

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6<sup>TH</sup> DAY OF OCTOBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

**WRIT PETITION NO.9510/2020 (EDN - RES)**

**BETWEEN:**

MS.SHUCHI MISHRA

TH

...PETITIONER

(BY SRI.A.MAHESH CHOWDHARY, ADVOCATE)

**AND:**

1. JOINT SECRETARY,  
DEPARTMENT OF SCHOOL  
EDUCATION AND LITERACY,  
MINISTRY OF HUMAN RESOURCE DEVELOPMENT,  
GOVERNMENT OF INDIA  
SHASTRI BHAVAN, C-WING,  
DR.RAJENDRA PRASAD ROAD,  
NEW DELHI - 110 091.
2. CONTROLLER OF EXAMINATION,  
CENTRAL BOARD OF SECONDARY EDUCATION,  
SHIKSHA KENDRA,  
2 COMMUNITY CENTRE,  
NEW DELHI - 110 092.
3. THE REGIONAL OFFICER,CBSE,  
DEGREE COLLEGE BUILDING NO.57,  
HESARAGHATTA MAIN ROAD,  
NEAR SAPTHAGIRI HOSPITAL,  
CHIMENY HILLS, CHIKKABANAVARA,  
BANGALORE - 560 090.

4. THE PRINCIPAL,  
DELHI PUBLIC SCHOOL, EAST  
SURVEY NO.43/1B AND 45,  
SULIKUNTE VILLAGE,  
DOMMASANDRA POST,  
BANGALORE – 562 125.
  
5. THE PRINCIPAL,  
PSBB LEARNING LEADERSHIP ACADEMY,  
NO.52, SAHAstra DIPIKA ROAD,  
LAKSHIMIPURA,  
OFF BANNERGHATTA, ANEKAL,  
BANGALORE-562 106.

...RESPONDENTS

(BY SRI.A.P.PULAKESHI, CGC FOR R1;  
SRI.M.R.SHAIENDRA, ADVOCATE FOR R-3;  
SRI.GOWTHAM.A.R., ADVOCATE FOR R-4;  
SRI.SURAJ SAMPATH, ADVOCATE FOR R-5;  
R-2 IS DELETED V/O DTD 15/09/2020)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED MEMORANDUM DATED 29.07.2020 VIDE ANNEXURE-A AS ILLEGAL, UNLAWFUL AND ARBITRARY AND ETC.

THIS WRIT PETITION COMING ON FOR **ORDERS** THIS DAY THROUGH VIDEO CONFERENCE, THE COURT MADE THE FOLLOWING:

**ORDER**

Petitioner, a student who is at the last leg of her teens, is knocking at the doors of Writ Court for laying a challenge to the punitive Memorandum dated 29.07.2020 issued by the third respondent at Annexure-A, whereby, “-- *her exam in the subject (044) Biology of AISSCE (Main)-2020 is hereby*

*cancelled for using unfair means in the said Examination -- her result is declared as ESSENTIAL REPEAT”.*

2. After service of notice, the respondents having entered appearance through their respective counsel resist the writ petition making submission in justification of impugned order; the answering respondent No.3 has filed the Reply Statement on 18.09.2020.

3. Brief facts of the case:

i) petitioner, a Class-XII student then prosecuting her studies in the 5<sup>th</sup> respondent – School had appeared for Biology Examination (044) on 14.03.2020, having accomplished the papers in English, Physics & Chemistry; unmindfully, she had carried her mobile phone instrument to the Examination Hall which after advertence was handed over to the Center Invigilator allegedly a bit before the commencement of the said examination;

ii) in connection with this incident an enquiry was held, after receiving the explanation from the petitioner in terms of EXAMINATION BYE-LAWS 1995 promulgated by the Central Board of Secondary Education; the impugned punitive order

has been issued to the effect that her exam in the subject Biology (044) of AISSCE has been cancelled for using “Unfair means” and that she was declared as “Essential Repeat”; and,

iii) as a consequence of the above punitive order, coupled with her failure in Mathematics Examination, petitioner became ineligible to take up “Compartment Examination” that was scheduled in September, 2020 and eventually, she has to appear for the examinations under “Full Subject Category” which would be scheduled on the basis of new Syllabi and the Course Study; with this grievance, the petitioner is at the door steps of this Court;

4. The respondent No.3 being the answering party, contends that: the allegation against the petitioner as to using “Unfair Means” in the examination has been held to be proved by the Unfair Means Committee comprising of four members; the versions of petitioner and of her parents have been duly considered by the Committee; the Reports of the Invigilator & the Center Superintendent have also been kept in view; the Rules & Procedures have been scrupulously followed; matter does not merit deeper examination in writ jurisdiction; so

contending, learned Panel Counsel sought the dismissal of Writ Petition with costs.

5. Having heard the learned counsel for the parties and having perused the petition papers, this Court is of a considered opinion that relief needs to be granted to the petitioner – student as under and for the following reasons:

a) the CBSC is a Registered Society arguably answering the ever-widening concept of “State” as defined under Article 12 of the Constitution of India in the light of Apex Court decision in **R.D. SHETTY Vs. INTERNATIONAL AIRPORT AUTHORITY OF INDIA, AIR 1979 SC 1628**; therefore, its functions relating to imparting of public education/instruction render it amenable to judicial scrutiny at the hands of the Writ Court; the CBSC has promulgated EXAMINATION BYE-LAWS 1995 that are amended from time to time; BYE-LAW 36.1 (iv)(a) reads as under:

*“If during the course of examination, a candidate is found indulging in any of the following, he/she shall be deemed to have used unfair means at the examinations, and as such his/her result shall not be declared but shall be marked as UNFAIR MEANS (U.F.M.):*

*(a) having in possession papers, books, notes or any other material or information relevant to the examination in the paper concerned.”*

BYE-LAW 36.1 (v) provides for imposition of penalty, with the following text:

*“A candidate found guilty of any of the unfair means mentioned at (iv) above:*

*(a) may be disqualified by the Board from the examination in that year (i.e. his/her examination for that year may be cancelled).”*

b) the subject Byelaw which prohibits carrying of the “barred items” has a normative arrangement expressed as a principle/standard as contradistinguished from a normative arrangement expressed as a Rule; a Rule details a set of facts which if proved, mandates a normative conclusion whereas, a principle/standard, in contrast, establishes the background values which if materialize, mandate a normative conclusion; the difference is that the fundamental values on which a Rule is based are external to the Rule whereas the fundamental values shaping a normative arrangement, formulated as a principle/standard are the very part of the normative conditions of that very principle/standard: ordinarily, the interpretation of a rule-based-text should give greater weight to the intent of the rule-maker (subjective purpose); on the

other hand, the interpreter of a principle/standard-based-text has to give greater weight to the intention of the system (objective purpose); the reason for distinguishing between these two i.e., rule-based text and standard-based text goes to the heart of purposive interpretation;

c) a text formulating a rule makes a precise decision about what is permitted and what is prohibited: in ascertaining the objective that lies at the core of the prohibition, significant weight needs to be attached to the intent of the rule-maker; in contrast, a text formulating a principle/standard sets an ideal to be attained, which operates within a legal system; the Byelaw has an aim and apparently, it seeks to suppress some mischief; the true aim is evinced in its language as read in the light of other external manifestations of purpose; keeping this in mind, the text of the aforesaid Byelaw has to be construed, since such a purposive construction advances the cause of justice of the case;

d) with the above in mind, it is pertinent to mention that the thrust of the prohibition enacted in the subject Byelaw is not just carrying the “barred items” but carrying it

*“during the course of the examination”*; this expression cannot be likened to the term *“during the course of employment”* used in Section 3 of the Employees Compensation Act, 1923 since the elasticity which this term has acquired in the realm of Industrial Jurisprudence cannot be artificially infused into the expression employed in this Byelaw; suffice it to say that, carrying any material before the commencement of the examination per se does not fall within the parameters of the fault-line on which this Byelaw is structured; an argument to the contrary, cannot be countenanced without bruising the text & intent of this Byelaw;

e) the allegation against the petitioner as can be ascertained from the records, is only as to her *“possessing the barred items during the examination”*; petitioner like any other student of her age and presumably with examination anxiety which ordinarily they develop in varying degrees, had inadvertently carried the mobile phone instrument; however, her assertion that she had deposited the said instrument at 9.55 am i.e., prior to the commencement of the examination with the official of the Examination Hall gains acceptance, since admittedly it was returned to her after the examination

was over and with no much murmur; the timing of the deposit and demeanor of the student could have been ascertained from the CC-TV footage which was not done; the explanation offered for not doing the same being not plausible, the case of the petitioner wins credence; in fact, the very purpose of installing CC-TV is to capture such incidents and keep them as a record for proving the delinquency or innocence of the students concerned; if the content of the CC-TV footage is not preserved or otherwise not retrievable, it is a fault attributable to the answering respondents and therefore, they cannot be permitted to take advantage thereof to the detriment of the students;

f) the mobile phone instrument was handed to the Center Invigilator by the petitioner before the examination was commenced, becomes evident by the fact that it was sent to her School which in turn delivered it back to her after the examination and on the same day; it is nobody's case that the petitioner had clandestinely stored the examination material in the said phone instrument for making unfair use of the same; ordinarily, a student is expected not to carry such instruments into the examination hall, is ideally true, but,

human fallibility more particularly, in the case of young children going to the examination with associated anxiety needs to be kept in mind; an extreme penalty of cancelling the very examination violates the rule of proportionality and it shakes the conscience of the Court, to say the least; a warning which an ideal teacher would administer to an erring student of the kind in the given circumstances, would have served the purpose; the petitioner shall consider herself as having been so warned, and matter should rest here;

g) tender minds even when they commit some significant mistakes, cannot be treated with iron gloves; the penalty order arguably may answer the requirement of letter of law but certainly it fall short of the standards of justice and fairness inasmuch as, there is absolutely no material as to the petitioner having used the phone instrument for writing the examination in question; in fact, that is not the allegation at all, one cannot be oblivious to the anxiety of the students and their parents during the crucial examination of the kind, especially during the unprecedented COVID Pandemic; carrying mobile phone instrument during such difficult periods by anyone admits rationalization; even in Court halls,

mobile phones of the counsel ring and often loudly despite repeated instructions to keep them in idle mode; that is not a case of serious culpability; an argument to the contrary would be abhorrent to the notions of reason & justice;

h) in more or less a similar fact matrix, a Division Bench of Hon'ble Delhi High Court in **NATIONAL BOARD OF EXAMINATIONS Vs. VIPIN SHARMA, 2013 SCC OnLine Del 1345**, at paragraph no. 4 has observed as under:

*“The case of the respondent no.1 is that carrying the mobile phone inside the examination hall was an inadvertent act which was also be evident from the fact that he did not make an attempt to put the phone on silent mode. This is also an admitted position that no attempt was made by the respondent to use the mobile phone found in his possession, during the examination. The mobile phone was seized by the Invigilator from the respondent no.1 and, therefore, sim card of the phone was available with the appellant. No attempt was made by the appellant to find out, from the service provider as to whether any telephone call was made from or received at the mobile phone or respondent no.1 at any point of time during period of the aforesaid examination. In these circumstances, it cannot be said that respondent no.1 had made use of some unfair means during the aforesaid examination.”;*

the above observations come to the aid of the petitioner, whatever little differences apparent therein, piling into insignificance;

i) the contention of the learned Panel Counsel for the third respondent that a Four Member Committee conducted the enquiry and therefore, Court should be slow in interfering with such matters is a poor solace to the aggrieved student, when the records show that despite request for personal hearing, the same was denied with no justification whatsoever; a young student like the petitioner should not feel that her inner voice was not heard by the quarters concerned, the sense of justice being innate to such minds; the Constitution of India enshrines several Articles guaranteeing Rights & Privileges to children and these are complemented with numerous legislative and quasi-legislative measures keeping in mind India's 1992 ratification of the United Nations Conventions on the Rights of the Child, 1989 (UNCRC); a tender student even when delinquency is established, cannot be treated as an offender of the war crime; it hardly needs to be mentioned that all this has entered the framing of this judgment.

In the above circumstances, this writ petition succeeds; a Writ of Certiorari issues quashing the impugned

Memorandum; consequently, a Writ of Mandamus issues to the second & third respondents to announce the result of petitioner's Biology (044) examination held on 14.03.2020 and to issue to her the Statement of Marks, forthwith; a further direction issues to the Central Board of Secondary Education to organize necessary examination for the petitioner along with other such candidates if any so that they complete All India School Certificate (Main) Examination – 2020 with the same Syllabi and the Course Study, if they are otherwise eligible; this shall be done on or before 31<sup>st</sup> day of December, 2020.

Application in I.A.No.2/2020 pales into insignificance since the main matter itself is disposed off on merits, regard being had to the urgency.

No costs.

**Sd/-  
JUDGE**

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