

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 08TH DAY OF SEPTEMBER, 2020

PRESENT

THE HON'BLE MRS.JUSTICE B.V.NAGARATHNA

AND

THE HON'BLE MR. JUSTICE RAVI V. HOSMANI

WRIT PETITION NO.9682/2020(EDN-EX)

BETWEEN:

MR S P VENKATESH,
S/O S N PARAMESHWARA,
AGED ABOUT 43 YEARS,
RESIDING AT NO. 58, 6TH CROSS,
3RD STAGE, 4TH BLOCK,
SHAKTHIGANAPATHINAGAR,
BASAWESVARANAGAR,
BANGALORE- 560079.

... PETITIONER

(BY SRI. SUNIL KUMAR H, ADVOCATE APPEARED THROUGH
VIDEO CONFERENCE)

AND:

1. THE CHIEF SECRETARY,
GOVERNMENT OF KARNATAKA,
VIDHANA SOUDHA, BANGALORE 560001.
2. THE ADDITIONAL CHIEF SECRETARY,
DEPARTMENT OF HIGHER EDUCATION,
GOVERNMENT OF KARNATAKA ,
VIDHANA SOUDHA, BANGALORE 560001.

... RESPONDENTS

(BY SRI Y.H. VIJAY KUMAR, PRL. GA - THROUGH VIDEO
CONFERENCE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE GOVERNMENT ORDER DATED 10.07.2020 AS PER AS GUIDELINES FOR INTERMEDIATE SEMESTER STUDENTS FOR THE YEAR 2019-20, PG AND UG AS THE SAME IS UNSCIENTIFIC AND ILLOGICAL AND DIRECT THE RESPONDENTS TO CONSIDER THE REPRESENTATION OF THE PETITIONER VIDE ANNEXURE-A AND A1 AND ETC.,

THIS WRIT PETITION COMING ON FOR ORDERS THIS DAY, **NAGARATHNA J.**, PASSED THE FOLLOWING:

ORDER

This writ petition is stated to have been filed in public interest. Though there are certain office objections raised on the petition, nevertheless we have heard learned counsel for the petitioner, Shri Sunil Kumar H, at length.

2. The petitioner is stated to be a public spirited citizen who takes up social causes on behalf of the students, women and senior citizens of the State. Therefore he has averred that this writ petition is filed in the larger interest of public and students and that no private interest is sought to be gained by this

writ petition. The petitioner has sought the following prayers and interim prayer in the writ petition:

"WHEREFORE, it is most respectfully prayed that this Hon'ble court may kindly be pleased to

- 1. Issue a writ in the nature of Certiorari to quash the government order no.ED/197/UNE/2020 dated 10/07/2020 as per as guidelines for intermediate semester students for the year 2019-20, PG and UG as the same is unscientific and illogical.*
- 2. Issue a Writ in the nature of Mandamus directing the respondents to considered the representation of the petitioner vide Annexure-A and A1.*
- 3. Issue a Writ of Mandamus directing respondents to allow the universities in deciding the conduct of examination for all semesters UG and PG Courses 2019-2020 keeping in mind the interest of Students and their future.*
- 4. Pass such other order or direction as this Hon'ble court deems fit in the facts and circumstances of the case in the interest of Justice and Equity.*

INTERIM PRAYER

Pending disposal of above petition it is most respectfully prayed that this Hon'ble court may kindly be pleased to stay the government order no.ED/197/UNE/2020 dated 10/07/2020 for intermediate semester PG and UG 2019-20 is

concerned till the disposal of the above petition in the interest of justice and equity."

3. According to the petitioner, the first respondent-State of Karnataka has issued guidelines and an order for the conduct of examinations for Undergraduate and Postgraduate Courses for the Academic Year 2019-20 in the State of Karnataka, a copy of which is in the form of Government Order bearing No. ED/197/UNE/2020 dated 10.07.2020 produced as Annexure-B to the writ petition. That as per the said Government Order, students of intermediate semesters for year 2019-20, both in Undergraduate and Postgraduate Courses, shall be promoted to the higher semester based on the grading of the students which would be comprising of 50% of the marks on the basis of the pattern of internal evaluation adopted by the Universities and the remaining 50% marks to be awarded on the basis of performance in the previous year (if available). If

previous semester marks are not available, particularly in the first year of annual pattern of examination, then 100% evaluation would be done on the basis of internal evaluation. According to the petitioner, this is an unscientific and illogical way of promoting the students as many meritorious students will suffer if the said order is implemented.

4. According to the petitioner, the University Grants Commission (UGC) has issued guidelines for the conduct of examination both for the final as well as the intermediate semester or annual examinations in offline or online mode as per the rules and regulations, scheme of examinations, by observing guidelines of social distancing and other safeguards during the ensuing corona virus - Covid-19 pandemic. That the UGC has stated that in view of the emergency situation relating to Covid-19 pandemic in India, it is important to safeguard the health, safety,

fair and equal opportunity for students. At the same time it is necessary to maintain academic credibility, career opportunities and future progress of the students globally. The UGC guidelines are produced as Annexure-C.

5. Petitioner has stated that when the UGC guidelines state that the Universities may conduct examination after making comprehensive assessment of their level of preparedness, residential status of the students, status of covid-19 pandemic spread in different region or State and other factors, the State Government could not have done away with conducting of examination for the students of the Universities in the State including the private Universities by issuance of the impugned Government Order dated 10.07.2020. Therefore the same is assailed in this writ petition.

6. Learned counsel or the petitioner reiterating the averments made in the writ petition and drew our attention to the Government Order dated 10.07.2020 which is produced as Annexure-B to the writ petition and particularly Clause 2 of the said order which deals with intermediate semesters or year for Undergraduate and Postgraduate Courses 2019-20 and contended that while the final semester or year examination is being conducted in the month of September, 2020 in offline, online or blended mode, as far as intermediate semesters are concerned, the examination mode itself has been given a go bye. If such promotions are going to be made on the basis of the internal evaluation and on the basis of performance in the previous semester, the students would be put to hardship and prejudice in their academic career. He contended that the UGC guidelines have left it to the wisdom of the

Universities to conduct the examination. As per paragraph No.5 of said guidelines the Universities have the discretion to conduct the examinations after making a comprehensive assessment and taking into consideration the safeguards during the ensuing Covid - 19 pandemic.

7. Learned counsel for the petitioner contended that the State Government ought to have followed the UGC guidelines rather than issuing the impugned Government Order dated 10.07.2020 by doing away with the examination for the intermediate semester or year. That discretion ought to have been given to the respective Universities to conduct the examinations rather than passing the Government Order dated 10.07.2020. He therefore submitted that this Court may interfere in the matter and stay the Government Order dated 10.07.2020 for intermediate semester or year relating to Undergraduate and

Postgraduate Course for 2019-20 concerned pending disposal of this writ petitioner and ultimately may consider quashing the said Government Order.

8. Learned AGA appearing for the State, on advance notice, supported the impugned Government Order and contended that a policy decision has been taken by the State Government with regard to the conduct of semester/annual examinations for Undergraduate and Postgraduate students in the State Universities as well as the private Universities. The said decision taken is by bearing in the mind the acute pandemic in the State as the number of corona virus Covid-19 cases are increasing by the day. Having regard to the said factor and also of the fact that the students cannot be exposed to the risk of the disease by allowing them to appear physically for the examination to be conducted in the usual mode and thereby risking their lives as well as the health and

lives of the other stake holders, the Government has issued the impugned Government Order dated 10.07.2020.

9. Learned AGA submitted that this Government Order is only for the present Academic Year and when the policy decision has been taken at the Government level which is in the interest of health and safety of the students, the faculty, the non-teaching staff, the parents and relatives of the students and or other stake holders such an order may not be assailed at the instance of the petitioner. He submitted that permitting the students to appear in the examination physically in the respective colleges would only lead to increase in the number of Covid-19 cases in the State and thereby would affect the health and safety of all the stake holders and would also cause a dent to the exchequer of the State. He submitted that for final year students offline

examination would be conducted by the Universities in the respective colleges. He therefore submitted that there is no merit in this writ petition and the same may be dismissed.

10. The detailed narration of facts and contentions would not call for reiteration. We examine the same in the light of the UGC Guidelines issued in April, 2020 and consider the impugned Government Order dated 10.07.2020. The Covid-19 pandemic has engulfed the entire planet and on account of the nature of the disease and the safeguards to be taken to prevent the same the Central and State Governments imposed lockdown on 25.03.2020, which was subsequently extended from time to time and ultimately bearing in mind the course in which the pandemic was spreading, there was relaxation in the lock the guidelines norms from time to time. It is in that context in April, 2020 the UGC

issued the Guidelines of examinations and academic guidelines for the Universities in view of Covid-19 pandemic and subsequent lock down. In so far as the guidelines concerning examinations is concerned, the most pertinent for the purpose of this case are guideline Nos. 5 & 6. The same read as under:

"5. For intermediate semester/year students, the universities may conduct examinations, after making a comprehensive assessment of their level of preparedness, residential status of the students, status of COVID-19 pandemic spread in different region/state and other factors.

In case the situation does not appear to be normal in view of COVID-19, in order to maintain "social distancing", safety and health of the students, grading of the students could be composite of 50% marks on the basis of the pattern of internal evaluation adopted by the universities and the remaining 50% marks can be awarded on the basis of performance in previous semester only(if available). The internal evaluation can be continuous evaluation. Prelims, mid semester, internal assignments or whatever name is given for student progression.

In the situations where previous semester or previous year mark are not available, particularly in the first year of annual pattern of

examinations, 100% evaluation may be done on the basis of internal evaluation.

If the student wishes to improve the grades, he/she may appear in special exams for such subjects during next semester.

This provision for intermediate semester examinations is only for the current academic session (2019-20) in view of COVID-19 pandemic, while maintaining safety and health of all the stakeholders and sanctity and quality of examinations.

6. In addition to the above, following steps are required to be taken:

a. The scheme of "Carry forward" (for the subjects in which the student has failed) will be allowed for the current academic year in the universities and every student will be promoted to next semester/year. However, such students may clear the examination for the course in which he/she has failed/remained absent, whenever the examination is held next.

b. The students may be allowed to improve their grades by offering one additional opportunity to appear for the current semester course(s) in succeeding semesters/years or through supplementary examinations."

The guidelines were recommended by the Expert Committee and framed for the examination and the academic calendar in the Universities. The UGC guidelines are advisory in nature and each University may chart out its own plan of action taking into consideration the issues pertaining to the Covid-19 pandemic.

11. On perusal of the aforesaid guidelines it is clear that in respect of intermediate semester/year, the Universities have a discretion to conduct examination after making a comprehensive level of preparedness, residential status of the students, status of Covid-19 Pandemic spread in different region or State and other factors and bearing in mind the health and safety of the students and all other stakeholders.

12. In the light of the aforesaid guidelines, State Government Order clearly refers to the UGC Guidelines which states that in order to ensure academic credibility, career opportunities and future progress of the students and also the other stake holders in the system and in consultation with Higher Education Department in Karnataka Stake holders and experts, the Government Order has been issued for the Academic Year 2019-20. It is in that light that the Government Order dated 10.07.2020, inter alia, speaks of the system to be adopted for the year 2019-20 for Undergraduate and Postgraduate Courses students in the matter of their promotions and career progress. The relevant clauses of the Government order read as under:

"2. **For intermediate Semester/Year (UG/PG)2019-20**

- a) *The students are promoted to higher semester based on the grading of the students which would be composite of 50%*

marks on the basis of the pattern of internal evaluation adopted by the universities and the remaining 50% marks can be awarded on the basis of performance in previous semester only(if available).

- b) In the situations where previous semester or previous year marks are not available, particularly in the first year of annual pattern of examinations, 100% evaluation may be done on the basis of internal evaluation.*
- c) If the student wishes to improve the grades, he/she may appear in exams for such subjects during next semester.*
- d) The provision for intermediate semester examinations is only for the current academic session (2019-20) in view of COVID-19 pandemic.*
- e) The scheme of "Carry forward"(for the subjects in which the student has failed) will be allowed for the current academic year in the universities and every student will be promoted to next semester/year. However, such students may clear the examination for the course in which he/she has failed/remained absent, whenever the examination is held next."*

By reading of the same, it is clear that the State Government has borne in mind the guidelines of the

UGC and has taken a policy decision to promote the students on the basis of internal evaluation and performance in the previous semesters as far as intermediate semesters are concerned. The State Government being conscious of the fact that there is a steep rise in the Covid-19 cases in the State and in its wisdom that the students must not be exposed to such a risk by conducting examination in the colleges in the usual form thereby leading to spreading of the disease and exposing lakhs of students and other stake holders in the system as well as their parents and families to the Covid-19 Pandemic has passed the impugned Government Order. Therefore the State in its wisdom has formulated the manner in which the promotion and career advancement of the students could be made only for the academic year 2019-20, i.e., for one semester only. Further, clause Nos. 2(c), (d) & (e) permits the students to improve grades and

also carry forward of the subjects to next semesters and will be allowed for the current academic year in the Universities. Also every student will be promoted to next semester/year. Therefore not only the health and safety of the students but also their academic and career progress are taken care of by the Government Order dated 10.07.2020.

13. Such being the case, the petitioner cannot contend that it should have been left only to the Universities to conduct the examination if they so desired as the UGC had advised so. The UGC has issued the Guidelines as an advisory. Ultimately it is the discretion of the State to take a policy decision, as to, whether, the examination could be conducted by the physical appearance of the students or through any other mode the students could be promoted, bearing in mind the spread of the Covid-19 Pandemic in the State and also the health and safety of the

students, all stake holders and citizens of the State. The State Government has always the power as well as the discretion to guide the Universities individually or issue advisories to the respective Universities coming within the scope and ambit of the Universities Act, 2000. But in such exceptional circumstances, we cannot find fault with the State Government taking a policy decision on behalf of all the Universities so that the health and safety of the students, stakeholders is safeguarded and protected.

The other reason as to why the State has taken such a policy decision is to ensure uniformity amongst all the Universities so that there is no disparity caused amongst the students or the students being put to any other difficulty in their future career progression on account of different methods being adopted by the Universities in the State.

We do not find the Government Order dated 10.07.2020 to be either unreasonable or arbitrary in nature.

In the circumstances, we do not find any merit in the writ petition. The writ petition is hence dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

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