



2024:DHC:6592



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

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Reserved on: 27.08.2024
Pronounced on: 30.08.2024

+ **W.P.(C) 2830/2024 & CM APPL. 11632/2024, CM APPL. 22207/2024 & CM APPL. 45203/2024**

RAKHI KAUR AND ORS.Petitioners

Through: Mr. Pankaj Sinha & Mr.
Manish Kumar, Advocates.

versus

CENTRAL BOARD OF SECONDARY EXAMINATION
AND ANR. ...Respondents

Through: Mr. Sanjay Khanna, Standing
Counsel with Ms. Pragya
Bhushan, Mr. Karandeep
Singh and Mr. Tarandeep
Singh, Advocates for CBSE
(through VC).

+ **W.P.(C) 3181/2024 & CM APPL. 22828/2024 & CM APPL. 45181/2024**

VINEETA AND ORS.Petitioners

Through: Mr. Pankaj Sinha & Mr.
Manish Kumar, Advocates.

versus

CENTRAL BOARD OF SECONDARY EXAMINATION
AND. ANR.Respondents

Through: Mr. Sanjay Khanna, Standing



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Counsel with Ms. Pragya Bhushan, Mr. Karandeep Singh and Mr. Tarandeep Singh, Advocates for CBSE (through VC).

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. Both these writ petitions, having common issues for consideration and similar facts, were heard together and are being decided by this common judgment.
2. The instant petitions under Article 226 of the Constitution of India have been filed on behalf of the petitioners, who assail the decision of respondent no. 1 i.e. Central Board of Secondary Education [**'CBSE'**], communicated *vide* email dated 21.02.2024, to disable the petitioners from appearing in the final examination in Class Xth (Higher Secondary) scheduled from 17.02.2024 to 07.03.2024 and Class XIIth (Senior Secondary) scheduled from 19.02.2024 to 01.04.2024, on the ground of violation of conditions prescribed in the notification dated 05.09.2023 issued by the CBSE, which mandatorily requires the petitioners to submit the Domicile Certificate of National Capital Territory of Delhi to be eligible to avail admission and consequent examination in Class Xth and XIIth.
3. Therefore, these petitions have been preferred by similarly placed petitioners seeking the following identical reliefs:



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“a. Issue A Writ, Order or Direction In The Nature Of Mandamus, Declaring That The Stipulation Contained In Clause [P-(2)] Of Notice Dated 05.09.2023 Issued By Respondent No. 1 Is Manifestly Arbitrary, Illegal And Unconstitutional;

b. Issue a writ order or direction in the nature of mandamus, commanding the respondents to permit the petitioner appear in examination and direct the respondent to undertake the examinations in subjects where petitioners were not permitted to attend.”

4. **The case set out by the petitioners**, in brief, is that they are persons with 100% visual disabilities in terms of the Rights of Persons with Disability Act, 2016, who were to appear for the Class Xth and XIIth CBSE examinations 2023-2024. for which they had applied for during September-October 2023. It is stated that after considering the applications submitted by the petitioners, the CBSE on 29.01.2024 had sent an e-mail with notice to all candidates whereby they were informed that all the candidates had to submit their Domicile Certificate till 31.01.2024.

5. Thereafter, the petitioners had contacted the concerned authority and they were assured that the admit cards will be issued by the CBSE, to the petitioners, if they produce the required domicile certificate even a day before the commencement of the scheduled examination. Accordingly, it is stated the petitioners had submitted their Domicile Certificates, and therefore, the CBSE had duly issued the admit cards to the petitioners for the aforesaid examinations. It is stated that thereafter, the petitioners had appeared in the examinations conducted by the CBSE for Class Xth and XIIth.



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6. However, after appearing in two subjects, the petitioners had received an email dated 21.02.2024 informing that the admit cards issued by the respondents to the petitioners to appear in the examination conducted by respondent no. 1/CBSE have been canceled, since the domicile certificate had not been submitted by the petitioners herein within the stipulated period of time.

7. The petitioners are, thus, before this Court aggrieved by this action of the CBSE, of denying them to appear in the Class Xth and XIIth examinations on the ground that they had not produced the domicile certificate of Delhi.

8. **Learned counsel appearing on behalf of the petitioners** argues that if the CBSE has come up with a policy, it cannot restrict the benefit of the policy to a particular class of entities only, and that too, on the ground of existence or non-existence of domicile. It is stated although the very stipulation which requires a person to be an ordinary resident, to be eligible to have an enrolment in Class Xth and XIIth under the category (8) of the Impugned Notice, seeking residence of Delhi itself is manifestly arbitrary because the same deprives a person born an ordinary resident of any other state to avail such benefit, this aspect of the matter does not arise directly for the consideration of this Court as the petitioners herein are “*ordinary residents of Delhi*”. It is argued that the only grievance of the petitioners in the present case is that they have been denuded of their hard work by denying them to appear in the Class Xth and XIIth CBSE Board Examinations, only on the ground that they had not produced



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the domicile certificate of Delhi. It is stated that there is no requirement in law, which permits the instrumentality of the State such as the CBSE, to deprive a citizen of his fundamental right to education without there being any authority of law. It is submitted that the stipulation restricting the benefits solely to be determined by existence or non-existence of domicile and non-consideration of any other document to said effect, is bad in law. It is argued that the petitioners herein are ordinary residents of Delhi, who are disabled and their disability certificates were issued by competent authority at different points of time, and at present, they all possess the domicile certificates of Delhi. It is further stated that they were issued admit cards after due scrutiny of the documents and were permitted to appear in examinations, however, in the midst of their examination, they are interdicted from undertaking the same further.

9. It is further stated that the respondents have carried out an extensive cherry picking, in disabling the petitioners from appearing in examination by way of an arbitrary, unjust, illegal Clause P-2 in notice dated 05.09.2023, which is liable to be quashed as it violates Article 14 and 21 of the Constitution of India.

10. **Learned standing counsel appearing on behalf of CBSE**, on the other hand, argues that the impugned notification dated 05.09.2023 mandating the Female Candidate and the Candidates with Special Needs (CwSN) to upload the domicile certificates to show that the candidate appearing under private category are *bona fide* residents of Delhi/NCT of Delhi finds strength from the rationale of



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CBSE Examination Bye-Laws. It is stated that Rule 17 of CBSE Examination Bye-Laws being “17. *Persons eligible to appear as ‘Private Candidate’ at Delhi Senior School Certificate (Class XII) Examination*” itself suggests that it provides the eligibility criteria for the candidates of ‘Delhi’ who wish to appear under private category, meaning thereby that the said rule is specially formulated for the candidates who are residents of Delhi. Conversely, Rule 18 i.e. “18. *Persons eligible to appear as ‘Private Candidate’ at All India Senior School Certificate (Class XII) Examination*” provides the eligibility criteria for the candidates pan India as it reads “All India” examinations. It is stated that similarly, Rule 20 of the Examination Bye-laws being “20. *Persons eligible to appear as Private Candidate for Delhi Secondary School Examination*” suggests that it provides the eligibility criteria for the candidates of ‘Delhi’ who wish to appear under private category, meaning thereby that the said rule is specially formulated for the candidates who are residents of Delhi. Conversely, Rule 21 being “21. *Persons eligible to appear as a Private Candidate for All India Secondary School Examination*” provides the eligibility criteria for the candidates pan India as it reads “All India” examinations. It is thus stated that the notifications dated 05.09.2023 were released in consonance with the scheme, aim and object of Examination Bye-Laws of CBSE. Therefore, the impugned notifications are not *ultra vires* and are, therefore, not within the teeth to law.



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11. It is further argued that there is a reasonable nexus between the CBSE Examination Bye-Laws and impugned notifications and the purpose behind it. The aim and objective to be achieved is to promote the residents of Delhi to appear for their Class Xth and XIIth Board Examinations under Private category as Delhi earlier did not have its own Board to conduct examinations, which exists in other states. It is stated that the motive behind submission of Domicile of Delhi/NCT of Delhi is to segregate those candidates who, though, are residents of other states but may yet take the advantage of this provision and thereby, defeat the purpose and intent behind it. It is stated that this classification is reasonable, non-discriminatory and free from arbitrariness. It is stated that the Academics Policies governing an examination are equally applicable to all students. If any relaxation is required to be made, that relaxation has to find place in the policy. It is further stated that the impugned notifications have been upheld by this Court in *W.P.(C.) No. 2374/2024* and *W.P.(C.) No. 2375/2024*. Further, the appeal filed by the petitioners assailing the judgment in these cases was dismissed by the Division Bench of this Court in *LPA No. 149/2024* on 22.02.2024.

12. This Court has **heard** arguments advanced on behalf of both the parties, and has perused the material available on record.

13. The grievance of the petitioners, in a nutshell, is that despite being persons with 100% visual disabilities under the Rights of Persons with Disabilities Act, 2016, and having duly applied for the Class Xth and XIIth CBSE Board Examinations for the academic



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year 2023-2024, and being allowed to initially appear in some of the examinations, they were unjustly denied the opportunity to appear in examinations of the remaining subjects as the CBSE, had subsequently canceled their admit cards on the grounds of late or non-submission of domicile certificates, thus, barring them from continuing to appear in the remaining examinations.

14. In these petitions, the petitioners have impugned Clause P-2 of the notice dated 05.09.2023 issued by the CBSE, which reads as under:

“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 CSSE. However, following is intimated:

2. Children With Special Needs (CwSN) students who are a bonafide residents of the National Capital Territory of Delhi and have attained the age for appearing in Class X on producing reasonable evidence of having difficulty attending normal institutions shall upload the copy of Domicile Certificate alongwith the Disability certificate issued by the authority when submitting online application form.”

(Emphasis supplied)

15. The issues which arise for consideration of this Court are as under:

(i) Whether Clause P-2 of the notice dated 05.09.2023 issued by Respondent No. 1 i.e. CBSE, is liable to be set aside on the grounds of being arbitrary, discriminatory, or in violation of the petitioners' rights under applicable



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laws, including the Rights of Persons with Disabilities Act, 2016?

(ii) Whether the petitioners, despite the cancellation of their admit cards, are entitled to appear in the remaining examinations for the academic year 2023-2024 and what directions, if any, should be issued to the CBSE in this regard?

16. As far as Issue no. 1 is concerned, this Court notes that this issue has already been dealt with by the Division Bench of this Court in case of ***Vishakha v. The Controller of Examination CBSE LPA No. 149/2024***, wherein the appellants, who were female students applying as private candidates for the year 2024 CBSE Board Examinations had submitted their applications in September/ October 2023 without the required Domicile Certificate, despite a clear mandate in the Clause P-1 of CBSE's notice dated 05.09.2023 that only *bona fide* residents of Delhi holding a domicile certificate were eligible to apply for the said examination. Instead, the petitioners had uploaded their Aadhar Cards. When their admit cards were not issued, they had approached the CBSE in February 2024 and were informed that the lack of a Domicile Certificate precluded the issuance of their admit cards. The appellants had then filed a writ petition seeking the issuance of their admit cards, but it was dismissed by the Coordinate Bench of this Court on 16.02.2024, and thus, the appeal had come up before the Division Bench. The appeal



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filed by the petitioners therein was dismissed, and relevant observations of the Division Bench read as under:

“5. In this regard, we may note that the ‘Domicile Certificate’ is issued by Government of NCT of Delhi to an individual, who is residing continuously for the last three years within the territorial jurisdiction of NCT of Delhi.

6. The Appellants have relied upon their Aadhaar to substitute the requirement of the domicile certificate. In this regard, we may refer to Section 9 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (‘Aadhaar Act’), wherein, it is specifically stated that the Aadhaar is not a proof of domicile. Section 9 of the Aadhaar Act reads as under:

“9. Aadhaar number not evidence of citizenship or domicile, etc. — The Aadhaar number or the authentication thereof shall not, by itself, confer any right of, or be proof of, citizenship or domicile in respect of an Aadhaar number holder.”

(Emphasis supplied)

7. In view of the said provision in the Aadhaar Act, the stipulation in the Notice dated 5th September, 2023 requiring the applicant to file a domicile certificate issued by the competent authority is reasonable and justified.

8. The exception carved out for private female students by the Notice dated 5th September, 2023 is a privilege extended only to the bona fide residents of NCT of Delhi. To avail the said privilege, the requirement to satisfy the domicile in NCT of Delhi is an essential condition. Further to establish such a domicile, the Notice categorically notified the applicant that he/she must submit a domicile certificate with the application form. The law is well settled that a person, who claims benefit of an exception, has to strictly comply with the conditions for availing the said exception. It is well settled that exemptions and notifications have to be construed strictly. The Supreme Court in *CCE v. Hari Chand Shri Gopal* has held as under:

“Exemption clause — Strict construction

29. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision



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providing for an exemption, concession or **exception**, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved. **If exemption is available on complying with certain conditions, the conditions have to be complied with.** The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption.....

.....

31. Of course, some of the provisions of an exemption notification may be directory in nature and some are mandatory in nature. A distinction between the provisions of a statute which are of substantive character and were built in with certain specific objectives of policy, on the one hand, and those which are merely procedural and technical in their nature, on the other, must be kept clearly distinguished. In *Tisco Ltd. [(2005) 4 SCC 272]* this Court held that the principles as regard construction of an exemption notification are no longer *res integra*; whereas the eligibility clause in relation to **an exemption notification is given strict meaning wherefor the notification has to be interpreted in terms of its language, once an assessee satisfies the eligibility clause, the exemption clause therein may be construed literally.** An eligibility criterion, therefore, deserves a strict construction, although construction of a condition thereof may be given a liberal meaning if the same is directory in nature.”

(Emphasis supplied)

9. The Appellants have failed to file the domicile certificate and they cannot seek waiver of the said condition in the writ proceedings. The proof of domicile is an essential condition for proving that the appellants fall in the excepted category covered by the Notice.

10. Similarly, the Supreme Court in *Shikhar and Anr. v. National Board of Examination & Ors.* has repeatedly reiterated that power of judicial review in matter concerning



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academic policies, which includes setting down of eligibility criteria for writing examinations, should be exercised with care and circumspection. The endeavor to mitigate the hardship of the petitioning persons should not result in unintended consequences adversely affecting the ongoing process of examination. The relevant paragraphs of the judgment read as under:

*“9. While we understand that the present cut-off date for the completion of the internship would put certain students at a disadvantage, we are conscious that it is the domain of the executive and regulatory authorities to formulate appropriate eligibility standards for admission. In Indian Institute of Technology Kharagpur v. Soutrik Sarangi, a three-judge Bench of this Court held that courts should be circumspect in exercising their powers of judicial review in matters concerning academic policies, including admission criteria. In that case, this Court refused to interfere with the eligibility criteria for appearing in JEE (Advanced) 2021 which prevented a candidate who had secured a seat in one of the IITs from competing in a subsequent examination. This Court relied on All India Council for Technical Education v. Surinder Kumar Dhawan, where it was observed **that judicial interference motivated by concerns of mitigating the hardship faced by students may result in unintended consequences adversely affecting the education system.** This Court held thus:*

"19. The reasoning of the High Court of Criterion 5 not permitting IIT students to participate in IIT (Advanced) for the second time being arbitrary, in the opinion of this Court is not supportable. This Court has repeatedly emphasized that in matters such as devising admissions criteria or other issues engaging academic institutions, the courts' scrutiny in judicial review has to be careful and circumspect. Unless shown to be plainly arbitrary or discriminatory, the court would defer to the wisdom of administrators in academic institutions who might devise policies in regard to curricular admission process, career progression of their employees, matters of discipline or other general administrative issues concerning the institution or university. It was held by this court in



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All India Council for Technical Education v. Surinder Kumar Dhawan.

"16. The courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. If the courts start entertaining petitions from individual institutions or students to permit courses of their choice, either for their convenience or to alleviate hardship or to provide better opportunities, or because they think that one course is equal to another, without realizing the repercussions on the field of technical education in general, it will lead to chaos in education and deterioration in standards of education."

"20. Given this general reluctance of courts to substitute the views of academic and expert bodies, the approach of the High Court in proceeding straightaway to characterize the rationale given by the IIT in fashioning the Criteria No. 5 cannot be supported."

(emphasis supplied)

11. Whenever a cut-off is extended, some students are likely to fall on the other side of the dividing line. In State of Bihar v. Ramjee Prasad, the State had prescribed that applicants applying for the post of Assistant Professors must have three years of experience. In the preceding year, cut-off date for the receipt of applications was set in June, however, in the year in question, the date was fixed in January making certain candidates ineligible owing to their failure to meet the three-year requirement. This Court held that the cut-off date cannot be held to be arbitrary unless it is shown that it is unreasonable, capricious or whimsical even if no reasons are forthcoming as to the choice of date."

(Emphasis supplied)

12. The learned counsel for the Respondents has argued that the relief sought for in the present appeal if granted will cause disruption in the ongoing process of Class X and Class XII Board Examinations of 2024 being held by CBSE. The



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Respondents have stated it is neigh impossible to integrate the Appellants at this advanced stage of examination and in addition it will cause discrimination to the other similarly placed applicants, who have not approached the Court.

13. We are therefore, in agreement with the findings returned by the learned Single Judge and find no merits in the present appeal. Accordingly, the appeal along with pending applications stands dismissed.”

17. Therefore, the Division Bench in Para 8 and 9 of the aforesaid judgment has held that the exception for private students, in the CBSE notice dated 05.09.2023 under Clause P, was a privilege granted only to *bona fide* residents of Delhi, with the requirement of a domicile certificate being an essential condition. It was observed that as per law, those seeking to benefit from an exception must strictly comply with the conditions set forth. It was further held that the exemption provisions must be strictly construed, and mandatory conditions must be precisely fulfilled. Since the appellants therein had failed to submit the required domicile certificate, they could not seek a waiver of this condition in the writ proceedings, as proof of domicile was crucial for qualifying for the exception.

18. Now, the primary distinction made by the learned counsel for the petitioner between the issue addressed by the Division Bench in the case of ***Vishakha*** (*supra*) and the present case is that the former had dealt with Clause P-1, which provides privileges to female candidates, while the present case challenges Clause P-2, which extends privileges to children with special needs. However, it is important to note that both Clause P-1 and Clause P-2 are part of the



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same broader Clause P, which grants specific privileges to two distinct categories: (i) female candidates and (ii) children with special needs.

19. Despite the differences in the privileges conferred by these clauses, both are tied to a common requirement—the submission of a domicile certificate. The reason for requiring this certificate is that the privileges outlined in Clause P are intended specifically for private students taking the Class Xth and XIIth CBSE Board examinations who are domiciled in Delhi. Thus, the privilege is not extended to students who are not domiciled in Delhi. Therefore, submitting a domicile certificate is a prerequisite for availing of these privileges.

20. The underlying intent as well as the ratio of the Division Bench's decision in case of *Vishakha (supra)*, which had upheld the necessity of furnishing a domicile certificate, is directly applicable to the present case. This is because the judgment reinforces the requirement that candidates must provide a domicile certificate to benefit from the privileges granted by the CBSE under Clause P. Consequently, the principle established by the Division Bench's judgment in the case of *Vishakha (supra)* is relevant and applicable to the present case also concerning the necessity of submitting the domicile certificate to CBSE in case of Children with special needs.

21. As regards the argument of the petitioner that the Aadhaar card could also be used as a means of identifying the *bona fide* residence of the petitioner, it is noted by this Court that the Division Bench of



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this Court had examined the said issue also and had observed that the Aadhaar Act, 2016 clearly lays down that Aadhaar Card is not proof of domicile. The Court had upheld the CBSE's requirement for a Domicile Certificate as reasonable, emphasizing that the exception allowing private female students to apply was conditional upon proving domicile in Delhi.

22. In case of *Vishakha (supra)*, the Division Bench had also referred to the decision of Hon'ble Supreme Court in case of *Shikhar v. National Board of Examination 2022 SCC OnLine SC 425*, wherein it was held that power of judicial review in matters concerning academic policies, which includes setting down of eligibility criteria for writing examinations, should be exercised with care and circumspection and the endeavor to mitigate the hardship of some of the petitioners should not result in unintended consequences adversely affecting the ongoing process of examination.

23. Thus, in view of the decision of the Division Bench in case of *Vishakha (supra)* and the law discussed therein, this Court is of the view that there are no grounds to quash Clause P-2 of the impugned notice dated 05.09.2023.

24. Insofar as Issue no. 2 is concerned, it is important to note that the examinations in question were scheduled in the month of February-March, 2024 and the process has already concluded now. It is also not disputed that the petitioners herein had failed to upload their domicile certificates at the time of filling the online application form, as well as during the extension window provided by the CBSE



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between 29.01.2024 to 31.01.2023. Thus, introducing the petitioners now into the system at this advanced stage, when they had failed to fulfill the mandatory requirement of CBSE's notice dated 05.09.2023, would not be logistically feasible and the same would rather disadvantage other candidates who are in similar situations but have not sought judicial relief. Further, this could also lead to a situation where candidates who have followed the rules and deadlines may face unfair treatment compared to those who did not comply with the mandatory requirements. This Court has also been informed by the CBSE that even the improvement/compartments examinations of Class Xth and XIIth have concluded by now. Therefore, allowing such an integration would disrupt the fairness and integrity of the examination process. Moreover, at this stage, since the petitioners were not granted interim relief by the Predecessor Bench, their plea that now special examinations be held for them is not possible in the opinion of this Court. In this regard, this Court also takes note of the order of the Division Bench of this Court, in case of *CM Appl. No. 31419/2024 in LPA No. 203/2024*, wherein while adjudicating an application for permitting the petitioner to appear in the remaining examinations, the Court held that there is no provision for holding of special exams and the relief was thus denied.

25. Thus, in view of the foregoing discussion, this Court finds no ground to grant relief to the petitioners in these petitions, as has been prayed for.



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26. Accordingly, the present writ petitions along with pending applications, if any, stand dismissed.

27. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 30, 2024/zp