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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDCITION
SPECIAL LEAVE PETITION (CIVIL) No. 13570 OF 2021

IN THE MATTER OF:

Rasoolshan A

.....Petitioner

Versus

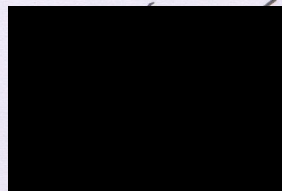
The Additional Chief Secretary &Ors.

.....Respondents

COUNTER AFFIDAVIT FILED BY THE RESPONDENT STATE OF KERLA

I, A.P.M Muhammed Hanish, S/o APM Kunhimakey, Princiapl Secretary, Department of General Education, Secretariat, Thiruvananthapuram, Kerala State do hereby solemnly affirm and state as follows:-

1. I am the 1st respondent in the above Special Leave Petition and I am competent to swear this affidavit. I am fully aware of the facts of the case as disclosed by the records available in my office. All the averments in the above Special Leave Petition are denied except which are expressly admitted hereunder.
2. It is submitted that the Hon.High Court by the impugned Judgment held that the petitioner could not establish any arbitrariness or illegality on

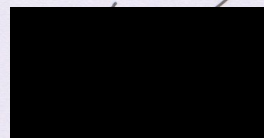


the part of the Government in scheduling the examination. The Hon'ble High Court observed that:-

“it is also equally relevant and important to state that the notification and the circular challenged in the Writ Petition are issued taking into account the present pandemic situation due to Covid-19. It is also significant to note that the Central and the State Government have issued timely guidelines under the Disaster Management Act and the Kerala Epidemics Act, 2021 to deal with the safety precautions. Viewed in that manner, it cannot be said that there is any laches or serious lapses on the part of the Government in the matter of scheduling the examinations, both Model and Board”.

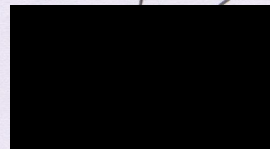
It is submitted that the Hon'ble High court dismissed the Writ Petition by observing that the Government has taken into account the present pandemic situation before issuing the impugned notification.

3. It is submitted that Secondary School Leaving Certificate (SSLC) and Plus Two examinations were conducted in the State during the month of April, 2021 observing all measures to prevent the spread of Covid-19 infections. Usually, Plus One and Plus Two examinations are scheduled at the same time. In view of rising number of Covid-19 cases, it was difficult to conduct Plus One and Plus Two examinations simultaneously and hence, Plus One examination was decided to be

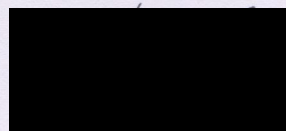


conducted later. The date of the Plus One examination was announced well in advance as per Notification dated 28.05.2021 giving enough time to the students to prepare for the examination. Normally, Plus One examinations are conducted in the month of March and improvement examinations in the month of September/October every year. This time, due to pandemic, the Plus One examination was postponed and the improvement examination has been cancelled. It is submitted that SSLC and Plus Two examinations were conducted in April, 2021 ensuring safety measures. In July, 2021, the A.P.J. Abdul Kalam Technological University conducted engineering examinations in offline mode. Nearly one lakh students attended engineering entrance examinations in Kerala. The JEE (Main) 2021 session 4 was conducted by NTA from 26.08.2021 to 02.09.2021 in Kerala also. 7.32 lakh students attended the examination. It is respectfully submitted that Plus one examination can also be conducted adhering to all Covid-19 protocols and strictly following the guidelines issued by the health authorities as was done in the conduct of earlier examinations. Separate arrangements could be made for those who are COVID positive or who are in quarantine and also for students who show any symptoms of COVID.

4. It is submitted that the following measures are proposed to be taken for ensuring the safety and health of the students, teachers and others involved in the Plus One examination process:-



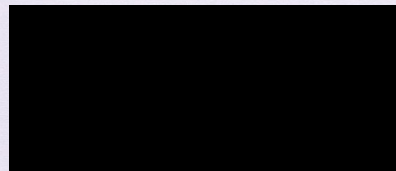
- (i) The Examination hall, furniture and school compound will be cleaned and sanitized. For this, the service of health wing, PTA, volunteers, fire force, local bodies will be utilized. Furnitures in the examination hall will be sanitized before each examination.
- (ii) The entry of the candidates to the examination centre will be allowed only through the main entrance, where staff (non-teaching staff, PTA members, health workers) will be deployed for providing sanitizer/soap & water to the students and to check the temperature of the students using thermal Scanner. Soap & water/Sanitizer will be provided in front of the examination halls also.
- (iii) Classrooms with proper air circulation and adequate light will be utilised for conducting examination. AC rooms will not be used for the examination. The maximum number of students accommodated in a room will be limited to twenty (20). The Chief Superintendent and Deputy Chief Superintendents will ensure that students are using masks properly and social distancing observed in the examination centre. Classes on health and safety measures will be given in advance to teachers who involve in examination duties.
- (iv) The Chief Superintendent in each examination centre will ensure supply of PPE kits to Covid Positive students and to their invigilators. Separate class rooms will be arranged for students

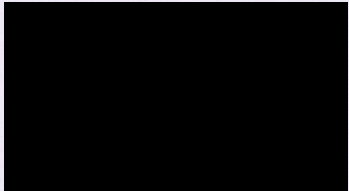


showing temperature above the normal level and to those showing symptoms of any disease.

- (v) Exchange of items like pen, calculator etc among students will be prohibited.
- (vi) Notice boards will be exhibited in the examination centres showing do's and don'ts for protection from Corona Virus.
- (vii) Micro plans for ensuring strict observation of Covid-19 protocols will be prepared by the school authorities under the supervision of Regional Deputy Directors.

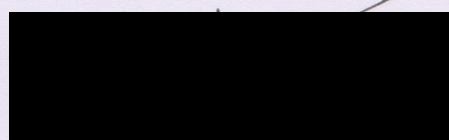
It is respectfully submitted that the above safeguard measures will be strictly adhered to eliminating any chances of lapses, thus ensuring that no one including the students are infected by the pandemic. It is submitted that the above safe guards would clearly convince that the conduct of Plus One Examinations through offline mode is done after ensuring the safety and health of all those involved with the process of conducting examination foolproof, eliminating all chances of the spread of the pandemic. The Secretary, Board of Higher Secondary Examinations as per Circular No.EX-II/1/6990/HSE/2021 dated 25/08/2021 has issued clear instructions and guidelines detailing the protocols to be followed in the conduct of Examinations. A true copy of the Circular No.EX-II/1/6990/HSE/2021, dated 25/08/2021 is annexed and marked as **ANNEXURE-R1** (at page 10 to 13.....).



5. It is submitted that from the year 2009 onwards, Plus One Board examinations are being 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 candidate for higher studies, contrary to the method adopted by CBSE and ICSE. Therefore, the conduct of plus one examination is necessary for properly evaluating the students for higher studies. It is submitted that the Hon'ble High Court after taking note of the above said facts, observed that it is clear from the Notification dated 28.5.2021 that it is to evaluate the students appropriately that the Board examinations are conducted. The Hon'ble High Court, accordingly concurred with the stand of the State in the conduct of examinations. Therefore, the aspect of differential treatment never arises, as contended by the petitioner.
6. It is submitted that all safety measures are taken by the State to protect the students and those involved in the process from affecting the Corona Virus. It is further submitted that the conduct of Plus One examinations, being evaluative in nature, need to be done at a single stroke manually ensuring physical presence of students in examination centres, thus eliminating chances of any leakage of question papers in various centres due to internet failure and connected issues. By diverting to offline method, the issue of lack of electronic gadgets to students could also be eliminated and a fair, equitable and transparent
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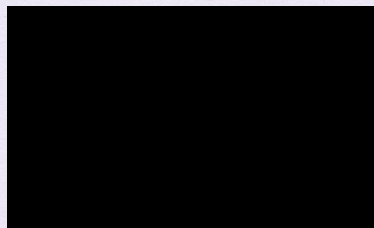
method of conducting examination could be ensured, thus eliminating chances of any complaints.

7. It is submitted that the model examination was conducted only to familiarize the students about the pattern of questions. Normally model examinations are conducted in schools under the supervision of the teachers of the same schools. This year, it was conducted at homes under the supervision of parents, whereas the Board examinations are conducted under the supervision of teachers from other schools. Therefore, the Model examinations will not in any way be equivalent to Board examinations. The Board examinations being evaluative in nature, it is only advisable that the same is done manually ensuring physical presence of the students in examinations centres and thus affording them an equitable footing to all and a fair method for performing in the examinations. The issues relating to failure of internet connectivity etc. while examination process is on and shortage of gadgets among students are thus fully eliminated. Examination in offline mode can be conducted by strictly adhering to all precautionary measures issued by the State and Central Governments, in preventing the further spread of Covid 19 Pandemic.
8. The National Institute of Disaster Management (NIDM) under the Ministry of Home Affairs, has warned the nation of the 3rd Covid-19 wave Peak in the month of October. But, as per the intended schedule,



the examination process could be completed well before the end of September and thus could be safely done.

9. It is submitted that students who failed in the previous Plus Two examinations have to pass both Plus One and Plus Two examinations in the subjects in which they have failed. So, if the Plus One examination notified as per Notification is not conducted, it will adversely affect their chance to pass and complete the course by 2021-2022. Further, as per G.O.(Ms) No.173/2021/G.Edn dated 05.08.2021, the last chance to write Plus Two examination, for students who are not eligible for higher studies in the Higher Secondary Examinations conducted from March,2009 to March, 2016, is the Plus Two examination in March, 2022. So, it is mandatory for them to write the Plus One examination. If the Plus One examination is not conducted as per the notification, they will also suffer irreparable hardship, in their future career.
10. The conduct of examination through online mode will prejudice large number of students who have no access to laptops or desktops or even mobile phones. The students belonging to lower strata of the society are depending on mobile phones/tabs for attending online classes. In many areas the internet connection or mobile data are not available. These students will never be able to write online examinations which will entirely upset the conduct of examination.



11. The averments in the counter affidavit are confined to the pleadings before the Court below and no additional facts are pleaded in the counter affidavit.

It is therefore most respectfully prayed that this Hon'ble Court may be pleased to dismiss the above Special Leave Petition and to pass such other order or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

VERIFICATION

Verified by the deponent on this 9th day of September, 2021 at Thiruvananthapuram that the contents of the above affidavit are true and correct and nothing material has been concealed therefrom.

APM MOHAMMED HANISH IAS
Principal Secretary to Govt.
Industries, General Education &
Revenue (F) Department
Govt. Secretariat, Thiruvananthapuram

ANNEXURE-R/1

Office of the Director Of General
Education, Higher Secondary Wing,
Housing Board Building ,
SanthiNagar,Thiruvananthapuram

EX-II/1/6990/HSE/2021

Dated : 25/08/2021

CIRCULAR

SUB: DGE-HSE -Conducting the first year Higher Secondary/ Vocational
Higher Secondary Examination 2021-Reg

Refe: Exam Notification No. EX-II/01/24300/HSE/2020(1) Dated
28/05/2021 -

Regional Deputy Directors/Assistant Directors and Chief Superintendents should implement the following recommendations for the smooth running of the Higher Secondary /Vocational Higher Secondary Examinations conducted from 06/09/2021 to 16/09/21

1. Health and safety Precautions

Due to the outbreak of Covid-19 the exam should be conducted the follow strict Health and Safety Precautions. Examination hall, furniture and school compound will be cleaned and sanitized. For this, the service of health wing, PTA, volunteers, fire force, local bodies will be utilized. Furniture in the examination hall will be sanitized before each examination. The entry of the candidates to the examination centre will be allowed only through the main entrance, where staff (non-teaching staff, PTA members & health workers) will be deployed for providing sanitizer/soap & water to the students and to check the temperature of the students using thermal Scanner. Soap & water/Sanitizer will be provided in front of the examination halls also.

On exam days in school compound social distancing should be strictly followed. The maximum number of students accommodated in a room will be limited to twenty (20). For social distancing more class rooms should be used. Before and after exam crowding of the students should be strictly restricted. The Chief Superintendent and deputy chief superintendents will ensure that students are using masks properly and

social distancing is observed in the examination centre. The detailed health and safety measures are annexed with this.

Exam centre change /Clubbed Centre Students

The chief superintendent should arrange facility to the centre changed and clubbed centre students

2. Chief/Deputy chief/Invigilators

The Concerned chief superintendent should confirm that all teachers deputed for exam should compulsorily attend their exam centres for duty. More invigilators needed in case of CWSN students, Covid positive, Quarantine exam centre changed student's etc. In that cases the Regional Deputy Directors should depute the excess teachers from their districts, if asked by the chief superintendent.

(Sd/-)

Secretary

Board of Higher Secondary Examinations
Kerala

Copy to,

All Regional Deputy Directors

All Principals

All Chief Superintendents

ANNEXURE

The following safety protocols should be adopted in the context of Covid 19 in examination centres.

1. The chief superintendent should consult the health workers of nearest CHC/PHC and fix health and safety measures and obtain the service of health workers during the examination time.
2. As in the previous examinations, classes on health and safety measure will be provided to the teachers who perform examination duties.
3. Classroom with proper air circulation and adequate light will be used for examination Air conditioned rooms will not be used.
4. The Chief Superintendent and deputy chief superintendents will ensure that students are using masks properly and to check the temperature of the students using thermal scanner. Separate class room's will be arranged for students with temperature above normal level and for those showing symptoms of any diseases.
5. Exchange of items like pen, calculator etc among students will be strictly prohibited.
6. Chief Superintendent in each examination centre will take necessary steps to provide PPE kits to Covid Positive students and their invigilators. Separate class rooms will be arranged for students with temperature above normal level and for those showing symptoms of any diseases.
7. The chief superintendent should ensure that social distancing is followed by all the students, teachers and other officials.

8. Make necessary steps to prohibit the crowding of students in the school compound.
9. Soap & water/Sanitizer will be provided in main entrance and in front of the examination halls also.
10. Notice boards will be displayed in the examination centres showing do's and don'ts for protection from Corona Virus.
11. Micro plans for ensuring strict observation of Covid-19 protocols will be prepared by the school authorities under the supervision of Regional Deputy Directors.

(Sd/-)

Secretary

Board of Higher Secondary Examinations

Kerala



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