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

Date of Decision 25th May, 2021

+ **W.P.(C) 108/2021 & CM APPL. 312/2021**

ANNU KUMARI (MINOR)
THROUGH HER NEXT FRIEND AND
NATURAL MOTHER RADHA DEVI Petitioner

Through: Mr. Ashok Agarwal & Mr.
Kumar Utkarsh, Advocates.

versus

GOVERNMENT OF NCT
OF DELHI & ORS. Respondents

Through: Mr. Anjum Javed, ASC with
Mr. Devendra Kumar and Mr.
Faran Ahmed, Advocates for
GNCTD/R-1 & 2.
Ms. Seema Dolo, Advocate for
R-3/CBSE.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

PRATEEK JALAN, J. (Oral)

The proceedings in the matter have been conducted through video conferencing.

1. The petitioner sought admission in Government Girls Senior Secondary School, Goela Khurd, New Delhi (respondent no. 2) in Class XI in the year 2020-21. Her request to be granted admission in the Humanities stream was rejected, relying upon a Circular issued by the Directorate of Education ["DoE"] of the Government of National

Capital Territory of Delhi [“GNCTD”] dated 27.08.2020. The petitioner has assailed the aforesaid Circular and sought a direction upon the respondents to grant her admission in the Humanities stream in the said school or any government school near her residence.

2. The case of the petitioner is that she was originally a student of the respondent no. 2-school, but was unable to continue her education in school due to some family preoccupations. She therefore took a transfer certificate in the year 2018-19 and registered herself with the National Institute of Open Schooling [“the NIOS”] for the Class X examination. She was unable to take the examination in 2018-19, but passed Class X in the academic year 2019-20. (Although regular examinations were not held in the year 2019-2020 due to the Covid-19 lockdown, the petitioner was assessed on the basis of the assignments submitted by her, like all other students of NIOS). The petitioner has annexed her marksheet of the examination (Annexure P-3 to the writ petition), which shows that she had taken the subjects of English, Home Science, Science/Science and Technology, Social Science, and Hindi. She passed in each of the five subjects, and secured an aggregate of 38.2%. The petitioner wished to resume her education in the respondent no. 2-school. However, her request for admission in Class XI in the Humanities stream was declined, relying upon the Circular dated 27.08.2020.

3. The impugned Circular provides that students who have passed their secondary examination (Class X) directly from NIOS with 55% marks or above in the aggregate of five main subjects are eligible for admission in Humanities without Skill Subjects, and with 50% marks

or above in the aggregate of five main subjects are eligible for admission in Humanities with Skill Subjects.

4. By an order dated 29.04.2021, it was recorded as follows: -

“2. Mr. Ashok Agarwal, learned counsel for the petitioner, submits that the aforesaid stipulation is entirely arbitrary and is also discriminatory against the students who have taken classes directly from NIOS, inasmuch as students of Delhi Government Schools are given admission simply upon passing the Class X examinations. He draws my attention to a specific clause in the impugned circular to the effect that this criterion would be applicable both for regular students and students of the Directorate of Education [“DOE”], studying regularly under the NIOS project. According to Mr. Agarwal, the students of the DOE, studying under the NIOS project, take exactly the same examination as students who study directly under the NIOS. Mr. Agarwal also draws my attention to a Division Bench judgment of this Court dated 11.05.2018 in W.P.(C) 1813/2018 [Anshul Aggarwal vs. Union of India & Ors.] and connected matters, wherein the Division Bench has drawn an equivalence between the candidates who pass Class XII examinations through open schooling and regular schooling.

3. Mr. Devender Kumar, learned counsel who appears on behalf of the GNCTD relies upon the counter affidavit filed by the GNCTD in these proceedings. Although the GNCTD’s affidavit relies upon the impugned Circular as the basis for denial of admission to the petitioner, it is inadequate to appreciate the justification for the impugned Circular.

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6. The GNCTD will file a further affidavit within two weeks, explaining the rationale behind the impugned Circular, and also addressing the argument of Mr. Agarwal that it creates an invalid classification.

7. *As the petitioner has not, in fact, been enrolled in any school or been given the benefit of any classes in Class XI, Mr. Agarwal will also take instructions as to whether she wishes to be admitted in Class XI in the respondent No.2/School for the academic session 2021-22.”*

5. Pursuant to the aforesaid order, Mr. Ashok Agarwal, learned counsel for the petitioner, has taken instructions, and states that the petitioner would be agreeable to admission in Class XI in the respondent no. 2-school for the academic session 2021-22. The GNCTD has also filed a further affidavit dated 22.05.2021.

6. It is the undisputed position that, as an alternative to the Class X examination offered by the Central Board of Secondary Education, DoE schools also prepare students to appear through the DoE for the Class X examination conducted by the NIOS. The NIOS also directly enrolls students, and the petitioner falls in that category.

7. As recorded in the order dated 29.04.2021, Mr. Agarwal submits that the classification between the students in NIOS and candidates who are regular students of DoE is unsupportable. He relies upon the Division Bench judgment of this Court dated 11.05.2018 in W.P.(C) 1813/2018 [*Anshul Aggarwal v. Union of India & Ors.*] and connected matters. He further contends that, by way of the impugned Circular dated 27.08.2020 itself, DoE students under NIOS project were eligible for admission in the Humanities programme without any stipulation as to minimum marks.

8. Mr. Anjum Javed, learned Additional Standing Counsel for the GNCTD, does not dispute that the examinations taken by the NIOS candidates who appear directly (such as the petitioner) is the same as

the examinations taken by the NIOS candidates who appeared through DoE. However, he relies upon the counter affidavit filed by the GNCTD in the present petition to submit that the students directly enrolled with the NIOS are not required to take the same subjects as offered to students in the DoE schools. It is particularly contended in the counter affidavit that a student enrolled directly with the NIOS may not have studied subjects in Class X which would enable her to study the subjects offered in Class XI in DoE schools. She may also not have taken any of the languages of Hindi, English or Sanskrit, as required by the Government schools in Class XI. However, Mr. Javed accepts that, in the present case, the petitioner has studied subjects which are akin to those studied by students in the DoE schools, and this impediment does not arise in her particular case.

9. In view of the fact that the petitioner has admittedly studied the same subjects as are studied in the DoE schools, and has undergone the very same assessment that is taken by the NIOS students who appear through the DoE, the application of the minimum cut-off to the petitioner's case cannot be justified. Although interference of the writ court with matters of academic policy or eligibility conditions is limited, the present case is one where it is appropriate to grant relief to the petitioner on the anvil of Article 14 of the Constitution.

10. The DoE has sought to justify the classification imposed by the Circular on the basis that direct NIOS candidates may not have the requisite subjects to enable them to study the subjects offered in Class XI in government schools. This cannot justify the rejection of the petitioner's case, as she has admittedly taken the requisite subjects.

Students who take the NIOS exam through the DoE in the same subjects are offered admission in the Humanities stream without any minimum cut-off marks. The petitioner is also entitled to the same consideration. The stipulation in the impugned Circular, to the extent that the student should have passed Class X directly from NIOS with the minimum mark stipulated, cannot be applied, even on the contentions raised in the counter affidavit, to a student who has in fact studied the very same subjects through the NIOS directly. Such a classification cannot be used by a government school to deprive a student from pursuing her schooling in the subjects of her choice.

11. For the reasons aforesaid, the respondents are directed to admit the petitioner in Class XI in the Humanities stream, in the respondent no. 2-school or any other government school near her residence, for the year 2021-22. Mr. Javed assures the Court that he will coordinate with Mr. Agarwal, so that the petitioner is informed about the modalities by which she can take admission.

12. In view of my finding that the minimum cut-off marks prescribed by the impugned Circular cannot be applied to the petitioner's case, the question regarding the validity of the Circular dated 27.08.2020 is left open for decision in an appropriate case.

13. The writ petition is allowed in the terms aforesaid. Pending applications also stand disposed of.

PRATEEK JALAN, J.

MAY 25, 2021

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