

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

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Reserved on: 25th August, 2022
Pronounced on: 26th August, 2022

+ W.P.(C) 11775/2022 & CM APPL. 35097/2022

DEVASRI BALI

..... Petitioner

Through: Ms. Anusuya Salwan, Mr. Bankim Garg, Mr. Shakaib Khan, Mr. Rachit Wadhwa and Ms. Nikita Salwan, Advocates

versus

CENTRAL BOARD OF SECONDRY EDUCATION & ANR

..... Respondents

Through: Mr. Chetan Sharma, ASG with Mr. Rupesh Kumar, Ms. Pankhuri Shrivastava, Mr. Amit Gupta, Mr. Saurabh Tripathi, Mr. Rishav Dubey, Mr. Sahaj Garg and Ms. Neelam Sharma, Advocates for R-1/CBSE
Mr. Rajesh Gogna, CGSC with Mr. Devvrat Yadav G.P., Mr. Vidit Jain, Mr. Digvijay and Ms. Priya Singh, Advocates for UOI

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant writ petition under Article 226 of the Constitution of India has been filed by the Petitioner assailing the Class XII Board results

declared by the Central Board of Secondary Education (hereinafter referred to as the “CBSE”) on 22nd July 2022, praying *inter alia* as under:

“(a) Issue a Writ of Mandamus directing the Respondents to declare the result of the Petitioner in terms of the Circular No. ACAD-51/21 dated 05.07.2021 factoring in the Special Scheme of Assessment which mandates equal weightage of the theory papers for Term-1 and Term-2 while computing the result;

(b) Issue a Writ of Certiorari quashing the circular no. CBSE/CE/PPS/2022 dated 23.07.2022 which stipulates 30 percent weightage to Term -1 and 70 percent weightage to Term - 2 for computing the results;”

FACTUAL MATRIX

2. The matter has arisen out of the facts as detailed hereunder:
 - a. Petitioner is a student aged 18 years who was studying at Delhi Public School, Vasant Kunj and had appeared in the Class XII CBSE Board Examination for the Academic Session 2021-2022.
 - b. Respondent No. 1 is the CBSE represented through its Chairperson and Respondent No. 2 is the Union of India represented through its Secretary.
 - c. On 5th July 2021, the CBSE came up with a “Special Scheme of Assessment for Board Examination Classes X and XII for the Session 2021-22” bearing Circular No. Acad-51/2021.

- d. Vide the said circular, it was conveyed that the CBSE has decided to conduct the 2022 Board examinations in two Terms i.e. Term-I & Term-II. The said scheme *inter alia* provided for “Assessment/Examination as per different situations” wherein four different scenarios were detailed and the consequent mode/manner and weightage of Term-I and Term-II examinations were notified.
- e. It was further stated therein that in case the situation of the pandemic improved and students were able to come to schools or centres for taking the exams, then the Board would conduct Term I and Term II examinations at schools/centres and the theory marks will be distributed equally i.e. 50%-50%, between the two exams for preparation of the Results.
- f. On 14th October 2021, CBSE issued a circular bearing no. CBSE/CE/EXAM-2021-22/ notifying that all examinations (Term-I and Term-II) will be conducted in an offline mode.
- g. Term-I examinations for Class XII Board were held in schools/centres in a phased manner from 16th November 2021 to 30th December 2021.
- h. On 19th March 2022, the result of Term-I was declared. CBSE on the same date issued a circular bearing no. CBSE/CE/2021 regarding the performance of the

students of Class-XII in Term-I exams. The Circular *inter alia* stated that the weightage of Term-I and Term-II will be decided at the time of declaration of Term-II result and accordingly, the final performance will be calculated.

- i. On 5th April 2022, the CBSE from its official/verified twitter handle (CBSE HQ|@cbseindia29) declared a notification, purported to be issued by the Board, as fake. The said notification described as being fake *inter alia* pertained to the weightage of Term-I and Term-II Board exams in the final results and mentioned that the result will be calculated by taking 30 per cent from Term-I exams and 70 per cent from Term-II exams.
- j. Term-II examinations for Class XII Board were held in schools/centres in a phased manner from 26th April 2022 to 15th June 2022.
- k. On 22nd July 2022, the CBSE declared the results for Class XII Board Examinations. This was followed by a Press Release bearing Ref. No. CBSE/CE/RESULTS-XII/2022 titled “Declaration of Results of Class XII, 2022”, wherein it was specified that the competent committee of the Board had fixed 30% weightage of Term-I and 70% weightage of Term-II in Theory for calculation of Result.

1. On 23rd July 2022, another letter was issued by the CBSE to the Principals of Affiliated Schools regarding the 30% weightage of Term-I and 70% weightage of Term-II while computing the result.
- m. The petitioner applied for admission to engineering colleges and appeared at the BITSAT-2022 entrance examinations for getting admission into the Birla Institute of Technology and Science, Pilani (hereinafter referred to as "BITS, Pilani").
- n. As per the petitioner, she qualified the BITSAT 2022 entrance examination but, due to the changed weightage formula for calculation of 12th Board marks, she failed to meet the criteria of minimum 75% marks in the three subjects, namely - Physics, Chemistry and Mathematics (hereinafter, collectively referred as "PCM"). Therefore, the petitioner is unable to secure admission to BITS, Pilani.
- o. The petitioner is thus aggrieved by the modification of earlier announced 50%-50% weightage formula to 30%-70% weightage assigned to theory marks scored in Term-I and Term-II for preparation of Result of the 12th CBSE Board Examinations.

SUBMISSIONS

Petitioner's Submissions:

3. Ms. Anusuya Salwan, learned counsel appearing on behalf of the petitioner made the following submissions:

- a. The Petitioner, Devasri Bali was a student of Delhi Public School, Vasant Kunj, New Delhi and had appeared for the Class 12th Board examinations conducted by the Respondent No. 1/CBSE in the Academic Session 2021 - 22. The results of the Class 12th Board examinations for the session 2021 - 22 were declared on 22nd July 2022 by the Respondent No. 1. The aforesaid results were declared by the Respondent No. 1 in discordance with the Special Scheme of Assessment for Board Examinations for the Session 2021-22 dated 5th July 2021.
- b. The Scheme of Assessment by the Respondent No. 1 was notified on 5th July 2021, prior to the Term - 1 and Term - 2 examinations, and specific circumstances were mentioned therein, laying down the contingencies regarding conduct of examination due to the pandemic situation and the respective weightage of marks.
- c. The said circular itself highlights the fact that the evaluation scheme as proposed was based on extensive

deliberations and consultations with various schools and stakeholders across the country.

- d. As per the relevant portion of Clause 6 of the said Circular, it was provided that in case the situation of the pandemic improved and students are able to come to schools or centres for taking the exams, then the Board would conduct Term I and Term II examinations at schools/centres and the theory marks will be distributed equally between the two exams.
- e. It is pertinent to note that since both the Term - I and the Term - 2 examinations were held at schools/centres, therefore, equal weightage ought to have been given to both the Terms in compliance of the Special Scheme of Assessment notified vide circular dated 5th July 2021.
- f. On account of the arbitrary and unlawful change in the scheme of assessment and the computation of result thereto in the manner detailed hereinabove, the Petitioner is unable to meet the minimum percentage criterion of seventy-five percent (75%) in PCM, despite her having cleared the qualifying entrance examination i.e. BITSAT 2022 for admission to BITS, Pilani.
- g. The arbitrary and unfair change in evaluation scheme by CBSE has resulted in violation of legitimate expectation of the Petitioner that the evaluation of the Petitioner

should have been in accordance with the circular dated 5th July 2021 and has thereby led to the violation of rights under Article 14 and Article 21 of the Constitution of India. The Respondent No. 1 is also estopped from changing its stance especially when the exams were conducted as per the Original Scheme by the rule of estoppel.

- h. The change in weightage is against the well-established principle that the change in the criteria for evaluation in the middle of the course of the selection process is bad in law. In this regard reliance is placed on *Maharashtra State Road Transport Corporation and Ors. v Rajendra Bhimrao Mandve and Ors* [MANU/SC/0737/2001], *Madan Mohan Sharma and Ors. v. State of Rajasthan and Ors.* [MANU/SC/7190/2008], and *K. Manjusree v. State of A.P. and Ors.* [MANU/SC/0925/2008].
- i. Respondent No.1's decision of changing the weightage of Term I and Term II came as a surprise to the stakeholders and the schools. The newspaper clippings and news articles of the months of July 2022 (as annexed in Annexure P-11 & P-12 of the writ petition) highlight the fact that even the heads of Schools/Principals were shocked at such arbitrary and retrospective change in the weightage of Board examination.

- j. The circular dated 19th March 2022 wherein it has been stated that the weightage of the Term-I and Term-II marks would be decided at the time of result, is arbitrary in nature since deciding the weightage at the time of declaration of result is similar to appearing in an examination of 100 marks with 10 questions and the individual marks allotted to each question being decided at the time of result. This has led to changing the rules of race once the race has ended and the results are to be announced, and as such is outrageously arbitrary.
- k. In the instant case, the Term-I exams were already held in November-December 2021 and the Term-II exams were held in March-April 2022. The 19th March 2022 Circular does not annul or expressly supersede the earlier circular dated 5th July 2021 wherein the 50%-50% weightage formula was promulgated.
- l. In the circular dated 19th March 2022, the Respondent No.1/CBSE nowhere mentioned about the change in weightage to the Term I and Term II exams. The said circular only stipulated that the weightage would be decided at the time of final result. The Petitioner could not have anticipated such a substantive deviation at the time of final results.
- m. Despite the notification dated 19th March 2022, the Respondent No. 1 had subsequently vide their twitter

handle issued an advisory on 5th April 2022 clearly declaring a circular stipulating reduced weightage of Term-I examination to 30% to be fake and again creating a legitimate expectation that the earlier scheme of 50%-50% was applicable.

- n. As per the CBSE, the new weightage formula was recommended by a Committee of Experts meeting on 21st May 2022 after extensive discussion and deliberations with academicians, school principals and other stakeholders. However, the factum of the recommendation regarding the new weightage formula was kept under wraps till the day the result was announced. This clearly shows the malicious intention of the Board to keep the students in the dark about the weightage formula adopted for preparation of result.
- o. The improvement examination held on 23rd August 2022 does not serve the purpose of the petitioner for the reason that the results of the said examination would be declared any time in September 2022 and by that time, admission to most of the colleges would be closed, thus defeating the very purpose for which the improvement exams are conducted.
- p. There is no contradiction to the fact that results of a number of students across India have been adversely impacted due to the said action of the Board, however,

the argument that if any relief in the instant case is granted to the petitioner, it would have a catastrophic effect on lakhs of students is false, misconceived and a mere exaggeration.

- q. Admission in colleges at the Undergraduate level in medical, engineering, law and other streams are carried out on the basis of performance in the competitive entrance examinations through NEET/JEE/CLAT/CUET, etc. In most of the cases, unlike for admission to BITS, Pilani, the rider regarding the attainment of marks in the 12th Board Examinations to the tune of 75% marks does not apply. In any other case, where the admission is based on the cut-off of the 12th Board results, the students would be able to attain admission in the subsequent cut-off lists.
- r. Reliance is placed on various judgments including *Sukriti & Ors. V. CBSE & Anr.* (MANU/SCOR/03759/2022), *Gaurav Bhairava & Ors. v. National Testing Agency & Anr.* (MANU/SCOR/67056/2022) to request that a judgment *in personam* be passed to allow the relief to the petitioner, thereby obliterating any probability of adversely impacting the marks of other students.
- s. *In arguendo*, it is stated that both the Term exams had equal portion of syllabus, while for Term-I students got 9

months for preparation for Term-II only 3 months were granted, and the students while appearing for Term-II were further burdened by the pressure of competitive examinations for undergraduate examinations. The new weightage formula has failed to take into account the actual burden *qua* the two Terms and has arbitrarily increased the weightage of Term-II from 50% to 70%, whereas reduced the weightage of Term-I from 50% to 30%. As such, the uncertainties of pandemic have already wreaked havoc on the life of the students. This arbitrary decision taken by the Board added to the woes of students including the petitioner.

- t. On compassionate grounds and on equity, the petitioner be granted relief by allowing the instant petition and direction to the Respondent No. 1 CBSE to prepare the result of the petitioner by applying the original weightage formula (50%-50%) to the scores attained in Term-I and Term-II, and to upload the amended mark sheet on the DigiLocker so as to enable the petitioner to furnish her mark sheet to BITS, Pilani for her admission.

Respondent's Submissions:

4. *Per Contra*, learned ASG appearing on behalf of the Respondents vehemently opposed the prayers made by the Petitioner and made the following submissions:

- a. CBSE is an autonomous organisation under the Ministry of Education, Government of India tasked with supervision and regulation of education, as well as conducting examinations across affiliated schools. The Board has a pan-India as well as international presence - with more than 26000 schools affiliated with the Board in India and having affiliated schools in more than 25 countries. The Board's functions *inter alia* also include granting affiliation to the schools for conduct of Class X and XII Examination.
- b. In light of the impact of the unprecedented COVID-19 pandemic on the credibility of the Board's assessment of students while issuing certificate of performance for academic qualification, deliberations were made by the stakeholders over the alternative ways to conduct the Board Examinations for the academic session 2021-2022. Accordingly, the Respondent No. 1 CBSE came up with a special scheme for the academic session 2021-22 through Circular No. Acad/51 dated 5th July 2021 which was addressed to all the affiliated schools of CBSE, as per which it was decided to conduct examinations in two Terms viz. - Terms I and II.
- c. As per the said scheme, the syllabus was rationalised and each Term exam was allotted 50% of the entire syllabus for evaluation. Clause 6 of the said Circular refers to the

various scenarios giving various possibilities under which assessment could be done depending upon the stated eventualities. The relevant situation-action scheme prescribed therein is as under:

“Situation:

In case the situation of the pandemic improves and students are able to come to schools or centres for taking the exams.

Action:

Board would conduct Term I and Term II examinations at schools/centres and the theory marks will be distributed equally between the two exams.”

- d. Due to the fact that the pandemic situation eased out, the Respondent No. 1 was able to conduct the examinations for both the terms successfully. After the conduct of the Term-I examination, Principals of large number of schools affiliated to CBSE informed that since the Objective type assessment was done for the first time and there was no preparation time for this format of examination, hence, students faced many difficulties and thus, the Term-I weightage should be reduced to the minimum.
- e. Respondent No. 1 issued a Circular dated 19th March 2022 through which marks secured by students in Term-I Examination were informed. Clauses 6 and 7 are relevant for the present purpose, which are reproduced hereunder:

"(6) Being Term-I only, no Marks Sheet cum Passing Certificate is being issued now. Only one Mark Sheet cum Passing Certificate will be issued after the Term-II examination to have parity with the previous results. This will comprise of only total marks of both the Terms as per weightage decided of Term-I and Term-II examinations.

(7) The weightage of Term-I and Term-II will be decided at the time of declaration of Term-II result and accordingly, the final performance will be calculated."

- f. It is evident from the aforementioned portion of the circular that the weightage of Term-I and Term-II was to be decided at the time of Term-II final result and accordingly the final performance would be calculated, and therefore no legitimate expectation arises nor does any estoppel apply.
- g. Even otherwise, if a legitimate expectation is considered to have arisen, such an expectation cannot be said to be giving rise to any Fundamental Right, especially when in matters pertaining to assessment the Hon'ble Supreme Court has upheld full autonomy to the certifying authority.
- h. Reliance is placed on various judgments of the Supreme Court including *Ramchandra Murarilal Bhattad v. State of Maharashtra (2007) 2 SCC 588*, *Ganpath Singh Gangaram Singh Rajput v. Gulbarga University, (2014)*

3 SCC 767, and *Sanchit Bansal & Anr. v. Joint Admission Board & Ors. (2012) 1 SCC 157* to submit that the Court should refrain from substituting its own view in a policy matter especially when an expert committee has decided the same.

- i. As regards the reliance of the petitioners on the fake circular being busted by the CBSE on social media is concerned, it is pertinent to note that the clarification made was regarding the issuance of such a circular and was not a comment on the contents of the same.
- j. Thereafter, a Committee of Experts was constituted to obtain the views on the weightage to be given for both the Terms I and II. The meeting of the Committee was convened on 21st May 2022 at the CBSE Headquarters, and after detailed deliberations, majority of the members of the committee recommended that the weightage for Term-I (Theory) should be around 30% and for Term-II (Theory) should be 70%. As far as Practical was concerned, it was recommended that equal weightage to both Term I and Term II be given. The said recommendations were accordingly accepted by the CBSE.
- k. Accordingly, on the basis of the recommendation of the Committee, the Competent Authority decided to prepare the final result for Class XII and Class X by giving the

weightage to Term-I at 30% (for Theory Papers) and to Term-II at 70% (for Theory Papers). However, for calculation of practical marks, equal weightage was decided to be given for both Terms. It is on this basis that the Respondent has declared Class XII result on 22nd July 2022. Therefore, there is no iota of arbitrariness and discriminatory practice adopted by the Respondent No. 1/CBSE.

- l. Reliance placed by the Petitioner on the judgment passed in *Sukriti (supra)* does not hold any ground since the matter was decided on a different plane altogether and the same had arisen out of the Assessment Policy laid out in light of specific prayer made by the petitioners that they were not regular students but were appearing as private students.
- m. A conjoint and harmonious reading of the three circulars dated 5th July 2021, 19th March 2022 and 22nd July 2022 makes it crystal clear that the revised weightage formula is valid and reasonable.
- n. In view of the dynamic situation, it is submitted that policy cannot be cast in stone, and the same was modified from time to time in the interest of students, as per the representations received by the CBSE from principals from affiliated schools across the country. In any case, there was an opportunity granted to the student to appear

in the examination held on 23rd August 2022 for improvement, which was not availed by the petitioner.

- o. Respondent No.1 being the pace setting national board having its presence across the globe and being known for its assessment quality, there was a need that a realistic result of the students should be declared in 2022. 21,09,208 students have appeared in Class X and 14,44,341 have appeared in Class XII. From the media reports it is evident that the students are happy with the result.
- p. All the results have been prepared in accordance with the new weightage formula for Term-I and Term-II examinations. However, no other student except the petitioner has approached this Court for the said relief, which is a testimony to the fact that the decision of the Board regarding the new weightage formula has been correct and in the larger interest of the students.
- q. Passing any orders interfering with the results prepared would amount to an extraordinary and unprecedented ordeal leading to a catastrophic effect that would adversely impact lakhs of students. Therefore, equity demands that larger public interest be taken into consideration while adjudicating the instant petition.

5. In light of the aforesaid, it is submitted that the instant petition is devoid of merits and this Court may be pleased to dismiss the same.

6. Heard learned counsels appearing on behalf of parties at length and perused the record.

ISSUE

7. The petitioner is aggrieved by the modification of earlier announced 50%-50% weightage formula to 30%-70% weightage assigned to theory marks scored in Term-I and Term-II for preparation of Result of the 12th CBSE Board Examinations.

Percentage in PCM claimed by the petitioner:

As per original weightage formula	As per new weightage formula
77%	73.33%

Impact of the said decision of CBSE:

8. The petitioner qualified the BITSAT 2022 entrance exam but, due to the changed weightage formula for calculation of XII Board marks, failed to meet the criteria of minimum 75% marks in XII results in the three subjects, namely - Physics, Chemistry and Mathematics. Therefore, the petitioner is unable to secure admission to BITS, Pilani.

ANALYSIS

9. The main question for consideration is whether a legitimate expectation has arisen due to the circulars issued by the CBSE and if so, what remedy can be granted to the petitioner for breach of such expectation by the CBSE.

10. For a better appreciation of the case at hand, it is pertinent to peruse and analyse the doctrine of Legitimate Expectation as held by the Hon'ble Supreme Court.

Doctrine of Legitimate Expectation

11. The concept of legitimate expectation owes its origin to Europe. The statement of Lord Diplock in *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 is regarded as envisaging legitimate expectation extending to an expectation of a benefit. Legitimate Expectation may arise from, either of the following circumstances:

(i) Violation of what a person has been permitted by the concerned authority to enjoy and which he can legitimately expect to be permitted to continue to enjoy until he has been communicated some rational grounds for withdrawing it on which he has been given an opportunity to comment;

(ii) Taking away of a benefit in the future which has not yet been enjoyed but has been promised.

12. Legitimate or reasonable expectation may arise from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue. It is a valuable and developing doctrine, that comes to the rescue of an ordinary person, in case where a public authority conducts itself so as to create a legitimate expectation that a certain course will be followed, and the same is violated. It would be unfair if the authority were permitted to follow a different course to the detriment of one who entertained the expectation, particularly if he acted on it. The doctrine of legitimate expectation is thus rooted in fairness and equity.

13. The Hon'ble Supreme Court of India in the case of ***National Buildings Construction Corporation v. S. Raghunathan***, AIR 1998 SC 2779 has held as under:

“The doctrine of ‘Legitimate Expectation’ has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statement cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in his context that the doctrine of ‘Legitimate Expectation’ was evolved which has today become a source of substantive as well as procedural rights. But claims based on ‘Legitimate Expectation’ have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel.”

14. The doctrine of legitimate expectations is founded on the principle of fairness in government dealings. It comes into play if a public body leads an individual to believe that they will be a recipient of a substantive benefit.

15. Recently, in the case of *State of Bihar And Ors. v. Shyama Nandan Mishra*, 2022 LiveLaw (SC) 449, the Hon'ble Supreme Court held that abuse of power is one of the criteria for testing whether a public body could retract from a *prima facie* legitimate expectation. It was held therein that if the government authority induced an expectation which was substantive, the upsetting of that expectation, through departure from the expected course of action in the absence of compelling public interest, would be so unfair that it would amount to abuse of power.

16. Therefore, where the substantive legitimate expectation is not *ultra vires* the power of the authority, the State cannot be allowed to change course and belie the legitimate expectation. Regularity, Predictability, Certainty and Fairness are necessary concomitants of Government's action and a failure to keep these commitments would permit the State's action to be interdicted.

17. In the *State of Jharkhand v. Brahmputra Metallics Ltd., Ranchi*, 2020 SCC OnLine SC 968, the Hon'ble Supreme Court clarified the difference between the concepts of promissory estoppel and legitimate expectation. It was observed that the doctrine of legitimate expectation is premised on the principles of fairness and non-arbitrariness in State action. The doctrine of legitimate expectation emerges as a facet of

Article 14 of the Constitution. On the other hand, promissory estoppel, can be invoked if the State has entered into a private contract with another entity but is inapplicable where a representation has been made by the State in the discharge of its public functions. In the latter situation, the doctrine of legitimate expectation finds its application.

18. Since, the circulars were issued by the Respondent No.1 CBSE, as an autonomous organisation under the Ministry of Education, in discharge of its public function, the doctrine of legitimate expectation can be attracted against it.

19. Having dealt extensively with the doctrine, this Court shall now delve deeper into the facts of the case at hand.

20. The CBSE, owing to the extraordinary circumstances caused due to COVID-19 pandemic and due to the uncertainty prevailing regarding Board examinations for the Academic Session 2021-22, on 5th July 2021 came up with a “Special Scheme of Assessment for Board Examination Classes X and XII for the Session 2021-22” bearing Circular No. Acad-51/2021.

21. The relevant portion regarding the Special Scheme for the Session 2021-22 in the said Circular is reproduced hereunder:

"Special Scheme for 2021-22

A. Academic session to be divided into 2 Terms with approximately 50% syllabus in each term:

The syllabus for the Academic session 2021-22 will be

divided into 2 terms by following a systematic approach by looking into the interconnectivity of concepts and topics by the Subject Experts and the Board will conduct examinations at the end of each term on the basis of the bifurcated syllabus. This is done to increase the probability of having a Board conducted classes X and XII examinations at the end of the academic session.

B. The syllabus for the Board examination 2021-22 will be rationalized similar to that of the last academic session to be notified in July 2021. For academic transactions, however, schools will follow the curriculum and syllabus released by the Board vide Circular no. F.1001/CBSEAcad/Curriculum/2021 dated 31 March 2021. Schools will also use alternative academic calendar and inputs from the NCERT on transacting the curriculum.

C. Efforts will be made to make Internal Assessment/ Practical/ Project work more credible and valid as per the guidelines and Moderation Policy to be announced by the Board to ensure fair distribution of marks. "

22. It is evident that in a marked departure to the tradition, the CBSE, unlike other academic sessions, decided to conduct the 2022 examinations in two Terms i.e. Term-I & Term-II.

23. Regarding the Assessment/Examination as per different situations, the relevant portion of the Circular is extracted below:

"6. Assessment / Examination as per different situations

A. In case the situation of the pandemic improves and students are able to come to schools or centres for taking the exams. Board would conduct Term I and Term II examinations at schools/centres and the theory marks will be distributed equally between the two exams."

24. The said scheme *inter alia* provided for “Assessment/Examination as per different situations” wherein four different scenarios were detailed and the consequent mode/manner and weightage of Term-I and Term-II examinations were notified. It was stated therein that in case the situation of the pandemic improved and students were able to come to schools or centres for taking the exams, then the Board would conduct Term I and Term II examinations at schools/centres and the theory marks will be distributed equally between the two exams for preparation of the Results.

25. On 14th October 2021, CBSE issued a circular bearing no. CBSE/CE/EXAM-2021-22/ notifying that all examinations (Term-I and Term-II) will be conducted in an offline mode. Accordingly, the Term-I examinations for Class XII Board were held in schools/centres from 16th November 2021 to 30th December 2021.

26. The CBSE on 19th March 2022, issued a circular bearing no. CBSE/CE/2021/ regarding the performance of the students of Class-XII in Term-I exams. The Circular *inter alia* stated that the weightage of Term-I and Term-II would be decided at the time of declaration of Term-II result and accordingly, the final performance would be calculated. The relevant portion of the circular is extracted hereunder:

"(6) Being Term-I only, no Marks Sheet cum Passing Certificate is being issued now. Only one Mark Sheet cum Passing Certificate will be issued after the Term-II examination to have parity with the previous results. This will comprise of only total marks of both the Terms as per weightage decided of Term-I and Term-II examinations.

(7) The weightage of Term-I and Term-II will be decided at

the time of declaration of Term-II result and accordingly, the final performance will be calculated."

27. This was followed by another clarification that was issued on 5th April 2022 by the CBSE from its official/verified Twitter handle (CBSE HQ|@cbseindia29) wherein it declared a notification, purported to be issued by the Board, as fake. The said notification, described as being fake, *inter alia* mentioned that the result will be calculated by taking 30 per cent from Term-I exams and 70 per cent from Term-II exams.

28. Term-II examinations for Class XII Board were held in schools/centres in a phased manner from 26th April 2022 to 15th June 2022. On 22nd July 2022, the CBSE declared the results for Class XII Board Examinations. This was followed by a Press Release bearing Ref. No. CBSE/CE/RESULTS-XII/2022 titled "Declaration of Results of Class XII, 2022", wherein it was specified that the competent committee of the Board had fixed 30% weightage of Term-I and 70% weightage of Term-II in Theory for calculation of Result.

29. It is stated that a Committee of Experts was constituted to obtain the views on the weightage to be given for both the Terms I and II. The meeting of the Committee was convened on 21st May 2022 at the CBSE Headquarters, and after detailed deliberations, majority of the members of the committee recommended that the weightage for Term-I (Theory) should be around 30% and Term-II (Theory) 70% respectively.

30. As per CBSE, meeting of the Result Committee was held on 21st July, 2022 at 3:30 pm, wherein after detailed deliberations, the recommendations made were accepted.

31. Officer of the CBSE was present during the hearings before this Court and assisted this Court. On the query made by this Court *qua* the approval of the Minutes of the Result Committee Meeting, which has been placed on record, the concerned officer responded that the same has been approved by the competent authority of the Board. Upon not finding any formal order by the competent authority enforcing the recommendation regarding the new weightage formula, this Court was constrained to summon the Original file, which was furnished by the concerned officer present in the Court. However, it was disappointing to see that only two green coloured sheets containing the notes of the Controller of Examinations was present, and no such order made by the Chairperson/Competent Authority accepting, enforcing and notifying the recommendation regarding the new weightage formula was present in the file produced. Even, the Officer present was unable to satisfactorily answer the query of the Court in this regard.

32. In view of the above, this Court has come to the conclusion that there is nothing on record to suggest that any such order has been passed by the Chairperson/Competent Authority accepting, enforcing and notifying the recommendation regarding the new weightage formula. Accordingly, merely on the basis of the recommendation of the Committee, the Competent Authority decided to prepare the final result for Class XII and Class X by giving the weightage to Term-I at 30% (for

Theory Papers) and to Term-II at 70% (for Theory Papers). In a matter of hours, the result of lakhs of students was prepared and published the very next day, that is on 22nd July 2022.

33. The factum of the recommendation and its acceptance was kept a secret from public and students at large, until the fag end and on the very date the results were declared, it was disclosed to the students. This clearly shows the arbitrariness and lapse on the part of the Board to keep the students in the dark about the weightage formula adopted for preparation of final result. This tantamounts to changing the rules of race after the race has ended and as such is outrageously arbitrary.

34. Upon perusal of the record as produced by the Respondent no. 1/CBSE, it is evident that there are glaring lapses and lackadaisical approach adopted by the Respondent No.1/CBSE.

35. All of this does not paint a glossy picture. This state of affairs at the CBSE is nothing but worrisome. Manifest arbitrariness at such a large scale cannot be allowed to go on unfettered. By its conduct and representations in public by way of circulars, the CBSE has violated the legitimate expectation of the students, including the petitioner.

CONCLUSION

36. CBSE has a rich and glorious past. Since its humble beginning in 1929, the sapling has now grown into a gigantic banyan tree with a number of milestones, and its outreach not only in India but also across more than 25 countries worldwide. CBSE affiliated schools today include

Kendriya Vidyalayas, Navodaya Vidyalayas, government schools, as well as private schools. These affiliated schools have produced outstanding luminaries in various fields, who have contributed significantly to the cause of nation building. The Board's dedication and efforts to undertake continuous and comprehensive reforms and innovations in education is commendable. Given such a bright history, the responsibility vested and the trust reposed in the Board is also magnified. Therefore, a greater degree of care and caution, as well as due diligence is required on the part of the functionaries and office bearers to ensure that due process is not violated at the higher echelons while taking decisions that affect the lives of lakhs of students.

37. Petitioner has not pressed the prayer for setting aside the Revised Scheme of Weightage of Term-I and Term-II exams dated 23rd July 2022. In the course of arguments, reliance has also been placed by the learned counsel for the petitioner on various judgments including *Sukriti & Ors. V. CBSE & Anr. (MANU/SCOR/03759/2022)*, *Gaurav Bhairava & Ors. v. National Testing Agency & Anr. (MANU/SCOR/67056/2022)* to request that a judgment *in personam* be passed to allow the relief to the petitioner, thereby obliterating any probability of adverse impact on the marks of other students.

38. In view of the aforesaid, I am inclined to partly allow the instant petition. Accordingly, the prayer for issuance of a Writ of Mandamus directing the Respondents to declare the result of the Petitioner in terms of the Circular No. ACAD-51/21 dated 5th July 2021 providing for the Special Scheme of Assessment which mandates equal weightage to

theory papers for Term-I and Term-II while computing the result is allowed.

39. CBSE is accordingly directed to calculate and declare the result of the petitioner as per the formula as declared in the Original Scheme dated 5th July 2021. The revised Result/mark sheet thus prepared shall be uploaded, as expeditiously as possible, preferably within two working days from the date of this Judgment, on the DigiLocker for ensuring access to the petitioner.

40. As goes the popular saying - “Justice should not only be done, but also seen to be done.” In the Academic Session 2021-22, around 14 lakhs students appeared for the CBSE Class-XII Board Examinations, whose results have been prepared and declared in accordance with revised weightage formula. Therefore, in the greater interest of the students at large and to ensure that justice does not in itself become an agent of chaos, as well as in light of the fact that the petitioner has not pressed its prayer for setting aside of the impugned circular of revised weightage formula, this Court is not interfering with the Revised Scheme of Weightage of Term-I and Term-II exams dated 23rd July 2022. It is also made clear that the petition has been partly allowed in the peculiar facts and circumstances of the case and shall not operate as a precedent.

41. The instant petition is partly allowed in the aforesaid terms and accordingly stands disposed of.

42. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

AUGUST 26, 2022

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HIGH COURT OF DELHI



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