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

Date of decision: 30th AUGUST, 2022

IN THE MATTER OF:

+ **LPA 497/2022 & CM APPL. 37828/2022**

CENTRAL BOARD OF SECONDARY EDUCATION..... Appellant

Through: Mr. Chetan Sharma, ASG with
Mr. Rupesh Kumar, Ms. Pankhuri
Srivastava, Mr. Amit Gupta, Mr.
Saurabh Tripathi, Mr. Rishav Dubey
and Ms. Neelam Sharma, Advocates.

versus

DEVASRI BALI & ANR.

..... Respondents

Through: Mr. Sandeep Sethi, Sr. Advocate with
Ms. Anusuya Salwan, Mr. Bankim
Garg, Mr. Rachit Wadhwa, Mr.
Shakaib Khan and Ms. Nikita Salwan,
Advocates for R-1 along with
Respondent No.1 in – person.
Mr. Rajesh Gogna, CGSC with Mr.
Devvrat Yadav, G.P with Ms. Priya
Singh and Mr. Digvijay Prasad,
Advocates for R-2/UOI.

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

J U D G M E N T



1. The Central Board of Secondary Education (*hereinafter referred to as* 'CBSE') by way of the present LPA, has assailed the Judgment dated 26.08.2022 passed by the Ld. Single Judge in W.P.(C) 11775/2022 (*hereinafter referred to as* 'the Writ Petition') wherein the Writ Petition was allowed in favour of the Petitioner therein, and against the Appellant herein.
2. It is stated that Respondent No.1 is a student who has recently graduated from Delhi Public School, Vasant Kunj. Her class 12 boards for the academic session 2021-22 were conducted by the Appellant, i.e. CBSE.
3. In view of the COVID-19 pandemic, on 05.07.2021, the Appellant issued a circular and introduced the 'Special Scheme of Assessment for Board Examination Classes 10 and 12 for the Session 2021-22.' As per the said circular, the Appellant decided to conduct the Class 12 examination for the academic session 2021-22 in two Terms i.e. Term-I and Term-II. The CBSE envisaged for Term-I examination to have a flexible schedule; exams for Term-I were to be conducted between November-December, 2021 with a window period of 4-8 weeks for the schools situated in the country and abroad.
4. Further, the circular stated that the question papers would have Multiple Choice Questions (MCQs), including case-based MCQs and MCQs on assertion-reasoning type. The duration of the test was for about 90 minutes and was to cover approximately about 50 per cent of the entire syllabus. The Term-II examination was to be organised at the end of the year for the remaining 50 per cent of the syllabus. The examination was to be held in March-April, 2022. The duration of the examination was to be about two hours and the questions were to be asked in different formats i.e. case based/ situation based, open ended short answers and long answer type.



5. Paragraph 6 of the said circular dated 05.07.2021 laid down four scenarios for the purpose of assessment, which read as under:-

“6. Assessment/Examination as per different situations

A. In case the situation of the pandemic; improves and students are able to come to schools or centres for taking the exams.

Board would conduct Term I and Term II examinations at schools/centres and the theory marks will be distributed equally between the two exams.

B. In case the situation of the pandemic forces complete closure of schools during November-December 2021, but Term II exams are held ' at schools or centres.

Term I MCQ based examination would be done by students online/offline from home - in this case; the weightage of this exam for the final score would be reduced, and weightage of Term II exams will be increased for declaration of final result.

C. In case the situation of the pandemic forces complete closure of schools during March-April 2022, but: Term I exams are held at schools or centres.

Results would be based on the performance of students on Term I MCQ based examination and Internal assessments. The weightage of marks of Term I examination conducted by the Board will be increased to provide year end results of candidates.

D. In case the situation of the pandemic forces complete closure of schools and Board conducted Term: I and II exams are taken by the candidates from home in the session 2021-22.

Results would be computed on the basis of the Internal Assessment/Practical/Project Work and Theory marks



of Term-I and II exams taken by the candidate from home in Class X/XII subject to the moderation or other measures to ensure validity and reliability of the assessment.”

6. A perusal of the aforesaid paragraphs indicate that marks were to be distributed equally between Term-I and Term-II examination (50 per cent each). A circular was issued on 14.10.2021 notifying that all examinations for Class 10 and 12 were to be conducted in offline mode. The Term-I examinations for Class 12 were held in schools/centres in a phased manner from 16.11.2021 to 30.12.2021. On 19.03.2021, result for Term-I examination was declared.

7. On 31.03.2022, internal circular was issued by the Appellant stating that the weightage of Term-I and Term-II examinations will be 30 per cent and 70 per cent respectively. This circular was not brought to the knowledge of the students. On the eve of declaration of the results for Class 12 i.e. 22.07.2022, a Press Release was issued by the Appellant herein giving out the weightage of Term-I and Term-II examination. The relevant portion of the Press Release dated 22.07.2022 reads as under:-

“WEIGHTAGE OF TERM - I AND TERM - II EXAMINATION:-

The predominant feedback received after Term-I (Theory) exams was that students were unable to perform to their full potential in the Term-I examinations as they had to appear for an objective pattern for the first time in board exams without any adequate precedent and practice. The predominant feedback for Term II exams was more positive, with satisfactory performance being expressed by the students. The board sought the views of a large number of school Principals and officials, through a



consultative mechanism, on the relative weightage to be given for the two terms, to arrive at a composite final result.

Majority of the members of the committee recommended that the weightage for Term-I (Theory) should be around 30% and for Term-II (Theory) 70% respectively. As far as Practical is concerned, equal weightage of both Term I and Term II be given.

The Competent Committee of the Board deliberated at length on the discussions of the committee. It was decided to accept the recommendations and the weightage of Term-I was fixed at 30%, and Term-II 70% for theory papers. However, for practical, equal weightage was decided to be given for both Terms for preparing the final result of both class X and Class XII.”

8. The said Press Release indicates that the Competent Committee of the Appellant had deliberated at length on the decisions on the Committee and decided to accept the recommendations. Consequently, the weightage of Term-I examination was fixed at 30 per cent and Term-II at 70 per cent for theory papers. However, equal weightage was decided to be given for both Terms for practical examination and results were declared on 22.07.2022.

9. Respondent No.1 herein, who had taken her Class 12 examination, challenged the circular dated 23.07.2022 contending that *vide* circular dated 05.07.2021, equal weightage was to be given to both the Terms, due to which Respondent No.1 herein decided to concentrate more on the competitive examinations in order to secure a seat in a professional institution. However, in view of the change in the weightage of marks, Respondent No.1 who would have got 77 per cent marks as per the original formula, only secured 73.33 per cent marks as per the new weightage



formula. It is stated that the Respondent No.1 had qualified for the BITSAT 2022 Entrance Examination, however, despite clearing the entrance examination, she was unable to secure admission at BITS, Pilani, as she had failed to meet the criteria of minimum 75% marks for admission in the said institution.

10. The contention of Respondent No. 1, who was the Petitioner in the Writ Petition, was that the weightage of marks could not have been altered after the examination had been conducted. According to her, the rules of the game could not have been changed after the game had begun. *Vide* the impugned judgment, the learned Single Judge allowed the Writ Petition and directed the Appellant herein to declare the result of Respondent No.1 in terms of the circular dated 05.07.2021 under which equal weightage was to be given for the theory papers of Term-I and Term-II examination while computing the results. However, the learned Single Judge categorically stated that the Writ Petition was being allowed in the peculiar facts and circumstances of the case and would not operate as a precedent. Aggrieved by the said decision, the Appellant, i.e. CBSE, seeks to challenge the same by filing the instant LPA.

11. Mr. Chetan Sharma, learned ASG appearing for the Appellant, contends that the learned Single Judge, while exercising jurisdiction under Article 226 of the Constitution of India, ought not to have interfered with the policy decision of the CBSE. He states that the change in weightage was occasioned after serious deliberations with experts, who had taken into account the grievance of Principals of multiple schools regarding non-preparedness of the students for the objective type assessment done for Term-I. He states that the Committee of Experts comprised of Additional



Director, Directorate of Education, GNCTD, Delhi; Assistant Commissioner, Kendriya Vidhayalaya Sangathan; Assistant Commissioner, Navodaya Vidhayalaya, Principals of some private schools who, in the meeting convened on 21.05.2022, had recommended that the weightage should be reduced to 30 per cent for Term-I and 70 per cent for Term-II.

12. The learned ASG further argued that the Impugned Judgment would result in overturning the exercise done for more than 35 lakh children who had taken the examination. He further states that the Impugned judgment would open a Pandora's box and that this Court would be flooded with petitions by aggrieved students.

13. *Per contra*, Mr. Sandeep Sethi, learned Senior Counsel for Respondent No.1, contends that since the entrance examination for various engineering colleges is highly competitive, students, more particularly students in the science stream, plan their academic calendar and give more importance to such examinations. He states that since the Appellant had declared that it would conduct Class 12 examination in two parts, namely, Term-I and Term-II and equal weightage would be given to both Terms with Term-I consisting of MCQs, Respondent No.1 had planned for the same in a manner that would have allowed her to prepare for the entrance examination more efficiently. He states that due to the circular of the Appellant, the Respondent No. 1 had planned her academic year in a particular way, and the Appellant ought not to have gone back. In this regard, it is argued that the Ld. Single Judge's reliance on the doctrine of legitimate expectation ought not to be interfered with. He states that the first notification which had given equal weightage to Term-I and Term-II was brought on 05.07.2021, and in case of any change in the same, students ought to have been informed



much prior to the date on which the results were to be announced, i.e. 22.07.2022.

14. Heard, Mr. Chetan Sharma, learned ASG appearing for the Appellant, Mr. Sandeep Sethi, learned Senior Counsel for the Respondent No.1, Mr. Rajesh Gogna, learned CGSC appearing for Respondent No.2, and perused the material on record.

15. A perusal of the Impugned Judgment shows that it was rendered on the peculiar facts and circumstances of the case and is not to be treated as a precedent. The facts of the case reveal that in July, 2021 i.e. at the beginning of the academic year itself, the Appellant *vide* circular dated 05.07.2021 had brought out the manner in which the students were going to be assessed.

16. A perusal of paragraph 6 of the said circular dated 05.07.2021 indicates that in case the pandemic improved and the students were to come back to the schools, the Appellant would have conducted examinations at schools/centres and theory marks in the examination would be of equal weightage. The second situation that was envisaged was that in case the situation of the pandemic forced complete closure of schools between November-December 2021, then Term-I MCQ based examination would be done online/ offline from home, and in that case, the weightage of Term-I exam for the final score would be reduced and the weightage of the Term-II examination would be increased for the declaration of final results. The third situation envisaged that in case the situation of the pandemic forced complete closure of schools during March-April 2022, but Term-I examinations had been held at school/centres, then weightage of Term-I examination would be increased to provide year end results of candidates. The fourth scenario envisaged that in case the pandemic forced complete



closure of schools and Board conducted the Term-I and Term-II examination which were taken by the candidate from home then the results would be computed on the basis of internal assessment/practical/project work as well as theory marks of Term-I and Term-II examination.

17. The pandemic did improve and this Court can take judicial notice of the fact that the schools reopened from November-December, 2021. In light of this, the first situation ought to have governed CBSE students. Therefore, the second scenario envisaged in the circular under which the weightage of the Term-II examination could be increased only if the schools were shut during November-December, 2021 cannot be applied.

18. A student, therefore, would have expected that Clause 6-A under which the marks were to be equally distributed under Term-I and Term-II would be applicable. Respondent No.1's expectation that the Appellant would not change the decision, cannot be faulted. If CBSE had intended to change the weightage of marks, the said decision ought to have been taken before the examinations were conducted and this should have been conveyed to the students so that they were adequately prepared for their examinations.

19. The Apex Court in State of Bihar & Ors. v. Shyama Nandan Mishra, **2022 SCC OnLine SC 554**, has succinctly explained the concept of legitimate expectation and has observed as under:-

“34. To understand the legal consequences arising therefrom, useful reference can be made to R. v. Inland Revenue Commissioners, ex parte M.F.K. Underwriting Agents Ltd.9 (1989) where Lord Justice of Appeal, Thomas Bingham, while invoking fairness as a rationale for protecting legitimate expectations, expressed the following:—



“If a public authority so conducts itself as to create a legitimate expectation that a certain course will be followed it would often be unfair if the authority were permitted to follow a different course to the detriment of one who entertained the expectation, particularly if he acted on it. ... The doctrine of legitimate expectation is rooted in fairness.”

35. Another facet of denial of legitimate expectations is underscored by the Court of Appeal of England and Wales in the seminal case of *Coughlan*¹⁰, where the Court preferred to use abuse of power as one of the criteria for testing whether a public body could resile from a *prima facie* legitimate expectation. In the Court's opinion, if the government authority induced an expectation which was substantive, the upsetting of that expectation, through departure from the expected course of action in the absence of compelling public interest, would be so unfair, that it would amount to abuse of power. In the present case, the abuse of power is discernible in the State's disparate decision in encadring the +2 lecturers with the teachers of nationalized schools, notwithstanding the contrary representation through the 1985 notification which created the +2 lecturer posts and the 1987 advertisement under which, the respondents entered service. Such manifest departure from the projected course smacks of arbitrariness and the government action, to selectively protect the interest of the BES cadre, does not conform to rules of justice and fair play.

36. Taking a cue from above, where the substantive legitimate expectation is not *ultra vires* the power of the authority and the court is in a position to protect it, the State cannot be allowed to change course and belie the legitimate expectation of the respondents. As is well known, Regularity, Predictability, Certainty and Fairness are necessary concomitants of Government's



action and the Bihar government in our opinion, failed to keep to their commitment by the impugned decision, which we find was rightly interdicted by the High Court.”

20. Similarly in Navjyoti Cooperative Group Housing Society & Ors. v. Union of India & Ors., (1992) 4 SCC 477, the Apex Court has observed as under:-

“15... The existence of ‘legitimate expectation’ may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat the ‘legitimate expectation’ without some overriding reason of public policy to justify its doing so. In a case of ‘legitimate expectation’ if the authority proposes to defeat a person’s ‘legitimate expectation’ it should afford him an opportunity to make representations in the matter. In this connection reference may be made to the discussions on ‘legitimate expectation’ at page 151 of Volume 1(1) of Halsbury’s Laws of England, 4th edn. (re-issue). We may also refer to a decision of the House of Lords in Council of Civil Service Unions v. Minister for the Civil Service [(1984) 3 All ER 935] . It has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reasons.

16. It may be indicated here that the doctrine of ‘legitimate expectation’ imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such ‘legitimate expectation’. Within the conspectus of fair dealing in case of ‘legitimate expectation’, the



reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in. We, have not been shown any compelling reasons taken into consideration by the Central Government to make a departure from the existing policy of allotment with reference to seniority in registration by introducing a new guideline...”

21. In National Buildings Construction Corporation v. S. Raghunathan & Ors., (1998) 7 SCC 66, the Apex Court placed reliance on its earlier judgments in Navjyoti Cooperative Group Housing Society (supra) and Food Corporation of India v. Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71, and has observed as under:-

“24. In Food Corpn. of India v. Kamdhenu Cattle Feed Industries [(1993) 1 SCC 71] it was held that in all State actions, the State has to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. It was further observed that there is no unfettered discretion in public law and a public authority possesses powers only to use them for public good. It was further observed as under: (SCC p. 76, para 8)

“8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's



perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.”

(emphasis supplied)

22. Further, in Maharashtra State Road Transport Corporation & Ors v. Rajendra Bhimrao Mandve & Ors., (2001) 10 SCC 51, the Apex Court observed that the rules of the game cannot be altered in the middle or after the game has commenced. In fact, the Apex Court had gone on to hold that if denial of legitimate expectation in a given case amounts to denial of a right that is guaranteed or is arbitrary, discriminatory, unfair or biased or gross abuse of power or is in violation of principles of natural justice, the same can be questioned on the preliminary grounds attracting Article 14 of the Constitution of India [Refer Union of India & Anr. v. Lieutenant Colonel P K Choudhary & Ors., (2016) 4 SCC 236].

23. Applying the said principles on the facts of the present case, it can be seen that paragraph 6 of the circular dated 05.07.2021 laid down the principles of assessment of the examination in different circumstances. Clause 6-A is applicable to the facts of this case since most schools were operating physically in November 2021. Therefore, the situation contemplated in Clauses B, C, D of paragraph 6 would not be applicable. As rightly contended by Mr. Sethi, a student, more particularly those who have opted for the science stream, need to tactfully plan their academic year so as



to be able to prepare for their Boards as well as for competitive examinations. Therefore, it can be said such students would not have expected CBSE to change the weightage it ought to have followed, and were adversely affected by it. If the Appellant had desired to reconsider the decision then the exercise ought to have been done well before the examination so that the students could have planned their studies.

24. It is well settled that the rules of the game cannot be permitted to be changed after the game had begun. The contention of learned ASG that Impugned Judgment would open up floodgates cannot be accepted as the learned Single Judge foresaw that possibility, and categorically stated that the Impugned Judgment was rendered on the peculiar facts and circumstances of the case and would not act as a precedent. Further, the Respondent No.1 has adequately proved that she is a meritorious and capable candidate by clearing the BITSAT-2022 examination.

25. In view of the above, this Court does not find any merit in the present appeal. Resultantly, the appeal is rejected. Pending application stands disposed of.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

AUGUST 30, 2022

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