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

Date of decision: 3rd April, 2019

+ W.P.(C) 7535/2018

POOJA GARG (MINOR)

..... Petitioner

Through: Mr. Ankit Batra, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Amrita Prakash, CGSC for
UOI with Mr. Hari Shankar Shrama, Adv.

Mr. S. Rajappa, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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JUDGEMENT (ORAL)

1. The grievance of the petitioner, in this writ petition, was that, thought she was eligible for being admitted to the Commerce Stream in Class-XI in the Kendriya Vidyalaya, Dwarka Sec-5, where she had undertaken her Class-X, the Respondent No. 2/ Kendriya Vidyalaya, Dwarka, Sec-5 (hereinafter referred to as "the KVS") illegally denied her admission to the Commerce Stream in Class-XI and admitted her to the Arts Stream.

2. The KVS, in its counter affidavit, has stated that the cut-off percentage for admission to the Commerce Stream in Class-XI was 55%, which the petitioner did not score.

3. The petitioner does not dispute the fact that the cut-off percentage for Class-XI was, in fact, 55%, and that she had not scored the requisite percentage, but seeks to premise her case on the fact that certain other students, who had also scored less than 55% in Class-X, were admitted to the Commerce Stream in Class-XI.

4. In view of the fact that the petitioner had not scored 55%, *prima facie*, the petitioner cannot be said to have any legally enforceable right to have been admitted to the Commerce Stream in Class-XI in the KVS. The circumstances, in which other students were granted such admission, is not known to this Court; Mr. Rajappa, learned counsel for Respondent No. 2, submits, however, that they may have belonged to certain other quotas, for which lesser marks were required.

5. Be that as it may, even if such other students were erroneously granted admission, that cannot clothe the petitioner with any right to seek similar relief, it being a position, trite in law, that Article 14 of the Constitution of India does not contemplate negative equality.

6. In any case, the ground situation has been changed at the volition of the petitioner herself as, having failed to secure admission to the Commerce Stream in Class-XI of the KVS, the petitioner took admission in another school, namely, the Navgyan Deep School at Vijay Enclave, where she has completed her class-XI, and her session for the next year, i.e. Class-XII, has also commenced.

7. It is obvious that, that, in these circumstances, the main grievance of the petitioner in the writ petition has become incapable of redressal. If at all the petitioner wants to come back to the Commerce Stream in the KVS, Dwarka, Sec-5, an entirely new issue would arise, regarding migration from another school to the KVS, Dwarka, Sec-5 after having left the KVS, Dwarka, Sec-5, on her own volition. That is an issue entirely outside the scope of this writ petition.

8. Nothing further survives for adjudication in this writ petition, which is disposed of as such.

9. Learned counsel for the petitioner submits that the KVS may be directed to refund, to her, the fees which were charged from her in advance, before admitting her to the Arts Stream in Class-XI. Her submission is that she paid the said fees under the impression that she would be admitted to the Commerce Stream.

10. Mr. Rajappa submits that the petitioner may approach the KVS in this regard and that the KVS would take an informed decision on the request of the petitioner.

11. Without expressing any opinion on the right of the petitioner to refund of the fees, as sought by her, the petitioner is at liberty to approach and to make a representation to the KVS, Dwarka, Sec-5 for the said purpose.

12. Any such representation, if made, would be considered by the KVS, Dwarka, Sec-5, in accordance with law, and the decision thereon be communicated to the petitioner as expeditiously as possible.

13. There shall be no order as to costs.

C. HARI SHANKAR, J

APRIL 03, 2019

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