

**IN THE SUPREME COURT OF INDIA
Civil Original Jurisdiction**

Writ Petition (Civil) No. 739 of 2020

Yuva Sena .. Petitioner

Versus

University Grants Commission and others .. Respondents

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ADVOCATE FOR RESPONDENT : SACHIN PATIL

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**SKELETAL SUBMISSIONS FILED ON BEHALF OF THE STATE OF
MAHARASHTRA (Respondent No 4) BY ARVIND P. DATAR,
SENIOR ADVOCATE**

**I. The Role of the State in Conducting Examinations during the
COVID-19 Pandemic**

- 1.1. In normal times, the academicians alone can take a decision as to whether or not to hold examinations. However, during the Covid-19 Pandemic, such a decision needs to be taken not just by the academicians but also by executives and/or the administration of every State. This is obvious because conduct of examination involving thousands of students is not the job of academicians alone, but involves various agencies of the State. During the Covid-19 Pandemic, the administration of a State will have the final say in this regard.
- 1.2. The feasibility of holding examinations has to be determined taking into consideration the ground realities. As it involves mobilization of not only the students appearing for the examination but also the entire

staff involved in the conduct of examination such as Peons, Supervisors, Invigilators, etc.

- 1.3. The exercise of holding of examination also includes transportation of confidential material, such as question papers, answer papers, right from printing press to the examination centers. It also involves transportation of answer papers after completion of examination and their distribution to the teachers/professors for checking the answer papers and keeping them in safe custody even after the examinations.
- 1.4. The holding of examinations is not a one-time exercise. The students are required to appear for several papers, relating to different subjects, and the exercise of holding examinations is usually spread over a period of more than two weeks. On every occasion, it is not just the students but the entire staff involved in the exercise to travel from their respective residence to the place of examination i.e. examination center and back to their respective homes. Even the Police personnel and other staff of the Government is required to be used to maintain law and order and maintain strict discipline at the examination centers.
- 1.5. All of the examination centers, without exception, are educational institutions, most of which are presently being used as Covid Care Centers or isolation centers, where people are quarantined for a considerable length of time. Therefore, most of these institutions are not presently available for being used as examination centers.

- 1.6. The students staying in hostels, rented accommodation in university towns/cities have returned to their native places, due to the lockdown. They cannot return for the limited purpose of examination and reside for a limited duration in the university towns/cities. Additionally, inter district transportation is presently banned. Especially in Mumbai, the local trains are not working and the city buses are allowed to ply only with 50% of its capacity, making it almost impossible for the students and the aforesaid staff to undertake repeated journeys from their respective homes to the examination centers and back.
- 1.7. In the State of Maharashtra (Respondent No. 4) there are 7,34,516 non-professional students and 2,83,937 professional students appearing in the final year examination.
- 1.8. Further, at a meeting held on 4th July 2020, of the Vice-Chancellors of various universities in the State and the concerned officers of the Higher and Technical Education Department and at the meeting, most of the Vice-Chancellors opined that considering the situation of COVID-19 Pandemic in the State it would not be possible to conduct examinations.
- 1.9. The aforesaid aspects and several other aspects are stated in detail in the Affidavit in Reply dated 28th July 2020, filed by the State of Maharashtra.

II. Lack of legislative competence:

The impugned revised guideline and office memorandum dated 06.7.2020 is under the UGC Act, 1956, which, according to the counter affidavit filed by the UGC, is traceable to Entry 66 of List-I. This Entry is confined to “*Coordination and determination of standards*”. This does not include conduct of examination [*Modern Dental College v. State of Madhya Pradesh*, (2016) 7 SCC 353].

III. Impugned guidelines are violative of Article 14:

3.1 The impugned guidelines fail the test of Article 14 because they apply throughout India and give one fixed date of 30th September 2020, irrespective of the conditions prevailing in individual States / universities. Issuing one deadline results in unequals being treated equally.

[*KT. Moopil Nair v State of Kerala*, AIR 1961 SC 552: (1961) 3 SCR 77; *Ghaziabad Development Authority v. Balbir Singh*, (2004) 5 SCC 65]

3.2 Guidelines are completely arbitrary and also fail the *Wednesbury* test. They have taken into account irrelevant material and ignored the relevant ones for consideration.

IV. The guidelines are violative of section 12 of the UGC Act, 1956:

4.1 Section 12(1) of the UGC Act requires consultation with various universities and other bodies concerned. The expression “*other bodies concerned*” will include State Disaster Management Authority (SDMA), which have been constituted in each State. These authorities have made independent assessments of the COVID-19 situation and made

recommendations relating to various public activities including conduct of examination.

- 4.2 The initial guidelines were issued on 29th April 2020. At page 30 of the convenience compilation, a reference to the universities, which have been consulted, are given. Strangely, no university from Maharashtra or Tamil Nadu or other States having high COVID-19 instances have been consulted as required by section 12(1) of the UGC Act.
- 3.3 The impugned guidelines were issued on 06th July 2020 on the basis of the same Chairman of the Expert Committee (Prof. R.C. Kuhad).
- 3.4 Para 10 of the counter affidavit of UGC states that Vice Chancellors of Technical Universities were consulted this time. However, the list of persons consulted has not been appended to the report. An E-mail dated 12th August 2020 sent by the State of Maharashtra requesting for a copy of the report, has not been responded to. In the absence of consulting larger universities or SDMA, the guidelines are in violation of section 12(1).

V. The provisions of the Disaster Management Act, 2005, will have an overriding effect.

- 5.1 Section 72 of the Disaster Management Act, 2005 ('the Act 2005), leaves no manner of doubt that not only the provisions of the Act 2005 but also the decisions taken and orders issued thereunder will have overriding effect not only on the provisions of the Maharashtra University Act, 2016, but also on the University Grants Commission Act, 1956 as also decisions taken and orders issued thereunder. Resultantly, on account of

the circumstances and the situation prevailing in the State, if a decision is taken by the appropriate authority legally competent to take a decision under the Act 2005, regarding holding of the examinations in issue, the same will operate and hold the field despite the provisions of the Universities Act and/or UGC Act as also despite any decision taken or order issued to the contrary thereunder, by any of the authorities or bodies or persons competent to do so under the Universities Act and/or UGC Act.

- 5.2 A perusal of Sections 18 and 24 of the Act 2005 as also Section 2 of the Epidemic Act, shows that for the purpose of taking effective measures in order to prevent the outbreak as also spread of the Corona virus or COVID-19 etc., which is highly contagious and infectious, if any of the abovenamed authorities come to an informed conclusion that, it is requisite to postpone or even cancel the holding of the examinations in issue, it will be certainly open for it or them, as the case may be, to take such a decision.
- 5.3 Not only the State Government but also the State Disaster Management Authority constituted under Section 14 and/or the State Executive Committee constituted under Section 20 of the Act 2005 is legally competent to take a decision in the aforesaid regard.

VI. **The Guidelines issued by the UGC**

- 6.1 The Guidelines issued by the UGC dated 29th April 2020 are advisory in nature and the universities are called upon to chart their own plan of action *“taking into consideration issue pertaining to Covid-19 Pandemic”*.

6.2 The Note below Clause (8) makes it abundantly clear that notwithstanding these guidelines every university/college is to ensure that it is prepared in all respect to carry out the academic activities following necessary advisories/guidelines/ directions issued by the Central/State Government, MHRD or UGC from time to time “*to prevent the spread of Covid 19*”.

6.3 Clause (iii) of Clause 8 of the communication issued by the UGC dated 06th July 2020 specifically says that the newly issued guidelines are to be adopted by the university giving paramount importance to health of the students, faculty and the staff adhere to “*the Government protocols/guidelines related to COVID- 19 while conducting the examinations*”.

VII. **Conferment of degree certificate permissible:**

7.1 UGC Regulations of 2003 provide for a three-year first **degree programme**. Thus, B.A., B.Sc., B.Com., are three-year degree programmes.

7.2 Clause 6 read with Clause 8 in the UGC Regulations of 2003 provides that the overall performance of the students, throughout the course in issue is assessed in deciding as to whether or not he/she is entitled to conferment of degree.

7.3 Each programme consists of two semesters per year *i.e.* six semesters in total.

- 7.4 Each semester consists of 6-7 courses for that semester. Thus, each programme will consist of a three-year degree course having six semesters and approximately 36 to 42 courses.
- 7.5 Each semester consists of core courses, ancillary courses and elective courses.
- 7.6 The students are given marks or points for each semester and this is called Semester Grade Point Average (SGPA). The aggregate of the SGPAs is Cumulative Grade Points Average (CGPA).
- 7.7 Thus, each student's rank is based on Cumulative Grade Point Average. Thus, the CGPA at the end of second year will be the average of SGPA in the first four semesters and the final degree will be on the average of six SGPAs on the basis of which CGPA is calculated.
- 7.8 The students in the sixth semester had completed five out of six semesters, and even the last semester was almost over by the time the COVID-19 pandemic was upon us, and the lockdown commenced at the end of March 2020. The last semester also has internal assessments.
- 7.9 Further, the students in the second and fourth semester already stand promoted, so when they are awarded their degrees in the year 2021 or 2022, they will also have not been examined for one semester, and they will also be granted degrees on the basis of of CGPA for five semesters (and not six semesters).
- 7.10 The Maharashtra Government proposes that CGPA can be based on the first five semesters and internal assessment for the sixth semester and

CGPA can be given and degree awarded. This will permit candidates who want to get a degree, if they require it at an early date.

- 7.11 The students who wish to write the final semester examination can do so, which will be held at a later date, after the risk of COVID-19 has subsided and is so determined by the SDMA.
- 7.12 It is reported that even IITs have dispensed with the last semester examination and have granted degrees on the basis of CGPA for the semesters held so far.
- 7.13 Job interviews on campus are conducted in the last semester and the interviews take place on the basis of the applicable CGPA on the date of the interviews. Further, students receive job offers before the results for the last semester examination are declared. Therefore, not holding of the final semester does not mean that people with no knowledge or competence are being given degrees.
- 7.14 The earlier system of awarding degree or ranks only on the basis of the performance in the final year has been suspended. A student, to get high rank or distinction, has to perform consistently over a three-year period.

Dated on this the 17th day of August 2020.

Filed By



Sachin Patil
Advocate for the Respondent