

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

1009 **WRIT PETITION NO.10530 OF 2021**

VAISHANAVEE PRAKASH THORE AND OTHERS
VERSUS
UNION OF INDIA AND OTHERS

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Mr.P.V. Balkhande a/w Mr.U.B. Bondar, advocate for the petitioners.

Mr.Abhay Ostwal, advocate appointed as an amicus curiae

Mr.S.G. Sangle, AGP for respondent no.3.

Mr.A.G. Talhar, advocate for respondent no.1.

Mr.Pratik Kothari, advocate for respondent no.2.

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**CORAM : RAVINDRA V. GHUGE &
S.G.DIGE, JJ.**

DATE : 08.04.2022

P.C. :

1. By this petition, three students, through their parents, are petitioners before us. They have put-forth prayer clause "B" as under :-

"B. This Hon'ble Court may please to direct respondent no.4 school to forward the internal assessment of the petitioners, for academic year 9th and 10th std. and with further direction to respondent no.2 to consider the assessment submitted by the school, to effect the correction in statement of mark issued on 24.7.2021."

2. Considering the conspectus of the matter, we appointed Shri Abhay Ostwal, the learned advocate as amicus curiae to assist the Court in this matter. Respondent no.4 is the school, which is represented by an advocate in this proceeding.

3. On 29.03.2022, the learned advocate for the school was absent. Today, as well, he is absent.

4. This matter was mentioned at 1.30 p.m. and we requested the learned advocate for the petitioner to inform the learned advocate for the school. After this, matter was called out post lunch session, the learned counsel for the petitioner submits that after he has called the learned advocate for the petitioner, he answered the call and informed that another counsel would appear in the matter.

5. These three petitioners are aggrieved by the aggregate marks that have been granted to them by the Council for Indian School Certificate Examinations, New Delhi, respondent no.2 herein. It is contended that these are meritorious students and have always been scoring high marks. Because of the Covid-19 pandemic and the national lock-down, the schools conducted their curriculum through the online process and students participated online, in so far as their daily educational curriculum is concerned.

Respondent no.2 had given an option to the students to appear for their exams, off-line. Those, who opted for the online process, were subjected to the CISCE scheme for ICSE (class-X) and ISC (Class-XII) 2021 examinations, which scheme was formulated as per the directions of the Hon'ble Supreme Court of India in ***Mamta Sharma Vs Central Board of Secondary Education and others (2021) 7 SCC 364.***

6. We have considered the strenuous submissions of the learned advocates appearing for the parties and have gone through the petition paper book with their assistance. The statements of marks are placed on record. By these statements of marks, the total marks allotted to each of these petitioners, in the light of the said scheme, have been mentioned. Grievance is that marks as expected have not been granted and though the students may be 90+ in the internal school assessment, the CISCE, Delhi has granted percentages, which are less than what the petitioners anticipated.

7. The learned advocate for the petitioners has drawn our attention to the affidavit in reply filed by Mrs. Poonam Shantaram Narwade, who is the Incharge Principal of respondent no.4 school. It is submitted in paragraph 5 that after the parents of the students made a grievance around 28.07.2021, the then Principal verified the record

and found that there were clerical/calculation mistakes at the end of the school. The then Principal is said to have issued a proforma with corrected marks so as to be tendered under the Dispute Resolution Mechanism to respondent no.2, on 30.07.2021. It is stated that the last day for tendering such Dispute applications was 01.08.2021.

8. It is further stated in paragraph 6 that one student namely Vaishnavi Thore had scored 96 marks in English out of 100. The school committed a mistake in mentioning 63 marks. In the case of Uday Kale, his marks for the Maths subject relating to the IXth and Xth standards, should have been as per the mark-sheet. On perusal of the mark-sheet, we find that these two students have been scoring in between 82 to 98. At page 51 to 53, the purported copy of the proforma of the Dispute Resolution Mechanism has been annexed.

9. Grievance voiced is that though these students have scored well in English, Maths, Physics and Chemistry in the internal online exams, the aggregate marks granted by respondent no.2 appear to be less. For example, Vaishnavi Thore had scored 95 marks in English-I in Xth standard and 94 marks in IXth standard. Her aggregate, as has been calculated by the Board, is 75. In the case of Miss Heli Lad, she had scored 95 marks in Maths in the IXth standard and 95.8 in the Xth standard. Her aggregate is 81

marks as per the Board's calculations. In the case of Uday Kale, he had scored 97 marks in Maths in the IXth standard and scored 97 marks in Maths in the Xth standards. His aggregate is 80 marks as per Board's calculations.

10. From the above dispute resolution request, what we have found is that the school has raised a grievance about the aggregate calculated by respondent no.2, as being less than what was expected. It appears from the affidavit in reply of the school that it has raised a question that when Vaishnavi scored 92.5 and 94 in the Xth and IXth standard, the average should have been a total of the marks divided by two. The same principle is applied in the case of Heli Lad and Uday Kale.

11. The amicus curiae has drawn our attention to the brief summary of the scheme and details of the CISCE scheme for ICSE (Class-X) and ISC (class XII) for the 2021 examination. It would be apposite to reproduce the brief submissions of the learned amicus curiae, which are as under :-

“1. It is most humbly submitted that, the Hon'ble Supreme Court in the case of, Mamta Sharma v/s. Central Board of Secondary Education & Others, (2022) 1 SCC 368, the validity of decision to cancel exams and the internal

assessment schemes was upheld.

2. The Council for the Indian School Certificate Examinations (CISCE) is a private, non-governmental board of school education in India: the Indian Certificate of Secondary Education (ICSE) and the Indian Certificate of Secondary Education (ICSE) and the Indian School Certificate (ISC).
3. Thus, the Council for the Indian School Certificate Examinations (CISCE) is a privately held national-level board of school education in India that conducts the Indian Certificate of Secondary Education and the Indian School Certificate Examination for Class X and Class XII respectively.
4. Council for the Indian School Certification Examination (CISCE) declared the scheme as contended by the Petitioners in Civil Writ Petition No. 10530/2021 at Page No. 10 to 21 and also annexed herewith, the assessment scheme for pending Class 10 and 12 exams which have been cancelled in wake of the COVID-19 pandemic.
5. As per the scheme, candidates will be assessed based on three parameters -
 - (a) Best of three marks,
 - (b) Percentage subject project work, and

(c) Subject project.

6. Students will get an average of the best three percentage marks obtained from among the subjects for which board exams have been conducted.
7. While the subject project category refers to total marks obtained by the candidate in the internal assessment of the papers, the percentage subject project would be percentage of marks obtained by the candidate in the internal assessment of the papers.
8. The components used to arrive at the formula to award the marks in the subjects which have project and practical work component is limited to the project and practical work in the subjects, and the performance of the candidates in the board examination in the subjects that they have already appeared for so far, measured through their average marks obtained in the best three subjects.
9. As stated herein above in preceding paragraph no.8, the former measures the subject proficiency of the candidates, the latter is a measure of their general academic ability as per the statements issued by the Council available on the website of the council.

About ISC 12th Assessment Scheme – 2021

10. As per the ISC marking scheme 2021, the marks obtained by a student in Class 11 and 12 examinations will be considered to evaluate the ISC 12th result 2021.
11. CISCE will also consider the historical performance of the past six years of academic records for the compilation and moderation of marks.
12. It is submitted that, the CISCE adopts the following criteria while evaluating marks for Class 12th Board Exams – 2021;
 - (a) Scaled Score (from Class 11 and Class 12 class tests) - 60%
 - (b) Percentage subject project and practical work – 30%
 - (c) Class 10 board percentage – 10%

13. ISC 12th Marking Scheme 2021

Following criteria needs be taken into consideration during internal assessment

- (A) The average marks obtained by the student throughout various class tests and final examinations in Class 11th.
- (B) The average marks obtained by the student throughout various class tests and pre board examinations in Class 12th.

(C) The subjects opted in both classes 11 and 12 must be same.

(D) The average marks obtained in Class 10th will also be considered for the evaluation.

(E) Historical performance of the past six years of academic records.

14. About ICSE 10th Assessment Scheme – 2021

Council of Indian School Certificate Examinations (CISCE) will compute the marks for ICSE (Indian School Certificate Examinations) class 10th board exams – 2021 on the basis of the project and practical work.”

12. He has then drawn our attention to the judgment delivered by the Hon’ble Apex Court in ***Mamta Sharma (supra)*** and especially, the submissions and conclusions set out in paragraph nos.12, 15, 16 and 21, which read as under :-

“12. On the other hand, we find force in the submission canvassed by the learned Attorney General for India that the Scheme is a composite Scheme and has been formulated by the expert body which was appointed by the Board consisting of thirteen members. All aspects have been taken into account by the expert body on the basis of which the final decision to

cancel the examination was taken, including formulation of the Scheme to have holistic approach and to ensure that no candidate/student is prejudiced. Instead, the Scheme intends to rationalise the internal assessment performance and bring semblance of parity amongst the assessment of different schools. This exercise will be undertaken by a broad-based Result Committee. It is, therefore, not open to us to have a second look as suggested by Mr Vikas Singh. We would instead uphold the Scheme as propounded by the respective Boards, which, as aforesaid, are independent and autonomous bodies and entitled to take their own decision with regard to the affairs of conducting examination by them.

15. It is then submitted that there is possibility of CBSE schools manipulating the records as the relevant data on the basis of which internal assessment is to be done is not in the custody or in possession of the CBSE.

16. Even this submission does not commend to us. We find force in the argument canvassed by the learned Attorney General for India that the broad-based Result

Committee would examine all aspects of the matter and take decision on the basis of registers maintained by the schools concerned, and inspected by the competent authority. On the basis of such vague apprehension, the Scheme as has been propounded cannot be doubted.

21. In view of the above, we hold that there is no reason to interfere with the Scheme propounded by the CBSE or ICSE. Notably, there is other set of students represented by different learned counsel who have unreservedly supported the Schemes under consideration and do not want any interference therewith. More so, because we find that the stated Schemes are fair and reasonable and take into account concerns of all students and is in larger public interest."

13. It is, thus, obvious that the Hon'ble Apex Court has considered the scheme that was formulated by experts for the purpose of calculating the scores of students, who were not required to appear for the examination and their final results were to be calculated by reckoning the scores of the earlier years and internal exams. We wish to make it clear, at this stage, that we have not made an attempt to scrutinise the scheme, which has been approved by the

Hon'ble Court and which has been placed before us from page 10 to 21. We are informed that this scheme has been formulated by the experts in the field and Statisticians from IIM Ahmedabad. A Committee was formulated for the purpose of working out the said scheme and the same has been approved by the Hon'ble Apex Court.

14. Earlier to the judgment delivered in the case of *Mamta Sharma (supra)*, the Hon'ble Apex Court had dealt with an earlier petition preferred by *Mamta Sharma Vs. Central Board of Secondary Education and others (2021) 7 SCC 364*, wherein the Hon'ble Apex Court considered the proposed scheme propounded by the CBSE Board and has observed in paragraph no.3 as under :-

"3. Whereas, the Committee of Experts of ICSE had propounded a scheme which is somewhat different. It reads thus:

"Rationale"

(a) The components used to arrive at the formula limited to:

(i) marks percentage in Class X Board examinations,

(ii) the Project & Practical Work in the subjects,

(iii) the performance of the candidates in the school examinations in the subjects in Classes XI and XII,

measured through their best marks obtained in the two years (referred to as raw marks), and
(iv) the best performance of the school in the last six years.

- (b) The first factor measures the general proficiency of the candidates, the next two factors measure the subject proficiency of the candidates, while the last is a measure of the general quality of the schools the candidates are appearing from.
- (c) To arrive at the weights, detailed analyses were performed on the data from the past Board examinations from the years 2015 to 2020.
- (d) Extensive scenario analyses were done based on different subjects."

15. In *Amit Bathla and others Vs Central Board of Secondary Education and another (2020) 7 SCC 233*, the Hon'ble Apex Court (3 Judges bench) has recorded in paragraph nos.6 to 10 as under :-

"6. As regards ICSE, the counsel appearing for the said Board, on instructions, stated that ICSE in principle would issue similar notification with additional aspects referred to in the affidavit filed by

them. To wit, Para 6 of the affidavit reads thus:

"6. In the light of the aforesaid, the respondent has taken the following decisions with regard to ICSE (Class 10) and ISC (Class 12) Year 2020 Examinations:

(i) The remaining papers in the ICSE and ISC Year 2020 Examinations as scheduled from 1-7-2020 to 14-7-2020 as per press release/Notification dated 22-5-2020 shall stand cancelled.

(ii) Results of all the candidates for the remaining papers in the ICSE and ISC Year 2020 Examinations will be declared as per methodology decided and adopted by the respondent i.e. CISCE.

(iii) If the situation is deemed conducive, in the near future, CISCE may give an option to candidates to write any or all of the remaining papers of the ICSE/ISC Year 2020 Examinations at a later date whereby the marks so obtained by the candidate in that written examination(s) shall be considered as their final marks."

7. Two aspects have been highlighted during the hearing by the counsel for the ICSE, as follows:

7.1. ICSE may consider of conducting optional examination for Class X as well and abide by the same terms as regards the optional examination regarding Class XII referred to in the draft notification of CBSE, reproduced above.

7.2. The Assessment Scheme of ICSE is different, which would be notified within one week from today on the website of the ICSE.

8. Rest of the stipulations in the draft notification of CBSE, referred to above, are acceptable to ICSE in principle, which would be reflected in the proposed notification to be issued by ICSE in that behalf.

9. In terms of this order, all proceedings/petitions pertaining to the subject-matter of conducting examinations for Classes X and XII by ICSE for Academic Year 2019-2020 pending in this Court or any other court shall be governed by this order and deemed to be disposed of accordingly.

10. We make it clear that this order does not deal with any other issue which may arise for consideration in some other

proceedings pending before the High Court or this Court except the subject-matter of conducting examinations for Classes X and XII for Academic Year 2019-2020 by CBSE and ICSE respectively."

16. It is, thus, held by the Hon'ble Supreme Court that pursuant to the scrutiny of the scheme and its approval, pending proceeding before the Hon'ble Apex Court as well as various other High Courts would be governed by the said order and those proceedings would be deemed to be disposed of accordingly.

17. In this petition before us, the petitioners do not seek a review of the scheme or it's scrutiny. Their grievance is that they were expecting higher aggregate marks and relatively, their expectations have been disappointed by an average of around 10% marks.

18. From the scheme, we find that the Dispute Resolution Mechanism for candidates is prescribed at clause 9 on internal page 11. The learned counsel representing respondent no.2, who has ably assisted us with regard to the scheme and the manner of calculating the aggregate scores, submits that around 2,50,000 students were to be considered under the scheme and each of such students has appeared for six subjects. As such, by the said scheme,

around 15,00,000 results in various subjects were to be declared. By the Dispute Resolution Mechanism, the dispute with regard to correction in calculation error was to be looked into.

19. Our attention is drawn to a Press Release issued by the CISCE, dated 23.07.2021 clearly indicating that requests would be looked into if the same are tendered online and dispute resolution mechanism was meant only for correction in “Calculation Errors”. The learned advocate representing respondent no.2 informs us that three sheets, at page nos.51, 52 and 53, forwarded by the school online, had been received by the CISCE and after considering the calculation errors, the school was specifically informed on 10.08.2021 about there being no error in the calculation of the aggregate scores of the students.

20. It appears to us from the pleadings of the parties and the affidavit in reply filed by school that probably the school is not fully conversant with the methodology, which is called as Algorithm, to be used for calculating the aggregate scores of the students. The marks that are allotted for last six years ranking of the school are also a part of the Algorithm, while calculating the aggregate marks of the students. It is not like student “A” scoring 94 marks in one year and 96 marks in the 2nd year and, therefore, the average has to be 95 marks. If the ranking of

the school is, for example, 45, such figure is inserted in the algorithm, to draw the average of the students which could be 80 or 85, as the case may be. The case of the school is apparently based on a simple law of averages like $2 + 2 = 4$ and, therefore, the average has to be 2. This is not the way in which the Algorithm works.

21. Considering the above, we do not find that this petition deserves to be entertained.

22. As such, this petition is dismissed.

23. We need to record that the learned amicus curiae has admirably assisted us.

(S.G.DIGE, J.)

(RAVINDRA V. GHUGE, J.)