

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 8787 of 2025****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE NIKHIL S. KARIEL**

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Approved for Reporting	Yes	No
	✓	
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AASIYABANU MOHAMMED AFZAL SHAIKH SINCE MINOR THROUGH
MOHAMMED AFZAL MOHAMMED YAKUB SHAIKH
Versus
STATE OF GUJARAT & ORS.

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Appearance:
RAFIK LOKHANDWALA(5590) for the Petitioner(s) No. 1
MR ADITYA PATHAK, ASST. GOVERNMENT PLEADER for the
Respondent(s) No. 1,2,3,4,5

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CORAM: HONOURABLE MR. JUSTICE NIKHIL S. KARIEL**Date : 07/07/2025****ORAL JUDGMENT**

1. Heard learned advocate Mr.Rafik Lokhandwala appearing on behalf of the petitioner and learned Assistant Government Pleader Mr.Aditya Pathak appearing on behalf of the respondent – State.

2. By way of this petition, the petitioner has sought for the following prayers:-

“(A) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to re-evaluate

Petitioner's Basic Mathematics answer-sheet for the examination dated 01.03.2025 and award marks affected by the confusion and ambiguous instructions in the question paper (Annexure "B"), in the interest of justice.

(B) Pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to direct the respondents to preserve the answer-sheet of mathematics for the examination held on 01.03.2025 for the purpose of re-evaluation, in the interest of justice. (Ann. B)

(C) Your Lordship may be pleased to pass any other and further orders as may be deemed fit and proper."

3. It is the case of the petitioner that the petitioner was studying in a 10th standard and had given her board examination in the month of March, 2025. It is the case of the petitioner that the question paper for the subject - Basic Mathematics contained ambiguous instructions namely the question paper at certain places mentioned that the questions were for visually impaired students. It is the case of the petitioner that the instruction did not spell out as to which questions were for visually impaired students namely the question which were preceding the instructions or the questions which were post the instructions.

3.1. It is the case of the petitioner that since she got

confused on account of instructions, she had attempted the questions which were for visually impaired students. It is the case of the petitioner that she had probably attempted 18 to 20 marks' questions which were for visually impaired students. It is the case of the petitioner that such questions not having been assessed, prejudice is caused to the petitioner.

3.2. It is further pointed out that the father of the petitioner had immediately, after examination was over i.e. on 04.03.2025, submitted a representation to the Gujarat Secondary and Higher Secondary Board and whereas, an application under the Right to Information Act was also filed by the father of the petitioner. It is submitted that having not received any reasonable reply / answer, the writ petition is filed.

3.3. Attention of this Court is also drawn to a public notice issued by the Gujarat Secondary and Higher Secondary Board whereby, the Board had taken remedial steps as regards such ambiguous instructions having been made in the 12th standard question paper.

4. Learned advocate Mr.Lokhandwala on behalf of the petitioner would take this Court specifically to the question paper more particularly to part-B of the question paper from questions 25 to 34 and from questions 34 to 37. Learned advocate would invite the attention of this Court to the instructions between question no.34 and 35 where it is mentioned “(only for visually impaired students)”. Learned advocate would also point out that such instructions were at certain other places in the question paper also. Learned advocate would submit that since the instructions did not mention as to whether the questions which were before the instructions or after the instructions, the petitioner having been confused, had attempted the questions which were for the visually impaired students.

4.1. It is submitted that the questions attempted by the petitioner not having been assessed by the respondent – Board, the petitioner had suffered loss of around 18 to 20 marks. Learned advocate would submit that as such, the very same issue had occurred insofar as the 12th standard examination and whereas, upon representations being received, the Board i.e. Secondary and Higher Secondary

Education Board had taken a decision that questions meant for visually impaired students having been attempted by non-visually impaired students also would be assessed and marks would be given to non-visually impaired students. Learned advocate would submit that the marks for the questions attempted by the petitioner not being given to the petitioner more particularly the question not having been assessed at all, grave prejudice has been caused to the petitioner.

5. Having heard learned advocate for the petitioner and having perused the documents on record, while it would appear to this Court that the petitioner may have a reasonable grievance, but, at the same time, such grievance has not resulted in any prejudice being caused to the petitioner and therefore, to this Court, it would appear that the present is not a fit case for issuance of a prerogative writ.

5.1. This Court reaches the above conclusion on the basis that from the mark-sheet, the petitioner appears to have secured 59 marks out of total 80 marks in the Basic Mathematics subject. It is informed that the petitioner has now joined 11th standard, probably in the commerce stream. It is also not the case of the petitioner that because of the lack

of marks, the petitioner who wanted to study in some other stream in the 12th standard, could not get appropriate admission; neither the same is the case made out from the pleadings of the petition nor is the same the case argued by learned advocate.

5.2. It also appears to this Court that marks of 10th standard examination, though very important to a student, would not be the criteria for any future admission (except for standard 11) or any future employment. It is also not the case as it appears that because of the non-consideration of the marks for the questions which the petitioner had attempted, though meant for students in the visually impaired category, the petitioner has failed in the examination. Thus, overall, it would appear that the petitioner though may have fallen short of some marks, if the best case of the petitioner is accepted, yet, it would not appear to this Court that any prejudice is caused to the present petitioner.

6. At this stage, this Court craves leave to refer to observations of the Hon'ble Supreme Court in case of **M.S.Sanjay vs. Indian Bank and others, reported in 2025 SCC OnLine SC 368**. Paragraphs no.9 and 10 being relevant

for the present purpose, are being reproduced hereinbelow for benefit:-

“9. It is well settled that interference by the Writ Court for mere infraction of any statutory provision or norms, if such in-fraction has not resulted in injustice is not a matter of course. In the case of Shiv Shanker Dal Mills v. State of Haryana reported in (1980) 2 SCC 437, the dealers in that case had paid market fees at the increased rate of 3%, which was raised from the original 2 per cent under Haryana Act 22 of 1977. The excess of 1 per cent over the original rate was declared ultra vires by this Court in the case of Kewal Krishna Puri v. State of Punjab reported in (1980) 1 SCC 416. The excess of 1 per cent over the original rate having been declared ultra vires, became refundable to the respective dealers from whom they were recovered by the Market Committee concerned. The demand for refund of the excess amounts illegally recovered from them not having been complied with, the dealers filed Writ Petitions under Article 32 and Article 226 of the Constitution for a direction to that effect to the Market Committee concerned. The Market Committees contended that although the refund of the excess collections might be legally due to the dealers, many of them had in turn recovered this excess percentage from the next purchasers. While disposing of the petition and laying down guidelines, this Court held as under:

“Article 226 grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the court, exercising this flexible power, to pass such order as public interest dictates and equity projects. Courts of equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go where only private interests are involved. Accordingly, the granting or withholding of relief may properly be dependent

upon considerations as of public interest.”

10. It has been rightly observed that legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal Court of Appeal, which it is not. It is a settled principle of law that the remedy under Article 226 of the Constitution of India is discretionary in nature and in a given case, even if some action or order challenged in the petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. ”

6.1. From the law laid down by the Hon'ble Supreme Court, it would appear that the writ jurisdiction under Article 226 of the Constitution of India granted to this Court is an extraordinary remedy which is discretionary in nature and whereas, Courts are empowered to pass such order as public interest dictates and equity projects. It is open for the Courts of equity to go further than the relief sought for or withhold relief in furtherance of public interest.

6.2. The Hon'ble Supreme Court has also laid down that directions should not be issued divorced from the realities of

the fact situation that while in a given case, the High Court would be justified in not taking a legal issue to its logical end if equitable considerations so demand, more particularly, since law has to be administered while tempering it with equity. It is observed that even if some action or order challenged in a petition is found to be illegal and invalid, High Court exercising its extraordinary jurisdiction would be justified to refuse or interfere with a view to do substantial justice between the parties.

6.3. Considering the fact situation from the perspective of the law laid down by the Hon'ble Apex Court, while it would appear that the petitioner may have a reasonable grievance to make, yet, issuing directions for reevaluation etc. could lead to a situation where the Board would be faced with similar request from thousands of students who had hereinbefore not raised any grievance as raised by the petitioner.

6.4. To this Court, it would appear that when after the results of standard 10th i.e. the examination in question where the students including the petitioner have already joined their new academic courses, it would not be in larger public interest to interfere in the present petition and thereby

opening the door for students like the petitioner to question the evaluation by the Board. As such, considering from the petitioner's perspective, as noticed hereinabove, he has not suffered any real or substantial prejudice on account of the error which may have been committed by the respondent Board. In the considered opinion of this Court, while the petitioner may have a case against the respondent Board, but, public interest and equity demand that there should not be any interference in the present petition.

6.5. On the other hand, as far as the substantive grievance of the petitioner is concerned, to this Court, it would appear that the same is absolutely justified. A perusal of the question paper reveals that the question paper contained random instructions below certain questions as being only for visually impaired students. This Court has perused the list of instructions contained in the question paper and whereas, the instructions have not specified as to whether the question preceding the instructions or the question post the instructions are for visually impaired students. Thus, a reasonable doubt would be caused in anyone's mind, more particularly a student appearing in the 10th standard

examination, as to whether the instructions would be relatable to the preceding questions or the later questions.

6.6. Thus, to this Court, it would appear that the respondent no.2 should have been alive to such a situation and should ensure that question papers in future, be it of standard 10th or standard 12th, such an ambiguity should not arise. The Board should ensure that question papers should specifically state at the commencement of the question paper the list of instructions as to which of the questions are only for visually impaired students. Furthermore, the instructions in the body of the question paper should specifically list out the questions which are meant only for the students having visual impairment. To this Court, it would appear that providing clarity to the students would go a long way in ensuring that the faith and trust placed by the students and parents all over the State in the Gujarat Secondary and Higher Secondary Board is justified.

7. Having regard to the above discussion, to this Court, it would appear that the following directions would meet with the ends of justice:-

The respondent no.2 is directed to ensure that for examination held in future, both for standard 10th and 12th, the list of instructions preceding the actual questions shall specifically state as regards the questions only to be attended by the visually impaired students. Furthermore, the general instructions in the body of the question paper shall also specifically mention the question numbers which are for the students having visual impairment.

8. With the above directions, the present petition stands disposed of.

Bhoomi

(NIKHIL S. KARIEL,J)