

ITEM NO.301+303 Court 4 (Video Conferencing)

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Civil) No(s). 522/2021

MAMTA SHARMA

Petitioner(s)

VERSUS

CENTRAL BOARD OF SECONDARY EDUCATION & ORS.

Respondent(s)

(FOR ADMISSION

IA No. 65175/2021 - APPROPRIATE ORDERS/DIRECTIONS
 IA No. 60315/2021 - CLARIFICATION/DIRECTION
 IA No. 65263/2021 - EXEMPTION FROM FILING AFFIDAVIT
 IA No. 60317/2021 - EXEMPTION FROM FILING AFFIDAVIT
 IA No. 65255/2021 - EXEMPTION FROM FILING AFFIDAVIT
 IA No. 60122/2021 - EXEMPTION FROM FILING AFFIDAVIT
 IA No. 62752/2021 - EXEMPTION FROM FILING AFFIDAVIT
 IA No. 68308/2021 - EXEMPTION FROM FILING AFFIDAVIT
 IA No. 62751/2021 - INTERVENTION APPLICATION
 IA No. 68306/2021 - INTERVENTION APPLICATION
 IA No. 62714/2021 - INTERVENTION APPLICATION
 IA No. 65258/2021 - INTERVENTION APPLICATION
 IA No. 65254/2021 - INTERVENTION APPLICATION
 IA No. 65171/2021 - INTERVENTION APPLICATION
 IA No. 60123/2021 - PERMISSION TO APPEAR AND ARGUE IN PERSON)

WITH

WP(C) No(s). 636/2021

(FOR ADMISSION and IA No.67258/2021-PERMISSION TO APPEAR AND ARGUE
 IN PERSON and IA No.68025/2021-PERMISSION TO FILE ADDITIONAL
 DOCUMENTS/FACTS/ANNEXURES)

Date : 22-06-2021 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
 HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Petitioner(s) Ms. Mamta Sharma, In-person

Mr. Anshul Gupta, In-person

For Respondent(s)

UOI

Mr. K.K. Venugopal, A.G.
 Mr. Tushar Mehta, S.G.
 Mr. Gurmeet Singh Makker, AOR
 Mr. Rajat Nair, Adv.
 Mr. Ankur Talwar, Adv.

Ms. Suhasini Sen, Adv.
Ms. Apoorva Kurup, Adv.

CBSE
Mr. Tushar Mehta, S.G.
Mr. Rupesh Kumar, AOR.
Mr. Rajeev Sharma, Adv.
Ms. Neelam Sharma, Adv.
Ms. Pankhuri Shrivastava, Adv.
Mr. Alekshendra Sharma, Adv.
Mr. Pravesh Bahuguna, Adv.

68306/2021
Mr. Vikas Singh, Sr. Adv.
Mr. Mehul Milind Gupta, Adv.
Mr. Manish Vaish, Adv.
Mr. Ravi Prakash Gupta, AOR

ICSE
Mr. J.K. Das, Sr. Adv.
Mr. Sandeep Devashish Das, AOR
Ms. Arushi Mishra, Adv.
Mr. Shashwat Sarin, Adv.

62751/21
Mr. Jose Abraham, AOR
Mr. Robin Raju, Adv.
Mr. M.P. Srivignesh, Adv.
Ms. Anju Joseph, Adv.
Ms. Deepa Joseph, Adv.

65171 &65175/21
Mr. Jaideep Gupta, Sr. Adv.
Mr. Inderjit Sinha, Adv.
Mr. Pai Amit, AOR
Mr. Kumar Vaibhav, Adv.
Ms. Pankhuri Bhardwaj, Adv
Ms. Bhavana Duhoon, Adv.

Dr. Charu Mathur, AOR
Ms. Tanvi Dubey, Adv.
Mr. Sanjay Kumar Dubey, Adv.
Mr. Sanpreet Singh Ajmani, Adv.

Mr. James P. Thomas, AOR
Mr. Apzal Ansari, Adv

State of Assam
Mr. Nalin Kohli, AAG
Mr. Vivek sonkar, Adv.
Mr. Ankit Roy, Adv.
Mr. Debojit Borkakati, AOR

State of Punjab
Ms. Jaspreet Gogia, AOR
Ms. Mandakini Singh, Adv.
Mr. Karanvir Gogia, Adv.
Ms. Shivangi Singhal, Adv.
Ms. Ashima Mandla, Adv.

State of Haryana Dr. Monika Gusain, AOR

69307/2021 Mr. Sagar N. Pahune Patil, Adv.
 Ms. Sangeeta Pahune Patil, Adv.
 Mr. Rushikesh Pahune Patil, Adv.
 Mr. N.J. Pahune Patil, Adv.
 Mr. Anand Dilip Landge, AOR

67878 & 67565/2021 Mr. Abhishek Choudhary, Adv.
 69696 & 69699/2021 Ms. Anubha Srivastava Sahai, Adv.
 Mr. Prabhu Prassana Behera, Adv.
 Mr. Abhishek Pattnaik, Adv.
 Mr. Nabab Singh, Adv.
 Ms. Ritika Ritu, Adv.
 Ms. Manju Jetley, AOR

UPON hearing the counsel the Court made the following
 O R D E R

Application seeking permission to appear and argue-in-person is allowed.

At the outset, Mr. Anshul Gupta appearing-in-person in Writ Petition(C) No. 636 of 2021 had urged that it would be appropriate to direct the concerned Boards to conduct the XII standard examination for academic year 2020-21; and to set aside their decision to cancel the examinations and declare results on the basis of internal assessment marks as propounded in the Scheme.

In our opinion, it is not possible to accede to this suggestion. The fact that other Boards or institutions have been able to conduct examination does not necessarily mean that the Boards before us are bound by that dispensation. The Boards are autonomous Boards and are entitled to evolve their schemes independently. The Boards before us have taken

decision to cancel the examinations, which according to them, is in larger public interest including the body of students pursuing education with them.

Accordingly, the Writ Petition deserves to be dismissed. Even on the earlier occasion, similar question was raised and we had clearly indicated that the limited question that requires examination is about the fairness and appropriateness of the Scheme propounded by the Boards. We will confine the discussion to those aspects raised by Mr. Vikas Singh, learned senior counsel appearing for the intervenors.

We have heard learned counsel for the parties in reference to the Schemes propounded by the C.B.S.E. and I.C.S.E. Boards respectively.

The first issue raised by Mr. Vikas Singh, learned senior counsel appearing for the intervenors, is that the Scheme ought to provide option at the threshold as to whether the student wants to appear in the examination for improvisation of marks, to be conducted by the concerned Board for that purpose. Further, the results of the internal assessment should be declared together with the results of such examination.

After hearing Mr. Vikas Singh, learned senior counsel and the response given by the learned Attorney General for India duly adopted by the Solicitor General of India, Mr. Tushar

Mehta appearing for C.B.S.E. and Mr. J.K. Das, learned senior counsel appearing for the I.C.S.E., we have no hesitation in taking the view that this suggestion cannot be taken forward.

We are of the considered opinion that tweaking the Scheme in any manner, as propounded by the two Boards would result in denial of one option to the students and also delay the declaration of results indefinitely. There would be uncertainty until the examination for improvisation is actually conducted and results are declared.

On the other hand, if the students are given the option of accepting the internal assessment marks, the results could be declared before 31.07.2021 and despite declaration of those results, they may still have the option of appearing in the examination for improvisation, if they so choose to. It is worthwhile to note that somewhat similar Scheme was adopted in the previous academic year and the body of students accepted the internal assessment results. Hardly, 10 students from I.C.S.E. and 15000 from C.B.S.E. availed of the option to appear in the examination for improvisation of marks.

Suffice it to observe that it is not possible to accede to the suggestion given by Mr. Vikas Singh, learned senior counsel, in this behalf.

Reverting to the second point raised by Mr. Vikas Singh, learned senior counsel, he submitted that the past performance

of three years of the students is being reckoned for internal assessment in the Scheme propounded by C.B.S.E. That, in his view, is unfair and irrational.

On the other hand, we find force in the submission canvassed by learned Attorney General for India that the Scheme is a composite Scheme and has been formulated by the expert body which was appointed by the Board consisting of thirteen members. All aspects have been taken into account by the expert body on the basis of which the final decision to cancel the examination was taken, including formulation of the Scheme to have holistic approach and to ensure that no candidate/student is prejudiced. Instead, the Scheme intends to rationalize the internal assessment performance and bring semblance of parity amongst the assessment of different schools. This exercise will be undertaken by a broad-based Result Committee. It is, therefore, not open to us to have a second look as suggested by Mr. Vikas Singh. We would instead uphold the Scheme as propounded by the respective Boards, which, as aforesaid, are independent and autonomous bodies and entitled to take their own decision with regard to the affairs of conducting examination by them.

The next submission made by Mr. Vikas Singh, learned senior counsel is that the result should be declared on the same day. This submission again is countered by learned

Attorney General for India by pointing out that U.G.C. will be issuing necessary instructions to ensure that the admission process by the colleges and institutions should commence only after the declaration of results by the C.B.S.E. and I.C.S.E., including the State Boards.

In that view of the matter, there is no reason to dilate on this apprehension entertained by Mr. Vikas Singh, learned senior counsel any further.

It is then submitted that there is possibility of C.B.S.E. schools manipulating the records as the relevant data on the basis of which internal assessment is to be done is not in the custody or in possession of the C.B.S.E.

Even this submission does not commend to us. We find force in the argument canvassed by learned Attorney General for India that the broad-based Result Committee would examine all aspects of the matter and take decision on the basis of registers maintained by the concerned schools, and inspected by the competent authority. On the basis of such vague apprehension, the Scheme as has been propounded cannot be doubted.

The next objection to the Scheme came from the students pertaining to private, patrachar and second compartment, represented by Mr. Abhishek Choudhary, learned counsel. He invited our attention to the Scheme propounded by the C.B.S.E.

in the previous year, as noted in the case of Amit Bathla & Others vs. Central Board of Second Education & Anr., reported in (2020) 7 SCC 233.

We agree with the Attorney General that the analogy in paragraph 7 of the said Scheme cannot be applied to the students falling in the category of private, patrachar and second compartment represented by Mr. Abhishek Choudhary.

The present Scheme provides that examination will be duly conducted in which all these candidates can appear as private candidates and such examination will be conducted between 15.08.2021 to 15.09.2021 and the results would be declared at the earliest so that even these students would be in a position to pursue their further education, if they so desire.

As is stated in Clause 29 of the C.B.S.E. Scheme, it provides for this eventuality and, therefore, the apprehension entertained by Mr. Abhishek Chaudhary, learned counsel does not merit consideration.

In view of the above, we hold that there is no reason to interfere with the Scheme propounded by the C.B.S.E or I.C.S.E. Notably, there is other set of students represented by different learned counsel who have unreservedly supported the Schemes under consideration and do not want any interference therewith. More so, because we find that the stated Schemes are fair and reasonable and take into account

concerns of all students and is in larger public interest.

Accordingly, both the writ petitions, intervention application(s) and other pending interim application(s) are disposed in the above terms.

(DEEPAK SINGH)
COURT MASTER (SH)

(VIDYA NEGI)
COURT MASTER (NSH)