

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: **11th August, 2011**

% Judgment pronounced on: **1st September, 2011**

+ **LPA No.563/2011**

Independent Schools' Federation of India (Regd.) Appellant
Through: Ms.Shobha, Adv.

Versus

Central Board of Secondary Education & Anr. Respondents
Through: Mr.Amit Bansal, Adv. for Resp.1
Mr.B.V. Niren, CGSC for Resp.2

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

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| 1 | Whether reporters of the local papers be allowed to see the judgment? | Yes |
| 2 | To be referred to the Reporter or not? | Yes |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

DIPAK MISRA, CJ

The appellant, Independent Schools' Federation of India (for short 'the Federation'), claiming to be espousing the cause of the interest of the schools which are affiliated to the Central Board of Secondary Education (CBSE) invoked the jurisdiction of this Court under Article 226 of the Constitution of India and prayed for declaring the Circular No. 39 dated

20th September, 2009 and Circular No. 40 dated 29th September, 2009 issued by the CBSE as unconstitutional and further issue of a writ of certiorari for quashment of the same.

2. It was averred in the writ petition that the CBSE issued the circular dated 20th September, 2009 for introducing the examination reforms and Continuous and Comprehensive Evaluation (CCE) and directed that the senior secondary schools need not undertake the board examination for the 10th class, whereas the schools upto high-school standards shall take up the board examination for the 10th class. Thus, the board examination for class 10th was withdrawn by the CBSE a month prior to the date of examination. The board advised all other schools to award grades to the students of 10th class as per the CCE scheme. On 29th September, 2009, the CBSE issued a circular introducing grading system at the secondary level for class 9th and 10th effective from the academic year 2009-2010. The purpose of issue of the circular, as claimed by the CBSE, was is to reduce the stress on the students and help in making holistic assessment of the students, to minimize the misclassification of the students on the basis of marks and to eliminate unhealthy cut-throat competition among the high achievers.

3. The Federation assailed the circular dated 20th September, 2009 in WP (C) No. 2226/2010 which was disposed of on 7th April, 2010 granting liberty to the Federation to make a representation to the competent authority. The circular dated 29th September, 2009 came to be challenged in WP (C) No. 3433/2010 and this Court vide order dated 19th May, 2010 asked the Federation to submit a representation to the CBSE with a further command that the CBSE shall dispose of the same by a speaking order after affording opportunity to the representatives of the Federation. As set forth, the CBSE rejected the representation on 12th August, 2010 stating therein that the abolition of board examinations could reduce the stress and anxiety of the students and minimise the classification and could help in holistic assessment of the children. The CBSE has issued circulars requiring the schools affiliated to it to follow the Continuous and Comprehensive Evaluation Scheme for assessments. It has laid down the procedure for the same.

4. After the rejection of the representation, the Federation impugned the circulars, which have been mentioned hereinbefore as there had been no adjudication whether the introduction of grading system for class 9th and 10th and abolition of examination in 10th standard is justified in the

backdrop of national curriculum framework and sustainable on the anvil of reasonableness.

5. The learned Single Judge expressed the view that an expert body like CBSE has taken the decision by consulting all stakeholders and such a policy decision could not be interfered with on the ground that a better, fairer or wider alternative policy is available.

6. Calling in question the legal pregnability of the order, Ms.Shobha, learned counsel for the appellant has contended that the learned Single Judge has fallen into error by expressing the view that the court should not interfere with the opinion of the experts, particularly the academic bodies, inasmuch as when an expert body acts in a total irrational manner and defeat the purpose of education, the court can strike down the whole action exercise in exercise of power of judicial review. It is her further submission that the circular by virtue of which grading system has been introduced though on the guise of examination reforms, the same in actuality is detrimental to the interest of the students and further after the action of the CBSE is appreciated with nuanced scrutiny it will clearly

reveal the unreasonableness and arbitrariness inviting the frown of Article 14 of the Constitution of India.

7. Learned counsel for the respondent submitted that the order passed by the learned Single Judge is absolutely defensible as the CBSE has undertaken the exercise after consulting the expert bodies and the stakeholders and, therefore, the writ Court in exercise of power of judicial review has appositely not dislodged the said decision. Learned counsel for the respondents would further contend that the fundamental reason inherent in the policy is to reduce the load on the students and to make a CCE system and regard being had to the laudable purpose it deserves the stamp of approval of this Court.

8. To appreciate the controversy, it is necessary to refer to the letter-circular dated 20th September, 2009 issued by the CBSE. It deals with examination reforms and CCE in the CBSE. In the said letter-circular, it has been mentioned that in the larger context, education is to prepare futuristic citizen for a meaningful and productive life in a globalised society and hence there is a dire need to strengthen the education system

more so in a pluralistic society which addresses itself to a heterogeneous group.

9. Regard being had to the introduction of a functional and system of school based evaluation, the CBSE has stipulated in the scheme how the scheme would be helpful. We think it appropriate to reproduce clauses 1 to 5 of the said letter-circular, which read as follows: -

“1. Scheme of the Board

1.1 Senior Secondary Schools

- a) There will be no Class X Board Examination w.e.f. 2011 for students studying in CBSE's Senior Secondary schools and who do not wish to move out of the CBSE system after Class X.
- b) However, such students of Senior Secondary Schools who wish to move out of the CBSE system after Class X (Pre-University, Vocational course, Change of Board, etc.) will be required to take the Board's **External (pen and paper written/online) Examination**.
- c) Further, those students who wish to assess themselves vis-à-vis their peers or for self assessment will be allowed to appear in an On Demand (pen and paper/online) Proficiency test.

1.2 Secondary Schools

The students studying in CBSE's Secondary schools will however be required to appear in **Board's External (pen and paper written/online) Examination** because they will be leaving the secondary school after Class X.

1.3 All Schools

1.3.1 The **Continuous and Comprehensive Evaluation (CCE)** will be strengthened in **all affiliated schools** with effect from **October, 2009 in Class IX**.

1.3.2 An Optional Aptitude Test developed by the CBSE will also be available to the students. The Aptitude Test along with other school records and CCE would help students, parents and teachers in deciding the choice of subjects in Class XI. All students of **Class X in the current academic year** will be taking the **CBSE Board's Class X 2010 Examination**. The CBSE will be conducting this Examination. The weightage of the school based assessment will remain the same as per past practice, i.e. 20% each in the subjects of Science, Social Science and Mathematics.

1.3.3 **The new Grading system will be introduced at Secondary School level (for Classes IX & X) effective from 2009-10 Academic Session.** The details of grading scheme are being circulated in a separate advisory to schools.

2. How would the Scheme help?

The above steps would help the learners and parents, who are the primary stakeholders or school education, in the following manner:-

- a) It will reduce stress and anxiety which often builds up during and after the examination which could have an adverse impact on young students especially in the age group of 13-15 years.
- b) It will reduce the dropout rate as there will be

- less fear and anxiety related to performance.
- c) In the past there was practice to often finish the entire syllabus much before time and follow it up with Pre-Board(s) and study leave. Now there will be greater focus on learning rather than teaching to the test.
 - d) The emphasis on conceptual clarification through experimental learning in the classroom will increase since there will be more time available for transaction of curriculum.
 - e) It will help the learners to develop holistically in terms of personality by also focusing on the co-scholastic aspects which will be assessed as part of the Continuous and Comprehensive Evaluation scheme.
 - f) It is expected to prepare the students for life by making students physically fit, mentally alert and emotionally balanced.
 - g) The students will have more time on their hands to develop their interests, hobbies and personalities.
 - h) It will enable the students, parents and teachers to make an informed choice about subjects in Class XI.
 - i) It will motivate learning in a friendly environment rather than in a fearful situation.
 - j) It will equip students with Life Skills especially Creative and Critical thinking skills, **social skills** and coping skills which will keep them in a good stead when they enter into a highly competitive environment **later on**.

3. Addressing the Concerns

The CBSE has been discussing the matter with its stakeholders all over the country. A number of issues are likely to be raised by students/parents

regarding this initiative, as it is being done for the first time by any Board in India. A compilation of such issues, and solutions offered by the Board in the form of FAQs (*Frequently Asked Questions*) will be soon available on the CBSE website. In case of any clarification you may write through the CBSE's website (detailed below) or mail your queries to the Chairman CBSE by superscribing "CBSE Examination Reform" on the top of the envelop.

4. **CCE Guidelines**

Many of the Schools are already aware about the CCE and are implementing the same. However, in order to improve the quality of CCE, the detailed guidelines are being issued and will reach the schools shortly. These will also be available on CBSE website (www.cbse.nic.in)

5. **Teacher Workshops**

Teacher training workshops will be conducted simultaneously from October 2009 onwards. These training workshops will be compulsory for the **Heads of Schools and two teacher representatives**. Details of these will be available on the CBSE's website. Principals and trained teachers will be thereafter interacting with parents during Parent Teacher Meetings to create awareness regarding the Board's Scheme and address their concerns."

10. In the letter-circular dated 29th September, 2009, the CBSE addressed the issue pertaining to introduction of grading at secondary school level

for classes 9th and 10th from the academic session 2009-2010. In the said letter-circular reference has been made to the National Curriculum Framework 2005 (NCF) which has envisaged an evaluation system which would grade the students on their regular activities in the classroom and enable students to understand and focus on their learning gaps and learn through these as part of formative assessment. The scheme of grading, its utility, advantage and operational modalities are given in detail. They read as follows: -

“2. Scheme of Grading

2.1 As a matter of fact the Board has been preparing itself and all the stakeholders for a change to move over from numerical marking system to grading system during the past few years by creating a climate of acceptance. The Board has already in a phased manner, introduced the grading system based on absolute marks up to class VIII.

2.2. Now, therefore, the CBSE, in consultation with the Ministry of Human Resource Development, Government of India has decided to introduce **nine point grading system.**

2.3 In this system, student’s performance will be assessed using conventional numerical marking mode, and the same will be later converted into the grades on the basis of the pre-determined marks ranges as detailed below:

MARKS RANGE	GRADE	GRADE POINT
91-100	A1	10.0
81-90	A2	9.0
71-80	B1	8.0
61-70	B2	7.0
51-60	C1	6.0
41-50	C2	5.0
33-40	D	4.0
21-32	E1	---
20 and below	E2	---

2.4 The Board has decided to introduce the above grading scheme at Secondary level for classes IX & X from current academic year 2009-10. Accordingly, the ‘Statement of Subject wise Performance’ to be issued by the Board w.e.f. the Class X Examination 2010 will have only grades.

2.5 Similarly, the schools are also directed to introduce the above Grading Scheme in the evaluation of their students in Class IX under the scheme of CCE as detailed in the Circular No. 39 dated 20th September, 2009.

3. How does it help?

3.1 The primary function of Grading is to communicate effectively to a variety of stakeholders the degree of achievement of an individual student. The grading of student would also take away the frightening judgmental quality of marks obtained in a test leading to a stress free and joyful learning environment in the school. This will also enable maintaining a meaningful continuity in the assessment pattern from the primary level to the secondary level and also in ensuring a basic uniformity in the schools.

3.2 The system being implemented now will have the following advantages:

- It will minimize misclassification of students on the basis of marks.
- It will determine unhealthy cut-throat competition among high achievers.
- It will reduce societal pressure and will provide the learner with more flexibility.
- It will lead to a focus on a better learning environment.

4. Operational Modalities

4.1 The student's performance shall be assessed using conventional method of **numerical marking**.

4.2 The 'Grades' shall be awarded to indicate the subject wise performance.

4.3 The 'Grades' shall be awarded on a nine point scale as per Table at para 2.3.

4.4 Only Subject wise grades shall be shown in the "**Statement of Subject wise Performance**" to be issued to all candidates.

4.5 Subject-wise percentile score/rank at the National level shall be provided to the schools on demand.

4.6 The practice of **declaring Compartment/Fail shall be discontinued**.

4.7 Those candidates who obtain the qualifying grades (D and above) in all the subjects excluding Additional subject as per Scheme of Studies shall be awarded a **Qualifying Certificate**.

4.8 Those candidates who have obtained E1 or E2 in the subject shall have to **improve their performance** through subsequent five attempts.

For example, a candidate who appeared in Board's examination in March 2010 can appear in July 2010, March 2011, July 2011, March 2012 and July 2012 only in subjects in which he/she has got grade E1 or E2 till he/she gets qualifying grades (D and above) in all the subjects excluding Additional subject as per Scheme of Studies and becomes eligible for award of Qualifying Certificate.

4.9 Those who get Qualifying Certificates shall be eligible for admission in higher classes.

4.10 Those candidates who are not able to get qualifying grades (D and above) in all the subjects excluding Additional subject as per Scheme of Studies shall not be permitted for admission in Class XI.

4.11 Exemptions available to differently abled students as per CBSE's rule shall continue to apply.

4.12 The scheme shall also be applicable mutatis mutandis in the assessment of academic performance communicated to the students at the end of Class IX."

11. We have reproduced both the schemes in extenso to appreciate what precisely the CBSE has done. As is noticeable, the whole endeavour has been to improve the system of education, reduce the load on the students, usher in assessment-oriented approach, cultivate a holistic system and further make the education system more effective and productive regard being had to the global trend and the requirement of 21st Century. The

CBSE, as is perceptible, has withdrawn the class 10th Board examination and introduced the grading system. We have reproduced the table relating to the grading system. It is submitted by Ms.Shobha, learned counsel for the appellant that though the CBSE has put the policy decision at a higher platform but the policy is neither fair nor non-arbitrary and further it really does not disclose a discernible principle which would satisfy the test of reasonableness. Learned counsel would submit that examination reforms would never mean a routine change of method of assessment by replacing marks by grades because it is only a cosmetic change pertaining to assessment without bringing in other real necessary spectra. It has been highlighted by her that the change in the typology of the question papers and integration of the examination with the classroom life would have really addressed the need and the concern and met the requirement. It is urged that the method chosen by the CBSE is a temporary and short-cut one in the name of holistic approach whereas it really mars the quality of education and eventually the young students are disastrously affected. It is canvassed by her that by virtue of the aforesaid change, the system has not become healthy but the concept of grading is virtually an eye-wash, which in ultimate eventuate would erode the

quality of the education system. As we have noted, the CBSE has replaced marking system with the grading system and abolished the examination in the 10th class. The scheme has been framed with the assistance of the experts. It needs no special emphasis to state that the CBSE is an expert body and taken advice from the experts and there has been a study on the said aspect for some years.

12. Thus scrutinized, it is evident that the CBSE has kept in view the interest of the young students and taken a policy decision to introduce a different evaluation system. What is urged before us is that such a system is arbitrary, unreasonable and irrational as it corrodes the marrows of education by annulling the earlier system which provided for competing in the board examination and obtaining marks. Be it noted, it is an accepted fact that education is an extremely important facet of a civilized society. It always had its signification and has gained more importance in the modern day. As has been held in the case of *Rohit Singhal & Ors. v. Principal, Jawahar N. Vidyalaya & Ors.*, AIR 2003 SC 2088, education is an investment made by the nation in its children for harvesting a future crop of responsible adults who contribute to a well functioning society. Students require nurture, care, protection and they have to be imbibed

with values of character. Education, as has been understood since centuries, pertains to acquisition of information, knowledge, skill and building up a rational mind. In the present scenario more focus and emphasis have been laid on vocational and professional trainings. The system of education has to be purposive. It guides a student at the tender age and gradually shows him the path to enter into the different fields of education, which have productivity, global awareness and professionalism. The elan vital of education is to accept limitation and strike a balance between tradition and modernization. It is an obligation of today's generation to pay the debt to the future one. That is what the CBSE has sought to achieve by introducing the new system.

13. Though the learned counsel for the appellant would criticize such norms on certain grounds which we have indicated hereinbefore yet this Court is not an expert to judge the decision of the CBSE that has been arrived at after undertaking detailed exercises. It is a policy decision and that too a policy decision relating to the field of education. One may not be in a position to accept the same. To some, it may look like abolition of competition and to others it may look simplistic. There may be a few who may feel that in the name of change, a cosmetic approach has been done

and it could have been better. But, a significant one rider and limitation, the role of the Court in exercise of judicial review is limited. In the *University of Mysore and Anr. v. C.D. Govinda Rao & Anr.*, AIR 1965 SC 491, it has been held that Courts should be slow to interfere with the opinions expressed by the experts and the same should be left to the decision of the experts who are more acquainted and familiar with the problems.

14. In *The Secretary & Curator, Victoria Memorial Hall, v. Howrah Ganatantrik Nagrik Samity & Or.*, AIR 2010 SC 1285, it has been stated thus –

“26. Thus, it is evident that the High Court did not give any specific/good or relevant reason for not accepting the recommendation made by Expert Committee at initial stage or while rejecting the application for modification vide impugned order.

27. The Constitution Bench of this Court in *The University of Mysore and Anr. v. C.D. Govinda Rao & Anr.*, AIR 1965 SC 491 held that “normally the Court should be slow to interfere with the opinions expressed by the experts.” It would normally be wise and safe for the Courts to leave the decision to experts who are more familiar with the problems they face than the Courts generally can be.

28. This view has consistently been reiterated by this Court as is evidence from the Judgments in *The State of*

Bihar & Anr., v. A.K. Mukherjee & Ors., AIR 1975 SC 192; Dalpat Abasaheb Solunke etc. etc. v. Dr. B.S. Mahajan etc. etc., AIR 1990 SC 434; Central Areca Nut & Cocoa Marketing & Processing Co-operative Ltd. v. State of Karnataka & Ors., (1997) 8 SCC 31 : (AIR 1998 SC 2399 : 1998 AIR SCW 2348); and Dental Council of India v. Subharti K.K.B. Charitable Trust & Anr., (2001) 5 SCC 486: (AIR 2001 SC 2151 : 2001 AIR SCW 1883).

29. However, if the provision of law is to be read or understood or interpreted, the Court has to play an important role. [Read: P.M. Bhargava & Ors. v. University Grants Commission & Anr., AIR 2004 SC 3478 : (2004 AIR SCW 3194) and Rajbir Singh Dalal (Dr.) v. Chaudhari Devi Lal University, Sirsa & Anr., (2008) 9 SCC 284 : (AIR 2009 SC (Supp) 768 : 2009 AIR SCW 5817).”

15. In *State of Himachal Pradesh & Ors. v. Himachal Pradesh Niz Vyavsayik Prishikshan Kendra Sangh*, (2011) 6 SCC 597 it has been held thus –

“As rightly pointed out by Mr. Altaf Ahmed, without any arguments having been heard, without there being any question raised by any party as to the validity of the Cabinet decision dated 18-7-2009 and without the same being in question, or any relief sought for in the writ petition, the High Court has gone into the said decision of the Cabinet having taken place after the judgment was reserved. The decision of the Cabinet generally ought not to be interfered with in judicial review so lightly as has been done in the present case. The quashing of the Cabinet decision without analysing the pros and cons in the manner seeks to restrict the State’s

constitutional authority and powers to frame policy especially in such vital areas like imparting technical education is not acceptable.”

16. In view of the aforesaid analysis, we are unable to persuade ourselves to accept the submission of learned counsel for the appellant that the letter-circulars/the policy decisions introducing the new methodology of CBSE invites the frown of Article 14 of the Constitution of India being unreasonable and arbitrary. Resultantly, the appeal, being sans substance, stands dismissed without any order as to costs.

CHIEF JUSTICE

SEPTEMBER 01, 2011
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SANJIV KHANNA, J.