

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

I. A. No. _____ OF 2021

IN

WPC (C) NO. 000522 OF 2021
(A PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

MAMTA SHARMA

.....PETITIONER

VERSUS

CENTRAL BOARD OF SECONDARY EDUCATION &

ORS

.....RESPONDENTS

AND

IN THE MATTER OF:

[REDACTED]

[REDACTED]

[REDACTED]

APPLICATION FOR INTERVENTION

TO,

**THE HON'BLE THE CHIEF
JUSTICE OF INDIA AND HIS
COMPANION JUDGES OF
THE HON'BLE SUPREME
COURT OF INDIA:**

THE HUMBLE
APPLICATION OF THE
INTERVENER ABOVE
NAMED

MOST RESPECTFULLY SHEWETH:

1. That this intervention application in WP (C) No. 000522 of 2021 is being filed by the applicants for and on behalf of the private and compartment students of the Central Board of Secondary Education (herein after referred as 'CBSE').
2. That the applicants being a public-spirited individual who is concerned about the large number of private and compartmental students of CBSE and are due to appear in the Class XIIth private / 2nd Compartmental Examinations. The applicants are also the private / compartmental students and have last attended Kendriya Vidyalaya No. 1, Cuttack, Odisha, Mahavir Senior Model School, Ashok Bihar, New Delhi and Bhavan's Tripura Vidya Mandir, Bimangarh, Agartala, Tripura, and are also due to appear in the said private/2nd Compartmental Examinations. The Class XII private and compartmental students of CBSE are being compelled to appear in the above-mentioned offline

examinations, amid the prevailing Covid-19 pandemic situation causing a huge threat to their life.

3. That for the effective and proper adjudication of the writ petition, it is quintessential that the present intervener applicants may be heard and may kindly be allowed to participate in the present proceeding. So far as the prayer before this Hon'ble Court is concerned, the presence of present applicants / interveners will be helpful for proper adjudication of lis in the interest of justice, more particularly in the greater interest of the Class XII private and compartmental students of CBSE.
4. That the petitioners have filed this present writ petition in the shape of a Public Interest Litigation, seeking writ directions from this Hon'ble Court against respondent no. 1 and 2 for cancellation of Class XII Board Examinations in the year 2021.
5. That on 03.06.2021 this Hon'ble Court directed the CBSE to devise and place on record a well-defined objective criteria for assessment of performance of the candidates within two weeks from the date of the order.
6. That pursuant to the aforesaid order / direction dated 03.06.2021, the CBSE placed on record 'objective criteria for assessment of performance of the candidates' on 17.06.2021 before this Hon'ble Court, titled "Policy for Tabulation of Marks for Class XII Board Examinations 2021" (hereinafter the 'Class XII Policy') [Notification no. CBSE/CE/2021 dated 17.06.2021].
7. That Clause 29 of the Class XII Policy relates to the policy for Private / Patrachar / 2nd chance Compartment etc., It reads –

**For Private / Patrachar / 2nd chance
Compartment candidates etc., Examination will
be conducted by the board as and when the
conditions become conducive for conduct of such
examinations. The details will be notified in due
course.**

8. That the CBSE on 01.05.2021 notified the “Policy for Tabulation of Marks for Class X Board Exams 2021 Based on the Internal Assessments Conducted by Schools” (hereinafter the ‘Class X Policy’) [Notification no. CBSE/CE/2021 dated 01.05.2021].

9. That Clause 31 of the Class X Policy relates to the policy for Private / Patrachar / 2nd chance Compartment etc., It reads –

**For Private / Patrachar / 2nd chance
Compartment candidates, a separate scheme for
the assessment will be announced soon.**

10. That it is humbly submitted that a bare perusal of above mentioned two provisions would clearly indicate that the CBSE has attempted to give unequal treatment to Private / Patrachar / 2nd chance Compartment candidates of Class X and XII, thereby creating a classification which has no reasonableness, rational and hence, is *prima facie*, unfair, unjust, arbitrary, and unreasonable and violative of the principles of equality enshrined under Article 14 of the Constitution of India.

11. That owing to the prevailing Covid-19 pandemic situation in the country it is not advisable to conduct physical mode examination for the Private / Patrachar / 2nd chance Compartment candidates,

as it would endanger their life and would expose them to an environment that may not be safe.

12. That according to Clause 29 of Class XII policy, examination for the Private / Patrachar / 2nd chance Compartment candidates would be conducted at a later stage, when the conditions become conducive for conduct of such examinations. However, owing to prevailing Covid-19 situation in the country, it cannot be conclusively said, as to when exactly we will be able to have such conducive environment necessary for the conduct of physical mode examinations. Most importantly, when the dates for various entrance tests, like CLAT, NEET etc., have already been notified, keeping the date of aforesaid board examinations in abeyance, would take away the equal rights of the Class XII Private / Patrachar / 2nd chance Compartment candidates of the CBSE, to compete with other students, equally, at such national level entrance tests. It is submitted that this would not only be unfair and unreasonable but would also be violative of the Article 14 of the Indian Constitution.
13. That it is humbly submitted that in the interest of justice and equity, for the safety of Class XII Private / Patrachar / 2nd chance Compartment candidates of CBSE, their parents, guardians and family members and for the effective and proper adjudication of the writ petition, the present applicant may kindly be allowed to participate in the present proceeding.
14. Therefore, the intervener applicants being Class XII Private / Patrachar / 2nd chance Compartment candidates, formulates an integral part of the students of the CBSE Boards, who will be

affected by the outcome of the writ petition in so far as the criteria of the evaluation of assessment of performance of students sans physical mode examinations is concerned, and thus, may be allowed to participate in the present proceeding.

PRAYERS

That in the abovementioned facts and circumstances it is most respectfully prayed that this Hon'ble Court may be pleased:

- a) To allow the Applicants to intervene in the present Writ Petition, and
- b) Pass any further order or orders, as this Hon'ble Court may deem fit and proper in the interest of justice.

AND FOR THIS ACT OF KINDNESS, THE APPLICANT AS IN DUTY BOUND SHALL EVER BE GRATEFUL.

DRAWN BY:

ABHISHEK CHOUDHARY
ANUBHA SHRIVASTAVA SAHAI
PRABHU PRASSANA BEHERA
RITIKA RITU
ABHISHEK PATNAIK
NABAB SINGH

ADVOCATES

FILED BY

MANJU JETLEY
Advocate-On-Record
For Intervener Applicants

Drawn on 18/06/2021

Filed on 18/06/2021

PLACE: NEW DELHI

IN THE SUPREME COURT OF INDIA
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I. A. No. _____ OF 2021

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IN THE MATTER OF:

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CENTRAL BOARD OF SECONDARY EDUCATION &

ORS

.....RESPONDENTS

AND

IN THE MATTER OF:

[REDACTED]

[REDACTED]

[REDACTED]

..... APPICANTS

APPLICATION FOR DIRECTIONS

TO,

**THE HON'BLE THE CHIEF
JUSTICE OF INDIA AND HIS
COMPANION JUDGES OF
THE HON'BLE SUPREME
COURT OF INDIA:**

THE HUMBLE
APPLICATION FOR
DIRECTIONS OF THE
APPLICANTS ABOVE
NAMED

MOST RESPECTFULLY SHEWETH:

1. That this intervention application in WP (C) No. 000522 of 2021 is being filed by the applicants for and on behalf of the private and compartment students of the Central Board of Secondary Education (herein after referred as 'CBSE').
2. That the list of all the private and compartmental students of CBSE (Class X and XII), who have supported the present intervention applications filed by the applicants, is annexed and marked as **ANNEXURE A1 (pg)**
3. That the applicants being a public-spirited individual who is concerned about the large number of private and compartmental students of CBSE and are due to appear in the Class XII private/2nd Compartmental Examinations. The applicants are also the private / compartmental students and have last attended Kendriya Vidyalaya No. 1, Cuttack, Odisha, Mahavir Senior Model School, Ashok Bihar, New Delhi and Bhavan's Tripura

Vidya Mandir, Bimangarh, Agartala, Tripura and are also due to appear in the said private/2nd Compartmental Examinations. The Class XII private and compartmental students of CBSE are being compelled to appear in the above-mentioned offline examinations, amid the prevailing Covid-19 pandemic situation causing a huge threat to their life.

4. That the petitioners have filed this present writ petition in the shape of a Public Interest Litigation, seeking writ directions from this Hon'ble Court against respondent no. 1 and 2 for cancellation of Class XII Board Examinations.
5. That for the effective and proper adjudication of these applications, it is necessary to define the terms 'private students', '2nd compartment students'. The definitions of the terms 'private students', '2nd compartment students' as prescribed by the Examination Bye-Laws, 1995 notified by the CBSE, the copy of which is annexed and marked as **ANNEXURE A2 (pg)**, is reproduced hereinbelow –

16. Private Candidates – Definition – For the purposes of the byelaws contained in this chapter and in chapter 5, unless there is something repugnant in the subject or context, a **'Private Candidate'** means **a person who is not a Regular Candidate but, under the provisions of these byelaws, is allowed to undertake and/or appear in the All India/Delhi Senior School Certificate Examination or All India/Delhi Secondary School Examination of the Board.**

It is submitted that though the definition of the term 'compartment students' is not clearly prescribed in the aforementioned bye-laws, however, a reference to Clause 40.2, which is reproduced hereinbelow, would be helpful in that respect –

40.2 Eligibility for Compartment in Senior School Certificate Examination – **A candidate failing in one of the five subjects of external examination shall be placed in compartment in that subject provided he/she qualifies in all the subjects of internal assessment.**

6. That the relevant provisions from the above-mentioned bye-laws with respect to the persons eligible to appear as 'Private Candidate' in Class XII board examinations are reproduced hereinbelow –

17. Persons eligible to appear as 'Private Candidate' at Delhi Senior School Certificate (Class XII) Examination –

(i) A candidate who had failed at the Delhi Senior School Certificate Examination of the Board will be eligible to reappear at a subsequent examination as a private candidate in the syllabus and text books as prescribed for the examination of the year in which he/she will reappear.

(ii) The following categories of candidates shall also be eligible to appear as private candidates at the Delhi

Senior School Certificate Examination of the Board on the conditions laid down in these byelaws:

(a) teachers serving in educational institutions affiliated to the Board, who have already passed Secondary or an equivalent examination at least two years before taking the Senior School Certificate Examination. Teacher candidates shall submit his application form along with a certificate by the Head of School in which they are serving duly countersigned by the Director of Education of the State/Union Territory concerned to the Regional Officer of the Board of the region in which the teacher is serving;

(b) women candidates who are bonafide residents of the National Capital Territory of Delhi and have passed the Delhi Secondary or an equivalent examination at least two years before appearing at the Senior School Certificate Examination subject to conditions mentioned in byelaw 17(iii); and

(c) physically handicapped students having passed the Secondary School Examination or its equivalent at least two years before appearing at the Senior School Certificate Examination on producing reasonable evidence of having deficiency to attend normal institutions for the purpose of studies.

(iii) Women/handicapped private candidates shall be required to satisfy the following additional conditions:

(a) that they have privately pursued the prescribed course of studies under proper guidance; and

(b) that they are unable to join a Senior Secondary School affiliated to the Board or there are such other reasons compelling them to appear at the examination as a private candidate.

18. Persons eligible to appear as "Private Candidate" at All India Senior School Certificate (Class XII) Examination

(i) A candidate who had failed at the All India Senior School Certificate Examination of the Board will be eligible to reappear at a subsequent examination as a private candidate in the syllabus and text books as prescribed for the examination of the year in which he will reappear.

(ii) Teachers serving in educational institutions affiliated to the Board who have already passed Secondary or an equivalent examination at least two years before taking the Senior School Certificate Examination. Teacher candidates shall submit his application form alongwith a certificate by the Head of school in which they are serving duly countersigned by the Director of Education of the

State/Union Territory concerned to the Regional Officer of the Board of the region in which the teacher is serving.

7. That, the above-mentioned provisions from the CBSE Bye-laws makes it crystal clear that a private student is one who had failed at the All India Senior School Certificate Examination / Delhi Senior School Certificate Examination of the Board. As a natural corollary these provisions include any student who failed to secure a minimum of 33% marks in any of the five subjects of external examination in the main or at the compartmental examinations. These provisions also include the students who failed to appear in the external examination in the main or at the compartmental examinations for any subject, due to any reason, whatsoever, including *inter alia*, medical or health grounds.
8. That the relevant provisions from the above-mentioned bye-laws with respect to the persons eligible to appear in Compartment in Senior School Certificate Examination are reproduced hereinbelow –

40.2 Eligibility for Compartment in Senior School Certificate Examination – A candidate failing in one of the five subjects of external examination shall be placed in compartment in that subject provided he/she qualifies in all the subjects of internal assessment.

42. Compartment Examination for Secondary/Senior School Certificate Examination

–

** (i) A candidate placed in compartment may reappear at the compartmental examination to be held in July/August and may avail himself/herself of the second chance in March/April next year and may further avail himself/herself of the third chance at the compartmental examinations to be held in July/August of that year. The candidate will be declared 'Pass' provided he/she qualifies the compartmental subject/subjects in which he/she had failed.

** (ii) A candidate who does not appear or fails at one or all the chances of compartment shall be treated to have failed in the examination and shall be required to reappear in all the subjects at the subsequent annual examination of the Board as per syllabi and courses laid down for the examination concerned in order to pass the examination. The candidate shall have the option to appear at the practical examination in the subjects involving practical or retain their previous marks in one more annual examination after the Third Chance Compartment.

(iii) Syllabi and Courses for the Compartmental candidates in March Examination shall be the same as applicable to the candidates of full subjects appearing at the examination,

*** (iv) A candidate placed in compartment shall be allowed to appear only in those subjects in which

he/she has been placed in compartment at the Second Chance Compartmental Examination to be held in March/April next year.

(v) For subjects involving practical work, in case the candidate has passed in practical at the main examination he/she shall appear only in theory part and previous practical marks will be carried forward and accounted for. In case a candidate has failed in practical he/she shall have to appear in theory and practical both irrespective of the fact that he/she has already cleared the theory examination.

*** (vi) The candidate who is placed in Compartment in the Secondary School Examination (Class-X) shall be admitted provisionally to class XI till he takes in first chance Compartmental Examination to be held in July/August of that year. His/her admission shall be treated as cancelled if he/she fails to pass at the first chance Compartmental Examination,

It is submitted that a perusal to the 'Pass Criteria' mentioned in Clause 40.1 of the CBSE Bye-laws, reproduced hereinbelow, would be helpful in this regards –

40.1 Pass Criteria (Senior School Certificate Examination) (ii) In order to be declared as having passed the examination, a candidate shall obtain a grade higher than E (i.e. atleast 33% marks) in all the five subjects of external examination in the main or at the compartmental examinations. The pass

marks in each subject of external examination shall be 33%. In case of a subject involving practical work a candidate must obtain 33% marks in theory and 33% marks in practical separately in addition to 33% marks in aggregate in order to qualify in that subject.

9. That it is therefore clear that any candidate failing in one of the five subjects of external examination shall be placed in compartment in that subject provided he/she qualifies in all the subjects of internal assessment.
10. That it is submitted that in order to be declared as having passed the examination, a candidate must obtain at least 33% marks in all the five subjects of external examination in the main or at the compartmental examinations. Therefore, in case of a subject not involving 'practical work', a candidate must obtain 33% marks in that subject and in case of a subject involving 'practical work', a candidate must obtain 33% marks in theory and 33% marks in practical separately, in addition to 33% marks in aggregate, in order to qualify in that subject.
11. That it is also submitted that a candidate placed in compartment may reappear at the compartmental examination to be held in July/August (first chance compartment) and may avail himself/herself of the second chance in March/April next year (second chance compartment) and may further avail himself/herself of the third chance at the compartmental examinations to be held in July/August of that year (third chance compartment).

12. That on 03.06.2021 this Hon'ble Court directed the CBSE to devise and place on record a well-defined objective criteria for assessment of performance of the candidates within two weeks from the date of the order.
13. That pursuant to the aforesaid order / direction dated 03.06.2021, the CBSE placed on record 'objective criteria for assessment of performance of the candidates' on 17.06.2021 before this Hon'ble Court, titled "Policy for Tabulation of Marks for Class XII Board Examinations 2021" (hereinafter the 'Class XII Policy') [Notification no. CBSE/CE/2021 dated 17/06/2021]. The copy of the Notification dated 17/06/2021 is annexed and marked as **ANNEXURE A3** (pg).
14. That Clause 29 of the Class XII Policy relates to the policy for Private / Patrachar / 2nd chance Compartment etc., It reads –

For Private / Patrachar / 2nd chance Compartment candidates etc., Examination will be conducted by the board as and when the conditions become conducive for conduct of such examinations. The details will be notified in due course.
15. That the CBSE on 01.05.2021 notified the "Policy for Tabulation of Marks for Class X Board Exams 2021 Based on the Internal Assessments Conducted by Schools" (hereinafter the 'Class X Policy') [Notification no. CBSE/CE/2021 dated 01.05.2021]. The copy of the Notification dated 01/05/2021 is annexed and marked as **ANNEXURE A4** (pg).

16. That Clause 31 of the Class X Policy relates to the policy for Private / Patrachar / 2nd chance Compartment etc., It reads –

**For Private / Patrachar / 2nd chance
Compartment candidates, a separate scheme for
the assessment will be announced soon.**

17. That it is humbly submitted that a bare perusal of above mentioned two provisions would clearly indicate that the CBSE has attempted to give unequal treatment to Private / Patrachar / 2nd chance Compartment candidates of Class X and XII, thereby creating a classification which has no reasonableness, rational and hence, is *prima facie*, unfair, unjust, arbitrary, and unreasonable and violative of the principles of equality enshrined under Article 14 of the Constitution of India.
18. That owing to the prevailing Covid-19 pandemic situation in the country it is not advisable to conduct physical mode examination for the Class XII Private / Patrachar / 2nd chance Compartment candidates, as it would endanger their life and would expose them to an environment that may not be safe.
19. That it is humbly submitted that the State of Maharashtra while cancelling the State Board Examinations for Class XII, decided to pass ALL students based on internal assessments on 11/06/2021. Similarly, in Jammu & Kashmir, all pending final exams (both regular and private) for the session 2020-21 were cancelled on 09/06/2021. Similarly, in the State of Odisha, all Annual Higher Secondary Examination, 2021 was cancelled by the Government of Odisha, which also gave an insight about the evaluation scheme that will be adopted for both the regular and

private students. The part of the press release w.r.t. private candidates of the CHSE Board dated 18.06.2021 read, “Scores in Theory Papers for Ex-Regular Examinees will be awarded on the basis of their performance in the previous CHSE Examination which they had appeared”. It further said, “Scores will be awarded in the Practical/Project Component of a paper both for Regular and Ex-Regular Examinees at their Higher Secondary School level. The Scores awarded at the H.S. School level will be scrutinized and moderated”. The copy of the press note released by the Council of Higher Secondary Education, Odisha dated 18/06/2021 is annexed and marked **ANNEXURE A5 (pg)**.

20. It is therefore most humbly submitted before this Hon’ble Court that a direction may be passed to CBSE to follow evaluation schemes, similar to that of Maharashtra, Jammu & Kashmir and Odisha, for the Private / Patrachar / 2nd chance Compartment candidates of CBSE Class XII examinations 2021, which would be in the greatest interest of the students at large belonging to these categories.
21. That according to Clause 29 of Class XII policy, examination for the Private / Patrachar / 2nd chance Compartment candidates would be conducted at a later stage, when the conditions become conducive for conduct of such examinations. However, owing to prevailing Covid-19 situation in the country, it cannot be conclusively said, as to when exactly we will be able to have such conducive environment necessary for the conduct of physical mode examinations. Most importantly, when the dates for various entrance tests, like CLAT, NEET etc., have already been notified, keeping the date of aforesaid board examinations in

abeyance, would take away the equal rights of the Class XII Private / Patrachar / 2nd chance Compartment candidates of the CBSE, to compete with other students, equally, at such national level entrance tests. The notification issued by Consortium of National Law Universities, dated 14/06/2021 w.r.t. CLAT-2021 is annexed and marked as **ANNEXURE A6 (pg)**. The notification issued by National Testing Agency, dated 12/03/2021 w.r.t NEET UG-2021 is annexed and marked as **ANNEXURE A7 (pg)**

22. It is submitted that, when many students of Class XII Private / Patrachar / 2nd chance Compartment, including applicants herein, approached CBSE through e-mail, seeking information on conduct of their examinations, taking a contradictory stand, against what has been proposed in Cl. 29 of the Class XII policy, the CBSE informed them that “all exams for Class X and XII are cancelled for this year”. In another instance, CBSE responded by saying, “please note that conditions and circumstances in February 2021, are totally different from the time when pandemic caused the board to cancel the examinations. Now the examination result shall be based upon a rationale, uniform and justified criteria as per the expert advice.” The copy of both these communications are annexed and marked as **ANNEXURE A8 (pg)**
23. It is humbly submitted that like regular students of CBSE, the Class XII Private / Patrachar / 2nd chance Compartment candidates are aspiring and are equally hopeful to secure admission in various Universities / Colleges of repute in India and abroad for pursuing their higher education. However, if their

examinations are delayed beyond reasonable time till a conducive environment is achieved in order to conduct the examination, they will not only lose opportunity to apply and seek admission in these Universities / Colleges, but they will also be denied their fundamental right to education.

24. It is submitted that this would not only be unfair and unreasonable but would also be violative of the Article 14 of the Indian Constitution, as no medical expert, professional scientist, body or agency can say conclusively about any date, probable or otherwise, which may be considered as conducive for conducting the examinations for Class XII Private / Patrachar / 2nd chance Compartment candidates.
25. That, it is submitted that in these above-mentioned prevailing circumstances, all the private / compartment / repeaters candidates of Class XII CBSE Board examination 2021 have been forced to raise their voice against the above irrational, unjust and unreasonable decision of the CBSE, for which the present applicant approaches this Hon'ble Court seeking intervention in the WP(C) NO. 000620 OF 2021, with prayers, *inter alia* for issuance of appropriate writs, directions and/or orders for cancellation of private / compartment / repeaters candidates of Class XII CBSE Board examination 2021 the following grounds–

GROUND

- (i) **Right to Equality** – Article 14 of the Constitution of India in a clear and unequivocal term stipulates that the, “State shall not deny to any person equality before law and equal protection of the laws”. The concept of equality not only

embarks upon the theory of “Rule of Law”, but it is equally important to realize the goals set forth in the Preamble of our Constitution. While the judicial evolution of the right to equality permits classification, this classification should however, at any cost, whatsoever, be ‘just and reasonable’ and must not be unfair, unjust, arbitrary and unreasonable.

It is submitted that the Central Board of Secondary Education (CBSE), upon the direction/recommendation of the Central Government, vide Notification No. CBSE/CE/EXAM.2021 dated 01/06/2021 decided to cancel the Class XII Board Examinations for the year 2021. The copy of the Notification dated 01/06/2021 is annexed and marked **ANNEXURE A9 (pg)**.

It is submitted that keeping in view the safety, health and well being of all the private / compartment / repeaters candidates of Class XII CBSE Board examination 2021, their parents and family members, teaching faculty and all stakeholders, the notification issued by CBSE calling off the Class XII Board Examinations, owing to the prevailing Covid-19 pandemic situation in the country, should be given widest interpretation so as to include all categories of students.

It is humbly submitted that the equality clause enshrined in Article 14 of our Constitution is of wide import, as it guarantees ‘equality before the law’ and the ‘equal protection of the laws’ within the territory of India.

Any deviation from the rule of equality can only be upheld if the classification, so purported to be made, applied to person who forms a separate and distinct class and such classification is a reasonable one based on intelligible differentia having nexus with the object sought to be achieved.

It is therefore most humbly submitted that the classification sought to made in present case between regular Board Students on one hand and the private / compartment / repeaters candidates of Class XII CBSE Board examination 2021 on the other is *prima facie* irrational, unreasonable and is bad in law on the ground of violation of the basic feature of our Constitution, namely, the principles of equality enshrined under Article 14 of the Constitution.

The health and safety of all the students irrespective of the category they belong are of utmost importance and should be protected at any cost, without discrimination of any kind, whatsoever.

It is emphasized and most humbly submitted that the decision to conduct private / compartment / repeaters examination of Class XII CBSE Board candidates would endanger the life of lakh of students, who would be forced to appear in this physical-mode-board examination, which would clearly violate their 'right to life and health' as guaranteed by Article 21 of our Constitution.

It is submitted that the Hon'ble Prime Minister of India while deciding to cancel CBSE Class XII Board Examinations 2021 himself said that the decision on Class XII CBSE Exams has been taken in the interest of students. He stated that Covid-19 has affected the academic calendar and the issue of Board Exams has been causing immense anxiety among students, parents and teachers, which may be put to an end. The Hon'ble Prime Minister himself stressed that the health and safety of our students is of utmost importance and there would be no compromise on this aspect. He added, **“that in today’s time, such exams cannot be the reason to put our youth at risk”**. The copy of the press release dated 01/06/2021 is annexed and marked **ANNEXURE A10 (pg)**.

It is submitted that a perusal in this regard to Shiksha Samvaad, A weekly update of activities of Hon'ble Education Minister (of India), dated 16/06/2021, annexed and marked **ANNEXURE A11 (pg)** would suggest that the decision to call off the board examination 2021 was taken so that, **“students should not be forced to appear for exams in such a stressful condition”**. It clearly says that **“these uncertain circumstances have been causing immense anxiety among students, parents and teachers. Therefore, the decision on Class 12 CBSE Exams has been taken in the interest of students”**.

It is therefore submitted that the health, safety and life of the private / compartment / repeaters students

are equally important and there should not be any compromise on this aspect. It is equally important to end the anxiety among students, parents, and teachers and therefore, the interveners pray before this Hon'ble Court to pass appropriate directions for cancelling the examinations for private / compartment / repeaters students for the year 2021.

It is submitted that the present unprecedented situation prevailing in the country due to Covid-19 pandemic calls for extraordinary measures, especially for the board students who constitutes a majority portion of the youth of the country. It is therefore prayed before this Hon'ble Court that a comprehensive decision should be taken bearing in mind all categories of students, without there being discrimination of any kind, whatsoever.

Furthermore, delaying the examination of private / compartment / repeater students till such uncertain date when the situation become conducive for the conduct of such examinations, would also delay the results of such category of students, thereby depriving them of their right to participate and compete along with other students in various competitive examinations viz., CET, CLAT, NEET, JEE etc., This would adversely affect their career opportunities and would have a direct impact on their fundamental right to equal opportunities with respect to admission in colleges / universities for pursuing higher education.

It is emphatically submitted that the Circular issued by the CBSE dated 11.02.2021, clearly stated that, “in case of the candidates of examination-2020, old practical marks will be taken while computing results. In case of the candidates from examinations prior to 2020, prorata marks will be awarded while computing results”. The copy of the circular dated 11/02/2021 is annexed and marked **ANNEXURE A12 (pg)**.

It is also submitted that the “Guidelines For Conducting Practical Examinations / Project / Internal Assessment For Classes X & XII” issued by the CBSE dated 27.02.2021 clearly stipulates at point no. 9 (Class XII – Private Students) that there will be no separate Practical Examinations / Project / Internal Assessment in respect of private students. The copy of the circular dated 27/02/2021 is annexed and marked **ANNEXURE A13 (pg)**. Therefore, with respect to the private and compartment students for Class XII examination-2020, CBSE would be in a position to declare their results based on a similar assessment policy as would be made applicable to the regular students. In case of the candidates from examinations prior to 2020, prorata marks may be awarded while computing results basing on their previous performance assessment.

It is also submitted that the Assessment Scheme adopted by the CBSE for the year 2020, clearly stipulated vide point no. 7, that for the student who have appeared in the examinations in more than three (3) subjects, the

average of the marks obtained in best three performing subjects will be awarded in the subjects whose examinations have not been conducted. The scheme further said that, “for those students who have appeared in examinations in only three (3) subjects, the average of the marks obtained in best two performing subjects will be awarded in the subjects whose examinations have not been conducted”. The scheme also clarified about those students who have appeared in the examinations in only one (1) or two (2) subjects. According to the Scheme, for these students, the results will be declared based on performance in the appeared subjects and performance in internal / practical / project assessment.

It is important to mention here the plight of applicant no. 1 who is aggrieved by the Class XII policy 2021, along with numerous similarly placed private candidates. The applicant no. 1 appeared in the Class XII CBSE Board Examination for the first time in the year 2018 (Roll No. 6602754) as a regular candidate, wherein he was declared FAIL. He again appeared as a regular candidate in the year 2019 (Roll No. 6603082), wherein he was again declared FAIL. In the year 2020, he appeared as a private candidate (Roll No. 12603768), and gave examination for three subjects viz., English (301), Physics (042) and Physical Education (048), wherein he scored 94, 48 and 96 marks respectively. Accordingly, the CBSE adopted the Assessment Scheme, 2020 and taking into average of marks obtained in best three performing

subjects, awarded him 95 marks in Hindi (302), the paper which got cancelled due to Covid-19 pandemic in the year 2020. He, however, failed to appear in two theory papers, viz., Chemistry and Biology, as because he was suffering from depression and was under the supervision of a psychiatrist. The CBSE board while declaring his results for the year 2020, remarked “Essential Repeat”. He could have appeared in the Board Examination, 2021, as a private candidate, had the board conducted the examination.

Interestingly, in the year 2021, the CBSE Board has taken an approach for the private candidates which is *prima facie* discriminatory and irrational. On one hand, when the applicant no. 1 appeared as a private candidate, in 2020, the CBSE awarded him the average of marks obtained in best three performing subjects, i.e., 95 marks in Hindi (302), the paper which was cancelled. But for the same private candidate and for thousand others like him, in 2021, the CBSE Board is not adopting the formula adopted in 2020, which was in the interest of the students. The board have arbitrarily in an unfair and unreasonable manner decided to postpone examinations of all private / compartment / repeater candidates till the situation become conducive for conducting their examination.

It is humbly submitted that, this scheme is *prima facie* irrational, unreasonable, unjustifiable, illogical and hence, unconstitutional, on the ground of violation of the right to equality enshrined under Article 14 of the

Constitution and of “proportional equality”, which constitutes an intrinsic part of the basic structure of the Constitution, as held by this Hon’ble Court in *M. Nagaraj v. Union of India* ((2006) 8 SCC 212)

- (ii) **Vaccination** – It is submitted that in the prevailing circumstances, the life of the students should be given more importance and private / compartment / repeaters examinations should only be conducted after vaccinating the maximum number of people, including the students.

It is submitted that the process of vaccinating the maximum number of people, including the students will take considerable time, considering the large population of our country, it would be in the interest of health and safety of the students, to cancel private / compartment / repeaters examinations for the year 2021 and to declare their result adopting the similar formula as proposed by the CBSE before this Hon’ble Court. The Class XII policy should, therefore, be made applicable to all the students of Class XII CBSE board, irrespective of the category they belong to, particularly when the CBSE has decided to publish the result of all the students Class X CBSE board, including the private / compartment / repeater students, by adopting a fair and reasonable assessment scheme.

It is therefore prayed that this Hon’ble Court may be pleased to pass appropriate directions for cancelling the examinations for private / compartment / repeater students as well and for publication of their result in a time bound

manner, by adopting the same assessment scheme as is proposed for the regular students, or upon reaching to a formula of performance evaluation / assessment which is just, fair, reasonable and equitable.

- (iii) **Mental Health** – It is humbly submitted that the present unrepresented circumstances has not only affected the physical health of the people, but also has adversely affected their mental health. Many have lost their loved ones and the situation, though have improved to some extent, cannot be prudently called ‘normal’. The second wave of Covid-19 virus in India has devastated many families and there is no justifiable record to show who is going with what circumstances. While many have lost their lives, many are still battling for it. Health, essentially, is an integral and inherent part of life, more particularly, ‘good health’ which forms an integral part of the ‘right to life’ as enshrined under Article 21 of our Constitution. It includes both ‘physical’ and ‘mental’ health. It is therefore, the responsibility of the State to ensure effective and good health to its citizen on priority basis.

The sole purpose of conducting examinations in educational institutions is to test the skill, knowledge, intellect and overall understanding of students in a given subject. The preparation for the examination requires both physical and mental wellbeing. When the group of students is allowed to sit in a given examination, it is generally presumed that the prevailing social-environmental conditions are appropriate for the

preparation, without there being any fear, threat or danger to the physical and mental wellbeing.

However, in the present case, without ascertaining the condition of the students with respect to their social wellbeing, CBSE is, arbitrarily trying to impose the Board Examination on select category of students viz., private / compartment / repeaters, while cancelling examinations for all other category of students. This essential has the tendency of creating a classification among the students of CBSE Boards, thereby giving them treatment which is unequal, unreasonable and so also unconstitutional. This would, under the given facts and circumstance, is not going to be a fair way of evaluating the students.

Therefore, when the sole purpose of conducting examination is going to be frustrated, it would be highly unjust, unfair and unreasonable to allow the CBSE Board to conduct Board Examination only for the private / compartment / repeater students.

26. That so far as prayers of the writ petitioner are concerned, the present intervener petitioner is also in support of the prayers made therein in the interest of public / students at large to protect the future of the country. Therefore, the intervener petitioner being the private / compartment / repeaters students, formulates an integral part of the citizen of the country at large, and of the CBSE board students in particular, that will be affected by the

outcome of the writ petition, and thus, may be allowed to participate in the present proceeding.

PRAYERS

That in the abovementioned facts and circumstances it is most respectfully prayed that this Hon'ble Court may be pleased:

- a) To pass appropriate orders / directions for cancellation of Class XII private / compartment / repeaters CBSE Board Examinations, 2021,
- b) To direct the respondent board to arrive at a formula for performance evaluation of the Class XII private / compartment / repeaters students in line with the assessment formula adopted by CBSE and other Education Boards for the regular students and to release the results in a time bound manner,
- c) To direct the respondent board to arrive at a formula for performance evaluation of the Class X private / compartment / repeaters students in an expedite manner and to release the results in a time bound manner
- d) To direct the CBSE to allow Class X & XII private / compartment / repeaters students to file their objections within a reasonable period of time, in case they are not satisfied with the results so published in terms of prayer no. B of this application,
- e) To direct the CBSE to resolve the grievances / objections that would be raised in terms of prayer no. C by giving them fair and equal treatment with that of regular students,

- f) Pass any further order or orders, as this Hon'ble Court may deem fit and proper in the interest of justice.

AND FOR THIS ACT OF KINDNESS, THE APPLICANT AS
IN DUTY BOUND SHALL EVER BE GRATEFUL.

DRAWN BY:

ABHISHEK CHOUDHARY
ANUBHA SHRIVASTAVA SAHAI
PRABHU PRASSANA BEHERA
RITIKA RITU
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Filed on: 13/06/2021
Place: New Delhi