

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision : December 11, 2017

1. C.W.P No.2548 of 2017 (O&M)
Shree Balaji Senior Secondary School vs Central Board of
Secondary Education & another
2. C.W.P No.1210 of 2017 (O&M)
BKN Public School vs Central Board of Secondary Education & anr
3. C.W.P No.3757 of 2017 (O&M)
Mehak (minor) through her mother Smt Rajesh vs State of Haryana
and others
4. C.W.P No.3758 of 2017 (O&M)
Rao Jai Ram Sr. Sec. School Bunde baj Nagar Mohindergarh
vs
Regional Officer, Central Board of Secondary Education and others
5. C.W.P No.3768 of 2017 (O&M)
Rajanpreet Singh Brar & ors vs Central Board of
Secondary Education and another
6. C.W.P No.1210 of 2017 (O&M)
BKN Public School vs Central Board of Secondary Education & anr
7. C.W.P No.3944 of 2017 (O&M)
Tarun Kumar and others vs Central Board of
Secondary Education and another
8. C.W.P No.4428 of 2017 (O&M)
Gyandeep Model Sr. Secondary School, Sector 20C, Chd vs Central
Board of Secondary Education & ors
9. C.W.P No.4781 of 2017 (O&M)
Davinder Singh & ors vs Central Board of Secondary Education
and others
10. C.W.P No.5134 of 2017 (O&M)
Prince Bansal vs Central Board of Secondary Education & Anr
11. C.W.P No.5265 of 2017 (O&M)

Inderjeet & ors vs Central Board of Secondary Education & Ors

12. C.W.P No.5379 of 2017 (O&M)

Mohit Kumar vs CBSE and others

13. C.W.P No.5534 of 2017 (O&M)

BJRD Public School, Dadri-Narnaul Road, Pali, District
Mohindergarh vs Central Board of Secondary Education & Ors

14. C.W.P No.5744 of 2017 (O&M)

MLP Sr. Secondary School Rajpura vs Central Board of
Secondary Education and another

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Praveen Gupta, Advocate
Mr. Karan Singh, Advocate
Mr. Aditya Sanghi, Advocate
Mr. Chirag Wadhwa, Advocate
Mr. Shailendra Sharma, Advocate
Mr. Naveen S Bhardwaj, Advocate
Mr. Ashwani Verma, Advocate
Mr. Jatinder Nagpal, Advocate
for the petitioner/s

Dr. Sushil Gautam, DAG Haryana
Mr. Harsh Aggarwal, Advocate
for the Central Board of Secondary Education.
Mr. Vinay Pandey, Advocate
for respondent No.4 in CWP No.3757 of 2017.

Mr. Rakesh Deshwal, Advocate
for respondent No.2 in CWP No.3768 of 2017.

Mr. Shalender Sharma, Advocate
for respondent No.2 in CWP No.3944 of 2017.

Mr. JS Rana, Advocate
for respondent No.3 in CWP No.4781 of 2017.

Mr. Jagjot, Advocate
for respondent No.2 in CWP No.5134 of 2017.
Mr. S.P Verma, Advocate
for respondent No.3 in CWP Nos.5265 & 5379 of 2017.

Ajay Tewari, J (Oral)

This order shall dispose of the aforesaid writ petitions.

These writ petitions have been filed by various schools and in some instances by students complaining against the action of the Central Board of Secondary Education (for short “the Board”) in not approving the candidature of the students for the exams of Classes X and XII. By different interim orders issued in the month of March 2017, the students were allowed to take the examination provisionally.

On 4.7.2017, the following order was passed :-

C.M No.8716 of 2017 in CWP No.3712 of 2017

This application has been filed by the students of the petitioner-School for being impleaded as respondents.

Notice of C.M. Mr. Harsh Aggarwal, Advocate for the CBSE and Mr. Anil Kumar Garg, Advocate for the petitioner accept notice and state that they have no objection to the application being allowed.

Consequently, this application is allowed and the applicants mentioned in para 2 thereof are impleaded as respondents No.4 to 14.

C.M No.7973 of 2017 in CWP No.3712 of 2017

This application is allowed and the replication is taken on record.

C.M No.8189 of 2017 in CWP No.3712 of 2017

This application is allowed and the document, Annexure R-1/4 is taken on record.

C.M Nos.7881 in CWP No.3724 of 2017

This application is allowed and the replication is taken on record.

C.M No.8025 of 2017 in CWP No.3724 of 2017

This application is allowed and the document, Annexure R-5 is taken on record.

C.M No.8578 of 2017 in CWP No.1210 of 2017

This application is allowed and the replication is taken on record.

CWP No.2548 of 2017 & connected matters

Counsel for the petitioners press that results of Classes X and XII of the CBSE were declared almost one month ago, and pray that the CBSE be directed to declare the results of the students of the petitioner-Schools because otherwise these writ petitions would be rendered infructuous and those students who have passed would not be able to seek admission in the next class.

Counsel for the CBSE, on the other hand, has argued that classes IX & X and XI & XII actually constitute one integrated course and that is why as per

the bye-laws relating to the examination, the Board has directed that admissions directly to classes X and XII would not be allowed, though there are certain exceptions like transfer, shifting of family etc. As per him, the petitioners are actually teaching shops masquerading as schools who have no respect for the law and that is why they have made willy-nilly admissions in breach of the bye-laws and rather in some cases forged documents have been placed on record and, therefore, there is no occasion to grant interim relief which would, in effect, result in these writ petitions being allowed.

As regards the question of interim relief, I deem it appropriate to direct the petitioners to initially deposit a sum ₹ 10,000/- per student of classes X and XII whose cases were under dispute, by way of demand draft in favour of the Registrar General of this Court so that in case it is found that admissions have been made in breach of the bye-laws, this amount can be paid as costs (subject to final orders). Let necessary deposit be made before the next date of hearing after giving notice to the Board so that it can verify that the payment is as per the number of students. The petitioners are directed to show to the Court how they satisfied themselves that admissions could be made in classes X and XII in derogation of the normal law. They are further directed to inform the total amount of fees including admission fee/tuition fee and all other sundry miscellaneous charges, which they have obtained from the students during the course of the year. Counsel for the CBSE is directed to place on record a tabulated statement mentioning the forged documents and the cases so that the suspect documents can be accessed without too much difficulty during hearing of the matter.

Adjourned to 17.7.2017. Meanwhile, the respondent-Board is directed to provisionally declare the result of the students who have taken the examination under the interim orders of this Court.

Copy of this order be given dasti to counsel for the parties under the signatures of the Bench Secretary. Photocopy of this order be placed on the connected matters.”

Thereafter, on 17.7.2017, the following order was passed :-

The order dated 4.7.2017 has not been implemented except by three petitioners-schools who have deposited the fees. As regards schools who were respondents in the cases, it is made clear that all the schools whether petitioners or respondents would have to make the deposit in terms of the order dated 4.7.2017, since that order was passed only because all the schools had given

admissions in class 10th and 12th contrary to the Rules the decision for depositing Rs. 10,000/- was in the nature of a condition, consequently whether the schools are petitioners or respondents they are bound to pay the same.

Mr. Harsh Aggarwal, Advocate for respondent-CBSE, on being asked, stated that CBSE has not declared the result and have three problems. His first problem is that as regards some students who were allowed to give the exam under the interim order of this Court even examination fee was not paid. As per him, apart from examination fee even late fee is payable. The second issue raised by Mr. Aggarwal, Advocate is that cases have come to light where students have connived with the schools and have furnished fake documents. There are also cases where the schools have not sent any record and those students have also taken the examination under the interim orders of this Court.

On the other hand, counsel for the petitioners-schools say that in many cases the delay occurred because of inaction by the CBSE. At this stage, in my opinion it would be in the interest of justice if examination fee is deposited for those students who have not deposited the same. As regards the late fee the same may not be deposited at this stage and this issue would be decided when the main case is decided.

Learned counsel for those schools who have not been able to make deposit, pray for one more opportunity to make the said deposit in the interim order dated 4.7.2017. Be deposited before the next date of hearing.

In the circumstances, the interim order is modified to the extent that the CBSE would provisionally declare the result of those students aboutwhom there is no allegation of fake documents and whose certificate etc. have been received from the schools and also in respect of whom the deposit of Rs. 10,000/- has been made.

None of the schools have also filed any material to show to the Court how they satisfied that admission in Class 10th or 12th in derogation of the normal law. The schools have also not informed total amount of tuition fee, admission fee and all other sundry miscellaneous charges which were obtained by the school from the students during the course of the year. The CBSE has also not placed any statement mentioning the forged documents and the case/s. One week time is given to all the parties to furnish documents with advance copy for the counsel opposite so that rejoinder can be filed before the next date of hearing.

CWP-5262-2017

It is the case of the counsel for the petitioners that the documents were sent and that is why out of 15 students 8 have been allowed to take the examination.

Mr. Harsh Aggarwal, Advocate for respondent-CBSE states that even if now the documents are given the Board will consider the same provided the same/copies are submitted within 3 days from today.

All the cases adjourned to 1.8.2017.

A photocopy of this order be placed on the file of connected case(s).”

Thereafter, on 17.8.2017, the following order was passed:-

“CM-11193-94-2017 in CWP No. 5265-2017

Registry has pointed out that affidavit in support of these application have not been filed Counsel for the applicant is directed to file necessary affidavits with the applications.

CM-8525-2017 in CWP-5262-2017

This is an application for placing on record replication by the petitioner.

For the reasons mentioned in the application, the same is allowed and replication is taken on record.

CM-11196-2017 in CWP -3712-2017

Learned counsel for the applicant prays for permission to withdraw this application.

Allowed as prayed for.

Application stands dismissed as withdrawn.

Main cases

Mr. Harsh Aggarwal, Advocate for the respondent-CBSE states that in all the cases where the money was deposited and the Board was able to determine that it was not a case of fake student, the results have been declared. Counsel for the petitioners state that in some cases the verification has not been done by the Board Mr. Aggarwal assures the Court that in all the cases where payments have been made necessary verification will be done by the Board within one week and he will file an affidavit giving the details of those students (alongwith schools) (writ petition wise) where the Board has decided that the students are fake. Counsel for the petitioners point out that even where the results have been declared the Detailed Mark Certificates have not been issued. Some of the counsel for the petitioners pray that because of the huge amounts involved they were not able to arrange the money and pray for one more last opportunity to deposit the amount of Rs. 10,000/- per student, as per the order dated 4.7.2017. Mr. Aggarwal states that though there is no justification in giving one more opportunity for this purpose yet since it is a situation where the future of the students is involved he would not oppose the prayer but it should be made clear that no further opportunity will be granted to make this deposit. Keeping in view the entire circumstances, I deem it appropriate to grant one more opportunity of one week

from today to the learned counsel for the petitioners to deposit the amount as per order dated 4.7.2017 and it is made clear that thereafter, no further opportunity will be allowed to make any deposit. Mr. Aggarwal has further pointed out that as per the order dated 4.7.2017 and subsequent orders also all the petitioners were directed to show to the Court how they satisfied themselves that admission could be made in classes 10th and 12th in derogation of the normal law and they were further directed to inform to the Court the total amount of admission fee, tuition fee and all other sundry miscellaneous charges which they had obtained by the school from the students during the course of the year but those necessary details have not been filed by the petitioners and even till date these details are not forthcoming in many cases. He has further prayed that till such time as the petitioners do not give these details, there should be no direction to hand over the Detailed Marks Certificate because otherwise the petitioners would not give these details to the Court. Counsel for the petitioners have vehemently argued that the Detailed Marks Certificate of the students should be released to them without any condition because it is a case of students.

In my opinion, this is not a complete answer. Once the petitioners have been on notice since 4.7.2017 that they have to furnish the certain information they cannot refuse to furnish the information and try to act as if the entire fault for spoiling the career of the students lies on the Court or CBSE.

The Court has no hesitation and would rather want to declare the results of all the students but it would not appropriate to do so if the petitioners do not implement the conditions of the order dated 4.7.2017, since none of them has challenged the same. Mr. Aggarwal pointed out that even for this aspect last opportunity had been granted. No doubt last opportunity was granted to the petitioners to give this information but the Court does not wish to penalize the students without giving one more opportunity to the petitioners schools to provide the information as mentioned in the order dated 4.7.2017 and the subsequent orders.

Keeping in view the urgency of the matter, the case is adjourned to 25.8.2017 to enable the petitioners to file necessary information with an advance copy to Mr. Aggarwal. This Court does not appreciate these crocodile tears being shed by the petitioners-schools about the fate of the students and hope and expects that if they are really keen that the result of the students be declared then they would fulfill the conditions in the order dated 4.7.2017 and subsequent orders. They would keep in mind that now entire onus of the future of the students

lies on them and not on the Court or the CBSE.”

On 30.8.2017, the following order was passed :-

“C.M No.11929 of 2017 in
CWP No.3724 of 2017

Notice of C.M. On the asking of the Court, Mr. Harsh Aggarwal, Advocate accepts notice and seeks time to file reply.

CWP Nos.5262, 5131, 5607 of 2017

Counsel for the CBSE points out that no deposit was made by the concerned school. Counsel for the petitioner in CWP No.5607 of 2017 states that the bank draft has been wrongly sent to CBSE. He further states that he would get that draft cancelled and would get a fresh draft prepared in terms of the previous order. Counsel for the CBSE states, on instructions, that till today no draft has been received in the office of the CBSE and as and when the same is received he would return it to the concerned school.

As regards, CWP No.2548 of 2017, counsel for the CBSE has pointed out that though 100 students were there in the school yet payment was made only qua 98 students. Counsel for the petitioner states that the remaining two students had left the school and consequently the petitioner has no objection if their result is not declared.

Counsel for the petitioners state that in all the cases where payments have been made, result of all candidates has been declared except those who were found to be fake students and those whose preceding classes' result was not verified. In this connection, counsel for the CBSE has filed a supplementary affidavit of Ms. Sweta Arora, Assistant Secretary of the Regional Office of the CBSE Panchkula and undertakes to supply a copy thereof to all the counsel for the petitioners.

Counsel for the petitioners have argued that at-least as far as those candidates are concerned whose result has been declared, their Detailed Mark Sheets (DMCs) should also be released.

Mr. Harsh Aggarwal and Mr. NK Setia, Advocate state that even though result of certain students has been declared yet the fact is that all these students were admitted in contravention to Regulations 7.3 and 7.5 and, therefore, it would not be appropriate to release their DMCs at this stage. They have further pointed out that even in the year 2016, similarly situated schools had come to the Court and by an interim order, their students were allowed to take the exam and thereafter result was also declared and DMCs were released but after the release of the DMCs, those

schools completely lost interest in the litigation and now the position is that the CBSE is trying to chase them. However, it is to be remembered that the Regulations envisage a bar to the schools to admit certain kind of students and there is no bar to the students to apply for admissions. Moreover, once the result is declared, DMC is merely an attendant corollary. The Principal and the Chairman of the governing body of each of the schools are directed to give an undertaking to the effect that they would not make any admission in class X and XII outside the purview of Regulations 7.3 and 7.5 with effect from today. In the circumstances, it is directed that DMCs of all the students whose result has been declared under the interim order of this Court be also released forthwith after receipt of copies of the undertakings filed in this Court. DMCs of the petitioners in CWP Nos.3768, 3944, 4781 5131, 5134 5265, 5379 of 2017 be released without the undertaking, in case their result has been declared.

Adjourned to 3.10.2017. Photocopy of this order be placed on the connected matters.”

Today, it has been agreed that as regards those students whose results were declared-after the Board determined that they were not fake students-the matter would be closed and the Board would finalize those results. It is relevant to notice here that in all these cases, the schools had deposited a sum of ₹ 10,000/- per student and were required to justify the admission granted to the students in classes X and XII. It has been brought to my notice that in all the cases late fee of ₹ 5,000/- was also charged by the Board. Let the entire amount be now released to the Board. The Board shall examine all such cases and where it finds that admission was justified and in conformity with Regulations 7.3 and 7.5 of the Examination Bye-laws, the entire amount would be refunded back to the concerned schools. Where, however, the Board finds that the admission was not justified or was not in conformity with the said Regulations, it would be at liberty to take any action as per the rules but not limited to the retention of the aforesaid amounts.

Learned counsel for the petitioners in CWP No.4781 of 2017 states that petition qua 30 students was allowed on 3.10.2017 and consequently the entire money deposited by the school should be refunded to it. In my opinion, the petition was allowed qua the petitioners' right to take the examination but the issue whether the admission was granted in conformity with the said Regulations would have to be decided with the other cases.

Some of the counsel have pointed out that despite the schools having fulfilled all the requirements, result has not been declared. Mr. Harsh Aggarwal states that as far as the information with him is concerned, in all the cases either the result has been declared or it has been refused to be declared on the ground that the students are fake. However, if there is any matter pending, the same will be finally decided within 15 days. It is made clear that where permission has not been granted by the Board on any ground whatsoever, it would be open to the concerned person/s to challenge that decision independently.

Resultantly, these writ petitions are disposed of in the above terms.

Since the main cases have been decided, the pending C.Ms, if any, also stand disposed of.

December 11, 2017
'kk'

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No