

Before Sudhir Mittal, J.

ROHIT KAPOOR—*Petitioner*

versus

**CENTRAL BOARD OF SECONDARY EDUCATION AND
OTHERS**—*Respondents*

CWP No.18881 of 2021

November 12, 2021

Constitution of India, 1950—Examination Bye Laws, 1995—Right of Children to Free and Compulsory Education Act, 2009—SS.3(2), 3(4), 12(1)(c), 12(2), 13(1), 13(2), 14(1) and 14(2)—Persons with Disabilities Act, 1995—S.2—Admission of the candidate in Class XI was on the basis of migration certificate of previous School—His Class X School was not recognized by CBSE—He cleared Class XI and continued to study till Class XII—Result of Class XII declared him ineligible—Held, it is for the incumbent School to verify all documents before giving admission in Class XI—Fault is with the School and not with the student and hence the student cannot be held responsible—Writ Allowed.

Held, that on facts there is no dispute. The petitioner passed his Class examination from Grameen Mukta Vidhyalaya Shiksha Sansthan and thereafter took admission in Class-XI in respondent No.3-school on the basis of certificate issued by the said Board. He continued to study in the school for two years till he took his Class-XII examination. The fact that Grameen Mukta Vidhyalaya Shiksha Sansthan is not recognized by CBSE is also not disputed. Thus, the only question to be answered is whether under the prevailing circumstances, the petitioner is entitled to any relief.

(Para 7)

Further held, that it was incumbent upon respondents No.1 & 2 to peruse the documents of the petitioner when he took admission in Class-XI. Had the same been done, respondent No.3-school could have been informed that the petitioner was not eligible to take admission. It appears that the record of admission was not scrutinized at that stage and by this act, respondents No.1 & 2 have dis-entitled themselves to take any action detrimental to the interests of the petitioner. The allegation of misrepresentation is also not acceptable. It is well known that at the time of filling up of the list of candidates, printed proformas

are presented to the students and their parents and they sign them placing full faith in the institution concerned. Thus, the fault does not lie with the petitioner. If at all, respondent No.3 school was responsible
(Para 11)

Pranav Handa, Advocate, *for the petitioner.*

Kannan Malik, Advocate, for respondents No.1 & 2.

SUDHIR MITTAL, J.

(1) The petitioner took his Class-XII examination in 2021, however, when the result was declared, no marks were awarded to him. He was declared 'not eligible' and this has led to the filing of the present writ petition.

(2) The Class-XII examination was taken by the petitioner as a student of respondent No.3-school. Before taking admission in the same, he took his Class-X examination at the Ludhiana Centre of Grameen Mukta Vidhyalayi Shiksha Sansthan in July 2018. The Class-X certificate of the petitioner is dated 20.09.2018 and is annexed as Annexure P-1 on the record. On the basis of a migration-cum-transfer certificate (copy annexed as Annexure P-2), the petitioner took admission in Class-XI in respondent No.3-school in 2019. He cleared the Class-XI examination and was promoted to Class-XII in the year 2020. Examination Form for taking the Class-XII examination was filled by him and a roll number was issued by respondent No.1. Practical examination was taken by him but as mentioned hereinabove, the result was not declared, being ineligible.

(3) In the written statement filed on behalf of respondents No.1 & 2, it has been averred that the Board from which the petitioner passed his Class-X examination was not a recognized Board. Thus, the petitioner was ineligible for admission to Class-XI. That being the case, he could not have taken the Class-XII examination at all. That apart, the petitioner was guilty of misrepresentation. The list of candidates annexed as Annexure R-1/3 with the written statement shows that the petitioner is stated to have cleared his Class-X examination from National Institute of Open Schooling (NIOS). The said list has been signed by the petitioner as well as his parents. On account of the same, roll number was issued. At the time of collation of result, all documents were examined and it came to light that the petitioner had in fact passed his Class-X examination from a Board which was not recognized. Thus, he was declared not eligible.

(4) It may be noted that respondent No.3-school has not joined the proceedings despite service.

(5) Learned counsel for the petitioner has submitted that the petitioner took admission in Class-XI on the basis of a certificate issued by the Grameen Mukta Vidhyalayi Shiksha Sansthan. Migration-cum-Transfer Certificate was also issued by the said Board. Thereafter, the petitioner continued as a student of respondent No.3-school for two years but no objection was ever raised by respondent No.1. The list of candidates was signed by him and his parents as instructed by respondent No.3-school. There was no misrepresentation by them. A printed copy was presented for signature and was signed. There was no concealment of facts by the petitioner nor there was any misrepresentation on his part and thus, declaring him ineligible was not justified. Reliance has been placed upon *Surinder Singh versus Gaini Zail Singh College of Engineering and Technology*¹.

(6) On the other hand, learned counsel for respondents No.1 & 2 has submitted that according to the Examination Bye-Laws, 1995 (updated upto January 2013) (hereinafter referred to as the Bye-Laws) copy annexed as Annexure R-1/1, a 'recognized Board' means an education Board recognized by the CBSE and/or by the Union/State Government in India. This is evident from Clause 2(xii) which gives the definition of 'recognized Board'. Clause 7.4(b) stipulates that a student is entitled to admission to Class-XI only if he/she has passed the secondary school examination conducted by a recognized Board of secondary education. A list of recognized boards has been annexed with the written statement as Annexure R-1/2 in which Grameen Mukta Vidhyalayi Shiksha Sansthan does not find mention. Thus, the petitioner was not even entitled to take admission to Class-XI. Further, Clause 10.1 (a)(iii) clarifies that only a student who had passed his/her secondary school certificate examination from a 'recognized Board' was eligible to take the Class-XII examination. The petitioner not having done so, was not eligible. Further, the petitioner was guilty of misrepresentation as is evident from the list of candidates annexed as Annexure R/3 as it is stated therein that he had passed his Class-X examination from NIOS. Thus, he does not deserve any relief.

(7) On facts there is no dispute. The petitioner passed his Class-X examination from Grameen Mukta Vidhyalayi Shiksha Sansthan and thereafter took admission in Class-XI in respondent No.3-school on the

¹ 1998(4) SCT 642

basis of certificate issued by the said Board. He continued to study in the school for two years till he took his Class-XII examination. The fact that Grameen Mukta Vidhyalaya Shiksha Sansthan is not recognized by CBSE is also not disputed. Thus, the only question to be answered is whether under the prevailing circumstances, the petitioner is entitled to any relief.

(8) Definition of school contained in Clause 2(xvi) and Clause 6.1 regarding general conditions of admission are relevant for deciding the issue in question and are reproduced below:-

Clause 2 (xvi)

'School' means a school affiliated to the Central Board of Secondary Education.

Clause 6.1

- (a) A student seeking admission to any class in a 'School' will be eligible for admission to that Class only if he :
 - (i) has been studying in a School recognized by or affiliated to this Board or any other recognized Board of Secondary Education in India;
 - (ii) has passed qualifying or equivalent qualifying examination making him eligible for admission to that Class;
 - (iii) satisfies the requirements of age limits (minimum and maximum) as determined by the **State/U.T. Government** and applicable to the place where the School is located;
 - (iv) produces:
 - a) the School Leaving Certificate/Transfer Certificate signed by the Head of the Institution last attended and countersigned, if required as provided elsewhere, in these Byelaws;
 - b) document(s) in support of his having passed the qualifying or equivalent qualifying examination; and
 - *c) For the purposes of admission to elementary education, the age of a child shall be determined on the basis of the birth certificate issued in accordance with the provisions of the Births, Deaths and Marriages Registration Act, 1886 or on the basis of such other document, as may be prescribed, as stipulated in section 14(1) of THE RIGHT OF

CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009.

**d) No child shall be denied admission in a school for lack of age proof, as stipulated in section 14(2) of THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009.

**b) a child suffering from disability, as defined in Clause (i) of Section 2 of the Persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act, 1995, shall have the right to pursue free and compulsory elementary education in accordance with the provisions of Chapter V of the said Act, as stipulated in Section 3(2) of THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009.

**c) Where a child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age

Provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time-limits, as may be prescribed.

Provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years, as stipulated in Section 3(4) of THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009

*(d) (i) For the purposes of this Act, a school specified in sub-clauses (iii) and (iv) of clause (n) of Section 2 shall admit in Class I, to the extent of the strength specified in THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009, of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion. Provided further that where a school specified in clause

(n) of section 2 imparts preschool education, the provisions

of clause (c) shall apply for admission to such preschool education, as stipulated in section 12(1)(c) of THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009.

(ii) The school specified in sub-clause (iv) of clause (n) of section 2 providing free and compulsory elementary education as specified in clause (c) of sub-section (1) shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed.

Provided that such reimbursement shall not exceed per-child-expenditure incurred by a school specified in sub-clause (i) of clause (n) of section 2.

Provided further that where such school is already under obligation to provide free education to a specified number of children on account of it having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation, as specified in section 12(2) of THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009.

*(e) No school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parents or guardian to any screening procedure, as stipulated in section 13(1) of THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009.

Any school or person, if in contravention of the above provisions -

(a) Receives capitation fee, shall be punishable with fine which may extend to ten times the capitation fee charged

(b) Subjects a child to screening procedure, shall be punishable with fine which may extend to twenty-five thousand rupees for the first contravention and fifty thousand rupees for each subsequent contraventions or as may be decided from time to time, as stipulated in section 13(2) of THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009.

Explanation:

(a) A person who has been studying in an institution, which is not recognized by this Board or by any other recognized Board of Secondary Education or by the State/ U.T. Government of the concerned place, shall not be admitted to any class of a "School" on the basis of Certificate(s) of such unrecognized institution attended by him earlier.

(b) 'Qualifying Examination' for the purposes of this Byelaws means an examination the passing of which makes a student eligible for admission to a particular class; and 'equivalent examination' means an examination conducted by any recognized Board of Secondary Education/Indian University or an institution recognized by or affiliated to such Board/ University and is recognized by this Board equivalent to the corresponding examination conducted by this Board or conducted by a "school" affiliated to/recognized by this Board."

(9) A perusal of Clause 6.1(a)(i) shows that only a student studying in a school recognized by or affiliated to the CBSE or a board recognized by the CBSE is entitled to take admission in a school affiliated to the CBSE.

(10) Explanation (a) clarifies this position in specific terms. It states that a student studying in an institution not recognized by the CBSE shall not be admitted to any school affiliated to the CBSE.

(11) In view of the above, it was incumbent upon respondents No.1 & 2 to peruse the documents of the petitioner when he took admission in Class-XI. Had the same been done, respondent No.3-school could have been informed that the petitioner was not eligible to take admission. It appears that the record of admission was not scrutinized at that stage and by this act, respondents No.1 & 2 have dis-entitled themselves to take any action detrimental to the interests of the petitioner. The allegation of misrepresentation is also not acceptable. It is well known that at the time of filling up of the list of candidates, printed proformas are presented to the students and their parents and they sign them placing full faith in the institution concerned. Thus, the fault does not lie with the petitioner. If at all, respondent No.3 school was responsible. However, no action appears to have been taken against it. Respondents No.1 & 2 have been remiss in their own duties and they

cannot make the petitioner suffer. In *Surinder Singh* (*supra*) it has been held that the doctrine of waiver and acquiescence would apply in situations as the present one as there was no concealment or misrepresentation by the student. This judgment squarely applies to the facts of this case.

(12) For the aforementioned reasons, the writ petition is allowed. Annexure P-6 whereby the result of the petitioner has not been declared on the ground of being not eligible is quashed. Respondents No.1 & 2-CBSE is directed to declare the result of the petitioner earliest and in any case not later than four weeks from the date of receipt of a certified copy of this judgment/order.

Dr. Payel Mehta