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

+ **W.P.(C) 3485/2015 & CM APPL. 6241/2015**

PEARL SHARMA (MINOR)

THROUGH HER NEXT FRIEND

SH. VIRENDRA KUMAR BHARDWAJ Petitioner

Through Mr.Kamal Jindal, Advocate.

versus

CENTRAL BOARD SECONDARY

EDUCATION DELHI Respondent

Through Mr.Amit Bansal with Ms.Manisha Singh, Ms.Seema Dolo and Mr.Akhil Kulshrestha, Advocates for R-1/CBSE. Mr. Satyakam, ASC (Civil), GNCTD for R-2.

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Reserved on : 8th April, 2016

Date of Decision : 19th April, 2016

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Petitioner is aggrieved by not being allowed to opt for Home Science and Commerce subjects instead of Mathematics and Science in the 10th standard Board Examination conducted by the CBSE. It is averred in the writ petition that while Patrachar Vidyalaya candidates have the option of taking the examination in Home Science and Commerce instead of Mathematics and Science, the same is denied to private candidates. It is also

averred in the writ petition that there is no difference between a Patrachar Vidyalaya candidate and a private candidate as both the students are outside the school system.

2. It is pertinent to mention that the petitioner had earlier filed a writ petition being W.P.(C) 1449/2015 in this Court seeking a direction to respondent-CBSE to allow the petitioner to take the examination in the subjects of Commerce and Home Science instead of Mathematics and Science. The said petition was dismissed by a learned Single Judge of this Court and LPA No. 138/2015 preferred against the said order, was also dismissed vide order dated 9th March, 2015 after giving liberty to petitioner to challenge the Scheme of Studies/ Examination of respondent-CBSE.

3. By way of the present petition, petitioner challenges the Scheme of Examination of the CBSE.

4. Mr. Kamal Jindal, learned counsel for the petitioner submitted that the CBSE rule that does not allow a private and regular student of 10th class to opt for Home Science and Commerce, but allows the said subjects to 10th class students of Patrachar Vidyalaya is violative of the equality principle enshrined in Article 14 of the Constitution of India.

5. Mr. Jindal submitted that rule of CBSE that makes Science and Mathematics mandatory in 10th class is also unlawful because all subjects are equally important and CBSE cannot impose its arbitrary will on the students.

6. On the other hand, Mr. Amit Bansal, learned standing counsel for respondent-CBSE stated that all CBSE candidates are bound by Scheme of Studies prescribed by CBSE in accordance with which the candidates of

class 10th are compulsorily required to appear in five subjects, viz., two languages, Mathematics, Science and Social Science.

7. Mr. Bansal further stated that the National Curriculum Framework, which provides framework for making syllabi and draws policy for education at Secondary and Senior Secondary level, has laid emphasis on Mathematics, Science and Social Science as basic subjects to be studied at the secondary level. He contended that for the basic standard of education in the school system, CBSE follows the guidelines/Scheme of Studies prepared by the National Curriculum Forum all over India.

8. According to Mr. Bansal, the only exemption provided by CBSE from the above Scheme is in respect of candidates who are spastic, blind, physically handicapped and dyslexic. As far as rest of the CBSE students are concerned, whether they are part of regular school system or private candidates, they have to follow the above mentioned scheme of studies, in terms of which Science and Mathematics are compulsory subjects.

9. Mr. Bansal clarified that Patrachar Vidyalaya is established and run by respondent no. 2-Director of Education, Government of NCT of Delhi, which caters to the needs of dropouts and persons belonging to weaker sections of society who could not continue their education. He stated that it is the respondent no. 2 which lays down the scheme of studies for students of Patrachar Vidyalaya under which a student can opt for any two subjects out of Science, Mathematics and Home Science.

10. Mr. Bansal pointed out that although in the above mentioned Scheme of Studies, Commerce is provided as one of the subjects, respondent no. 2 in

its affidavit has stated that the same is not being offered as an option anymore by it. He stated that hence a Patrachar Vidyalaya student has to appear in any two languages, Social Science and has to opt any two subjects out of the following, i.e., Science, Mathematics or Home Science.

11. Having heard learned counsel for the parties, this Court is of the view that there is no discrimination between a Patrachar Vidyalaya student and a private student appearing for Secondary Examination conducted by CBSE as both are not similarly situated. While CBSE students have to follow the scheme of studies prepared by the National Curriculum Forum, the Patrachar Vidyalaya students have to follow the scheme of studies prepared by the Directorate of Education, Government of NCT of Delhi. Thus, Patrachar students and Private students like the petitioner are not similarly situated, even though CBSE is the common examination conducting body.

12. It is settled law that "Equality before the law" means that amongst equals the law should be equal and should be equally administered and that like should be treated alike. Hence, what it forbids is discrimination between persons who are substantially in similar circumstances or conditions. Unequal treatment does not arise between persons governed by different conditions and different sets of circumstances. The rule is that like should be treated alike and not that unlike should be treated alike. A Division Bench of this Court in ***Gagandeep Chauhan Vs. GNCT of Delhi and Ors., 2011 VIII AD (Delhi) 127*** has held as under:-

“17. Tested on the aforesaid touchstone of the law laid down, we are disposed to think, the submission of the learned senior counsel that once the said benefit is extended to a private student, there is no justification or

warrant not to make the said permission/right available to a regular candidate and because of the said extension of the benefit, the bye-law suffer the vice of discrimination and thereby offends Article 14 of the Constitution of India, has an inherent fallacy, when there is already a scheme for regular students with a stipulation that a regular candidate can take certain subjects if he intends to take an additional subject, he must study and attend classes in the said subject. There are two categories of students, private students who have already passed the examination and regular students, who are studying in recognized schools. A regular student cannot be treated as a private student. A regular student cannot undertake an examination in a subject, on the foundation that a private student is permitted to undertake the same. In that event, the regular student would have a dual character and certain students would be treated as a regular student for the subjects which he is studying in the school and in one subject as a private candidate. That apart, a private candidate is given the facility to appear in a subject, which would be available in the annual examination only after passing out, if there is a need or necessity for the same for the student. A regular student has a choice for prosecuting the studies to choose the subjects on attending the classes. He may be brilliant in studies but he has to be guided by the law. If the provision for private candidates is made applicable to the regular students, it will be over-exclusiveness. Article 14 may tolerate under-exclusiveness but does not countenance over-exclusiveness. The two categories being different, they belong to two different classes altogether. The intelligible differentia is inherent as benefit is extended to a private student after he passes out and the benefit is offered to a regular student subject to his attending the classes. That is the discipline in academics. A private student cannot attend the classes as a regular student and a regular student cannot be treated as a private candidate partially. Thus, the differentia is intelligible and the classification withstands scrutiny.....”

13. Moreover, as the CBSE follows the Scheme of Studies all over India prepared by an Expert Body like the National Curriculum Forum, it cannot be said to be arbitrary. The Supreme Court in *All India Council for Technical Education Vs. Surinder Kumar Dhawan*, (2009) 11 SCC 726 has held that the Courts are neither equipped nor have academic or technical backgrounds to take decisions in academic matters and if the Courts start doing the same, it will lead to chaos in education. It has further been held that the Courts should be extremely reluctant to substitute their own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by the persons authorized to do so and that the Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. After all legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review. Similarly, in *University Grants Commission Vs. Neha Anil Bobde*, (2013) 10 SCC 519 it has been held that in academic matters, unless there is clear violation of statutory provisions, regulations or notification issued, Courts should not interfere.

14. Consequently, the schemes of examination of CBSE and Patrachar Vidyalaya are separate and legal, but not discriminatory or arbitrary.

15. Keeping in view the aforesaid, present writ petition and application being bereft of merits, are dismissed.

MANMOHAN, J

APRIL 19, 2016

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