

**(2002) 09 AHC CK 0192**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 32619 of 2002

Kanishka Pandey

APPELLANT

Vs

Seth Anandram Jaipuria School  
and Another

RESPONDENT

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**Date of Decision:** Sept. 3, 2002

**Acts Referred:**

- Constitution of India, 1950 - Article 14, 226

**Citation:** (2002) 5 AWC 3756 : (2003) 1 UPLBEC 214

**Hon'ble Judges:** S.K. Singh, J

**Bench:** Single Bench

**Advocate:** S.K. Gupta, for the Appellant; S. Farman Ahmad Naqvi, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

S.K. Singh, J.

By means of this writ petition, the petitioner has prayed for a direction to the respondents to admit/re-admit the petitioner in Class XI and to pursue studies in Commerce side.

2. There appears to be no dispute about the fact that the petitioner was admitted as a student in the respondents' School in Class 1st in the year 1992 and he continued there upto Xth standard. It is said that the petitioner has secured about 70% marks in the ISCE Examinations, 2002. After completion of Xth standard, the petitioner opted Commerce side in higher class and as the respondent's school although happened to be the first choice of the petitioner being reputed College, was not having studies in Commerce side, the petitioner had no option but to obtain transfer certificate from the aforesaid School on 6.7.2002. It is said that it is thereafter, the petitioner came to know that on 19.7.2002, respondents' School obtained permission and recognition to teach Commerce subject as well after ISCE and consequently, the petitioner who secured about 70% marks in ISCE Examination,

2002 applied his re-admission in the parent School. The petitioner claimed that initially an oral assurance was given by the respondents but thereafter, they have refused admission without any lawful justification. It is this action of the respondents which has made the petitioner aggrieved to come up to this Court.

3. Learned Counsel for the petitioner submits that the petitioner happened to be an old student of respondents' School studying there right from 1992 i.e., Class 1st upto Xth standard and petitioner happened to be meritorious students having secured about 70% marks in ISCE Examination, 2002 besides he is a sportsman bagging medals and Certificates, the respondents have acted in arbitrary manner in refusing admission to petitioner in Class XIth in Commerce subject. It is further submitted that the petitioner got his Transfer Certificate from the School for the reason that there was no Commerce studies but as soon as he came to know about the permission for Commerce studies, well in time, i.e., before taking admission of the students and filling of seats, the petitioner applied for his re-admission in Class XIth and therefore, the petitioner has every right to be admitted and to continue his studies of Class XIth and XIIth. In support of the contention, that in the event the petitioner has studied in a particular College right from 1st standard, the student is to be permitted to continue till last class in the said College/School, irrespective of percentage of marks which a student might have secured in any Lower Class, reliance has been placed on a decision given by Apex Court in the case of *The Principal, Cambridge School v. M/s. Payal Gupta and Ors.*, JT 1995 SC 101.

4. In response to the aforesaid submission, learned Counsel for the respondent on the basis of the facts so stated in the counter-affidavit argued before the Court that for taking admission in Class XIth in Commerce side, as the petitioner did not fulfill the criteria as has been prescribed by the respondent's School, he could not be admitted. Learned Counsel submits that a criteria has been fixed that the students intending to take admission in Commerce side must have secured minimum 50% marks in mathematics in ISCE Examination, 2002 and as the petitioner has not secured 50% of the marks in mathematics, although, he has secured about 70% in ISCE examination, the petitioner could not be admitted.

Learned Counsel submits that there is no discrimination on the part of the respondents as no student having lower merit than the petitioner has been admitted, as alleged in the petition. Learned Counsel further submits on the basis of the averments so contained in Para 7 of the counter-affidavit that the petitioner's conduct and behaviour has not been found to be proper and for his misdeeds at various occasions, warning letters were sent by the School Management and in fact, the petitioner's father himself has written a note to the Principal that he may not continue his ward on account of bias attitude of the Principal, after Class IXth. Learned Counsel submits that in view of own undertaking given by the petitioner's father and on account of the indiscipline of the petitioner, he has been rightly denied admission. It has been further submitted that now all the seats in Commerce

subject are filled up and therefore, the respondents cannot be directed to admit the petitioner. In support of the submission that the respondents cannot be mandated to enhance the seat and admit a student, reliance has been placed on a decision given by the Apex Court in the case of [Mallikarjuna Mudhagal Nagappa and Others Vs. State of Karnataka and Others](#), [State of Maharashtra Vs. Vikas Sahebrao Roundale and others](#), and *State of Punjab v. Renuka Singla and Ors.* AIR 1994 SDC 595.

5. In view of the aforesaid submissions as has come from both sides, the pleadings and materials as has come before this Court and the decisions of the Apex Court relied upon has been examined. The controversy runs in a very narrow compass. The petitioner happened to be student in the respondents' School right from Class 1st till Xth standard. At the time when the petitioner opted to leave the School, Commerce subject was not there in Class Xlth but immediately thereafter, when the petitioner came to know that permission has been accorded to teach Commerce subject, application has been moved for his re-admission in Class Xlth. There is no dispute about the fact that the petitioner's application came before the respondents, well in time i.e., before admitting other students and therefore, it is not a case where the petitioner approached the respondents after seats were filled and admissions were closed. It is on account of denial of admission by the respondents in due course, time passed away. Although, in the counter-affidavit, the respondents have mentioned about some indiscipline on the part of petitioner for which apology was also tendered by the petitioner's father but admittedly, that happened to be in the year 2000. The\* document as has been annexed in the counter-affidavit demonstrates that there happened to be some quarrel with a fellow student which resulted in a marpit but that appears to be a solitary incident. In any view of the matter, petitioner's continued for quite sometime after the alleged incidence without any further complaint and he completed his ISCE Examination, 2002 with a good result of having secured about 70% marks. Petitioner was not expelled and he continued upto Xth standard. The aforesaid act of indiscipline of the petitioner, have been stated by the respondents in Para 7 of the counter-affidavit but at the same time, reading of all the paragraphs of the counter-affidavit gives an impression to the Court that the petitioner has not been denied admission on the ground of his indiscipline rather he has been denied admission mainly on the ground that the petitioner could not fulfill the norms as has been fixed for admitting student in Class Xlth in Commerce side. There is specific averments in this respect as contained at two places in Para 9 of the counter-affidavit. The relevant detail as given by the respondents in Para 9 of the counter-affidavit is hereby quoted :

".....As the petitioner could not fulfil this norm, he could not be admitted because of non-fulfillment of the norms..... It is further submitted that as the petitioner had obtained 69% marks aggregated and 46% marks in maths subject in ICSE 10th Class Examination, 2002, applied for re-admission in the institution on July

17, 2002 and as he does not fulfil the eligibility criteria, hence, he was not admitted in the XIth Class Commerce."

6. In view of the aforesaid, it is clear that although the petitioner happened to be a student in the respondents' College right from Class 1st, he was denied admission on account of fixing of cut-off marks for his continuance in Class XIth. The Hon'ble Apex Court in the decision as given in the Principal Cambridge School (supra) has an occasion to consider exactly same situation upon which, it has been laid down that once a student is given admission in any educational institution that will that same continued class after class, until he leaves school. The relevant observation of the Apex Court as is contained in Paras 3, 6 and 8 is hereby extracted :

Para-3....."The High Court, however, did not agree with the stand taken by the appellant and took the view that an unaided recognised School cannot of its own fix criteria of not admitting its own students to Class XI unless they secure certain minimum percentage of marks in Class X examination which is a public examination and if a School lays down any such criteria, it would be arbitrary, unreasonable and irrational. The High Court, therefore, directed the appellant to admit the respondent herein to Class XI of their School which led to the filing of the present appeal."

Para-6 ..... "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 of readmission."

Para-8....."The question of an admission test or the result in a particular class or School for purposes of admission would arise only if a student of one institution goes for admission in some other institution. The question of admission test on the basis of result in a particular class will not be taken into account in the case of a student of the same school who passes the public examination."

7. In view of the aforesaid, it appears that the action on the part of the respondents of refusing admission to the petitioner is clearly arbitrary and is not justified.

8. The decision as has been referred by the respondents relates to the technical studies and on the facts of the present case, they have no application. In the case of Malhkarjuna Mudhagal Nagappa (supra), students were admitted in excess of permitted seats and the department dis-allowed them to take examination and it is in that situation, the High Court refused to grant any relief which was confirmed by the Apex Court. Similarly, in the decision State of Maharashtra (supra), student was admitted in a particular course after having his studies from an unauthorised D.Ed. College and it is in that situation, the Court refused to grant relief to the student. The last decision referred by the learned Counsel for the respondent as has been given in State of Punjab (supra), there was a question of giving admission on compassionate ground in BDS course and in that situation, it was held that on

compassionate ground to disturb the balance between the capacity of institution and number of admission, no direction can be given.

9. In view of the aforesaid analysis, it is clear that the petitioner being a student of respondents' School right from Class 1st upto Xth standard having passed out ISCE Examination, 2002 was entitled to be admitted in Class XIth to whatever course he has opted. The action of the respondents in fixing a cut-off marks for taking admission by the students who have applied for admission, having come from different institutions can be said to be justified but so far as student of its own institution is concerned, denial of admission and continuance of that student in Class XIth in the course for which student opts, appears to be not justified. In view of the aforesaid, contention of the respondents that now no seat is available to accommodate the petitioner is not to be accepted as the situation of non-availability of seat, is not on account of any fault of petitioner rather it is to be attributed to the respondent and therefore, the petitioner cannot be permitted to suffer on that count. Otherwise also, studies in Class XIth, cannot be said to require huge infrastructure and some additional material, equipments to be provided to the petitioner and therefore, as the respondents are responsible for denial of rights to the petitioner, they are liable to be commanded to admit the petitioner in Class XIth in Commerce side and permit him to continue with his studies, like other students.

10. In view of the foregoing discussions, this petition succeeds and is allowed. The respondents are hereby directed to admit the petitioner in Class XIth (Commerce side) after completion of other necessary formalities, in accordance with law.

11. Parties will bear their own costs.