

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5896 OF 2020

Mansi d/o Narayan Gaikwad, ... **Petitioner**
Age 16 years, Occu: Education,
Through her natural guardian-mother
Jayshree w/o Narayan Gaikwad
Age: 40 years, Occu: Household, R/o
Mehar Nagar, Garkheda, Aurangabad
Tq. and Dist Aurangabad.

VERSUS

1. Union of India
Through Ministry of Human Resource
Development,
New Delhi
2. Central Board of Secondary Education, ... **Respondents**
Through its Controller of Examination,
Shiksha Kendra-2, Community Centre,
Preet Vihar, Delhi 110 092
3. The Headmaster,
Principal International School CBSE
Jabinda Park, Garkheda, Aurangabad.

Mr Sachin S. Deshmukh, Advocates for the petitioner
Mr. A. B. Dhongade, Advocate for respondent No.1.
Mr. S. B. Deshpande, Advocate for respondent No.2.
Mr Swapnil S. Patnurkar i/by M/s J P Legal Associates, Advocate
for Respondent No.3.

**CORAM : S. V. GANGAPURWALA &
SHRIKANT D KULKARNI, JJ.**

DATE : 21st September, 2020

JUDGMENT (Per Shrikant D. Kulkarni, J.)

1. Rule. Rule made returnable forthwith. With the consent of the parties, the petition is taken up for final disposal at admission stage.

2. The petitioner, a girl student, is challenging the Circular dated 12.08.2020 and Clause 41.2 of Notification of Examination Bye-laws issued by Respondent No.2/Central Board of Secondary Education thereby excluding category of candidates who could not appear for the examination held in February- March, 2020 as regular candidates due to either ailment or any other cogent reason preventing the students from appearing to the said examination.

3. Factual matrix , giving rise to the present petition, is as under:

(1) According to the petitioner, she has undergone curriculum as regular student of Class 10 for the academic year 2019-20. Main examination of Class-10 was scheduled in the month February- March, 2020. The petitioner has received admit card for the said examination to be conducted by respondent No.2/ CBSE. Meanwhile, the petitioner suffered from ailment of pancreatitis and due to severity of ailment, she was admitted on 27.02.2020 in Asian Institute of Gastroenterology at Hyderabad. Prior to that she was taking medical treatment at Aurangabad. She had undergone surgery at Hyderabad and as such, she could not appear for the main examination of Class-10 which was scheduled from 26th February to 18th March, 2020.

- (2) Because of the compelling circumstances, the petitioner has now decided to appear for the compartment examination scheduled to be held in the month of September, 2020. By way of the impugned circular the CBSE has made two categories, 1) for regular candidates approaching through school and 2) for private candidates applying directly through the CBSE website. The circular made applicable for regular candidates appearing through school further obligates to submit NOC for compartment examination. The categories of candidates approaching the school from which they have appeared are categorized by virtue of clauses 2(a) to 2(d). The categories for compartment examination as referred in the impugned circular does not include the category of those students who were either prevented or could not appear for the main examination held in February/ March, 2020.
- (3) It is contended by the petitioner that exclusion of the categories unlike the petitioner, who could not appear for the said examination would defeat the very object sought to be achieved by issuance of impugned circular dated 12.08.2020. The object of issuing the impugned circular is to facilitate the students of Class 10 and Class 12 to appear for compartment examination of September, 2020, those who are either unsuccessful in the category clauses 2(a) to

2(d) so also 4(a) to 4(f). As such, it is essential to include the category of the students those who could not appear in the examination held in February/March, 2020.

- (4) It is contended by the petitioner that the respondents have lost sight of the fact that the very object of the circular is to facilitate the unsuccessful students in the main examination to clear respective standard by way of compartment examination. As such, exclusion of the category of students those who are similarly situated with the petitioner, could not appear in the examination essentially should have been considered as separate and independent category, falling in category as those are carved out in the category 2(a) to 2(d) and 4(a) to 4(f).
- (5) The petitioner has requested to respondent No.3 to consider her case and accept her application for compartment examination in September, 2020. Her request was turned down by respondent No.3 by placing reliance on category of candidates in clauses 2(a) to 2(d) and 4(a) to 4(f) of the Circular. In the premise, the petitioner is constrained to approach this Court by invoking extra ordinary jurisdiction. The academic career of the petitioner is at stake due to the exclusion of the category of the students those who could not appear for the main examination.

- (6) According to the petitioner, clause 41.2 of Examination Bye-laws of CBSE does not satisfy the clean test of reasonableness. Such classification vis-a-vis failure to achieve the very object sought to be achieved, as such it is regarded as arbitrary, unsustainable and liable to be quashed and set aside.
- (7) The sub classification as carved out by the impugned circular dated 12.08.2020 within class of unsuccessful candidates would have no rational nexus with the object sought to be achieved by way of the facility of compartment examination.
- (8) The petitioner has prayed to hold and declare that clause 41.2 of the Bye-laws of Examination and pass criteria framed by respondent No.2 Central Board of Secondary Examination and the consequential eligibility criteria in the circular dated 12.08.2020 as arbitrary, unsustainable, illegal and as such needs to be quashed and set aside with direction to include category of candidates, those who could not appear for main examination-2020 as eligible to appear for compartment examination September, 2020. The petitioner has requested for issuance of writ of mandamus or any other appropriate writ or directions to respondents more particularly to respondent No.2 to consider the candidature

of the petitioner for ensuing Class-10 compartment examination to be held in September, 2020.

4. Respondent No.3 has filed reply. Respondent No.3 did not dispute about the illness of the petitioner and long medical treatment. According to respondent no.3, they have made separate sitting arrangement on the ground floor for the petitioner in view of the request made by the petitioner's parent in the Jain International School, Shahanoorwadi. Though separate sitting arrangement was made for petitioner, she did not appear for the examination. Respondent No.3 made efforts to contact the parents of the petitioner and came to know that they were at Hyderabad for medical treatment of the Petitioner.

5. It is submitted that respondent No.3 is strictly following the the norms laid down by Respondent No.2/ CBSE. As per the Circular issued by the CBSE, the petitioner was advised to appear as private candidate for next year or regular candidate for the next year through the school.

6. Shri Dhongade and Shri Deshpande, learned Advocates for Respondent Nos. 1 and 2 have placed reliance on the affidavit filed on behalf of C.B.S.E. in the Supreme Court of India in case of Mohit Gupta Vs. C.B.S.E. They stuck to the same stand.

7. Heard Mr Sachin S. Deshmukh, the learned Advocate for the petitioner, Mr. A. B. Dhongade, learned Advocate for respondent No.1., Mr. S. B. Deshpande, learned Advocate for respondent No.2 and Mr Swapnil S. Patnurkar i/by M/s J P Legal Associates, Advocate for Respondent No.3. Perused the impugned circular dated 12.08.2020 issued by Respondent No.2/ Central Board of Secondary Education regarding online submission of forms by regular candidates of Class XII and Class X for compartment examination September, 2020 and Notification of Examination Bye-laws dated 01.02.2018.

8. Mr. Sachin Desmukh learned Advocate for the petitioner invited our attention to the medical papers of the petitioner. Mr. Deshmukh, submitted that the petitioner was suffered from serious illness. She was taken to Hyderabad for medical treatment. She was admitted as indoor patient in the Hospital for surgery. Due to serious illness, the petitioner could not appear for Class 10 examination of CBSE held in the month of February-March, 2020. She has decided to appear for compartment examination scheduled in the month of September, 2020 and accordingly, she approached respondent No.3 but respondent no.3 refused to allow the petitioner to appear for compartment examination by pointing out the impugned circular dated 12.08.2020 issued by respondent No.2/CBSE. The learned counsel further drew our attention to the impugned circular and

Examination Bye-laws of CBSE for Class 10. He pointed out that by way of the impugned Circular, the CBSE has made categories of students/candidates for compartment examinations.

9. According to Mr. Deshmukh, the category of candidates carved out by the CBSE for Class 10 examination as referred above by way of impugned circular in view of amended Rule 41.2 of the Examination Bye-laws has caused injustice to certain group of candidates/students who could not appear for the main examination due to illness like the petitioner. The object of the Circular is to provide facility to the unsuccessful candidates to clear the examination by allowing them to appear in compartment examination of September 2020. Therefore, the exclusion of students who could not appear to the main examination is violative of Article 14 of the Constitution of India. Clause 41. 2 is unsustainable. As such, the amended Rule 41.2 of the regulations and the impugned circular dated 12.08.2020 need to be quashed and set aside.

10. Mr. Deshmukh, the learned counsel for the petitioner has placed reliance on the following citations:

- (1) **Mohit Gupta Vs. Central Board of Secondary Education & Anr. Writ Petition (Civil) No.842/2020 dated 25.08.2020 (Supreme Court.)**
- (2) **Virender Singh Hooda and others Vs. The State of Haryana and another, reported in AIR 2005 Supreme Court 137.**

(3) Shivkumar Shivhare Vs. The Central Board of Secondary Education and others, in Writ Petition No. 8036/2015, dated 23.02.2016 (Madhya Pradesh High Court).

11. On the other hand, Mr. A. B. Dhongade, learned Advocate for respondent No.1., Mr. S. B. Deshpande, Advocate for respondent No.2 and Mr Swapnil S. Patnurkar i/by M/s J P Legal Associates, Advocate for Respondent No.3 have supported to the Examination Bye-laws and Circular which are challenged in this petition.

12. Mr. S. B. Deshpande, the learned counsel for respondent No.2 vehemently submitted that experts in the field of education have framed policy regarding holding of compartment examination. Examination Bye-laws of C.B.S.E. have been amended in the year 2018 and accordingly notification has been issued on 01.02.2018. The Scheme of Examination and Passing Criteria have been determined by the C.B.S.E. on the basis of the recommendation of the Examination Committee. On the basis of vast experience gained in the education field and difficulties in conducting examination, the Examination Bye-laws have been amended. It is a policy decision taken by the C.B.S.E. on the recommendation of the Examination Committee. It would not be proper to interfere in the policy decision at this stage. It may give birth to various problems and complications. The learned

counsel submitted that he has sympathy to the petitioner student but in view of the policy decision, it is not possible for the C.B.S.E. to allow the petitioner to appear for the compartment examination. Mr. Deshpande, the learned counsel has placed reliance on the following citations:

- (1) **Federation Haj Ptos of India Vs. Union of India, reported in 2019 (2) Bom. C.R.557**
- (2) **Maharashtra State Board of Secondary and Higher Secondary Education and another Vs. Paritosh Bhupesh-kumar Sheth, reported in 1984 (4) Supreme Court Cases.**

13. It is necessary to place on record relevant admitted facts in order to decide the issue raised in this petition. The petitioner was studying in Class-10 in the school of respondent No.3 International School, CBSE, Garkheda, Aurangabad, for the academic year 2019-20. The CBSE examination for Class-10 was scheduled to be held in February-March, 2020 (Main). She had completed necessary curriculum and paid requisite amount of examination fees. She was issued with admit card for examination 2020 (main). The petitioner was seriously ill in the month of February, 2020 and she was taken to Hyderabad for medical treatment. She was hospitalized in Asian Institute of Gastroenterology at Hyderabad for substantial period. The petitioner could not appear for main examination scheduled to be

held during 26th February to 18th March, 2020. She is now seeking permission to appear for the compartment examination which is to be held in the month of September, 2020.

14. The petitioner is challenging impugned circular bearing No. COORD/Regular/Compt/2020 dated 12.08.2020 issued by the Central Board of Secondary Education, Delhi and Clause 41.2 of the Examination Bye-laws of Central Board of Secondary Examination which reads thus:

"41.2 Eligibility for Compartment in Secondary Examination

A candidate failing in two of the five subjects of external examination shall be placed in compartment in those subjects provided he/she qualifies in all the subjects of internal assessment.

42. Compartment Examination for Secondary/ Senior School Certificate Examination

(i) A candidate placed in compartment may reappear at the compartmental examination to be held in July/August and may avail himself/herself of the second chance in March/April next year and may further avail himself/herself of the third chance at the compartmental examinations to be held in July/August of that year. The candidate will be declared 'Pass' provided he/she qualifies the compartmental subject/subjects in which he/she had failed.

(ii) A candidate who does not appear or fails at one or all the chances of compartment shall be treated to have failed in the examination and shall be required to reappear in all the subjects at the subsequent annual

examination of the Board as per syllabi and courses laid down for the examination concerned in order to pass the examination. The candidate shall have the option to appear at the practical examination in the subjects involving practical or retain their previous marks in one more annual examination after the Third Chance Compartment.

(iii) Syllabi and Courses for the Compartmental candidates in March Examination shall be the same as applicable to the candidates of full subjects appearing at the examination,

(iv) A candidate placed in compartment shall be allowed to appear only in those subjects in which he/she has been placed in compartment at the Second Chance Compartmental Examination to be held in March/April next year."

15. The CBSE is an autonomous organization working under the control of the Ministry of Human Resource Development, Government of India, Delhi. The CBSE has its own Rules, Regulations and Examination Bye Laws. In pursuance of the recommendation of the examination committee at its meeting held on 7.12.2017, duly approved by the Governing Body at its meeting held on 15.12.2017, certain amendments have been made in the Examination Bye-laws. It is necessary to reproduce the old rules and amended rules for Examinations-2018 onwards :

Existing Rules	Amended Rules w.e.f. 2018 Exams onwards
41.2 Eligibility for improvement of performance in Secondary Examination: A candidate obtaining Grades E1 or E2 in any or all the five subjects (excluding the 6th additional subject) under Scholastic Area A, as per the scheme of studies, jointly examined by the School and Board shall be eligible for improvement of performance in any or all the five subjects.	41.2 Eligibility for Compartment in Secondary Examination. i. <u>Candidate offering 5 subjects:</u> For candidate offering 5 subjects and failing in two of the five subjects of external examination shall be placed in compartment in those subjects provided he/she qualifies in all the subjects of internal assessment. ii. <u>Candidate offering additional NSQF vocational subject:</u> (a) A candidate failing in two of the six subjects of external examination shall be placed in compartment in those subjects provided he/she qualifies in all the subjects of internal assessment. (b) For a candidate who has offered a vocational subject as 6th subject and fails in any one of the three compulsory subjects i.e., Science, Mathematics and Social Science, the Vocational subject (offered as 6th additional subject) will replace one of the subjects and result of Class X Examination will be computed accordingly. iii. <u>Candidate offering other Academic Elective as additional subject:</u> a) A candidate failing in two of the six subjects of external examination shall be placed in compartment in those subjects provided he/she qualifies in all the subjects of internal assessment. b) A language offered as an additional subject may replace a language in the

	event of a candidate failing in the same provided after replacement the candidate has English/Hindi as one of the languages; and The replacement shall satisfy the conditions as laid down in the Scheme of Studies. There will not be any replacement facility of other academic elective subjects offered by such candidates.
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42. Improvement of Performance / Compartment Examination for Secondary/Senior School Certificate Examination: (i) (b) A candidate who has appeared for the Secondary School Examination and obtained Grades E1 or E2 in any or all the five subjects (excluding the 6th additional subject) under Scholastic Area A, as per the Scheme of Studies, shall be eligible for improving his/her performance in any or all the five subjects and may reappear at the only chance of improvement of Performance to be conducted by the Board in July/School by July, as per the option exercised by the Main examination held in March the same year. The candidates will be issued statement of subject wise performance/ Grade sheet cum certificate of Performance provided she/he obtains minimum Grade D in at least five subjects (excluding	42. Compartment Examination for Secondary/Senior School Certificate Examination 42(i)(b) & (c), 42 (ii) (b), 42(v) (i) A candidate placed in compartment may reappear at the compartmental examination to be held in July/August same year and may avail himself/herself of the second chance in March/April next year and may further avail himself/herself for the third chance at the compartmental examinations to be held in July/August of that year. (ii) A candidate who does not appear or fails at one or all the chances of compartment shall be treated to have failed in the examination and shall be required to reappear in all the subjects at the subsequent annual examination of the Board as per syllabi and courses laid down for the examination concerned in order
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the 6th additional subject) under Scholastic Area A as per the Scheme of Studies and grades in the subjects under Scholastic Area B and Co-scholastic Areas. (ii) (b) At the Secondary School Examination a candidate who does not obtain minimum Grade D in the five subjects (excluding the 6th additional subject) under Scholastic Area A at the only chance of improvement of performance shall be treated to have not qualified the examination and shall be required to reappear in all the subjects at the examination to be held in March of the subsequent year, in order to qualify the examination. The syllabi and courses shall be as laid down for Summative Assessment II for the year of examination concerned. The candidates' grades obtained in the Formative Assessment and Summative Assessment I at the main examination shall be carried over for the only chance of improvement of performance.	to pass the examination. (iii) Syllabi and Courses for the Compartmental candidates in March Examination shall be the same as applicable to the candidates of full subjects appearing at the March examination. (iv) For subjects involving internal Assessment, in case the candidate has passed in internal Assessment, he/she shall appear only in theory part and previous internal Assessment marks will be carried forward. v) The candidate who is placed in Compartment in the Secondary School Examination (Class-X) shall be admitted provisionally to class XI till he passes the first chance compartmental Examination to be held in July/August of that year. His/her admission shall be cancelled if he/she fails to pass at the first chance Compartmental Examination.
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16. In view of amendment to the Examination Bye-laws of CBSE, the Controller of examination issued impugned circular dated 12.08.2020 whereby categories of candidates for compartment examination to be held in the month of September, 2020 are made out. By the impugned circular, the CBSE has issued two separate instructions for candidates appearing for

compartment examination, (1) for regular candidates appearing through schools and (2) for private candidates applying directly through CBSE website.

17. It is obvious to know what is compartment examination. The CBSE conducts compartment examination for students who could not pass in one or two subjects in Class 10 or Class 12 Board examinations. So, those students who could not able to score passing marks in one or maximum two subjects, have another chance to reappear for the examinations through compartment examination. The criteria for the compartment examination for regular candidates appearing through school is as follows:

- "(a) Candidates of Classes X & XII who have appeared for the examinations in February/March 2020 as regular candidates and whose result has been declared as 'Compartment';
- (b) Candidates of Class XII who had applied for Improvement of Performance as regular candidates in the subjects for which examination was scheduled from 1st July, 2020 to 15th July 2020 and their result has been declared as 'NC' in the subject concerned.
- (c) Candidates of Class XII who have appeared as regular candidate in 6 subjects in February/March 2020 and declared PASS but could not clear one subject can appear under improvement of Performance category; and
- (d) Candidates of Class XII and X who have been punished under Category 1 of UFM wherein their current examination

of the subject has been cancelled and they have been allowed to appear in Compartment examination. "

18. It is important to note Rule 41.2 coupled with other Rules came to be amended on the basis of recommendations of the examination committee. The Academicians in the field of education, who have vast experience and knowledge in the field, have recommended for amendment in the existing Bye-laws of examination and accordingly, the Governing Body of CBSE has approved those recommendations of amendment and accordingly, the amendments have been made in the Examination Bye-laws which are under challenge, more particularly Rule 41.2 and the impugned Circular dated 12.08.2020.

19. The Hon'ble Supreme Court, while dismissing **Writ Petition (Civil) No.842/2020 (Mohit Gupta Vs. C.B.S.E.)**, vide **order dated 25.08.2020**, held as under:

"Considering the response of the C.B.S.E., it is noticed that the petitioner was not eligible to appear in the examination conducted for the students, who qualified to take compartment having failed to appear in the examination, held in February, 2020."

The above decision does not render any help to the case of the petitioner.

20. The decision of the **Madhya Pradesh High Court, in Shivkumar Shivhare Vs. The Central Board of Secondary Education and others, in Writ Petition No. 8036/2015, dated 23.02.2016**, relied upon by the learned counsel for the petitioner also does not render any help to the case of the petitioner in view of the fact that it was before the amendment to the Rule 41.2 and moreover, the order itself speaks that it would not be treated as a precedent since that order came to be passed in a peculiar facts and circumstance of the case. Mr Deshmukh, the learned counsel for the petitioner has referred the judgment in the case of **Virender Singh Hooda and others Vs. The State of Haryana and another, reported in AIR 2005 Supreme Court 137**, wherein, it is held by the Hon'ble Supreme Court that the executive instructions if contrary to the statutory rules, the Rules would prevail and not executive instructions.

21. In case of **Federation Haj Ptos of India Vs. Union of India, reported in 2019 (2) Bom. C.R.557**, relied upon by Mr. Deshpande, it is held by the Hon'ble Supreme Court that:

" Scope of judicial review was very limited in such matters. It was only when a particular policy decision was found to be against a statute, or it offended any of provisions of Constitution or it is manifestly arbitrary, capricious or malafide, Court would not interfere with such policy decisions. No such case was made out. On the contrary,

views of Petitioners have not only been considered but accommodated to extent possible and permissible."

22. Mr. Deshpande, the learned counsel for respondent No.2 CBSE has referred to decision in the case of **Maharashtra State Board of Secondary and Higher Secondary Education and another Vs. Paritosh Bhupeshkumar Sheth, reported in 1984 (4) Supreme Court Cases**, wherein the the Hon'ble Supreme court has held as under:

"The question whether a particular piece of delegated legislation- whether a rule or regulation or other type of statutory instrument- is in excess of the power of subordinate legislation conferred on the delegate has to be determined with reference only to the specific provisions contained in the relevant statute conferring the power to make the rule, regulation, etc. and also the object and purpose of the Act as can be gathered from the various provisions of the enactment. So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the statute, it is not within the legitimate domain of the Court to determine whether the purpose of a statute can be served better by adopting any policy different from what has been laid down by the Legislature or its delegate. Legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act for its efficacious implementation. Any

drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution.

None of the above vitiating factors are shown to exist in the present case and therefore, Regulation 104(3) cannot be held to be ultra vires. Instead of confining itself to a consideration whether the impugned regulation fall within four corners of the Act and particularly Section 36 thereof, the High Court erred in embarking upon an investigation as to whether the prohibition against the disclosure and inspection of answer books and other documents imposed by Regulation 104(3) would, in practice, effectively serve the purpose of the Act ensuring fair play to the examinees.

Having regard to the provisions of section 36, especially clauses (c), (d), (f) and (g) of sub-section(2) thereof, as also those of Section 19(f) and (g), it is clear that a duty is cast on the State Board to formulate its policy as to how the examinations are to be conducted, how the evaluation of the performances of the candidates is to be made and by what procedure the results are to be finalised, compiled and released. It was perfectly within the competence of the Board, rather it was its plain duty, to apply its mind and decide as a

matter of policy relating to the conduct of the examination as to whether disclosure and inspection of the answer books should be allowed to the candidates, whether and to what extent verification of the result should be permitted after the results have already been announced and whether any right to claim revaluation of the answer book should be recognized or provided for. All these are matters which have an intimate nexus with the objects and purpose of the enactment and are, therefore, within the ambit of the general power to make regulations conferred under sub-section (1) of Section 36. In addition, these matters fall also within the scope of clause (c), (f) and (g) of sub-section (2) of the said section.

The Hon'ble Supreme Court further held that:

"The Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and departments controlling them. It will be wholly wrong or the curt to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded.

23. Having regard to the landmark judgment of the Hon'ble Supreme Court in the case of **Maharashtra State Board**

of Secondary and Higher Secondary Education and another Vs. Paritosh Bhupeshkumar Sheth (supra), the legal position is now well established that even a bye law cannot be struck down by Court on the ground of unreasonableness merely because the Court thinks that it goes further than "is necessary" or that it does not incorporate certain provisions which, in the opinion of the court, would have been fair and wholesome. The Court cannot say that a bye-law is unreasonable merely because it has carved out certain categories. It cannot be said that the bye-law and circular under challenge are manifestly unjust, capricious, inequitable or partial in its operation. It cannot be invalidated by the Court on the ground of unreasonableness. The responsible representative body entrusted with the powers to make bye-laws must ordinarily be presumed to know what is necessary, reasonable, just and fair.

24. The experts in the education field have framed the policy and accordingly, made amendment in the Examination Bye-laws of CBSE and on that basis, impugned circular has been issued, which provides categories of students who are eligible for compartment examination. Clause 41.2 of the Examination Bye-laws facilitates a candidate/student failing in maximum two of the five subjects of main examination to appear for compartment examination with a specific object. Clause 41.2 is very clear. It does not allow candidate/student to appear for the

compartment examination who has failed in all subjects. A candidate/students who has failed in one subject or failed in maximum two subjects is only allowed for compartment examination. In the case at hand the petitioner/student could not appear for main examination held in the month of February-March 2020 and therefore, not eligible for compartment examination in view of the above referred amended Clause 41.2. Category of students eligible for compartment examination in secondary examination is carved out to facilitate a student who failed in one or two subjects, so as to extend one more opportunity to clear the academic year. The case of the petitioner is not covered by the above category of eligible students for compartment examination. The candidate/student would be declared pass in compartment examination provided, he/she has cleared the subject in which he/she had failed. The candidate who could not appear at all for the main examination held in the month of February-March, 2020 for any reason on having appeared and failed in three or more subjects, is not allowed for compartment examination to be held in the month of September, 2020.

25. Clause 41.2 carves out a class of students who have studied and taken efforts to appear for the examination and cleared maximum subjects. The compartment examination for

such category of students provides for an opportunity to improvise upon their performance in maximum two subjects. The petitioner not appearing for the main examination cannot equate herself with the students who have appeared for the examination and cleared maximum subjects. The classification appears to be reasonable and does not suffer from the vice of arbitrariness, *iner alia* not violative of Article 14 of the Constitution.

26. The Circular under challenge is based upon the amended Examination Bye-laws-2018. The impugned Circular is in tune with Clause 41.2 of the Examination Bye-laws. Therefore, the challenge to the impugned circular dated 12.08.2020 and Clause 41.2 of the Examinations Bye-laws failed. There is no scope for interference. We have sympathy for the petitioner-student who could not appear for February-March, 2020 examination (main) because of her prolonged illness. But, we cannot permit the petitioner to appear in compartment examination to be held in the month of September, 2020 in view of the circular dated 12.08.2020 and the Clause 41.2 of the Examination Bye-laws. The petitioner does not fit in the categories of candidates/ students made in the circular and as such, we deem it fit not to exercise our extraordinary jurisdiction by invoking Article 226 of the Constitution of India.

27. Having regard to the above reasons, we are not inclined to grant any relief in favour of the petitioner.

28. Writ petition stands dismissed.

29. Rule is discharged accordingly. No costs.

(SHRIKANT D. KULKARNI, J.)

(S.V.GANGAPURWALA, J.)

JPC