

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

**W.P.(C) 5065/2010**

**Date of decision: 7<sup>th</sup> September, 2010**

**MS. NIDA QAMAR (MINOR) & ORS. .... PETITIONERS**

Through: S.K. Rungta, Advocate.

## Versus

**JAMIA MILLIA ISLAMIA, NEW DELHI** **..... RESPONDENT**

Through: Mr. M.A. Siddiqui, Advocate.

AND

**W.P.(C) 5087/2010**

**ZAFAR AHMAD (MINOR) ..... PETITIONER**

Through: Mr. S.K. Rungta, Advocate.

## Versus

**JAMIA MILLIA ISLAMIA, NEW DELHI** **..... RESPONDENT**

Through: Mr. M.A. Siddiqui, Advocate.

AND

**W.P.(C) 5107/2010**

**SIRAJ AHMED (MINOR) ..... PETITIONER**

Through: Mr. S.K. Rungta, Advocate.

## Versus

**JAMIA MILLIA ISLAMIA, NEW DELHI**      **..... RESPONDENT**

Through: Mr. M.A. Siddiqui, Advocate.

AND

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**W.P.(C) 5379/2010**

**NEELOFER TAUHIDI**

**..... PETITIONER**

Through: Mr. Ravindra S. Garia, Advocate.

Versus

**JAMIA MILLIA ISLAMIA**

**..... RESPONDENT**

Through: Mr. M.A. Siddiqui, Advocate.

***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 all these petitions were students of the School established and run by the respondent in its campus; all of them appeared in their Class X examination in the year 2010 and being successful therein were entitled to promotion to Class XI (of the +2 stage) in the same School. All the petitioners, except the petitioner in WP(C) No.5087/2010, sought the Science stream in Class XI. The petitioner in WP(C) No.5087/2010 sought the Commerce with Mathematics stream. The respondent School however offered Humanities stream to the petitioners and to the petitioner in WP(C) No.5087/2010, Commerce without Mathematics stream. The respondent School denied the streams sought by the petitioners for the reason of the petitioners not meeting the eligibility criteria laid down by the respondent School with respect to the Science and Commerce with Mathematics streams. As per the said criteria, for the Science stream, the students were required to have

aggregate of 60% marks in English, Maths, Science, Social Science and in second language opted and with minimum of 60% marks in the subject of Science and Technology. The criteria laid down for the Commerce with Mathematics stream was aggregate of 55% marks in English, Mathematics, Science, Social Science and second language and with at least 55% marks in the subject of Mathematics. Thus all the petitioners, except the petitioner in WP(C) No.5087/2010, were given the Humanities stream instead of Science stream opted by them and the petitioner in WP(C) No.5087/2010 though given the Commerce stream was given the same without Mathematics. It is the case of the petitioner in WP(C) No.5379/2010 that upon being not given the Science stream, she was so dejected that she chose not to pursue further education and did not even pay the fee for Class XI. On enquiry, it is informed that the said petitioner is not studying in any other School and has not obtained admission in Science stream in any other School.

2. I have recently in WP(C) No.4325/2010 titled ***Master Ankit Kumar Vs. Summer Fields School*** & WP(C) No.4610/2010 titled ***Ms. Akshita Goyal Vs. Delhi Public School*** decided on 30<sup>th</sup> August, 2010 had the occasion to deal with the rights of the students and the School to pursue and / or to allot a particular stream. It was found that the said question is fully covered by the judgment of the Division Bench of this Court in ***M.I. Hussain Vs. N. Singh*** 125 (2005) DLT 223; 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. 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. Reliance was also placed by me on another

judgment of a Single Judge of this Court in ***Kanika Aggarwal (Minor) Vs. NCT of Delhi*** 93 (2001) DLT 756 holding 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 petitions in those cases were dismissed.

3. Notwithstanding the aforesaid settled legal position, notices of these petitions were issued for the reason of finding the eligibility criteria for admission to various streams prescribed by the respondent School in the present case to be discriminating against those students who had passed their Class X examination from the same School vis-à-vis students admitted by the respondent School in Class XI from other Schools.

4. The respondent School besides promoting its own students from Class X to Class XI, also admits in Class XI students who have passed their Class X from other Schools. However, for outside students to gain admission in Class XI in the respondent School, they have to take an admission test. Since the Central Board of Secondary Education (CBSE), followed by most of the other Schools in Delhi, had with effect from last year introduced a 'grade system', the respondent School while laying down the eligibility criteria for admission of such outside students also prescribed minimum grades for admission. While prescribing the minimum grades, for admission in the Science stream the aggregate grade of 'C1' with the grade of

‘C1’ in Science and Technology subject was prescribed. Similarly, for admission into the Commerce with Mathematics stream, the minimum grade of ‘C1’ in aggregate and ‘C1’ in the subject of Mathematics was prescribed. It is not in dispute that grade ‘C1’ of CBSE corresponds in marks to a range of 51% to 60%. It was thus the contention of the petitioners that the respondent School had laid down different eligibility criteria for its own students and for outside students, with the eligibility for outside students being lower than the eligibility for own students. It was contended that the same was not permissible and since each of the petitioners for admission to the stream opted by them had the marks as prescribed for outside students, they were entitled to the stream of subjects desired by them.

5. In fact the present petitions are a sequel to WP(C) No.4359/2010 titled *Hala Zafar Vs. Jamia Millia Islamia* earlier filed by another student of the respondent School. The said writ petition had come up before this Court first on 5<sup>th</sup> July, 2010 when finding the respondent School to have discriminated against its students, the counsel for the respondent School was asked to take instructions. That writ petition thereafter came up before this Court on 21<sup>st</sup> July, 2010 when the counsel for the respondent School informed that the Vice Chancellor of the respondent School, as a special case, had agreed to admit the petitioner in that case in the Science stream. Immediately after that order, the present writ petitions were filed.

6. The respondent School has filed counter affidavits contending that interference in academic matters by law Courts should be bare minimum; that the respondent School is an autonomous School with its own administrative and academic structure (along with its own Board of Examinations); it follows the system of marking which is

typically different from the CBSE pattern which has the grading system; that the evaluative methodology under the two systems cannot be allied with mathematical accuracy; that the prospectus qua various streams in Class XI was notified on or before 10<sup>th</sup> March, 2010 and the allotment of various streams was done on 28/29<sup>th</sup> June, 2010 and the classes commenced on 2<sup>nd</sup> July, 2010; that the petitioners, except for the petitioner in WP(C) No.5379/2010 who has not even paid the fee for Class XI, joined the stream allotted to each of them as per their marks and the eligibility criteria laid down in the prospectus aforesaid and have filed these petitions taking a chance on the basis of the sympathetic view taken by the Vice Chancellor of the respondent School pursuant to the directions of this Court in the earlier writ petition aforesaid. The counsel for the respondent School has contended that the petitioners were fully satisfied with the allotment of streams to each of them and cannot now be permitted to avail of what followed in the earlier writ petition. It is further contended that the petitioners cannot equate themselves with the outside students who for the purpose of seeking admission have to clear the admission test as well. It is further contended that admissions in the Science stream are based on a number of factors like sufficient teaching strength, availability of infrastructure and laboratories facilities and all the seats in the Science stream being filled, the respondent School would not be able to adjust the petitioners in the Science Stream owing to paucity of resources aforesaid. It is further argued that the petitioners cannot invoke the equality clause of Article 14 of the Constitution, being not equal to the outside students who not only have to satisfy the eligibility criteria but to also compete in entrance examination; the petitioners don't have to compete in an entrance examination. It is thus contended that there is a fair classification between the two categories.

7. This Court, on the day when the petitions first came up, being of the opinion that students who are otherwise not fit for Science stream ought not to be admitted to the same merely by taking advantage of a mistake even if committed by the respondent School in fixing the eligibility criteria, directed the respondent School to verify whether it is in the interest of each of the petitioners to pursue the stream sought by them. The concerned authorities of the School were directed to meet the parents of each of the petitioners and if being of the opinion that the child was not fit for the stream desired, to counsel the parents in that regard. The said exercise has however failed to yield any result. The counsels were thus heard on merits.

8. The petitioners base their case only on the plea of the respondent School having discriminated against its own students and having given preference to the outside students. Per contra, the counsel for the respondent School has argued that the petitioners are fence sitters; they (except petitioner in WP(C) No.5379/2010) joined the streams allotted to them as per the eligibility criteria laid down by the respondent School and have preferred these petitions only because of the sympathetic view taken by the Vice Chancellor of the respondent School on persuasion by this Court in the earlier writ petition aforesaid. It is contended that the petitions are barred by the principles of acquiescence and waiver. It is also contended that change of stream at this late juncture is not possible and would lead to displacement and disruption and also affect the rights of the other students who have not been impleaded. It is demonstrated that the petitioners seeking admission to the Science stream have in Class X examination scored much better in the Humanities subject and which stream has been allotted to them in Class XI. Reliance is placed on (i) ***Guru Nanak Dev University Vs. Parminder Kumar Bansal*** AIR 1993 SC 2412 (ii) ***Bhushan Uttam Khare Vs. The Dean, B.J.***

*Medical College* AIR 1992 SC 917 & (iii) *Central Board of Secondary Education Vs. Nikhil Gulati* (1998) 3 SCC 5 to contend that Courts should be slow to interfere with the decisions of educational authorities.

9. The counsel for the petitioners has rejoined by contending that it is not the case of the respondent School that the standard of the respondent School is lower than that of the CBSE for the respondent School to prescribe higher eligibility marks for its own students than those prescribed for the outside students.

10. In writ petitions decided by my judgment dated 30<sup>th</sup> August, 2010 (supra) also the contention of the petitioners was that the Schools are required to fill up the seats available in each of the stream with its own internal students irrespective of whether they meet the eligibility criteria or not. The said contention was held to be contrary to the judgment of the Division Bench in *M.I. Hussain* (supra).

11. The only question therefore which arises for consideration in these cases is, whether the respondent School has an obligation to maintain equality in the eligibility criteria for various streams between its internal students and outside students admitted in Class XI. In this context, I may notice that the Supreme Court in *Principal, Kendriya Vidyalaya Vs. Saurabh Chaudhary* AIR 2009 SC 608, in para 17 of the judgment 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. The Division Bench of this Court however in *M.I. Hussain* held the judgment in *Payal Gupta* (supra) to have no application to the matter of allotment of streams. I have in judgment dated 30<sup>th</sup> August, 2010 (supra)

negated the contention of the students on the basis of observations in para 17 of *Saurabh Chaudhary* (supra) by relying on para 16 holding that “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”. The judgment in *Saurabh Chaudhary* was thus held to be not coming to the rescue of the petitioners in that case.

12. Nevertheless the principle laid down in *Payal Gupta & Saurabh Chaudhary* though not in relation to allotment of stream is of the School in Class XI not acting to the detriment of its own students. I have wondered whether what has been prohibited by the Supreme Court can be permitted to be done indirectly by, for allotment of various streams, providing higher eligibility criteria for its own students than that provided for the outside students. The same would automatically result in the School compelling its own students to leave and seek admission in other Schools for being unable to pursue the stream of their choice and increasing the influx of outside students in Class XI. The same cannot be allowed.

13. Though certain pleadings have been made of there being a difference in grading system and in marking system and of difference in standards in the Board of Examination of the respondent School and of CBSE but there is no material before this Court to proceed on that assumption. Rather the respondent School while prescribing the eligibility criteria in terms of grades for the outside students has within brackets mentioned the percentage in marks to which the said grades correspond. The School nowhere in the prospectus provided that grade ‘C1’ corresponds to over 60% marks. Thus what follows is that while the respondent School has encouraged its own students

to seek admissions elsewhere in Class XI to pursue the stream of their choice, it has shown a desire to admit outside students in Class XI. The same cannot be permitted.

14. In my opinion, however, the respondent School has committed an inadvertent mistake in providing eligibility criteria of grade 'C1' and ought to have provided the eligibility criteria of grade 'B2' corresponding to 61% to 70% marks while prescribing the eligibility criteria as aforesaid. Upon the same being put to the counsel for the respondent, he contended that the respondent School would still have run into difficulty since grade 'B2' would not have covered those with 60% marks, as the internal students of the respondent School with such marks were eligible. However, in my view the same would not have posed a problem. For outside students, providing grade 'B2' in the absence of any grade corresponding just to 60% to 70% marks would not have put the respondent School to any charges of discrimination. The outside students have no right to admission in the respondent School while as held by the Supreme Court in *Payal Gupta*, the internal students of School have. Such right of the internal students of the respondent School cannot be permitted to be defeated by discouraging them from gaining admission in the stream of their choice. Institutional preference in higher studies to a certain extent is also permitted by judgments in (i) *AIIMS Students' Union Vs. AIIMS* (2002) 1 SCC 428, (ii) *Saurabh Chaudri Vs. UOI* (2003) 11 SCC 146 & (iii) *Dr. Saurabh Chaudhri Vs. UOI* (2004) 5 SCC 618. It was held that a certain degree of preference for students of the same Institution is permissible on grounds of convenience, suitability and familiarity with an educational environment.

15. I have even otherwise satisfied myself as to whether it is in the interest of each of the students to pursue the stream sought by them.

While three petitioners in WP(C) No.5065/2010 have 56%, 57% & 56% marks respectively in Science subject, the sole petitioner in WP(C) No.5107/2010 has 59% marks in Science subject; each of them has been denied the Science stream for failing to have 60% marks in the Science subject. Similarly, the petitioner in WP(C) No.5379/2010 has 56% marks in the Science subject. The petitioner in WP(C) No.5087/2010 seeking Commerce with Mathematics and who has been denied Mathematics for failing to have 55% marks in Mathematics has 51% marks in Mathematics. On perusal of their mark sheets including the marks in other subjects, I am satisfied that they are all bright students and do not find any of them incapable of coping with the stream sought by them.

16. In so far as the contention of the respondent School of the outside students in addition to satisfying the eligibility, being also required to appear in an admission test, the same in my view would not make any difference. Rather the counsel for the petitioners has contended that each of the petitioners are also willing to appear in an admission test and would have appeared if had been given a level playing field. Thus discrimination against the own students cannot be sought to be justified on the basis of the examination.

17. Though there is some merit in the contention of the counsel for the respondent that the decision as to number of seats in each stream is based on the infrastructure available therefor and allowing the petitioners to join the streams of their choice would result in undue pressure on the infrastructure available in the School for those streams but considering the number of petitioners and further considering the fact that the situation which has emerged is of the own making of the respondent School, I am not inclined to deprive the petitioners who otherwise have been found entitled to the relief,

on the said ground. Similarly, the argument of acquiescence & waiver also does not prevail. The students had no choice but to join the stream allotted to them. They could not be expected to rush to the Court immediately. The publication of the prospectus in March, 2010 is of no avail since the results of Class X examination were declared later and the admissions admittedly took place only in the end of June, 2010. The petitions filed in late July, 2010 cannot be said to be barred by the principle of laches and waiver.

18. The argument of the classes having commenced on 2<sup>nd</sup> July, 2010 also does not persuade me to decline the relief to the petitioners. The CBSE system as prevalent in most of the Schools in Delhi also provides for the option of change of stream till the end of the month of September. The said decision must have been taken by the CBSE after considering that the students would be able to make up for the lost time in the remaining academic year. Even otherwise, students who have persisted in their choice of stream by knocking the door of the Court, I am sure would put in extra efforts so as to not suffer by such late entry.

19. That leaves me with the peculiar facts in WP(C) No. 5379/2010. The petitioner therein on the date of filing of the writ petition was not even a student of Class XI of the respondent School having chosen not to deposit the fee. She claims that dejected by non allotment of the Science stream and not desirous of pursuing the Humanities stream offered to her, she has chosen to give up the studies. Though I find the behaviour odd inasmuch as a student showing so much zeal to pursue the Science stream is unlikely to give up studies and suspect that the said petitioner must have joined some other School but having found defect in the eligibility criteria laid down by the respondent School, I am inclined to grant relief to

her also. The respondent School has not taken a plea that her name has been struck off from the rolls of the respondent School.

20. The petitions therefore succeed. The respondent School is directed to allot Science stream in Class XI to the petitioners, except the petitioner in WP(C) No.5087/2010. The respondent is directed to allot Commerce with Mathematics stream to the petitioner in WP(C) No.5087/2010. The petitioners shall be immediately entitled to sit in the classes of the streams to which they have been held entitled.

The petitions are disposed of. No order as to costs.

Dasti.

**RAJIV SAHAI ENDLAW  
(JUDGE)**

**7<sup>th</sup> SEPTEMBER, 2010**

‘gsr’

(Corrected and released on 22<sup>nd</sup> September, 2010)