

**IN THE HIGH COURT OF KARNATAKA, PRINCIPAL BENCH
AT. BENGALURU
(ORIGINAL JURISDICTION)**

W. P. No. _____ /2020 (PIL)

BETWEEN :

1. Eric E Steaphens

...PETITIONER.

AND

1. The State of Karnataka,
Rep by, The Secretary,
Dept. of Primary & Secondary Education,
M.S. Building,
Bengaluru- 560001.

2. Karnataka Examinations Authority
Rep by, The Secretary,
8th Cross Road, Sampige Rd,
Malleshwaram, Bengaluru,
Karnataka- 560012

3. Additional Chief Secretary
Higher Education Dept
Government of Karnataka,

ACS Establishment, 2nd Gate,
6th floor MS Building Bangalore,
-560001

4. Addl. Commissioner,
Public Education Dept.,
Bengaluru. 560023

5. The Deputy Director,
Public Education Dept.
Bengaluru.560023

...RESPONDENTS

**MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226 & 227
OF THE CONSTITUTION OF INDIA.**

The petitioner above named respectfully submits as follows:

1. That the Petitioner no. 1 is a Citizen of India and is the National Secretary of the National Students Union of India which is a students' wing of the Indian National Congress. The Petitioners no.2 – no.11 are Citizens of India and are residents of State of Karnataka. The cause of action has arisen in the State of Karnataka and the Petitioners are entitled to invoke the Jurisdiction of this Hon'ble Court. As such the Petitioners are filing the present Writ Petition.
2. That the Respondent Authorities, by the nature of duties and functions performed by them, are covered under the definition of "State" as defined under Article 12 of the Constitution of India. As such the present Writ Petition is maintainable against the Respondents.
3. That the Petitioners no. 2- no. 10 are Students undertaking studies in PUC-II year in the Department of PCMB/PCMS, and are eligible to appear for KCET exam being conducted by the Respondent Authority. The same is apparent from the Identity Cards of the Petitioners issued by the Respondent Authority. The copies of which are annexed herewith and marked as **ANNEXURE-A series**.

the respectful submission would also include all the Exam Centers designated by the respondent authority herein, shall remain closed. The said Order was preceded by similar Orders issued by the NDMA/Ministry of Home Affairs. It is further relevant to mention that the Ministry of Home Affairs has issued an Order dated 30.05.2020 under the Disaster Management Act 2005 (hereinafter referred to as the "DMA, 2005"). A perusal of the same would show that the National Disaster Management Authority (hereinafter referred to as the 'NDMA') has directed to issue an Order to extend the Lockdown in Containment Zones upto 30.06.2020 and to re-open the prohibited activities in a phased manner in areas outside Containment Zones, It would be further relevant to mention that the Guidelines annexed along with the Order dated 30.05,2020 which also form a part and parcel of the Order dated 30.05.2020 are titled as "Guidelines for Phased Re-opening (Unlock 1)". A perusal of the same would show that in areas outside the Containment Zones all activities have been permitted except those mentioned in the different phases enlisted there under, which may be permitted in a phased manner. There are various Phases of re-opening of certain activities which in the prudent and expert decision of the Ministry of Home Affairs and the NOMA would be required to be re-opened in phases and not all of a sudden as a knee-jerk reaction to opening up of the Lockdown.

7. That a perusal of the Order dated 30.05.2020 more so the "Guidelines for Phased Re-opening (Unlock 1)" would show that the Re-opening of the Schools, Colleges, Educational/Training/Coaching Institutions etc. has been enumerated under Phase H of the Guidelines which follows Phase I of the Guidelines. The relevant portion of the Guidelines i.e. Phase II, is reproduced herein below for the kind perusal of this Hon'ble Court.

"Phase II

Schools, colleges, educational/ training/ coaching institutions etc. will be opened after consultations with States and (ifs. State Governments/ administrations may hold consultations at the institution level with parents another stakeholders, based on the

feedback, a decision on the re-opening of these Institutions will be taken in the Month of July 2020.

A perusal of the above would clearly show that it has been specifically directed by the NDMA/Ministry of Home Affairs that the Schools, Colleges, Educational/Training/ Coaching Institutions etc., will be re-opened only after consultations with the States/U.T.s. The State Governments have been allowed to hold consultations at an Institutional Level with parents and other Stakeholders. The same underlines the very importance of the consultation of various stakeholders including parents of the students before taking a decision with respect to opening or Institutions.

That though in Unlock -1 guidelines it was provided that School and colleges will be opened after deliberation with all the stake holders, parents etc., however the central Government Ministry of Home affairs have issued the notification dated 29.06.2020 whereby the Unlock-II guidelines have been issued, but in the said guidelines also it has been specifically mentioned that School colleges and all the education institutions will remain closed till 31st July 2020. It would be relevant to mention that the provisions of the DMA 2005 as well as the Orders/Guidelines issued there under have an overriding effect in view of Section 72 of the Act of 2005 which is reproduced herein below for kind perusal of this Hon'ble Court:

"72, Act to have overriding effect---The provisions of this Act, shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

8. It is submitted that the notification dated 29.06.2020 is still in force as on today, that directs all schools, colleges and educational institutions to remain closed till 31st July 2020. Notwithstanding this, the Respondent State and Respondent Authority (KEA) have issued a notification dated 13.05.2020 bearing NO. ED/KEA/ADMN/CR-13/2019-20 that provides a revised Timetable

- for conducting KCET-2020 exam on the 30th and 31st of July, 2020. The copy of which is annexed herewith and marked as **Annexure- C**. The decision taken by the Respondents to conduct this exam is against the prudent and expert decision of the MHA to reopen certain activities in a phased manner, in order to, control the spread and outbreak of the novel Coronavirus. The decision in clear violation of the 29.06.2020 notification issued by the MHA and conducting the exams during these testing times will create widespread panic and put the lives of several students, teachers, staff and parents at great risk.
9. It is further submitted that around 2 thousand students will be travelling into Karnataka from other parts of the country and 30 students will be travelling from abroad to appear for the KCET that is scheduled on 30th and 31st of July 2020. It is submitted that these students will be exempted from the rules and norms of Home quarantine and will be allowed to stay in Karnataka for a period of 96 Hours only to appear for the KCET. This is clearly in violation of the 04.06.2020 Government order regarding quarantine of outside people travelling to Karnataka. Through this order, the state mandates a 7-day compulsory state quarantine followed by a 14-day home quarantine for people coming from outside of Karnataka. The copy of the order is annexed herewith and marked as **Annexure- D**. Exempting the above-mentioned candidates from the purview of this order is discriminatory, vague and arbitrary. By allowing this, the respondents are exposing the candidates and the general public to the virus and are undermining the larger public health and safety.
10. It is submitted that The Respondent authority has gone a step further and permitted Covid Positive candidates to appear for the KCET 2020 exam. These candidates will be allowed to take up the exam in a separate examination centre/ a separate room within the same examination centre as other students. The Covid positive student will be required to provide their medical certificate along with "Risk Consent" to the examination authorities. It is evident that the Respondents are also aware of the fact that conducting the exams under such dreadful conditions are risky but are choosing to

be oblivious of the same. The Respondents are risking the health/Lives of not only students and parents but also invigilators, Examiners, Expert assistants, Support staff, Security and other staff. Allowing the exam to be conducted under these circumstances will only instill severe pressure in the minds of the students and it will have a drastic impact on their mental health that will subsequently affect their exams and undermine the quality of education in our state. This decision of the respondents is imprudent, irresponsible, incautious and unreasonable. The copy of the SOP issued by the respondent authority on 18.07.2020 is annexed herewith and marked as **Annexure-E**. The copy of instructions to Covid Positive candidates willing to appear for CET 2020 exam is annexed herewith and marked as **Annexure-F**.

11. It is submitted that the petitioners and other students all across the state are undergoing severe distress and hardships due to untimely and unplanned decision to conduct KCET- 2020. With the exponential rise in cases of Covid positive patients in the state, the students are unprepared mentally and physically to face these exams to the best of their capability. It is submitted that some students are residing at containment zones with their entire locality being locked down and severely affected by Covid-19 virus, hence it is impractical and inconvenient for them to attend the said exam. Not only will they be at risk, they will also be a potential threat to the larger public. They have expressed their concerns by making representations to the concerned authorities in the state Government as well as the Government of India. It is submitted that letters and emails were sent to National Commission for protection of child Rights, Government of India (NCPCR), the Respondent state and respondent authority. The NCPCR acknowledged the grievances of the students and wrote a letter to the Respondent authority directing the respondent authority to take appropriate action in the best interest of the students, also to consider recommendations issued by them regarding re-opening of schools/ colleges/ educational institutions and conduct of examinations and instructed the Respondent authority to follow the due procedure provided by the MHA. The copy of the Letter by NCPCR is annexed herewith and marked as **Annexure-G**. The copies of emails and

letters sent by the students are annexed herewith and marked as **Annexure-H**.

12. It is important to submit that National Testing Agency (NTA) issued a public notice date 03.07.2020 rescheduling the National Eligibility cum Entrance Test (NEET) (UG)-2020 to 13.09.2020. The NTA decided that with the current situation arising from COVID-19 pandemic, it is in the best interest of the Students to postpone these entrance tests. It is further submitted that the NTA decided to postpone the Joint Entrance Examination (JEE) (Main) that was to be held on July 18- 23rd 2020 to (01-06) September 2020, citing reasons of the exponential increase of the Covid-19 pandemic. The Copies of rescheduling of JEE and NEET are annexed herewith and marked as **Annexure-J & K** respectively. It is submitted that other Authorities conducting entrance exams for students willing to get admitted to professional courses, are acknowledging the current situation and making necessary changes, whereas the Respondent Authority is being oblivious to the same, though it is carrying out functions to achieve the same purpose.
13. Further the conduct of the Respondents in permitting the exams will cause hardship for students who have to travel a long distance with the stress of the exam and the looming aggravating situation caused by the pandemic, which may only lead to mental health issues to the petitioners herein.
14. It is further submitted that the petitioners herein are also appearing for JET and NEET exams, which have already been postponed in the light of the ongoing pandemic, however if the KCET exams is conducted and if at all the petitioners were to get infected by the COVID-19 virus, it would render them in a helpless state as they will not be able to appear for the other exams. That this Hon'ble Court ought to take into account the far reaching affects that could be caused to the health and prospective careers of the petitioners herein.
15. Being aggrieved by the inactive response of the Respondents in not paying heed to the concerns and requests of the student

community and also there being an eccentric action of conducting the examination in violation the MHA order amidst the exponential outbreak of the coronavirus, It is submitted that the petitioners having no other alternative and efficacious remedy, except approaching this Hon'ble Court under Articles 226 and 227 of Constitution of India, has filed this writ petition for the relief sought for in the prayer.

16. It is further submitted that the petitioners have not filed any other writ, suit or other proceedings seeking the reliefs sought in this writ petition. Wherefore, the petitioners present this petition, on the following amongst other grounds.

GROUND

17. That the Notifications dated 13.05.2020 issued by the Respondent authority are clearly in the teeth of the Order dated 29.06.2020 as well as the Order dated 30.05.2020 and order dated 17.05.2020 issued by the Ministry of Home Affairs, Government of India which had clearly directed that the Schools, Colleges, Educational/Training/ Coaching Institutions etc. shall remain closed till 31st July 2020. The same in the respectful submission would also include the Exam Centres designated by the Respondent Authority.
18. That the 29.06.2020 notification is still in force as on today, that directs all schools, colleges and educational institutions to remain closed till 31st July 2020. The decision taken by the Respondents to conduct this exam is against the prudent and expert decision of the MHA to reopen certain activities in a phased manner, in order to, control the spread and outbreak of the novel Coronavirus. The Respondent Authority is in clear violation of the same and thereby it is putting the lives of students, teachers, staff and parents at risk.
19. That allowing students from outside the state to appear for the KCET- 2020 exam by exempting them from Quarantine regulations is discriminatory, unreasonable and imprudent. The respondents have failed to apply their minds before arriving at this decision. By

allowing this, the respondents are exposing the candidates and the general public to the virus and are undermining the larger public health and safety. The submission is in violation of Article 14 & 21 of the Constitution of India.

20. That allowing candidates who are Covid positive to appear for the said exam and requiring them to provide "risk consent" is incautious, ill conceived and unwise. The Respondents are risking the health/Lives of not only students and parents but also invigilators, Examiners, Expert assistants, Support staff, Security and other staff. Allowing the exam to be conducted under these circumstances will only instill severe pressure in the minds of the students and it will have a drastic impact on their mental health that will subsequently affect their exams and undermine the quality of education in our state. The same is in Gross violation Article 21 of the Constitution of India and should be set aside.

21. That there isn't an immediate urgency to conduct the KCET 2020 as it will not have any effect on the students' academic future. That the National testing agency has already postponed the national level entrance tests like JEE and NEET owing to the dreadful pandemic situation prevailing in the country. That Nobody will be affected or injured if the 13.05.2020 notification is set aside.

22. The only point for consideration before this Hon'ble court are, (a) Whether the act and omission of the Respondent authorities is illegal, arbitrary and against law?
(b) Whether the act and omission of the Respondents is in violation of Article 14, 19 and 21 of the Constitution of India?
(c) Whether in the light of the fact and circumstances of the present case, the Petitioners ought to be given the relief as prayed for?

PRAYER

Wherefore, for the reasons stated above this Hon'ble Court may kindly be pleased to:

- (a) Call for records in pursuance of the notification-dated 13.05.2020 bearing no ED/KEA/ADMN/CR-13/2019-20.
- (b) Issue a Writ of Certiorari for setting aside the Notification dated 13.05.2020 bearing no ED/KEA/ADMN/CR-13/2019-20 issued by the respondent in conducting the CET-2020 exams on 30.07.2020 and 31.07.2020 as the same is in violation of the "Guidelines for Phased Re-opening (Unlock I)" contained in the Order dated 30.05.2020 (P-4) & also "Guidelines for Phased Re-opening (Unlock 2)" contained in the Order dated 29.06.2020 (P-5) Issued by the Ministry of Home Affairs, Government of India and also in violation of the 04.06.2020 State Government order regarding quarantine of outside people travelling to Karnataka.
- (c) Issue a Writ, Order or Direction in the nature of Mandamus directing the Respondent State as well as the Respondent Board to conduct the KCET that is scheduled on 30th and 31st of July 2020 after the completion of the JEE and NEET exams which have already been postponed.
- (d) Issue a Writ, Order or Direction in the nature of Mandamus directing the Respondent State as well as the Respondent Board to take a well timely, well informed and uniform decision after consultation of various stake holders as well as the parent of the students as envisaged under the Order dated 30.05.2020 (P-4) & 29.06.2020 (P-5) with respect to the Schedule of conducting the examinations of the Students.
- (e) Any other relief, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present Case, may kindly be issued in favour of the Petitioners in the interest of Justice.

Bengaluru
22.07.2020

Advocate for the Petitioners