

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

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W.P.(C) 1203/2011

Date: 28th February, 2011.

GAGANDEEP CHAUHAN

..... Petitioner

Through: Mr. Aditya Sharma, Advocate.

versus

GOVT.OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Pankaj Batra, Advocate for R-1.
Mr. Atul Kumar, Advocate for R-2.
Mr. R.K. Vats, Advocate for R-3.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petition seeks mandamus to the respondent no.2 CBSE and respondent no.3 Manav Bharati India International School to allow the petitioner to appear in the Board Examination for Academic Session 2010-2011 to be conducted on 13th March, 2011 in the subject of Mathematics as

an additional sixth subject.

2. The petitioner in July, 2009 took admission to the respondent no.3 School in class XIth in Commerce Stream with the subjects of English (Core), Economics, Information Practices, Business Studies and Accountancy. The petitioner, in the school examination held in March, 2010 cleared class XIth with the aforesaid subjects and was promoted to class XIIth. It is the case of the petitioner that, being desirous for opting Mathematics as an additional subject and having qualified all internal examination and Pre-Board examination conducted by the respondent no.3 School in the subject of Mathematics also, he on 16th November, 2010 deposited Board Examination fee of ₹150/- on account of 'Additional Subject' fee for Mathematics with the respondent no.3 School. It is further the case of the petitioner that on 1st February, 2011 the Principal of the respondent no.3 School addressed a letter to the respondent no.2 CBSE for granting permission to the petitioner to appear in the examination for Mathematics as sixth subject; in the said letter it was also stated that the petitioner had qualified the internal examination in the subject of Mathematics successfully. However, the petitioner was not issued the

Admit Card for the XIIth class Board Examination commencing from 1st March, 2011, for the examination in the subject of Mathematics scheduled on 13th March, 2011; thereafter, the present petition was filed.

3. The petition came up before this Court first on 23rd February, 2011 when the counsel for the respondent no.2 CBSE and the counsel for the respondent no.3 School appeared on advance notice. It was the contention of the counsel for the respondent no.2 CBSE on that day that the petitioner having not studied the subject of Mathematics in class XIth, was under Bye-Law 26 of the CBSE Examination Bye-Laws, 1995, not entitled to appear in the examination therefor. The counsel for the petitioner had then sought time to study the Bye-Laws.

4. The counsels have been heard finally on the writ petition today. Considering the nature of the controversy and the urgency, the filing of affidavits etc. has been done away with.

5. The contention of the counsel for the respondent no.2 CBSE is that under Bye-Law 26 though with the heading “Rules for Change in Subject” in Clause (iii) thereof it is provided that a candidate shall not offer a subject in class Xth & XIIth which he has not studied and passed in class

IXth & XIth respectively. Attention is invited to the letter dated 1st February, 2011 (supra) of the respondent no.3 School in which it is clearly mentioned that the petitioner had not opted for Mathematics in class XIth but had made his own arrangements to prepare for examination and qualify for internal examination in the said subject. He has further handed over in the Court the letter dated 26th July, 2010 of the respondent no.2 CBSE laying down the schedule for the Senior School Certificate Examination (Class XII), 2011 which prescribed the last date for submission of examination form with fee as 15th September, 2010 and with late fee, latest by 30th October, 2010. The counsel for the respondent no.2 CBSE has also handed over in the Court the extracts of the list of candidates for the class XIIth examination in 2011 submitted by the respondent no.3 School to the respondent no.2 CBSE on 15th September, 2010 and in which, against the name of the petitioner there is no mention of Mathematics and the fee deposited by the petitioner also is for without Mathematics as an additional subject. It is also pointed out that the signature of the petitioner also appears on the said list. The counsel for the respondent no.2 CBSE has further urged that as per petitioner's own averment, he deposited the

examination fee of ₹150/- for the additional subject of Mathematics with the respondent no.3 School only on 16th November, 2010 i.e. after the last prescribed date of 30th October, 2010. It is contended that thus the petitioner cannot be said to have applied within time for appearing in the examination for the subject of Mathematics and is not entitled to any relief for this reason also.

6. Per contra, the counsel for the petitioner at the outset has relied upon *Kumari Jyoti Gupta v. Govt. of NCT of Delhi* MANU/DE/3913/2010 but has not been able to show the relevance thereof to the present controversy. He has next relied upon *Kusum Lata v. State of Haryana* MANU/0627/2002 observing that the scheme of CBSE requires the candidate to qualify 10+2 examination in five subjects and not six and the sixth subject is treated as additional and optional and it is up to a candidate to take or not to take the sixth subject. It was further held that when eligibility clause stipulates that a candidate should have passed 10+2 examination with at least 50% aggregate marks, it is implicit that the aggregate marks are required to be calculated keeping in view only the subjects which are necessary to pass 10+2 examination and not the marks

of additional subject which is not taken into account for passing the examination.

7. On the basis of the aforesaid judgment, the counsel for the petitioner has argued that he desires to appear in the examination for the subject of Mathematics as an additional subject without the marks of the said additional subject being included in the result to be declared by the respondent no.2 CBSE of the five subjects which he has studied in class XIth and class XIIth. On enquiry as to why he so desires to appear in the examination in the subject of Mathematics when he would not be entitled to compute marks thereof in the result of class XIIth, he states that further admissions beyond the 10+2 stage in several courses are dependent upon having studied and passed Mathematics as a subject in class XIIth and without his appearing in Mathematics he would be disentitled from applying for admission to the said courses.

8. The counsel for the petitioner otherwise agrees that the Supreme Court in *Kusum Lata* (supra) was not concerned with the controversy as in the present case.

9. The respondent no.3 School in its communication dated 1st February, 2011 (supra) had requested the respondent no.2 CBSE to grant permission to the petitioner to appear in Mathematics as an additional subject “in accordance with the subsequent provision made for this purpose by CBSE”. It has as such been enquired from the counsel for the respondent no.3 School as to which was the subsequent provision made by the respondent no.2 CBSE in accordance wherewith the case of the petitioner was canvassed.

10. The counsel for the respondent no.3 School has invited attention to the Senior School Curriculum 2011 of the respondent no.2 CBSE, Clause 1.21 under Chapter 1 titled “Eligibility of Candidates” whereof prescribes the rules for change of subject. He has also invited attention to Clause 3.1 qua Additional Subject under Chapter 3 titled “Scheme of Studies”. It is contended that though while providing for change in subject it is provided that the candidate shall not offer a subject in class XIIth which he has not studied and passed in class XIth, there is no such prohibition in the Clause with respect to the additional subject.

11. It has been enquired from the counsel for the respondent no.3 School

as to what could be the reason or logic for not permitting change in subject where the candidate has not studied or passed the same in class XIth. The counsel is unable to answer. In my opinion the only logic or reason therefor can be that a student is not entitled to, while appearing as a Regular Candidate in class XIIth, change to a subject which he has not studied in class XIth. The importance is given not only to passing the examination but to also study of the subject. The respondent no.3 School does not appear to have guided its students correctly. If the respondent no.3 had any doubt whatsoever as to the meaning of any Clause in the Curriculum aforesaid, the respondent no.3 School before guiding its students ought to have sought a clarification from the respondent no.2 CBSE and which does not appear to have been done.

12. The counsel for the petitioner has also argued that another candidate was permitted in the previous year to appear in an additional subject. However there is nothing to show that the said candidate had not studied and not passed the said additional subject in class XIth. No credence whatsoever can thus be given to the said argument.

13. The counsel for the respondent no.2 CBSE has in response to the

desire of the petitioner to appear in examination in subject of Mathematics without consideration of marks secured in the said subject for computation of result contended that the petitioner as a regular student is not entitled to appear in any additional subject marks whereof would not be computed in the result to be declared by the respondent no.2 CBSE. It is urged that though a candidate is entitled to take an additional subject but is required to also study it in class XIth and pass the exam thereof and to continue studying it in class XIIth and thereafter besides the compulsory subject of language, the four best marks out of the remaining subjects including the additional subject are taken into consideration for computing the result to be declared. Attention is invited to the extract of the list aforesaid handed over in the Court where the candidate entered immediately after the petitioner namely Garima Popli had filled up the examination form for six instead of five subjects and paid examination fee accordingly. It is contended that the petitioner within the prescribed time did not fill up the form or pay the fee for any additional subject which he in any case was not entitled to. It is further informed that under Bye-Law 43, the petitioner will be entitled to appear in the additional subject of Mathematics as a Private

Candidate after one year of appearing as a regular student and within six years thereof. Attention is further invited to Bye-Law 16 where a “Private Candidate” is defined as a person “who is not a Regular Candidate”. On the basis thereof it is contended that the petitioner in the ensuing examinations of the year 2011 cannot appear as a Regular Candidate for the five subjects for which he has filled up the form and as a Private Candidate for the additional subject of Mathematics as sought by him. It is further informed that when a candidate so appears as a Private Candidate for an additional subject, marks whereof are not taken into consideration for the result of class XIIth and the same is allowed only to enable a student to gain admission for courses requiring the study and clearance of Mathematics as a subject in the Senior School Secondary Examination.

14. Though in view of the categorical position in the Examination Bye-Laws aforesaid and also for the reason of delay by the petitioner in applying for appearing in examination in the subject of Mathematics, the petitioner cannot be granted the relief, however during the hearing it has been felt that when the respondent no.2 CBSE is permitting a student to, without studying a subject in class XIth take examination thereof as a

Private Candidate in the year following the student passing out as a Regular Candidate, to enable such students to seek admission in courses requiring passing of Mathematics as a subject in class XIIth, why the same facility is declined to a student appearing as a Regular Candidate. The counsel for the petitioner has contended that the petitioner could not have taken commerce with both Information Practices as well as Mathematics but will suffer in his further academic career if does not clear the examination in both subjects. *Prima facie* it appears that there is no reason whatsoever to disallow a student to so appear as a Private Candidate in an additional subject while appearing as a Regular Candidate, specially when he/she is permitted to so appear, in the following year. There appears to be no reason for making a candidate lose a precious year of the academic life. The counsel for the petitioner states that the petitioner is willing to file an undertaking that if allowed to appear in Mathematics as a Private Candidate, he will not insist upon the consideration of the marks in Mathematics for the purpose of computation of the result. The counsel for the respondent no.2 CBSE states that computer system will not accept such a situation and in any case the rules prohibit a student from appearing both

as a Regular and a Private Candidate at the same time. However, neither the Bye-Laws have been challenged in this writ petition nor is this Bench as per roster entitled to entertain the said challenge. The counsel for the petitioner seeks liberty to file afresh challenging the said Bye-Laws. Thus while dismissing the petition, opportunity is granted to file afresh on the same cause of action impugning the Bye Laws.

15. No order as to costs.

Dasti under the signatures of court master.

**RAJIV SAHAI ENDLAW
(JUDGE)**

FEBRUARY 28th, 2011
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