

# SUPREME COURT OF INDIA

Principal, Kendriya Vidyalaya

Vs.

Saurabh Chaudhary

C.A.No.6487 of 2008

(R.V. Raveendran and Aftab Alam JJ.)

05.11.2008

## JUDGMENT

**Aftab Alam, J.**

1. Heard counsel for the parties.

2. Leave granted.

3. The appeal arises from a controversy about admission of a boy to class XI in the school from where he appeared and passed in the class X examination held by the Central Board of Secondary Education (CBSE) in the academic year 2007-08. The school declined to give him admission because his marks were lower than the cut off fixed for admission to class XI in the admission guidelines for the school. The boy, represented by his father took the matter to the Madras High Court in Writ Petition No.22472 of 2007. Before the High Court, in support of the boy's claim for admission reliance was placed on the decision of this court in *Principal, Cambridge School vs. Payal Gupta*<sup>1</sup> and the decisions of the Calcutta High Court in *Debashish Kr. Gupta vs. State of West Bengal*<sup>2</sup>, and the Madras High Court in *D. Aravinth vs. State of Tamil Nadu*<sup>3</sup>. The Madras High Court upheld the student's claim and by judgment and order dated August 16, '07 directed the school from where he passed the class X CBSE examination to admit him to class XI. This appeal is taken against the judgment of the Madras High Court.

4. The relevant facts are few and may be stated thus. The boy, Saurabh Chaudhary, was earlier a student of Kendriya Vidyalaya (Central School), C.L.R.1 up to class VIII. Thereafter, he moved to Kendriya Vidyalaya No.2 (Central School No.2), AFS, Tambaram, Chennai because his father shifted his residence from Tiruvanmiyur to Medavakkam. He passed the class X CBSE examination from Central School No.2, AFS, Tambaram. The boy is a sports person and he is said to have won a trophy in cricket and five gold and six silver medals in athletics. Unfortunately he was unable to give matching results in studies. His marks in the class X CBSE examination cannot be said to be very good by current standards. His marks were as follows:

"English : 80/100  
Hindi : 70/100  
Mathematics : 39/100  
Science : 46/100  
Social Science : 50/100"

He was, however, declared pass without difficulty, 33% being the pass marks for the CBSE examination. He wanted to continue in class XI that school, taking Physics, Chemistry and Mathematics, comprising science stream with Mathematics but was denied admission because his class X marks were lower than the cut off prescribed in the guidelines for admission to class XI in those subjects in Central Schools.

5. Coming now to the school, Central School No.2, AFS, Tambaram, is one of a large number of schools established and run by Kendriya Vidyalaya Sanghathan. The Sangathan is an autonomous body set up by the Ministry of Human Resources Development and registered as a society under the *Societies Registration Act, 1860*. All the Central Schools are governed by the regulations and guidelines framed by the Sanghathan. Here it is important to note that in Central School No.2. AFS, Tambram science stream with Mathematics is the only course being taught in classes XI and XII. But there are other Central Schools in Chennai where apart from science stream with Mathematics other courses in Commerce and Humanities streams are also available. It is also relevant to note that though the boy was denied admission in Central School No.2 AFS, Tambram, he was offered admission in another Central School in other courses commensurate to his class X marks.

6. Mr. Patwalia learned Senior Counsel appearing for the appellants submitted that the three-judge-bench decision of this Court in *Principal Cambridge School vs. Payal Gupta* (supra) had no application to the facts of the case in hand and the High Court was in error in up holding the claim of the respondent student on the basis of that decision. Learned Counsel submitted that in *Payal Gupta* what came under consideration was a circular issued by the principal of a private unaided school in Delhi fixing cut off marks for admission in class XI for the students passing the class X examination from the school. On behalf of the school the circular was defended by contending that rule 145 of the *Delhi School Education Rules, 1973* framed under the *Delhi School Education Act, 1973* gave to the head of the recognised unaided school the power and authority to regulate admission to the school or to any class in the school and the circular was issued in exercise of that authority. This Court on examining the relevant provisions (rules 138, 144 and 145 of the *Delhi School Education Rules, 1973*) came to conclude that the head of an educational institution had no authority to prescribe a cut off level of marks for continuance of further studies in higher class in the same school by a student who passes a public examination. Mr. Patwalia submitted that the circular issued by the principal of the school in question in *Payal* was held invalid because there was no legal

sanction behind it but the case in hand related to a Central School where admissions were governed by 'regulations' and 'guidelines' framed by the Sanghathan. This, according to him, was a material difference between Payal and the case in hand. Mr. Patwalia placed before us the guidelines for admission to class XI as framed by the Sanghathan and also referred to decisions of three High Courts in which a distinction was made between the decision in Payal and similar cases arising from Central Schools and the action of the Central School authorities in declining admission to class XI to a student passing the class X CBSE examination from the same Central School was upheld on the basis of those guidelines. Mr. Patwalia relied upon a single judge decision of the Agartala Bench of the Gauhati High Court in *Rahul Kumar Kashyap (Das) vs. Union of India & Ors.*, 2001 Indlaw Guw 112, a Division Bench decision of the Orissa High Court in *Maheshwari Mohapatra & Anr. vs. Mahanadi Coal Fields Ltd. & Ors.*<sup>4</sup> and a Division Bench decision of the Delhi High Court in *M. I. Hussain vs. N. Singh & Ors.*<sup>5</sup>.

7. The second point of distinction between Payal and the case in hand, according to Mr. Patwalia, is that in the reported decision the school in question had altogether denied admission in the next higher class to one of its students passing the class X CBSE examination and he was asked to collect the school leaving certificate and to leave the school. But in the case in hand the respondent student was offered admission in another Central School in Chennai having regard to the marks obtained by him in the class X CBSE examination.

8. We are unable to accept the submissions of Mr. Patwalia. Let us first deal with the second submission made by him as the first point would need some discussion before it is turned down. We find it difficult to accept that the offer of admission in another Central School in the city is quite the same as allowing the student to continue in the higher class in the school from which he passed the class X CBSE examination. In the context in which the dispute arises, the same school can only mean the school from which the student appeared and passed in the class X CBSE examination and the offer of admission in another Central School in the same city would not alter the position. As a matter of fact in a small town where there may be only one Central School this arrangement may not work at all. Moreover, another Central School in Chennai will be almost as strange to a young boy or girl student as any other school. He/she will not have there the familiar surroundings, the known teachers and his/her friends and classmates. Furthermore, as we shall see presently even the admission guidelines framed by the Sanghathan recognise the distinction between the school from where the student passed the class X CBSE examination and other Central Schools. We are, therefore, clearly of the view that in the present context the offer of admission in another Central School in the same city is of no relevance.

9. We now take up Mr. Patwalia's submission that the earlier decision of this Court in *Payal Gupta* has no application to this case as that decision was rendered on the provisions of the *Delhi School Education Rules, 1973*. We may point out here that accepting Mr. Patwalia's submission would lead to a strange and highly anomalous situation. A private unaided school in Delhi shall be obliged to accommodate in class XI all its students passing the class X CBSE examination regardless of their percentage of marks but a Central School in Delhi

shall be free to refuse admission to some of its own students passing the class X CBSE examination on the ground that they failed to secure the cut off marks as per the admission guidelines.

10. The submission that the decision in Payal would not apply to Central Schools is otherwise also quite unsound. It is indeed true that the case of Payal Gupta arose under the provisions of the Delhi School Education Rules but certain observations and findings in the decision are clearly of general application. In paragraph 5 of the judgment the Court framed two questions arising for its consideration as follows:

"In view of the facts and circumstances stated above the short question that arises for our consideration is whether the Head of a private unaided school has the power to regulate admission by prescribing the criterion of cut-off level of marks under Rule 145 and on that basis may deny admission to the students of its own school to class XI who had passed class X, Central Board of Secondary Education with marks less than 50 per cent in aggregate. A further question may arise whether in the aforementioned situation a student who passes class X would be entitled to automatic promotion to the next higher class i.e. XI class or it would be a case of fresh admission or readmission to the next higher class in the same school." (emphasis added)

As may be seen the second question is in general terms. Answering the second question, in paragraph 6 of the judgment, the Court observed as follows:

".....It may, however, be pointed out that it is common knowledge that once a student is given an admission in any educational institution by making an application in the manner prescribed by Rule 135, he is not required to submit fresh application forms after he passes a class for his admission to the next higher class. Once a student is given admission in any educational institution the same continues class after class until he leaves the school. In these facts and circumstances it is difficult to accept that after a student passed his tenth class of a public examination his admission to the next higher class i.e. eleventh class would be a fresh admission or readmission." (emphasis added)

Further, in paragraph 7 the Court observed as follows:

".....If a student who fails at any public examination could not be denied readmission in the school or class then it is beyond comprehension as to how a student who passed the public examination can be denied admission in a higher class in the same school from which he had appeared at such examination. That being so, the right of a student to continue his studies further in the higher class, in the same school, after passing any public examination, cannot be worse than the right of a student who fails at any such public examination....."

In Payal, thus, this Court clearly held that on passing the examination promotion from one class to the next higher class does not involve any fresh admission or readmission in the school and whether the examination is internal or a general examination by an external statutory agency makes no difference in the position.

11. It may here be noted that paragraph 7.4 of the CBSE bye-laws concerning Admission of Students to a School, Transfer/Migration of Students provides as follows:

"Admission to Class XI: - Admission to class XI in a school shall be open only to such a student who has passed:

(a) Secondary School Examination (Class X examination) conducted by this Board; or

(b) An equivalent examination conducted by any other recognised Board of Secondary Education/Indian University and recognised by this Board as equivalent to its secondary school examination."

12. In view of the above, we find it difficult to see how the appellants can avoid the application of the earlier decision of this Court in Payal.

13. We may now advert to what was described by Mr. Patwalia as the 'regulations and guidelines' of admission framed by the Kendriya Vidyalaya Sanghathan. Here it needs to be stated that though alluding to the provisions as 'regulations' Mr. Patwalia was unable to point out to us any statutory basis for them. There is thus not much difference between the circular coming under consideration in Payal and the provisions relied upon by the appellants.

14. Mr. Patwalia referred to 'Admission Guidelines-2007' (Annexure P-1). Paragraph 5 of the Guidelines deals with methods of admission and clause H provides as follows:

#### "METHODS OF ADMISSION

(H) CLASS XI ADMISSIONS: Fresh admissions would be made after accommodating the eligible students of the same KV and thereafter other KVs. Fresh admissions for remaining vacancies would be made in the order of merit in the sequence of categories of priority on the basis of the Board results of Class X. There would be no admission in Class XI over and above the class strength. Admissions in different streams for children seeking admission from KVs and non-KVs would be made only on fulfilment of the following requirements. (emphasis added)

(i) There will be two distinct situations for admissions in Science and Commerce streams. One situation would be where adequate number of children are available for admission to the streams from amongst students passing Class X from KVs as well as from amongst students from other schools seeking admission in a KV with the requisite eligibility. The second situation would be where adequate number of eligible

children are not available for the stream for amongst students passing Class X from KVs as well as from amongst students from other schools seeking admission in KVs with the requisite eligibility. The cut off marks for admission in both the situations would be as under:

#### Admission to Class XI

Provision for admission in situations wherein adequate eligible children are eligible children are not available

Provision for admission in situations wherein adequate children are available (where registration of eligible children is less than 40)

##### (a) Science Stream

##### (I) Science with Mathematics

(i) A minimum of 55% marks in Maths  
52% marks in Maths

i) A minimum of

(ii) A minimum of 55% marks in Science and  
52% marks in Science and

ii) A minimum of

(iii) A minimum of 60% marks in Maths and Science  
57% marks in Maths and Science together  
taken together and

iii) A minimum of

(iv) A minimum of 55% marks in aggregate of all subjects  
52% marks in aggregate  
of all subjects

iv) A minimum of

##### (II) Science without Mathematics

Science without mathematics may be allowed if the students has 50% marks in Science and a minimum of 55% marks in aggregate of all subjects.

Science without mathe-matics may be allowed if the student has 57% marks in Science and minimum of 52% marks in aggregate of all subjects.

b. Commerce Stream           xxx   xxx   xxx

c. Humanities Stream           xxx   xxx   xxx       "

These provisions are extracted from a compilation called "Education Code for Kendriya Vidyalayas". The Code is drawn up in the form of Articles, each article

dealing with a different matter. Article 93 in chapter XI lays down the admission guidelines. The compilation produced before us was printed in January 2004. The relevant provision in the 2004 guidelines are contained in paragraph 4 (f) under article 93. These provisions were superseded by the 2007 guidelines enclosed with the SLP brief. The cut off levels of marks in the current guidelines remain unaltered but there is a pronounced preference in favour of students passing the class X CBSE examination from the same Central School. The relevant provisions in the 2004 guidelines were as follows:

"4(f). Class XI - Fresh admissions would be made in the order of merit in the sequence of categories of priorities on the basis of Board results of class X. There will be two distinct situations for admission in Science and Commerce streams.

One situation would be where adequate number of eligible children are available for admission to the streams from amongst students passing class X from KVs as well as from amongst students from other schools seeking admission in a KV with the requisite eligibility.

The second situation would be where adequate number of eligible children are (sic) not available for the stream from amongst students passing class X from KVs as well as from other schools. The cut off marks for admission in both these situations would be as follows:....."

15. Reading the 2004 and the 2007 provisions together would make it clear that any preference in favour of the school's own students that might have been assumed earlier has now been provided for expressly. But that alone, as we see in the present case does not prevent the school from denying admission to one of its own students on the ground that he/she failed to secure the cut off marks in the class X CBSE examination.

16. One can have no objection to a school laying down cut off marks for selection of suitable stream/course for a student giving due regard to his/her aptitude as reflected from the class X marks where there are more than one stream. But it would be quite unreasonable and unjust to throw out a student from the school because he failed to get the cut off marks in the class X examination. After all the school must share at least some responsibility for the poor performance of its student and should help him in trying to do better in the next higher class. The school may of course give him the stream/course that may appear to be most suitable for him on the basis of the prescribed cut off marks.

17. In the present case it would have been perfectly open to the appellants to offer admission to the boy Saurabh Chaudhary in class XI in streams/courses other than science stream with Mathematics on the basis of the prescribed cut off levels of marks, had such courses been available in Central School No.2, AFS, Tambram. But this school has only science stream with Mathematics for classes XI and XII. The decision in Payal forbids the school from turning down a student because he/she failed to get the cut off level of marks for admission

to class XI. As a result of this fortuitous circumstance the boy must get admission in class XI in Central School No.2, AFS, Tambaram in science stream with Mathematics.

18. In light of the discussions made above we come to the conclusion that the case in hand is fully covered by the earlier decision of the Court in Payal. The decisions of the three High Courts relied upon by Mr. Patwalia in so far as they go contrary to the decision in Payal do not lay down the correct law. The decision of the Madras High Court coming under appeal takes the correct view of the matter and warrants no interference by this Court.

19. In the result the appeal is dismissed but with no order as to costs.

<sup>1</sup>1995 (5) SCC 512

<sup>2</sup>AIR 1999 Cal. 300

<sup>3</sup>(2007) 4 M.L.J. 400

<sup>4</sup>2005 Indlaw Ori 25

<sup>5</sup>2005 Indlaw Del 1120