

IN THE SUPREME COURT OF INDIA

(Civil Appellate Jurisdiction)

I.A No. 72121 of 2020

In

WP (C) No. 724 of 2020

In the matter of: -

Praneeth K. and Ors.

...Petitioner

Versus

UGC & Ors.

...Respondents

AND IN THE MATTER OF:-

MAHARASHTRA STUDENTS'S UNION

.... APPLICANT

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Maharashtra Students's Union

Through its Founder-President,

....Applicant

**WRITTEN SUBMISSIONS ON BEHALF OF MAHARASHTRA
STUDENT'S UNION IN IA 72121/2020 IN WP (C) 724/2020.**

To

THE CHIEF JUSTICE OF INDIA AND

HIS COMPANION JUSTICES OF THE

HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF THE
APPLICANT ABOVE NAMED

MOST RESPECTFULLY SHEWETH

1. The present Intervention Application being I.A. 72121/2020 in WP (C) No. 724/2020 is preferred by the Maharashtra Student's Union, which is a non-profit organization working for welfare of students, more particularly students pursuing higher education and has been championing the cause of equal access of education to all students in the State of Maharashtra.
2. At the outset it is humbly submitted that guidelines dated 29.04.2020 or the revised guidelines dated 06.07.2020 issued by the University Grants Commission are neither mandatory nor binding on the State Authority set up under Section 14 of the Disaster Management Act, 2005. In case of a conflict between laws made either by the Parliament and/or State Legislature and the Disaster Management Act, 2005, the latter shall prevail in accordance with the provisions of Section 72 of the Disaster Management Act, 2005.

3. That as per Section 8 of the UGC(Minimum Standards of Instruction for the Grant of the First Degree through Formal Education) Regulations, 2003, which deals with the Award of Degrees by Universities, no student shall be eligible for the award of the first degree/bachelor's degree unless he/she has successfully completed a programme, of not less than three years duration and secured the minimum number of credits prescribed by the university for the award of the degree.

Thus a Bachelor's degree is conferred on the basis of a collective assessment of all 3 years of a Bachelor's course and not of the final semester alone.

4. It is also pertinent to mention here that the UGC vide its notification dated 21.04.2009 came up with an Action Plan for Academic and Administrative Reforms in Higher education wherein they introduced the "**Semester system**" of conducting exams wherein a sum total of the performance of every student for all the semesters is collectively considered in order to declare the final result. It was also suggested to gradually move on to a system which emphasizes on continuous internal assessment. Another reform that was introduced was the "**Choice based Credit system**" which means an evaluation wherein modules taken by students shall be assessed immediately upon completion of required academic work as a part of continuous

assessment or at the end of a semester. Hence after the said 2009 reforms introduced by UGC, the last examination or the final examination of students of Higher and Technical Education does not carry any special weightage or decisive value which a final year examination used to carry in the erstwhile education system, as the evaluation is done on a cumulative assessment of all semesters in a degree course.

5. At this juncture it would be relevant to analyze the interplay between certain provisions of the following Acts:

- I. The Universities Grants Commissions Act, 1956
- II. The Maharashtra Public Universities Act, 2016
- III. The Disaster Management Act, 2005

The Universities Grants Commissions Act, 1956:

4. **Section 12** of the Universities Grants Commissions Act, 1956 enumerates the powers and functions of the UGC and states that *it shall be the general duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for promotion and co-ordination of University Education and for the determination and maintenance of standards of teaching, examination and research in Universities.*

6. That “other bodies” not being defined in the Act and the same being comprehensive and wide, certainly would include the State Authority and/or State Government.

Admittedly while taking the decision of holding examinations, the UGC did not consult either the State Authority and/or the State Government and hence in my humble submission, such decision on part of UGC to hold examinations is neither mandatory nor binding on the State Governments.

7. Further **Section 22** of the UGC Act, 1956 clearly stated that the right of conferring or granting degrees rests solely upon the Universities. The relevant portion of the Act is extracted hereinbelow”

22. (1) The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

(2) Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree.

(3) For the purposes of this section, “degree’ means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the official Gazette.

8. Moreover In exercise of the powers conferred by **Section 22(3)** of the UGC Act, 1956, the UGC came up with

notification dated 05.07.2014 wherein it specified nomenclature of degrees for the purposes of the said section. As per the same, a “*Bachelors’ degree*” is a comprehensive 3 years course, and not any particular semester as such, including the final semester.

Maharashtra Public Universities Act, 2016:

9. It is submitted that every State have their own Public Universities Act dealing with conduct of examinations, evaluation and award of degrees. **Section 5** of The Maharashtra Public Universities Act, 2016 lays down the powers and functions of Universities. The relevant extract is quoted hereinbelow:

5.(21) to hold examinations or evaluations and confer degrees and post-graduate diplomas and award post-higher secondary diplomas and certificates and other academic distinctions on persons who,— (a) unless exempted therefrom in the manner prescribed, have pursued approved courses of study in the university, or in a college or in an institution or a recognized institution or a school and have passed the examinations and earned the required credits or marks or grades prescribed by the university; or (b) have pursued approved courses of study in the university, or in a college or in an institution or a recognized institution or in an autonomous college or an autonomous recognized institution or in empowered

autonomous college or empowered autonomous cluster institutions or a school and have passed the examinations and earned the required credits or marks or grades prescribed by the university; or (c) have engaged in research under conditions provided by Ordinances and Regulations;

(22) to confer and award such degrees, diplomas and certificates to, and provide for such lectures, instructions and training for external students, and the students under correspondence and distance education, online and continuing education courses;

10. Section 88 of the 2016 Act specifies that before the end of each academic year, the university shall prepare and publish a schedule of examinations for the next academic year and choice based credit system of evaluations for each and every course where ever applicable provided that, in case the university is unable to follow the said schedule due to reasons and circumstances beyond its control it shall, as soon as practicable, submit a report to the Chancellor and to the State Government incorporating the detailed reasons for making a deviation from the published schedule.

Section 90. No examination or evaluation or the results of an examination or evaluation shall be held invalid only for the reasons that the university has not followed the schedule as stipulated in sections 88 and 89, as the case may be.

11. Also as per **Section 5(81)** of the 2016 Act, it is obligatory on part of the Universities to comply with and carry out any directives issued by the State Government.
12. A collective analysis of the aforesaid provisions of the Maharashtra Public Universities Act, 2016 makes it clear that the power to take decisions regarding the conduct of examinations and conferring degrees rests upon the respective State Universities and not upon the UGC.

The Disaster Management Act, 2005:

1. That the Disaster Management Act, 2005, being a Special Act shall prevail over all Central and State Acts including the Universities Grant Commission Act, 1956, and the decisions taken and orders issued thereunder. Section 72 of the Disaster Management Act, 2005 (hereinafter referred to as

“the Act 2005”) gives it overriding effect. The same is quoted hereinbelow:

‘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.”*

2. Further Section 18 and Section 38 of the DM Act 2015 lays down the powers and functions of the State Disaster Management Authority and the State Government respectively for the purpose of disaster management in a State. The same are quoted hereinbelow.

18. Powers and functions of State Authority

(1) Subject to the provisions of this Act, a State Authority shall have the responsibility for laying down policies and plans for disaster management in the State.

(2) Without prejudice to the generality of provisions contained in sub-section (1), the State Authority may-

(a) lay down the State Disaster Management policy;

(b).....(c)...

(d) lay down guidelines to be followed by the departments of the Government of the State for the purposes of integration of measures for prevention of disasters and mitigation in their development plans and projects and provide necessary technical assistance therefor;

(e).....(f).....(g).....;

(h) review the measures being taken for mitigation, capacity building and preparedness by the departments of the Government of the State and issue such guidelines as may be necessary.

38. State Government to take measures-

(1) Subject to the provisions of this Act, each State Government shall take all measures specified in the guidelines laid down by the National Authority and such further measures as it deems necessary or expedient, for the purpose of disaster management.

(2) The measures which the State Government may take under sub-section (1) include measures with respect to all or any of the following matters:-

(a) coordination of actions of different departments of the Government of the State, the State Authority, District Authorities, local authority and other non-governmental organizations;

(b).....to (k).....

3. A cumulative study of the aforesaid provisions would make it clear that not only the State Government, but even the State Disaster Management Authority (hereinafter referred to as “State Authority”) constituted under section 14 and/or the State Executive Committee constituted under Section 20 of the Act of 2005 are legally competent to take a decision in this behalf.
4. That the Government of Maharashtra after considering the decisions taken at the meeting of the State Authority on 18.06.2020, came up with a resolution dated 19.06.2020 whereby considering the exigencies of conducting final semester examinations it took a conscious decision of not holding the last year final semester examination of both professional and non-professional courses and also gave directions to take appropriate decision regarding the students having backlog of subjects.
5. That on 04.07.2020, a meeting was convened of the Vice Chancellors of various universities of the State of Maharashtra, wherein most of the Vice Chancellors expressed their opinion that considering the situation of

COVID-19 pandemic in the State , it will not be possible to conduct examinations.

6. That in light of the revised guidelines issued by the UGC dated 06.07.2020, the State Authority of Maharashtra convened another meeting on 13.07.2020 wherein after considering the prevailing COVID-19 situation in the State of Maharashtra, as well as the views put forth by majority of Vice-Chancellors of Universities in the State that it is not possible to conduct examinations in the State, reiterated and confirmed its earlier decision of not holding the examinations and confirmed the State Government's Resolution dated 19.06.2020.
7. On an overview of the aforesid provisions of law, as well as the developments that have taken place, it becomes abundantly clear that the power to take decisions regarding conduct of examinations and conferring of degrees rests with the respective State Universities, and as such the UGC does not have the authority to grant/withhold degrees of students, when the State Governments and Vice Chancellors of Universities have after considering all the exigencies of the

current situation made a unanimous decision to confer degrees without holding the final year examinations. Furthermore, while UGC is concerned with the standards of education, the decision of the State Government regarding non-conduct of final exams in a situation of a national health crisis like the present COVID-19 pandemic cannot in the remotest manner be considered as an impediment on the powers of UGC to maintain standards of education.

8. That the UGC vide its revised guidelines dated 06.07.2020 has permitted the conduct of examinations optionally by way of online method. Suffice it to say that online examination has its own limitations, inherent defects and practical difficulties, some of which are lack of electricity supply in some areas, sudden disconnection of electricity supply, technical glitches in the system, lack of internet connectivity in many areas as well as lack of availability of computers. That even if online mode of conducting examinations is considered as an alternative, it is virtually impossible for Universities not equipped with the requisite infrastructure to be able to build that without causing any further delays, which would in turn exacerbate students' anxiety and

jeopardize their future. If this is done in a hurried and unplanned manner it would lead to further issues. Hence, online mode of conducting examinations is not feasible in the current situation.

9. That holding of physical examinations, which normally continue for a period of 15-20 days, would pose a problem of accommodation of students, staff and invigilators for the duration of the examination. Also owing to lack to public transport, it would be difficult for lakhs of students who have gone back to their hometowns to make travel arrangements.
10. That it is pertinent to mention here that from the time the Applicant Union first made a representation on 17.03.2020 to the then Hon'ble the acting Chief Justice of the Bombay High Court requesting him to direct the State of Maharashtra and the University of Mumbai to take measures for the safety and security of students appearing in the Ty.B.com Sem-VI examination, till the time the State of Maharashtra took a decision not to hold examinations in its meeting dated 13.07.2020, the situation in the State of Maharashtra has only deteriorated further with the contagion reaching the community transmission stage. Thus on factual grounds as

well, considering that the State of Maharashtra is worst hit by the pandemic with the situation only worsening with each passing day it is not feasible to hold the final year examinations, as it would pose a huge risk to health and lives of not only the students and staff but also the members of their families and other persons that they may come in contact with. Also since the COVID-19 situation is varying from one State to another, it is right that the decision whether or not to hold the final year examinations should be left to the respective State Governments as they are best equipped to handle a crisis of this enormity under the provisions of the Disaster Management Act, 2005.

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