

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.7818 of 2018

R.Roshan Wilfred,
Minor Rep. by father and natural guardian
P.Rex Jerald

.. Petitioner

Vs.

1. Deputy Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, IIT Campus,
Chennai-600 036.
2. The Principal,
Kandriya Vidyalaya,
GPRA Complex, CPWD Quarters,
Thirumangalam, Chennai-600 040.
3. Chairperson,
Central Board of Secondary Education,
Shiksha Kendra, 2, Community Centre,
Preet Vihar, Delhi-110 092.
4. Deputy Secretary and Regional Officer,
Central Board of Secondary Education,
Chennai Region, New No.3, Old No.1630A,
J-Block, 16th Main Road, Anna Nagar,
Chennai-40.

(Respondents 3 and 4 are impleaded as
per order dated 16.04.2018 passed in
W.M.P.No.11197 of 2018 in W.P.No.7818 of 2018)

.. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the second respondent herein to conduct supplementary examination for the subjects of Chemistry and Computer Science in Standard XI insofar as the petitioner is concerned.

For petitioner : Mr.B.Satish Sundar

For respondents : Mr.M.Vaidyanathan for RR-1 and 2

Mr.G.Nagarajan for RR-3 and 4

ORDER

The petitioner has come forward with the above Writ Petition praying for issuance of a Writ of Mandamus to direct the second respondent herein to conduct supplementary examination for the subjects of Chemistry and Computer Science in Standard XI insofar as the petitioner is concerned.

2. It is the case of the petitioner that the petitioner may be permitted to take up supplementary examination in Chemistry and Computer Science subjects in XI Std., as the student has failed in these two subjects. According to the petitioner, as per the guidelines, the student who has failed in two subjects, is entitled to take up the re-examination and that the Kendriya Vidyalaya ought to have permitted for re-sitting of the examination. It is the sole discretion of the Kendriya Vidyalaya with regard to the papers for permitting re-sit of the papers, and discretion is vested with the School by the CBSE. That apart, it is further submitted that the candidate or the parent was not informed that the student would not be permitted to take up more than one paper to have re-sitting and that in terms of the Examination Bye-laws of the CBSE, dated 29.11.2016, more particularly as per the amended Bye-law No.40.2 which is in existence, the petitioner should be permitted to take up the said two subject papers. The said Bye-law/Rule No.40.2 reads as follows:

Rule No.	Existing Rule	Amended Rule
40.2	A candidate failing in one of the five subjects of external examination shall be placed in compartment in that subject provided he/she qualifies in all the subjects of internal assessment.	i) A candidate failing in one of the five subjects of external examination at Class XII shall be placed in Compartment in that subject provided he/she qualifies in all the subjects of internal assessment. ii) A candidate failing in one of the five subjects of external examination at Class XI shall be placed in Compartment in that subject provided he/she qualifies in all the subjects of internal assessment.

3. The learned counsel appearing for CBSE, even though verbally stated that it is left to the discretion of the School to have more than one sitting, but on instructions, he filed a counter affidavit stating that the new clause had been introduced, namely 40.2 (ii) stated supra. According to the learned counsel appearing for CBSE, if a candidate fails in one subject out of five subjects in XI Std., he shall be placed in the compartmental examination in that subject, provided he/she qualifies in all the subjects of internal assessment. According to the learned counsel for the CBSE, the criteria for pass of XI Std. from 2017-2018 had been issued by the respective schools and that it is for the school to adhere to the guidelines/bye-laws/rules issued by the CBSE.

4. Learned counsel appearing for the Kendriya Vidyalata Sangathan submitted that they have been following the guidelines/bye-laws/Rules/instructions that had been issued by the CBSE from time to time and that prior to the present instructions, the discretion vest with the school to permit the students to take up the examination in more than one paper. After amendment of the Bye-laws, namely Rule 40.2(i) extracted supra, as amended, as has been stated by the CBSE, a candidate failing in one of the five subjects of external assessment at Class XI, shall be placed in compartment in that subject provided he/she qualifies in all the subjects of internal assessment.

5. The contention of the learned counsel for the petitioner that the parents/students are not aware of the amended Rule, is not correct. He also drew the attention of the Court to the Notification, dated 29.11.2016 issued by the CBSE regarding addition/amendment in examination Bye-laws, more particularly with regard to Bye-law 40.2, and also the Progress Card/Report Card of the student referring to Clause 1(d) therein. As per the Report Card, the petitioner was aware of the instructions as early as by November 2017, as the Progress Card has been duly signed by the class teacher, the exam-in-charge and the Principal of the School. The parents have also endorsed the remarks of the class teacher in the Report Card, which implies that the parents are also aware of the instructions stated in the Progress Report. The instructions issued in Clause 1(d) in the Progress Card reads as follows:

"1(d): A candidate failing in one of the five subjects of examination at Class XI shall be placed in compartment in that subject provided he/she qualifies in all the subjects of internal assessment (As per CBSE Examination Bye-laws Notification dated 29.11.2016 regarding Additions/Amendments in Examination Bye-Laws, para 40.2.)"

6. After the end of the half yearly examination, the student and the parent are aware of Clause 1(d) mentioned in the Progress Card, as extracted above. In view of the amendment brought in Bye-law 40.2 which was introduced on 29.11.2016 by the CBSE and that the student has failed in Chemistry and Computer Science in Class XI, I am of the view that the relief sought for by the petitioner cannot be granted, because, as per the Bye-laws, the candidate who failed in only one subject of the external examination of XI Std., shall be placed in compartment in that subject, provided he/she qualifies in all the subjects in the internal assessment.

7. Learned counsel for the petitioner relied upon a decision of Kerala High Court, reported in 2014 (Vol.308) E.L.T. 394 (Ker) (Vigneswaran Sethuraman Vs. Union of India), more particularly, paragraph 26 therein, and contended that the State has a duty to specify with a degree of certainty as to what is prohibited and what is not. This decision of the Kerala High Court will not be applicable to the facts and circumstances of the present case. The said decision relates to Customs Act and the Baggage Rules. Even assuming that the principle laid down in the said decision is applicable to this case, it is seen that the petitioner/parent is aware of the Bye-law 40.2 and also the instructions specified in the Progress/Report Card, which has been duly signed by the parent of the student. Moreover, the Supreme Court, in the decision reported in 2002 (3) SCC 533 (Padma Sundara Rao Vs. State of T.N.), held as follows:

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington Vs. British Railways Board* (1972 (2) WLR 537 = 1972 AC 877 (HL)). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

Hence, the said citation of the Kerala High Court is distinguishable on facts.

8. Hence, for the reasons stated above, the Writ Petition is dismissed. Since the Writ Petition has been dismissed, this Court is not opening the cover containing the re-sitting of the paper/subject and the same is handed over to the learned counsel for the respondents 1 and 2/Kendriya Vaidyalaya. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. Deputy Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, IIT Campus,
Chennai-600 036.
2. The Principal, Kandriya Vidyalaya,
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J-Block, 16th Main Road, Anna Nagar,
Chennai-40.

+1cc to Mr.B.Satish Sundar, Advocate sr.no.30556
+1cc to Mr.G.Nagarajan, Advocate sr.no.30420
+1cc to Mr.M.Vaidyanathan, Advocate sr.no.30230

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ssv(co)
nr 31/05/2018



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