

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) NO. 3040/2012 & CM.6558/2012

% *Judgment dated 30.10.2012*

MASTER NEERAJ BHANDoola THROUGH
HIS FATHER RAMESH BHANDoola

..... Petitioner

Through: Mr.Nilendu Vatsayan, Advocate

versus

THE DIRECTORATE OF EDUCATION,
DELHI & ORS.

..... Respondents

Through: Mr.Atul Kumar, Advocate for respondent no.2
Mr.Khowaja Siddiqui for Mr.Sacchin Puri,
Advocate for respondents no.3 and 4
Ms.Shobha Gupta for Mr.Jagdeep Sharma, Adv.
for respondent no.1

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. The present writ petition has been filed by the Petitioner inter alia seeking a direction, order in the nature of mandamus to the Respondents to allow the petitioner to appear in the compartmental examination of Class XI and/or award him grace marks so as to be promoted to Class XII.
2. The necessary facts to be noticed for the disposal of the present petition are that the petitioner is a student of respondent no.3 school since year 2003. The petitioner appeared in the class IX and X exams in the session 2009-2010 and was promoted to Class XI after securing a Cumulative Grade Point Average (CGPA) of 6.5. As per the petition, during the session 2011-2012 there was a drastic shuffle in the management of the respondent no.3 school and also many teachers left the school. Respondent no.3 school appointed new teachers who were not up to the

mark, as a result of which many students failed to do well in their examinations.

3. The respondent no.3 school conducted two Term Tests each consisting of two Formative Assessments and one Summative Assessment. The Formative Assessments were for 25 marks each and the Summative Assessments were for 100 marks each. Thus, in each term the test was for 150 marks. The weightage carried by each Term Test for calculating the cumulative percentage is:

<u>TERM TEST-I</u>		
Test	Marks	Weightage
FA1	25	10%
FA2	25	10%
SA1	100	20%
TOTAL	150	40%

<u>TERM TEST-II</u>		
Test	Marks	Weightage
FA3	25	10%
FA4	25	10%
SA2	100	40%
TOTAL	150	60%

Therefore, as per the petitioner the weightage carried by the Term Test-I is 40% and for the Term Test-II is 60%. Thus, the cumulative percentage of Term Test-I + Term Test-II is 100%.

4. The counsel for the petitioner submits that the petitioner obtained 7.7 marks (i.e. 30.8%) in Economics in FA1 in Term Test-I and was unable to achieve the required 33% marks to pass the subject, but as the petitioner

faired well in other subjects, therefore, the total aggregate was more than 33% marks. It is also submitted that the petitioner has been a regular student, has been attending classes regularly with 85.4% attendance in Term Test-I and 93% attendance in Term Test-II.

5. It is also submitted by the counsel for petitioner that the cumulative percentage of marks obtained by the petitioner in 2011-2012 session is 28.03% in economics and has obtained 33% marks in every other subject i.e., the aggregate cumulative percentage of the petitioner was 41.77%, however, he was declared as failed and was not promoted to class XII. It is also the case of the petitioner that as per his understanding if a student is unable to secure 33% in a subject but has secured 33% marks in the rest of the subjects individually as well as in aggregate, the student will be entitled to one more chance to pass Class XI through compartment exams. The counsel for the petitioner submits that the petitioner was denied the right to appear in the compartmental exams as per Rule 32. It is also submitted that the petitioner has fulfilled both the criteria as per Rule 32 by obtaining 28.03% marks in economics and has obtained 41.77% as aggregate. Rule 32 reads as under:

“32. COMPARTMENT EXAMINATION:

A student who is eligible to take the comprehensive test in order to be declared “passed” can be declared eligible for appearing at the “compartmental examination”, provided he/she has obtained at least 20% in one failing subject in class XI and in not more than two failing subject(s) in classes IV to IX. In case the candidate gets at least 15% of marks in failing subject/subjects (not more than two in classes IV to IX), he should get at least 40% marks in aggregate in the remaining subjects in order to become eligible for the

compartmental examination. Such a student shall be eligible to appear in the subject(s) at a subsequent examination to be held in the last week of April before the summer vacation and to be known as the “Compartmental Examination”. If the student secures in the subject(s) in which he/she has taken the compartmental examination, at least 33% marks disregarding the terminal test marks, he/she shall be declared successful in the compartmental examination and promoted to the next higher class.”

6. It is also the case of the petitioner that he was oblivious of any such Rules/Instructions passed by the Directorate of Education i.e. respondent no.1 Regarding Assessment, Evaluation and Promotion of a Student from one class to another for Class I to IX and XI (Rule 41 of Delhi School Education Rules, 1973), and also submits that it was mandatory for respondent no.3 school to bring the said rules to petitioner’s knowledge.
7. The counsel for petitioner further submits that the father of the petitioner made various representations to the respondents to which the respondents failed to revert back and have deprived the petitioner of an opportunity of being heard. It is also the case of the petitioner that the respondent no.3 school failed to carry out instructions issued by the Directorate of Education for the session 2011-2012 i.e., to conduct Terminal Test as required by the procedure prescribed by respondent no.1.
8. It is next submitted by the counsel for the petitioner that if the petitioner could not fair well in economics in one Formative Test in Term-I, then the respondents should have awarded the petitioner either grace marks or an opportunity to appear in compartmental exams.
9. The counsel for the petitioner submits that many students studying in respondent no.3 school who could not secure the required 33% marks in

one subject have been allowed to appear in the compartmental exam but the petitioner was singled out for reasons not communicated to petitioner.

10. Per contra, counsel for the Directorate of Education and the school have opposed this petition. The counsel for respondent no.1 submits that a three member enquiry committee was constituted to conduct an enquiry by the Deputy Director of Education consisting of the Education Officer Zone-20, Dr. Anurag Yadav, Principal, R.P.V.V., Vasant Kunj and Dr. Rajbir Singh, Principal GBSSS, Mahipalpur, New Delhi, to scrutinize the complaints made by the students of respondent no.3 school. After conclusion of the enquiry it was found that the school was not following the promotional rules of Directorate of Education issued vide order dated 08.09.2001 under Rule 41 of DSER, 1973. It was observed by the committee that the school had given 40% and 60% weightage instead of 25% and 75% to the marks obtained in the term and comprehensive tests respectively and thereby violating the promotional rules.
11. It is also submitted that the committee also examined the case of the petitioner according to the promotional rules and observed that the petitioner could not be promoted to the next higher class by giving grace marks, as per Rule 35. Rule 35 reads as under:

“35. GRACE MARKS FOR CLASSES IX & XI:

Grace marks upto a maximum of 10 in all, shall be awarded to a student to reach the minimum required 33% of marks in each of the subject(s), subject to the condition that a minimum of 25% of marks shall be secured in each subject at the comprehensive test as per rule 29 to make him eligible for promotion, provided he/she does not require more than 5 marks in a subject to come upto the minimum required of 33% of marks in that subject. However, no

grace marks shall be awarded to a student taking the compartmental examination.”

It is further submitted by the counsel for respondent no.1 that the petitioner has only scored 23.25 marks in economics and 14.62 marks in mathematics in the comprehensive test and thus, the petitioner did not fulfill the condition for granting grace marks. The counsel for the respondent no.1 also submits that the petitioner is ineligible for appearing at the compartmental exams as a student has to obtain at least 20% marks in one subject in which he has failed, whereas the petitioner has secured 14.62 marks in mathematics in comprehensive test against the requirement of minimum 20% marks.

12. The counsel for respondent no.3, school, submits that the petitioner was declared failed in Class XI according to the criteria which are mandatory and are followed in all schools recognized by the Directorate of Education, GNCT, Delhi. The counsel submits that as per the instructions regarding assessment, evaluation and promotion of students from one class to another circulated by respondent no.1 i.e. Directorate of Education, GNCT, Delhi dated 08.09.2001, the promotion to the next higher class as per Rule 29 is to be decided on the basis of the cumulative results and comprehensive test. Rule 29 reads as under:

“29. PROMOTION RULES FOR CLASS IV TO XI:

In order to be declared ‘passed’ at the end of the session, a student must secure at least 33% marks in each of the following subjects studied by him/her during the session subject to the condition that

he/she secures 33% marks separately in theory and practical portion also. The promotion is also subject to the condition that a minimum of 25% marks should be secured in the comprehensive test. In computing 33% of the marks, the benefit of a fraction will go to the credit of the student and as such a student shall be declared “passed” and he/she shall be promoted to the next higher class:- Provided that in classes IV to VIII, a student will have to obtain the required passing marks in any two of the three languages in order to get promoted.”

Therefore, for promotion to the next class, a student must secure at least 33% aggregate marks in cumulative test in each subject. It is further submitted that the promotion is also subject to the condition that a minimum of 25% marks should be secured in each subject in the comprehensive test.

13. The counsel for respondent school further submits that as per the assessment report of the petitioner for the year 2011-2012 the petitioner obtained 28.30% marks in economics against the minimum requirement of 33% in the cumulative test and obtained 19.50% in mathematics in comprehensive test against the minimum requirement of 25% whereas the minimum required marks in two subjects in the cumulative/comprehensive tests makes the petitioner ineligible for appearing in compartmental examination for promotion to the next class.
14. It is also submitted by the counsel for respondent school that the petitioner failed in Class XI due to not being able to secure minimum required 33% marks in Cumulative Theory in economics and mathematics wherein he scored 27.4% and 23.80% marks respectively. It is submitted that the

petitioner was unable to secure the minimum required 25% marks in Comprehensive test in mathematics by obtaining only 19.5% marks.

15. The counsel for respondent school also relies upon the letter dated 05.05.2012 addressed by the Deputy Directorate of Education (Dist. South-West-A), C-4, Vasant Vihar, New Delhi to the respondent school communicating the decision of the committee constituted by the Education Officer of the Zone. The committee concluded that out of three students one student namely Karan Khullar could be declared passed but in respect of the petitioner and one Danni Singh the decision with respect to the result remained unchanged.
16. The counsel for respondent school further submits that the petitioner was declared failed on the basis of the examination conducted by the school while taking into consideration the promotional policy notified by the directorate of education and same being applicable to respondent school as per Rule 41 of DSER, 1973. It is submitted that the continuous assessment of petitioner was constantly notified to the petitioner's father during the academic session i.e. during the course of parent teachers meeting held quarterly. It is also submitted that the petitioner's father was explained about the poor performance of the petitioner and also an undertaking was given by petitioner's father in this regard.
17. I have heard counsel for the parties, considered their rival contentions and also perused the pleadings and the annexures placed on record including the Report of the three member enquiry Committee. The enquiry committee in its report has independently scrutinized and analyzed the case of the petitioner in the light of the promotional rules of the Directorate of Education while relying upon Rule 29 which deals with promotion rules for Class XI, Rule 32 which deals with Compartment Examination and Rule 35 which relates to Grace Marks for Class XI and

concluded that the petitioner cannot be promoted to the next higher class as he had not secured the minimum required 25% marks in mathematics in the comprehensive test. The enquiry committee also concluded that the petitioner was neither eligible for compartmental exams nor eligible for being granted grace marks.

18. Thus, in the light of the report of the enquiry committee and submissions made by the counsel for both the parties, the petitioner cannot be promoted to the next higher class by giving grace marks as he did not fulfill the conditions under Rule 29, wherein the petitioner had to score minimum 25% marks in each subject in the comprehensive test to make him eligible for promotion, provided he did not require more than 5 marks in each subject to come up to the minimum of 33% of marks in that subject and maximum 10 marks in all can be given as per Rule 35. The petitioner secured only 23.25% in economics and 14.26% in mathematics in comprehensive test wherein petitioner did not fulfill the said conditions and was held ineligible from being granted grace marks.
19. Further, the petitioner had scored only 14.62% marks in mathematics in the comprehensive test against the requirement of a minimum on 20% marks, which is a condition to be fulfilled to be eligible for appearing at the compartmental examination. Hence, the petitioner cannot be declared eligible for appearing at the compartmental examination as he failed to obtain at least 20% marks in one failing subject.
20. The apex court in **Sanchit Bansal Vs. Joint Admission Board & Ors.** (2012) 1 SCC 157 and **All India Council for Technical Education Vs. Surinder Kumar Dhawan** (2009) 11 SCC 726 observed that the courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of

technical education. The role of statutory expert bodies on education and role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced, with reference to or connected with education, courts will step in.

21. The ratio of the above mentioned decision rendered by the Apex Court in *All India Council for Technical Education (Supra)* is squarely applicable to the facts of the present case, as not only the school has examined the request of the petitioner, but even the Directorate of Education, which constituted an independent committee examined the case of the petitioner and found no infirmity in the decision of the school.
22. Accordingly there is no force in the submissions made by counsel for petitioner as to why the petitioner should be allowed to appear in the compartmental examination or be awarded grace marks so as to be promoted to Class XII. In view of the above I find no illegality, malafides, arbitrariness and unreasonable acts and omissions on part of the Respondents. Accordingly, the present petition and the application stand dismissed.

G.S.SISTANI, J

OCTOBER 30, 2012

ssn