

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.5743 OF 2022

Madhav Chorghade son of Achyut Chorghade,
 aged about 19 years, occupation Student,
 Resident of Plot no.34, Iccha Co-operative
 Housing Society, Near 85 Plots area,
 Narendra Nagar Extension, Nagpur
 Tahsil and District Nagpur – 440027. **PETITIONER**

...V E R S U S...

1. Union of India through its Principle Secretary, Department of School Education and Literacy, Ministry of Education, Government of India at its office at 124-C Shastri Bhawan, New Delhi 110001.
2. Central Board of Secondary Education through its Chairman Shiksha Kendra, 2, Community Center, Preet Vihar, Delhi – 110092.
3. Central Board of Secondary Education, through Regional Director, RO, RLM Business Park, Sr. No. 28/4/A, Old Kharadi Mundava Road, Opposite to Bollywood Multiplex, Kharadi, Pune – Maharashtra 411014.
4. ~~Shri Mahesh son of Dattatraya Dharmadhikari Regional Director, Central Board of Secondary Education, RO, RLM Business Park, Sr. No. 28/4/A, Old Kharadi Mundava Road, Opposite to Bollywood Multiplex, Kharadi, Pune – Maharashtra 411014.~~
5. School of Scholars, through its Principal, Atrey layout Nagpur Tahsil and District Nagpur 440022. **RESPONDENTS**

Deleting
 name of R-4
 as per order
 dt/- 29.11.22

Mr. S. A. Mohta, Advocate for Petitioner.
Mr. Sahil Mate, Advocate h/f Mr. N. S. Deshpande, DSGI for
Respondent 1.
Mr. P. S. Chawhan, Advocate for Respondents 2 & 3.
Mr. P. D. Meghe, Advocate for Respondent 5.

CORAM: **ROHIT B. DEO AND MRS. VRUSHALI V. JOSHI, JJ.**
DATE: **16th MARCH, 2023.**

ORAL JUDGMENT: **(PER ROHIT B. DEO, J.)**

Rule. Rule made returnable forthwith. By consent
of the parties petition is heard finally.

2. The petitioner is a student who appeared for the
standard 12th examination conducted in 2021 by respondent 5 –
School of Scholars.

3. The Covid-19 was at its peak. Respondent 5 School is
affiliated to Central Board of Secondary Education (CBSE).
In view of the extra ordinary circumstances prevailing, the
examination was conducted by the School Committee and not by
the CBSE, as is the norm.

4. The grievance of the petitioner is limited.

5. CBSE declared the results on 31.07.2021. Petitioner was shown to have failed in the subject of Chemistry. The petitioner submits that in uploading the marks the respondent 5 committed an inadvertent and technical error. To be precise, the petitioner secured 16 marks out of 80 in Chemistry and 23 in the subject of Psychology from aggregate 80 marks. 7 grace marks were available and had the marks been added to the 16 secured by the petitioner in Chemistry, he would have been declared pass. Instead, the 7 grace marks were added to the subject of Psychology, which was wholly unnecessary since the petitioner had secured the passing marks in Psychology which is 23.

6. The management has filed an affidavit in response dated 23.01.2023. The management has candidly and fairly admitted its mistake. We may extract the relevant portions from the affidavit of the management:

2. It is submitted that as it is evident from the Judgment and order passed by this Hon'ble Court on 23.11.2021, it was a categorical stand of present respondent that due to clerical error and issue of internet, there was incorrect uploading of marks in respect of the petitioner in two subjects namely psychology-theory and chemistry. Inadvertently the marks in psychology was uploaded as 30 and in Chemistry, it was uploaded as 16 marks but in fact, the marks of these subjects should be 23 in psychology and 23

in chemistry. It is the case of present respondent that the present respondent immediately on 11.8.2021 itself in the format of CBSE informed that there was error in entry/ uploading of result of petitioner and on 11.8.2021, it was pointed out that in both the subjects marks should be treated as 23 since earlier there was incorrect uploading of marks, the result was shown as 'failed'.

3. It is further submitted that after the Judgment delivered by this Hon'ble Court on 23.11.2021, the present respondents informed telephonically and also sent email to respondent no.3 in follow-up to that, by sending all the conversations which occurred between School and CBSE regarding petitioner. Copy of said email dated 1.12.2021 is annexed herewith and marked as Annexure R.3 (A).

4. Thereafter on next day this respondent again sent a email to respondent no.3 enclosing the copy of order and copy of representation of petitioner, dated 24.11.2021. It is the present respondent on the same day forwarded email which was earlier sent in which present respondent has categorically informed along with data about the correction and also the screenshot about the actual correction sent by the school on 11.8.2021. Copy of the said letter, dated 12th October along with screenshot of format sent on 11.8.2021 is annexed herewith as Annexure R.3 (B).

5. It is submitted that from this communication, it is crystal clear that at no point of time, present respondent ever communicated to respondent nos. 2 to 4 about not having any surplus marks in Chemistry. In fact, the issue arose due to clerical error of uploading the marks which were incorrectly uploaded in the subject Chemistry and Psychology and that correction was made by the school as in August, 2021, due to Corona pandemic, no exams were

conducted by C.B.S.E. and exams were conducted at the school level up to 12th standard. It is pertinent to note that in the letter, dated 7.1.2022, the C.B.S.E. did not mention the date of letter by which present respondent has communicated to them that no surplus marks are balance in subject Chemistry in respect of present petitioner. Thus, looking to this aspect, this Hon'ble Court can pass appropriate orders in the present matter.

7. The CBSE has filed an affidavit in response dated 02.03.2023. The substratum of the affidavit in response is that in so far as the subject of Chemistry, the respondent 5 school could have distributed only 3074 marks, even factoring the additional 5 marks. We may extract the relevant portion from the affidavit in response:

10. That the petitioners did not understand the objective, purpose or rationale behind issuance of Circular dated 08.08.2021 which was issued in terms of the orders/directions passed by this Hon'ble Court with the objective of handling the post result declaration grievances of the students through Dispute Redressal Mechanism framed therein. Moreover, a number of grievances had been adequately addressed through this mechanism where genuine grievances were raised by the candidates within the scope of the tabulation policy and appropriately recommended by the school result committee following due procedure. The factual matrix of data related to the result of the respondent school is as under:-

It is clear that the school has utilized all the available marks in the subject Chemistry

whereas there are surplus balance marks available in the subject Psychology. However, out of overall total marks allotted to the school have been consumed in distribution of the same amongst the student subject wise in pursuance to keep the permissible limit intact. As a result of which there were no overall balance marks available with the school.

It was under prerogative of the school result committee to allot the marks to each and every student after due assessment and analysis of the candidate on the basis of his/her individual performance in the school whether it is subject wise or overall performance. There was no role of the answering respondent in preparation of the result of the students, as have been claimed by the petitioner or as contended by the respondent school.

Apart from the above, the following information is required to be considered by the Hon'ble Court.

Overall Reference Mean (Table A)

All Candidate All Subject	Over all Ref. Mean	Permissible Overall Ref. Mean (+2)	Total overall marks	Overall Raw Mean	Overall Raw Marks	Permissible Moderation in Marks	Moderation Given	Overall Mean after Mod.	Total overall Marks	Balance
M	N	O = (N+2)	P = O×M	Q	R	S=P-R	T	U	V	W=P-V
432	43.51	45.51	19660.32	53.49	23108	-3447.68	-3448	45.51	19660	0.32

At this stage, it is to apprise that as per Table A the school was allotted a total pool of 19660 marks which were to be distributed amongst the students towards the theory component of the subjects for Class XII. Similarly, there are also subject reference means were to be maintained besides the overall reference mean of the school.

Subject Reference Mean – Chemistry & Psychology (Table B)

Subject	No. of Cand.	Ref. Mean	Ref. Mean (+5)	Total Marks	Raw Mean	Raw Marks	Permissible Moderation	Modratio n Given	Moderatio n Mean	Total Marks after Moderati on	Balance Marks
A	B	C	D=C+5	E=DxB	F	G	H=E-G	I	J	K	L=E-K
Chemistry	81	32.95	37.95	373.95	49.67	4023	-949.05	-949	37.95	3074	-0.05
Psychology	30	36.22	41.22	1236.6	49.8	1494	-257.4	-313	39.37	1181	55.6

Further, it is also on record as per data that:-

- (a) the reference mean of subject chemistry was the lowest amongst the other subject reference mean i.e. 32.95;*
- (b) the school has only 2668.95 marks as per actual mean of the chemistry subject for distribution amongst the 81 students who have opted the Chemistry as subject for class-12th;*
- (c) The school has utilized the maximum permissible limit (enhanced to 37.95) of +5 marks in the subject chemistry and distributed 3074 marks instead of 2668.95 marks and therefore, the school has already awarded 405 excess marks in the subject of Chemistry;*
- (d) In the subject chemistry the balanced marks are -0.05.*

Thus, it is clear that there are no marks left in the subject chemistry in any manner so as to support the contention of the school as well as the petitioner that the data was wrongly got entered due to technical error which is absolutely vague and misconceived.

Further, there is no concept of exchanging of marks (be it from psychology or any other) from one subject to any other subjects as contended by the school as well as the petitioner.

In this regard, it is needless to mention that it is not only the petitioner students who have been downward moderated in chemistry subject but there are more than 10 students (out of 81 students) who have been moderated downward for 20 and more marks.

In view of the above, the contention/stand of the school is also not factually correct and based on rational documents or data so uploaded by the school on the Board's Portal.

In addition to above, it is also apprise to this Hon'ble Court that petitioner student has also availed opportunity of the improvement/compartement examination held in the year 2021, in which petitioner secured 06 marks out of total theory marks 070 in the Chemistry. This shows the proficiency of the petitioner in the Chemistry and with the help of this petition on the false, wrong and unlawful submissions, petitioner wishes to pass the examination by hook or by crook.

Thus, it may be inferred that the previous result which is disputed by the petitioner was declared as per the merits of the petitioner. After, appearing in subsequent examination, petitioner cannot reopen the already settled result afterwards.

8. In essence, what is stated in the affidavit in response on behalf of CBSE is that the respondent 5 school having utilized the available marks for the subject of Chemistry, could not have asked the CBSE to add 7 grace marks to the marks in Chemistry secured by the petitioner, in as much as such marks were not available for allotment. It is submitted by the learned counsel Mr. Chawhan, that surplus marks or grace marks were available

for the subject of Psychology, and it is presumably because of such availability that respondent 5 added the surplus marks to the Psychology marks.

9. Mr. Mohta and Mr. Meghe would rebut the contentions of CBSE on the premise that the petitioner having already secured the threshold marks, addition of marks to the marks secured in the subject of Psychology was not at all necessary. It is further argued that at the very first opportunity on 11.08.2021 the technical error was brought to the notice of the CBSE and notwithstanding the earlier round of litigation, such a stand is taken by the CBSE for the first time in the present petition.

10. We do appreciate the submission of the learned counsel for CBSE that its policy is uniform and applies in a pervasive manner across India and that CBSE must not be directed to deviate or make exceptions lest such course opens the floodgate for similar request.

11. However, we cannot be oblivious that such occasions may arise rarely, if at all. It is only because of the extra ordinary pandemic situation that the schools were called upon to conduct

the process, or at least substantial part thereof at their own level. According to the school, it has committed a mistake in the allocation of marks. In the peculiar circumstances, and clarifying that this order shall not be a precedent nor is this order an adverse reflection on the stand of the CBSE, we allow the petition in terms of prayer clause (i) which reads thus:

(i) Directing the Respondents No.3 and 4 to quash the impugned order dated 07/01/2022 ANN P-6 passed by R-3 and order a fresh result.

(MRS. VRUSHALI V. JOSHI, J.)

(ROHIT B. DEO, J.)

NSN