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

+ LPA 816/2023, CAV 637/2023 & CM APPL. 64416-64418/2023

KENDRIYA VIDYALAYA THROUGH THE PRINCIPAL
& ANR.

..... Appellants

Through: Mr. S. Rajappa, Advocate

versus

ARYAN KUMAR THROUGH FATHER RAVINDER KUMAR
& ANR.

..... Respondents

Through: Ms. Pooja Dhar and Mr. S. Ambica,
Advocates for R-1.
Mr. Ashok Kumar and Ms. Chhavi
Arora, Advocates for R-2

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Date of Decision: 13th December, 2023

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present appeal has been filed challenging the judgment dated 6th November, 2023 passed by the learned Single Judge in *W.P.(C) 10836/2023*. By the impugned judgment, the learned Single Judge allowed the writ petition filed on behalf of the respondent no.1, thereby holding that the respondent no. 1 has fulfilled the pass criteria for Class XI and is eligible to be promoted to Class XII at the Kendriya Vidyalaya School, Sector-12, Dwarka.

2. Brief facts of the case that are material for deciding the present appeal are as follows:



2.1 The respondent no.1 being a student of appellant no. 1/School i.e. Kendriya Vidyalaya School, Sector-12, Dwarka, New Delhi-110078 opted for English, Business Studies, Accountancy, Economics and Mathematics as his five ‘main subjects’. In addition to that, the respondent no.1 also opted for Physical Education as an ‘additional subject’.

2.2 The appellant no.1/school is affiliated to the Central Board of Secondary Education (“CBSE”). Since respondent no. 1 obtained less than 33% marks in Mathematics, which are the minimum marks a student must obtain in order to qualify, he was required to take a supplementary examination in that subject. However, even in the supplementary examination held on 19th April, 2023, he was unable to secure 33% marks. Accordingly, the School declared him as an ‘essential repeat’ on 29th April, 2023, that is to say, he was asked to repeat Class XI.

2.3 Subsequently, father of the respondent no. 1 addressed a representation dated 20th July, 2023 to the Principal of the appellant no. 1/School, wherein he requested the School not to take into consideration the marks obtained by the respondent no. 1 in Mathematics. It was submitted that the respondent no. 1 was entitled to replace the subject of Mathematics with Physical Education, since he had obtained more than 33% marks in Physical Education. As the respondent no.1 obtained more than 33% in the remaining five subjects and his aggregate percentage in the other five subjects came to a total of 43.6%, it was requested that the respondent no.1 should not be detained as per the provisions of the CBSE Examination Bye-Laws. Since no response was received from the appellant no.1/School, respondent no. 1 filed writ petition being *W.P.(C) 10836/2023*.



2.4 By the impugned judgment dated 6th November, 2023, the learned Single Judge allowed the writ petition filed by respondent no.1, thereby holding that the respondent no. 1 was entitled to be promoted in terms of the CBSE Examination Bye-Laws. Hence, the present appeal has been filed.

3. On behalf of the appellants, following contentions have been raised:

3.1 The appellant no.1/School is governed and controlled by the Kendriya Vidyalaya Sangthan (“KVS”), which is a body under the Ministry of Education, Government of India. It is submitted that the Kendriya Vidyalaya Schools are governed by the Education Code for Kendriya Vidyalayas (“KVS Education Code”).

3.2 As per Article 106 of the KVS Education Code, in order to qualify for promotion, a candidate must obtain 33% marks in all subjects, without counting the additional subject. The respondent no. 1 has not challenged the Article 106 of the KVS Education Code, therefore, the same is binding upon him.

3.3 Bye-law 40.01 of the CBSE Examination Bye-Laws, which permits to substitute a ‘main subject’ with an ‘additional subject’, is applicable only to the examinations conducted by the CBSE for Class XII. It is not obligatory upon KVS to follow the CBSE Examination Bye-Laws, since they do not specifically cover promotion of a student from Class XI to Class XII. The CBSE recognizes the autonomy of Schools to conduct the Class XI examinations internally, based on their own pass criteria.

3.4 This Court in the case of *Neeti Singh Malik Versus Union of India*, **MANU/DE/8939/2007**, has held that KVS is not subject to Local States Act and Regulation.



3.5 Since Article 106 of the KVS Education Code is a matter of policy, the Court may not interfere with the same.

3.6 It is impermissible for the respondent no. 1 to substitute his score in Mathematics with that in Physical Education. Therefore, he cannot be promoted from Class XI to Class XII and is ineligible to sit in CBSE Senior Secondary Certificate Examination for Class XII to be conducted in 2024.

4. Per contra, learned counsel appearing on behalf of respondents justified the judgment passed by the learned Single Judge.

5. We have heard learned counsel for the parties and have perused the record.

6. At the outset, this Court notes that the respondent no. 1 had opted for English, Business Studies, Accountancy, Economics and Mathematics as his five 'main subjects', with Physical Education as an 'additional subject'. He sat for his final examination for Class XI in March, 2023 and as per the results declared on 28th March, 2023, he obtained the following marks:

Subjects	Final Theory (80)	Practical/Project (20)	Overall Marks (100)	Overall Grade
Business Studies	27	15	42	C2
Accountancy	27	15	42	C2
English	41	13	54	C1
Economics	27	12	39	D
Mathematics	12	14	26	E

7. Since the respondent no. 1 failed to secure pass marks in Mathematics i.e. at least 33% marks in the theory and the practical/project works, as also 33% marks in the aggregate, he sat for the supplementary examination. The breakup of the marks obtained by the respondent no. 1 in Mathematics in the



initial and supplementary examination are as follows:

Examination	Final Theory (80)	Practical/Project (20)	Overall Marks (100)
Initial Examination	12	14	26
Supplementary Examination	19	14	33

8. Perusal of the aforesaid clearly shows that the respondent no. 1 failed to secure pass marks in Mathematics even in the supplementary examination. Meaning thereby, the respondent no. 1 passed in only four 'main subjects'. However, he obtained pass marks in the 'additional subject' i.e. Physical Education.

9. The question that is raised before this Court is whether the CBSE Examination Bye-Laws or the KVS Education Code will apply for promotion to Class XII from Class XI in Kendriya Vidyalaya Schools.

10. Admittedly, the Kendriya Vidyalaya School, appellant no. 1 herein is affiliated to CBSE. As per Para 3 of the Senior School Curriculum 2022-23 of the CBSE, under the head 'Scheme of Studies', Class XI and Class XII is a composite course. Further, the CBSE clearly provides that besides five 'main subjects', a candidate can also opt an 'additional subject'. It is further stipulated that if a student has taken six subjects and if he/she fails in any one of the first five subjects, the same will be replaced by the sixth subject, provided after replacement, either Hindi or English remains as one of the main five subjects. The relevant Paras of Senior School Curriculum 2022-23 of the CBSE, read as under:

"3. SCHEME OF STUDIES

Class XI and XII is a composite course. Students need to take only those subjects in class XI in which he/she intends to continue in class-XII. Students can offer a minimum of 5 or more subjects in class XI. They need to continue the same subjects in class XII.



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3.1.1.3 Mathematics (Code 041) and Applied Mathematics (Code 241)

j) The first 5 subjects in the chronological order of filling the subjects in the online registration system/ Mark Sheet are considered as Main subjects.

k) A candidate can also offer an additional elective which may either be a language at elective level or, any other elective subject.

l)

m) For candidates who take 6 subjects (5 main and 1 additional subject) and pass in all 6 subjects, the percentage is to be calculated by the employer/institution/university according to the norms of employer/ institution/university in which the candidate will be seeking admission.

n) If a student has taken 6th subjects, and if he/she fails in any one of first five subjects, the same will be replaced by the 6th subject provided the candidate satisfies the scheme of studies i.e. after replacement either Hindi or English remains as one of the main five subjects.

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11. As regards the pass criteria, Rule 40.01 of the CBSE Examination Bye-Laws provides as under:

"Chapter-7 Rule 40.1 Pass Criteria (Senior School Certificate Examination:

(i) A candidate will be eligible to get the Pass Certificate of the Board, if he/she gets a grade higher than E in all subjects of internal assessment unless he/she is exempted. Failing this, result of the external examination will be withheld but not for a period of more than one year.

(ii) In order to be declared as having passed the examination, a candidate shall obtain a grade higher than E (i.e. atleast 33% marks) in all the five subjects of external examination in the main or at the compartmental examinations. The pass marks in each subject of external examination shall be 33%. In case of a subject involving practical work a candidate must obtain 33% marks in theory and 33% marks in practical separately in addition to 33% marks in aggregate in order to qualify in that subject.

(iii) No overall division/distinction/aggregate shall be awarded.



(iv) In respect of a candidate offering an additional subject, the following norms shall be applied:

(a) A language offered as an additional subject may replace a language in the event of a candidate failing in the same provided after replacement the candidate has English/ Hindi as one of the languages.

(b) An elective subject offered as an additional subject may replace one of the elective subjects offered by the candidate. It may also replace a language provided after replacement the candidate has English/Hindi as one of the languages.

(c) Additional language offered at elective level may replace an elective subject provided after replacement, the number of languages offered shall not exceed two.

(v) Candidates exempted from one or more subjects of internal examination shall be eligible for appearing in external examination and result shall be declared subject to fulfilment of other conditions laid down in the Pass Criteria.

(vi) In order to be declared as having passed the Class XI Examination a candidate shall obtain 33% marks in all the subjects. The pass marks in each subject of examination shall be 33%. In case of subject involving practical work, a candidate must obtain 33% marks in theory and 33% in practical separately in addition to 33% marks in aggregate in order to qualify in that subject."

12. A reading of the aforesaid CBSE Examination Bye-Laws clearly exhibits that if the respondent no. 1 is held to be governed by the said Bye-Laws, he would be entitled to substitute the marks scored by him in Physical Education in place of the marks secured in Mathematics in terms of the said Bye-Laws, since he has secured qualifying marks in the 'additional subject' i.e. Physical Education, while failing to secure the qualifying marks in the 'main subject' i.e. Mathematics.

13. However, if the respondent no. 1 is held to be governed by the KVS Education Code, he would be required to pass in all the five 'main subjects' in order to be promoted to Class XII. Relevant portion of Article 106 of the KVS Education Code reads as under:



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25. It is further argued that vide Minutes of Meeting dated 06.03.2018, the Board of Governors of KVS, which is its apex body for making policies and rules, has approved Article 106 of the KVS Education Code, the relevant portion of which reads as follows :

2. In order to be declared as having passed the Class XI Examination, a candidate shall obtain 33% marks in all the subjects (without additional subject). The pass marks in each subject of examination shall be 33%. In case of subject involving practical/project work of a candidate must obtain 33% marks in theory and 33% in practical/project separately in addition to 33% marks in aggregate in order to qualify in that subject.

(emphasis supplied)

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14. Reading of the aforesaid provision of the KVS Education Code manifests that there is no provision for substitution of marks of ‘additional subject’ under the KVS Education Code, in case a candidate fails to secure the minimum qualifying marks in any ‘main subject’.

15. Therefore, the position that emerges is that the respondent no.1 would be entitled to be promoted to Class XII if he is held to be governed by Rule 40.01 of the CBSE Examination Bye-Laws. However, the respondent no. 1 would have to repeat Class XI in case he is held to be governed by Article 106 of the KVS Education Code.

16. At this stage, it is relevant to note that learned counsel for appellants did not dispute the fact that for passing in Class XII examinations conducted by the CBSE, the provisions of CBSE Examination Bye-Laws, would be applicable.

17. It is also noteworthy to point out that CBSE Senior School Curriculum 2022-23, categorically stipulates in Para 3 under the head ‘Scheme of Studies’, that Class XI and Class XII is a composite course. Therefore, when study in Class XI and Class XII is undisputedly a



composite course, there cannot be different parameters for promotion for the said Classes. Thus, the contention on behalf of the appellants that the CBSE Examination Bye-Laws would be applicable to only Class XII, does not persuade to reason. The said contention, if accepted, would lead to incongruous results.

18. It is to be noted that the CBSE is a national level Board of Education for government and private schools, controlled and managed by the Government of India. The schools, which are affiliated to the CBSE, are bound to follow the Examination Bye-Laws, Rules and Regulations of the CBSE. Thus, the CBSE in its short affidavit before the learned Single Judge has stated as follows:

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6. I further say that the Respondent No.3/CBSE is bound by its bye-laws, rules, policies and Circulars being issued from time to time and always expects the Schools affiliated with it to follow the same in letter and spirit. Further, herein; it is specifically submitted that any School which is affiliated with the CBSE, is bound to follow the Examination bye-Laws, rules, regulations and circulars issued from time to time by the CBSE. Accordingly, in view of the curriculum framed by the CBSE, the said schools affiliated with the CBSE, have to follow and act within the purview of the said bye-laws, rules & regulations, Circulars etc.

7. That further, it is pertinent to mention that the Class XI & XII courses are a composite course and students need to take only those subjects in class XI which he/she intends to continue in class-XII. It is further submitted that the Students can be offered a minimum of 5 or more subjects in class XI and the same subjects are required to be continued in Class XII. In case, the student has taken a 6th subject (additional subject) and if he/she fails in any of first five subjects, the same will be replaced by the 6th subject, provided that the candidate satisfies the scheme of studies i.e. after replacement, either Hindi or English language remains as one of the main five subjects. Herein it is further pertinent to mention that Skill Electives can be offered along with any subject, as per the scheme of studies.

8. I say that the Respondent No.3 is an Examining Body for the



students of Class 10th and 12th for the candidates who appear for class 10th and 12th Board Examinations sponsored by the school concerned (Affiliated School with the CBSE) after complying with the conditions of qualification for promotion from Class XIth to Class XIIth.

9. I further say that it is specifically submitted that the Respondent No.3/CBSE neither supervises the examination and promotion, evaluation and compartment Examination of XI Class nor controls the same because the Class XI examinations are conducted internally by the schools themselves. However, the concerned School(s) affiliated with the CBSE is/are bound to follow the said Examination Bye-Laws and Circulars, orders issued from time to time to the Heads of the Schools.

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19. Holding that the CBSE Examination Bye-Laws have the force of law and bind the parties, Supreme Court in the case of ***Jigya Yadav (Minor) Versus Central Board of Secondary Education and Others, (2021) 7 SCC 535***, has held as follows:

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115. CBSE is the only Central body for conducting examinations in the country created by a resolution of the Central Government. All the bodies constituted at various levels are working in the direction of just educational governance. Article 41 of the Constitution, couched as a directive, is the source behind the basic functioning of the CBSE Board as it secures nothing but right to education. It is participating in educational affairs which form an intrinsic part of social affairs. The CBSE Board is a public authority functioning in public interest for the performance of a public function.

116. We may gainfully refer to the Constitution of the Board which reaffirms the public character of the Board as the ultimate control over the functioning of the Board is exercised by the Ministry of Education (now Ministry of Education & Social Welfare). Article 1 states that:

“1. The Board shall conduct examinations at the secondary stage of the education and such other examinations as it may consider fit, subject to the approval of the Controlling Authority or as it may be called upon to conduct by the Government of India, Ministry of Education, (now Ministry of Education & Social Welfare) and do such acts ancillary to the objects as may be necessary.”



Article 4 further reads thus:

“4. The Secretary to the Government of India, Ministry of Education (now Ministry of Education and Social Welfare) shall continue to be the Controlling Authority of the Board.”

117. Reverting to the CBSE Examination Bye-laws, the same are couched in the form of a code. They provide for all essential aspects relating to formal education of a student including admission, examination, migration, transfer, curriculum, fee for various services, issuance of verified certificates, modifications in certificates, etc. This bye-laws, therefore, bind the parties and are duly enforceable in a court of law, even by way of writ remedies as we have seen in the present batch of petitions.

118. To put it differently, the bye-laws of the Board have the force of law and must be regarded as such for all legal purposes. It would serve no meaningful purpose to hold these authoritative set of rules originating from an instrumentality of the State as mere contractual terms despite there being overwhelming public interest in their just application.

119. The argument that bye-laws of the Board are contractual elements as CBSE is a registered society unbacked by a statute cannot be accepted for at least four reasons — first, CBSE is not a private corporate body. It is a juristic person and a “State” within the meaning of Article 12, which in itself warrants its amenability to the courts including constitutional writ courts; second, the functions performed by the CBSE Board are public functions and not private functions; third, the test of “force of law” takes within its sweep the nature of rule, its authoritative impact on the subjects, nature of function performed by the rule-making body, the origin of the body, the binding value of the rules, existence of any competing set of rules and fourth, absence of statute does not automatically render the rules to be contractual terms, as already observed.

120. As in the ultimate analysis, the bye-laws operate as law, the scrutiny of this Court cannot be undermined by giving them an artificial colour. For a student enrolled with the CBSE, there is no other body of rules but the subject bye-laws for dealing with all significant aspects of her education. By now it is an established tenet that even body corporates, cooperative societies, registered societies, etc. can be declared as instrumentalities of the State, for the only reason that the outer form of organisation must not be allowed to defeat the ultimate constitutional goal of protection of fundamental



rights as and when they suffer at the hands of the State, directly or indirectly. The Court ought to intervene with circumspection even when the public body derives its authority from a government resolution.

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20. Thus, when there is contradiction and conflict in the CBSE Examination Bye-Laws and KVS Education Code, the CBSE Examination Bye-Laws would prevail. Accordingly, this Court is in complete agreement with the following finding of the learned Single Judge:

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49.11. As a sequitur to the above, in the opinion of this court, there can be no manner of doubt that in the event of any conflict between a bye-law framed by the CBSE and a code issued by KVS, the CBSE bye-law would prevail. In the present case, there is a clear conflict inasmuch as Article 106 of the KVS Education Code stipulates an additional criterion by which a candidate is not permitted to substitute an additional subject in place of a main subject in order to fulfill the pass criteria for Class-XI. Since Bye-Law 40.1(iv)(b) and (vi) specifically permit such substitution, Article 106 must yield to Bye-Law 40.1(iv)(b) and (vi).

49.12. Accordingly, the petitioner is entitled to substitute Physical Education (an elective subject taken as an additional subject) in place of Mathematics (an elective subject taken as a main subject). By doing so he would also continue to retain English as one of the main subjects. Since that is so, upon such substitution, the petitioner would have obtained 33% marks in 05 subjects, viz. Business Studies, Accountancy, English, Economics and Physical Education – in theory, in practical as well as in the aggregate – in each of the subjects.

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21. There has to be uniformity amongst all the affiliated schools of CBSE in imparting education to students who appear in the examinations to be held by the CBSE. If each school is permitted to apply different criteria for internal examination in Class XI, then the uniformity and the objective of the CBSE in framing Bye-Laws for their applicability across all affiliated schools would be lost. The conduct of Class XI examination internally



necessarily follow the same pattern and standard, as applicable to Class XII examinations conducted by the CBSE.

22. In the present case, once the marks scored by respondent no. 1 in Mathematics in Class XI is replaced with the marks scored by him in Physical Education in terms of the CBSE Examination Bye-Laws, then respondent no. 1 fulfills the criteria of having obtained 33% marks in each subject (individually, in the theory and practical components) as well as 33% marks in the aggregate. Therefore, the respondent no. 1 is held entitled for promotion to Class XII by applying the criteria as laid down in the CBSE Examination Bye-Laws.

23. When it is the clear stand of the CBSE that Class XI and Class XII are a composite course and that students may only take those subjects in Class XI which they intend to continue with in Class XII, the pass criteria under Bye-Law 40.1 of the CBSE Examination Bye-Laws would apply equally to Class XI. Thus, there cannot be different criteria for assessment and promotion for Classes XI and XII, as the same would be totally irrational and illogical. The autonomy of schools in running the institution or in setting their academic criteria, cannot be stretched to the point of irrationality and absurdity.

24. Reliance by the appellant no.1 on the judgment in the case of *Neeti Singh Malik (supra)* is totally erroneous, as the said judgment dealt with the issue of applicability of Local States Act and Regulations over the Kendriya Vidyalaya Schools. It is also to be noted that the Kendriya Vidyalaya Schools are not affiliated under the Delhi School Education Act and Rules, 1973, the local laws which were subject matter of the said case. However, in the present case, it is undisputed that the appellant no. 1/Kendriya Vidyalaya



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School is affiliated to the CBSE. Besides, the CBSE Examination Bye-Laws are in the nature of Central Bye-Laws which are applicable all over the country to the schools which are affiliated to CBSE. CBSE Examination Bye-Laws are not akin to Local States Act/Regulations.

25. In view of the aforesaid detailed discussion, this Court finds no merit in the present appeal. The same is accordingly dismissed along with the pending applications.

MINI PUSHKARNA, J

ACTING CHIEF JUSTICE

DECEMBER 13, 2023

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