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

Date of Decision : 19.09.2019

+ W.P.(C) 7985/2019 & CM APPL. 33184/2019
AMITOI SINGH Petitioner

Through: Mr. Aditya Ranjan, Adv.

versus

SARDAR PATEL VIDYALAYA, LODI ESTATE & ORS.

..... Respondents

Through: Mr. Pramod Gupta, Ms. Aman Ahmad, Ms. Pragya Agrawal and Ms. Nikita Goyal, Advs. for R-1.

Mr. Amit Bansal, SC with Ms. Seema Dolo and Ms. Vipasha Mishra, Advs. for R-2

Mr. Sachin Nahar and Mr. V.P. Nahar, Advs. for R-3.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner praying for the following direction:-

“a) Issue a writ in the nature of Mandamus or any other appropriate writ/order/direction directing the respondent No. 1, 2 & 3 to allow the petitioner to opt Mathematics as one of the main subjects.”

2. It is the case of the petitioner that the respondent no. 1 has refused to allow the petitioner to opt for Mathematics as one of the main subject only on the ground that he has obtained only 73 marks out of 100 in Class 10th Board Examination. The petitioner contends that the school has arbitrarily fixed cut-off of 75 marks in Mathematics for allowing the students to opt for the same as a main subject in Class 11th. The petitioner further contends that the respondent no. 1 has admitted the petitioner to Class 11th in 'Commerce Without Maths' stream which would hamper his future career prospect as the petitioner would be deprived of studying his choice of subjects in Graduation as Mathematics is mandatory for a large number of Commerce and Economics related subjects.

3. The learned counsel for the petitioner has placed reliance on the judgment of the Supreme Court in *Principal, Cambridge School and Another v. Ms. Payal Gupta and Other*, AIR 1996 SC 118 to contend that Rule 145 of the Delhi School Education Rules, 1973 (hereinafter referred to as the 'Rules') do not allow for prescribing a cut-off level of marks for continuance of further studies in higher class in the same school by the student who passes a Public Examination. He submits that equally, the school cannot prescribe a cut-off level for allowing the student to pursue his studies in the higher class for a particular stream of subject.

4. The learned counsel for the petitioner further relies upon the Circular dated 17.05.2019 issued by the Directorate of Education, Government of National Capital Territory Delhi wherein for the

Government Schools, the Directorate of Education has prescribed a minimum of 50% of marks in Mathematics for being considered for admission in 'Commerce (with Maths)' stream. He submits that therefore, the prescription of cut-off of 75% marks by the respondent no. 1 is totally arbitrary and cannot be sustained.

5. The learned counsel for the petitioner lastly submits that even otherwise the petitioner has obtained 73 marks in Mathematics in his Class 10th Board Examination. Merely for two marks, he could not have been denied opportunity to pursue studies in the subject of his choice.

6. On the other hand, the learned counsel for the respondent no. 1 submits that in terms of Rule 145 of the Rules, the Principal of the school is empowered to regulate admission in a particular class. This power has been recognized by this Court in various judgments to also include the power to regulate admission in various streams of subjects for Class 11th. He further submits that the respondent no. 1, apart from the marks obtained by a student in Class 10th examination, also considered the student's academic performance in Classes 9th and 10th in all Semesters and final examinations. The student's strength areas were identified and examined by the admission team and then recommended to the concerned student and his/her parents. It is contended that it has been the school's experience that students securing less than 75% in any subject found it difficult to perform in Class 11th in that particular subject, hence, the benchmark of 75% has been prescribed by the school. He further relies upon the marks

obtained by the petitioner in his Class 9th half yearly and final examination as well as in the half yearly and pre-board examination for the Class 10th wherein, the petitioner did not perform well in his Mathematics subject.

7. The learned counsel for the respondent submits that keeping in view the above, the petitioner has been allowed the choice of Mathematics as his sixth subject, thereby ensuring the best interest of the petitioner. However, his performance can be gauged from the fact that in the last Unit Test, the petitioner secured only 5 marks out of 25. He, therefore, submits that the present petition has no merit and deserves to be dismissed.

8. I have considered the submission made by the learned counsels for the parties. In *M.I. Hussain vs. N. Singh & Others*, 2005 SCC OnLine Del 1149, the Division Bench of this Court, while dealing with a similar prayer of the respondent therein seeking admission in Science stream in Class 11th in the appellant school, has held that many schools have a reputation to uphold and protect, and they can certainly fix the minimum criteria below which they will not admit students to a particular stream even if seats remain vacant. The prescription of the minimum percentage of marks for a particular stream taken as a policy decision cannot be interfered with by the Court. The Courts ordinarily do not interfere in administrative matters since the Administrative Authorities are specialists in matters related to administration and such matters are best left to the discretion of the Administrative Authorities. This Court further held as under:-

“44. No doubt in the present case the policy decision is that of the management of the school and not of the Government, but in our opinion there is no real difference between the policy decisions of the Government and the policy decisions of other bodies so far as the principle enunciated above is concerned. In our opinion the policy decision of the school in fixing the minimum marks for admission in science stream cannot be said to be so outrageous in defiance of logic or accepted moral standards that no sensible person could have arrived at it. The school has to safeguard and uphold its reputation and at the same time it does not want to put children who do not have sufficient aptitude in maths and science to such a stress that they may not be able to cope up with the subject and they may even be harmed mentally or physically. In our opinion the school management has expertise in the matter and the Court should not strike down administrative decisions solely because it is perceived by it to be unwise. A Judge cannot act on the belief that he knows better than the executive on a question of policy, because he can never be justifiably certain that he is right. Judicial humility should, therefore, prevail over judicial activism in this respect.”

9. The above decision was followed by a Learned Single Judge of this Court in ***Master Ankit Kumar vs. Summer Fields School & Ors.***, 2010 SCC OnLine Del 2946, wherein apart from relying upon the above judgment of the Division Bench, the Learned Single Judge relied upon various other judgments of other High Courts as well while dismissing a similar prayer of the petitioner(s) therein.

10. In ***Karan Raj Singh (Minor) Through his Natural Guardian vs. Department of Education, Govt. of NCT of Delhi & Ors.***, 186

(2012) DLT 764, another Learned Single Judge of this Court, while rejecting a similar prayer made therein, further observed as under:-

“11. It is settled law that Courts should ordinarily refrain from interfering with matters relating to the internal working of schools, colleges and other educational institutions for the reason that the decisions taken by such academic bodies are largely in the nature of policy decisions and the rules and regulations made by the institutions are based on their day to day experience. As long as such a decision/rule/regulation is on the face of it unreasonable, arbitrary or in violation of the principles of natural justice, the Courts ought not to interfere therein as every institution has a right to set its own benchmark for achieving academic excellence. Providing standards of admission by laying down eligibility criteria is in consonance with the object of promoting excellence in academics and the object of fixing an eligibility criteria is not only to maintain such standards of excellence in an academic institution, but also to enable institutions to shortlist applicants for admission where there are more applicants and less seats available.”

11. The judgment of the Supreme Court in ***Payal Gupta*** (Supra) cannot come to any assistance of the petitioner as in the said case the Supreme Court was considering as to whether the school can deny admission to a student in Class 11th by prescribing cut-off marks to be obtained in Class 10th Board Examination though the student has passed the Class 10th Board Examination. The Supreme Court held that the school cannot prescribe such cut-off of marks. In the present case, however, the petitioner has not been denied admission in Class 11th by the

respondent no. 1. The school has merely prescribed a cut-off for opting for the Mathematics subject.

12. The reliance of the counsel for the petitioner on the Circular dated 17.05.2019 issued by the Directorate of Education is also unfounded. Infact, it negates the claim made by the petitioner. The Directorate of Education, even for the Government Schools, has prescribed a cut-off percentage of marks in subjects alongwith with aggregate percentage for a student to be declared eligible for various streams. As an example, for 'Commerce (with Maths)' the student has to secure atleast 50% marks in Mathematics for being declared eligible for admission to that stream in Class 11th, while for 'Commerce (without Maths)' this eligibility criteria is not prescribed.

13. The respondent no. 1 has further stated that no student securing less than 75% marks in Mathematics in Class 10th Board Examination has been allowed by the school to opt for Mathematics as a main subject in Class 11th. Even otherwise there is no allegation of *mala fide* or discrimination made out against the respondent no. 1.

14. In view of the above, I find no merit in the present petition. The same alongwith the pending application are dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

SEPTEMBER 19, 2019/rv