

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 4982/2011 and CMs 10094/2011 & 11552/2011**

Reserved on: 06.01.2012

Date of decision: 24.01.2012

IN THE MATTER OF:

KARAN RAJ SINGH (MINOR) THROUGH HIS NATURAL GUARDIAN

SH. S.K. SINGH

..... Petitioner

Through: Ms. Vandana Bhatia, Advocate

versus

DEPARTMENT OF EDUCATION, GOVT. OF NCT OF DELHI AND ORS.

..... Respondents

Through: Ms. Anjana Gosain, Advocate for
R-1 and R-3 with Ms. Asha Monga, EO-14,
Department of Education.

Mr. Atul Kumar, Advocate for R-2/CBSE.

Mr. Abhijat, Advocate for R-4/School.

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.

1. The present petition is filed by the petitioner through his father as his natural guardian, seeking directions to respondent No.4/School to allow him to attend and pursue his course in Non-Medical Science Stream with Computers in class XI in which he claims to have got admission on 14.06.2011.

2. The facts of the case which lie in a narrow compass are that the petitioner, a student studying in respondent No.4/School, passed class X in June 2011 through respondent No.2/Central Board of Secondary Education (in short '**CBSE**'), where he secured Grade B2. On 14.06.2011, he was admitted to the class XI in the Non-Medical Science Stream with Computers. It is the case of the petitioner that prior thereto, respondent No.4/School had conducted a Students Global Aptitude Index Test and on the basis of the said aptitude test and considering his mark-sheet, as declared by respondent No.2/CBSE for class X, he opted for Non-Medical Science Stream with Computers. After counselling, respondent No.4/School confirmed the admission of the petitioner in Class XI in the Non-Medical Science Stream with Computers. On 14.06.2011, the parents of the petitioner deposited a fee of ₹28,570/- as demanded by respondent No.4/School. However, on 01.07.2011, when the petitioner went to school, he was informed that he would not be permitted to attend classes in the Non-Medical Science Stream with Computers and instead, he was directed to attend classes in the Commerce Stream. It is averred in the writ petition that when the father of the petitioner contacted the school authorities, he was informed that respondent No.4/School had raised the merit of the Science Stream, due to which the petitioner could not be admitted in the Science Group and he could only be allowed to attend

classes in the Commerce Stream. Immediately thereafter, the petitioner lodged a complaint with respondent No.2/CBSE vide letter dated 02.07.2011 and with respondent No.3/Dy. Director of Education (West), vide letter dated 11.07.2011. However, as no action was taken by the said Departments, the present writ petition was filed on 14.07.2011.

3. Vide order dated 18.07.2011, notice was issued in the writ petition and as an interim measure, respondent No.4/School was directed to allow the petitioner to attend his classes in the Non-Medical Science Stream with Computers, in which he was admitted on 14.06.2011. Counsel for respondent No.2/CBSE, who appeared on advance copy, informed the Court that instructions had been issued by respondent No.2/CBSE to all schools not to force the students to change their streams in class XI after grant of admission to one stream and in support of the said submission, learned counsel relied upon the circulars dated 30.03.2006 and 20.06.2007 issued by respondent No.2/CBSE. On 12.09.2011, it was clarified that the interim protection granted in favour of the petitioner would not result in any special equity flowing in his favour.

4. In response to the aforesaid petition, the stand taken by respondent No.4/School was that respondent No.2/CBSE has laid down a standard admission procedure to be followed by all schools affiliated to

the said Board, and that the said system was being scrupulously followed by the school. As per the grading system adopted for class IX and X used for evaluation of the performance of students, assessment was required to be done by using conventional numerical marking mode and then converting the same into grades on the basis of pre-determined marks ranges. To explain the said procedure, learned counsel for respondent No.4/School referred to the Scheme of Examination Reforms and Continuous and Comprehensive Evaluation (in short '**CCE**'), circulated by respondent No.2/CBSE vide circular dated 20.09.2009. It was submitted on behalf of respondent No.4/School that an optional aptitude test alongwith other school records and the CCE would help the students, parents and the teachers in deciding the choice of subjects for class XI and for the purpose of admission in class XI, the CCE certificate would be relied upon. Furthermore, it was stated that the aptitude test, scholastic performance and co-scholastic achievements of a student, all put together would be required to be given weightage by the school for allotting subjects in class XI. Thus, it was averred that every student is given a Cumulative Grade Point Average (in short '**CGPA**') and subject-wise Grade Point (in short '**GP**') and that in order to get admission in class XI, both CGPA and subject-wise GP are considered. Initially, the admission is based on CGPA and in case of two or more students with equal CGPA,

their *inter se* merit is determined through subject-wise GP. Reference was made to the aforesaid circular dated 20.9.2009 issued by respondent No.2/CBSE to state that the said circular stipulates that for the science based course, candidates were required to obtain higher CGPA in one compulsory language, mathematics and science.

5. Learned counsel for respondent No.4/School explained that based on the aforesaid prescribed procedure as laid down by respondent No.2/CBSE for the purposes of fixing cut-off points for admission to various streams, the school conducts an elaborate exercise, whereafter a list of eligible students is released. He adverted to the circular dated 06.07.2010 issued by the Principal of respondent No.4/School which informed that the admission to class XI (2011-12) would be on the basis of the result of the students based on a point system converted into grade points (Annexure B to CM 11552/2011). It was submitted that after following the aforesaid procedure, respondent No.4/School had prepared three separate lists and all the 76 seats available in the Science Stream of class XI were filled up by following the aforesaid procedure. Learned counsel stated that the name of the petitioner did not feature in the aforesaid list simply for the reason that he did not qualify the requisite Grade Points for being eligible for admission in the Non-Medical Science Stream with Computers in class XI. To buttress the said submission,

reference was made to a final list of students admitted in class XI (Academic year 2011-12) alongwith a list showing allocation of the stream to each student, as filed on record. In the said list, the name of the petitioner features at Sr.No.109 and in the last column, where the stream is mentioned, the same is written as "C1/H1/C2/H2". The list reveals that the petitioner had scored GP 6.6 in English, GP 8.1 in Mathematics and GP 5.8 in Science, while the lowest minimum criteria as per the relevant circular dated 08.06.2011 (Annexure-D to CM 11552/2011) required a score of GP 5.2 in English, GP 7.0 in Mathematics and GP 6.7 in Science.

6. Thus, it was stated by learned counsel for respondent No.4/School that the petitioner had scored far less than the required GP in the subject of science, in which the cut-off GP was 6.7. He further pointed out that the petitioner was also given a relaxation of GP 0.2, as he had represented the school in sports and despite the above, the only reason for allocating Non-Medical Science Stream with Computers to the petitioner was on account of a *bona fide* inadvertence on the part of the teacher incharge, who, instead of taking into consideration the petitioner's GP for science, which was 5.8, inadvertently, took into consideration his GP in English, which was 6.6 and after granting him a relaxation of GP 0.2 on the basis of his having represented the school in sports, allotted him Non-Medical Science Stream with Computers under a mistaken impression

that he had scored GP 6.8 in science. In support of the said submission, reliance was also placed on the admission performa of the petitioner filed by respondent No.4/School under the index dated 05.12.2011.

7. Learned counsel for respondent No.4/School urged that the petitioner did not fulfill the prescribed eligibility criteria for admission in Science Stream having scored GP 5.8 in Science subject in his class X examination, which was well below the settled cut off GP 6.7 in Science Stream and even after granting GP 0.2 on account of sports relaxation, he admittedly did not fulfill the eligibility criteria laid down by the school. He further submitted that the aforesaid erroneous admission of the petitioner in the Non-Medical Science Stream with Computers was duly conveyed to his mother as early as on 17.06.2011, when the teacher incharge, upon cross checking the admissions, discovered the same and again on the next date, i.e., on 18.06.2011, when she visited the school and was categorically informed that her son was eligible to be admitted in Commerce Stream with Mathematics and not in the Non-Medical Science Stream with Computers. As regards the circulars dated 30.3.2006 and 20.6.2007, which mandate that students should not be forced by schools to change their subject/stream in class XI after class X results are announced, from science subject to commerce or humanity subject,

counsel for respondent No.4/School submitted that this is not a case of a nature where the petitioner was being forced by the school to change his subject/stream. Rather, it was a case of mistaken admission in the wrong stream, which had been corrected by respondent No.4/School at the earliest given opportunity and it was not a case where the school had any malice towards the petitioner. It was also stated that as far as deposit of fee for the Non-Medical Science Stream with Computers is concerned, the school is ready and willing to refund/adjust the excess fee deposited by the petitioner and also give him special coaching classes in the Commerce Stream with Maths to make up the loss of the academic months.

8. In the rejoinder, counsel for the petitioner reiterated the averments made in the writ petition and denied the fact that the petitioner was admitted in class XI in the Non-Medical Science Stream with Computers on account of any human error/mistake/inadvertence as claimed by respondent No.4/School or that the same was informed to the mother of the petitioner as early as on 17/18.06.2011. It was further stated that respondent No.4/School had not informed the parents of the petitioner about the aforesaid error either verbally or in writing and that though a legal notice dated 02.07.2011 was issued by the counsel for the petitioner to respondent No.4/School asking it to inform the parents of

the petitioner as to why he was not being permitted to attend classes in the Non-Medical Science Stream with Computers, where his admission had been confirmed, the school did not choose to respond to the said notice. It was contended that once he had been admitted in the said stream, respondent No.4/School could not be permitted to act in such an arbitrary fashion by denying admission to the petitioner in the Non-Medical Science Stream with Computers. Counsel for the petitioner stated that the Grade Points scored by the petitioner in the CBSE class X results in the subjects of science and social science were GP 7 each and she particularly relied upon his score card of CBSE Students Global Aptitude Index undertaken by him to urge that as per the said test, the aptitude of the petitioner was recorded as below:-

“Teacher’s observation in order of hierarchy on the basis of free and voluntary response given by the student of Aptitude and Interest.

Interest profile: a. Science
 b. Maths
 c. Behavioral Science

Aptitudes indicated: a. Social Science
 b. Maths
 c. Science

The score card is only indicative of the Student’s preferences. The result may be taken as a ‘facilitator’ only. The level of mental preparedness and sincerity of the student at the time of attempting

the test may affect the score.

It is expected that the SGAI Score will empower the student to make a wise selection of subjects to be taken up in class XI”.

9. This Court has perused the case file, taken into consideration the submissions made by the learned counsels and carefully examined all the relevant documents placed on record.

10. The facts of the case are undisputed. It has not been denied by respondent No.4/School that at the time of his admission to class XI , the petitioner was granted admission in the Non-Medical Science Stream with Computers. It is also undisputed that respondent No.2/CBSE does not lay down the admission criteria for students when they take admission to class XI after clearing class X and that each school lays down its own norms for the said purpose. However, it is considered necessary to test the explanation offered by respondent No.4/School for granting admission to the petitioner in the Non-Medical Science stream, which is that this happened due to a genuine error on the part of the teacher incharge, who instead of taking into consideration his GP in science, inadvertently, took into consideration his GP in English and further, after granting him relaxation of GP 0.2, allotted to the petitioner, Non-Medical Science

stream with Computers under a mistaken impression that he had scored GP 6.8 in Science, as against the cut-off fixed by the school which was GP 6.7.

11. It is settled law that Courts should ordinarily refrain from interfering with matters relating to the internal working of schools, colleges and other educational institutions for the reason that the decisions taken by such academic bodies are largely in the nature of policy decisions and the rules and regulations made by the institutions are based on their day to day experience. As long as such a decision/rule/regulation is on the face of it unreasonable, arbitrary or in violation of the principles of natural justice, the Courts ought not to interfere therein as every institution has a right to set its own benchmark for achieving academic excellence. Providing standards of admission by laying down eligibility criteria is in consonance with the object of promoting excellence in academics and the object of fixing an eligibility criteria is not only to maintain such standards of excellence in an academic institution, but also to enable institutions to shortlist applicants for admission where there are more applicants and less seats available.

12. As held by the Supreme Court in the case of Visveswaraya Technological University and Anr. Vs. Krishnendu Halder and Ors.

reported as **(2011) 4 SC 606**, the object of providing eligibility criteria is to ensure maintenance of excellence in standards of education and not to fill up all the seats. Reducing the standards to fill the seats was observed to be a dangerous trend that would lead to destruction of the quality of education. It was held that determination of such standards being part of the academic policy of an educational institution, are ordinarily beyond the purview of judicial review. On similar lines was the decision of a Division Bench of this Court in the case of Ashutosh Bharti Vs. Ritnand Balved Education Foundation reported as MANU/DE/0024/2005, wherein it was held that educational institutions are the best judges to impose appropriate restrictions and conditions and merely because the conditions imposed were found to be inconvenient to some students, could not be a ground to lay a challenge to the same as being arbitrary.

13. In a recent decision of another Division Bench of this Court in the case of Independent Schools' Federation of India (Regd.) Vs. Central Board of Secondary Education and Anr. reported as **183 (2011) DLT 211**, it has been reiterated that Courts are not experts to judge the decisions that have been arrived at by the educational bodies and experts and the same are policy decisions with which the Courts should be slow to

interfere for the reason that opinions are expressed by the experts who are more acquainted and familiar with the problems.

14. Another Division Bench of this Court in the case of Siddharth Kaul & Orvs. Vs. Guru Gobind Singh Indraprastha University reported as MANU/DE/6677/2011 opined that a university/academic body is always entitled to set a higher benchmark and students cannot be permitted to decide the academic policy or seek change thereof to enable them to overcome their deficiencies and further that mere payment of fee would not create any right in favour of the students.

15. In the present case, respondent No.4/School formulated a criteria for filling up seats in the subject streams in a particular manner and the criteria for allocation of Science Stream in Class XI(2011-12) was fixed in the following manner:-

SUBJECT STREAM	ENGLISH	MATHEMATICS	SCIENCE
SCIENCE WITH MATH ENG, PHY, CHEM, MATH + ONE OF THE FOLLOWING: COMPUTERS(C++)/ECONOMICS/BIOLOGY (PHYSICAL EDUCATION MAY BE OPTED AS 6 TH SUBJECT)	A1, A2, B1, B2, C1 (Grade Point 5.2)	A1, A2, B1, B2, (Grade Point 7.0)	A1, A2, B1, B2 (up till Grade Point 6.7)
SCIENCE WITHOUT MATH ENG, PHY, CHEM, BIO+ ANY ONE OF THE FOLLOWING: COMPUTERS(C++)/PHYSICAL EDUCATION	A1, A2, B1, B2, C1 (Grade Point 5.2)	A1, A2, B1, B2 (Grade Point 6.2)	A1, A2, B1, B2 (up till Grade Point 6.7)

16. The petitioner's class X examination results 2011, as declared by respondent No.2/CBSE under the CCE scheme reflected his academic performance as below:-

"Part 1 – Scholastic Areas

Part 1A – Academic Performance:

Subject	FA	SA	TOTAL	GP
101 ENGLISH COMM.	B1	B2	B2	07
085 HINDI COURSE-B	B2	B1	B1	08
041 MATHEMATICS	A2	B1	B1	08
086 SCIENCE	C1	C1	B2**	07
087 SOCIAL SCIENCE	B2	C1	B2**	07
			CGPA	7.4

Part 1B

	Grade
500 -WORK EXPERIENCE	B+
501 -ART EDUCATION	B+
502 -PHY & HEALTH EDUCA.	B+

Part 2 Co-Scholastic Area:

Part 2A – Life Skills	Grade	Part 2B – Attitude and Values Towards	Grade
511 THINKING SKILLS	A	521 TEACHERS	A+
512 SOCIAL SKILLS	A	522 SCHOOL-MATES	A+
513 EMOTIONAL SKILLS	A	523 SCHOOL PROGRAMMES	A+
		524 ENVIRONMENT	A
		525 VALUE SYSTEM	A

Part 3 Co-Scholastic Areas

Part 3A-Co-Scholastic Activities	Grade	Part 3B-Phy. & Health Edu.	Grade
531 LITERARY & CREATIV	A	541 SPORTS	A+
532 SCIENCE & ICI S	A	548 GARDENING/SHRAMDAN	A

Result: QUAL

**** - Upgraded Grade by one level"**

17. A perusal of the aforesaid examination results of the petitioner read with the footnote reveals that GP 7, the Grade Points scored by the petitioner in both the subjects, i.e., science and social science was arrived at by converting the Cumulative Grade Point Average

(CGPA) into subject-wise Grade Points. In the case of the petitioner, his cumulative average point in science subject as also social science subject were B2**. The two stars suffixed to Grade B2 have been explained in the foot note as upgradation by one level. In other words, GP 7 assigned to the petitioner for the subjects of science and social science were on the basis of upgradation by one level and that they were not the actual grade points scored by him. Further, the analysis sheet of the result of the petitioner for class IX and X placed on record by respondent No.4/School reveals that he had scored GP 5.8 in Science, and GP 6 in Social Science, i.e., Grade C1 in both subjects. In the last column of the said analysis sheet, the stream allocated to the petitioner has been clearly reflected as "C1/H1/C2/H2". Furthermore, a perusal of the entire list of allocation of streams in respect of class X students in respondent No.4/School shows that none of the students, who had been allotted Science stream, had scored marks that were below the cut-off GP 6.7, which was the minimum eligibility criteria fixed by respondent No.4/School for allocation of Science stream with Maths.

18. It is also pertinent to refer to the document enclosed by respondent No.4/school as annexure E to CM 11552/2011, which is a tabulation of the Grade Points obtained by all the 76 students, who have

been admitted to Science stream. The said tabulation shows that the last four students at serials No.73 to 76, had scored GP 6.7, which was fixed as the cut off Grade Point. Another relevant point to note is that the results of the petitioner as reflected in the collective analysis sheet of the students to be promoted from class X to class XI tallies with the results reflected in the admission form of the petitioner, where the stream allocated to him has been shown as "C1/H1/C2/H2" and the stream chosen is shown as "S1+ C++". A bare perusal of his admission form shows that the petitioner had been allocated stream "C1/H1/C2/H2" and not "S1", which was only reflected as his stream of choice. However, at the bottom of the petitioner's admission form, which bears his signature as also that of his father's, there is an endorsement made by the teacher incharge showing "S1" within a circle alongwith a remark, "sports quota". The same bears the date, 14.6.2011 on the top right side.

19. Having regard to the aforesaid documents placed on record by the respondent No.4/School, this Court finds force in the submission of learned counsel for respondent No.4/School that allocation of Non-Medical Science Stream with Computers to the petitioner was on account of inadvertence on the part of the teacher incharge, who remained under a mistaken impression that he had scored GP 6.6 in Science subject,

whereas he had actually scored GP 5.8 in the said subject and GP 6.6 in English. Then she went on to consider his GP in English and by adding to it GP 0.2 on account of sports relaxation granted to him, allocated him Non-Medical Science Stream with Computers. The documents reveal that the petitioner was ineligible for being admitted to Non-Medical Science Stream with Computers having scored GP 5.8 in Science subject in class X examinations, which is well below the cut off of GP 6.7 for the Science stream fixed by the school as an eligibility condition. Even if the benefit of GP 0.2 relaxation under the sports category is granted to the petitioner, he would not make the grade as his score would tally to GP 6, which is still well below the cut off GP 6.7 required in Science Stream.

20. It is also pertinent to note that in the writ petition, the stand taken by the petitioner was that respondent No.4/School had changed the admission parameters after receiving the fee from him and that he was granted admission in Non-Medical Science Stream with Computers as per the prevalent rules and norms determined by respondent No.4/School. The aforesaid submission is however not borne out from the records as it is noticed that there has been no change by way of dilution/upgradation of the eligibility criteria prescribed by respondent No.4/School for assigning different streams and having scrutinized the records pertaining

to the other students, belonging to the same batch as the petitioner who were found eligible, and were assigned Science stream, there is no discernable disparity, discrimination or arbitrariness exercised by the respondent No.4/School. Thus the petitioner has not been able to substantiate his claim that the admission parameters were sought to be raised by respondent No.4/School after his admission to class XI in the Non-Medical Science Stream with Computers.

21. In the course of arguments, much emphasis was laid by learned counsel for the petitioner on the fact that on the basis of an interim order passed on 18.07.2011, the petitioner was permitted to continue attending classes in the Non-Medical Science Stream with Computers and while deciding the present petition, the Court may not lose sight of the fact that six months have passed ever since then. It was canvassed that the petitioner had been performing very well in the Non-Medical Science Stream with Computers and that he ought not to be disturbed midstream.

22. Conscious of the fact that disturbing a student in midstream could have serious consequences for him and his academic career, it was deemed expedient to pass an order on 02.11.2011 calling upon counsel for respondent No.4/School to place on record the result of the internal

assessment of the petitioner for the past six months. On the aforesaid date, the father of the petitioner was present and he was also requested to objectively assess his son's academic progress and revert back to the Court. Respondent No.4/School filed the results of the petitioner for Unit Test-1 under index dated 05.12.2011 and on 03.01.2012 the school filed the collective results of the petitioner with respect to Unit Test-1 and 2. The academic performance of the petitioner in Unit Test-1 and Unit Test-2 are as below:-

Unit Test -1

SUBJECT	UNIT TEST-1 (25)	THEORY	PRACTICAL	TH.+PRAC.(100)	TOTAL (125)
ENGLISH	10.0	37.5		37.5	47.5
MATHS	16.0	27.5		27.5	43.5
PHYSICS	3.0	16.5	21.0	37.5	40.5
CHEMISTRY	0.5	11.0	13.5	24.5	25.0
COMPUTER	10.0	9.5	11.0	20.5	30.5
GRAND TOTAL (625)					187.0

Unit Test-2

DATE OF EXAM	SUBJECT	UNIT TEST-2 (25)	DATE OF RETEST EXAM	MARKS (25)
14-11-2011	ENGLISH	11.5		
28-11-2011	MATHS	16		
21-11-2011	PHYSICS	08		
05-12-2011	CHEMISTRY	ABSENT	24-12-2011	06
12-12-2011	COMPUTER	ABSENT	27-12-2011	0

23. The aforesaid academic performance of the petitioner reveals that while he faired well in the subjects of English, Mathematics and

Physics in Unit Test-1, the marks scored by him in the subject of Chemistry was 25 and in Computer was 30.5, as against the pass marks of 42.5 out of 100 in each subject. As regards the result of Unit Test-2, the petitioner scored 11.5 in English, 16 in Mathematics and 8 in Physics out of 25 marks in each subject and he absented himself in the said unit test held for Chemistry and Computers on 05.12.2011 and 12.12.2011, respectively. Upon a re-test conducted for the petitioner on 24.12.2011 for Chemistry and on 27.12.2011 for Computers, he scored 6 marks in Chemistry and 'Nil' in Computer, against the pass marks of 8.5 out of 25.

24. Having perused the aforesaid results of the petitioner, which showed a remarkable decline in his academic performance in the first quarter, vide order dated 07.12.2011, the Court required the presence of the petitioner and his father, so as to interact with them. On 19.12.2011 and 21.12.2011, the Court took pains to explain to both, the petitioner and his father fact that the academic career of the student ought to be given primacy and loss of objectivity while assessing his performance would jeopardize his further studies. It was also pointed out that the performance of the petitioner in the Non-Medical Science Stream with Computers did not bode well for him and any insistence on his carrying on his studies in the said stream would result in sacrificing his future

prospects at the alter of his parent's obduracy. While requesting the father of the petitioner to carefully weigh his options by keeping in mind the performance of the petitioner for the past six months, the matter was adjourned. Despite the aforesaid fact, on the next date of hearing, the petitioner and his parents did not turn up, nor did they convey their decision through their counsel. Instead, on 6.1.2012, the counsel for the petitioner stated that she had instructions to argue the matter on merits.

25. The Court is quite mindful of the fact that a matter like the present one ought not to be treated as an adversarial litigation. The focus has to be only on the petitioner and his academic progress in the light of the extant rules and regulations. There is no place for pampering false egos or assuaging hurt sentiments of either the parents of the petitioner or the respondent No.4/School. It must be remembered that these are the crucial formative years of the petitioner and his academic progress as a student shall lay the foundation for his higher studies which shall finally be the springboard for his career progression. In such circumstances, the insistence that the petitioner should continue in the Non-Medical Science Stream with Computers, in the face of his adverse academic performance for the past six months, may end in playing havoc with his future. Instead, if he switches to the Commerce stream with Maths even now, the result would be that while one door may close,

another door shall open where the petitioner's skill in the subjects of his choice, i.e., Maths and English, in which he has performed well, shall be put to good use and be further enhanced in the Commerce Stream.

26. The merits of the case have already been discussed. The same clearly bring out the fact that not only was the petitioner ineligible for being admitted to the Non-Medical Science Stream with Computers in terms of the eligibility criteria laid down by respondent No.4/school, but even after he had been attending classes in the said stream on the strength of the interim order passed on 18.07.2011, he had not been able to perform well in the subjects of physics and chemistry, as is clearly reflected from his results of Unit Test-1 and Unit Test-2.

27. The petitioner and his counsel ought to have realized that having regard to the sensitivity and urgency of the matter, it was not one which could have brooked any delay. Instead, a perusal of the order sheets clearly reveal that the counsel for the petitioner has been dragging his feet throughout the proceedings. When the interim order was granted in favour of the petitioner on 18.07.2011, the matter was adjourned to 25.08.2011. However, much before 25.8.2011, on 08.08.2011 the respondent No.4/school filed an application for vacation of the stay orders, registered as CM 11552/2011. Though advance copy of the said

application was duly served on the counsel for the petitioner, he did not appear on 08.08.2011. Resultantly, notice was issued on the application, returnable for the date fixed, i.e., 25.08.2011, when counsel for the petitioner appeared and sought time to file a reply. The case was then adjourned to 12.09.2011, on which date further time was sought by counsel for the petitioner to file the reply affidavit. For the next two dates, i.e., 28.09.2011 and 02.11.2011, counsel for the petitioner did not turn up. He again absented himself on 09.12.2011 and 21.12.2011 and the matter was argued on 06.01.2012 at the insistence of the Court. This leaves the court with a distinct impression that attempts were being made on the part of the petitioner and the counsel to avoid addressing arguments and use dilatory tactics to prolong the proceedings, so that the academic year may come to an end in a few more months and consequently, the petition be rendered infructuous.

28. It is also relevant to note that the error committed by the concerned teacher incharge of respondent No.4/School was brought to the knowledge of the parents of the petitioner within a reasonable time of his admission, which is apparent from the fact that even as per the petitioner, he was admitted to class XI in the Non-Medical Science Stream with Computers on 14.06.2011, and assuming that the school did not convey the said error committed by the teacher incharge on

17/18.06.2011 as claimed by the school and did so only on 01.07.2011, when he was not permitted to attend the said classes and instead, was called upon to attend classes in Commerce stream, the time line between the admission of the petitioner to the Non-Medical Science Stream and intimation to him to go to attend classes in Commerce Stream was only two weeks.

29. Even otherwise, upon a perusal of the admission form of the petitioner and the computation of his analysis sheet when compared with his other classmates as placed on record, the inevitable conclusion is that the stream allocated to the petitioner was not "Science", but "C1/H1/C2/H2". Further, the results of the petitioner in Unit Test 1 and Unit Test 2 held in the last six months have also not been encouraging and portend an uncertain future for him in the Non-Medical Science Stream. The CBSE Students Global Aptitude Test was also an indicator of the aptitude of the petitioner, which was inclined towards Social Science as a first choice, followed by Maths and lastly, Science.

30. It is not a case where the petitioner has alleged any *malafides* against respondent No.4/School. Nor has the claim of the petitioner that the school has adopted a pick and choose policy or that he has been arbitrarily discriminated against, been substantiated. On the basis of the

documents placed on record, this Court is satisfied that the admission of the petitioner in the Non-Medical Science Stream with Computers was purely on account of an error on the part of the teacher incharge. In the course of arguments, counsel for respondent No.4/School had informed the Court that an explanation had already been called for from the concerned teacher and in this regard, he had relied upon letters dated 04.07.2011 and 01.08.2011 addressed to the said teacher, copies of which were taken on record. It was submitted that no action was required to be initiated against the said teacher as she was on contractual appointment and had tendered her resignation to the School on 17.09.2011, which had been duly accepted.

31. It is relevant to note that the Circulars dated 30.03.2006 and 20.06.2007 issued by respondent No.2/CBSE as referred to in the order dated 18.07.2011 are not applicable to the case in hand for the reason that it is not a case where the respondent No.4/School had forced the petitioner to change his subject after the announcement of the results of class X; rather, the admission of the petitioner in Science stream was sought to be cancelled for the reason that he did not meet the eligibility criteria laid down by the school and applied uniformly to all the students of his batch without any upward or downward revision. Further, mere

payment of school fee for the Non Science Maths stream with Computer would not create a vested right in favour of the petitioner.

32. The question, which remains to be decided is the manner in which the relief is to be moulded. The Court is conscious of the fact that the petitioner would face some difficulty in coping up with the rest of his class in the Commerce stream as almost half an academic year has already passed. It is also conscious of the fact that the initial blame lies at the door of respondent No.4/School in not being vigilant enough to have carefully scrutinized and cross checked the analysis sheet of the students as also the admission form of all the students including the petitioner before allocating the subject stream to them. At the same time, the Court cannot lose sight of the fact that the said oversight was brought to the knowledge of the petitioner/his parents on 01.07.2011, i.e., within a period of two weeks if reckoned from 14.06.2011, the date of his admission to class XI and that the petitioner has been continuing to attend his classes in the Non-Medical Science Stream with Computers on the strength of an interim order dated 18.07.2011 and vide order dated 12.09.2011, it was further clarified that no special equity would flow in his favour due to the aforesaid interim order. Therefore, merely because the petitioner has continued to study in the Non-Medical Science Stream

with Computers in class XI for the past six months, cannot be the sole consideration that ought to weigh with the Court while deciding the present case. Even if the eligibility criteria laid down by respondent No.4/School for admission to the Non-Medical Science Stream with Computers in class XI, which has been uniformly been applied to all the students in the said batch is over looked, the academic performance of the petitioner for the past six months has to be taken into consideration.

33. In view of the aforesaid facts and circumstances, it is deemed appropriate to decline the relief sought in the present petition and vacate the interim orders. The respondent No.4/school is directed to permit the petitioner to start attending classes in the Commerce stream with Maths in class XI, in terms of the stream allocated to him as per his eligibility, based on his performance in class X, as early as possible. Taking into consideration the role of respondent No.4/School and the lack of due diligence displayed by it, while allocating the subject stream to the petitioner, it is further deemed expedient to balance the equities by issuing the following directions for compliance:-

- (a) Respondent No.4/School shall not claim any fee from the petitioner for the past six months and adjust the fee already

deposited by him towards the fee that shall be payable for the next six months.

- (b) Respondent No.4/School shall make good the loss of classes in the Commerce stream suffered by the petitioner, by giving him special coaching classes without burdening him/his parents with any additional fee for the same.
- (c) Further, respondent No.4/School shall bear the burden of all the expenses, to be incurred by the petitioner/his parents in buying a second set of books and study material for the allocated subject stream, and reimburse them on the basis of the bills produced by them.
- (d) Respondent No.4/School shall give the petitioner the benefit of his attendance by including the classes attended by him in the Non-Medical Science Stream with Computers.
- (e) Respondent No.4/School shall take into consideration, the results of Unit Test-1 and Unit Test-2 undertaken by the petitioner while carrying out an analysis of his results at the end of class XI. If considered necessary, a reasonable relaxation may also be given to the petitioner to make up for the loss of academic session

suffered by him in the Commerce stream in the current academic year.

- (f) To avoid any such occurrence in future, respondent No.4/School shall ensure that while allocating subject streams to the students in the higher classes, their collective analysis sheets are scrutinized and tallied at two separate levels so that any discrepancy if detected, is rectified in the process of cross checking.
- (g) The aforesaid procedure shall be prescribed by respondent No.2/CBSE as a standard guideline to be followed by all the schools affiliated to it and duly circulated by it within six weeks for intimation to the schools for making necessary compliances.

34. The writ petition is disposed of while leaving the parties to bear their own costs.

JANUARY 24, 2012
rkb

(HIMA KOHLI)
JUDGE