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

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Judgment delivered on: 02.08.2016

+ W.P.(C) 6288/2016 & CM No.25768/2016 (for interim directions)

ANANYA SINGH

..... Petitioner

versus

CENTRAL BOARD OF SECONDARY EDUCATION Respondent

Advocates who appeared in this case:

For the Petitioner

:Mr. Virag Gupta with Mr. Gaurav Pathak, Advocate.

For the Respondents

:Mr. Amit Bansal with Ms. Seema Dolo and Mr. Akhil Kulshrestha,
Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

02.08.2016

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner seeks quashing and setting aside of Clause 3(i) of notice/circular dated 24.05.2016.
2. The case of the petitioner is that the petitioner appeared in the All India Secondary School Certificate Examination, 2016 (hereinafter referred to as 'AISSCE 2016') conducted by the respondent.
3. On declaration of her results, the petitioner had doubts over the marks received in certain subjects and, accordingly, applied for verification of the

marks as also for obtaining photocopy of her answer book. It is contended that after receipt of the answer book, the petitioner discovered that she had been awarded zero marks in question no. 1 in Political Science even though, as per her, she had written the correct answer that was provided in the Marking Scheme released by the respondent and also the NCERT textbooks.

4. The petitioner wanted to apply for re-evaluation of the answer book in Political Science but in view of the notice/circular dated 24.05.2016, no such application could be filed. The petitioner thereafter gave a representation and also a legal notice to the respondent for re-evaluation of the Question Nos.1. However, the same was not permitted in view of the impugned notice/circular.

5. Reliance is placed on the decision in the case of **Samarth Mittal vs. Union of India & Ors.**: 2015(6) AD Delhi 498 wherein a similar circular/notice, which had restricted re-evaluation to certain subjects, was held to be not applicable and the respondent was directed to re-evaluate the answer sheet of the petitioner therein. The petitioner in that case had sought revaluation in the subject of Physical Education and the stand of the respondent was that the said subject was not included in the subjects enumerated in a similar notice/circular which had permitted revaluation.

6. Per contra, learned counsel for the respondent submits that in view of the circular dated 24.05.2016, re-evaluation has been permitted in limited subjects and in Political Science, in which the petitioner seeks revaluation,

no such right has been given. He further submits that the judgment in the case of ***Samarth Mittal*** (*supra*) has been taken up in appeal and the letters patent appeal is pending. He, however, fairly submits that there is no interim order staying the operation of the judgement.

7. Clause 3 of the notice dated 24.05.2015 reads as under:-

“3. RE-EVALUATION

- i) Only those candidates who have applied for obtaining photocopy of the evaluated answer book shall be eligible to apply for re-evaluation or challenge the marks awarded to any question(s) in the following subjects only
—

English Core, English Elective (CBSE), English Elective (NCERT), Hindi Core, Hindi Elective. Mathematics, Physics, Chemistry, Biology, Business Studies, Economics & Accountancy

XXXX XXXXX XXXX XXXX”

8. Perusal of the said Clause shows that the respondent has given right to candidates to seek re-evaluation or challenge the marks awarded to any question in limited number of subjects. The subject of Political Science is not one such subject.

9. The decision in the case of ***Samarth Mittal*** (*supra*), in my view, squarely covers the case in favour of the petitioner. The learned Single Judge, in the said judgment, held as under:-

“7. The only question thus for determination is whether CBSE can, in exercise of administrative power, restrict the subjects in which revaluation can be sought, while prescribing the “manner” in which revaluation is to be sought.

10. The amendment with effect from 11th March, 2015 to the Bye-law has to be seen in the light of the Bye-law as it stood earlier. Prior thereto, CBSE prohibited applying for re-evaluation. However, the same stood changed with effect from 11th March, 2015 and re-evaluation has been permitted in Class XII examination. In my view, the words “....may also apply for re-evaluation in the manner as prescribed by the Board from time to time” are incapable of any two meanings. The same cannot be stretched to mean that the CBSE, while prescribing the manner, can decide to allow re-evaluation selectively in only some of the subjects of examination in Class XII. The word ‘manner’ as commonly understood, connotes the procedure by which re-evaluation would be applied for, i.e., the time within which the re-evaluation shall be applied for and the charges / fees etc. to be paid for re-evaluation etc. If the purport of the amendment with effect 11th March, 2015 was to empower the CBSE to introduce re-evaluation stage-wise, as is suggested is being done, nothing prevented the CBSE from, while amending the Bye-law, use the words “in such of the subjects as may be prescribed”.

11. The argument, that this is the way in which the Bye-law has been interpreted by the CBSE also is of no avail. Once a Bye-law admittedly stands on a higher footing than the administrative circular which has been issued, the understanding, if any, of the Controller of Examination thereof or the difficulties if any faced in introducing re-evaluation in all

*the subjects at the same time is irrelevant. Difficulty involved in implementing a law is no ground to apply the provision of law in a manner different from what the law means, as discussed by the Division Bench of which undersigned was a member in **Amit Bhagat Vs. Government of NCT of Delhi** MANU/DE/3351/2014. All the said considerations were for the authority making the Bye-law to consider at the stage / time of making the said Byelaw and that authority having allowed re-evaluation generally and having empowered the CBSE only to prescribe the method / manner of seeking re-evaluation, CBSE cannot whittle down the aforesaid Bye-law and, while prescribing the manner, also restrict the subjects in which re-evaluation can be sought.*

13. I may notice that the date prescribed for seeking re-evaluation is over and it is not the case of the respondent No.2 CBSE that there are others apart from petitioner who have sought revaluation of the theory examination in the subject of Physical Education. The possibility thus of this order opening the floodgates and leading to a large number of students seeking re-evaluation in the subject of Physical Education or in subjects other than those covered by the Circular aforesaid of the CBSE, does not arise. Anybody else who may have applied for re-evaluation and which has been denied on similar grounds, having not approached this court would even otherwise not be entitled to the relief.

14. The petition is accordingly allowed. The respondent No.2 CBSE is directed to, in accordance with the Bye-law and the Circular and any other rules applicable, re-evaluate the answer sheet of the theory examination of the petitioner in the subject of Physical Education within a period of one week from today

and if there is any change in marks, the re-valuated result be also declared within the said time. It is further clarified that the absence of online application for re-evaluation and for which there was no provision, would not be treated as non compliance by the petitioner of the procedure prescribed by the CBSE for seeking re-evaluation.”

10. Perusal of the judgment in **Samarth Mittal** (*supra*) shows that the Court has held that byelaws stand on a much higher footing than the circulars. Once re-evaluation has been permitted by the byelaws, CBSE by a circular could not restrict the right to only some subjects. The Court also held that the CBSE cannot whittle down the aforesaid Bye-law and, while prescribing the manner, also restrict the subjects in which re-evaluation can be sought.

11. In view of the above, Writ Petition is allowed. The respondent is directed, in accordance with the byelaws and the circular, to re-evaluate the answer of the petitioner in question No.1 of Political Science paper.

12. Learned counsel for the petitioner submits that the last date for change of option by the University is 08.08.2016 and, in case, the petitioner were to succeed and get higher marks then the petitioner would be able to secure a better seat in the University.

13. In view of the same, the petitioner is directed to deposit the requisite fee with the respondent on or before 12 noon of 03.08.2016. On deposit of the said fees, the respondent shall re-evaluate the question No.1 of Political

Science paper of the petitioner on or before the closure of working hours of 06.08.2016 and, in case, there is any change in marks, the revaluated result shall also be declared within the same period.

Dasti under the signatures of the Court Master.

SANJEEV SACHDEVA, J

AUGUST 02, 2016
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