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

+ **LPA 149/2024 &, CM APPL. 11005/2024**

VISHAKHA & ANR.

..... Appellants

Through: Mr. Sanjay Mani Tripathi, Mr. Suraj Kumar Singh, Mr. Kamal Kant Tripathi and Mr. B. S. Panday, Advocates

versus

**THE CONTROLLER OF EXAMINATION 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 for CBSE

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Date of Decision: 22nd February, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

CM APPL. 11004/2024(for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present applications stand disposed of.

LPA 149/2024 &, CM APPL. 11005/2024

1. Present appeal under Clause X of the Letters Patent of the then High Court of Judicature at Lahore, which stands extended to the High Court of



Delhi, has been filed challenging the judgment dated 16th February, 2024, whereby the learned Single Judge dismissed the writ petition i.e., WP(C) 2374/2024 in *limine*.

1.1. The Appellants are female students who applied in September/October, 2023 for appearing in Class X and Class XII Board Examinations of 2024 being held by CBSE¹, under the private candidate category.

1.2. The Respondents vide public notice dated 05th September, 2023 notified the procedure to be followed by the private students for applying to the Class X Board Examinations of 2024. The notice at serial no. 7 expressly clarified that this option was being made available only to the female students who are bona fide residents of National Capital Territory of Delhi ('NCT of Delhi'). In furtherance of the said condition, as per the Clause (p) (1) the applicant female student was mandatorily required to upload the copy of 'Domicile Certificate' at the time of submitting online application form for registration. The serial no. 7 and said Clause (p) (1) enlisted under the head 'Features of the Online System of Registration' reads as under:

*"7. Female Students who are **bonafide residents of the National Capital Territory of Delhi** (NCT of Delhi). This scheme is available only for examination 2024. Thereafter, this scheme will be discontinued.*

Features of the Online System of Registration

....

*Clause (p) (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.**"*

(Emphasis supplied)

¹ Central Board of Secondary Education



1.3. The requirement for uploading the copy of the Domicile Certificate was printed in font color 'red', which was in contrast with the remaining text of the said Clause which was in font color 'black'. In fact, a perusal of notice shows that the terms and conditions which the Respondents believed were important had been printed in font color 'red' to draw the attention of the applicants to the said conditions.

1.4. The Appellants state that an identical notice was also issued by CBSE for female students undertaking Class XII Board Examination, though it has not been placed on record. The Respondents admit the said fact.

1.5. The Appellants submitted their respective online application(s) without the Domicile Certificate. It is stated that the Appellants uploaded their Aadhar Cards with the application form. The Appellants have placed on record the confirmation issued on the Web Portal with following application numbers to the Appellants: (i) Vishakha i.e., Appellant No.1 was allotted WW200040; dated 15th September, 2023 (ii) Priya Das i.e., Appellant No.2 was allotted DW100022; dated 29th September, 2023.

1.6. The exams were scheduled to begin on 19th February 2023. However, since the Appellants were not issued their admit card(s) and therefore the Appellants on 12th February, 2024 approached the Regional Office of the Respondents at Patparganj, Delhi. The Regional Office referred the Appellants to the Head Office. Subsequently, on 15th February 2024 the Appellants were informed by the Respondents that no admit card(s) would be issued to them as they failed to submit the 'Domicile Certificate' as per Clause (p)(1) of the notice dated 05.09.2023.

1.7. The Appellants thereafter, filed a WP(C) 2374/2022 before this Court against the Respondents seeking direction to the Respondents to issue the



admit card(s) to the Appellants. The learned Single Judge vide the impugned judgment dated 16th February, 2024 has dismissed the writ petition in *limine*.

2. Learned counsel for the Appellants states that since the Appellants had submitted their Aadhar Cards along-with their application forms as proof of residence. He states that the Respondents on the basis of those documents accepted the online application forms of the Appellants.

2.1. He states that subsequent denial of the admit card(s) by the Respondents was not warranted under any circumstances. He states that the 'Domicile Certificate' could have been submitted later by the Appellants.

2.2. He states that Notice dated 05th September, 2023 issued by the Respondents nowhere indicates that non-filing of the 'Domicile Certificate' would result in disentitlement of the Appellants for appearing in the Class X and Class XII Board Examinations of 2024. He, therefore, states that non-filing of 'Domicile Certificate' is a curable defect. He states that the Aadhar Card duly bears out the address of the Appellants at Delhi and therefore, they satisfy the mandatory condition of being a bonafide resident of Delhi.

2.3. He states that though exams in two subjects have already been held, the Appellants can be permitted to appear for the remaining three subjects as they will be able to appear for the two subjects in compartment.

2.4. In reply, learned counsel for the Respondents state that there is no error in the order of the learned Single Judge which has duly considered the categorical and unequivocal conditions set out in the notice. He states that the condition of furnishing a domicile certificate is mandatory for satisfying the condition that the applicant is the bonafide resident of Delhi. He states that there is no stipulation in the Notice for accepting the Aadhar Card as an alternative proof of residence. He states that there is no challenge to the



Notice and the Clause (p)(1) therein and therefore, the pleas raised in these proceedings are not maintainable.

2.5. He states that this facility for writing exams by private students was made exclusively available to the female students in NCT of Delhi. He states that though CBSE examinations are being held all over India, this facility has not been available to the female students in the rest of the country. He states that therefore, to ensure that only bonafide residents of NCT of Delhi avail this option, the requirement of a domicile certificate was provided for. He states that sufficient time was available to the Appellants for obtaining the said certificate.

2.6. He states that exam for the subjects of Hindi on 19th February, 2024 and English on 22nd February, 2024 has already been held and therefore, the issue has become irreversible. He states that administratively it is not possible to issue admit cards and allot a center to these applicants. He states that all applicants allowed to take exams under this Notice have submitted the domicile certificate. He states that the submission of the Appellants that they can take the exams for the subjects of Hindi and English by appearing in compartment is misconceived as compartment is offered to those students who initially sat for the exam; as the compartment is the continuation of the original.

3. We have considered the submissions of the learned counsel for the parties and perused the record.

4. Learned Single Judge while dismissing the writ petition has returned the following findings:

“4. Learned counsel for the petitioners do not dispute that, as required by the Notification dated 5 September 2023, no copy of the domicile certificate issued by the appropriate authority was uploaded by them when they submitted their



application online for appearance in the Class X Board examinations. In fact, they submit that, even as on date, they are not in a possession of the domicile certificate and have only applied to the Competent Authority for issuance thereof.

5. Though learned counsel for the petitioner have made fervent pleas calling on the Court to exercise mercy keeping in mind the fact that the petitioners are young children, who have to undergo their Class X and Class XII Board examinations, it is a settled that, while mercy can, and must, temper justice, it cannot substitute it. Ubi jus, as the adage goes, ibi remedium. Availability of a remedy depends on the existence of a right. The Court cannot pass merely to show mercy, where the necessary indicia for grant of relief are not fulfilled.

6. As far back as on 5 September 2023, the notice issued by the CBSE made it clear that female students who wanted to apply for attempting Class X and XII Board examinations, as private candidates, were required to upload their domicile certificates. There is no dispute that this has not been done.

7. If this Court were to grant the relief sought by the petitioners it would render Condition 1 in Clause (p) of the Notice dated 5 September 2023 completely redundant. It would also set a precedent where students, without complying with said clause, can nonetheless come to the Court at the eleventh hour and obtain orders allowing them to participate in the examination.

8. It is true that every statutory requirement, which is facially mandatory, may not always be so. Procedural statutory requirements, even if conditioned by the use of the word “shall”, are often treated as directory. In the present case, however, the CBSE deals with lakhs – or maybe more – of applications. Procedural requirements, and the stipulations regarding the documents and details which are to accompany an application are not, therefore, dispensable, more so when the submission of applications is online, and there is little scope for physical verification. If Courts start benevolently granting relief even in cases where there is no strict compliance with these requirements, it can throw the system into anarchy. Save in rare cases, therefore, the Court should not treat such stipulations as dispensable, in pursuit of what it may feel is “substantial justice”.

9. While the Court, therefore, sincerely regrets being unable to come to the aid of the petitioners, that is unfortunately what the law ordains.

10. For the aforesaid reason, it is not possible to grant the relief sought in this writ petition. The writ petition is accordingly dismissed in limine.”

(Emphasis supplied)

5. In this regard, we may note that the ‘Domicile Certificate’ is issued by Government of NCT of Delhi to an individual, who is residing continuously for the last three years within the territorial jurisdiction of NCT of Delhi.



6. The Appellants have relied upon their Aadhaar to substitute the requirement of the domicile certificate. In this regard, we may refer to Section 9 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 ('Aadhaar Act'), wherein, it is specifically stated that the Aadhaar is not a proof of domicile. Section 9 of the Aadhaar Act reads as under:

“9. Aadhaar number not evidence of citizenship or domicile, etc.—The Aadhaar number or the authentication thereof shall not, by itself, confer any right of, or be proof of, citizenship or domicile in respect of an Aadhaar number holder.”

(Emphasis supplied)

7. In view of the said provision in the Aadhaar Act, the stipulation in the Notice dated 5th September, 2023 requiring the applicant to file a domicile certificate issued by the competent authority is reasonable and justified.

8. The exception carved out for private female students by the Notice dated 5th September, 2023 is a privilege extended only to the bona fide residents of NCT of Delhi. To avail the said privilege, the requirement to satisfy the domicile in NCT of Delhi is an essential condition. Further to establish such a domicile, the Notice categorically notified the applicant that he/she must submit a domicile certificate with the application form. The law is well settled that a person, who claims benefit of an exception, has to strictly comply with the conditions for availing the said exception. It is well settled that exemptions and notifications have to be construed strictly. The Supreme Court in *CCE v. Hari Chand Shri Gopal*² has held as under:

“Exemption clause — Strict construction

29. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or **exception**, as the case may be, has

² (2011) 1 SCC 236.



to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption.....

.....
31. Of course, some of the provisions of an exemption notification may be directory in nature and some are mandatory in nature. A distinction between the provisions of a statute which are of substantive character and were built in with certain specific objectives of policy, on the one hand, and those which are merely procedural and technical in their nature, on the other, must be kept clearly distinguished. In *Tisco Ltd.* [(2005) 4 SCC 272] this Court held that the principles as regard construction of an exemption notification are no longer *res integra*; whereas the eligibility clause in relation to an exemption notification is given strict meaning wherefor the notification has to be interpreted in terms of its language, once an assessee satisfies the eligibility clause, the exemption clause therein may be construed literally. An eligibility criterion, therefore, deserves a strict construction, although construction of a condition thereof may be given a liberal meaning if the same is directory in nature.”

(Emphasis supplied)

9. The Appellants have failed to file the domicile certificate and they cannot seek waiver of the said condition in the writ proceedings. The proof of domicile is an essential condition for proving that the appellants fall in the excepted category covered by the Notice.

10. Similarly, the Supreme Court in *Shikhar and Anr. v. National Board of Examination & Ors.*³ has repeatedly reiterated that power of judicial review in matter concerning academic policies, which includes setting down of eligibility criteria for writing examinations, should be exercised with care and circumspection. The endeavor to mitigate the hardship of the petitioning persons should not result in unintended consequences adversely affecting the

³ 2022 SCC OnLine SC 425



ongoing process of examination. The relevant paragraphs of the judgment read as under:

*“9. While we understand that the present cut-off date for the completion of the internship would put certain students at a disadvantage, we are conscious that it is the domain of the executive and regulatory authorities to formulate appropriate eligibility standards for admission. In *Indian Institute of Technology Kharagpur v. Soutrik Sarangi*, a three-judge Bench of this Court held that courts should be circumspect in exercising their powers of judicial review in matters concerning academic policies, including admission criteria. In that case, this Court refused to interfere with the eligibility criteria for appearing in JEE (Advanced) 2021 which prevented a candidate who had secured a seat in one of the IITs from competing in a subsequent examination. This Court relied on *All India Council for Technical Education v. Surinder Kumar Dhawan*, where it was observed that judicial interference motivated by concerns of mitigating the hardship faced by students may result in unintended consequences adversely affecting the education system. This Court held thus:*

*“19. The reasoning of the High Court of Criterion 5 not permitting IIT students to participate in IIT (Advanced) for the second time being arbitrary, in the opinion of this Court is not supportable. This Court has repeatedly emphasized that in matters such as devising admissions criteria or other issues engaging academic institutions, the courts' scrutiny in judicial review has to be careful and circumspect. Unless shown to be plainly arbitrary or discriminatory, the court would defer to the wisdom of administrators in academic institutions who might devise policies in regard to curricular admission process, career progression of their employees, matters of discipline or other general administrative issues concerning the institution or university. It was held by this court in *All India Council for Technical Education v. Surinder Kumar Dhawan*.*

“16. The courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. If the courts start entertaining petitions from individual institutions or students to permit courses of their choice, either for their convenience or to alleviate hardship or to provide better opportunities, or because they think that one course is equal to another, without realizing the repercussions on the field of technical education in general, it will lead to chaos in education and deterioration in standards of education.”

20. Given this general reluctance of courts to substitute the views of academic and expert bodies, the approach of the High Court in proceeding straightaway to characterize the rationale given by the IIT in fashioning the Criteria No. 5 cannot be supported.”

(emphasis supplied)

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*11. Whenever a cut-off is extended, some students are likely to fall on the other side of the dividing line. In *State of Bihar v. Ramjee Prasad*, the State had prescribed that applicants applying for the post of Assistant Professors must have three years of experience. In the preceding year, the*



cut-off date for the receipt of applications was set in June, however, in the year in question, the date was fixed in January making certain candidates ineligible owing to their failure to meet the three-year requirement. This Court held that the cut-off date cannot be held to be arbitrary unless it is shown that it is unreasonable, capricious or whimsical even if no reasons are forthcoming as to the choice of date.”

(Emphasis supplied)

12. The learned counsel for the Respondents has argued that the relief sought for in the present appeal if granted will cause disruption in the ongoing process of Class X and Class XII Board Examinations of 2024 being held by CBSE. The Respondents have stated it is neigh impossible to integrate the Appellants at this advanced stage of examination and in addition it will cause discrimination to the other similarly placed applicants, who have not approached the Court.

13. We are therefore, in agreement with the findings returned by the learned Single Judge and find no merits in the present appeal. Accordingly, the appeal along with pending applications stands dismissed.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 22, 2024/hp/sk