

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-11745 of 2020 (O&M)

Date of Decision: 11.11.2020

Harsh Yadav (minor) through his father

...Petitioner

Vs.

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. D.S. Nriban, Advocate,
for the petitioner.

Mr. P.C. Goyal, Advocate
For respondents No.1 and 2.

Mr. Ramneek Vasudeva, Advocate and
Mr. Varun Sharma, Advocate
For respondent No.3.

(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

1. Petitioner herein, a minor, seeks issuance of writ in the nature of mandamus directing the respondents to consider and admit him in 6th Class in Sainik School, Rewari (for brevity- School).

2. Factual matrix, succinctly, is that respondent No.2 invited online applications for admission in Class-6 in its School/ respondent No.3. Pursuant thereto, petitioner also applied and sought admission. Petitioner successfully cleared the entrance test and secured 252 marks. Cut off marks

in general category as per last admitted student were/are 244. Petitioner was also accordingly called for scrutiny of documents on 28.02.2020, followed by his medical on 02.03.2020. During admission process, it came to light that though petitioner belongs to “General Category” but in the admission form his category was mentioned as “Defence”. However, petitioner’s father, well before culmination of admission process, applied for correction of this *bonafide* error in the online application. An affidavit dated 11.12.2019 was also sent through an email to respondents No.2 and 3 on 11.02.2020. Notwithstanding, the category was not changed from defense to general. Petitioner was driven to serve a legal notice dated 23.06.2020 but vide reply dated 15.07.2020 his request was declined, for no valid reasons. Hence the instant writ petition.

3. In the return filed before this court, respondents do not deny that petitioner is meritorious enough to be admitted in the school and he qualified in the written examination. He was called for scrutiny of documents and medical examination, but under the “Defence” category as per his option in application form. The rigid stand of the respondents, in nutshell, is that in the online application form “Defence Category” was opted and as such, he was and can only be considered under the same category. Respondents case is that change of category after online submission of application can not be permitted as there is no provision or instructions qua the same.

4. I have heard learned counsel for the parties.

5. It would be apposite to reproduce the some of the earlier self speaking orders passed by me in course of hearing the case, whereby

respondents were asked to respond to queries/observations of this Court as below:-

Order dated 12.10.2020

“After hearing arguments at some length, prima facie, I am of the view that petitioner’s son was denied admission on account of bonafide mistake made on the part of his father while filling up the application form, wherein he mentioned his category as “defence” instead of “general”. Well before the date of examination of entrance test qua admission to the school, which was slated for 05.01.2020, the petitioner realized his mistake and vide an email intimated about said mistake. Later, an affidavit dated 11.12.2019 was also filed/sent, wherein he deposed that the category of his ward be taken as “General” instead of “Defence”. The affidavit was though received by the respondent, but the category was not changed on the ground that once a category is opted, it is irrelevant whether the same is opted rightly or wrongly, the same cannot be changed, as per the prospectus issued by the School.

The candidature of the son of the petitioner was considered provisionally. Pursuant thereto, he has not only qualified the written examination but also successfully cleared his medical, documents verification, followed by interview. He is stated to have secured 252 marks which are more than the marks scored by last selected child/ student in the general category. The lowest cut off of the general category is stated to be 244 marks.

These facts are not controverted by the respondent School in the reply filed in response to the writ petition.

That being the background, learned counsel appearing for respondent School may seek instructions, if there is any vacant seat currently available to adjust the petitioner’s son as he is more meritorious than the last candidate selected in his category. It is hoped and expected of the School to take a lenient view and not adopt a rigid and pedantic approach, keeping in view the overall interest of career of the child. It is highly probable that due to pandemic scenario, few seats may have left vacant due to non-joining by the students, who may have though participated in the written examinations and admission process. Adjourned to 14.10.2020, in order to enable the authorities to find out an amicable solution, with the aforesaid expectation.”

Order dated 14.10.2020

“Learned counsel for respondent School, on verbal instructions from Principal of the School submits that there is no seat lying vacant at present and petitioner, therefore, cannot be accommodated for the current academic session.

Let an appropriate affidavit be filed clearly explaining the difficulty of the School, particularly in view of the observations of this Court contained in order dated 12.10.2020. List on 27.10.2020.”

Order dated 27.10.2020

”Pursuant to order dated 14.10.2020 passed by this Court, an affidavit of the Principal of the School has been filed wherein it is stated that in case any seat falls vacant in 6th class, minor child/student can be accommodated for the current academic session.

A perusal of the pleadings on record appended thereto reflects that the child has been deprived admission in 6th class in the school on the very flimsy and technical grounds. The school was even though informed well in advance, prior to the initiation of admission process, that the minor has applied for admission against general category seat and yet, he was not considered in the general category. It is otherwise not disputed that minor is more meritorious than the last student selected in the said category.

In course of hearing, it transpires that school cannot accommodate the child on its own unless respondent No.2 i.e. Director, Sainik School Society grants permission to the School to do so.

In the premise, learned counsel for respondent No.2 shall seek instructions from the competent authority of the Society, who is in a position to take a decision on the same and, convey to this Court, if as a special case, one supernumerary seat in 6th class in the current academic session can be created. Since during the current academic session, no physical classes are taking place and students are being taught online by sitting at home, it is expected that school shall adjust the petitioner during the current academic session. It is however, made clear that if a favorable decision is taken, same shall not be treated as a precedent to be followed in future.

Adjourned to 30.10.2020, with the expectation that respondent No.2 shall sympathetically and approvingly consider the case of the petitioner and accordingly, grant permission to the school to admit him for the current academic session since the career/future of the child is at stake.”

Order dated 30.10.2020

“Learned counsel for respondents No. 1 and 2 submits that pursuant to order dated 27.10.2020 passed by this Court, he could not get instructions from his client, as he did not have their contact details which he only managed to get only yesterday. Today being a holiday on account of Eid in the office of respondents No. 1 and 2, he would get the necessary information/instructions by Monday i.e. 02.11.2020 when the office opens after the weekend.

Meanwhile, learned counsel for the petitioner submits that he also had a chance to make an enquiry through his client and under his instructions states that there are total 77 seats in Class 6 in the School and against that 76 admissions have been made. As on today one seat is thus still lying vacant. He further submits that in the previous years, the school has been admitting upto 90 students in Class 6, however, this year only 77 seats were advertised.

Be that as it may, both the learned counsel for respondents no.1 to 3 are expected to get the specific instructions with regard to the aforesaid submissions of counsel for the petitioner on or before the next date of hearing. Adjourned to 03.11.2020.”

Order dated 3.11.2020

“Despite repeated opportunities, no satisfactory response is coming forth with regard to the observations made by this Court in order dated 27.10.2020 followed by order dated 30.10.2020. All the respondents are directed to file specific affidavits with regard to the contentions/observations recorded in aforesaid previous orders, failing which adverse inference will be drawn. Adjourned to 11.11.2020.”

6. It was in this backdrop that a joint affidavit dated 10.11.2020 by Col. Soumyabrata Dhar, Principal, Sainik School has been filed on behalf of respondents No.1 to 3, in which following stand has been taken:-

“2. That vide orders dated 27.10.2020 and 30.10.2020, the Hon’ble High Court directed the respondents to seek specific instruction in the matter.

3. That the candidate has filled in the Application Form after going through the Important Instructions issued by Sainik School Society regarding filling of Application Forms for All India Sainik Schools Entrance Exam 2020 for admission to Class VI and IX, wherein it was clearly mentioned at Special Note (g), that only wards of serving/ Ex-Serviceman parents from Indian Army, Navy and Air Force are eligible for Defence category.

4. That as per Special Note (c) and (d) of Important Instructions of filling the Application Form, the candidature of a candidate is liable to be cancelled without giving any reason at any stage, if any information filled by him is found incorrect and he fails to furnish documents in corroboration of the information filled in the Application Form. No request for change/ amendment of category or information will be entertained. In the instant case, Master Harsh Yadav(Roll No. 574302), son of Shri Surender Singh failed to submit requisite documents pertaining to his claim of Defence category and as a result the candidature of the said candidate stands cancelled as on date.

5. *That admission process in Sainik School, Rewari for the academic session 2020-21 has been closed on 31 Oct 2020, hence no candidate can be admitted at this stage.*

6. *That as his candidature stands cancelled as on date as per the existing guidelines on the subject, hence the petitioner cannot be considered as a candidate for admission to Class VI.*

7. *That the deponent is filing the affidavit on behalf of respondent No.1 to 3.”*

7. A perusal of the aforesaid stand taken by the respondents would reveal that qua the specific queries posed by this court, response thereof in the affidavit is as vague, evasive and ambiguous as it can be. Resultantly, this Court has no choice but to draw adverse inference.

8. In the premise, writ petition is allowed. Respondents are directed to accommodate the minor son of petitioner in the current academic session by giving him admission in 6th Class and permit him to attend the classes. Admittedly, the physical classes have yet not started in the current academic session due to Covid-19 pandemic and no prejudice would, therefore, be caused to either side on account of delay in admission. The respondents are directed to forthwith allow the petitioner to attend online tutorials, if any, being conducted for class-6 students by the school. Though, it is not borne out from the affidavit, whether or not any seat is lying vacant, but in case there is no vacancy, the minor child shall be accommodated by creating a supernumerary vacancy in the current academic session. It is made clear that in case a vacancy is to be created, as aforesaid, the same shall not be treated as a precedent, since the instant order is being passed keeping in view the interest of justice and, equity being heavily loaded in favor of the minor child, who cannot be made to suffer for no fault of his.

9. Writ petition is allowed in aforesaid terms.

10. In the parting, it would not be out of place to deprecate the highly condemnable conduct of the respondents in deliberately filing such an elusive reply to the queries of this court, notwithstanding, that ample opportunities were granted to render assistance to this Court to apprise about actual reality, yet nothing was forthcoming. Such a conduct of litigants makes the onerous duty and position of the learned counsels, representing them, very vulnerable, for no fault of theirs.

NOVEMBER 11, 2020

Jiten

(ARUN MONGA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable

Yes/No