

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
I.A. NO. 77445 OF 2020
IN
WRIT PETITION (C) 724 OF 2020**

IN THE MATTER OF:

Praneeth K and Ors. Etc. ... Petitioners

Versus

University Grants Commission (UGC) &Ors. Etc. ... Respondents

And in the matter of:

A.T.S.S.P.Vaishnavi. ...APPLICANT / INTERVENER

WRITTEN SUBMISSIONS ON BEHALF OF THE APPLICANT

I. Background

1. The Applicant is a student of the final semester of the 5 year B.A L.L.B at Pendekanti Law College, Osmania University, Hyderabad. She has passed all previous examinations conducted as part of her course (nine out of ten semesters) with an overall score of 74%. The Applicant has regularly secured top ranks in her course. Consequently, she has been made an offer of admission to pursue the Master of Law (LLM) program at the University of Cambridge.

The course is scheduled to commence on 01.10.2020. However, the Applicant's admission is subject to her submitting her BA LLB degree to the University of Cambridge by 19th September 2020.

2. The Applicant submits that given the pandemic situation prevalent throughout the country in general, and the State of Telengana in particular, it is neither feasible nor practical to conduct examinations. The same puts the health and lives of thousands of students, teachers and staff at risk. She challenges the validity of the impugned guidelines/ office memorandum dated 06.07.2020 of the UGC. They are liable to be struck down for four reasons:
 - a. Violation of the right to life under Article 21
 - b. Violation of Article 14 by treating unequals as equals
 - c. Absence of consultation as mandated by S.12 of the UGC Act
 - d. UGC's lack of legislative competence to regulate examinations

It is submitted that even under the existing UGC Guidelines, degrees/provisional degrees can be conferred to final year students based on their performance in the previous years. Consequentially, it is prayed that final year students such as the Applicant be conferred degrees/provisional degrees on the basis of their performance in the previous

semesters of study. The Applicant undertakes to answer her final examination if the same is held at any time in the future.

II. Submissions

A. Violation of Article 21

3. Numerous judgments of this Hon'ble Court have held that it is the "primary duty" of the state to ensure the good health of its citizens. **[State of Punjab v. Ram Lubhaya Bagga, (1998) 4 SCC 117 at Paragraph 40]**
4. As per data released on 19.08.2020, there have been 95,700 reported cases of Covid-19 in Telengana. The state has also reported 719 deaths. The entire country has reported over 27 lakh cases and 51,000 deaths. It is submitted that given the rising number of cases, conduct of examinations poses a direct threat to the health of students, teachers and the staff involved.
5. It is humbly submitted that examinations are usually conducted over a period of several days. Students are required to appear for multiple papers, relating to different subjects. On every occasion, it is not just the students but teachers, non-teaching staff etc. who have to travel. Thousands of them use public transport. The conduct of examinations also includes transportation of material such as question papers,

answer sheets etc.

6. The Applicant submits that given the existing infrastructure in universities, it is impossible for examinations to be conducted while maintaining norms of social distancing. Conduct of examinations will expose thousands of people to the risk of exposure to the virus. The same is therefore a direct threat to the right to life and health and thus violative of Article 21 of the Constitution.

B. Violation of Article 14

7. Article 14 prohibits the state from treating equals, unequally. It also prohibits equal treatment of un-equals. **[Union of India v. Tulsiram Patel, (1985) 3 SCC 398 at Paragraph 90]** Further, Article 14 strikes at arbitrary state action. State action that is capricious, irrational and/or without adequate determining principle is liable to be struck down by Court. **[Shayara Bano v. Union of India, (2017) 9 SCC 1 at Paragraph 101]**

8. The prevalent situation with respect to the spread of Covid-19 differs across the country. Some states continue to show rising number of cases. The situation is somewhat better in others. The impugned guidelines direct all universities, regardless of location to conduct examinations before 30th September. This has the effect of treating un-

equals as equals. The same is also capricious, irrational and without adequate determining principle and therefore violates Article 14 of the Constitution.

C. Lack of Effective Consultation

9. Section 12 of the UGC Act 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 the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities.”
10. The impugned guidelines have been passed without consulting all universities. Further, in the existing situation where provisions of the Disaster Management Act are in force throughout the country, the expression “other bodies concerned” will include the State Government and State Disaster Management Authority (SDMA), which have been constituted in each State. It is the state government and the authorities that are in the best position to make an assessment regarding the Covid-19 situation in each state. However, they have not been consulted.
11. When one authority is required to consult another, such consultation

must be meaningful, conscious and effective. **[Andhra Bank v. Andhra Bank Officers, (2008) 7 SCC 203 at Paragraph 24]** Consultation is not complete or effective before the parties thereto make their respective points of view known to the other and discuss and examine the relative merit of their views. **[Ram Tawakya Singh v. State of Bihar, (2013) 16 SCC 206 at Paragraph 30]**

12. Consultation as envisaged under law has not taken place in this case. In fact, the UGC has not consulted the relevant stake-holders at all. The impugned guidelines/ office memorandum are therefore liable to be struck down for non-compliance of Section 12 of the UGC Act.

D. Lack of Legislative Competence

13. The impugned guidelines and office memorandum dated 06.7.2020 have been issued under the UGC Act, 1956. Legislative competence to enact the same is traceable to Entry – 66 of List I of the seventh schedule. The entry pertains to “Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.” A Constitution Bench of this Court in *Modern Dental College v. State of Madhya Pradesh, (2016) 7 SCC 353* has held that conduct of examinations is beyond the scope of Entry 66. The observations of the Court are reproduced below:

“101. To our mind, Entry 66 in List I is a specific entry having a very specific and limited scope. It deals with coordination and determination of standards in institution of higher education or research as well as scientific and technical institutions. The words “coordination and determination of standards” would mean laying down the said standards. Thus, when it comes to prescribing the standards for such institutions of higher learning, exclusive domain is given to the Union. However, that would not include conducting of examination, etc. and admission of students to such institutions or prescribing the fee in these institutions of higher education, etc.”

14. The aforesaid makes it clear that the Entry 66 does not authorize the UGC or any authority under the Central Government to regulate examinations in Universities. It is therefore submitted that the impugned guidelines and office memorandum are beyond the legislative competence of the UGC.

III. Conclusion and Relief

15. Clause 6 read with Clause 8 of the UGC(Minimum Standards of Instruction for the Grant of the Master's Degree through Formal Education)Regulations, 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.

16. Final year students have already completed education and assessment in more than 90% of their course. For instance, the Applicant has completed 9 out of 10 semesters. This accounts for 4500 marks out of the total 5000 marks in 10 semesters. Even in the remaining 500 marks of the final semester have already been assessed for 260 marks [2 practical subjects (100 each) + internal assessments for 3 theory subjects (20 per subject)] that are under the control of the respective colleges.

Thus, the Applicant has already studied and has been assessed for 4760 marks out of a total of 5000 marks. Over 95% of her course is complete. The remaining course contains only 3 theory subjects. Even out of these, only one, i.e., Law of Taxation is a mandatory subject as specified by BCI. Classes/ syllabi in these subjects have already been concluded.

17. In view of the above, it is submitted that a degree can be conferred to students similarly situated to the Applicant even under the existing UGC regulations. In the alternative, it is submitted that students such as the Applicant can be conferred a provisional degree subject to their answering their final exams, at a future date, decided in consultation with all stakeholders and keeping in view the health of all involved.

18. It is submitted that non-conferment of a degree/ provisional degree before 15.09.2020 will gravely prejudice the Applicant and thousands of others pursuing higher education. They will lose time of another year and will have to go through the strenuous application process for the 2021 academic year. Yet, there will be no guarantee of them securing admission once again.

19. In this light, it is prayed that the impugned guidelines/ office memorandum stipulating conduct of examinations before 30.09.2020 be struck down. Consequentially, it is prayed that final year students such as the Applicant be conferred degrees/ provisional degrees on the basis of their performance in the previous semesters of study.

Drawn by:

Pranjal Kishore and
Aditya Manubarwala,
**Advocates for the
Applicant/Intervener**

Filed by:

Bharat T Manubarwala,
**Advocate on Record for
the Applicant/Intervener**

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