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

Reserved on:-16.02.2026.
Date of Decision:- 19.02.2026.

\+ LPA 72/2026, CM Nos.10422/2026 & 10423/2026
CENTRAL BOARD OF SECONDARY EDUCATION.....Appellant

Through: Mr. Chetan Sharma, ASG with Ms. Manisha Singh, ASC, Mr.Amit Gupta, Mr.R.V. Prahbhat, Mr.Shubham Sharma, Mr.Yashwardhan Sharma, Mr.Naman, Advs.

Versus

PRABHROOP KAUR KAPOOR & ORS. .....Respondents

Through:. Mr.Rajshekhar Rao, Sr.Adv. with Mr.Lzafeer Ahmad B.F., Mr.Karan Nambiar, Mr.Sachin Dubey, Mr.Shubham Arun, Mr.Abhir Malik, Advs for R-1-17.
Mr.Sahaj Garg, SPC with Mr.Deepansh Sharma, GP for R-18.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJAS KARIA

J U D G M E N T

DEVENDRA KUMAR UPADHYAYA, C.J.

1. The appellant-Central Board of Secondary Education (hereinafter referred to as CBSE) being an instrumentality of State within the meaning of Article 12 of the Constitution of India [as held in ***Jigya Yadav v. Central***

Board of Secondary Education& Others, (2021) 7 SCC 535], cannot be immune from judicial scrutiny of this Court under Article 226 of the Constitution of India as its actions are subject to part III of the Constitution of India. However, what we find in the facts of the present case is that by its action impugned in the proceedings of the writ petition before the learned Single Judge, CBSE sought to defeat the valuable rights of the respondent nos.1 to 17 (hereinafter referred to as 'students'), causing not only serious prejudice to them, but also jeopardising their educational career.

As this judgment progresses, it would reveal as to how there is hardly any sustainable challenge to the learned Single Judge's judgment (impugned judgment), which the CBSE can be said to make out in this intra-court appeal.

FACTS

2. Certain facts need to be noted:

2.1. For the purposes of conducting the examinations and admitting the students enrolled in the schools affiliated to CBSE, to the examinations conducted by it, Bye-Laws have been framed. These Bye-Laws are called Examination Bye-Laws of the CBSE and are effective from 31.01.1995. The Bye-Laws contain a specific provision in Clause 43(i), which permits a candidate, who has obtained minimum Grade 'D' in at least five subjects, to offer an additional subject as a private candidate provided that the additional subject is provided in the Scheme of Studies and is offered within six years of passing the examination of the Board. The Clause 43 of the Bye-Laws was amended in the year 2021 and the only change, which was affected in the existing Clause 43 was that the period of offering the additional subject was reduced to two years from six years of passing the examination of the Board. Clause 43 of the Bye-Laws is extracted hereunder:-

*"**43 Additional Subject(s)***

(i) A candidate who has obtained minimum Grade D in at least five subjects (excluding the 6th additional subject) under Scholastic Area A as per the Scheme of Studies and a Qualifying Certificate/Gradesheet cum Certificate of Performance at the Secondary School Examination/passed the Senior School Certificate Examination of the Board may offer an additional subject as a private candidate provided the additional subject is provided in the Scheme of Studies and is offered within six years of passing the examination of the Board. No exemption from time limit will be given after six years. Facility to appear in additional subject will be available at the main examination only.

(ii) However, candidates appearing in six subjects at the Senior School Certificate Examination having been declared 'Pass' by virtue of securing pass marks in five subjects, without replacement, may reappear in the failing sixth additional 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 additional subject."

2.2. The Circular dated 16.03.2021, whereby the alteration in the period for offering the additional subject from six years to two years was circulated to all the Principals and Heads of institutions is extracted hereunder:-

"CBSE/CE/2021/ Dated:16.03.2021

To

All the Principals/Heads of Institutions
Affiliated Schools, CBSE

SUBJECT: PERIOD FOR APPEARING IN ADDITIONAL SUBJECT-REG

Madam/Sir,

As per Examination Bye-Laws, a candidate who has passed Boards' Examination can apply or additional subject from the list of subjects within 06 years of passing the examination. However, candidate cannot apply for an additional subject involving practical work.

As per approval of the Examination Committee in its meeting held on 15th December 2020 and approval of the minutes in the Governing Body meeting of the Board on 23rd December,2020, the period for applying for additional subject(s) has been reduced from 06 years to 02 years only after passing the examination.

This rule will be effective from the 2021 examinations.

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CONTROLLER OF EXAMINATIONS"

2.3. The Governing Body of the CBSE in its meeting held on 26.12.2024 took a decision ratifying the decision of the Examination Committee, whereby the rule of offering additional subject has been discontinued and it has been provided that such students may go on to National Institute of Open Schooling (hereinafter referred to as 'NIOS') for appearing for additional subjects. The relevant minutes of meeting of the Governing Body held on 26.12.2024 is extracted herein below:-

"***ITEM : EC 4.17***
OFFERING ADDITIONAL SUBJECT BY PRIVATE CANDIDATES.

Background
The members were informed that that Examination Byelaw quotes-
"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 Secondary School Certificate Examination or All India/Delhi Secondary School Examination of the Board. A candidate who had failed at the 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. Such candidates as per Chapter 7 Part ***43. Additional Subject(s) mentions that A*** *candidate who has passed the Secondary/Senior School Certificate Examination of the Board may offer an additional subject as a private candidate provided the additional subject is provided in the Scheme of Studies and is offered within SIX YEARS of passing the examination of the Board.* ***No exemption from time limit it will be given after six years****. Facility to appear in additional subject will be available at the annual examination only."*

This clause was amended allowing such candidates to appear for Additional Subjects for a period of 2 years after passing the board examination. The Circular for Private students issued by the Board dated 11/09/2024 mentions the same as –

ADDITIONAL SUBJECT	*Students who have passed Board's Examination can apply for an Additional subject from the list of subjects enclosed, within 02 years of passing the examination (students who have passed in 2023 or2024 are eligible to apply). However, students cannot apply for a subject involving practical work. Students is allowed to take subjects having project component.*

This clause is in contradiction to its own self as most subjects at present contain a theory and a practical/project or internal Assessment component.

It will be implemented from 2025-2026 session, if agreed upon.

In the Examination Committee the matter was discussed at length and opined that offering additional subjects by private candidates can be discontinued and such students may go to NIOS for appearing for additional subjects.

Decision

The Governing Body ratified the recommendations of Examination Committee."

2.4. As averred on behalf of the appellant, by the said resolution of the Governing Body, Clause 43 of the examination Bye-Laws was scored off. According to the appellant, resolution of the Governing Body of the CBSE passed in its meeting held on 26.12.2024 was approved by the Controlling Authority of the CBSE, namely the Secretary, Department of School Education and Literacy, Ministry of Education, Government of India, on 22.01.2025. It is also the case set up by the appellant that on receipt of the approval of the amendment from the Controlling Authority, it was published on the website of the CBSE under the tab i.e. 'Governing Body Minutes' on 27.02.2025. The fact that the amendment in the Bye-Laws as per the resolution of the Governing Body of the CBSE dated 26.12.2024 was published on 27.02.2025 is, however, being disputed by the students.

2.5. The bone of contention between the appellant and the students is as to whether posting the decision of the Governing Body on the website on 27.02.2025 will or will not amount to its publication to the general public so as to make the general students aware of such an amendment in the Bye-Laws.

2.6. The students passed their Class XII examination in the years 2024 &

2025. With a view to improve their chances of pursuing higher studies, they put one or two years for preparing to appear in the 'additional subject' examination conducted by the CBSE in view of the provisions of the unamended Clause 43(i) of the examination Bye-Laws. On 04.09.2025, the CBSE issued a public notice for submission of examination forms by private candidates for Class XII examination of 2025-2026. This public notice dated 04.09.2025, however, did not contain the option of 'additional subject' category for private candidates, who had already passed their Class XII examination in the previous years and, as is the case set up by the students, were eligible to appear for additional subject in conformity with unamended Bye-Law 43(i) of the Examination Bye-Laws. The 'additional subject' category in the said public notice dated 04.09.2025 was not included.

2.7. The respondent no.1, on noticing that 'additional subject' category has been eliminated from the public notice dated 04.09.2025, made a representation to the CBSE via e-mail dated 12.09.2025 bringing to its attention removal of the 'additional subject' category, which was responded to by the CBSE on 12.09.2025 itself, stating therein that any student, who has passed Class X or XII examination cannot be allowed to appear as a private candidate in any new subject, which was not offered by a student in Class X or XII.

2.8. Thereafter, the CBSE issued a formal public notice on 15.09.2025 giving in detail the essential requirement for appearing in the Board examination conducted by it. From the said public notice dated 15.09.2025 the 'additional subject' category was missing. The students, therefore, filed the underlying writ petition, namely W.P.(C) 15086/2025, with the prayer to quash the notifications dated 04.09.2025 and 15.09.2025 to the extent it

excluded the 'additional subject' category for private candidates from appearing in the examination. The learned Single Judge, elaborately dealing with the respective contentions of the parties, has allowed the writ petition *vide* impugned judgment dated 05.02.2026 and directed the appellant to take steps within three working days to make necessary arrangements for registration of the students for 'additional subject' examination.

2.9. The judgment and order dated 05.02.2026 states that the judgment was passed in the peculiar facts of the case, wherein the students are graduates of Class XII of 2025 batch, however by means of a subsequent order passed on 06.02.2026 on C.M. APPL. 8495/2026 the learned Single Judge clarified that the judgment shall include the students who have cleared their Class XII, both in 2024 and 2025. The said clarification appears to be in tune with what has been envisaged in Clause 43(i) of the Examination Bye-Laws where the 'additional subject' category students are permitted to take the examination in the additional subject within two years from the date they passed their Board Examination. It is this judgment and order passed by the learned Single Judge, which has been assailed in the instant intra-court appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

3. Mr.Chetan Sharma, learned Additional Solicitor General assisted by Ms.Manisha Singh, learned Additional Standing Counsel for the appellant-CBSE has vehemently argued that the learned Single Judge has completely erred in law by allowing the writ petition and permitting the students to take the 'additional subject' examination completely ignoring the amendment, which was brought into the Examination Bye-Laws by means of the decision of the Governing Body of the CBSE taken in its meeting held on 26.12.2024 as approved by its Controlling Authority, namely the Secretary,

Department of School Education and Literacy, Ministry of Education, Government of India. It has been vehemently contended by Mr.Chetan Sharma that without there being any challenge to the aforesaid amendment in the Bye-Laws, the prayer made in the writ petition could not have been granted at all. It is his contention that the learned Single Judge has granted the prayers to the students, which are *dehors* the Examination Bye-Laws, which, according to him, stood amended on approval accorded to the decision of the Governing Body resolution dated 26.12.2024, by the Controlling Authority on 22.01.2025.

4. It has further been argued on behalf of the appellant that the plea taken by the students that they were entitled to the relief on the basis of *doctrine of legitimate expectation* is absolutely misconceived for the reason that *doctrine of legitimate expectation* does not have any application in case a policy decision is taken in public interest. His contention is that the resolution passed by the Governing Body of the CBSE was taken to give effect to the provisions of the National Education Policy, 2020 and, therefore, exclusion of the 'additional subject' category from examination of the CBSE is in public interest and, hence, the plea of *legitimate expectation* is not available to the students, however learned Single Judge has placed reliance on the said doctrine which vitiates the impugned judgment and order.

5. Mr.Sharma has stressed that as a matter of fact, by exclusion of 'additional subject' category from the examination of the CBSE no prejudice is caused to the students for the reason that they can take 'additional subject' examination conducted by NIOS and in absence of any prejudice being caused to them, it cannot be said that any of their vested right was infringed by not permitting the 'additional subject' category students in the examination of

the Board. He has further contended that it is settled principle of law that in absence of any enabling provision permitting the relief prayed for, the same cannot be granted. In this context, it has been argued that once the provision permitting private candidates to opt for 'additional subject' examination was deleted by way of amendment in Bye-Laws, the relief as granted by the learned Single Judge by the impugned judgment and order could not have been granted for the reason that it will have the effect of setting the said amendment to naught though there was no challenge in the writ petition to the said amendment.

6. Further submission on behalf of the appellant is that, as held in ***All India Council for Technical Education v. Surinder Kumar Dhawan & Ors. [(2009) 11 SCC 726]***, the Court should be reluctant in interfering with the education policy for the reason that such policies should be left to the experts, who are supposed to be the best judge of the subject. Submission in this regard further is that no policy can be static which needs to be changed according to the changing needs of the society and keeping in view the National Education Policy promulgated in the year 2020, the provision for permitting private candidates to take 'additional subject' examination has been deleted, which is a policy decision and, therefore, the learned Single Judge without testing the validity of the amendment could not have granted the relief by passing the impugned judgment and order.

SUBMISSIONS ON BEHALF OF THE STUDENTS

7. Mr.Rajshekhar Rao, learned Senior Advocate representing the students has, however, opposed the appeal and has submitted that the issue as is being projected by the appellant in this appeal, never arose in the facts of the case. According to him, the students never challenged the amendment brought

about in the examination Bye-Laws by the resolution of the Governing Body of the CBSE dated 26.12.2024. In his submission, he further stated that the question which actually emerged and which in fact needed to be decided by the learned Single Judge was as to whether the amendment brought into the Bye-Laws by the resolution dated 26.12.2024 passed by the Governing Body of the CBSE became enforceable and effective without its publication for bringing such amendment to the notice and knowledge of general public or students, who are effected by such amendment.

8. Mr.Rao has further submitted that it is not in dispute that the Governing Body of the CBSE passed the resolution on 26.12.2024 eliminating the category of 'additional subject' for private students, however it was approved by the Controlling Authority only on 22.01.2025. His submission is that before 15.09.2025 the said amendment was never published. In this context, he has argued that publication of the resolution of the Governing Body, dated 26.12.2024 on the website of the CBSE on 27.02.2025, cannot in any manner be construed to be publication of the amendment brought into the Bye-Laws. His submission in this regard further is that it is the community of the students, who had passed the Board examination in the year 2024 and 2025 and were intending to take the 'additional subject' examination in the year 2026, which is the most impacted by the amendment in the Bye-Laws and, therefore, for bringing such amendment into force it was legally incumbent upon the CBSE to have published the same in a manner, which would have made such publication accessible to the students.

9. Mr.Rao has further argued that any student, intending to take any examination conducted by the CBSE, will search the provisions of the Bye-Laws on the website under the tab 'Bye-Laws' or any other related term

close to 'Bye-Laws'. Such a student, he submits, will not click the tab 'Governing Body Minutes' on the website of the CBSE and, therefore, any posting of the Minutes of the Meeting of the Governing Body dated 26.12.2024 on the website under the tab 'Governing Body Minutes' cannot, in any manner, be considered to be a publication of the amendment in the Bye-Laws. It is his submission that for the first time the said amendment was brought to the notice of the general public was by way of notification dated 15.09.2025 and not before that. He has also argued that in past all amendments in the Bye-Laws were appropriately published by the appellant. He has handed over copies of such amendments brought in the Bye-Laws in past, which were distinctly notified and such notification included the existing clause and the amended clause. One such notification dated 28.02.2022 whereby amendment in Clause 42(iv) of the Examination Bye-Laws was made effective is being extracted herein below:-

"CBSE/COORD/Amendment/EC/Item-29/2021-22/

28.02.2022

NOTIFICATION

The following amendment in Examination Byelaws has been approved in the meeting of Examination Committee on 20/01/2022 and ratified in the meeting of the Governing Body meeting convened on 01/02/2022:

Existing Clause 42(iv)	***Amended Clause 42(iv)***
For subjects involving practical work at the Senior School Certificate Examination, if a candidate has passed in practical at the main examination, he/she shall	*For subjects involving practical work at the Senior School Certificate Examination, if a candidate has passed in practical at the main examination, he/she shall appear only in theory part*

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 s/he has already cleared the theory examination.***	*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 practical examination only and previous theory marks will be carried forward and accounted for.*** ***The cases of absent in practical shall be dealt with in the same manner as the cases of absent in theory are being dealt with.***

(sd)
CONTROLLER OF EXAMINATIONS"

10. In the background of the aforesaid facts, it has been argued on behalf of the respondent-students that they have been preparing for a year or two since they passed their Class XII examination in view of what was envisaged in unamended Clause 43(i) of the Examination Bye-Laws, in the hope that they shall be taking the 'additional' subject examination. It is also the submission on behalf of the students that the amendment in the Bye-Laws, as per the decision of the Governing Body held on 26.12.2024, shall have prospective application from the date of its publication for the reason that in case it is applied retrospectively, the same shall harm the right of those students who have been preparing for a year or two based on the provisions contained in unamended Bye-Law 43(i) and any change during mid-session will not be permissible as it takes away the right available to them under the unamended Bye-Law.

11. Regarding invocation of the *doctrine of legitimate expectation* it has been argued by Mr.Rao that the said doctrine can be invoked as a substantive and enforceable right and that the principle of *legitimate expectation* is founded on reasonableness and fairness and in the instant case the said doctrine can be taken aid of keeping in view the fact that the students on the basis of unamended Clause 43(i) of the Bye-Laws had the *legitimate expectation* that they shall be permitted to appear in the 'additional subject' examination and denying the same would not only defeat the said doctrine but would also be absolutely arbitrary and unreasonable.

DISCUSSION

12. The issue which needs our consideration in this case is as to whether in absence of proper publication of the amendment in the Bye-Laws whereby the 'additional subject' category for private candidates has been eliminated, it can be said that such amended Bye-Law came into force and operation, as a result of which the relief to the respondents-students could be denied?

13. As already noticed above, the amendment in the Bye-Laws as per the resolution of the Governing Body of the CBSE dated 26.12.2024 impacted those students, who have put in one year or two years in their preparation to take the 'additional subject' examination for the purposes of making their prospects of better higher education in view of what was envisaged in the unamended Clause 43(i) of the Bye-Laws and, therefore, any notification of such amendment in the Bye-Laws by way of appropriate publication or promulgation bringing such amendment to the notice of the students, in our considered opinion, was essential. The contention of the appellant that such amendment was notified or published by posting the minutes of the Governing Body on 27.02.2025 on the website of the CBSE, in our

considered opinion, cannot be said to be appropriate publication of such amendment in the Bye-Laws so as to enable the affected students to come to know of such amendment.

14. The resolution of the Governing Body of the CBSE dated 26.12.2024 was approved by the Controlling Authority only on 22.01.2025, however no amendment in the Bye-Laws was notified or published by any means, not even by posting such amendment in the 'Bye-Laws' on the website of the CBSE. What all was done was that on 27.02.2025, the CBSE posted the resolution dated 26.12.2024 passed by the Governing Body deciding to amend the Bye-Law eliminating the 'additional subject category' for private candidates on their website under the tab 'Governing Body Minutes'. Any student intending to appear in the 'additional subject' category examination of the CBSE can be expected to search the Bye-Laws under the tab 'Examination Bye-Laws' on the website of the CBSE. For searching any provision in the amended or unamended Examination Bye-Laws, student would not go to the tab under 'Governing Body Minutes' available on the website of the CBSE. As per the information available on the website of the CBSE, even for exploring the Governing Body Minutes on the website a person has to undergo clicking successive tabs. In this factual situation, contention of the learned ASG that the amendments in the Bye-Laws were appropriately publicised or published or notified cannot be accepted on any count whatsoever.

15. It is also to be noticed that it has been consistent practice of the appellant of uploading any change in the Examination Bye-Laws after being resolved by the Governing Body and approved by the Controlling Authority on its website distinctly from uploading minutes of meeting of the Governing

Body. Considering this past practice, if the CBSE intended to bring into force the amendment in the Bye-Laws w.e.f. 2026 Examination, they ought to have uploaded the amendment in the Examination Bye-Laws under an appropriate tab on the website, well in advance so that the students, who are expected to appear in the 'additional subject' examination as private candidates in 2026, would have made their conscious and informed choice of not sitting at home preparing for the 'additional subject' examination. By not appropriately publicising the amendment in the Bye-Laws, in our opinion, a huge prejudice had been caused to those students, who in view of what Bye-Law 43(i) envisaged prior to its amendment, were preparing for a year or two for the 'additional subject' examination for private candidates. Such an insistence on the part of the CBSE to apply the amendment in the Bye-Laws for the current examination, depriving the students who had passed their Board Examination in 2024 and 2025, from appearing in the 'additional subject' category, is thus absolutely arbitrary and unreasonable.

16. Regard in this respect may be had to a decision of Hon'ble Supreme Court in ***B.K. Srinivasan and Others v. State of Karnataka and Others, (1987) 1 SCC 658,*** where it has been held that those who are governed by any law, whether Parliamentary or subordinate legislation, must be notified directly and reliably of the law and changes and additions made to it by various processes. It has been further observed that law, viewed from any angle, must be known, that is to say, it must be so made that it can be known. Noticing the nature of delegated or subordinate legislation, the Hon'ble Supreme Court went on to observe that delegated or subordinate legislation is all-pervasive and there is hardly any field of activity where governance by delegated or subordinate legislation is not more important than governance by

Parliamentary legislation. The Court further holds that unlike Parliamentary legislation, which are publicly made, delegated or subordinate legislations are often made unobtrusively and, therefore, it is necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner. The Court further observed that if the subordinate legislation does not prescribe the mode of publication it will take effect only when it is published through the customarily recognised official channel, namely the official gazette or some other reasonable mode of publication. Such observations are very relevant to be noticed in the context of the facts of the present case, which are embodied in paragraph 15 of the report that reads as under:-

> "***15.*** *There can be no doubt about the proposition that where a law, whether parliamentary or subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and additions made to it by various processes. Whether law is viewed from the standpoint of the "conscientious good man" seeking to abide by the law or from the standpoint of Justice Holmes's "unconscientious bad man" seeking to avoid the law, law must be known, that is to say, it must be so made that it can be known. We know that delegated or subordinate legislation is all-pervasive and that there is hardly any field of activity where governance by delegated or subordinate legislative powers is not as important if not more important, than governance by parliamentary legislation. But unlike parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of*

publication or promulgation that mode must be followed. Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the Official Gazette or some other reasonable mode of publication. There may be subordinate legislation which is concerned with a few individuals or is confined to small local areas. In such cases publication or promulgation by other means may be sufficient. [Narayana Reddy v. State of A.P., (1969) 1 Andh WR 77]."

17. If the submission of the appellant in respect of publication of the amendment in the Bye-Laws by posting the Minutes of the Governing Body of the CBSE dated 26.12.2024 is viewed and analysed in view of what has been held by Hon'ble Supreme Court in ***B.K. Srinivasan (supra)***,what we find is that such mode of publication cannot be termed to be a reasonable mode of publication and, therefore, such amendment in the Bye-Laws cannot be held to have taken effect from the date of publication of the Minutes of Meeting dated 26.12.2024 on the website of the CBSE under the tab 'Governing Body Minutes' on 27.02.2025.

18. As already observed above, which view is supported by what has been enunciated by Hon'ble Supreme Court in paragraph 15 of the judgment in ***B.K. Srinivasan (supra)***,the amendment as per the resolution of the Governing Body of the CBSE dated 26.12.2024 impacted the students the most, especially those who had devoted one or two years in preparation for taking the 'additional subject' examination in view of Clause 43(i) of the Examination Bye-Laws and, therefore, it was incumbent, necessary and

obligatory on the part of the CBSE to publish the amendment in the Bye-Laws in a manner which would have made such amendment appropriately known to the students, who are affected by such an amendment. Only if the amendment in the Bye-Laws were made known to the students by any appropriate mode of publication can it be said that the mode adopted would have been reasonable.

19. For the reasons stated above, we find that there was no publication in the eye of law, of the amendment in the Bye-Laws as per the resolution of the Governing Body of the CBSE dated 26.12.2024 before 15.09.2025 and as such the same would not have impacted the right of the respondents-students to appear in the 'additional subject' examination as a private candidate. In the facts of the case, the amendment in the Bye-Laws can be said to have come into effect and operation only from 15.09.2025 and not before that and since the respondents-students had passed their Class XII examination in the year 2024 and 2025, i.e. prior to 15.09.2025, applying such amendment to the students in our opinion is unreasonable which defeats their right which is otherwise available to them under Clause 43(i) of the Examination Bye-Laws.

20. Mr.Chetan Sharma, learned ASG had laid great emphasis on inapplicability of the doctrine of *legitimate expectation* to the facts of the instant case by submitting that the doctrine of *legitimate expectation* cannot be put to service by asserting a right in case of change of policy made in public interest. The said submission in our opinion is flawed for the reason that jurisprudence surrounding the doctrine of *legitimate expectation*, which is a principle of administrative law, has come a long way as developed by various judgments of Hon'ble Supreme Court.

21. In ***Monnet Ispat and Energy Limited v. Union of India & Ors. [(2012)***

11 SCC 1] Hon'ble Supreme Court, after a thorough review of various judgments surrounding the principle of *legitimate expectation*, has come to the conclusion that doctrine of *legitimate expectation* can be invoked as a substantive and enforceable right. The judgment, however, proceeds further to observe that where decision of an authority is founded in public interest as per the executive policy or law, the Court would be reluctant to interfere with such decision by invoking the doctrine of *legitimate expectation*. Paragraph 188 of the judgment in ***Monnet Ispat and Energy Limited (supra)*** is extracted herein below:-

> "***188.*** *It is not necessary to multiply the decisions of this Court. Suffice it to observe that the following principles in relation to the doctrine of legitimate expectation are now well established:*
> ***188.1****. The doctrine of legitimate expectation can be invoked as a substantive and enforceable right.*
> ***188.2****. The doctrine of legitimate expectation is founded on the principle of reasonableness and fairness. The doctrine arises out of principles of natural justice and there are parallels between the doctrine of legitimate expectation and promissory estoppel.*
> ***188.3****. Where the decision of an authority is founded in public interest as per executive policy or law, the court would be reluctant to interfere with such decision by invoking the doctrine of legitimate expectation. The legitimate expectation doctrine cannot be invoked to fetter changes in administrative policy if it is in the public interest to do so.*
> ***188.4****. The legitimate expectation is different from anticipation and an anticipation cannot amount to an assertable expectation. Such expectation should be justifiable, legitimate and protectable.*
> ***188.5****. The protection of legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words, personal benefit must give way to public interest and the doctrine of legitimate expectation would not be invoked which could block public interest for private benefit*."

22. The Apex Court in ***Sivanandan C.T. & Ors. v. High Court of Kerala***

& Ors. [(2024) 3 SCC 799] has held that significant developments in jurisprudence pertaining to doctrine of *legitimate expectation* have taken place which emphasise on predictability and consistency in decision-making as a facet of non-arbitrariness. It has further been held in the said judgment that the doctrine of substantive *legitimate expectation* is entrenched in Indian administrative law and further that the said doctrine can be successfully invoked by individuals to claim substantive benefits or entitlements based on an existing promise or practice of the public authority. ***Sivanandan C.T. (supra)***, however, clarifies that the said doctrine cannot serve as independent basis for judicial review of decisions taken by public authorities. The Court further goes on to observe the fact that *legitimate expectation* is not a legal right, though it is an expectation to avail a benefit or relief based on an existing promise or practice. The Court further states that any decision by a public authority to deny *legitimate expectation* may be termed as arbitrary, unfair or abuse of process, the validity of the decision itself can only be questioned on established principle of equality and non-arbitrariness under Article 14.

23. In ***Army Welfare Education Society v. Sunil Kumar Sharma& Ors. [(2024) 16 SCC 598]*** Hon'ble Supreme Court has summarised various features of doctrine of *legitimate expectation* and has stated that *legitimate expectation* must be based on a right as opposed to a mere hope, wish or anticipation and further that *legitimate expectation* must arise from an express or implied promise. The Court further goes on to observe that *legitimate expectation* can be taken as a plea when a public authority breaches a promise or deviates from consistent past practice without any reasonable basis. Paragraphs 62, 63 and 64 of the report in ***Army Welfare Education Society***

(supra) are extracted herein below:-

> "***62.*** *In Jitendra Kumar v. State of Haryana [(2008) 2 SCC 161 : (2008) 1 SCC (L&S) 428], this Court, while differentiating between legitimate expectation on the one hand and anticipation, wishes and desire on the other, observed thus:*
>
> *"58. … A legitimate expectation is not the same thing as an anticipation. It is distinct and different from a desire and hope. It is based on a right. [See Chanchal Goyal v. State of Rajasthan {(2003) 3 SCC 485 : 2003 SCC (L&S) 322} and Union of India v. Hindustan Development Corpn. {(1993) 3 SCC 499}] It is grounded in the rule of law as requiring regularity, predictability and certainty in the Government's dealings with the public. We have no doubt that the doctrine of legitimate expectation operates both in procedural and substantive matters."*
>
> ***63.*** *A reading of the aforesaid decisions brings forth the following features regarding the doctrine of legitimate expectation:*
>
> ***63.1.*** *First, legitimate expectation must be based on a right as opposed to a mere hope, wish or anticipation;*
>
> ***63.2.*** *Secondly, legitimate expectation must arise either from an express or implied promise; or a consistent past practice or custom followed by an authority in its dealings;*
>
> ***63.3.*** *Thirdly, expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be treated as a legitimate expectation;*
>
> ***63.4.*** *Fourthly, legitimate expectation operates in relation to both substantive and procedural matters;*
>
> ***63.5.*** *Fifthly, legitimate expectation operates in the realm of public law, that is, a plea of legitimate action can be taken only when a public authority breaches a promise or deviates from a consistent past practice, without any reasonable basis.*
>
> ***63.6.*** *Sixthly, a plea of legitimate expectation based on past practice can only be taken by someone who has dealings, or negotiations with a public authority. It cannot be invoked by a total stranger to the authority merely on the ground that the authority has a duty to act fairly generally*
>
> ***64.*** *The aforesaid features, although not exhaustive in nature, are sufficient to help us in deciding the applicability of the doctrine of legitimate expectation to the facts of the case at hand. It is clear that*

> *legitimate expectation, jurisprudentially, was a device created in order to maintain a check on arbitrariness in State action. It does not extend to and cannot govern the operation of contracts between private parties, wherein the doctrine of promissory estoppel holds the field*."

24. From the discussion on the doctrine of *legitimate expectation* made above, what we find is that a mere hope or expectation is not a feature on the basis of which a right can be claimed by any person, rather, such expectation can be said to be legitimate only if it is based on some right or on a promise made by the State or its instrumentality. In the instant case, the right available to the students to appear in the 'additional subject' examination as a private candidate existed in what Clause 43(i) of the Examination Bye-Laws of the CBSE envisaged and based on such right, the respondents-students took a conscious decision not to take further admission in any higher education course and rather to prepare for 'additional subject' examination to be held in the year 2026. Accordingly, it cannot be said, in the facts of the present cases, that the doctrine of *legitimate expectation* is being invoked on mere expectation, rather it is being invoked, and rightly so, on the basis of right available to the students under Clause 43(i) of the Examination Bye-Laws. On the basis of such stipulation in Clause 43(i) of the Examination Bye-Laws, the students, instead of taking admission to higher courses, decided to appear in the 'additional subject' examination as a private candidate and, therefore, defeating such a right on the basis of the resolution of the Governing Body of the CBSE dated 26.12.2024, which was not appropriately notified/published/promulgated, the impugned action on the part of the appellant is absolutely arbitrary and unreasonable. In the facts of the case we safely conclude that there was a right available to the students as

per Clause 43(i) of the Examination Bye-Laws and denial of such right does not have any reasonable basis and, therefore, in view of the law surrounding *legitimate expectation* as discussed above, the insistence on the part of the appellant not to allow the students to appear in the 'additional subject' examination in the year 2026, is violative of principle of non-arbitrariness in State actions as entrenched in Article 14 of the Constitution.

25. We may also notice that for praying for the effective relief, so that the students are permitted to take the 'additional subject examination' as a private candidate in the year 2026, it was not necessary for them to have challenged the amendment in the Bye-Laws as per the resolution of the Governing Body of the appellant dated 26.12.2024. In fact, no such challenge was made by the students in the proceedings of the writ petition before the learned Single Judge. The question of validity of such amendment does not arise here at all. The question which arises and which has appropriately been addressed by the learned Single Judge by passing the impugned judgment and order is the applicability of the amended Bye-Law as per the resolution of the Governing Body of the CBSE dated 26.12.2024.

26. Insistence on the part of the appellant-CBSE to make effective and apply the amendment in the Bye-Laws as per the resolution of the Governing Body dated 26.12.2024 without its proper publication or without such amendment having been made known to the students prior to 15.09.2025, in our considered opinion, suffers from grave arbitrariness, jeopardising the educational career of the students and bringing the preparation of two years or one year of the students to a naught. The amendment in the Bye-Laws as per the resolution of the Governing Body of the CBSE dated 26.12.2026 will become effective and operational only from its publication or promulgation in

a reasonable manner as per the law declared by Hon'ble Supreme Court in ***B.K. Srinivasan (supra)***.

CONCLUSION

27. In view of the discussions made and reasons given above, we conclude that the instant intra-court appeal lacks merit, which deserves to be dismissed.

28. Resultantly, the appeal is dismissed along with pending application.

29. We reiterate the direction issued by the learned Single Judge in the impugned judgment and order that requisite steps shall be taken by the appellant-CBSE to make necessary arrangements for registration of the students for 'additional subject' examination forthwith, say within three working days from today, if such arrangements have already not been made.

30. There will be no orders as to costs.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TEJAS KARIA)
JUDGE

FEBRUARY 19, 2026
S.Rawat