course for a student giving due regard to his/her aptitude as reflected from the class X marks where there are more than one stream”. Thus, the same does not come to the rescue of the petitioners.

12. In so far as the reference to the Division Bench judgment of the Madras High court in ***Anandalakshmy*** (supra) is concerned, I find that the same does not lay down any law and merely directs the School in that case to comply with the Circular of the year 2006 of the CBSE relating to the

Schools in Tamil Nadu. The reliance on the said judgment is therefore misconceived.

13. I am unable to accept the contention of the counsel for the petitioners that the Schools are required to first fill up the available streams in each of the subjects with its internal students irrespective of whether they meet the eligibility criteria or not. To hold so would be holding contrary to *M.I. Hussain* with which this Bench is bound.

14. I may also add that though I am not taking any action against the petitioners for abusing the process of this Court by not making a true representation to this Court and by seeking interim orders from this Court without complete disclosure but the same alone disentitles the petitioners from any relief in the present petitions.

15. The petitions are therefore dismissed. Costs have already been awarded to the Summer Fields School I refrain from imposing any further costs on the petitioner in the petition against the Delhi Public School.

**RAJIV SAHAI ENDLAW
(JUDGE)**

30th AUGUST, 2010
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