

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

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Date of decision: 28th July, 2015

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W.P.(C) No.5231/2015 & CM No.9482/2015 (for directions)

CHETAN KUMAR

..... Petitioner

Through: Mr. Pulkit Sharma & Mr. Prashant
Sivarajan, Advs.

Versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Anurag Ahluwalia, CGSC for
UOI.

Mr. Amit Bansal, Ms. Manisha Singh
& Ms. Seema Dolo, Advs. for R-3.

Mr. Dharamveer Singh, Adv. for R-4.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition impugns the action of the respondent No.3 Central Board of Secondary Education (CBSE) of withholding the result of the Senior School Certificate Examination (Class XII) of the petitioner inspite of having issued the admission card to enable the petitioner to take the said examination. The petition also impugns the letters dated 13th May, 2015 and 17th May, 2015 of the respondent No.3 CBSE rejecting the representations of the petitioner and holding the petitioner not eligible for admission to Class XII of the respondent No.4 Shiksha Bharati Public (SBP) School, Dwarka, New Delhi affiliated to the respondent No.3 CBSE.

2. The facts are not in dispute. The petitioner did his Class XI in the year 2012-13 from Kendriya Vidyalaya, Sector-8, R.K. Puram, New Delhi affiliated to the respondent No.3 CBSE. The petitioner thereafter took transfer from the said school and took admission to Class XII in Children's Paradise Public Senior Secondary School (CPPSSS), Kota, Rajasthan and passed the Senior School Certificate Examination (Class XII) held by the Board of Secondary Education, Rajasthan in the year 2014. The petitioner however again took admission in Class XII of the respondent No.4 SBPS, Dwarka, New Delhi affiliated to the respondent No.3 CBSE and was as aforesaid allowed to appear in the Senior School Certificate Examination (Class XII) held by the respondent No.3 CBSE in the year 2015. However, his result was withheld as the respondent No.3 CBSE then realized that the petitioner having passed his Class XII from the Board of Secondary Education, Rajasthan, was not entitled to take the Senior School Certificate Examination (Class XII) of the respondent No.3 CBSE.

3. Notice of the petition was issued and vide order dated 25th May, 2015 liberty was given to the petitioner to approach the respondent No.3 CBSE to ascertain his result and the respondent No.3 CBSE was directed to inform

the petitioner his result, without issuing any marksheet or disclosing the result on the website.

4. Counter affidavits have been filed by the respondent No.3 CBSE as well as the respondent No.4 SBP School. The counsels have been heard.

5. The respondent No.3 CBSE in its counter affidavit also has pleaded that the petitioner having passed his Class XII from CPPSSS not affiliated with the respondent No.3 CBSE, was not eligible for taking Class XII examination conducted by the respondent No.3 CBSE. It is further pleaded that there is no provision in the Examination Bye-Laws, 1995 of the respondent no.3 CBSE for a student who has already passed Class XII from another Board to take re-admission in Class XII with a CBSE affiliated school and to take Class XII Board Examination conducted by the respondent No.3 CBSE. It is contended that the respondent No.4 SBPS made a mistake in giving admission to the petitioner in Class XII. It is also contended that though the Examination Bye-Laws of the CBSE allow a student to improve / upgrade his performance in the Class XII examination but only those candidates who have passed Class XII examination conducted by the CBSE are eligible to re-appear in the succeeding year as a private

candidate and the petitioner was not eligible to appear as a case of improvement also.

6. Need is not felt to refer to the counter affidavit of the respondent No.4 SBP School.

7. The respondent No.3 CBSE in its counter affidavit as well as during the hearing referred to Bye-law 7.5 of its Examination Bye-Laws, 1995 and which is as under:

“7.5 Admission to Class XII

- (i) As the syllabus prescribed at Senior level is of two years integrated course, no admission shall be taken in class XII directly. Provided further that admission to Class XII in a school shall be open only to such a student who:
 - (a) has completed a regular course of study for Class XI and has passed class XI examination from an institution affiliated to this Board
 - (b) has completed a regular course of study for class XI and has passed class XI examination from an institution affiliated to this Board and migrating from / within one city / state to another only on the transfer of the parent(s) or shifting of their families from one place to another, after procuring from the student the mark sheet and the Transfer Certificate duly countersigned by the Board; and
 - (c) has completed a regular course of study for class XI and has passed class XI examination from an institution recognized by / affiliated to any recognized Board in India can be admitted to a school affiliated to this Board only on the transfer of the parent(s) or shifting of their families from one place to another, after procuring from the student the mark sheet and the Transfer Certificate duly countersigned by the Educational Authorities of the Board concerned. Notwithstanding anything contained in the rules above, Chairman shall have the powers to allow change of

school for better academic performance, medical reasons etc. To avoid undue hardship to the candidate(s).

In case of all such admissions the schools would obtain post facto approval of the Board within one month of admission of the student.”

8. It is the contention of the counsel for the respondent No.3 CBSE, (i) that Clause (a) of the Bye-Law supra applies for admission to Class XII of the same School, from which the student has passed Class XI; (ii) Clause (b) applies for admission to Class XII of a School in a city / state other than the city / state from a school wherein the student has passed Class XI—however for application of the said Clause, the change of city / state should be either on account of transfer of the parents of the student or owing to shifting of the family of the student from one city / state to another and both the schools should be affiliated to the CBSE; and, (iii) Clause (c) of the aforesaid Bye-Law applies for admission to Class XII of a school affiliated to the CBSE of a student who has passed his Class XI examination, though not from a School affiliated to the CBSE but from a school / institution recognized / affiliated to any other recognized Board of Examination—this Clause is also attracted only if the parents of the student have been transferred from one city / state to another or the family of the student has shifted from one place to another. It is contended that it is not the case of the petitioner that he

shifted from Delhi to Rajasthan or back to Delhi on account of transfer of his parents or owing to shifting of his family. It is further argued that thus the conditions on which the petitioner could be admitted to Class XII of the respondent No.4 SBPS, were not fulfilled.

9. I have enquired from the counsel for the petitioner, whether there is any other Bye-Law, Rule or Regulation of the CBSE governing the subject. The answer is in the negative.

10. I am unable to accept the contention aforesaid of the counsel for the petitioner with respect to Clause (a) of the Bye-Law supra. I am unable to find anything therein to suggest that the same deals with admission to Class XII in the same School, from which the student has passed Class XI examination. Had that been the intention while framing the Bye-Law, the words “the same” would have been inserted between the words “has completed a regular course of study for Class XI and has passed Class XI examination from” and the words “institution affiliated to this Board”. On the contrary, Clause (a) as exists, is for admission to Class XII, of a student who has completed a regular course of study for Class XI and has passed Class XI examination from an institution affiliated to the CBSE. Thus, as

long as both the institutions / schools i.e. the one from which the student has passed Class XI examination and the one in which the student is seeking admission in Class XII are situated in the same city and are affiliated to the CBSE, as per Clause (a) supra, the admission to Class XII is permitted. Rather, as far as I know, the occasion for admission or fresh admission to Class XII of the same school, from which the student has done Class XI, does not arise and Class XI and Class XII being an integrated course, the student, on passing the examination of Class XI, is promoted to Class XII. The fresh admission, at least as far as Delhi is concerned, is only in Class XI and with respect whereto also it has been held in *The Principal, Cambridge School Vs. Payal Gupta* (1995) 5 SCC 512 that the examination of 10th class cannot be regarded as terminal examination for those who want to continue their study in XIth & XIIth Classes of the school.

11. In my opinion, the Bye-law 7.5 supra can be broken up into the following components:

- (i) The syllabus of Class XI and Class XII is integrated and hence none can take admission directly in Class XII in a school affiliated to CBSE.

- (ii) However, the 'proviso' permits admission directly to Class XII of a school affiliated to the CBSE,
- (a) To those who have completed a regular course of study for Class XI and have passed Class XI examination from another school affiliated to CBSE and situated in the same city.
 - (b) To those who have completed a regular course of study for class XI and have passed Class XI examination from a school affiliated to CBSE in another city / state but have had to migrate from that city / state on account of transfer of parents or shifting of their family.
 - (c) To those who have completed a regular course of study for Class XI and have passed Class XI examination from a school in another city / state, though not affiliated to CBSE but recognized or affiliated to any recognized Board in India if had to migrate from that city/state on account of transfer of parents or shifting of their family.

12. The petitioner, in my view, was entitled to direct admission to class XII in respondent No.4 SBP School, New Delhi, affiliated to CBSE under Proviso (a) to Bye-law 7.5, having completed a regular course of study for Class XI and having passed Class XI examination from Kendriya Vidyalaya, Sector-8, R.K. Puram, New Delhi affiliated to the CBSE.

13. Faced therewith, the counsel for the respondent No.3 CBSE contends that the petitioner having sought admission in Class XII of the respondent No.4 SBP School with a gap of one year after passing Class XI examination and having in the said one year passed Class XII examination from the Board of Secondary Education, Rajasthan, was not eligible for direct admission to Class XII in respondent No.4 SBP School.

14. However, no such restriction is found in Bye-Law 7.5 supra. On enquiry, whether there is any such restriction in any other Bye-Law, Rule or Regulation of the CBSE, the counsel for the respondent No.3 CBSE has fairly stated that there is none.

15. In the absence of there being any requirement in Bye-Law 7.5 or in any other Bye-Law, Rule or Regulation, of Class XI and Class XII being required to be done in consecutive years and in the absence of any

prohibition in Bye-Law 7.5 or in any other Bye-Law, Rule or Regulation against direct admission in Class XII after a gap of one year of doing Class XI or if otherwise fulfilling Bye-Law 7.5, being not eligible, for the reason of having passed Class XII examination of another Board of Examination, I am unable to read any such restriction. The respondent No.3 CBSE has also not disclosed any other reason for reading any such restriction. It is not their case that the petitioner was overage or not eligible for any other reason. Else, I am of the view that if a student is desirous of passing Class XII examination from CBSE as well as from any other Board of Secondary Education, there cannot be said to be anything *per se* wrong therewith. Instances of doing graduation and post-graduation twice (in different subjects) and having double qualification therein are well known. Moreover, if the respondent No.3 CBSE for any reason whatsoever is of the opinion that Class XI and Class XII should be done in consecutive years or that after having passed Class XII examination of any other Board of Education, Class XII examination of the CBSE cannot be taken, it will have to make a provision therefor in its Bye-Laws/Rules/Regulations.

16. Thus, the impugned actions of the respondent No.3 CBSE of withholding the result of the petitioner of Senior School Certificate

Examination (Class XII) and of holding the petitioner ineligible for admission to Class XII of the respondent No.4 SBP School in the year 2014, cannot be sustained and is quashed. Axiomatically, the respondent No.3 CBSE is directed to, within one week hereof, declare the result of the petitioner.

The petition is disposed of.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 28, 2015

‘gsr/bs’..