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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8023 OF 2019

Mahek Upadhye and Ors.Petitioners

V/s.

The Union of India and Ors.Respondents

* * * *

For Petitioners : Mr. Shailendra S. Pendse i/by.

Mr. Amit Patel.

For Respondent no.1 : Mr. Y.S. Bhate a/w. Mr. P.J.
Khosla.

For Respondent no.2-

State : Mrs. Ashwini A. Purav, AGP.

For Respondents no.3

and 4 : Ms. Aparna Deokar I/by. M.P.
Vashi & Associates.

For Respondent no.5 : Mr. Mihir Joshi.

CORAM : S.C. DHARMADHIKARI, &

SANDEEP K. SHINDE, JJ.

Monday, 29th July, 2019.

P.C. :

1. By this petition, under Article 226 of the

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Constitution of India, the petitioners before us are praying for issuance of a writ of mandamus or any other appropriate writ, order or direction to the respondent no.5 to rectify the marks obtained in an internal examination by the petitioners and thereafter issued revised marksheets. The broader and wider reliefs in terms of prayer clauses (2) and (3) are in relation to the whole process of carrying out internal assessment.

2. The undisputed facts are that, the petitioners before this Court, had taken their Class-X examinations for the Academic Year 2018-19. They took this examination through respondent no.3, School. The Department of Human Resources Development, Government of India is the first respondent together with the Ministry of School Education and Sports, Government of Maharashtra

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which is the respondent no.2. The fourth respondent is stated to be Society managing the respondent no.3 School, whereas, respondent no.5 is the Central Board of Secondary Education ("CBSE" for short), the authority responsible for holding the examinations.

3. The fifth respondent is under the control of the Union of India and it affiliates all Kendriya Vidyalayas, Jawahar Navodaya Vidyalayas, Private Schools and other approved schools. This Board conducts the board examination for Class-X and XII on an Annual Basis. The fifth respondent held such an examination for the above academic year and declared the result on 6th May, 2019. The result comprises of three sections. One internal assessment awarded by the School in internal exams (out of 20), marks awarded by the fifth respondent

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in the main exam, that is out of 18. The Internal Exam Assessment Marks, according to the petitioners, is nothing but an aggregate of the average of best marks of any two Terms out of three Terms and the same are forwarded by the School Management to the Board.

4. Thus, the CBSE, then draws up the result sheet and issues the same. In the present case, the petitioners noticed that in the first two Semesters, there are mistakes committed and the Management has not accepted these errors and mistakes. The petitioners-appellants had approached the local Police Station after which the Management forwarded the necessary documents. The petitioners gathered from the perusal of these documents that the Internal Assessment Marks have not been entered into as gained or earned but there

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are errors and mistakes. The visual comparison made, denoted these errors. The matter was taken by the petitioners with the School but initially it refused to assist them. Later on, these respondents no.4 and 5 addressed a letter dated 14th May, 2019 to the Board and accepted the occurrence of a human error. It is claimed that, there is non-compliance with the procedural guidelines issued by the Board. It is therefore, the case of the petitioners that, the Board informed them that the request for correction of the internal marks cannot be considered after the final result is declared. This communication at Exhibit-B together with the acts of the School Management are subject matter of challenge in this petition.

5. Mr. Pendse, learned Counsel appearing for the petitioners would submit, that the petitioners

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have no control over the affairs of the School, as also, CBSE. They are totally innocent. All that they do is work hard bearing in mind the competitive spirit and atmosphere all around. Thus, students devote their time and energy to studies aiming to obtain admission in the best higher educational institution in the State and Country. As such when they have no control over the whole process, then we should not deny the relief on technical grounds. Ultimately, we must correct the injustice done to them.

6. These petitions were argued on the earlier occasions and today. Our emphasis was to have CBSE present before us. We wanted the CBSE persons to answer essentially our two queries. Firstly, whether the students can approach the Board directly to seek such a correction or whether it is

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only the School Management, which must after admitting its error, approach the CBSE. Secondly, in the facts and circumstances of the present case, whether the relief sought by the petitioners can still be granted.

7. On the previous occasion and today Mr. Mihir Joshi, learned Counsel appearing on behalf of the CBSE, would submit that the compilation of documents handed by him contains a Notification issued by the Central Board of Secondary Education dated 31st January, 2017. It records the entire procedure according to him and it is stated that the re-modelled Assessment structure effective from the Academic Year 2018-19 for Class-X had to be followed. The Notification restored the Class-X Board Examination and in that assessment of the student's performance has to be made periodically

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for not only his academic but ancillary related and sports activities. It is stated that the student must not only be disciplined but devoted to studies. The internal marks are for the subjects notified in the Annexure-I to this Notification. This internal assessment is provided for in which the student has to secure 33% marks out of the marks earmarked in each subject. It is then brought to our notice that, there is on 20th February, 2018 a guideline in writing provided to Principals/Heads of the Institution Affiliated to CBSE and respondent no.3 is one of the institution. Re-modelled assessment was brought to the notice of the Head of the Schools. It was impressed that, the component of Internal Assessment lies with the School. Board believes that schools must have carried out these activities in the order mentioned in the Notification and has assigned marks. This is entirely a school affair

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and marks of which are required to be collected from the Schools for the purpose of result processing and declaration. With a view to facilitate the entire process of data collection of Internal Assessment/practical marks for Class-X, the Board created an online link. The Schools were to use their existing credentials for login into the system and therefore the link for uploading of the marks for Internal Assessment will be live from the period 22nd February, 2018 to 15th April, 2018 for the Academic Session 2017-18. Thereafter, it has to be followed up and then there are procedural guidelines for online uploading. Under these procedural guidelines, it has been set out that the format of Excel File cannot be changed, no column heading should be altered and no change in the subject or entry of any new subject is permitted. Thus, this online procedure with the request form

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is to be filled and uploaded by the School. After successfully uploading the Excel file, schools are advised to generate check list using "Review Data" option. The schools should take a review of the Check list and carefully check to ensure the correctness of the data uploaded. In case of discrepancy in the Check list, schools may make online corrections using Edit Data option available in "Review Data". After ensuring zero error in the data, Schools must finalize the data using "Finalize Data" and no correction shall be allowed after finalisation of data. After finalisation, Schools must take the print of the data from the option "Final Report". Final Printout must be duly signed by the Principal alongwith the concerned Subject Teachers. Thereafter, it should be sent to the Regional Office concerned within seven days in a sealed cover.

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8. It is brought to our notice by the CBSE that on 14th May, 2019 it received a communication from the Administrator of the respondent no.3 that there has been a error on the part of the School in uploading the internal marks of some students of Class-X for Academic Year 2018-19. The error, was said to be a human and the explanation is that, some numbers jumped. Therefore, the plea of rectification was made. The total number of students appeared are stated to be forty-one. The Internal Marks to be corrected are of thirty students. Now, this communication admits colossal errors. We cannot, expect, the School to commit errors in the case of thirty students out of forty-one. The number of students, appearing, is not so huge so as to give rise or scope for human errors. It is in these circumstances, that when on 17th May,

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2019, there are detailed instructions for future preparations, the Board has pointed out that the corrections cannot be made after declaration of the final result. That is what is emphasized before us. It is stated that, now the final results have been declared. Once the final results are declared, there is no question of any change at this stage.

9. Though, Mr. Pendse would submit that we must issue a writ because in this case as neither the students or the parents were aware of the errors as the matter was wholly internal, this argument fails to impress us. We have seen that each of the petitioner's is possessed with a final marksheet. That is duly received by them. Internal examination or assessment precedes the final examination and after which results are declared. There may be human errors and mistakes committed by the Management in

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uploading the marks, but as stated in the communication, if there are forty-one students, out of which in the case of thirty students, such errors are committed, then to allow correction of thirty errors would mean the sanctity attached to the examination process as a whole is lost. There will be absolutely no trust, faith reposed in the system, if the reliefs as prayed are granted by us at this belated stage. Then unscrupulous managements would exploit the situation and capitalise upon the orders of this Court and much after the deadline, get the internal assessment marks altered. They would then put up the students to file cases in this Court and may collude with them to obtain the reliefs to which, they are otherwise not entitled to. After having lost their credibility, such Managements could not have approached this Court themselves. That they know

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fully well and that is why when students, either approach the police authorities or march to the Court, some letters are addressed. That they have sympathy for the students but we do not think that these students are deserving of the same. This is not a case where one or two students have been affected. If the communication, a copy of which is at page-41 of the paper-book addressed by the third respondent, School is taken into consideration, then, we do not think that the relief should be granted.

10. The entire compilation of documents handed in by Mr. Joshi is based on the Annexures to the writ petition. The correspondence with the school is very much on record. When the petitioners approached the Deputy Director of Education, Government of Maharashtra on 3rd June, 2019, they

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would be aware of the position, that he could hardly step in. He can step in at best for taking action against the School but we are not concerned with that aspect of the matter.

11. It is entirely for the students and the parents to approach such authorities as are permissible in law and seek appropriate reliefs including payment of compensation by the respondents no.3 and 4. However, at their instance and after the final marks and result sheets are issued and the whole academic year is over, we cannot direct the CBSE to call for the records and to allow the alleged errors to be corrected. For all we know, the original marks would then be substituted in the garb of correcting the errors, if one grants such reliefs. Ms. Deokar, appearing for respondents no.3 and 4 may be instructed to state

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before the Court that the Management will furnish the documents so as to enable the CBSE to carry out a corrective exercise but we do not accede to her request. That is for more than one reason.

12. If we pass an order contrary to the procedure and guidelines devised by CBSE, then, students would line up before this Court with similar requests. Secondly, there is a certain sanctity attached to the whole examination process which includes not only the appearance at the examination but the finality given to the marks and results obtained and the certificates issued. These documents cannot be easily discarded and should not be mechanically tampered with so as to correct some injustice as complained by the petitioners. Equally, we find that, if such orders are passed, the CBSE also will not be in a position

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to control or regulate the examination process as a whole. Even if we were to entertain such requests belatedly, we will have to assign reasons in every such case. That is not conducive to the maintenance of the academic standards and particularly of merit. It is in these circumstances, that we are of the opinion that the request of the Management, as also the petitioners to allow them to seek the correction and rectification in the marks, cannot be accepted. If now marks are altered/changed and the CBSE is directed to take corrective exercise, that would mean that, there is nothing wrong in the procedural guidelines and rules but still on the ground of sympathy, we should direct the CBSE to act as above.

13. We do not think that in writ jurisdiction, we should interfere in the academic decisions

especially when they are taken by the experts in the field.

14. Their view should not be substituted by our view. We are not sitting in Appeal over their decision either. The decision communicated to the petitioners therefore does not suffer from any error of law apparent on the face of the record or perversity, leave alone, *malafides* warranting interference in the writ jurisdiction. The writ petition is therefore dismissed but leaving other remedies open to the petitioners.

(SANDEEP K. SHINDE J.)

(S.C. DHARMADHIKARI, J.)