

(2020) 09 MP CK 0158

In the Madhya Pradesh High Court

Case No : Writ Petition No. 8197 Of 2020 (PIL)

Yash Sharma

APPELLANT

Vs

State Of M. P. And Others

RESPONDENT

Date of Decision : 07-09-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 21, 226
University Grants Commission Act, 1956 — Section 12

Citation : (2020) 09 MP CK 0158

Hon'ble Judges : S. C. Sharma, J; Shailendra Shukla, J

Bench : Division Bench

Advocate : Paritosh Shrivastava, Abhishek Tugnawat

Final Decision : Disposed Of

Judgement

01-The petitioner before this Court, a student of B.A.LL.B. (Hons) studying in School of Law, DAVV claiming himself to be a public spirited person, has filed present petition under Article 226 of the Constitution of India by way of Public Interest Litigation.

02- His contention is that on account of Covid-19 Pandemic the examinations are not being held in the various Universities situated in the State of Madhya Pradesh and the Department of Higher Education has issued instructions on 28/05/2020 directing the Universities and Colleges to conduct the examination for the academic session 2020-21.

03- He has further stated that as per the directions of the State of Madhya Pradesh Pen Paper Mode examination was scheduled from 29/06/2020 to 31/07/2020 and after analyzing the status of Covid-19, the University Grants Commission has also issued the guidelines. The petitioner has further stated that the Rajiv Gandhi Proudhyogiki Vishwavidyalaya has issued time table for conducting examination for final year students w.e.f. 16th June to 29th June, 2020 through online mode.

04- The petitioner has stated that it is difficult for the students to appear in the examination and the petitioner has prayed for the following reliefs:-

"i) That, this Hon'ble Court may kindly be pleased to issue an appropriate writ/order/direction quashing the circular dated 28-05-2020, no. - 311/67/2020/38/CC issued by the Higher Education Department, M. P. regarding conducting of college examinations for the academic year 2020-21 amidst this corona virus pandemic.

ii) That this Hon'ble Court may kindly be pleased to issue an appropriate writ/order/direction directing the respondent authority to make proper guidelines considering health of the students to be paramount and ensuring health and safety of each and every student.

iii) That this Hon'ble Court may kindly be pleased to issue an appropriate writ/order/direction directing the respondent authority to take responsibility of every student appearing for examination and if in case any student gets infected with this deadly virus, to make proper guidelines ensuring reasonable compensation to the infected students, faculties and other staff members.

iv) That this Hon'ble Court may kindly be pleased to issue an appropriate writ/order/direction directing the respondent authority to incur or reimburse all the direct/indirect expenses born by the students for giving examination.

v) That this Hon'ble Court may kindly be pleased to issue an appropriate writ/order/direction directing the respondent authority to waive off the examination fees or any other fees of such kind since this pandemic has put many people into financial crisis.

vi) That this Hon'ble Court may kindly be pleased to issue an appropriate writ/order/direction directing the respondent authority to act as per the guidelines of UGC and to take decision regarding general promotion of students of intermediate semesters on the basis of internal evaluation i.e. prelims, internal assignments, mid semester or on the basis of performance of previous year as provided in Point 5 of the Guideline and if a student wishes to improve the grades, he/she may appear in special exams for such subjects during next semesters.

vii) That this Hon'ble Court may kindly be pleased to issue an appropriate writ/order/direction appointing an observer or committee stating its powers and functions to ensure the safe and smooth conduct of examination.

viii) this Hon'ble Court may kindly be pleased to issue an appropriate writ/order/direction directing the respondent authorities to take decisions regarding examinations in the best interest of students and society.

ix) Any other relief / order / direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be granted."

05- The respondent / State has filed a detailed reply and have informed this

Court on affidavit that circular of the State Government dated 28/05/2020 was stayed and kept in abeyance vide another circular dated 17/06/2020 and the University Grants Commission has issued fresh guidelines namely Standard Operating Procedure (SOP) for conducting examination on 08/07/2020 with measures to be taken in view of the Covid-19 situation. The UGC guidelines has been approved by the Ministry of Health and Family Welfare, Government of India. It has been further stated that University Grants Commission has subsequently again issued guidelines on the subject.

06- Respondents have placed reliance upon a judgment delivered by the Hon'ble Supreme Court in the case of Praneeth K. Vs. UGC and Others reported in 2020 SCC OnLine SC 688. Paragraphs No.110 and 111 of the aforesaid judgment reads as under:-

"110. From the aforesaid discussion, we arrive at the following conclusions:

Conclusions:

(1) The Revised Guidelines dated 06.07.2020 issued by the UGC are not beyond the domain of the UGC and they relate to coordination and determination of standards in institutions of higher education.

(2) The Guidelines dated 06.07.2020 are in continuation to the earlier Guidelines dated 29.04.2020 and are not contrary to the earlier Guidelines. We have to look into the substance of the Guidelines to find out the intention and object of the Guidelines. The Guidelines were issued with the object that a uniform academic calendar be followed by all the Universities and final /terminal examinations be held.

(3) The Guidelines dated 06.07.2020 has to be treated to have been issued in exercise of the statutory powers vested in the Commission under Section 12. As per the Statutory Regulations, 2003, it is the statutory duty of the Universities to adopt the Guidelines issued by the UGC. The Guidelines dated 06.07.2020 cannot be ignored by terming it as non-statutory or advisory.

(4) The differentiation made in the Revised Guidelines to hold final or terminal semester examination and to give option for earlier years/intermediate semester for not holding the examination has a rational basis. The differentiation has nexus with the object to be achieved. We, thus, reject the challenge to the revised Guidelines on the ground that there is any discrimination between the students of final year/terminal semester and those of intermediate and first year.

(5) The revised Guidelines also cannot be termed to violate Article 14 of the Constitution on the ground that one date, i.e., 30.09.2020 has been fixed irrespective of the conditions prevailing in individual States. The date for completion of examination was fixed throughout the country to maintain uniformity in the academic calendar.

(6) The Revised Guidelines dated 06.07.2020 as well as Standard Operating

Procedures for conduct of examinations circulated vide letter dated 08.07.2020 of UGC as well as O.M. dated 06.07.2020 issued by MHRD clearly shows deep concern with the health of all stakeholders, i.e., students as well as the exam functionaries. Challenge to the Guidelines on the ground of it being violative of Article 21 is repelled.

(7) The expression "other bodies" used in opening part of the Section 12 of the UGC Act, 1956 is in reference to other bodies apart from Universities as enumerated under Section 12. The submission that other bodies as occurring in Section 12 should include State Disaster Management Authority or health experts is misconceived. Section 12 never contemplated any such expression. The revised guidelines dated 06.07.2020 are not in breach of Section 12 of 1956 Act.

(8) The Disaster Management Act, 2005 empowers the State Disaster Management Authority as well as the State Government to take measures for prevention and mitigation of a disaster and the action taken by the authorities under the Disaster Management Act have been given overriding effect to achieve the purpose and object of the Act, 2005. Saving of human life has been given paramount importance under the Act, 2005. Primacy have been given to the actions and measures taken under the Act, 2005 over anything inconsistent in any other law for the time being in force.

(9) The direction of the University Grants Commission in Revised Guidelines dated 06.07.2020 insofar as it directs the Universities and Colleges to complete the final year/terminal year examination by 30.09.2020 shall be overridden by any contrary decision taken by the State Disaster Management Authority or the State Government exercising power under the Disaster Management Act, 2005.

(10) The State Governments or State Disaster Management Authority in exercise of power under Disaster Management Act, 2005 has no jurisdiction to take a decision that the students of final year/terminal students should be promoted on the basis of earlier year assessment and internal assessment, which decision being contrary to UGC Guidelines dated 06.07.2020 has to give way to the UGC Guidelines. The UGC Guidelines dated 06.07.2020 specifically directed to conduct the final year/ terminal semester examination which shall override such contrary decision of the State Government or SDMA.

111. In view of our foregoing discussion and conclusion, this batch of cases is disposed of in the following manner:

(1) The prayer to quash the revised guidelines dated 06.07.2020 issued by the University Grants Commission and OM dated 06.07.2020 issued by the Ministry of Human Resource Development and letter dated 06.07.2020 issued by the Ministry of Home Affairs is refused.

(2) The decision taken by the State Disaster Management Authority/State not to hold final year/terminal semester examination by 30.09.2020 in exercise of power under Disaster Management Act, 2005 shall prevail over deadline fixed by

the University Grants Commission i.e. 30.09.2020 in respect to the concerned State.

(3) The decision of the State/State Disaster Management Authority to promote the students in the final year/terminal semester on the basis of previous performance and internal assessment being beyond the jurisdiction of Disaster Management Act, 2005 has to give way to the guidelines of UGC dated 06.07.2020 directing to hold examination of final year/terminal semester. The State and University cannot promote the students in the final year/terminal semester without holding final year/terminal examination.

(4) If any State/Union Territory in exercise of jurisdiction under Disaster Management Act, 2005 has taken a decision that it is not possible to conduct the final year/terminal semester examination by 30.09.2020, we grant liberty to such State/Union Territory to make an application to the University Grants Commission for extending deadline of 30.09.2020 for that State/Union Territory which shall be considered by UGC and rescheduled date be communicated to such State/Union Territory at the earliest."

In light of the aforesaid judgment delivered by the Hon'ble Apex Court, all the issues involved in the present petition have already been answered by the Hon'ble Supreme Court and the State of Madhya Pradesh has also issued executive instructions dated 13/08/2020 in respect of the examination schedule.

07- No further orders are required to be passed in the present writ petition and the question of refund of examination fee also does not arise as the examination fee not only covers the examination but it covers a system for conducting the examination like setting of question of papers, moderation of question papers, making preparation for the examination, valuation of answer sheets, issuance of mark sheets, etc. The University for conducting any examination has to do preparations about the examination six months in advance and therefore, as all preparation were made by the University in time, the prayer made by the petitioner for refund of the examination fees also does not arise.

08- Resultantly, present petition stands disposed of and the respondents are directed to take appropriate steps in accordance with law keeping in view the University Grants Commission's guidelines and the executive instructions framed by the State Government as well the judgment delivered by the Hon'ble Supreme Court in the case of Praneeth K. and Others (Supra).

Certified copy as per rules.