
(2020) 08 DEL CK 0192

In the Delhi High Court

Case No : Civil Writ Petition No. 4403 Of 2020

Sanyam Gupta

APPELLANT

Vs

Central Board Of Secondary Education

RESPONDENT

Date of Decision : 14-08-2020

Acts Referred:

Citation : (2020) 08 DEL CK 0192

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Rishi Manchanda, Arun Kumar, Amit Bansal, Seema Dolo, Maninder Acharya

Final Decision : Allowed

Judgement

Prathiba M. Singh, J

1. This hearing has been done by video conferencing.
2. The present petition has been filed by the Petitioner - Mr. Sanyam Gupta, who is a student of Sri Venkateshwar International School, Dwarka and had appeared in the Central Board of Secondary Education ("CBSE") Class 12th examination held in February-March, 2019 and secured 95.25%. He decided to drop one year as he was desirous of obtaining admission in a premier college in the University of Delhi. The subjects he had taken in Class 12 were English Core, Economics, Physical Education, Business Studies, Accountancy and Mathematics.
3. In order to improve his score, the Petitioner decided to re-appear in Accountancy, English Core, Economics and Business Studies for an improvement examination. The improvement examinations for English Core, Accountancy and Economics took place on 27th February, 2020, 5th March, 2020 and 13th March, 2020 respectively. However, the Business Studies paper which was scheduled for 24th March 2020 was cancelled due to the lock down announced on account of COVID-19.

4. Mr. Manchanda, Id. Counsel appearing for the Petitioner has two prayers. First, is that his result for the improvement examinations ought to be declared and the second is that in respect of the cancelled paper of Business Studies, he should be treated at par with the regular students for whom an assessment scheme in respect of cancelled papers was approved by the Hon'ble Supreme Court vide its orders dated 25th June, 2020 and 26th June, 2020.

5. Mr. Bansal, Id. Counsel for the CBSE had appeared on advance notice and submitted on 21st July, 2020 that the result for the improvement examinations would be declared before 27th July, 2020. Accordingly, the matter was listed on 28th July, 2020 and the Court was informed that the result of the Petitioner has been declared. The Petitioner scored 99% in Accountancy, 98% in English Core and 92% in Economics. Mr. Manchanda submitted that the Petitioner has applied for revaluation in respect of his Economics paper.

6. Mr. Bansal had submitted that CBSE had taken a separate decision in respect of students who had appeared for the improvement examination. The assessment scheme which was placed before the Supreme Court was only in respect of Regular students who were unable to appear even once for the examination in subjects for which the exams were cancelled. CBSE was then directed to place on record the minutes of meeting held by CBSE in respect of assessment of students who appeared in the improvement examinations. On 29th July, 2020 minutes of meeting dated 9th July, 2020 were placed on record. The same revealed that CBSE had taken a specific decision in respect of improvement candidates. Mr. Bansal submits that the improvement candidates cannot be treated in the same manner as regular students who had approached the Supreme Court and for whom the scheme was formulated and approved on 26th June, 2020. His submission is that in the improvement examinations, there are several students whose marks are increased and there are several students whose marks would be decreased as well. As per Id. counsel, a student who appears in the improvement examination has to give up the marks already scored. In view thereof, if an order is passed directing en bloc that for cancelled improvement examinations, the average of the best of the two improvement examinations' score would be awarded, it may put the students, who may not even have appeared for the improvement examinations or whose examinations were cancelled, at a severe disadvantage. Mr. Bansal also informs the Court that the result committee, which had earlier taken the decision in the notification extracted in order dated 26th June, 2020 is the same result committee, which has thereafter taken the decision in respect of improvement students.

7. Mr. Bansal further submits that insofar as the candidates whose improvement examinations are cancelled are concerned, such candidates have the option of either dropping the improvement examination and retaining their old score or taking the improvement examination at a later stage, whenever it is conducted. Mr. Bansal has also made the submission that insofar as improvement students are concerned, they are entitled to apply for revaluation and the timelines for the

same have been extended in respect of the improvement students.

8. Mr. Manchanda, however, objects to the stand taken by CBSE. The first submission is that the scheme which was proposed by CBSE before the Supreme Court should apply en bloc to all the candidates, including the candidates who had appeared in the improvement examinations. According to him, if a particular improvement examination is cancelled, the score for the same is to be calculated by taking the average score of the best two improvement examinations. He submits that the Petitioner should not be deprived of the benefit given to regular students. Mr. Manchanda argues that after acceptance of the scheme in respect of cancelled examinations by the Supreme Court, there was no cause for CBSE to hold a separate meeting in respect of improvement students. Ld. Counsel further submits that the assessment scheme, as recorded in the minutes of meeting dated 9th July, 2020, is a complete after thought of CBSE as initially no separate scheme was proposed for improvement candidates. He submits that the manner in which the meeting has taken place has also cast a serious doubt as to the genuineness of the meeting dated 9th July, 2020. Ld. counsel submits that for the Business Studies paper of the Petitioner, the Petitioner ought to be awarded the average of 99% and 98% i.e., the average of his top two improvement exams. Ld. counsel also raises a doubt as to the minutes of meeting dated 9th July, 2020, by submitting that despite the said meeting, the results were not declared till 22nd July, 2020. As per him, this shows that the minutes were not in existence, though the result of the regular students was declared on 13th July, 2020.

9. On 29th July 2020, the matter was part-heard and Ld. Counsels sought time to cite certain judgements in support of their case. At that stage this Court had appointed Ms. Maninder Acharya Sr. Advocate as Amicus Curiae to assist the court.

10. Mr. Manchanda relies upon the judgments of this Court in -

? Nikhil Sharma v. Guru Gobind Singh Indraprastha University [W.P(C) No. 106012 of 2017, Decided on 15th March 2018] and

? Poonam v. Guru Gobind Singh Indraprastha University [W.P(C) No. 8242 of 2016, Decided on 3rd November 2016]

He submits that the CBSE Bye-laws permit candidates to rely upon both the marksheets i.e. first marksheet and the improvement marksheet. Both these judgments have held that since the CBSE Bye-laws do not prohibit the reliance upon either marksheet, the candidate has the choice to rely upon the marksheet which has better marks. The candidate therefore does not forfeit either of his marks. In the context of GGSIPU who was the Respondent in these cases, the admission booklet which provided that only the latter i.e. improvement marksheet would be considered was held to be invalid.

11. It is further submitted that even the IITs permits reliance on the better

marks, as is clear from the booklet of IIT JEE (Advanced) 2020 course. Question 43 of the Frequently Asked Questions in the said booklet, clarifies that the percentage marks of the candidates would be calculated on the basis of the higher marks when the candidate re-appears in the examination. Reliance is also placed on brochure of the National Institute of Open School which lays down that when a candidate appears for the improvement examination, the better of the results would be considered.

12. *Ld. Amicus* relying upon the said very two judgments submits that the Court has taken a liberal view in favour of the students to enable the students to rely upon the better marks which he or she has obtained. The law is well settled in the judgments of *Poonam (supra)* and *Nikhil Sharma (supra)* according to the *Ld. Amicus* that both the marksheets i.e. initial marksheet and the improvement marksheet would be valid.

13. Insofar as the scheme which was notified by the CBSE and approved by the Supreme Court is concerned, *Ld. Amicus* submits that the improvement candidates may not have been in the contemplation while approving the scheme. However, there is no reason why the benefit which has given to regular students, ought not to be extended to the improvement candidates. In the context of the present Petitioner, *Ld. Amicus* submits that the Petitioner has clearly sacrificed one full academic year for improving his scores in the examination and he registered to appear in four subjects to improve his score. In the improvement examinations where he was able to appear, his score has considerably improved in two subjects over his previous marks. She submits that he should not be deprived of the scheme of the CBSE, since fourth examination got cancelled.

14. *Mr. Bansal, Ld. counsel* submits that insofar as the Petitioner is concerned, the candidate was able to increase his marks in two of the papers and in one examination, the score was decreased. Thus, he submits that there are several similarly placed candidates who have appeared in the improvement examinations and the CBSE's formulation of the scheme was meant only for regular candidates and not for candidates appearing in the improvement examination.

Analysis and Findings

15. This Court has considered the rival contentions of both the parties. The CBSE conducts Class X and Class XII every year. Lakhs of students appear in these examinations. This year's examinations were scheduled between February-March 2020. Examinations for several subjects were conducted as scheduled. However, due to the sudden lockdown announced upon the outbreak of the COVID-19 pandemic, examinations for some subjects could not be held. Sometime in the end of May 2020, an announcement was made that the examinations which were cancelled would be held in July 2020. In June 2020 a writ petition came to be filed before the Hon'ble Supreme Court being W.P.(Civil) 566 of 2020. During the pendency of the said writ petition CBSE took a decision to cancel all the remaining examinations. It formulated an 'Assessment Scheme'

laying down the modalities for assessing students.

The said Assessment Scheme was presented as a draft Notification to the Supreme Court on 25th/ 26th June 2020. The Supreme Court approved the same vide order dated 26th June 2020. The relevant portion of the order reads:

"1. The core issue involved in these matters is about conducting examinations for classes X and XII of the Central Board of Secondary Education (CBSE) and the Indian Certificate of Secondary Education (ICSE) respectively.

2. As regards CBSE examinations, the CBSE has presented a draft notification for our consideration.

3. After perusing the same and taking into account the suggestions given by the counsel appearing for the concerned parties, we see no difficulty in permitting the CBSE to issue the said notification forthwith. The draft notification reads thus:

NOTIFICATION

Keeping in view the requests received from various State Governments and the changed circumstances as on date, following has been decided:-

1. Examinations for classes X and XII which were scheduled from 1st July to 15th, 2020 stand cancelled.

2. Assessment of the performance of students in the cancelled examinations will be done based on the assessment scheme as suggested by competent committee of the CBSE for declaration of result for both class-X and class-XII. The said scheme is mentioned in Para-7 below.

3. Results based upon the aforesaid assessment scheme will be declared by 15th July, 2020 so that candidates can apply and seek admissions in Higher Education Institutions in India and abroad, based thereon.

4. However, for Class-XII, CBSE will conduct an optional examination in the subjects whose examinations were scheduled to be conducted from 1st July to 15th July, 2020 as soon as conditions are conducive, as assessed and decided by the Central Government. Candidates whose results will be declared based on the assessment scheme will be allowed to appear in these optional examinations to improve their performance, if they wish so. However, the marks obtained by a candidate in these optional examinations will be treated as final for those who have opted to take these examinations.

5. For candidates in Class X, no further examinations will be conducted and the result declared by CBSE on the basis of assessment scheme will be treated as final.

6. For class-XII, the result declared by the CBSE under Sl. No. (2) above will be considered as final unless the students opt for Sl. No. (4) above.

7. Assessment Scheme:-

(a) For the students of both classes-X and XII, who have completed all their examinations, their results will be declared based on their performance in the examinations.

(b) For students who have appeared in the examinations in more than 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.

(c) For students who have appeared in the examinations in only 3 subjects, the average of the marks obtained in the best two performing subjects will be awarded in the subjects whose examinations have not been conducted.

(d) There are very few students of class-XII, mainly from Delhi, who have appeared in the examinations in only 1 or 2 subjects. Their results will be declared based on performance in the appeared subjects and performance in internal/practical project assessment. These students will also be allowed to appear in the optional examinations conducted by CBSE to improve their performance, if they desire to do so. Result of these students will also be declared along with other students.

4. Resultantly, all these petitions pertaining to CBSE examinations pending in this Court or any other Court shall be deemed to be disposed of in terms of the proposed notification to be issued by the CBSE.

5. Accordingly, if any other petition is pending in this Court or any other Court concerning the subject of conducting examinations for Classes X and XII by the CBSE scheduled from 1st July, 2020 to 15th July, 2020, the same will be governed by this order and the notification approved by this Court."

16. As per the above Scheme, the students were to be awarded marks for the cancelled examinations and promoted based on the average performance in the examinations where they appeared. The formula evolved was:

i. If a student had appeared in more than 3 subjects, in the subject for which the examination was cancelled, the average of the best three scores would be awarded;

ii. If a student had appeared in only 3 subjects, in the subject for which the examination was cancelled, the average of the best two scores would be awarded;

iii. In case of students who have appeared only in 1 or 2 subjects, results to be declared on the basis of the performance in the said subjects along with the internal/practical project assessments. Such students would have the option of appearing in the optional examinations to be conducted by CBSE for improving their performance if they so desire.

The contention of the Petitioner is that he has appeared in three subjects and the average of the best two scores ought to be awarded to him for the cancelled examination viz., Business Studies.

17. The question that arises is as to whether the regular students and students who appeared for the improvement examinations (hereinafter 'Improvement students') should be treated at par with each other and the assessment scheme approved for regular students should be applied for the Improvement students. The CBSE's stand is that they cannot be treated on par as the Improvement students have already had the opportunity to appear once in the examinations which the regular students did not have. The Assessment scheme is meant for students who were not able to appear for examinations even once. From a reading of the draft notification and the order of the Supreme Court, it is clear that the distinction between these two sets of students has not been raised by the CBSE before the Supreme Court when the CBSE's scheme was approved on 25th June, 2020 and 26th June, 2020. Thus, the orders of the Supreme Court did not make any reference to the improvement students.

18. Before proceeding to deal with the Petitioner's contention, another aspect as to the settled position qua Improvement examinations need to be highlighted. The CBSE's Bye-Laws deal with Improvement examinations as under:

"44. Improvement of Performance/Upgrading of Performance 44.1 Senior School Certificate Examination

(i) A candidate who has passed an examination of the Board may reappear for improvement of performance in one or more subjects in the succeeding year only; however, a candidate who has passed an examination of the Board under Vocational Scheme may reappear for improvement of performance in the main examination in the succeeding year or the following year provided they have not pursued higher studies in the mean time. They will appear as private candidates. Those reappearing for the whole examination may, however, appear as regular candidates also if admitted by the school as regular candidates. The candidate(s) appearing for improvement of performance can appear in the subject(s) in which they have appeared for the Examination.

(ii) For subjects involving practical work, in case the candidate has passed in practical at the main examination, he/she shall be allowed to appear in the theory part only and marks in practical obtained at the main examination shall 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.

(iii) Candidates who appear for improvement of performance will be issued only Statement of Marks reflecting the marks of the improvement examination.

(iv) A candidate appearing for improvement of performance in one or more subjects cannot appear for additional subject simultaneously.

(v) Candidates appearing in six subjects at the Senior School Certificate Examination having been declared 'Pass' by virtue of securing pass marks in five subjects as per Rule 40.1(iv) may appear in the failing main subject at the

Compartment Examination to be held in July the same year provided he/she had appeared at the Examination held in March in the said subject."

19. The above bye-laws were the subject matter of the judgements of this Court in Poonam (supra) and Nikhil Sharma (supra). In both these judgments, Id. Single Judges of this Court, in the context of CBSE Bye-laws have held that the students are entitled to rely upon the higher of the two marks and neither marks are forfeited by the students. In the judgment in Poonam (supra) the CBSE's stand was that if the student does not score better marks, the earlier marks are not forfeited. The relevant paragraphs of the judgment read as under:

"11. It is contended that for the Joint Entrance Examination (Main) Conducted by CBSE itself for admissions into Engineering programmes, it is clearly mentioned for 12th qualifying examinations, that the candidate willing to appear in the improvement examination to improve the qualifying examination marks, will have to appear in all the five subjects for improvement. The Candidate can appear for improvement in the succeeding year only. On the results being declared the candidate has to submit as to which year's qualifying examinations marks are to be considered for the purpose of declaration of final merit.

12. It is contended that the University has followed the practice of considering the last of the two marks sheet issued by CBSE. It is submitted that a number of candidates, who have got the second marks sheet upon improvement, approached the University for Admission in different courses. Those candidates who qualified for admission based on the improvement exam result have been given admission while those who did not qualify on the basis of improvement exam have not been given admission. It is contended that the University has followed this policy without any discrimination and has chosen to consider the marks which are later given by the CBSE and not better marks, out of the two.

13. It is submitted that applying the aforesaid policy, since petitioner had opted for improvement in Chemistry and Biology papers and the CBSE had issued the mark sheet stating "FT" i.e. Failed in Theory, the petitioner has been denied admission.

14. Learned counsel for the University conceded the fact that the said practise of considering the marks which are later given by the CBSE and not the better of the two marks is not incorporated in any bye law, rule or regulation and is also not part of the information bulletin issued by the University. Learned counsel for the University admitted that the candidates have not been put to notice of any such practise.

15. Learned counsel for CBSE submitted that when a candidate appears in an improvement examination, the mark sheet is issued only for the improvement paper and no consolidated mark sheet is issued.

16. Learned counsel for CBSE conceded that there is no bye law or rule to the effect that if a candidate opts for an improvement examination in a subject, he/

she would forfeit the result of the main examination. Learned Counsel further conceded, that if a candidate opts for an improvement examination but does not improve the marks, he/she can still rely upon the earlier result and the mark sheet because the original mark sheet is not cancelled by CBSE and continues to remain valid.

...

22. The Bye-Laws do not stipulate that a candidate who opts for an improvement examination forfeits the result of the earlier examination. Candidates are not even put to notice that if they opt to take an improvement examination, they would forfeit their earlier result.

23. There may be situations where a candidate fails in a paper of the main examination and per force has to appear in the improvement examination. In such a situation, the candidate has no option but to rely upon only the result of the improvement examination. But there may be situations where a candidate has otherwise passed the examination but for other reasons wishes to improve his/her result. In such situations, making a candidate forfeit the earlier result and that also without putting the candidate to notice that the earlier result would be forfeited would cause grave prejudice and hardship to the candidate.

24. There may also be cases, like the present, where a candidate opts for an improvement examination but on account of medical or other reasons absents himself/herself from appearing. For such candidates to forfeit the result of the main examination would be causing grave prejudice and hardship.

25. A candidate who has otherwise passed an examination and wishes to merely better the earlier performance, may not exercise such an option, if he/she were informed that the earlier result would be forfeited. Furthermore, the stand of the CBSE is not that the result of the earlier examination is forfeited. The stand is that they do not issue a consolidated mark sheet but issue a mark sheet of only the improvement examination. The candid admission on the part of CBSE is also that the earlier mark sheet is not cancelled and continues to remain valid. If the first mark sheet is not cancelled and remains valid, then the marks obtained by the candidate in the first examination would also stand and the candidate would be entitled to choose the better of the two, unless the same is excluded by any rule or regulation.

26. Post appearing in the improvement examination, candidates retain possession of both the mark sheets. As per both the counsel for the University and the CBSE, if a candidate appears in an improvement examination and he is not able to better his performance, that candidate can still seek admission by presenting his earlier mark sheet. If such a situation is acceptable, then how can the University refuse to accept the better of the two marks obtained by a candidate."

20. Reiterating the above view, in Nikhil Sharma (supra) another Ld. Single

Judge held:

"22. Having examined the aforesaid bye-laws and the decision of this Court in the case of Poonam (supra), I find that the role of the Respondent No. 1/ University was only to examine the results as provided by the CBSE, as it is only the CBSE which conducted the qualifying exam, based on the results whereof the Respondent No.1/University could determine whether a candidate meets the eligibility criteria or not. In my considered opinion, Respondent No.1/University cannot be allowed to go behind the marksheets issued by the CBSE or for that matter any other Board holding the qualifying exam. In view of the admitted position, that as per the CBSE both the Petitioner's marksheets are valid, the University cannot by introducing an instruction in its admission brochure, nullify the result of the candidate, which continues to be valid as per the CBSE since the candidate was merely given a chance to improve his result by taking an improvement exam. Learned counsel for the Respondent No. 1/University has not disputed the position that the result of the Petitioner's initial exam held in 2015 does not become invalid merely because he appeared in the improvement examination in 2016. I find that on the other hand, the position which emerges from a perusal of the bye-laws of the CBSE is that in such a situation, where a candidate appears for an improvement exam, his result/marksheet of the original examination remains fully valid.

23. Even though the learned counsel for the Respondent No.1/University has laid great emphasis on the fact that the said Instruction had clearly put the student to notice that only the result of the improvement examination would be considered, since it was a part of the admission brochure pursuant to which the Petitioner had applied for admission, I find merit in the submission of the learned counsel for the Petitioner that the said instruction virtually nullifies the policy of CBSE for holding of improvement exam. In my considered opinion, it is not at all open to the Respondent No.1/University to override the decision of CBSE and treat the result and marksheet of the original examination in which the Petitioner had appeared as invalid, merely because he appeared in an improvement exam. There can be no doubt about the settled legal position that Respondent No. 1/ University has full autonomy in respect of academic matters and the Courts ought not to interfere with the academic standards set up by educational institutions. However, the issue here is slightly different. While Respondent No.1/ University was fully justified in prescribing a particular eligibility criteria for admission and the same ought not to be interfered with lightly by the Court, the present case shows that the University seeks to ignore the result of the Petitioner's initial examination, which continues to be valid as per the CBSE and based on which the Petitioner has been declared as having passed in each subject of the Class 12th exam. Thus, it is not the eligibility criteria for admission but the manner in which the Respondent No. 1/University is insisting on ignoring a valid class 12th result and marksheet issued by CBSE, which is being examined by this Court. This action of the Respondents is wholly unfair, arbitrary and cannot be sustained. Instruction No. 17 issued by Respondent No. 1/University is

not only arbitrary and contrary to the CBSE bye laws, but is also discriminatory and unfair.

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29. Before I conclude, it would also be appropriate to deal with the various decisions relied upon by the learned counsel for the Respondent No. 1/University in support of her plea that the condition in the admission brochure is binding on the students. While there can be no doubt that the conditions in the admission brochure are binding on both the students and the Respondent No. 1/University, the Respondent No. 1/University cannot introduce such criteria in the admission brochure that are contrary to or inconsistent with the directions/rules/regulations of the various statutory/government bodies, including CBSE. The effect of Instruction 17 is that it virtually challenges the result declared by the CBSE, which alone is competent to decide whether the Petitioner had obtained the requisite marks in his Class 12 exams. Furthermore, in the case of an improvement examination the aforesaid instruction seeks to invalidate the first result, which result the CBSE has unequivocally declared to be valid in its bye-laws. Therefore, such an instruction in the admission brochure is wholly arbitrary, illegal and cannot be sustained."

21. Thus, as per the CBSE's Bye-law no. 44, insofar as Improvement examinations are concerned, the CBSE issues marks-sheet only for the subject where the student takes the improvement exam and not a consolidated marks-sheet for all the subjects taking into account the previous year's scores. Thus both the mark-sheets issued by the CBSE are valid. It is left to the student to rely upon whichever scores he/she wishes. Neither marks nor marks-sheet is forfeited. There is logic in this approach. The very purpose of Improvement examination as per Cl. 44(i) of the Bye-law is to give an opportunity to the student to improve the score. Improvement examinations are not meant to punish a student for taking the said exam. It is meant to encourage a student who wishes to aspire for better academic growth or career prospects to study better and give another shot at the examination to improve his marks. Thus, in a case where the student scores better in the Improvement examination, reliance can be placed on the same. In the same breath, if a student scores lesser, the earlier marks where he/she had scored better is not taken away. The legal position in respect of the Bye-laws relating to Improvement examinations of the CBSE, being now well-settled, does not require re-visiting by this Court.

22. The question that now arises is whether the CBSE's scheme which was approved by the Supreme Court should be extended to improvement candidates. There are various reasons why the students would give improvement examinations. The concept of improvement examination by its very terminology means that a student is trying to improve the score which he or she has earlier obtained so as to increase his percentage and to better his or her prospects for further studies. Improvement scores in examinations would enable the students to meet the extremely high cut-offs for admission to premier institutions in the

country where the difference in percentages is as low as 0.1%. Improvement examination scores may enable students to satisfy conditions imposed by Universities in India and abroad.

23. The general purpose of examinations is to evaluate students for their academic standards and their academic capability. Improvement examinations also have the same purpose. They are usually opted for by students by making sacrifices of an academic year or by putting in extra effort even while pursuing another course or while working. The purpose being of improvement, the candidate ought to be given the benefit of the better score, which he or she may achieve in the improvement examinations.

24. In the present case, the Petitioner has scored the following marks in his Class XII examination given in 2019 when he appeared for the first time.

Subject

Marks scored

English Core

96

Economics

95

Physical Education

86

Business Studies

95

Accountancy

95

Mathematics

95

25. In four subjects, he registered to appear for improving his scores. The purpose which the Petitioner has expressed is that he would like to study in the premier institutions of the Delhi University which have very high cut-offs marks as to be eligible for admission. For the said purpose, the Petitioner in fact sacrificed one full academic year only to focus on his studies and to improve his scores. The improvement examination which he had to take was in four subjects. However, he was only able to appear in three subjects, as the fourth paper i.e. Business Studies was cancelled due to the Covid-19 lockdown. The following are the scores which he achieved in the three subjects, for which he gave improvement examinations:

Subject

Marks scored In 2019

Marks in Improvement exam

English Core

96

98

Economics

95

92

Physical Education

86

Business Studies

95

Cancelled

Accountancy

95

99

Mathematics

95

26. The scores which he has achieved show that in two of the examinations he improved considerably and in one examination, he scored lesser. In the third examination i.e., Economics, where he scored lesser, the student is obviously entitled to rely upon his earlier score which he had achieved in 2019. The Petitioner is also stated to have applied for re-evaluation in the said subject. That is however not the concern of this Court in the present petition.

27. The decision taken by the CBSE on 9th July 2020 in respect of Improvement examinations reads as under:

"MINUTES OF THE MEETINGS OF THE RESULT COMMITTEE FOR SECONDARY SCHOOL (CLASS X) & SENIOR SCHOOL CERTIFICATE (CLASS XII) EXAMINATION, 2020 HELD ON 09.7.2020 AT 4.30 PM AT PREET VIHAR, DELHI

Following Members attended the meeting:

1. Shri Manoj Ahuja, IAS Chairman, CBSE

2. Shri Santosh Yadav, IAS Commissioner Kendriya Vidyalaya Sangathan, New Delhi
3. Shri Vipin Kumar, IAS Commissioner Navodaya Vidyalaya Samiti
4. Shri Binay Bhushan, IAS Director of Education
5. Mrs. Saroj Bala Sain, Addl. Director of Education (Schools) Directorate of Education Delhi
6. Shri Arumugam Joint Commissioner Navodaya Vidyalaya Samiti
7. Dr. (Smt.) V Vijaylakshmi Joint Commissioner Kendriya Vidyalaya Sangathan
8. Dr. Sanyam Bhardwaj Controller of Examinations CBSE

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ITEM V: TO CONSIDER DECLARING THE RESULT OF CANDIDATES WHO WERE TO APPEAR FOR IMPROVEMENT OF PERFORMANCE

Members were informed that above category of candidates also appear for the examinations conducted by the Board in February/March each year, both for Class XII & X. In 2020, out of the candidates registered, 4499 candidates were registered for Improving their performance in improvement category in class-XII. Examinations of some subjects were conducted and some were not conducted. Candidates applied in Improvement Category have appeared in the examinations conducted by the Board. The issue related to declaration of result of these candidates was discussed in detail and thereafter Committee resolved as under:

After deliberations and analysing the situation Committee resolved as under:

All candidates who have applied for appearing for Improvement of Performance following action be taken:-

- (i) their result of the subjects in which they have appeared be declared; and
- (ii) In remaining subjects they may be permitted to appear in the forthcoming examination to be conducted for Compartment candidates of 2020, if conducive OR in February/March, 2021."

28. As per the above, the only option for the Petitioner is to appear in the Business Studies examination whenever it is next conducted by the CBSE in 2020 or in February-March, 2021. The Petitioner submits that as per the Assessment Scheme he ought to be awarded the average of the best two scores and appearing in the examination ought to be only an option. This Court has to consider whether the Petitioner has to only appear in the examination as per CBSE's decision which may be conducted or would he be entitled to the benefit of the Assessment Scheme which was approved by the Supreme Court?

29. As per the said Scheme, for regular students who appeared in more than three subjects, the average of the best three performing subjects was to be

awarded for the cancelled examination. In the case of the students who appeared only in three subjects, the average of the best two performing subjects was to be given. If this formula is applied in the case of the Petitioner, who has appeared in three examinations, he would be entitled to average of the marks in the two best-performing subjects i.e. the average of the score in papers English Core and Accountancy.

30. This would give a considerable advantage to the Petitioner in his Business Studies paper which was cancelled i.e. instead of the earlier score of 95 marks he would now be entitled to the average of his score in English and in Accountancy which would be much higher.

31. The student having sacrificed one full year and also having improved his scores in two of the subjects to a much higher level than what he had scored in the previous year, in the opinion of the Court, there is no reason as to why he should be treated differently from the regular candidates. An improvement student is equally a victim of the pandemic just like a regular student. In the case of an improvement student like the Petitioner, the cancellation leads to a greater loss in as much as his entire effort and hard work for the last one year has been put to naught. The pandemic has affected one and all. If students have been able to appear in few examinations and for no fault of theirs, one of the examinations is getting cancelled, they should be able to score the average of their improvement scores in the improvement examination as per the scheme of the CBSE which has been approved by the Supreme Court. Thus, the Petitioner ought to be given benefit under the Scheme. Considering the submission of Mr. Bansal that there are 4,500 students who have given the improvement examination, there is no reason why improvement students should be treated any differently than the regular students since the pandemic has put them also to considerable disadvantage. Accordingly, it is held that the Assessment Scheme approved by the Supreme Court would also be applicable to Improvement students. Such students would also be entitled to avail of the scores as per the Scheme or appear for the optional examination whenever it is held by the CBSE. Let the corrected marksheet be issued to the Petitioner within a period of one week from today.

32. In case, any student's score is reduced in the improvement examination, by applying the said scheme, the said students would have the benefit of the legal position as set out in the judgments of Poonam (supra) and Nikhil Sharma (supra), i.e., they would be able to rely on the better of the scores. Insofar as the CBSE is concerned, the CBSE would apply the assessment scheme for release of the marksheets in the case of all improvement candidates in respect of their cancelled examination as well.

33. Let the consolidated mark sheet reflecting the scores in the Improvement examinations for all four subjects i.e., English Core, Economics, Business Studies and Accountancy after applying the Assessment Scheme dated 25th July 2020, be released within a week.

34. The Court records its appreciation for the Amicus Curiae and the Id. Counsels for the parties for the assistance rendered. Petition is allowed in the above terms.