



2024:DHC:1387



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

+ **W.P.(C) 2614/2024 and CM APPL. No. 10739/2024**

KHUSHI PRATAP SINGH

..... Petitioner

Through: Mr. Sandeep Sharma, Mr. Sahil Mongia, Mr. Shahil Rao, Ms. Kavya Dauk, Mr. Abhishek Yadav, Mr. Quasar Khan and Ms. Divya Sharma, Advocates

versus

CENTRAL BOARD OF SECONDARY

EDUCATION & ORS.

..... Respondents

Through: Mr. Sanjay Khanna, Standing Counsel with Ms. Pragya Bhushan, Mr. Karandeep Singh and Mr. Tarandeep Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T (O R A L)

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21.02.2024

1. This case relates to the right of the petitioner to appear in the Class XII board examination to be conducted by the CBSE tomorrow i.e. on 22 February 2024.

2. The issue in controversy is short.

3. Mr. Sanjay Khanna, learned counsel for the Central Board of Secondary Education (CBSE), has, on instructions, stated that the Court can proceed to decide the matter on the basis of the oral

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submissions advanced by him without his having to file any counter-affidavit. As such, I have heard learned counsel for the parties and have proceeded to decide the matter.

4. The petitioner is a girl student, who seeks to appear in the All India Senior Secondary (Class XII) examination held by the CBSE, scheduled to start tomorrow i.e. on 22 February 2024.

5. The CBSE has admittedly issued specific instructions, *vide* Notice dated 5 September 2023, to be followed by female students, who seek to appear as private candidates to undertake the Class X and Class XII examinations. The relevant part of the said instructions read as under:

“p). The submission of forms for examination has been made fully online. Accordingly, it is informed that a hard copy of the form is not required to be sent to CBSE. However, following is intimated :

1. Female students who are bonafide residents of the National Capital Territory of Delhi and have attained the age for appearing in Class X shall upload the copy of the Domicile Certificate issued by the appropriate authority when submitting online application form.”

6. Female students who desire to appear as private candidates in the CBSE Class XII examinations, were, therefore, required to upload alongwith their application forms for appearing in the examinations, a domicile certificate, certifying that they are residents of Delhi.

7. On 16 February 2024, I had an occasion to deal with the aforesaid instruction in two writ petitions. They were W.P.(C) 2374/2024 (*Vishakha & Ors. v. The Controller of Examination,*

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Central Board of Secondary Education & Ors.) and W.P.(C) 2375/2024 (Priyanka Darshi v. Central Board of Secondary Education & Anr.).

8. W.P.(C) 2374/2024 pertained to 20 students, who had never applied for obtaining a domicile certificate till the filing of the writ petition before this Court. W.P.(C) 2375/2024 was filed by a student who, though she had not applied for obtaining domicile certificate prior to uploading the application form on 05 September 2023, had applied for obtaining a domicile certificate on 12 February 2024, and had obtained the domicile certificate on 13 February 2024.

9. In these circumstances, I had held that as the CBSE had, as far back as on 5 September 2023, clearly made all the female students, undertaking the Class XII CBSE examination as private candidates, aware of the necessity of uploading the domicile certificate, the petitioners in the two writ petitions could not be granted any relief as the 20 petitioners in W.P.(C) 2374/2024 had, till the filing of the writ petition, never even applied for obtaining a domicile certificate and the petitioner in W.P.(C) 2375/2024 had applied for obtaining a domicile certificate only on 12 February 2024 just before filing of the writ petition before this Court. As such, the said writ petitioners who, being conscious and aware of the requirement of the uploading the domicile certificate never even made attempts to obtain domicile certificate, much less upload it, could not get any equitable relief from this Court under Article 226 of the Constitution of India.

10. The case of the present petitioner, however, is markedly



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different. She in fact applied on the morning of 20 September 2023 for obtaining a domicile certificate and, along with the application form for appearing in the examination, which was uploaded by her on the same day, also uploaded the receipt evidencing the submission of the application by her for obtaining the domicile certificate. She received the domicile certificate on 23 September 2023. These facts are not in dispute.

11. Mr. Khanna, however, stresses the fact that on 20 January 2024, the CBSE had addressed communications to all female private candidates, whose applications were deficient in any respect, pointing out the deficiencies and requiring them to take curative steps. He submits that, despite having been thus made aware of the deficiency in her application on 12 January 2024, the petitioner never cared to upload the domicile certificate that she had received, resulting in the CBSE having no option but to inform the school, where she was to undertake the examination, on 15 February 2024, that she could not be allowed to appear in the examination. He submits, therefore, that owing to the petitioner's own default in failing to cure the defect in her application despite the e-mail dated 12 January 2024, she has foreclosed her right to appear in the Class XII examination.

12. I have heard learned counsel for the parties and applied myself to the facts before me.

13. As already noted, the facts of the present case are different from those which were before the Court in *Vishakha* and *Priyanka Darshi*. Those were cases in which, despite the petitioners having been made



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aware on 5 September 2023 that they were required to upload the domicile certificate while applying for appearance in the Class X / XII CBSE examination, they, in the case of 20 students never even chose to apply for domicile certificate and in the case of **Priyanka Darshi**, applied for the domicile certificate just three days before filing the writ petition in this Court.

14. As against this, in the present case, the petitioner admittedly applied for the domicile certificate on the morning of 20 September 2023. As was informed to this Court while arguments had been advanced in the case of **Vishakha** and **Priyanka Darshi**, it appears that it was for the first time that a domicile certificate was being sought from private female candidates who desired to undertake the CBSE Class X/Class XII examination. No fault therefore can be seriously found with the petitioner in not having applied for the domicile certificate till the morning of 20 September 2023.

15. Be that as it may, the petitioner had in fact applied for obtaining the domicile certificate before submitting the application form online for appearing in the Class XII examination. There is no dispute that she had also uploaded, with her application form, the receipt evidencing the fact that she had applied for obtaining the domicile certificate. There is also no dispute about the fact that on 23 September 2023, she in fact obtained the domicile certificate. A copy of the domicile certificate has also been placed on record along with the writ petition.

16. It was, therefore, impossible for the petitioner to have uploaded



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the domicile certificate along with her application for appearing in the Class XII examination. The maximum that the candidate could have done, was to apply for the domicile certificate. Had she received the domicile certificate prior to submitting the application for appearance in the examination, she could undoubtedly have uploaded the domicile certificate as well.

17. However, so long as she had applied for the domicile certificate before submitting the application for appearance in the examination, the petitioner had done everything within her control in ensuring compliance with the requirement contained in the aforesaid notice dated 5 September 2023 of the CBSE. If she had not been able to upload the domicile certificate along with her application for appearance in the Class XII examination because she had not received it till then, that fact, in my opinion cannot be regarded as fatal to her right to appear in the examination. Having applied for obtaining the domicile certificate, ensuring that she received it before uploading her application for appearing in the Class XII examination was beyond her control. The law does not compel the performance of the impossible.¹

18. One may refer in this context to the judgment of the Supreme Court in *G.P. Ceramics Pvt Ltd v. Commissioner, Trade Tax*²

19. There is, however, undoubtedly one default of which the petitioner may be characterised as guilty. Despite the e-mail having been issued by CBSE on 12 January 2024 informing that her

¹ *Lex non cogit ad impossibilia*

² (2009) 2 SCC 90



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application form was defective as it was not accompanied by a domicile certificate, the petitioner still did not upload the domicile certificate which had been issued to her on 23 September 2023. There is no wishing away the fact that this was an omission on the part of the petitioner.

20. That said, the Court has to considered what the sequitur of the omission should be. It is obvious that the omission was, at the highest, negligent, and not deliberate. Should the petitioner be completely disentitled from undertaking the examination, or should the Court take a more expansive view in the matter?

21. The fact that the petitioner is in fact a domicile of Delhi cannot be disputed. She had applied her domicile certificate even before submitting her application form for appearing in the examination. As such, she cannot be held to be at fault for not having uploaded, along with the application form, the domicile certificate. In these circumstances, it would be unjust and unfair not to allow the petitioner to undertake her Class XII examination just because she defaulted in uploading the domicile certificate in response to the e-mail dated 12 January 2024.

22. The court has to be conscious that it is the academic career of a student that hangs in the balance.

23. In the present case, therefore, I am of the opinion that default in failing to upload the domicile certificate consequent on the e-mail dated 12 January 2024, despite the fact that the petitioner had applied



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for the domicile certificate even before submitting her application for appearing in the examination and had in fact received the domicile certificate as far back as on 23 September 2023, cannot be a legitimate ground to disentitle her from appearing in the examination.

24. Needless to say, no fault can be found with the CBSE which has strictly followed its rules and policy and to that extent, the CBSE has to be commended. Nonetheless, the Court has to keep the overall concern of substantial justice in mind.

25. In view of the aforesaid, the petitioner is permitted to appear in her Class XII CBSE examination to be held tomorrow i.e. on 22 February 2024.

26. Mr. Khanna very fairly submits that he would inform the Regional Officer, CBSE, Delhi East Region (hereinafter, 'ROD'), today, with a copy of her domicile certificate, producing evidence of compliance with the deficiencies mentioned in the email dated 12 January 2024, so that the ROD could ensure that she is permitted to appear in her Class XII examinations tomorrow i.e. on 22 February 2024.

27. The writ petition, accordingly, stands allowed in the aforesaid terms.

C.HARI SHANKAR, J

FEBRUARY 21, 2024

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