

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2016

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.Nos.25976 and 25977 of 2016

And

W.M.P.Nos.22226 to 22231 of 2016

Minor R.K.Jayavardhani
Rep. by her natural Guardian
And her father
Mr.R.Gunasekaran ... Petitioner in W.P.25976/2016

Minor G.Oviya Priya
Rep. by her natural Guardian
And her father
Mr.S.Govindaraj ... Petitioner in W.P.25977/2016

Vs.

- 1 The Chairman
Central Board of Secondary Education
Shiksha Kendra, 2, Community Centre,
Preet Vihar
Delhi-110 092
- 2 The Joint Commissioner(Acad)
Kendriya Vidyalaya Sangathan
(Ministry of HRD, Dept of Education, Govt. of India)
18-Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110 016
- 3 The Deputy Commissioner,
Kendriya Vidyalaya Sangathan,
Southern Region,
IIT Campus,
Chennai District.
- 4 The Principal
Kendriya Vidyalaya,
Gill Nagar, Choolai Medu,
Chennai-600 094. ... Respondents in both W.Ps.

Common Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the entire records connected with the proceedings of 2nd respondent, vide F.110331-01/2016/KVS(HQ)/Acad. dated 14.03.2016 and quash the same, consequently direct the 3rd respondent to provide 11th Standard admission in 4th respondent School to the petitioner.

For Petitioners : Mr.P.Saravanan

For Respondents : Mr.G.Nagarajan for R1

Mr.M.Vaidyanathan for R2 to R4

C O M M O N O R D E R

By consent, these writ petitions are taken up for final disposal.

2.The father of the minor petitioner in W.P.No.25976 of 2016 in the affidavit filed in support of the writ petition would aver among other things that his daughter R.K.Jayavardhani had studied in the fourth respondent School upto X Standard and also participated in the Regional Level Kabadi Tournament for the year 2013-14 and also completed the training in Scouts and Guides and she was also part of

the team which won under 19 Kabadi which was organized by Kendriya Vidyalaya, Minambakkam on 25.08.2015. The petitioner in the X Standard examination held during March, 2016, had secured the following marks:

"1.English Communication - A2 Grade Marks, GP 09 (Marks 80-90), 2.Comm. Sanskrit - B2 Grade Marks GP 07 (Marks 61-70), 3.Mathematics - B2 ** Grade Marks GP 07 (Marks 61-90), 4.Science C1 ** Grade Marks GP 06 (Marks 50-60), 5.Social Science - B2 Grade Marks, GP 07 (Marks 61-70)."

3.The father of the minor petitioner would further submit that after the announcement of the results of the X Standard, he approached the fourth respondent School to admit his daughter in the XI Standard and it was rejected by the impugned proceedings of the second respondent dated 14.03.2016, wherein amendment of paragraph no.9, I of Part-C (Procedure for Admissions) of KVS Admission Guidelines 2016-17 came to be formulated and it is relevant to extract the following hereunder:

"(a) KV Students. Admission in different Streams viz Science, Commerce, Humanities of

Class XI in KVs for KV students will be based on cut-off Grade and CGPA as under:-

(i) Science with Mathematics

(1) A minimum of B2 Grade in Maths.

(2) A minimum of B2 Grade in Science.

(3) A minimum of 6.4 CGPA

(ii) Science without Mathematics

(1) Science without Mathematics may be allowed if the student has secured B2 Grade in Science with at least 6.4 CGPA.

(iii) Commerce Stream

(1) A minimum of 6.0 CGPA

(2) Mathematics can be offered with Commerce if the student has secured a minimum of B2 Grade in Mathematics.

(iv) Humanities Stream

All students of KV if declared successful.

(B) Non KV Students - Fresh admissions for remaining vacancies would be made in the sequence of categories of priority on the basis of following criteria.

1. Science Stream and Commerce Stream a minimum of 8.0 CGPA.

2. Humanities Stream a minimum of 6.4 CGPA.

It may be noted that this relaxation of the eligibility criteria is available to KVs with lower enrolment but not to individual students. In no case, any relaxation is allowed for individual students.

This amendment is applicable from the session 2016-17 onwards. The above may be communicated to all concerned."

4. The grievance expressed by the father of the minor petitioner is that on the basis of the above said impugned amendment/ circular, his daughter has been denied admission in the XI Standard and therefore, came forward to file the writ petition.

5. The deponent of the affidavit filed in support of the writ petition in W.P.No.25977 of 2016 is the father of the minor petitioner and according to him, his daughter had studied in the fourth respondent School from I Standard to X Standard and she participated in various Kabadi Tournaments as well as Athletic Tournaments and brought laurels to the School and she has also participated in the National Level Kabadi Tournament under age group 19 and she also participated in Kho - Kho and she has got

talent in very many sports. It is further stated by the father of the minor petitioner that the petitioner in the X Standard examination held during March, 2016, had secured the following marks:

"1.English Communication - B2 Grade Marks, GP 09 (Marks 61-70), 2.Comm. Sanskrit - B2 Grade Marks GP 07 (Marks 61-70), 3.Mathematics - C1 ** Grade Marks GP 06 (Marks 50-60), 4.Science C1 Grade Marks GP 06 (Marks 50-60), 5.Social Science - B2 Grade Marks, GP 07 (Marks 61-70)."

6.The father of the minor petitioner would further submit that after the announcement of the results of the X Standard, he approached the fourth respondent School to admit his daughter in the XI Standard and it was rejected by the impugned proceedings of the second respondent dated 14.03.2016, wherein amendment of paragraph no.9, I of Part-C (Procedure for Admissions) of KVS Admission Guidelines 2016-17 came to be formulated and it is relevant to extract the following hereunder:

"(a) KV Students. Admission in different Streams viz Science, Commerce, Humanities of Class XI in KVs for KV students will be based on cut-off Grade and CGPA as under:-

(i) Science with Mathematics

(1) A minimum of B2 Grade in Maths.

(2) A minimum of B2 Grade in Science.

(3) A minimum of 6.4 CGPA

(ii) Science without Mathematics

(1) Science without Mathematics may be allowed if the student has secured B2 Grade in Science with at least 6.4 CGPA.

(iii) Commerce Stream

(1) A minimum of 6.0 CGPA

(2) Mathematics can be offered with Commerce if the student has secured a minimum of B2 Grade in Mathematics.

(iv) Humanities Stream

All students of KV if declared successful.

(B) Non KV Students - Fresh admissions for remaining vacancies would be made in the sequence of categories of priority on the basis of following criteria.

1.Science Stream and Commerce Stream a minimum of 8.0 CGPA.

2.Humanities Stream a minimum of 6.4 CGPA.

It may be noted that this relaxation of the eligibility criteria is available to KVs

with lower enrolment but not to individual students. In no case, any relaxation is allowed for individual students.

This amendment is applicable from the session 2016-17 onwards. The above may be communicated to all concerned."

7.The grievance expressed by the father of the minor petitioner is that on the basis of the above said impugned amendment/ circular, his daughter has been denied admission in the XI Standard and therefore, came forward to file the writ petition.

8.The learned counsel appearing for the petitioners has drawn the attention of this Court to the judgment of the Hon'ble Supreme Court of India reported in CDJ 2008 SC 1823 equivalent to AIR 2009 SC 608 (Principal, Kendriya Vidyalaya & Others Versus Saurabh Chaudhary & Others) and would submit that the impugned circular has no legal basis for the reason that the students who have studied in the very same School upto X Standard cannot be denied admissions to XI Standard by prescribing a cut off mark and such a practice has also been frowned upon by the Hon'ble Supreme Court of India in the above cited judgment and therefore, prays for appropriate orders.

9.Per contra, Mr.M.Vaidyanathan, learned counsel appearing for the respondents 2 to 4 has invited the attention of this Court to the counter affidavit and would submit that the impugned circular came to be issued by taking into consideration the interest and welfare of the students and admittedly, the petitioners did not perform well in academics and in the event, they choose the Science stream, they may not be able to get through the same and in their own interest, they can join Humanities Group and there are ten Kendriya Vidyalayas located in and around Chennai and both of them will be given admissions in anyone of the said School of their choice in Humanities Group and prays for dismissal of the writ petitions.

10.It is also relevant to extract paragraph no.6 of the counter affidavit filed on behalf of the respondents 2 to 4 in each of the writ petition hereunder:

"6.Regarding the averments in para 5, it is submitted that Ms.R.K.Jayavardhani secured 7.2 CGPA in AISSE 2016, as detailed below:

Student's Name	Over all CGPA	Grade in Maths	Grade in Science	Concession given in CGPA for Regional/National participants	Concession given in CGPA for students belonging to SC/ST category	Concession given in CGPA for Scouting & Guiding	Total concession extended	CGPA after extending concession
Jayavardhini	7.2	B2**	C1**	0.2 (Regional-als)	0.4 (SC)	0.2 (TSTC)	0.8	8.0

As per KVS Admission Guidelines 2016, maximum concession under Sports/Games/NCC/Scout/Guide/Adventure will not exceed 0.8 points in CGPA.

Maximum concession of 0.8 CGPA should be added to Total CGPA and not to individual subjects.

As per letter No.110331-01/2016/KVS(HQ)/Acad dated 14.03.2016, the Eligibility criteria for admission to Class XI (Science) is as under:

- a.Science Stream (with Maths)
 - i.A minimum of B1 Grade in Maths.
 - ii.A minimum of B1 Grade in Science.
 - iii.A minimum of 7.6 CGPA
- b.Science without Mathematics
 - iv.Science without Mathematics may be allowed if the student has secured B1 Grade in Science with at least 7.6 CGPA.
- c.Commerce Stream
 - v.A minimum of 6.4 CGPA
 - vi.Mathematics can be offered with Commerce if the student has secured a minimum of B1 Grade in Mathematics.
- d.Humanities Stream:
All students of KV if declared successful.

As per the criteria mentioned above, though Ms.R.K.Jayavardhani has secured more than minimum CGPA required (after extending concession), she did not secure a minimum of B1 Grade in Science. Hence, she is not eligible for admission to Class XI (Science), and hence was not granted admission.

K.V.Gill Nagar has only one section of Science Stream at class XI & XII and no other stream. Hence, Ms.R.K.Jayavardhani was not granted admission at K.V.Gill Nagar.

As per letter No.F.110331/01/2016-KVS (HQ)/Acad dated 20.06.2016, it is reiterated that "it is not feasible to allow any relaxation in the admission guidelines and all admissions are to be done as per existing provisions".

"6.Regarding the averments in para 5, it is submitted that Ms.Oviyapriya secured 6.6 CGPA in AISSE 2016, as detailed below:

Student's Name	Overall CGPA	Grade in Maths	Grade in Science	Concession given in CGPA for Regional/National level participants	Concession given in CGPA for students belonging to SC/ST category	Concession given in CGPA for Scoutin g & Guiding	Total concession extended	CGPA after extending concession
Oviyapriya	6.6	C1**	C1	0.6 (National -als)	Nil	0.2 (TSTC)	0.8	7.4

As per KVS Admission guidelines 2016, maximum concession under Sports/Games/NCC/Scout/Guide/Adventure will not exceed 0.8 points in CGPA.

Maximum concession of 0.8 CGPA should be added to Total CGPA and not to individual subjects.

As per letter No.110331-01/2016/KVS (HQ)/Acad dated 14.03.2016, the Eligibility criteria for admission to Class XI (Science) for KV students is as under:

- a.Science Stream (with Maths)
 - i.A minimum of B1 Grade in Maths.
 - ii.A minimum of B1 Grade in Science.
 - iii.A minimum of 7.6 CGPA
- b.Science without Mathematics
- c.
 - i.Science without Mathematics may be allowed if the student has secured B1 Grade in Science with at least 7.6 CGPA.

- d.Commerce Stream
 - i.A minimum of 6.4 CGPA
 - ii.Mathematics can be offered with Commerce if the student has secured a minimum of B1 Grade in Mathematics.
- e.Humanities Stream:
All students of KV if declared successful.

As per the criteria mentioned above, Ms.Oviyapriya has not secured the minimum CGPA of 7.6 (even after extending concession), and also a minimum of B1 Grade in Science, and hence she is not eligible for admission to Class XI (Science). K.V.Gill Nagar has only one section of Science Stream at class XI & XII and no other stream. Hence, Ms.Oviyapriya was not granted admission at K.V.Gill Nagar.

As per letter No.F.110331/01/2016-KVS(HQ)/Acad dated 20.06.2016, it is reiterated that "it is not feasible to allow any relaxation in the admission guidelines and all admissions are to be done as per existing provisions".

11.The learned counsel appearing for the respondents 2 to 4 has also drawn the attention of this Court to the representation submitted by the father of the minor petitioner G.Oviyapriya, wherein, in his representation dated 10.06.2016, had also stated that the students who have secured less marks cannot be faulted with, as it is purely the fault on the teaching and mismanagement by the in-charge of the School and it is for the School to employ Teachers and improve the students in getting good marks and in the light of the said complaint also, it may not be in the interest of the concerned petitioner to insist for admissions in Science Stream in Higher Secondary Course and prays for dismissal of the writ petitions.

12.At this juncture, the learned counsel appearing for the petitioners, on instructions would submit that the father of the minor petitioner G.Oviyapriya, is willing to withdraw the allegations with regard to the teaching faculty in his representation dated 10.06.2016 submitted to the third respondent and it is also placed on record.

13.This Court also heard the submissions of Mr.G.Nagarajan, learned counsel appearing for the first respondent. This Court has considered the rival submissions and also perused the materials placed before it.

14.The Hon'ble Supreme Court of India in the above cited

judgment, in similar facts and circumstances has held that the students who have studied X Standard in a particular School cannot be denied admission on the basis of some cut off marks/ prescription and it is relevant to extract paragraph nos.16 to 18 of the said judgment hereunder:

"16. 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. But it would be quite unreasonable and unjust to throw out a student from the school because he failed to get the cut off marks in the class X examination. After all the school must share at least some responsibility for the poor performance of its student and should help him in trying to do better in the next higher class. The school may of course give him the stream/ course that may appear to be most suitable for him on the basis of the prescribed cut off marks.

17. In the present case it would have been perfectly open to the appellants to offer admission to the boy Saurabh Chaudhary in class XI in streams/ courses other than Science stream with Mathematics on the basis of the prescribed cut off level of marks, had such courses been available in Central School No.2, AFS, Tambaram. But this school has only science stream with Mathematics for classes XI and XII. The decision in Payal forbids the school from turning down a student because he/ she failed to get the cut off level of marks for admission to class XI. As a result of this fortuitous circumstance the boy must get admission in class XI in Central School No.2, AFS, Tambaram in science stream with Mathematics.

18. In light of the discussions made above we come to the conclusion that the case in hand is fully covered by the earlier decision of the Court in Payal. The decisions of the three High Courts relied upon by Mr. Patwalia in so far as they go contrary to the decision in Payal do not lay down the correct law. The decision of the Madras High Court coming under appeal takes the correct view of the matter and warrants no interference by this Court."

15.No doubt, the apprehension expressed by the fourth respondent School cannot be brushed aside for the reason that both the petitioners had excelled in sports and it may be difficult for them to cope up with the studies, if they join Science Stream and it is also for the reason that they have to concentrate in sports activities also. However, their parents insist that they should be accommodated in the very same School in which they have studied upto X Standard. In the light of the above cited decision rendered by the Hon'ble Supreme Court of India, they are entitled to claim admission in XI Standard in the very same School they studied so far.

16.In the result, though the petitioners prayed for the larger relief, this Court in the light of the above facts and circumstances is of the view that it would be suffice to direct the fourth respondent School to grant admission to the petitioners in the Science Group/ Stream without Mathematics in Higher Secondary Course for the academic sessions 2016 - 17 and 18.

17.Accordingly, the fourth respondent School is directed to grant admission to the petitioners in the Science Group/ Stream without Mathematics in Higher Secondary Course for the academic sessions 2016 - 17 and 18, within a period of two weeks from the date of receipt of a copy of this order and communicate the decision, to the petitioners as well as to their parents.

18.These writ petitions are disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
सत्यमेव जयते

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

- 1 The Chairman
Central Board of Secondary Education
Shiksha Kendra, 2, Community Centre,
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 - 2 The Joint Commissioner (Acad)
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Chennai-600 094.
- 2 ccs to Mr.P.Saravanan, Advocate, sr.46707
1 cc to Mr.G.Nagarajan, Advocate, sr.46841
2 ccs to Mr.Vaidyanathan, Advocate, sr.46644

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And

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