

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : Delhi Education Rules, 1973

WP(C) No.3774/2007

Reserved on: 5th November, 2007.

Date of Decision : November 15, 2007

NEETI SINGH MALIK

.... Petitioner

Through: Mr. D.C. Malik, Advocate.

versus

UNION OF INDIA

.....

Respondents

Through: Mr. S. Rajappa, Advocate KVS.
Mr. Rajeev Sharma, Advocate for the UOI.

S. RAVINDRA BHAT, J

1. The Petitioner seeks directions under Article 226 of the Constitution that she should be declared successful in Class XI and the respondent Kendriya Vidyalaya Sangathan directed to admit her to Class XII.
2. The facts of the case are that the petitioner is studying at the Kendriya Vidyalaya, T. P. Block, Pritampura, New Delhi. It is a school managed and controlled by the Kendriya Vidyalaya Sangathan, a society registered under the Societies Registration Act, 1860. The Sangathan was sponsored by the Ministry of Human Resource Development, Central Government of India. It controls a large number of schools which function across India. The Sangathan is autonomous and lays down standards of education to be followed uniformly in all its schools.
3. The petitioner was detained in Class XI following her inability to pass in Mathematics both in the session ending exam and the Supplementary exam held in March-April 2007. She had obtained 27% marks in the final exam and later, 29% in the Supplementary Exam and was therefore detained. However, she secured an aggregate of above 33% in the sessions ending exam and continuous evaluation marks put together.
4. The petitioner urges that the school is bound by Delhi Education Rules, 1973 and instructions issued thereunder. As she had an aggregate of above 33% in session ending exam and continuous evaluation marks and minimum of 25% in the session ending exam, which the Delhi School Education Rules specify as the acceptable standard or benchmark, she cannot be detained and must be promoted to the twelfth standard.

5. The respondents, however, argue that they are bound by the rules of the Sangathan according to which the Petitioner was liable to be detained. Article 106 of the Education Code for Kendriya Vidyalayas provides that students of class XI must secure a minimum of 33% separately in the continuous evaluation and that annual/session-ending exam. In the event they fail to do this, they will be allowed a Supplementary exam in the failed subject. They must secure at least 33% in the Supplementary Exam, failing which they will be detained.

6. Mr. D.C. Malik, learned counsel submitted that the respondents acted arbitrarily in denying admission to the Petitioner to Class XII, though she is deemed to have cleared the examination for the previous class, in terms of circulars issued under the Delhi School Education Act. Reliance was placed on the following condition in instructions issued in that regard :

“Condition 29: Promotion Rules for Classes IV to IX & XI Classes to Classes III: In order to be declared “passed” at the end of the session, a student must secure at least 33% marks in each of the following subjects studied by him/ her during the session subject to the condition that he/she secures 33% marks separately in theory and practical portions also. The promotion is also subject to the condition that a minimum of 25% of marks should be secured in the comprehensive test. In computing 33% of the marks, the benefit of a fraction will go to the credit of the student and such a student shall be declared “passed” the benefit of a fraction will go to the credit of the student and such a student shall be declared “passed” and he/she shall be promoted to the next higher class.

Condition 32: Compartment Examination: A student who is eligible to take the comprehensive test in order to be declared “passed” can be declared eligible for appearing at the compartment examination, provided he/she has obtained at least 20% marks in one failing subject in Class XI and in not more than two failing subjects in Classes IV to IX. Such a student shall be eligible to appear in the subject at a subsequent examination to be held in the last week of April before the summer vacation and to be known as the “Compartment Examination”. If the student secures in the subjects in which he/she has taken the compartment examination, at least 33% marks disregarding the terminal text marks, he/she shall be declared successful in the compartment examination and promoted to the next higher class.”

7. The Sangathan has, in its return disputed the Petitioner’s contentions and averred that it follows the Education Code, which provides the minimum benchmark or standards for promotion in its schools. Article 106 (C) and (D) have been relied upon; they are reproduced as below:

“C)For Classes VI to IX and XI

Each student would need to pass the continuous and comprehensive evaluation as well as the annual examination separately with at least 33% marks. Thus, each child shall need to obtain not less than 20 marks out of 60 in each subject in the continuous and comprehensive assessment for class VI onwards and 13 marks out of 40 in annual examinations, for being promoted to the next class. To pass the examination, a student must obtain not less than 33% marks in each of the academic subjects viz Languages, Mathematics, Science and Social Studies and at least 33% in the aggregate.

D) In classes IX and XI if a candidate secures less than 33% in one or two subjects in the session-ending examination, he will be eligible to take the supplementary examination in those subjects.

The candidate will be promoted to the next higher class only if he/she secures 33% marks in each of these subjects in the supplementary examination. The supplementary examination shall be conducted 3 weeks after the declaration of the results and would be conducted under the supervision of the Assistant Commissioner.”

8. The question is whether the Kendriya Vidyalaya is governed by the Delhi School Education Rules, 1973. The Delhi School Education Act and the Rules made thereunder, were an exercise in standard setting. They provide a uniform standard that are applicable to schools recognized under the enactment. They mandate extensive guidelines on examinations, admissions, staff recruitment etc. Yet, as held by the Supreme Court in *The Principal and Others v. The Presiding Officer and Others*, (1978) 1 SCC 498, the enactment applies to only those schools which apply and are granted recognition by the appropriate authority under the enactment. Evidently, the school in question is not one such recognized school. In the circumstances, Paras 29 and 32 (supra) relied upon by the Petitioner are inapplicable.

9. The Kendriya Vidyalaya Sangathan itself is a body constituted so as to set and implement standards in schools initially set up by the Ministry of Education, Government of India. They have been enforcing uniformity in standards across India. Subjecting them to local regulations would defeat the objective of the Sangathan. If the Petitioner's contentions are to be favoured, the schools of the Sangathan would have to comply with local State Acts and Regulations, and also subject themselves to asymmetrical managerial structure, staffing patterns and standards of education. In these circumstances, having regard to the decision of the Supreme Court, the standards for promotion under Article 106 of the Sangathan's Code have to prevail. Since the petitioner could not score the minimum prescribed marks, she cannot claim a right to promotion to Class XII.

10. In the light of the above findings, the writ petition cannot succeed. It is therefore dismissed without order on costs.

November 15, 2007

Sd./-
S. RAVINDRA BHAT,J