



2024 : DHC : 195



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

+ W.P.(C) 11518/2023 and CM APP No. No.44823/2023

NASHETA ZAIDI THROUGH GUARDIAN

GROUP CAPTAIN IMRAN H ZAIDI Petitioner

Through: Mr. Musheer Zaidi and Ms.
Zahra Naqvi, Advocate

versus

CENTRAL BOARD OF SECONDARY

EDUCATION & ANR. Respondents

Through: Mr. Atul Kumar, Advocate for
Respondent No.1

Mr. Jagrup Singh, Section Officer, Air Force
School for R-2

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

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09.01.2024

1. The petitioner is aggrieved by the marks awarded by the CBSE against the answer entered by her in response to Question 27 in the Geography paper (Subject Code 029, Paper Code 64/5/2) in her Class 12 examination, held on 2 March 2023. Though the petition ventilates grievances apropos Question 24 and Question 27, Mr. Zaidi, learned Counsel for the petitioner submits, on instructions, that he is pressing the relief in the petition only *qua* the marks awarded in respect of Question 27. In fact, it may be noted that CBSE has actually awarded no marks against the said answer of the petitioner but has merely put a “__” against the said question in the answer sheet.



2. In view of the limited nature of controversy, it is not necessary for this Court to allude specifically to Question 27 or the answer provided by the Petitioner as the Court obviously cannot, save in the most exceptional of cases, qualitatively assess the correctness of the answers or the marks to which the candidate would be entitled.

3. Suffice it, therefore, to state that, against the answer provided by the petitioner to Question 27, the examiner entered two “√” marks. I deem it necessary, in view of the stand taken by Mr. Atul Kumar, on behalf of the CBSE, to provide a screen shot of the two pages related to the answer to Question 27 as entered by the petitioner :

- (27) The share of Indian imports is more than exports. The changing pattern is as follows :-
- (i) During the time of independence, ^(during 1950s) a large share of irrigated land went to Pakistan. This led to food crisis. Hence, food grains had to be imported from countries like U.S.A.
 - (ii) With green revolution in 1960s, food production increased and India became self sufficient in food grains. Hence, imports included machinery and chemicals.
 - (iii) With the Gulf war in 1970s, the prices of petrol rose and the import basket of India included machines, petrol, palm oil and chemicals, and electronics, minerals.
 - (iv) With ~~the~~ more development and India's export oriented markets, ^{and owing domestic needs,} imports have increased and machinery, fertilisers, chemicals, ~~are~~ from India's imports.



(v) India also imports gems, precious metals such as gold and silver from various countries.

✓

4. Clearly, the examiner has put one tick mark at the first page of the answer relating to Question 27 and a second tick mark on the second page of the answer relating to Question 27. Though Mr. Atul Kumar sought to contend that the second tick mark was not a tick mark but was merely the initial of the examiner, it does not appear to be so, at a plain glance.

5. Mr. Zaidi has taken me through the Marking Scheme of the CBSE, from which it is necessary to reproduce the General Instructions 6, 7, 8, 13 and 14 :

“Instruction 6. Evaluators will mark(✓) wherever answer is correct. For wrong answer CROSS 'X' be marked. Evaluators will not put right (✓) while evaluating which gives an impression that answer is correct and no marks are awarded. This is most common mistake which evaluators are committing.

Instruction 7. If a question has parts, please award marks on the right-hand side for each part. Marks awarded for different parts of the question should then be totaled up and written in the lefthand margin and encircled. This may be followed strictly.

Instruction 8. If a question does not have any parts, marks must be awarded in the left-hand margin and encircled. This may also be followed strictly.

Instruction 13. Ensure that you do not make the following common types of errors committed by the Examiner in the past:-

- Leaving answer or part thereof unassessed in an answer book.



- Giving more marks for an answer than assigned to it.
- Wrong totaling of marks awarded on an answer.
- Wrong transfer of marks from the inside pages of the answer book to the title page.
- Wrong question wise totaling on the title page.
- Wrong totaling of marks of the two columns on the title page.
- Wrong grand total.
- Marks in words and figures not tallying/not same.
- Wrong transfer of marks from the answer book to online award list.
- Answers marked as correct, but marks not awarded. (Ensure that the right tick mark is correctly and clearly indicated. It should merely be a line. Same is with the X for incorrect answer.)
- Half or a part of answer marked correct and the rest as wrong, but no marks awarded.

Instruction 14. While evaluating the answer books if the answer is found to be totally incorrect, it should be marked as cross (X) and awarded zero (0)Marks.”

(Italicised supplied)

6. Mr. Zaidi’s contention is that, as the examiner has entered two tick(✓) marks against the answer to Question 27, his client is entitled to full marks against the said answer.

7. Before proceeding to the submission of Mr. Atul Kumar, I may note that the Petitioner had applied for revaluation of the answer sheet, to which the following response was issued to the petitioner :

“Re-evaluation Status

Application No.	D51009R
Roll No.	14780127
Class	12
Name of Candidate	NASHETA ZAIDI
Re-evaluation status : Subject Code(s) Status	029 – No mistake found
Remark	

8. Mr. Atul Kumar submits, in response to Mr. Zaidi’s



submissions firstly, that the second tick mark against the answer to Question 27 is not a tick mark but is only the signature of the examiner (which I have already rejected); secondly, that as no marks were awarded by the examiner against the answer to Question 27, the CBSE was not at fault in awarding no marks to the petitioner against the said answer and, thirdly, without prejudice that the examiner has entered one tick mark only against the answer provided by the petitioner to all parts of Question 27 which seems to apply to Question 27 (i) or (ii).

9. At any rate, as only one tick mark has been entered by the examiner, he submits, the petitioner cannot be entitled to full marks against the answer provided to Question 27.

10. In the first place, I must observe that, even if there is an error at the end of the examiner, *so long as the answer sheet does not reflect the examiner's view as being that the answer is incorrect, the student has to be given the benefit of doubt. Assuming the examiner is remiss in a particular case regarding the manner in which he has marked the answer sheet, the student cannot be made to suffer and, unless the Court is satisfied that the examiner has found the answer to be incorrect, the student has to get the benefit of marks allotted to the question, against the answer that he has provided.*

11. In the present case, it is clear that the examiner has entered at least one tick against the answer provided to Question 27. The manner in which the tick mark has been entered on the answer sheet between



the answers to Question 27 (i) and 27 (ii) indicates that the examiner found the answer to Question 27 to be overall correct. Had only the answer provided by the petitioner to one of the parts of Question 27 been correct, the tick mark would have been entered against that part and cross (X) marks would have been entered against the answers to other parts of Question 27. In fact, a comparison of this page with other pages of the same answer sheet indicate that this particular examiner was not entering separate tick marks against each answer but, against various other answers too, where the question contained more than one part, the examiner had only entered one tick mark.

12. In any event, the examiner has not put a cross (X) mark against any of the answers provided in response to Question 27. This Court, cannot, therefore, presume that the answer provided by the petitioner, in response to any of the parts of Question 27, was found by the examiner to be incorrect.

13. *Prima facie*, therefore, the examiner was fully satisfied with the answer provided by the petitioner in respect of Question 27, qua all parts thereof.

14. The next issue to be addressed is the consequence of the examiner failing to put marks in the margin against the petitioner's answer to Question 27.

15. Mr. Atul Kumar submits that, as the examiner did not enter any mark alongside the answer to Question 27, the CBSE could not



possibly have awarded any mark against the answer and that, therefore no fault can be laid at the doors of the CBSE. Mr. Atul Kumar further *submits that, even in the covering page of the mark sheet, which requires the examiner to enter the marks against every question, he has entered “__” against Question 27.*

16. *It is correct that no marks have been entered by the examiner in the margin alongside the answer to question 27 as provided by the petitioner, though General Instructions 6 and 13 of the Marking Scheme of the CBSE specifically caution examiners against putting tick marks without awarding marks against the question. The question that the Court has to address, is however, the consequence that would follow if an examiner actually does not award marks against a question but puts a tick(✓) mark, indicating that the answer to the question is correct.*

17. *In my considered view, while the failure to award marks in the margin against a particular answer even after entering a tick(✓) mark may be a lapse on the part of the examiner in complying strictly with the instructions issued by the CBSE, the student cannot be made to suffer for that reason. Moreover, the CBSE Guidelines do not stipulate that, in the event of this happening, the student would not be awarded any marks for the answer given by him. So long as the examiner found the answer provided by the student to be correct, there can be no question at all of the student being awarded no marks against that answer. Else, it would do complete disservice to the efforts of the student, resulting in manifest injustice which the Court cannot*



countenance. To reiterate, the consequence of the lapse of the examiner, if any, cannot be visited on the student.

18. The indisputable position in the present case is that the examiner has put a tick(✓) mark against the answer provided by the petitioner to Question 27. The further indisputable position is that, as per General Instruction 6 of the CBSE, of which the examiner was supposedly aware, the entering of a tick(✓) mark indicates that the answer provided by the student was correct. Clearly, in the view of the examiner, the Petitioner has provided the correct answer to Question 27.

19. I may note here, that, in the counter affidavit filed by the CBSE, one of the somewhat surprising stands that the CBSE has taken is that no marks were awarded against the answer to Question 27 because the answer did not pertain to the question. That is not a call which the CBSE can take. The decision on whether an answer to a question is relevant, correct, or incorrect, vests in the examiner. The CBSE cannot sit in appeal over the decision of the examiner.

20. The only occasion for the decision of the examiner to be revisited is if the paper is re-evaluated, *at the option of the candidate*. That also took place in the present case, and the CBSE informed the petitioner that there was no fault found in the first evaluation. In other words, the result of the re-evaluation was that the answer was once again found to be correct.



21. I may note, here, that Mr. Atul Kumar sought to dispute this observation by stating that, in his submission, the remark “no mistake found” meant that when the paper was rechecked and the marks reassessed, it was found that there was no mistake in the original checking or in the original allocation of marks. This submission itself acknowledges the fact that there was no mistake found in the manner in which the examiner had originally checked the paper. In other words, it amounts to an implicit reiteration of the tick(✓) mark provided by the examiner against the answer to question 27.

22. *If the answer to a question is correct, the student is entitled to be awarded marks against that answer. If the examiner has not assigned any mark less than the maximum marks which can be awarded against that question, the student is entitled to be awarded the maximum marks.* This is especially so as, in the present case, though the CBSE Marking Scheme Instructions specifically require a cross (X) mark to be entered by the examiner if the answer to question was incorrect, no such cross marks has been entered by the examiner against answer provided by the petitioner in response to Question 27.

23. In that view of the matter, I am of the opinion that the petitioner is entitled to full marks against the answer provided by her to Question 27 of the Geography paper held on 2 March 2023 in the Class XII Board Examination.

24. The CBSE is accordingly directed to issue a corrected mark sheet to the Petitioner by adding 5 marks against the answer provided



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to Question 27.

25. The petition is accordingly allowed in the aforesaid terms.

C.HARI SHANKAR, J

JANUARY 9, 2024

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[Click here to check corrigendum, if any](#)