

Ankur Sen Vs. Cbse

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Court : Delhi

Decided On : Oct-13-2011

Judge : Kailash Gambhir, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : W.P.(C) 4820 of 2011 And CM No.9789 of 2011

Appellant : Ankur Sen

Respondent : Cbse

Judgement :

1. By this petition filed under Article 226 of the [Constitution of India](#), the petitioner seeks directions to direct the respondent CBSE to allow him to appear in the compartmental examination in Mathematics (additional subject) which was scheduled for 16.7.2011.

2. Facts, succinctly stated, are that the petitioner appeared in CBSE Class XII Examination held in the month of March 2011 and was declared 'Pass' but failed in 6th (additional) subject, i.e. Mathematics. It is the case of the petitioner that he had appeared in various entrance examinations, such as National Aptitude Test for Architecture, AIEEE (Architecture) and for other private colleges where he had secured good rank and if he is not allowed to appear in the compartmental examination in his 6th (additional) subject of mathematics in this year itself, then he would lose a chance to get admission in many prestigious courses. It is also the

case of the petitioner that he was permitted to appear in the said compartmental examination by his School and, in fact, the petitioner had filled the necessary examination form after depositing the fee of Rs.150/-, which Form was duly forwarded by the School to the CBSE and the same was received by the CBSE with its official seal affixed on the said form. After the submission of the said Form, the petitioner did not receive any response from the CBSE due to which the petitioner was apprehensive that he will not be permitted to appear in the compartmental examination in the same year because of misinterpretation of the relevant bye-laws of the CBSE. It is also the case of the petitioner that as per the rule mentioned in the footnote of the form, the petitioner is clearly eligible to appear in the compartmental examination as the said rule clearly permits a student who had appeared in all the six subjects but failed in one of the six subjects to be entitled to appear in the said compartmental examination. Also, a notice dated 1.7.2011 was sent by the petitioner to raise his grievance for inaction on the part of the respondent CBSE on his application for letting him appear in the compartmental examination and as he did not receive any response, ultimately he had to file the present writ petition.

3. In the counter affidavit filed by the respondent CBSE, the stand taken is that the petitioner is ineligible to take the said compartmental examination in the same year in terms of relevant bye-laws of respondent CBSE. As per the examination bye-laws framed by the CBSE, a candidate is eligible for taking the Senior Secondary School Certificate Examination, he has to undergo a regular course of study in one language and four elective subjects and besides these five main/elective subjects, the candidate may opt for an additional subject which can either be a language at elective level or another elective subject, as prescribed in the scheme of studies. It has been further explained by the respondent that in order to declare a student having passed the examination, he has to obtain a grade higher than the E(i.e. at least 33% marks)) in all the five subjects of external examination in the main or at the compartmental examination. Likewise, in case of a subject involving practical work, a candidate must obtain 33% marks in theory and 33% marks in practical separately, in addition to 33% marks in aggregate in order to qualify in that subject. So far as norms applicable to an additional subject are concerned, learned counsel for the CBSE has placed reliance on Rules 40.1 (iv) and (v) which

are reproduced below:-

"40.1(iv) In respect of a candidate offering an additional subject, the following norms shall be applied: (a) A language offered as an additional subject may replace a language in the event of a candidate failing in the same provided after replacement the candidate has English/Hindi as one of the languages.

(b) An elective subject offered as an additional subject may replace one of the elective subjects offered by the candidate. It may also replace a language provided after replacement the candidate has English/Hindi as one of the languages. (c) Additional language offered at elective level may replace an elective subject provided after replacement, the number of languages offered shall not exceed two.

(v) Candidates exempted from one or more subjects of internal examination shall be eligible for appearing in external examination and result shall be declared subject to fulfillment of other conditions laid down in the Pass Criteria. Learned counsel for the respondent also referred to Rule 40.2 which deals with eligibility of a candidate for appearing in compartmental examination in the senior secondary, besides referring to Rule 43(ii), which are reproduced as under:- 40.2 Eligibility for Compartment in Senior School Certificate Examination

A candidate failing in one of the five subjects of external examination shall be placed in compartment in that subject provided he/she qualifies in all the subjects of internal assessment..

Rule 43(ii) of the Examination Bye-laws given in Notification No.CE/COORD/DS-P/SO-K/F-8/2006 dated 29.9.2006 relating to Additional Subject(s) may be read along with Rule 40.1(iv). It means that a candidate who has offered and appeared in six subjects and in order to make him/her eligible for passing the examination, one of the main subject(out of first five mentioned in the List of Candidates/Application Form) has been replaced with the Additional Subject (Column 6 of the List of Candidates/Application form), such a candidate is eligible to appear in the failing subject at the compartment examination to be held in July/August in the same year. Based on the above said Rules, the respondent

took a stand that the petitioner had appeared in five main/elective subjects being English Core (301), Economics (030), Psychology (037), Physics (042) and Chemistry (043) and one additional subject, being Mathematics (041). The petitioner had passed in the five main/elective subjects but had failed in the additional subject being mathematics and the stand taken by the respondent was that the petitioner was not at all entitled to appear in the said additional subject in the compartmental examination in the same year and had the petitioner failed in any of the five main/elective subjects, and the additional subject replacing the failed elective subject, then in such a scenario the petitioner could have appeared in the failed elective subject in the compartmental examination in the same year. It is also the case of the respondent CBSE that the respondent did not issue any Admit Card in favour of the petitioner, although the form of the petitioner was duly forwarded by the School to appear in the compartmental examination of the said additional subject.

4. Mr. S.C. Vats, learned counsel appearing for the petitioner, with all vehemence, contended that the petitioner is certainly entitled to appear in the said compartmental examination in the additional subject of Mathematics in the same year. Learned counsel also strongly placed reliance on the rule printed as the footnote in the said Examination Form, which Form was duly received by the CBSE after the same was forwarded by the School of the petitioner. The said rule, on which reliance was placed by learned counsel for the petitioner, is reproduced below:-

1. Additional failed subject - Applicable - only to those who appeared at the March, 2011 examination in 6 subjects and whose result declared pass but failed in one of the six subjects.

Based on the above rule appearing as the footnote, learned counsel submitted that this rule clearly permits the petitioner to appear in the compartmental examination of Mathematics as the petitioner had appeared in all the six subjects but had failed in one of the six subjects. The contention raised by the counsel was that one of the failed six subjects could either be out of the five main/elective subjects or additional subject. Learned counsel also submitted that the stand taken

by the respondent CBSE is totally irrational, because as per CBSE, if a student fails in an elective subject or any language subject, which can be replaced by an additional subject, then only he would be entitled to appear in the compartmental examination in the same year, which interpretation would lead to wasting of one precious year of the student. Learned counsel also submitted that this Court must adopt a holistic approach to give a proper and purposeful import to the CBSE bye-laws on which reliance was placed by learned counsel for the respondent. Learned counsel also submitted that there is a gross negligence on the part of the respondent in not timely responding to the request of the petitioner and his parents kept on knocking at their doors for obtaining the Admit Card and the respondent did not respond even despite service of a legal notice. Learned counsel also submitted that pursuant to the directions given by this Court, the petitioner had already appeared in the said compartmental examination and now the respondent has to merely declare the result of the petitioner in the said subject and if the petitioner is declared pass in the said compartmental examination, then a precious year of the petitioner would not go waste, just on the wrong reading of the relevant bye-laws of the CBSE.

5. Learned counsel for the respondent, on the other hand, strongly opposed the present petition and submitted that the said admission form of the petitioner was not accepted by the CBSE and vide letter dated 6.7.2011, the CBSE had duly informed the petitioner as well as the School of the petitioner that he was ineligible to appear in the compartmental examination in the same year in terms of the bye-laws of the respondent Board. Learned counsel thus contended that after being informed about his ineligibility to appear in the said compartmental examination, the petitioner cannot complain that the respondent had slept over the matter or there was any kind of inaction on their part. Learned counsel also contended that the misprint of rule at the footnote of the Examination Form would not make the petitioner entitled to appear in the said compartmental examination. Counsel further submitted that for determining the eligibility of a candidate to appear in the compartmental examination, the relevant bye-laws will only hold the field and on a plain reading of these byelaws, it would be evident that the petitioner is totally ineligible to appear in the compartmental examination in the said additional subject of Mathematics in the same year.

6. I have heard learned counsel for the parties at considerable length and gone through the records.

7. The petitioner had chosen to appear in his Senior School Certificate Examination in the four elective subjects of Economics, Psychology, Physics, Chemistry and one language of English Core subject. It is not in dispute between the parties that the petitioner had secured more than 33% marks in each of the above subjects and also in aggregate and was thus declared "pass" in the 12th class examination by the CBSE and was also issued a marksheet to this effect. By exercising the choice to opt for an additional subject in class 12th, the petitioner chose the subject of Mathematics. It is also not in dispute between the parties that the petitioner failed in the said additional subject of Mathematics. The controversy involved in the present case is that the petitioner claims that he has the right to appear in the said additional subject of Mathematics in which he had failed alongwith the compartmental candidates whereas the respondent has taken a stand that he cannot be allowed to appear in the said examination as per the relevant rules and bye laws.

8. It is not in dispute between the parties that the petitioner had applied to appear in the said compartmental examination after depositing the requisite fee of Rs.150/- and filling in the required form but yet the petitioner got no intimation from the CBSE regarding his roll number to appear in the said exam. The petitioner has claimed his right to appear in the said exam on the basis of the rule appearing as the footnote in the said form, which is reproduced herein above, which entitles him to appear in the failed additional subject. However, after the service of the legal notice, the respondent intimated the petitioner on 6.7.2011 and also by reply to the legal notice dated 9.7.2011 that he is not eligible to appear in the said examination, and thus the contention of the counsel for the petitioner that the petitioner has not been timely informed does not hold good.

9. Be that as it may, the eligibility or ineligibility of the petitioner to appear in the compartmental examination held on 16.7.2011 in the additional subject of Mathematics can be decided only by the relevant bye laws framed by the CBSE. On a bare reading of Byelaw 40.1(iv) dealing with the norms concerning the

additional subject, the following is discernable:

a. if out of the five subjects chosen, one is a language and the student has failed in the said language subject and has also at the same time opted the additional subject as a language in which he has passed, then the additional subject would replace the main subject of language for calculating the pass grade/percentage.

b. similarly, if a candidate fails in an elective subject out of the five main subjects, and has chosen an elective subject as an additional subject in which he has passed, then the said additional subject would replace the main elective subject c.

also, as per the third condition, an additional language may also replace an elective subject if after replacement, the number of languages are not more than two in totality. The abovesaid rule is applicable to the candidates who have opted for an additional subject and have passed in the same to calculate the pass percentage or grade in the event a candidate fails in one of the five main subjects opted by him. The bye law 40.2 which deals with the compartment examination makes it clear by its simple language that a candidate is entitled to appear in the compartment examination only when he has failed in any of the five main subjects chosen by him. For the smooth implementation of the abovesaid rule, bye law 43 was amended on 6.2.2006 which entitles a candidate having passed by virtue of rule 40.1(iv) to appear in the failing subject in the compartment examination of the same year. The effect of this amendment is that if a student failed in any of the five main subjects opted by him and the subject was replaced by an additional subject as explained herein above, then he would be allowed to appear in the compartment examination of that failing main subject in the same year. This also satisfies the bye law 40.2 of the compartment rules which stipulates that the candidate is allowed to appear in the compartment examination if he has failed in any one of the five main subjects. These five main subjects are the ones which are the first five subjects in the application form of a candidate. The opting of additional subject is optional and not mandatory and is done like a safety net by the students in the event of their failing in any one of the main five subjects as it helps them for issuing them a pass marksheet by the replacement rule 40.1(iv). The additional subject concept is also to make available a wider choice to the candidate to apply for courses and appear in entrance examinations and the

additional subject result is immaterial in calculating the overall grade or while applying to any course of study. Thus even if a candidate fails in the additional subject, his result remains unaffected as it is based on the marks secured by him in the five main subjects.

10. Now adverting back to the facts of the case at hand, the petitioner failed in the additional subject of mathematics and not in any of the five main subjects. The rule of 40.1(iv) is not applicable to the case of the petitioner as he did not fail in any of the main five subjects. The compartment rule also debars the petitioner from appearing in the said compartment exam in the same year as the condition stipulated therein is that the candidate should fail in any of the five main subjects to be able to appear in the compartmental examination that year itself. Now the amended bye law 43 as well, which gives the benefit to a candidate to appear in the compartment exam the same year is only when the candidate has taken the benefit of rule 40.1(iv), which is the replacement rule. Hence, it would be quite manifest that the petitioner who had failed in the additional subject of Mathematics and not in any of the five main subjects, is not entitled to appear in the compartmental examination in the same year as rule 43 would also not be applicable in his case.

11. The entire scheme envisaged in the said bye laws manifestly is that once a student opts for an additional subject and fails in one of the five main subjects, then he is not declared failed so that a precious academic year of the student does not go waste and he can apply to seek admission for advancement of his career based on the 'pass' Mark Sheet issued by the CBSE giving him benefit of passing in the additional subject. However, in the case of a student who passes in the five main subjects but fails in the additional subject, as in the case of the petitioner, none of the above rules and bye laws are applicable. His situation is totally converse to what has been contemplated by the said rules and in that event he is only entitled to appear in the compartmental exam of the failing additional subject in the next year.

12. The petitioner also cannot take any advantage of a rule printed as the footnote in the Examination Form although the School should have been careful enough to

not print it with any such incorrect rule of CBSE. But, in any event of the matter, this Court cannot give any decision in favour of the petitioner based on such footnote which does not find support from the byelaws of the respondent CBSE.

13. Vide order dated 13.7.2011, the petitioner was permitted to appear in his compartmental examination in the additional subject of Mathematics to be held on 16.7.2011 but at the time of directing interim protection this Court made it explicitly clear that the said interim relief will not create special equity in his favour and his appearance in the said compartmental examination will be subject to the final outcome of the present petition. Indisputably, in such like matters of grave urgency, the Courts grant such interim reliefs so as to save the interest of a student approaching this Court who may ultimately be successful in his case. At the same time, in the event of dismissal of a case, there is bound to be an agonizing effect on the mind of a student as by the stage of passing of a final order, not only the student had appeared in the examination due to interim order but thereafter also further pursues his academic career based on that interim order. But this is a risk for the petitioner as he is forewarned at the stage of giving the interim relief only that grant of interim relief will not create any special equity in favour of such a student. It is a settled legal position echoed from the portals of the Apex Court and of the High Courts that the courts cannot decide academic matters to protect the interest of the students based on misplaced sympathy. The fact of petitioner having taken the said exam already will not sway this court to allow his case on merits. The rules and bye laws when analyzed in totality do not lean to augment the case of the petitioner and rather are not applicable to him at all and the others who were similarly placed cannot be discriminated vis a vis petitioner for the sole reason that he approached the court. This court is not inclined to show any indulgence to the petitioner on the ground that his academic career is dependent on the result of the said examination as it would lead to setting a malefic precedent.

14. In the light of the above discussion, this Court does not find any merit in the present petition and the same is hereby dismissed. The petitioner will not be entitled to any special advantage of interim relief granted by this Court and, therefore, the result of the petitioner will be only as per the Mark Sheet issued by

the respondent and he will be entitled to appear only next year along with the other students in his additional subject of Mathematics, if he chooses so.

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