



2024:DHC:1768



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3112/2024**

SARA SHARMA

..... Petitioner

Through: Mr. Sahil Mongia, Mr. Shahil Rao, Mr. Rahul Yadav, Mr. Sharukh Sharma, Mr. Abhishek Yadav and Ms. Divya Sharma, Advs.

versus

**CENTRAL BOARD OF SECONDARY
EDUCATION & ORS.**

..... Respondents

Through: Mr. Sanjay Khanna, with Ms. Pragya Bhushan, Mr. Taran Sokhi and Mr. Karan Sokhi, Advs. for CBSE

**CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR**

JUDGMENT (ORAL)
01.03.2024

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W.P.(C) 3112/2024

1. Female students, who desired to undertake the XII class examination of the Central Board of Secondary Education (CBSE) as private candidates have, as per Clause (p)(1) of Serial No.7 of Public Notice dated 5 September 2023 issued by the CBSE titled “Features of the Online System of Registration”, applicable to female private candidates who desired to attempt the examination, to upload, along

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with the online application form, a Domicile Certificate issued by the appropriate authority. The clause reads thus:

“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)”

2. Undisputably, in the present case, the petitioner uploaded her application for permission to sit in the XII class examination as a private female candidate but did not upload, with the application form, the requisite Domicile Certificate. Indeed, by that date, the Domicile Certificate was not even available with the petitioner.

3. Even in the absence of a Domicile Certificate, an admit card was issued to the petitioner by the CBSE on 6 February 2024. Mr. Khanna submits that this is one of the drawbacks of the online admit card generation system of the CBSE, regarding which attempts are being made by the CBSE to rectify it. In fact, as the petitioner had not uploaded the Domicile Certificate with her application to attempt the examination, she was not entitled to be issued an admit card.

4. After issuance of the admit card, as per the averments in the petition, the petitioner applied for a Domicile Certificate on 10 February 2024, which was issued to her on 16 February 2024.



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5. On 19 February 2024 and 22 February 2024, when the petitioner visited the exam hall to take the papers, she was denied entrance. It is in these circumstances that the petitioner has approached this Court by means of the present petition.

6. I had, on 16 February 2024, dealt with two writ petitions involving similar issues. One (*Vishakha and Anr. v. The Controller of Examination, CBSE*¹) involved 21 private female students. The second, *Priyanka Darshi v. CBSE*² involved one female private student. In both cases, the students were not in possession of Domicile Certificates when they uploaded their application forms for appearing in their Class XII examinations. In *Priyanka Darshi*, the situation was similar to one which obtains in the present case as, after the admit card was issued, the student applied for and obtained a Domicile Certificate.

7. I had voiced the opinion that, if the Domicile Certificate was not even obtained prior to the issuance of the Admit Card, it was not possible to permit the student to appear in the examination, lest the requirement of uploading of the Domicile Certificate be not reduced to a redundancy.

8. That decision in *Vishakha* was carried in appeal by the students to the Division Bench of this Court by way of LPA 149/2024 (*Vishakha and Anr. v. Controller of Examination, CBSE and Ors.*). By judgment dated 22 February 2024, the Division Bench has

¹ 2024 SCC OnLine Del 1087

² 2024 SCC OnLine Del 1087



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dismissed the appeal and upheld the view taken by me in the corresponding writ petitions. Paras 4 to 12 of the decision of the Division Bench merit reproduction thus:

“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.

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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**³ 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 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.**⁴ 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 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)

.....

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."

(All emphasis in original)

9. Mr. Sahil Mongia, learned counsel for the petitioner seeks to distinguish the decision of the Division Bench by reference to paras 1.5 and 1.6 thereof, which read thus:



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“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.”

10. Thus, according to Mr. Sahil Mongia, the present case is different from the case of the student appellants in *Vishakha*. The appellants in *Vishakha*, he submits, were students who had not even been issued admit cards, whereas his client has been issued an admit card. These two cases, he submits cannot be treated at par, and the fact that his client has been issued an admit card merits her case being treated differently from the case of the appellants before the Division Bench. He further submits that, in the case of *Vishakha*, the appellant had also sought replacement of requirement of the Domicile Certificate by the Aadhar Card.

11. These distinctions of fact, cannot, in my opinion, detract from the applicability of the position of law enunciated by the Division Bench in its aforesaid extracted passages from its judgment in *Vishakha*. As I have already observed in my decision in *Priyanka*

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Darshi, a student, who is erroneously issued an admit card, despite not having uploaded the Domicile certificate and not even having applied for a domicile certificate till then, cannot be placed on a better pedestal than a student who had never been issued an admit card. The erroneous issuance of an admit card to the former cannot give her a leg up over the latter.

12. That apart, the principles of law contained in paras 4 to 12 of the decision of the Division Bench in **Vishakha** would apply to all students who were not in possession of Domicile Certificate at least on the date when the admit cards were issued. Their applicability cannot depend on whether the students were actually issued admit cards or were not issued the admit cards. *The question is of their entitlement to be issued admit cards.* The Division Bench has held that they were not so entitled. If there is no entitlement, the fact of issuance of admit cards cannot confer any special equities in favour of the students.

13. The ancillary plea advanced by the appellants in **Vishakha** for replacement the requirement of Domicile Certificate with the Aadhar card is obviously completely tangential to the issue at hand.

14. In view of the judgment of Division Bench in **Vishakha**, it is not possible to grant the relief that the petitioner seeks.

15. This writ petition is accordingly dismissed *in limine*.

CM APPL. 12783/2024 and CM APPL. 12784/2024

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16. These applications do not survive for consideration and stand disposed of.

C.HARI SHANKAR, J

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