



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 3374/2024

(ANIRUDDHA GAURISHANKAR RAWAT, MINOR THROUGH NATURAL GUARDIAN
GAURISHANKAR RAMESHWAR RAWAT **VERSUS** PM SHRI KENDRIYA VIDYALAYA, NAGPUR
& OTHERS)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri A.A. Dhawas, counsel for the petitioner.
Shri S.A. Chaudhari, counsel for the respondent no.1.
Ms N.P. Mehta, Additional Government Pleader for the respondent no.4.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : JULY 12, 2024

The petitioner claims to be the student of respondent no.1-PM Shri Kendriya Vidyalaya (for short, 'the respondent no.1-School'), which is governed by its own Code.

2. It is urged by the counsel for the petitioner that the petitioner had secured 33% marks in all the subjects but for Mathematics. As a sequel of above, he was required to go for supplementary examination. It is claimed that by virtue of such status of the petitioner viz. a student of the respondent no.1-School studying in 11th Standard in 2023-24, he was entitled to be declared as 'passed' in 11th standard in view of Bye-Law No.40.1. It is claimed that the assessment of the petitioner as done by the respondent no.1-School in accordance with the regulations of the respondent no.3-Central Board of Secondary Education, New Delhi is illegal as the provisions of the regulations of the respondent no.3-CBSE are not applicable to the respondent no.1-School. It is claimed that the respondent no.1-School is purely governed by its own Code and so as to

substantiate the same, support is drawn from the judgment of Delhi High Court in *Aryan Kumar (Minor) through Father Ravinder Kumar Versus Kendriya Vidyalaya & Others* [Writ Petition (C) No.10836 of 2023], decided on November 11, 2023.

The counsel for the petitioner has drawn our attention to the communication dated September 16, 2022 issued by the Assistant Commissioner (Acad.) to all the schools operating under Kendriya Vidyalaya Sangathan (for short, 'KVS') relating to the "Assessment and Evaluation Practices for classes III to VIII and IX and XI in the Academic Session 2022-2023", in particular to the following portion thereof in the context of Senior Secondary Classes, i.e. XI and XII, which reads as under :-

"For Secondary Classes :- (IX-X)

- 1. CBSE Circular No.CBSE/dir(ACAD)/2022/dated 20-05-2022, Circular No.ACAD-57/2022 on Assessment and Evaluation Practices of the Board for the session 2022-23 need to be strictly followed.*
- 2. The qualifying marks for class XI students in each subject for promotion shall be 33% in each subject. It is to further clarify that in a subject where practical components are involved; separate pass (33%) is required in Theory component and Practical component respectively. This implies that students need to score 33% out of 70 (Theory) and 33% out of 30 marks in Practical separately. Similarly, students need to secure separate pass (33%) Theory Component (33% out of 80) and Internal Assessment (33% out of 20) for subjects having Internal Assessment. The overall 33% marks are also required for the promotion of the students in the next higher class."*

It is thus urged that the petitioner has made out a case for grant of the relief prayed in the writ petition.

3. As against above, the contention of Shri S.A. Chaudhari, learned counsel for the respondent no.1 is that the Courts should be slow in causing interference in exercise of extraordinary writ jurisdiction. He would urge that the judgment of the Delhi High Court in *Aryan Kumar* (supra) was questioned before the Apex Court and the Apex Court in the peculiar facts and circumstances of that case has disposed of the Special Leave Petition leaving the question of law open. As such, the counsel for the respondent no.1 would claim that the Court may pass appropriate order in the matter.

4. We have appreciated the rival submissions.

5. Bye-Law 40.1 of the CBSE Examination Bye-Laws reads as under :-

“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 fulfillment of other conditions laid down in the Pass Criteria.”

6. The Delhi High Court in *Aryan Kumar* (supra), after considering the rival claims has made the following observations :-

“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.

49.13. *In the above view of the matter, the petitioner fulfills the pass criteria contained in Bye-Law 40.1 of the CBSE Examination Bye-Laws.*

49.14. *Furthermore, this Court is of the view that the observation made by the Co-ordinate Bench of this Court in Puneet Singh (supra) cannot but be an obiter dictum since, as correctly pointed out by learned counsel for the petitioner, the decision of that case turned upon interpretation and applicable of Bye-Law 26(i) of the CBSE Examination Bye-Laws and was made in the backdrop of the promotion rules of the Department of Education, Government of NCT of Delhi. Moreover, it is also obvious that there is no discussion nor any reasoning in that judgment relating to Bye-Law 40.1. The Court could not therefore have expressed an authoritative opinion in relation to Bye-Law 40.1 of the CBSE Examination Bye-Laws. Most importantly, the observation of the Court in para 15 in that case proceeds without Bye-Law 40.1 (vi) having been brought to its notice, which specifically sets-down the pass criteria for Class-XI Examination.”*

7. As such, having gone through the aforesaid observations and the facts and circumstances of the case, we are of the view that the issue involved herein is squarely covered by the judgment in *Aryan Kumar* (supra). It is held that in case, the petitioner fulfills the ‘Pass Criteria’ for Class-XI and is eligible to be promoted to Class-XII at the respondent no.1-School in accordance with the findings recorded by the Delhi High Court in the case of *Aryan Kumar* (supra). The fresh assessment of the petitioner’s marks be carried out by the respondent no.1-School and the result thereof be communicated to the petitioner as expeditiously as possible and within a period of three days from the date of production of this order.

8. The writ petition is disposed of in above terms. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

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