

ITEM NO.28+38

COURT NO.3

SECTION X

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). 139/2022

JAY DHANDE & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(FOR ADMISSION)

WITH

W.P. (C)No(s).1081/2021

(FOR ADMISSION and IA No.124448/2021-APPROPRIATE ORDERS/DIRECTIONS,
IA No. 126173/2021 - APPLICATION FOR PERMISSION, IA No. 124448/2021
- APPROPRIATE ORDERS/DIRECTIONS)

Date : 20-05-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE MR. JUSTICE J.B. PARDIWALA

For Petitioner(s)

Mr. Kartik N. Shukal, Adv.
Mr. Abhikalp Pratap Singh, AOR
Ms. Aagam Kaur, Adv
Mr. Himanshu Shekhar Tripathi, Adv.

Ms. Mamta Sharma, Adv.
Ms. Vagisha Nandini, Adv.
Mr. Sandeep Malik, Adv.
Mr. Ravi Prakash, Adv.

For Respondent(s)

Mr. Rupesh Kumar, Adv.
Ms. Neelam Sharma, Adv.
Ms. Pankhuri Shrivastava, Adv.
Mr. Rupesh Kumar, AOR

Mr. K.M. Natraj, Sr. Adv.
Mr. Sonia Mathur, Adv.
Mr. Bhuvan Mishra, Adv.
Mr. B.K. Satija, Adv.
Mr. Bhuvan Kapoor, Adv.
Mr. Vinayak Sharma, Adv.
Mr. Amit J., Adv.
Mr. G.S. Makker, AOR

Ms. Aishwarya Bhati, ASG
Mr. Rajan Kr. Chourasia, Adv.
Ms. Rukmini Bobde, Adv.

Ms. Sanskriti Pathak, Adv.
Mr. Shreeyansh U. Lalit, Adv.
Mr. Shagun Thakur, Adv.
Ms. Kirti Khangarot, Adv.
Mr. G.S. Makker, AOR

Mr. Abhigya Kushwah, AOR
Mr. Wilson Mathew, Adv.
Ms. Sunita Yadav, Adv.
Mr. Pradeep Kumar Dubey, Adv.
Mr. Siddharth Rajkumar Murarka, Adv.
Mr. Virender Arora, Adv.
Ms. Anamika Kushwaha, Adv.
Mr. Shashank Shekhar, Adv.
Mr. Manoj Kumar, Adv.

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

W.P.(C) No(s). 139/2022

Heard learned counsel for the parties.

The core issue that needs to be answered is in the context of grievances made in the additional affidavit filed by the petitioners, is as follows:

"I. That the computation anomaly that forms the genesis of filing the instant Petition, can be best described by the Table that is annexed herewith as ANNEXURE A-1 (At page 7), for ready reference of this Hon'ble Court. In brief, the grievance of the Petitioners is that the school has informed the petitioners, that the school has allotted to the Petitioners particular marks, whereas the CBSE results that are uploaded reveal, that the marks uploaded are much less than the marks given by the school. The table shows: (1) The marks of the Petitioners/Students in class X, XI, XII, as per 30:30:40 formula, (2) the gross total marks of each Petitioners/Students, (3) The marks uploaded by the Respondent No.2, and (4) the difference between the gross total marks submitted by the Respondent No.4 and marks uploaded by Respondent No.2.

II. For instance, the marks of Petitioner No.1, which is as per the 30:30:30 formula, are 106, 88 and 234 for class X, XI and XII respectively. That the total of the aforesaid would be 428. the Respondent No.4 had forwarded total 428 marks, to Respondent No.2, to be given to the Petitioner No.1, on the basis of the formula approved by this Hon'ble Court. But the actual marks given by the Respondent No. 2

are 364. Thus, there is a difference of 64 marks in what is given by the Respondent No.4 School and Respondent No.2 board. That the Respondent No.2, without any authority, has changed the marks given by the Respondent No.4 and has awarded marks which are much less than the marks given by the Respondent No.4.

III. That the said difference in marks is consistent for all the Petitioners, as shown in the table referred hereinabove. That the Respondent No.2 is not vested with any powers, either under any Statute, Rules, Notifications, etc. to unilaterally alter/reduce the marks allotted by the school. The Respondent No.2 has acted beyond its powers and the formulation scheme floated by Respondent No.1, which is approved by this Hon'ble Court."

To the same end, the respondent-School Committee in its written submission amongst others has noted thus:

"10. Thereafter, on 4th August, 2021, CBSE informed the answering Respondent on phone that the data has not been submitted and asked the answering Respondent to check at the portal. When the answering Respondent checked the CBSE Portal, it was highlighted 'in red' that answering Respondent has to distribute the 'Balance marks' i.e. 354 marks (as reflected in the 11th column (W) to those students who have secured more than 90%. Accordingly, the 'Balance Marks' i.e. 354 marks were distributed among the said students who have secured more than 90%. This entire process was on the CBSE Portal and no acknowledgement was issued to the answering Respondent upon successful upload. In other words, the answering Respondent has meticulously followed each and every instruction as mentioned in the CBSE portal and the answering Respondent did not have any power or option to moderate or assign marks on its own. The entire process was done precisely as per the CBSE instructions and now, CBSE putting the onus of its wrongs on the answering Respondent, who had no independent role to play in either assigning marks or moderating the marks. The CBSE portal was an all inclusive portal and it worked as per the algorithm/program as designed by CBSE. If the moderation process was wrong or inaccurate, the responsibility and onus of such wrong or inaccurate moderation lies with the CBSE and not the answering Respondent. It also cannot be ruled out that the CBSE is trying to cover up this inaccuracy and now it has used the opportunity to put the entire blame on the answering Respondent.

11. That the entire moderation process was overlooked by

the CBSE using its portal and algorithm/software/program. When the CBSE instructed the answering Respondent to specifically moderate the marks of each student. The design of the portal/software was as such that, the portal mentioned against student's name as to the 'range of marks' that the answering Respondent was supposed to increase or decrease. this process was the only process where the answering Respondent had the role to play as that of a person doing pure data entry. The portal/algorithm/software was so designed that the answering Respondent could not increase or a decrease marks as per the instructions on the portal beyond the permissible limits as stated in their portal."

The order passed by the Comptroller of Examinations dated 31.12.2021 has neither adverted to this aspect much less dealt with the same. As a result, we deem it appropriate to direct the Comptroller of Examinations to reconsider the aforesaid grievances of the petitioner(s) and take appropriate decision as may be advised, including by taking assistance of technical team to explain the flow of algorithm/software which provides for different deduction of different marks student-wise.

We may not be understood to have expressed any opinion either way on this contentious issue. All aspects may be considered by the Comptroller of Examinations on its own merits and appropriate speaking order be passed within two weeks from today.

List this matter on 12.07.2022.

A copy of the order be made available to the petitioner(s) and the respondent-School Committee.

It will be open to the authority to give opportunity to the respondent-School Committee to participate in the

proceeding before a final decision is taken.

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More or less, similar grievance is made in this petition.

It will be open to the petitioner(s) to submit a formal representation to the Comptroller of Examinations within one week from today which can be considered appropriately by the authority on its own merits on the same lines as referred to in the companion case (W.P.(C) No(s). 139/2022).

List this matter on 12.07.2022.

(DEEPAK SINGH)
COURT MASTER (SH)

(VIDYA NEGI)
COURT MASTER (NSH)