

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 4504/2011 and CM No.9162/2011**

+ **W.P.(C) 4938/2011 & C.M. No.10003/2011**

Decided on: 12th December, 2011

IN THE MATTERS OF

MASTER NAVNEET SINGH (MINOR) & ORS Petitioners

Through: Mr. Sudhir Aggarwal, Adv.

versus

GOVT OF NCT OF DELHI & ORS Respondents

Through: Ms. Zubeda Begum, Adv with
Ms.Sana Ansari, Adv. for R-1 to 4.
Mr. Atul Kumar, Adv. for R-5.

AND

MASTER VISHAL (MINOR) & ORS Petitioners

Through: Mr. Sudhir Aggarwal, Adv.

versus

GOVERNMENT OF N.C.T OF DELHI AND ORS. Respondents

Through: Ms. Sonia Arora, Adv. for R-1 to 4.
Mr. Atul Kumar, Adv. for R-5/CBSE

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (ORAL)

1. By this order, the Court proposes to dispose of two writ petitions in which common issues have been raised for consideration, but with some difference in facts. For the sake of convenience, the facts of WP(C)No.4504/2011 are taken note of.

2. The present petition was originally filed by seven petitioners praying *inter alia* for directions to the respondent No.2/School to promote them to standard XI in the science stream and restrain the school from cancelling their admission in the said stream. Subsequently, counsel for the petitioners confined the relief in the present petition to petitioners No.1-6 on the ground that during the pendency of the present petition, petitioner No.7 had taken a transfer from Respondent No.2/School. Accompanying the writ petition is an application for interim orders registered as C.M.9162/2011, wherein in para-3 thereof a specific averment was made by the petitioners that respondent No.2/School was threatening to cancel their admission in the science stream of class-XI despite the fact that it had already accepted their fee for admission and further that the school was illegally contemplating giving admission to students from outside the school. Further averment was made in the application to the effect that the petitioners be permitted to "start their session for Class-XI from the science stream".

3. The aforesaid writ petition came up for admission on 29.06.2011, on which date, notice was issued by the vacation Bench. On the interim application, it was ordered that till 19th July, 2011, the admission of the petitioners would continue to be in the same course in which they were admitted and they would be permitted to attend

the classes. The aforesaid interim order is continuing to operate in favour of the petitioners till date and it is the admitted case of both sides that for the past 6 months, the petitioners are continuing to study in the science stream of Class-XI on the strength of the aforesaid interim order.

4. Respondents No.1 to 4 filed a counter affidavit on 08.07.2011 wherein it was stated that the claim of the petitioners that respondent No.2/school had confirmed their admission in the science stream was wrong and that the petitioners had failed to place on record any document issued by the school to that effect. It was further stated that the petitioners did not meet the eligibility criteria laid down by the respondents for allocation of the science stream and that the admission in various streams was to be offered strictly on the basis of the merits of each case. As regards the criteria fixed by the respondents for admission in the science stream, it is stated that the requirement is that in no subject should the requisite grade be labeled with an asterisk mark (*). But in the present case, the grades of the petitioners were suffixed with one or two asterisk marks, thus making them ineligible for admission in the science stream. In support of the aforesaid submission, a tabulated statement of the grades obtained by the petitioners was enclosed with the counter affidavit as Annexure R-

3. A perusal of the tabulated statement reflects that each of the six

petitioners had grades with two asterisks marks which as per the respondent meant that they did not fulfill the requisite criteria laid down by the school and their grades were upgraded by one level, i.e., from grade B-2 to grade B-1.

5. Learned counsel for the respondents submits that the aforesaid upgradation was done as per the remarks made on the report cards of the students of Class X, issued by respondent No.5/CBSE in terms of its new policy of Continuous and Comprehensive Evaluation introduced from the academic year 2010-11 onwards. It is the case of the respondents No.1 to 4 that the petitioners have failed to fulfil the requisite criteria for admission, as their names did not feature in the list of eligible candidates for admission in the science stream published by the school on the notice board on 15.06.2011. In support of the said submission, the attention of the Court is drawn to Annexure R-2 annexed with the counter affidavit, wherein the names of the petitioners No.1 to 6 are duly reflected in the list of eligible commerce students at serial No.5,20,9,23,10 and 2 respectively. It is further averred in the counter affidavit that in the option forms submitted by the petitioners, they had intentionally omitted mentioning the two asterisk marks against the grades obtained by them in the science stream. As a result, the grades obtained by them were wrongly reflected as "B-1". However, it is not disputed that the said option

forms were duly accompanied with the results and marksheets of each of the students which reflected their results correctly.

6. As regards the criteria of admission in different streams in all Rajkiya Pratibha Vikas Vidhyalaya (RPVV in brief), the same has been set out in the additional affidavit filed by the respondent on 16.08.2011 and reproduced hereinbelow for ready reference :-

"4. That the Criteria of Admission in Different Streams in Rajkiya Pratibha Vikas Vidhyalaya (RPVV) is same.

a) All Rajkiya Pratibha Vikas Vidhyalaya have fixed the same criteria of admission in different streams with due approval of Director of Education and the criteria as such has its sanctity and is uniformly applied to all the students who seek admission in different streams in RPVVs. The said schools have evolved their own method for getting best talent amongst students keeping in mind their capability in academically pursuing the stream desired by them and their potential to achieve it. It has nothing to do with CBSE. It is so as to maintain the level of achievement of students in Class XII where there is no grading but there are marks as per their academic performance.

b) Any deviation in criteria will vitiate the whole process and jeopardize the standard of RPVVs and the whole cause of establishing the RPVVs."

7. Learned counsel for the respondent submits that the aforesaid criteria is being followed strictly and has been applied uniformly across the board. Therefore, the petitioners cannot claim that there has been any discrimination against them. Counsel for the petitioners, however, denies the aforesaid position and asserts that the petitioners were

initially granted admission in the science stream but thereafter, the Principal of respondent No.2/School telephonically contacted them on 18.06.2011 and told them to meet him. In the said meeting, the petitioners were informed that their admission in the science stream would be cancelled by respondent No.2/school, as they were ineligible to be granted admission in the said stream as per a new circular issued by respondents No.3 and 4 for admission in the science stream for Class-XI and that instead, they could get admission in the commerce stream.

8. In para-4 of the writ petition, there is a specific averment by the petitioners to the effect that once respondent No.2/School had accepted their fees for the science stream in Class-XI, it was impermissible for the school to have subsequently cancelled their admission.

9. On a pointed query posed to the learned counsel for the petitioners as to the basis on which the petitioners claim that the fees deposited by them with respondent No.1/school was being charged exclusively from only such of the students who were entering the science stream in Class-XI, learned counsel for the petitioners states, on instructions, that each of the petitioners had deposited a sum of ₹20/- per month under the Pupils' Welfare Fund, which forms the basis of their making such a claim. However, it is not denied by the

petitioners that ₹20/- per month per student is the fee charged by the respondent/school from students belonging to all the other streams as well, including the science stream. As a result, no special equity can be claimed by the petitioners, on the basis of a monthly deposit of ₹20/- made by them with the respondent No.2/school while taking admission in Class-XI.

10. Further, it is pertinent to note that as per the averments made in the writ petition, it is not the case of the petitioners that respondent No.2/school had played a fraud upon them by reflecting their names in the admission notice as candidates eligible for the science stream and later on with some *mala fide* intentions, changed the said notice to reflect their names in the commerce stream. In reply to the aforesaid observation, counsel for the petitioners states that some averments to this effect have been made by the petitioners in the rejoinder filed in reply to the counter affidavit. He also lays much emphasis on the fact that there are still vacant seats available in the science stream in Class-XI to which the petitioners are entitled to be admitted.

11. The contention of the counsel for the petitioners that if petitioners are not allowed to continue their education in the Science stream, then those seats would go abegging, cannot be accepted as no student can be granted admission to any seat unless he/she satisfies the requisite eligibility criteria laid down by the concerned institution,

as per its policy in that regard. As held by a Division Bench of this Court in the case of M.I. Hussain Vs. N. Singh & Ors. **AIR 2006 Delhi 86**, there is no legal principle that all vacant seats must necessarily be filled up. It has also been observed that the fixing of cutoff marks by a school, for permitting the student to opt for a particular stream, is within the domain of such a school and such policy decision is to be taken by the school alone, and the standards set in that regard ought not to be interfered with by the Courts. The following observations of the Division Bench are relevant for consideration :-

"14. In our opinion, there is no legal principle that all vacant seats must necessarily be filled up. If such a contention is accepted, it would mean that vacant seats have to be filled up even by filling them up with students who have no aptitude for science or maths. We cannot countenance any such argument. Many schools have a reputation to uphold and protect, and they can certainly fix the minimum criteria below which it will not admit students to a particular stream even if seats remain vacant. The writ petitioner has not been able to show any legal right to get admission to science stream. Moreover, there are 36 students of the school who have passed Class X examination with higher merit than the writ petitioner and were seeking admission to science stream, but have been denied the same. Hence, the writ petitioner can have no legal right to get admission in science stream.

.....

.....

.....

21. The writ petitioner got only 60% marks in science whereas the school has fixed minimum 70% marks in Class X for admission to the science stream in Class XI.

.....

.....

.....

33. This Court cannot ordinarily interfere in administrative

matters, since the administrative authorities are specialists in matters relating to the administration. The court does not have the expertise in such matters, and ordinarily should leave such matters to the discretion of the administrative authorities. It is only in rare and exceptional cases, where the Wednesbury principle applies, that the Court should interfere.....

44. No doubt in the present case the policy decision is that of the management of the school and not of the Government, but in our opinion there is no real difference between the policy decisions of the Government and the policy decisions of other bodies so far as the principle enunciated above is concerned. **In our opinion the policy decision of the school in fixing the minimum marks for admission in science stream cannot be said to be so outrageous in defiance of logic or accepted moral standards that no sensible person could have arrived at it. The school has to safeguard and uphold its reputation and at the same time it does not want to put children who do not have sufficient aptitude in maths and science to such a stress that they may not be able to cope up with the subject and they may even be harmed mentally or physically. In our opinion the school management has expertise in the matter and the Court should not strike down administrative decisions solely because it is perceived by it to be unwise. A Judge cannot act on the belief that he knows better than the executive on a question of policy, because he can never be justifiably certain that he is right. Judicial humility should, therefore, prevail over judicial activism in this respect.** (emphasis added)

.....

49 Learned counsel for the respondent (writ petitioner) has also submitted that imposing of cut-off marks is without any statutory sanction. **In our opinion it is not necessary that there must be a statutory sanction for imposing of such cut-off marks. The school is free to take such policy decision as it deems fit for maintaining its standards and reputation.**" (emphasis added)

12. The aforesaid judgment of the Division Bench was followed by a

co-ordinate Bench in the case of Ankit Kumar & Ors.(Master) Vs. Summer Fields School & Ors. reported as **2010 VII AD (Delhi) 752** wherein the Court rejected the contentions of the petitioners therein that 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.

13. In the present case, the petitioners have failed to make out a case for interference by this Court while exercising its extraordinary powers of judicial review. The writ jurisdiction could have been exercised by the petitioners only if they were able to show on a simple reading of the facts of the case and on an examination of the decision taken by the respondent/School that the same is so perverse, illegal and arbitrary that it amounts to hostile discrimination, thus shocking the conscience of the Court. In the present case, it is purely an administrative matter of the respondent No.2/School relating to its policy decision in fixing the minimum marks for admission in science stream, which has been challenged and the petitioners have not been able to demonstrate any legal right to claim admission in the science stream. Nor can the petitioners be permitted to improve upon the case as set up by them originally, by taking grounds attributing *malafides* to the respondent No.2/School in their rejoinder, when there was no averment to this effect in the writ petition. This Court is

therefore of the opinion that the decision of the respondent No.2/School to decline the petitioners admission in the science stream in class XI does not call for any interference in writ jurisdiction.

14. This Court would also like to add that in the connected matter, i.e., in W.P.(C) No.4938/2011, the names of the petitioners No.1 and 3 were shown by respondent No.2/school at serial No.5 and 7 in the commerce stream in Class-XI, whereas that of petitioner No.2 was shown at serial No.3 in the arts stream. Pertinently, the aforesaid merit list which was displayed on the notice board of respondent No.2/school on 18.06.2011, was not brought to the notice of the Court by the petitioners while filing the said writ petition. Counsel for the respondents further points out that the parents of the three petitioners in the aforesaid writ petition were called upon by the School vide letter dated 8.7.2011, to send their wards by 11.07.2011 to join the streams allocated to them in terms of Annexure R-3 annexed with the counter affidavit, which fact has intentionally been withheld from this Court.

15. A perusal of the aforesaid writ petition shows that initially it was filed on 08.07.2011 and after removing certain objections, the same was re-filed on 13.07.2011 by which date the said petitioners were well aware of the contents of aforesaid letter dated 08.07.2011, but despite the same, they did not bring it to the notice of the Court when the aforesaid writ petition was listed on 15.07.2011. As a result, on

the said date, identical orders came to be passed permitting the said petitioners to continue their classes in the science stream in Class-XI in the same school, though, it was clarified that no special equity will be created in their favour on the strength of the said interim order.

16. In view of the aforesaid facts and circumstances, while W.P.(C) No.4504/2011 is dismissed leaving the parties to bear their own costs, W.P.(C) No.4938/2011 is dismissed with costs of ₹ 5000/- imposed on each of the petitioners for withholding material information from the Court and it being a case of *suppressio veri, suggestio falsi*. As counsel for the respondents states that the costs imposed may be put to use for a good cause, the costs are directed to be deposited by each of the petitioners in W.P.(C) 4938/2011 within one week, with the Delhi High Court Mediation and Conciliation Centre. Proof of deposit of costs shall be placed on record within one week thereafter.

17. It is further directed that having regard to the fact that the petitioners have been studying in the science stream of class XI on the strength of interim orders passed in the present proceedings, the respondent No.2/School shall hold special classes to enable them to catch up with the rest of the students in their respective streams in class XI. Besides the above, the attendance of the petitioners shall be computed by including the time spent by them in attending classes in the science stream in class XI and credit of marks/grades already

obtained by them in their internal assessments in the Science stream shall also be taken into consideration by the respondent No.2/School while tabulating their results at the end of the year.

18. Petitions are disposed of, along with the pending applications.

HIMA KOHLI,J

DECEMBER 12, 2011
'anb'