

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.08.2019

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.23847 of 2019 and
W.M.P.Nos.23692 of 2019

S.Bavadharsheka (Minor)

Rep. By her Natural Guardian, Mother
S.Kavitha

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Petitioner

Vs

1.The Commissioner,
Directorate of Technical Education,
No.53, Sardar Patel Road,
Guindy,
Chennai - 620 025.

2.The Regional Officer,
Central Board of Secondary Education,
New No.3, Old No.1630A,
6th Avenue,
Anna Nagar West, J Block,
Chennai - 600 040.

3.The Registrar,
Council of Architecture,
India Habitat Centre,
Core 6A, 1st Floor,
Lodhi Road,
New Delhi - 110 003.

4.Anna University,
Represented by its Dean,
No.1, 1st Cross Road,
Anna University, Kotturpuram,
Chennai - 600 025.

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Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Mandamus directing the first respondent to allot a seat to the petitioner as per the rank published in the TNEA website and place her in School of Architecture and Planning - Anna University.

For Petitioner :Ms.R.Shase

For 1st Respondent :Mr.Arvind Pandiyan,
Additional Advocate General,
Assisted by Mr.V.Kathirvelu,
Special Government Pleader

For 2nd Respondent :Mr.G.Nagarajan, Standing Counsel

For 3rd Respondent :Ms.Harinyi

For 4th Respondent :Mr.Vijayakumar, Standing Counsel

ORDER

Seeking a writ of Mandamus to direct the first respondent to allot a seat to the petitioner as per the rank published in the TNEA website and place her in School of Architecture and Planning - Anna University, the petitioner is before this Court with this writ petition.

2.Heard the learned counsel for the petitioner; learned Additional Advocate General appearing for the first respondent; learned Standing Counsel appearing for the second respondent; learned counsel for the third respondent and the learned Standing Counsel appearing for the fourth respondent.

3.The grievance of the petitioner is that, she studied XII in the Central Board of Secondary Education (CBSE) scheme of education and taken one additional subject besides five core subjects. The respondents herein while considering her candidature for B.Arch course, has taken up the additional subject score for consideration to draw the aggregate marks which has put her in a disadvantage position. More particularly, after issuing hall ticket, ranking at 87th place, taking into consideration the five core subjects alone to arrive at the aggregate marks later, altering the rank as 122A, at the time of counseling by adding the score in the additional subject and reducing her rank from 87 to 122A.

4.The case of the petitioner herein is that, as per the CBSE scheme of studies, five subjects of external examination has to be cleared by the candidate by securing over and above 33% in each subject. The candidates are also given option to choose one or more additional subjects. Likewise, the petitioner herein chosen Physics, Chemistry, Mathematics, Biology and English as core subjects and had chosen Physical Education as additional subject.

5.For all purpose, the five core subjects alone are to be taken into consideration since, only these five subjects are

necessary to declare the candidate, as pass. Whereas, the respondents have taken the 6th subject (optional) namely, the Physical Education score which has reduced the aggregate average mark of the petitioner from 313.2 to 306 after adding her NATA score of 144 out of 200.

6.The learned counsel for the petitioner would rely on the provisions of the CBSE examination and pass criteria to emphasise the petitioner's contention that, the respondents ought not to have taken the score of optional subject and altered her ranking during counseling which is bad in law and without proper notice.

7.Contrarily, the learned Additional Advocate General appearing for the first respondent would submit that the procedure of arriving the score in qualifying the examination is based on the guidelines of the Council of Architecture; G.O. (1D).No.140 Higher Education (J2) Department dated 30.05.2019 and the prospectus issued by the State for the admission of B.Arch course.

8.According to the learned Additional Advocate General appearing for the first respondent, it is the aggregate mark in all the subjects put together in the qualifying examination, is the criteria adopted by the State and it is in consonance with the provisions of the Council of Architecture and G.O.(1D). No.140 dated 30.05.2019. The learned Additional Advocate General would also furnish the list of candidates who have been admitted in B.Arch course in the State both in the Government college as well as in the Private College under the State quota.

9. As per Scheme of CBSE Studies, there are five subjects of external examination either two languages and three electives or one language and four electives. Unlike Higher Secondary Course offered by the State Government, the CBSE has got various subjects as additional/optional besides five core subjects as compulsory. The number of subjects required to clear XII standard is five subjects. However, the additional subjects which the candidates opt to take as additional subjects, the score will be taken only if the candidate wishes to substitute with any of the five core subjects but when it comes to the selection for B.Arch course in Tamil Nadu, the mark secured in the additional subject also bound to be taken to arrive the aggregate of all subjects because, the Council of Architecture as well as G.O.(1D).No.140 dated 30.05.2019 does not exclude any of the subject the candidate written in the qualifying examination. For better understanding, Clauses 40 and 41 of CBSE scheme of examinations and pass criteria are extracted below:-

"40.Scheme of Examinations (Senior

School Certificate Examinations)

(i)The Board shall conduct examination in all subjects except General Studies, Work Experience, Physical and Health Education, which will be assessed internally by the Schools.

(ii)In all subjects examined by the Board, a student will be given one paper each carrying 100 marks for 3 hours. However, in subjects requiring practical examination, there will be a theory paper and a practical examination as required in the syllabi and courses.

(iii)In Work Experience, General Studies and Physical and Health Education, the schools will maintain cumulative records of students periodical achievements and progress during the year. These records are subject to the scrutiny of the Board as and when deemed fit.

(iv)A candidate from a recognised school who has some physical deformity or is otherwise unable to take part in Work Experience and Physical and Health Education, may be granted exemption by the Chairman on the recommendations of the Head of the Institution, supported by medical certificate from a Medical Officer of the rank not below an Assistant Surgeon.

(v)Private/Patrachar Vidyalaya and candidates sponsored by Adult Schools shall be exempted from Work Experience, General Studies and Physical and Health Education.

(vi)A candidate may offer an additional subject which can be either a language at elective level or another elective subject as prescribed in the Scheme of studies, subject to the conditions laid down in the Pass Criteria.

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41.Scheme of Examinations (Secondary School Examinations)

*(1)Assessment in the following subjects will be undertaken by the schools themselves in terms of grades on a five point scale (i.e., A,B,C,D,& E)

-Work Experience

-Art Education

-Physical and Health Education

(ii)The evaluation for subjects of internal assessment shall be based on cumulative record of the candidate during his/her continuous assessment in the school.

(iii)Schools are expected to maintain regular records of student's achievement and progress. These records are subject to scrutiny by the Board when it deems fit.

(iv)Rest of the subjects of study not mentioned under subclause (i)shall be externally examined by the Board. Details of questions papers, marks and duration will be as per the Scheme of Examinations.

** (v) Heads of all affiliated institutions shall be required to issue "Certificate of School-Based Evaluation" covering co-cognitive and other related areas of learning based on continuous and comprehensive evaluation of students who will be completing a course of study of ten years."

10.No doubt, under the CBSE scheme, clauses 40 and 41 gives option for the candidate to take the additional subjects over and above five mandatory subjects and the score in the additional subjects need not be relevant for declaring a candidate pass in the subject if the candidate able to score more than 33% in each of five core subjects. There is also option to the candidate to substitute one or two additional subjects with the core subjects as per clause 40. However, these are all internal regulations of the CBSE and when it comes to common test, the decision of the Authority who conducts the selection process will prevail and as per the policy of the State Government, it has formulated the rule based on Council of Architecture notification and they have taken the policy decision to consider aggregate marks of all the subjects attended by the candidates.

11.The relevant portion in G.O.(1D) No.140 Higher Education (J2) Department dated 30.05.2019 is extracted below:-

"Qualifying Examination and Eligibility
from the academic year 2019-20:

a) HSC (Academic)/ Equivalent
Candidates who have passed '10+2' or its
equivalent examination with atleast the
following minimum aggregate marks in
Physics, Chemistry & Mathematics and also at
least Minimum aggregate mark in all the
subjects put together category wise.

Sl.N o	Category	Minimum aggregate marks in Physics, Chemistry & Mathematics and	Minimum aggregate mark in all the subjects put together
1	OC	50.00%	50.00 %
2	All other reserved categories BC/BC M/M BC/D N C/SC/SCA	45.00%	45.00 %

According to the Government Order, the respondents have taken the aggregate marks of all the subjects put together and they have selected candidates. The selection process also had already been done. Since, uniform process has been adopted by the respondents, this Court finds no ground to interfere. Accordingly, the writ petition is liable to be dismissed.

12. In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

jbm

To

1. The Commissioner,
Directorate of Technical Education,
No.53, Sardar Patel Road,
Guindy,
Chennai - 620 025.

2.The Regional Officer,
Central Board of Secondary Education,
New No.3, Old No.1630A,
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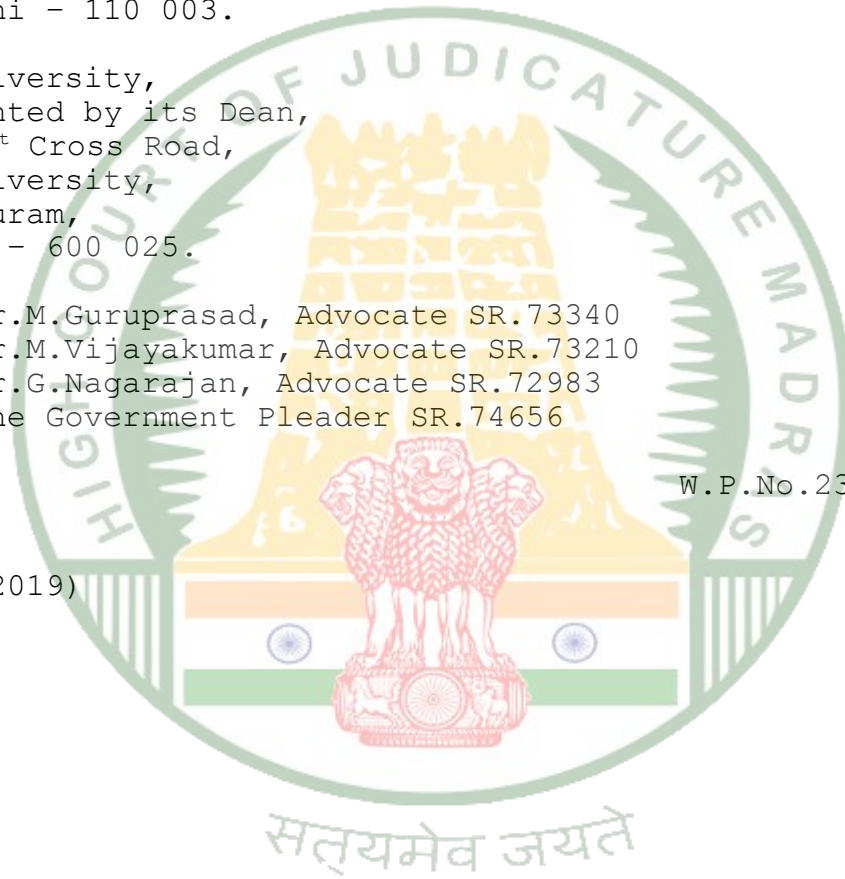
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New Delhi - 110 003.

4.Anna University,
Represented by its Dean,
No.1, 1st Cross Road,
Anna University,
Kotturpuram,
Chennai - 600 025.

+1cc to Mr.M.Guruprasad, Advocate SR.73340
+1cc to Mr.M.Vijayakumar, Advocate SR.73210
+1cc to Mr.G.Nagarajan, Advocate SR.72983
+1cc to the Government Pleader SR.74656

W.P.No.23847 of 2019

RV(CO)
CB(11/10/2019)



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