

(2021) 08 KL CK 0186

In the High Court Of Kerala

Case No : Writ Petition (C) Nos.13129, 15971 Of 2021

Devika Ajay

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 31-08-2021

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(a), 21, 21A
Disaster Management Act, 2005 — Section 20(3), 39

Citation : (2021) 08 KL CK 0186

Hon'ble Judges : Raja Vijayaraghavan V, J

Bench : Single Bench

Advocate : Ajaya Kumar. G, M.Jayakrishnan, T.B Hood

Final Decision : Dismissed

Judgement

Raja Vijayaraghavan V, J

1. Six students studying in Plus One class have approached this Court with these writ petitions impugning notification dated 28.5.2021 issued by

General Education Department of the State by which the First Year Higher Secondary Examination has been scheduled to be held from 6.9.2021 to

16.9.2021. The petitioners have sought for quashing the notification and cancel the Plus One final examination for the academic year 2020-2021. In

one of the writ petitions, directions have been sought to the Board of Higher Secondary Examinations to frame a guideline for conducting Plus One

Final Year examinations internally in each school.

2. In view of the commonality of the issues raised, both these writ petitions are taken up and disposed of together with the consent of the contesting

parties. For the sake of ease and clarity, the pleadings and Exhibits in W.P.(C) No.15971/2021 shall be mainly referred to in this judgment.

3. The petitioner is stated to be a student studying in the Umbichy Hajee Higher Secondary School at Chaliyam in Class XI, Commerce batch. It is

contended that due to COVID - 19 pandemic, tutoring for Classes XI and XII are conducted online. Due to poor electronic connectivity, network

range issues and the non-availability of electronic devices, the studies of the petitioner has been adversely affected. It is contended that there are other

students in the school who suffer the same handicaps.

4. The respondents have scheduled the First Year Higher Secondary Terminal Evaluation (TE) from 6.9.2021 to 16.9.2021 as is evident from Ext.P2

notification. The notification was issued without considering the gravity of the COVID-19 pandemic situation prevalent in the State of Kerala.

5. The petitioner contends that to secure the life and health of citizens and to keep the pandemic at bay, the 4th respondent had issued Ext.P3 order

imposing complete lockdown from 8.5.2021 to 16.5.2021 by invoking the powers under Section 20 (3) of the Disaster Management Act, 2005. The

lockdown was later extended in phases till 9.6.2021. It was only by Ext.P4 order dated 31.5.2021 that the 4th respondent had permitted certain

Government departments to function with 50% attendance, that too, from 7.6.2021. According to the petitioner, Ext.P2, which is seen published on

31.5.2021, is clearly against the directions imposed under Ext.P3.

6. The petitioner contends that the 4th respondent has reassessed the situation of the spread of the pandemic and the Test Positivity Rate in various

Districts and have issued Ext.P5 order fixing guidelines and directions and detailing the permitted activities. Those guidelines are still in force. The 4th

respondent had granted permission to conduct the examination only after the issuance of Ext.P5. According to the petitioner, the decision taken by the

respondent to conduct the examination was without any application of mind or after discussion with Government agencies. They have ignored the dire

situation prevailing in the State.

7. The petitioner contends that he is a resident of the Kadalundi Grama Panchayat, which is included in the 'A' category by the 4th respondent

as the Test Positivity Rate (TPR) in the area is above 15%.

8. The petitioner further contends that he is residing in a coastal area where internet connectivity is very poor. He has not been able to attend the

online classes regularly due to the above fact. The classes for Class XII

commenced on the last week of June 2021 and the scheduling of the final year exam of Class XI while the classes for XII are going on will result in untold misery to the students. Though he had a smartphone when the classes commenced, the phone got damaged and he was not in a position to purchase a new phone due to financial difficulties. According to the petitioner, the online classes are not very effective and students who are better placed and financially well off will have an unfair advantage. It is contended that even during discussions in the assembly, the digital divide prevailing in the State was highlighted and though it was assured that no efforts shall be spared to bridge the divide, nothing worthwhile has happened. The petitioner refers to Ext.P8 and P9 proceedings to substantiate the said contention.

9. According to the petitioner, the COVID -19 cases in the State have risen to alarming proportions and the Test Positivity Rate is also very high. As the students pursuing class XI are largely unvaccinated, they are very vulnerable to the virus. It is contended that the decision of the respondents to conduct the class and examinations would affect the life and health of the students.

10. The Central Board of Secondary Education had cancelled the public examinations for Class X and XII and had adopted a scheme for internal evaluation of students in the COVID-19 pandemic situation, which scheme was approved by the Honâ??ble Supreme Court of India. It is contended that some of the students intervened in W.P.(C) No.620 of 2021 pending before the Honâ??ble Supreme Court and by Ext.P10 order, the Apex Court refused to examine the grievance of the students of the State of Kerala who wanted to pursue XI standard examination and they were directed to approach this Court and raise all the contentions. The decision to conduct class XI examination while COVID-19 cases are peaking and the State is readying itself to face the third wave of the pandemic is an erroneous approach and violative of the rights of the students under Article 14, 19(1)(a) and 21 of the Constitution of India.

11. The very same contentions are advanced in W.P.(C) No 13129 of 2021 filed by a few Plus Two students.

12. In W.P. (C) 15971/ 2021 the reliefs sought for by the petitioner are as follows:

a) issue a Writ of mandamus directing the second and third respondents to frame a guideline for conducting class XI final year examinations internally on each school

wise and direct not to conduct centralised class XI final year examinations as in Exhibit P 2;

b) issue a Writ of certiorari and quash Exhibit P 2 as it violate Article 14, 21 and 21 A of Constitution of India and the Disaster Management Act, 2005;

13. In W.P.(C) No.13129/21, the petitioners have sought the following reliefs:

a) to issue a Writ of mandamus or any other appropriate Writ direction or order, directing the respondents to cancel the plus one final examination for the academic

year 2020 &" 2021 and follow the scheme adopted by the CBSE Board for the conduct of examination of plus one class and thereby ensuring the bright future of the

plus one students.

14. Counter affidavit has been filed in W.P. (C) No. 13129 of 2021 which was adopted in the other Writ petition.

15. It is stated in the counter that the 2nd respondent issued Exhibit P1 notification on 28/05/2021 for conducting the first year higher secondary

examinations from 06/09/2021 to 16/09/2021. As per the notification, only those candidates who have undergone Continuous Evaluation (CE) for all

the six subjects shall be eligible to appear for terminal evaluation of the first year higher secondary examination. Some of the petitioners have got

themselves registered for the Plus One examination after completing their continuous evaluation. COVID-19 pandemic has created an unprecedented

situation across the world and new methods had to be devised for imparting education. Classes had to be conducted in online mode to prevent the loss

of one academic year for the students. All efforts were taken to provide access to digital classes to all the students. The classes were imparted

through VICTORS, a Television Channel owned by the Kerala Infrastructure and Technology for Education (KITE for short), a Government of

Kerala establishment, set up to foster, promote and implement the modernisation of educational institutions in the State using technology. The Class X

and Plus Two classes were conducted through digital platforms during the academic year 2020-2021. The Secondary School Leaving Certificate

(SSLC) and Plus Two examinations were held in the State in April 2021 after

ensuring that all safety measures are taken to prevent the spread of COVID-19 infections. The Plus One examination was also scheduled in the month of April & May 2021. However, in view of the rising number of COVID-19 cases, it became difficult to conduct Plus One and Plus Two examinations simultaneously and hence Plus One examination was postponed. As the examination dates were announced well in advance, the students got enough time for preparation.

16. The form and structure of the Plus One examination had to be changed substantially in view of the COVID-19 scenario. The examination was decided to be held as per the curriculum that has been completed online. Sufficient opportunities have been provided to the students to attend the classes in digital mode and to interact with teachers through various online methods. The services of the State Council for Educational Research and Training (SCERT) were availed to isolate a focus area of the syllabus and as per the inputs received, Exhibit R2(a) circular dated 02/08/2021 was issued to all schools by the Director General of Education. Only questions from the focus area will be given prominence in the Plus One examination.

It has also been decided to double the questions so that the students need to attend only 50% of questions to be eligible to get full marks in each of the subjects.

17. The Plus Two online classes were stopped on 31/07/2021. Plus One revision class commenced on 2.8.2021 and it is stated to continue till 14/08/2021. In addition, the Higher Secondary Directorate proposed to conduct a weeklong live phone-in program through VICTORS channel to enable the students to clarify their doubts. Plus Two classes will be resumed only after the end of the Plus One examination.

18. From the year 2009, Plus One Board Examination is conducted in the State and the marks scored in the Plus One examination are added to the Plus Two marks to determine the eligibility of the candidates for higher studies. Plus One examination is normally conducted in the month of March and improvement examinations during the month of September/October of each year. However, owing to the pandemic, Plus One examination had to be postponed and in view of the above, the students got enough time to prepare for the examination. The students who failed in the previous Plus Two examinations need to pass Plus One and Plus Two examinations in the subjects in

which they had failed. So, if the Plus One examination notified as per Exhibit P1 is not conducted, it would adversely affect their chances to pass and complete the course by 2021â"2022. Further, as per G.O(M.S) 173/2021/G. Edn dated 05/08/2021, the last chance to write Plus Two examination for students, who have not been eligible for higher studies in the Higher Secondary Examinations held from March 2009 to March 2016, is the Plus Two examination to be held in the month of March 2022. To appear in the Plus Two examination in the month of March 2022, it is mandatory for those students to write the Plus One examination notified as per Exhibit P1. According to the respondent, if the Plus One examination is not conducted as per Exhibit P1 notification, those students will suffer serious hardship.

19. The SSLC and Plus Two examinations were conducted in April 2021 after taking all safety measures. In July 2021, the APJ Abdul Kalam Technological University conducted Engineering examinations in offline mode. In the days just passed, nearly One lakh students appeared for the Engineering Entrance examinations held offline. Plus One examination can also be conducted by adhering to all Covid-19 protocols brought out by the Government and by following the guidelines of the health authorities as was done for the earlier examinations. Separate arrangements can be made for those students who are Covid positive or who are in quarantine and for students who show any symptoms of Covid. It is stated that several measures are proposed to be taken for the safety and health of the students, teachers and others involved in the Plus One examination process. The measures taken have also been detailed which are as follows:

A. Examination hall, furniture and school compound will be cleaned and scrutinised/sanitized. For this, the service of the Health Department, Parent Teacher

Associations (PTA), Fire Force, Local Self-Government Institutions and Volunteers will be availed. The furniture in the examination hall will be sanitised before each examination.

B. The entry of the students to the examination centre will be allowed only through the main entrance, where non-teaching staff, health workers and members of the

PTA will be deployed for providing sanitiser/soap and water to the students and

to check the temperature of the students using a thermal scanner.

C. Classrooms with proper air circulation and adequate light will be used for examination. Air-conditioned rooms will not be used. The maximum Number of students

accommodated in a room will be twenty (20). The Superintendent and Deputy Chief superintendent will ensure that students properly wear masks and maintain social

distancing in the examination centre. Classes on health and safety measures will be provided to the teachers who perform examination duties.

D. The Chief Superintendent will take necessary steps to provide PPE kits for Covid positive students and their invigilators. Separate classrooms will be arranged for

students with temperatures above normal level and for those showing symptoms of any diseases.

E. Exchange of items like pen, pencil, calculator etc among students will not be permitted.

F. Notice board will be placed in the examination centre showing dos and donâ??ts for protection from Coronavirus.

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20. More than 4 lakh students all over the State are expected to appear for the Plus One examinations. No corroborating materials have been

produced to show that the students faced difficulties during online classes and the allegations raised are all general in nature. Any interference will

derail the academic schedule and cause hardships to such students. The respondent contends that the grievances raised by the petitioners are very

general in nature and is unsubstantiated.

21. I have heard Sri Ajayakumar and Sri. Legith T. Kotakkal, the learned counsel appearing for the petitioners and Sri T. Hood, the learned Senior

Government Pleader.

22. Sri. Ajayakumar, the learned counsel submitted that in view of the dire situation prevailing in the State, there was no justification on the part of the

respondents to insist that the Plus One Examination should be held. It would be risky for the students to congregate in examination halls and there is

every likelihood that the conduct of examination would be a super spreader event. He would also highlight the trauma likely to be faced by the

invigilators and all others who would have a role in efficiently conducting the exams. According to the learned counsel, most of the students of Plus

One had to encounter huge difficulties due to lack of electronic gadgets, absence of internet access and failure to take part in the tutorial activities for

various reasons. The learned counsel pointed out that other Boards have cancelled the exams and have decided to evaluate the students in other

manners. As all the students would be competing together for professional and other courses, the students from other Boards would have a headway

when compared to students pursuing the State syllabus. Furthermore, the students will have to appear for the exams when classes for Pus Two are

going on. This would create undue strain on the students and may even lead to them getting poor marks due to lack of preparation. All these aspects

would adversely affect the future of the students and their career prospects.

23. Sri. Legith T. Kottakkal, the learned counsel, after reiterating the contentions advanced by Sri Ajayakumar submitted that the decision taken by the

respondents to conduct the examinations in physical mode, when the effects of the pandemic are wreaking havoc in the State, is a thoroughly unwise

decision, taken with absolute disregard to the safety of the students. According to the learned counsel, the right to life guaranteed under Article 21 of

the Constitution would be violated. The learned counsel urged that it was under Section 39 of the Disaster Management Act, 2005 that Exhibit P3

notification was issued on 6.5.2021. There are no materials to suggest that respondents 2 and 3 were exempted from Exhibit P3 and they were bound

to strictly comply with the directions so issued. However, ignoring Exhibit P3, Exhibit P2 was issued. On that sole ground Exhibit P2 is liable to be

quashed, contends the learned counsel. The learned counsel urged that the lack of digital devices and poor internet connectivity in various parts of the

State has created an unbridgeable digital divide. According to the learned counsel, this aspect was admitted by the Chief Minister of the State on the

floor of the house. However, no concrete action was taken by the State to equip poor and disadvantaged students and to bring them at par with

affluent students. It is submitted by the learned counsel that the scores obtained by the First Year Higher Secondary examination will be carried

forward to the second year and the combined scores and grades obtained shall determine the eligibility of the candidate for higher studies. Exhibit P2

would show that the respondents have not provided an option for the students to improve the score obtained for the first year examination. It is

contended that various areas in the State are reeling under the effects of the Pandemic conducting the exams during this period will entail serious consequences.

24. Sri. Hood, the learned Senior Government Pleader, while vehemently opposing the submissions, submitted that all aspects of the matter were taken

note of by the Government in conjunction with experts in the Education sector while taking the decision to hold the exams. He would point out that the

apprehension expressed by the petitioners are misconceived. Several 1000 students are eagerly waiting to test themselves in the exam and the

petitioners do not represent such students. He would refer to Exhibit R2(a) and it was pointed out that the respondents took note of the difficulties

faced by the students and the SCERT was asked to identify focus areas and teachers were asked to give emphasis on those areas. The focus areas

have been carefully chosen in such a manner that they will aid the students in brushing up the Plus Two subjects. The school authorities have been

intimated that questions from those focus areas will be given prominence in the Plus One exams. Furthermore, in an unprecedented manner, the

students have the option of answering just 50% of the questions to be eligible to get full marks for each of the subjects. The learned counsel would

then point out that Plus Two classes were stopped to enable the students to prepare for the Plus One examination and classes are slated to commence

only after the exams. The predicament of the students who have failed and those students who have not been eligible for higher studies from 2009

onwards is also highlighted by the learned counsel. The experience gained by the State in conducting SSLC, Plus Two and Engineering Entrance

examinations are emphasized by the learned counsel to hammer home his contention that the apprehension of the students is misconceived. According

to Mr. Hood, none of the petitioners has a case that at any point of time, they have informed either the respondents or the School concerned that they

are unable to access the classes for lack of devices or poor internet connectivity. They cannot come and paint a different picture or raise the cause of

other students. It is submitted that if the conduct of the exams is interfered with, the whole admission process would get derailed and the same would

affect the interest of the entire student community.

25. I have carefully evaluated the contentions advanced and have gone through the records.

26. About six students have approached this Court seeking cancellation of the Plus One exams. I find that it was by notification dated 28.5.2021 that

the respondents have scheduled the conduct of the First Year Higher Secondary Examinations to be held from 6/9/2021 to 16/9/2021. It appears from

Ext.P2 that the scores obtained from the First Year Exams are to be carried forward to the second year and the combined scores of First and Second

Year Examinations and grades obtained thereupon shall determine the eligibility of the candidate for higher studies. The respondents have decided that

there shall not be any practical evaluation for the First Year exams. From Exhibit R2 (a), it appears that the difficulties faced by the students as well

as various other aspects were considered by the respondents while taking a decision to hold the exams. For each subject, the SCERT has formulated

focus areas and the students need to concentrate only on such areas. To make it simpler, what is envisaged is that double the questions would be

offered to the students and they are required to answer only 50% of the questions to secure full marks. As classes for Plus Two had commenced, to

ensure that the students are not subjected to serious strain, steps have been taken to put the classes on hold till the Plus One exams are completed.

These steps taken amply shows that, unlike previous years, the students will not have much difficulty while facing the exams.

27. I find it difficult to appreciate the contention of the petitioners that the decision to conduct the exams was taken by the respondents without much

deliberation and without any concern for the health of the students. I find that Ext.P2 notification was issued as early as 28.05.2021 fixing the date of

exams in the month of September. From the materials made available, it appears that serious efforts have gone in to make sure that the students are

not unduly strained and at the same time the process of examination goes on. The schools have been told to concentrate on certain focus areas and

they have been informed that the questions will be asked only from those areas. The students have been given the option of attempting only 50% of

the questions to gain 100% marks. The fact that tutoring through the online mode is not as effective as in the physical mode was taken note of. The

respondents also took note of the fact that students who had failed in the earlier exams and who want to pursue further studies will be adversely

affected if physical exams are not held. This is clearly a matter of policy of the Government and it is obvious that much deliberation has gone into the

same. Once the Government after discussion with the experts in various fields decides to go forward with the exams with due regard to all aspects of

the matter unless the petitioners are able to show that there is malafides, or arbitrariness, this Court will not be justified in interfering with the conduct

of exams. The interference of Courts is neither warranted to look into the quality of material relied upon by the Government to approach a decision

nor to adjudicate upon the sufficiency of such material. These matters are of a subjective character and if the legislature permits subjective powers on

one organ of the State, this Court in the exercise of its powers of judicial review is not expected to substitute its own subjective opinion in its place.

The Court may interfere when a decision is devoid of any reason or affected by malafides or when the decision is reached in the aftermath of

statutory violations. In other words, the formation of the opinion/satisfaction by the Government about the conduct of the exam is a purely subjective

process and if the materials show that the opinion was reached in good faith, it is immune from judicial review.

28. The next contention of the petitioners is that the conduct of physical exams would violate their right to life. The respondents have narrated the

steps that they have taken to ensure that the exams are held in a safe and protected environment, and they have asserted that all measures shall be

taken to protect each and every child. I find that the State has conducted SSLC, Plus Two and the Engineering Entrance exams successfully. Several

lakhs of students have attended the exams and the petitioners have not even stated that the conduct of the exams as aforesaid led to any unforeseen

consequences. I am, in the facts and circumstances, not impressed with the contention that by conducting the exams, the constitutional rights of the

petitioners would be violated. The Pandemic is here to stay and as rightly submitted by the learned Senior Government Pleader, the life must go on.

Except for a handful of students, no one has come forward seeking to cancel the exams. From the records, it appears that the students pursuing the

State syllabus will have an opportunity to score well if some effort is put in and not the other way around.

29. The next contention is that due to lack of digital gadgets, poor internet connectivity etc. some of the students were not able to participate in the classes. The petitioners have not produced any corroborating materials to substantiate their contentions except the excerpt of proceedings of the assembly. The petitioner in W.P.(C) No.15971 of 2021 have not even approached the respondents or the school authorities at any time prior to the filing of the writ petition asserting that he is not having the necessary equipment to access the online classes. The parent of one of the petitioners in W.P.(C) No.13129/2021, who is an advocate by profession, is stated to have sent a mail, stating that his child has not been able to properly engage in online classes. In other words, none of the petitioners had a case that they have suffered in their studies due to lack of gadgets or connectivity. It is too late in the day to raise such contentions before this Court.

30. The contention of the petitioner in W.P.(C) No.15971/2021 that the decision to conduct the Plus One exam is ultra vires the provisions of Act 53 of 2005 cannot be accepted. I find that by Ext.P5 order dated 15.6.2021, the DMA, has permitted the conduct of all National and State level public exams including Sports Section Trials from the date of the order. The scheduling of the examination was from 6.9.2021 to 16.9.2021 and no exception can be taken on the same.

31. I also find that a writ petition was filed in Public Interest as WP (C) No.17399/2020 seeking to quash the Government Circular dated 18.8.2021 as per which the First Year Higher Secondary Model examination was scheduled to be held from 3.8.2021 to 4.9.2021 and also to quash the notification which is impugned in this Writ Petition as per which, the conduct of the main exam was scheduled. A Division Bench of this Court refused to interfere holding that the petitioner in the said writ petition had failed to establish any arbitrariness or illegality on the part of the respondents.

Having considered the matter from all perspectives, I am of the considered opinion that the petitioners have not made out any case for interference.

These writ petitions are accordingly dismissed.