



2024 : DHC : 1264



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

+ **W.P.(C) 2374/2024 and CM 9822/2024**

VISHAKHA & ORS.

..... Petitioners

Through: Mr. Suraj Kumar Singh, Mr.
Kamal Kant Tripathi, Mr. Swapnil
Choudhary and Mr.B.S. Pandey, Advocates

versus

**THE CONTROLLER OF EXAMINATION CENTRAL
BOARD OF SECONDARY EDUCATION & ORS.**

..... Respondents

Through: Mr. Atul Kumar and Ms. Aditi
Gupta, Advocates

+ **W.P.(C) 2375/2024**

PRIYANKA DARSHI

..... PETITIONER

Through: Mr. Muhammad Arif, Adv.

versus

**CENTRAL BOARD OF SECONDARY EDUCATION
THROUGH REGIONAL DIRECTOR EAST DELHI & ANR.**

..... Respondents

Through: Mr. Sanjay Khanna, Ms. Pragya
Bhushan, Mr. Karandeep Singh, Mr.
Tarandeep Singh and Ms. Navya Goel,
Advs. for R-1/CBSE

Advocates for CBSE Mr. Santosh Kumar
Tripathi, SC (Civil) with Mr. Utkarsh Singh
and Ms. Nikita Vir, Advs. for GNCTD

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

16.02.2024

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1. The petitioners in this writ petition, are girl students, who desire to undertake their Class X and XII Board examinations, conducted by the Central Board of Secondary Education (CBSE) as private candidates. The papers, in which the petitioners desire to undertake the examinations, commence on 19 February 2024. The petitioners' grievance is that they have been informed that they are not eligible to appear in the examination and no admit cards have been issued to them.

2. Mr. Atul Kumar, learned Standing Counsel for the CBSE, draws my attention to the Notice dated 5 September 2023, issued by the CBSE, which specifically covers "submission of examination forms by private students for Class X Examinations-2024". He submits that an identical notice has been issued for students undertaking class XII CBSE examinations though it has not been placed on record. He has drawn my attention to clause (p)(1) of the features of the online system of registration for appearing in the examination, which reads thus :

"p) The submission of forms for examination has been made fully online. Accordingly, it is informed that a hard copy of the form is not required to be sent to CBSE. However, following is intimated :

1. Female students who are bonafide residents of the National Capital Territory of Delhi and have attained the age for appearing in Class X shall upload the copy of the Domicile Certificate issued by the appropriate authority when submitting online application form."

3. Mr. Atul Kumar submits – and learned counsel for the petitioners do not deny – that the petitioners are in default of

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compliance with Condition 1 in clause (p) *supra*, which requires them to upload the copy of the domicile certificate issued by the appropriate authority when submitting the online application form. It is not in dispute that the petitioners did not upload the copy of the domicile certificate when they applied online, though the aforesaid notice has been in the public domain since 5 September 2023. It may be noted that the petitioners had applied for undertaking the examinations during September 2023 itself. The confirmation page issued by the CBSE clearly states that the submission of the form and payment of fee does not render a candidate eligible for appearing in the examinations and that her eligibility would depend on fulfilment of the eligibility conditions prescribed by the Board and verification at the end of the Board.

4. Learned counsel for the petitioners do not dispute that, as required by the Notification dated 5 September 2023, no copy of the domicile certificate issued by the appropriate authority was uploaded by them when they submitted their application online for appearance in the Class X Board examinations. In fact, they submit that, even as on date, they are not in a possession of the domicile certificate and have only applied to the Competent Authority for issuance thereof.

5. Though learned counsel for the petitioner have made fervent pleas calling on the Court to exercise mercy keeping in mind the fact that the petitioners are young children, who have to undergo their Class X and Class XII Board examinations, it is a settled that, while mercy can, and must, temper justice, it cannot substitute it. *Ubi jus*, as



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the adage goes, *ibi remedium*. Availability of a remedy depends on the existence of a right. The Court cannot pass merely to show mercy, where the necessary indicia for grant of relief are not fulfilled.

6. As far back as on 5 September 2023, the notice issued by the CBSE made it clear that female students who wanted to apply for attempting Class X and XII Board examinations, as private candidates, were required to upload their domicile certificates. There is no dispute that this has not been done.

7. If this Court were to grant the relief sought by the petitioners it would render Condition 1 in Clause (p) of the Notice dated 5 September 2023 completely redundant. It would also set a precedent where students, without complying with said clause, can nonetheless come to the Court at the eleventh hour and obtain orders allowing them to participate in the examination.

8. It is true that every statutory requirement, which is facially mandatory, may not always be so. Procedural statutory requirements, even if conditioned by the use of the word “shall”, are often treated as directory. In the present case, however, the CBSE deals with lakhs – or maybe more – of applications. Procedural requirements, and the stipulations regarding the documents and details which are to accompany an application are not, therefore, dispensable, more so when the submission of applications is online, and there is little scope for physical verification. If Courts start benevolently granting relief even in cases where there is no strict compliance with these



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requirements, it can throw the system into anarchy. Save in rare cases, therefore, the Court should not treat such stipulations as dispensable, in pursuit of what it may feel is “substantial justice”.

9. While the Court, therefore, sincerely regrets being unable to come to the aid of the petitioners, that is unfortunately what the law ordains.

10. For the aforesaid reason, it is not possible to grant the relief sought in this writ petition. The writ petition is accordingly dismissed in *limine*.

W.P(C) 2375/2024

11. The facts of this case are identical to those which arose in W.P. (C) 2374/2024 (*Vishakha v. Controller of Examination, CBSE*). The present petitioner, who desires to appear in the Class XII CBSE examination, also did not upload the requisite domicile certificate with the application form which was submitted online in September, 2023. However, for reasons unknown, an admit card was, in fact, issued to the petitioner on 6 February 2024.

12. Mr. Arif, learned counsel for petitioner, submits that the petitioner had applied for obtaining a domicile certificate on 12 February 2024 and has obtained the domicile certificate on 13 February 2024. He prays that, in these circumstances, his client may be permitted to undertake the examination which is to be conducted on



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19 February 2024.

13. It is not possible to accede to the request.

14. As I have held in WP (C) 2374/2024 *supra*, the female students who desired to attempt the Class X or Class XII as private candidates were required to upload the domicile certificate issued by the Competent Authority along with the online application form. In fact, this requirement has been highlighted in bold red print in the notice dated 5 September 2023 issued by the CBSE applicable to such cases.

15. The provision is not under challenge.

16. There is no dispute that, on the date when the petitioner uploaded her application form for being permitted to appear in the Class XII CBSE examinations, she was not even in possession of a domicile certificate.

17. Needless to say, no such domicile certificate was uploaded with the application form either.

18. WP (C) 2374/2024, dealt with 20 similar candidates. They were not issued any admit card, as they had not uploaded the domicile certificates with the online application form. In my order passed today, I have held that in such cases, the Court cannot permit them to appear in the examination in the Class-X/XII CBSE Board Examinations, merely on sympathetic consideration.

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19. The petitioner cannot be placed in a better situation merely because an admit card was apparently inadvertently, issued to her on 6 February 2024.

20. In fact, Mr. Sanjay Khanna, appearing for the CBSE submits, on instructions, that the admit card was issued by mistake and that it is for that reason the CBSE has blocked the admit card.

21. The position that obtains in this case is, therefore, identical to the position which obtained in respect of the 20 petitioners in W.P. (C) 2374/2024.

22. This writ petition also, therefore, must meet the same fate. It is accordingly, dismissed *in limine*.

C.HARI SHANKAR, J

FEBRUARY 16, 2024

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Click here to check corrigendum, if any