

(2020) 07 GUJ CK 0017

In the Gujarat High Court

Case No : R/Writ Petition (PIL) No. 88, 92, 98 Of 2020

Rahul Sharma, I.P.S (Retd.) S/O (Late) Shri Nanheshwar
Sharma

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 07-07-2020

Acts Referred:

Constitution Of India, 1950 — Article 21, 226

Citation : (2020) 07 GUJ CK 0017

Hon'ble Judges : Vikram Nath, CJ; J.B.Pardiwala, J

Bench : Division Bench

Advocate : Manisha Lavkumar Shah, Aishwarya Gupta

Final Decision : Disposed Of

Judgement

J.B.Pardiwala, J

1 Since the issues raised in all the captioned writ applications are by and large the same, those were heard analogously and are being disposed of by this common judgement and order.

2 For the sake of convenience, the Writ Petition (PIL) No.88 of 2020 is treated as the lead matter.

3 By this writ application under Article 226 of the Constitution of India filed in public interest, the writ applicant, a practicing advocate appearing in person, has prayed for the following reliefs:

â??â??A. Admit AND ALLOW this petition;

B. Issue the writ of mandamusâ?? or any other appropriate writ, order or direction, to quash and set aside the impugned resolution, dated 24.05.2020, of the respondent, in so far as

it prescribes for the conduction of examination in the physical form, it being ultra

vires, the provisions of The Disaster Management Act;

C. Direct the Respondent to follow the Guidelines, issued under Orders passed by the government of India under the disaster management act, 2005 strictly, in letter and in spirit,

especially in respect of dealing with educational institutions;

D. By way of interim relief, direct the respondent to issue appropriate directions to all universities within its jurisdiction so as not to conduct examinations in the physical form till the

disposal of this petition;â??

4 The concern expressed by the writ applicant, in public interest, is one relating to the modalities to be adopted for the conduct of the University Examinations for the academic sessions 2019â20,

which were to commence from 25th June 2020. The writ applicant seeks to question the legality and validity of the resolution dated 24th May 2020 issued by the Education Department of the

Government of Gujarat. By the impugned resolution, a policy decision has been taken by the State Government to conduct the examinations in physical form.

5 Mr. Sharma, the learned counsel appearing in person vehemently submitted that the impugned resolution dated 24th May 2020 violates the directions issued by the Government of India under the

Disaster Management Act, 2005 and also the circulars / notifications issued by the Home Department of the Government of Gujarat for the control of the COVIDâ19 pandemic. Mr. Sharma

would argue that the orders passed under the Disaster Management Act, 2005 have an overriding effect over any other law for the time being in force. Mr. Sharma, in the course of his arguments,

pointed out many practical difficulties, which the students are likely to face, if they are asked to appear in the examination, as indicated in the impugned resolution. In short, the sum and substance

of the submissions of Mr. Sharma is that it is not possible or rather advisable to conduct examinations in physical form. His argument is that by asking the students to assemble at one particular

place for the purpose of physical examination may amount to exposing the students directly to the virus. Exposing any student to the risk of a disease is violative of Article 21 of the Constitution of

India.

6 In such circumstances referred to above, Mr. Sharma prays that appropriate

Universities in view of COVID-19 Pandemic

Respected Madam / Sir,

The University Grants Commission (UGC) Has Issued Guidelines On Examination And Academic Calendar For The Universities In View Of COVID-19 Pandemic And Subsequent Lockdown

On 29th April, 2020. In These Guidelines It Was Proposed To Conduct The Examinations In July 2020. The Said Expert Committee Was Requested To Revisit The Guidelines For Examinations

And Academic Calendar As The Number Of Covid Cases Are Still Rising And Likely To Increase Further. The Report Of The Expert Committee Was Considered And Approved By The

Commission In Its Emergent Meeting Held On 6th July 2020.

In Continuation To Earlier Guidelines Issued On 29.04.2020 And Based On The Report Of The Expert Committee, The UGC Revised Guidelines On Examinations And Academic Calendar For

The Universities In View Of COVID-19 Pandemic Were Also Approved By The Commission In Its Emergent Meeting Held On 6th July 2020. A Copy Of The Same Is Enclosed.

In View Of The Emerging Situation Related To COVID-19 Pandemic In India, It Is Important To Safeguard The Principles Of Health, Safety, Fair And Equal Opportunity For Students. At The

Same Time, It Is Very Crucial To Ensure Academic Credibility, Career Opportunities And Future Progress Of Students Globally. Academic Evaluation Of Students Is Very Important Milestone In

Any Education System. The Performance In Examinations Gives Confidence And Satisfaction To The Students And Is Reflection Of Competence, Performance And Credibility That Is

Necessary For Global Acceptability. UGC Is Constantly Making Efforts To Address Various Issues Related To Teaching, Learning Examinations, Academic Calendar Etc. In The Difficult Times

Of COVID-19 Pandemic.

The Commission Approved The Recommendations Of The Expert Committee Regarding Conduct Of Terminal Semester(S) / Final Year(S) Examinations By The Universities / Institutions To Be

Completed By The End Of September, 2020 In Offline (Pen & Paper) / Online / Blended (Online + Offline) Mode.

The Guidelines Regarding Intermediate Semester / Year Examination, AS Notified

On 29.04.2020 Will Remain Unchanged.

The Relevant Details, If Need Be, Pertaining To The Admissions And Academic Calendar In The Universities And Colleges Shall Be Issued Separately In Place Of Those Mentioned In The

Earlier Guidelines Issued On 29th April 2020.

You Are Requested To Adopt The Above Guidelines And Complete The Terminal Semester(S) / Final Year Examination Accordingly. It Is Reiterated That The Universities Should Give

Paramount Importance To Health And Safety Of Students, Faculty And Staff And Adhere To The Government Protocols / Guidelines Related To COVID-19 While Conducting The

Examinations.

10 Ms. Shah further invited our attention to the affidavitⁱⁿ reply filed on behalf of the State Government, which reads thus:

4 The Issues Raised In The Present Petition Revolve Around The Impugned Resolution Dated 24.05.2020, Passed By The Education Department, Government Of Gujarat Whereby

Instructions Have Been Issued To Conduct The Exams Of The Colleges/ Universities Of The State, And To Start The Admission Process And The Academic Work Of The Next Academic Year

2020-21. It Is Pertinent To Note That The Said Resolution Dated 24.05.2020, Is Based On The Guidelines Issued By The University Grants Commission On Examinations And Academic

Calendar For Universities In View Of COVID-

19 Pandemic And Subsequent Lockdown. Conducting Examinations, Carrying Out Admissions And Conducting Online Classes Do Not Require The Students To Come To Educational Institutions

Daily In Large Numbers. Therefore It Cannot Be Construed AS "Opening Up Of Schools/Colleges". Hence, The Resolution Dated 24 / 05 / 2020 Does Not Violate The Provisions Of The

Order Passed Under Disaster Management Act, 2005.

5 NATURE OF THE RESOLUTION DATED 24.05.2020

a) It Is Submitted That The Impugned Resolution Clearly States Under Be Merit Based Progression Meaning Thereby That The Students Will Be Evaluated On The Basis Of 50 Percent

Internal Evaluation And Remaining,

50 Percent Of The Previous Semester. Through This Provision About Two Third Of The Total Students Have Been Kept Outside The Purview Of Appearing In Examination. The

Resolution Also Clearly Mentions That If Any Student Wants To Improve His Grade, He Would Be Given One More Chance By Way Of A Special Examination In October / November.

B) As Regards The Petitioner's Contention That The Said Resolution Dated 24.05.2020 Mandates Universities To Conduct Their Examinations From 2.06.2020, It Is Most Humbly

Submitted That The Same Is Not The Correct Interpretation Of The Said Resolution And Tantamounts To Misreading Of The Actual Contents And The Intent Behind Issuing The Said

Resolution. It Is Pertinent To Note That Vide The Resolution Dated 24.05.2020, The Respondent STATE Has Merely Asked The Universities To Schedule Their Examinations From

25.06.2020 And That Too, For Particular Courses, (Terminal / Final Semester / Year In Undergraduate Course / Programms And The Exams Of The First Year And Terminal / Final

Semester In Postgraduate Courses / Programs) While Strictly Following The Central AS Well STATE Government Guidelines On The Pandemic COVIDÂ19. However, The Universities

Have Been Given Freedom To Assess The Local Ground Level Situation, Movement Of Students NonÂAvailability Of Hostels Containment Take The Decision For Conducting Exams,

In The Manner And Method Which The Universities Deem Fit, Keeping In Tune With The Guidelines On Pandemic COVIDÂ19. It Is Submitted That Considering The Resent Situation

Several Universities Have Already Postponed Their Examinations To The Month July.

C) It Is Further Submitted That Admissions To Various Universities, Courses, Etc. Have Begun Across The Country AS Well AS Internationally And Keeping In Mind The Future Of The

Students Of The State, The Impugned Resolution Has Been Passed By The Respondent STATE. It Is Pertinent To Note That The Students Of The STATE Need To Be Given A Fair

Chance To Compete In The Admissions Taking Place Across The Country And It Is The Duty Of The Respondent STATE To Ensure That The Students Do Not Suffer Any Loss On

Account Of Crucial Examinations Not Being Conducted, On Time And As Per Schedule. For Instance, The Students Of The Final Year LL.B Have Represented To The Respondent

State Authorities That They Are Unable To Fill The Form Of The Current BAR Council Of India Exam As They Have Not Cleared Final Semester Exam, Leading To A Delay Of Six

Months To 1 Year In Starting Their Careers. It Is Most Submitted That The Careers Of Students Cannot Wait, However, Given The Current Pandemic Situation, It Is Imperative That

ALL Measures, Necessary For Prevention Of The Infection, Be Taken, Such As Sanitisation, Social Distancing, Face Masks, Etc., For Conducting The Examinations.

6. THE IMPUGNED RESOLUTIONS : A STARTING POINT

A) It Is Pertinent To Note That The Petitioner Has Produced Only The Impugned Resolution Dated 24.05.2020, To Indicate The Intent Of The Respondent STATE For The Issue Being

Raised In The Present Proceedings. However, It Submitted That The Impugned Resolution Is Only The Starting Point Or Rather The Beginning Of The Steps That Are Being Taken By

The Respondent STATE In Order To Maintain A Balance Between The Prevention Of The Spread Of COVID-19 And The Progression Of The Careers Of The Students Of The State.

B) In This Regard, It Is Imperative To Bring To The Attention Of The Hon'ble Court The Government Resolution Dated 03.06.2020, Passed By The Education Department Whereby The

Government Has Issued Instructions Regarding The Following Aspects:

I. Considering That The Students Of Intermediate Semesters Will Be Evaluated Using A Merit Based Progression Method, The Examination Fee Paid By Such Students Shall Be

Carried Forward For The Next Semester.

Ii. For Students Staying In Containment Zones Or Those Showing Symptoms Of COVID-19 On The Day Of The Examination Or Those Who Cannot Come To The Examination Centre

For Any Reason, A Special Examination Will Be Conducted For Such Students In The Month Of August/September.

Iii. For Courses Such As B.Ed., LL.B., B.Lib Etc Which Are Actually Completion Of Graduation, As Per The Recommendation Of The Vice-Chancellors, Examinations

For Such

Courses Will Be Conducted In A Manner Similar To Those For Post-Graduation Courses. Iv. Due To The Lockdown, Many Students Have Returned To Their Native States/Districts

And In Many Cases, To Their Respective Native Countries As Well. The Respondent STATE Is Conscious Of The Fact That Such Students Cannot Be Called Back Just For The Purpose

Of Appearing In The Examinations And Therefore, Online Examinations Need To Be Conducted For Students Living Abroad And For Students Living In Different States. There

Are Many Universities, Such As Gujarat Technical University, Gujarat University, Etc. Where Students From ALL Across The State Are Studying. In Order To Facilitate Such Students

Living In Different Districts, A Novel System Has Been Devised To Enable The Students To Appear In The Examinations AT Their Door-Steps And To That End, The Universities Shall

Take Measures To Ensure That Examination Centres Are Available In The Respective District- Where Such Students Are Residing.

A Copy Of The Government Resolution Dated 03.06.2020, Is Annexed Hereto And Marked AS Annexure-1.

C) It Is Also Imperative To Bring To The Attention Of The Hon'ble Court, Education Department Regarding The Following Aspects, Amongst Others:

I. There Is A Great Need To Avoid Movement In Order To Prevent Spread Of COVID-19 And Therefore, To That End, The Universities Should Make Provisions For Making The

Admission Process, Online. This Would Include, Making The Forms Available Online And Also Putting In Place, A System Whereby The Process Of Submitting The Forms, The Relevant

Documents And The Fees, Are ALL Accepted Online By The Universities. Physical Verification Of Document Can Be Carried Out Subsequently When The Situation Improves.

Ii. For The Students Who Will Be Appearing In Physical Examinations, The Universities Should Make A Provision For Making The HALL Passes

/ Admit Cards Available To The Students, Online.

A Copy Of The Circular Dated 03.06.2020, Is Annexed Hereto And Marked AS Annexure-2.

D) In Addition To Aforementioned Steps By The Respondent STATE, AN Online

Meeting Was Held On 10.06.2020 Under The Chairmanship Of Education Minister With The Vice

Chancellors Of Various Universities. In This Meeting It Was Reiterated That ALL The Guidelines Need To Be Strictly Followed, So AS To Protect The Students And Keep Them Safe

And Healthy In The Prevailing Situation Of COVID-10 Pandemic, In Case, They Miss The Chance Of Taking Exams That Are Suggested To Be Commenced In June-2020 And

Universities Were Asked To Schedule Examinations Only If The Local Situation Is Conducive And Supportive, To Do So. A Copy Of The Minutes Of The Meeting Dated 10.06.2020, Is

Annexed Hereto And Marked AS Annexure-3.

E) It Is Therefore, Submitted That The Impugned Resolution Is But One, Step Taken By The Respondent STATE Towards Restoring Some Normalcy In The Lives Of The Students, While

Strictly Observing ALL The Guidelines Pertaining To COVID-19 Issued By The Central Government, Including The Guidelines By The Ministry Of Home Affairs, Indian Council Of

Medical Research, Etc. And Those Formulated By The STATE Government, In This Regard.

7. STEPS BEING TAKEN BY UNIVERSITIES.

A) It Is Submitted That The Central And STATE Government Guidelines Have Been Given Top Priority In The Impugned Resolution And Universities Have Been Strictly Instructed To

Take Care Of Social Distancing, Sanitization, Etc. To Ensure The Safety Of The Students And The Staff That Will Be Employed For The Examinations.

B) It Is Pertinent To Note That Many Universities Have Already Postponed Their Examinations, Either Indefinitely Or To A Subsequent Date. Gujarat University, Ahmedabad And

Hemachandracharya North Gujarat University PATAN That Cover The Most Affected Area Postponed The Examinations Indefinitely. Some Other Universities Are Also Exploring The

Option Of Conducting Examinations Online, However, The Same May Not Be Possible For ALL Universities Due To The Limitations Posed By Availability Of Infrastructure,

Connectivity And Other Related Issues, Especially In The Remote Areas. The Universities Have Been Asked To Take A Decision Considering; Many Factors,

Including The

Demographic Make-Up Of Students, AT The Local Level. This Also Raises Difficulties And Issues Regarding The Availability Of The Hardware With The Students In Order To Appear

For Online Examinations.

C) Detailed Guidelines Have Also Been Prepared In Order To Conduct Physical Examinations, Which Would Include, Amongst Others, The Following Steps:

I. Compulsory Usage Of Face Masks, Sanitisers And Observance Of Social Distancing Guidelines.

Ii. Sanitisation Of The Benches Before And After The Examination.

Iii. Reduction In The Number Of Students That Can Appear {Or The Examination In One Examination Hall, AT One Point Of Time.

Iv. Arrangement Of Students, In A Zig Zag Form In The Examination Hall.

V. Usage Of Libraries Close To The Examination Centres

Vi. Thermal Screening Using Temperature Guns While Entering The Examination Centre/ Hall.

Vii. Students Have Been Instructed To Get Their Own Water-Bottles For The Examination.

Viii. Senior Supervisor Is Held Responsible In Order To Check Such Arrangement And Report Daily To The Controller Of Examinations Or The Registrar Of The Respective University

D) The Universities That Have Postponed The Examinations But Intend To Conduct Physical Examinations In The Coming Weeks, Have Been Strictly Instructed To Prepare Detailed

Guidelines In Tune With The Guidelines And Instructions Issued By The Central Government, Including The Guidelines By The Ministry Of Home Affairs, Indian Council Of Medical

Research, Etc. And Those Formulated By The STATE Government, In This Regard, That To Be Followed For The Conduct Of The Examinations For The Safety Of The Students And

The Staff .

8. It Is Most Humbly Submitted That Even AS We Learn More About The Novel Coronavirus Every Day, The COVID-19 Pandemic Is Continuing To Change The Face Of The

Normalcy In Unprecedented Ways. The Impugned Resolution And The Subsequent Steps That Have Been Taken By The Respondent STATE, Are But One

Step Towards Maintaining A

Balance Between The Dangers And Risks Posed By COVID-19 And Towards Restoring Normalcy To Life Of The People, Albeit, With Full Precautions.

9. Considering The Aforementioned Facts And Circumstances And Submissions, It Is Most Humbly Submitted That Grievances Raised In The Petition, AS Preferred By The Petitioner,

Have Been Taken Care Of By The Respondent STATE And The Present Public Interest Litigation, Be Closed.â??

11 In such circumstances referred to above, Ms. Shah, the learned Government Pleader prays that in view of the revised guidelines issued by the UGC, this litigation may now be closed and it may

be left for the Universities to conduct the physical examinations working out appropriate modalities, which would protect the interest of the students in all respects.

? ANALYSIS:

12 Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether we should issue any

directions to the State Government as regards the mode of conduct of examinations by the Universities across the State of Gujarat.

13 According to the revised guidelines, the Universities have been asked to complete the terminal semester / final year examination by the end of September 2020 in offline (Pen and Paper) /

online blended (Online + Offline) mode after following the protocols as prescribed in the guidelines related to the COVID-19. One another provision that has been made in the revised guidelines is

in the form of special chance. In case, a student, who is unable to appear in the examination for any reason, he or she will be given an opportunity to appear in a special examination for such

course of paper which may be conducted by the Universities as and when it is found feasible. This would be applicable only as a one time measure.

14 The guidelines also provide that the students, having a backlog in the terminal semester / final year, will be compulsorily evaluated by conducting examination in offline (Pen and Paper) / online

blended (Online + Offline) as per feasibility and suitability.

15 The guidelines further provide that for the intermediate semester / year examination, the guidelines, as notified on 29th April 2020, would be followed.

16 The guidelines also provide that if need be, the relevant details relating to the admission and academic calendar shall be issued separately in place of those as mentioned earlier on 29th April

2020. The guidelines specifically mentions that every institution has to ensure that it is prepared on all respects to conduct the academic activities after following the necessary protocols, guidelines

and advisory issued by the Central and State Governments and Ministry of Human Resources Development time to time.

17 We may only say that it is now for the respective Universities to take the final call for the purpose of conducting the examinations in physical form. It goes without saying that it will be the

bounden duty and obligation of any University to conduct the examination in physical form in such a manner that the students are not put to any risk of any nature. The concerned Universities will

have to be prepared in this regard in all respects. If the situation worsens or is not conducive, then the Universities may have to push the examination or postpone the examination for some further

time. However, no risk shall be incurred of any nature while conducting the examination in the physical form.

18 With the above, the Writ Petition (PIL) No.88 of 2020 stands disposed of.

19 Mr. Majmudar, the learned counsel appearing in the Writ Petition (PIL) No.92 of 2020 pointed out that the Bar of Council of India proposes to conduct its examination for the purpose of

enrollment with the respective State Bar Councils. Mr. Majmudar has an apprehension that if the examination of the students of Ten semester of the Gujarat University is not conducted or they are

not declared as promoted on the basis of average marking system, then the students will have to lose one full year before they will have to again appear in the Bar Council of India Examination

next year.

20 We are of the view that the aforementioned issue should be taken up with the Bar Council of India for the purpose of postponing the examination for some time. It shall be open for the writ applicant

to take up this issue with the Bar Council of India having regard to the current situation.

21 So far as the Writ Petition (PIL) NO.98 of 2020 is concerned, the reliefs prayed therein are as under:

â??B. Direct The University Grants Commission (Ugc) Herein Respondent No.6 To Call And Produce, The Grievances Of Students And Stakeholders In Regards To Examination In

The Present Situation, From All The Universities And Produce The Same Before This Hon'ble Court Along With The Grievances Which Have Been Directly Reported To The University

Grants Commission (Ugc) And The Steps Taken By The Task Force On Those Grievances;

C. Direct The Respondents To Take Decision On How To Conduct The Examination And Admission Of Students In A Uniform Manner In The Present Situation At The Earliest And

Formulas An Sop For The Institutes As Per The Guidelines Of The Ministry Of Home Affairs (Mha) Dated 30th May 2020 (AnnexureÂ?I);

D. During The Pendency Of The Present Situation, This Hon'ble Court May Be Pleased To Direct The Respondents To Issue An Order/Notification, Staying The Examinations And

Admissions Process In The Territory Of India, Till A Uniform Alternative Method For Conducting The Examination And Admissions Is Decided By The Respondents;â??

22 Thus, the writ applicant wants this Court to issue appropriate directions to the University Grants Commission (UGC) to call for the grievances of the students as regards the conduct of

examination and also direction to the respondents to take an appropriate decision as to in what manner the examination should be conducted.

23 Our observations in paras 13 to 17 aforesaid takes care of the Writ Petition (PIL) No.98 of 2020 also.

24 In view of the aforesaid, all the three writ petitions filed in public interest are disposed of.