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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 11157/2024, CM APPL. 46106/2024, CM APPL. 53482/2024**
NIKKI KUMARIPetitioner

Through: Mr. Nilanjan Bose, Adv. (DHCLSC)

versus

CENTRAL BOARD OF SECONDARY EDUCATION & ORS.

.....Respondents

Through: Mr. Sanjay Khanna, Ms. Pragya Bhushan, Mr. Karandeep Singh, Mr. Tarandeep Singh and Mr. Amit Singh, Advs. for CBSE

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+ **W.P.(C) 2841/2024 & CM APPL 11681/2024**
MS. KANISHKA (THROUGH MRS. SANTOSH (MOTHER)

.....Petitioner

Through: Mr. Sahil Mongia, Mr. Yash Yadav and Ms. Sanjana Samor, Advs.

versus

CENTRAL BOARD OF SECONDARY EDUCATION & ORS.

.....Respondents

Through: Mr. Sanjay Khanna, Ms. Pragya Bhushan, Mr. Karandeep Singh, Mr. Tarandeep Singh and Mr. Amit Singh, Advs. for CBSE

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+ **W.P.(C) 4379/2024 & CM APPL 17933/2024**
PAVNI ALAGH (MINOR)Petitioner

Through: Mr. Sahil Mongia, Mr. Yash Yadav and Ms. Sanjana Samor, Advs.



versus
CENTRAL BOARD OF SECONDARY EDUCATION & ANR.

.....Respondents

Through: Mr. Sanjay Khanna, Ms. Pragya
Bhushan, Mr. Karandeep Singh, Mr.
Tarandeep Singh and Mr. Amit Singh,
Advs. for CBSE

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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27.09.2024

1. On account of similitude of the controversy involved in the instant writ petitions, the matters are being analogously heard and decided by this common order. For the sake of convenience, basic facts are extracted from W.P.(C) 2841/2024.
2. The petitioners in the instant writ petitions seek for directions to respondent nos. 1 and 3 to permit the petitioners to appear for the subsequent Class X Board examinations, more particularly in the English language, which was scheduled for 26.02.2024 at 10:30 a.m. and all other consequential exams as per the Board schedule.
3. Besides others, so far as the relief prayed in W.P.(C) 4379/2024 is concerned, the direction is sought to declare Clause P (2) of CBSE Notice dated 05.09.2023, titled as “*Submission Of Examination Forms By Private Students For Class-X Examinations – 2024*” as arbitrary and illegal and also to accept and receive the domicile certificate of the petitioner after the cut off date. Clause P (2) of the said notice reads as under:-

“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 appropriate authority when submitting online application form.”

4. In W.P.(C) 11157/2024, the petitioner has sought various reliefs, including the quashing of Clause P(2) in the notice dated 05.09.2023, and setting aside of the respondents' decision communicated vide email on 20.02.2024, which resulted in the cancellation of the admit cards earlier issued to the petitioners.

5. The Court vide order dated 26.02.2024 in W.P.(C) 2841/2024 passed an interim order and the following directions came to be issued:-

“1. By an order separately passed today, in view of the urgency of the matter, the petitioner in this case has been allowed to appear in the Class X examinations conducted by the Central Board of Secondary Education (CBSE).

2. This order contains the reasons for the said decision.

3. The petitioner is a private girl candidate undertaking Class X examinations conducted by the CBSE. Notice dated 5 September 2023 issued by the CBSE, governing such candidates, requires the candidate to upload along with the application for appearing in the examination, the domicile certificate, certifying that the student is a resident of Delhi.

4. This requirement, I have been informed in other similar cases, was introduced for the first time this year. Many students who desired to apply for the examination were, therefore, unaware of the requirement of uploading a domicile certificate till the issuance of the notice by the CBSE on 5 September 2023.

5. Be that as it may, learned counsel for the petitioner submits, the petitioner uploaded her application form for appearing in the Class X examination on the website of the CBSE on 3 October 2023. Unfortunately, she did not have a domicile certificate with her at that time. She applied for her domicile certificate in December 2023. The certificate was actually obtained by her on 24 January 2024. As the certificate could not at that stage be uploaded on the website of the CBSE, the petitioner physically submitted the certificate to the CBSE on 31 January 2024. She was issued an admit card, permitting her to appear in the examination on 15 February 2024. On the basis of the said admit card, the petitioner has undertaken the first paper of her Class X examination on 21 February 2024. She has, however, been stopped at the entrance of the Examination Hall this morning and has not been permitted to enter and undertake her second paper.



6. *This is completely unacceptable. The CBSE is expected to be vigilant regarding the entitlement of the students to appear in the examination. After issuing the admit card, stopping the student from entering the examination hall is unthinkable. The CBSE has no right, whatsoever, to do so. It is inhuman to first issue an admit card to a student, and when the student appears for the examination, make her stand outside the Examination Hall. The mother of the petitioner who is present in Court is in tears, but that is quite another matter.*

7. *The student will forthwith be entitled to undertake the examination. She will also be given extension of time for completing the paper to compensate the time for which she has had to wait outside the Examination Hall without undertaking the examination so that she is provided the same time to complete the paper as all other students.*

8. *It is further made clear that if any other candidate that has been thus held up outside the Examination Hall for want of uploading the domicile certificate in time, all such students will be entitled to enter the Examination Hall and undertake the examination with extension of time as noted above.*

9. *Needless to say, this would be subject to the outcome of the present writ petition. The permission to undertake the examination shall also be extended to the remaining papers which the students have to undertake.*

10. *Issue notice, in the writ petition, to show cause as to why rule nisi be not issued.*

11. *Notice is accepted on behalf of Respondent 1 and 2/CBSE by Mr. Atul Kumar.*

12. *Counter-affidavit, if any, be filed within two weeks with an advance copy to learned counsel for the petitioner who may file rejoinder thereto, within two weeks thereof.*

13. *Renotify for hearing and disposal on 1 April 2024."*

6. Learned counsel for the petitioners contend that in the present writ petitions, the petitioners have registered for all subjects; however, due to the arbitrary actions of the respondents, some of the petitioners have been unjustly restrained from appearing in certain subjects. Consequently, learned counsel argue that the requirement for a domicile certificate in conjunction with a disability certificate, as stipulated in Clause P(2) of the CBSE Notice dated 05.09.2023, is both illegal and improper. He asserts that, as a result, the petitioners should not be deprived of their right to participate in all examinations. They further assert that the respondents are obligated to



conduct examinations for the subjects in which the petitioners were unable to appear due to the respondents' actions.

7. Learned counsel appearing on behalf of the respondent-CBSE has vehemently opposed the submissions advanced by the learned counsel for the petitioners. He submits that *firstly*, the controversy in the instant writ petitions stand covered by the decision of the Division Bench of this Court in the case of ***Vishakha & Anr. v. The Controller of Examination Central Board of Secondary Education & Ors.*** in LPA 149/2024.

8. *Secondly*, learned counsel submits that a similar writ petition came to be dismissed by this Court *vide* its judgment dated 30.08.2024 passed in W.P.(C) 2830/2024. According to him, in W.P.(C) 2830/2024, an interim relief was initially granted to the petitioner, therein, to appear in the examination. However, subsequently, on interpretation of the applicable circular and relying on the decision passed in the case of ***Vishakha***, the writ petition came to be dismissed.

9. Learned counsel, therefore, submits that when there is a requirement to be followed which is envisaged under the CBSE circular, the same cannot be diluted and any interference, at this stage, would result in causing immense prejudice to the other candidates. He also submits that the prayer with respect to the conduction of the separate examination has also been rejected by the Division Bench of this Court *vide* order dated 24.05.2024 in LPA 203/2024 titled as ***Sara Sharma v. Central Board of Secondary Education & Ors.***

10. I have heard the learned counsel appearing on behalf of the parties and have perused the record.

11. So far as the public notice dated 05.09.2023 and the procedure



notified therein is concerned, the Court has considered the aforesaid aspects in greater detail in LPA 149/2024 *vide* its decision dated 22.02.2024. The aforesaid public notice, more specifically Clause P(1), therein, was examined in detail and in the said decision, the Court has held that the provisions of the said notice cannot be diluted. In paragraph no.9 of the said decision, the Division Bench has noted that the appellant, therein, had failed to file the domicile certificate and therefore, they could not seek waiver of the said condition in the writ proceedings. Paragraph no.9 of the said decision reads as under:-

“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.”

12. The Court has held that the proof of domicile is an essential condition for proving that the appellants therein fall in the excepted category covered by the notice. The aforesaid decision has also been relied upon by the Coordinate Bench of this Court in W.P.(C) 2830/2024, wherein, an almost similar grievance was raised. Paragraph nos. 17 to 20 of the said decision read as under:-

“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 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."

13. It is thus seen that, insofar as the requirement of domicile certificate is concerned, in terms of the notification dated 05.09.2023, no fault can be found with the said requirement.

14. So far as the submission with respect to the directions for conduction of the special examination for leftover subjects is concerned, the same also cannot be acceded to in absence of any vested legal rights in favour of the petitioners. The Division Bench in LPA No 203/2024, vide order dated 24.05.2024 has rejected the similar prayer with the followings observation:-

"4. He further states that vide the present application the appellant seeks permission to appear for the remaining exams in the subjects of Hindi Elective, English Core and the Economics.

5. He emphasises that denial of the present application shall cause irreparable loss and an unwarranted gap year in the academic life of the Appellant.



6. However, this Court is of the view that there is no provision for holding of special exams. Accordingly, the present application is dismissed.”

15. However, the interim order passed by the Court on 26.02.2024 allowed the petitioners to write further examinations. In the instant petitions, it be noted that the petitioners were able to attempt part/full examination, as per interim order passed by this Court. It also requires to be noted that subsequently, the petitioners have submitted their domicile certificates to the respondent-CBSE as required. While the petitioners did initially fail to submit their domicile certificates within the stipulated time frame as per the CBSE notification dated 05.09.2023, the petitioners have now fulfilled this mandatory requirement, *albeit* after a delay. Under the peculiar circumstances, the Court is persuaded to condone the delay in submitting the domicile certificates.

16. The Court is of the considered opinion that the process of issuing and submitting the domicile certificates was delayed due to factors beyond the petitioners’ immediate control, and it is observed that no prejudice has been caused to the respondent-CBSE or any third party as a result of this delay. Furthermore, allowing the petitioners’ results to be processed and declared will not cause any logistical difficulties for the respondent-CBSE. The examinations have already been conducted, and the petitioners have adhered to the procedural requirements in submitting their domicile certificates post-examination. Unlike in other cases, where, introducing candidates at a later stage might disrupt the integrity or fairness of the examination process, herein, the petitioners’ compliance, *albeit* delayed, does not pose such a challenge.



17. So far as denial of such a relief by the Coordinate Bench of this Court in the matter of conduction of re-examination is concerned, the Court found that introducing the petitioners into the examination system at an advanced stage would be logistically impractical, given their failure to upload domicile certificates during the prescribed application period or the extended window provided by the CBSE between 29.01.2024 and 31.01.2024. The aforesaid expression has been made in paragraph no.24 of the decision, which reads as under:-

*“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 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.”*

18. Thus, the facts noted by this Court in the aforesaid cases will not restrain this Court in acceding to the prayer of declaration of the result of the



already attempted examination.

19. Accordingly, the Court deems it appropriate to dispose of the instant writ petitions with the following directions:-

(i) The respondent-CBSE is directed to declare the results of the petitioners within 30 days, in accordance with the examination bye-laws, from the date of receipt of a copy of this order, subject to necessary verification.

(ii) The prayer for conducting a separate examination is rejected in light of the Division Bench's decision of this Court in the case of **Sara Sharma**.

20. In view of the aforesaid, the petitions stand disposed of, alongwith pending applications.

PURUSHAINDR KUMAR KAURAV, J

SEPTEMBER 27, 2024

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