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**IN THE HIGH COURT OF KARNATAKA AT BENGALURU
(Original Jurisdiction)**

WRIT PETITION NO. /2020 (PIL)

BETWEEN:

Rithvik Balanagraj B.

Arunkumara H.S.

Petitioner

AND:

1. Bar Council of India

Represented by the Chairman
21, Rouse Avenue Institutional Area,
Near Bal Bhawan, New Delhi - 110 002

2. Karnataka State Law University,

Represented by the Registrar
Navanagar, Hubballi,
Karnataka 560 025.

3. State of Karnataka

Represented by the Secretary to the Government,
Department of Higher Education,
M.S. Building, Dr. B.R. Ambedkar Veedhi,
Bangalore 560 001

4. University Grant Commission,

Represented by the Chairman,
Bahadur Shah Zafar Marg,
New Delhi 110 002.

Respondents



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MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226^{and 227} OF
THE CONSTITUTION OF INDIA

The Petitioner most humbly submits as follows:

1. The Petitioner being highly aggrieved by the impugned Circular dated 09.11.2020, issued by Respondent No.2 and Circular/Press Releasedated 01.11.2020, read along with the Guidelines bearing No. BCI:D:1401/2020, and press release dated 09.06.2020, both issued by Respondent No.1, in so far as they imposes an examination on the intermediate semester law students of all Law Universities across India, including the Law Universities that are affiliated with KSLU, for the semester from which they have already been promoted, has approached this Hon'ble Court. The copy of the impugned Circular, Guidelines and the Press Release are herewith produced and marked as **Annexure - A, B, C& D** respectively.

BRIEF FACTS

2. It is submitted that the Petitioner No.1 is a 3rd year law student at St. Joseph's College of Law, Bangalore, Petitioner No.2 is a 2nd year law student at S.B.R.R. Mahajana Law College, Mysore. Both of these law colleges are affiliated to Karnataka State Law University, Hubli. The Petitioners are public spirited individuals who believe that the outcome of the writ petition will save the interest of the law student community at large.
3. It is submitted that the Department of Higher Education, Government of Karnataka vide its order dated 13.03.2020, herewith produced and marked as **Annexure - E**, ordered the shutdown of college and universities across the state with effect from 14.03.2020.
4. The law colleges affiliated to Karnataka State Law University (Herein after referred as KSLU) started its operation for the even semester of 2019-2020 academic year on 10.02.2020, and conducted classes for around one month before its shutdown. The Circular dated

27.01.2020, notifying the commencement of the Semester is herewith produced and marked as **Annexure – F**.

5. It is submitted that on 10.04.2020 The KSLU issued a Circular bearing No. KSLU/2020-21, directing its affiliated law colleges to complete the remaining syllabus through various online modes. Hence, around 70-80 % of the syllabus was covered through online teaching. The Circular dated 10.04.2020 is herewith produced and marked as **Annexure - G**.
6. It is submitted that on 27.04.2020, The University Grant Commission issued the “Guidelines on Examinations and Academic Calendar for the Universities in View of COVID-19 Pandemic and Subsequent Lockdown” herewith produced and marked as **Annexure - H**, wherein it was suggested that In case the situation does not appear to be normal in view of COVID-19, grading of the students could be a composite of 50% marks on the basis of internal evaluation adopted by the universities and the remaining 50% marks can be awarded on the basis of performance in previous semester.
7. It is submitted that The Bar Council of India vide its communication dated 29.05.2020, read with the Press Release Dated 09.06.2020, recommended the Law Universities to conduct examination for the intermediate semester students after reopening of colleges/universities. The communication of the Bar Council of India claimed that the resolution and guidelines are only, in the light of detailed guidelines issued by the University Grants Commission on 29.04.2020. However an examination after the Universities reopen, when the students are already in next semester, is beyond the scope of the UGC guidelines.
8. It is submitted that UGC Expert Committee was requested to revisit the Guidelines for Examinations and Academic Calendar as the number of COVID cases were rising and likely to increase further. The UGC approved the recommendations of the Expert Committee and clarified that the guidelines regarding conduct of intermediate semester examination will remain unchanged vide its “UGC Revised Guidelines on Examinations and Academic Calendar for the

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Universities in view of COVID-19 Pandemic" dated 06.07.2020. which is herewith produced and marked as **Annexure - J.**

9. It is submitted that the state of Karnataka implemented the UGC Guidelines issued on 29.04.2020 vide its order ED/197/UNE/2020 dated 10.07.2020 mandating in clear terms that all the state universities to evaluate all the intermediate semester students based on comprehensive formula which is composite of 50% marks on the basis of the pattern of internal evaluation adopted by the universities and the remaining 50% marks awarded on the basis of performance in previous semester. By reading of the same, it is clear that the State Government has borne in mind the guidelines of the UGC and has taken this policy decision. The Order of the Karnataka State Government is herewith produced and marked as **Annexure -K**
10. It is submitted that subsequently the Karnataka State Law University issued revised academic calendar (KSLU/Reg/Acad-II/2020-21/0274) dated 16.07.2020 which is herewith produced and marked as **Annexure - L.** Which notified commencement of intermediate semester examination from 05.10.2020, completely deviating from the UGC guidelines of April 2020 and the government of Karnataka order dated 10.07.2020. This move by the university was severely criticized by the students and other stake holders. Students carried out peaceful protest throughout the state asking the university to implement the Order of the State Government dated 10.07.2020. The students argued that university has completed around 70-80% syllabus in online mode which was restricted to comfortable and privileged class of the society and therefore the decision to conduct an examination has a disproportionate and adverse impact on the students who were unable to attend classes in online mode for various reasons like inaccessibility, remote locality, and affordability. Further they contended that the students have comeback home without any book or study material and therefore are unable to prepare for the examination.
11. It is submitted that Petitioner No. 2 comes from a economically poor background and was undergoing a lot of financial difficulties during

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the initial time of lockdown. The Petitioner no.2 used to depend upon the college library for purpose of law books as he did not have a smart phone or a computer to attend online classes or the required study material to study.

12. It is submitted that taking all these factors into account the Hon'ble law minister for Karnataka, vide a press conference dated 26.08.2020 declared that the students would be provisionally promoted and after reopening of the college, the pending syllabus of the previous semester will be taught. Further, the students will be given access to library and after 45 days to 2 months, the examination will be held. However he clarified that the examination will be conducted as per the BCI's direction.
13. Pursuant to the press conference the KSLU vide its circular no. KSLU/2020-2021/294 dated 28.08.2020 which is herewith produced and marked as **Annexure - M**, postponed the intermediate semester examination and notified that the date of intermediate semester examination will be communicated after reopening of college.
14. It is submitted that KSLU later released the examination notification No. KSLU/Exam/2020-21/419 dated 13.10.2020 notifying commencement of intermediate semester examination from 23.11.2020. The KSLU circular No. KSLU/Exam/2020-21/419 dated 13.10.2020 is herewith produced and marked as **Annexure -N** . However, there was no clarity as to reopening of the university. This is a clear breach of the promise made by the Hon'ble Law Minister. If such examination is conducted, students who were unable to follow the online mode of education for various reasons like affordability, inaccessibility, remote locality etc., would effectively be compelled to write examinations on subjects which they were never taught. This will breach their legitimate expectation and will have a disproportionate impact on these students.
15. A nationwide survey conducted by National Statistical Office, Ministry of Statistics and Programme Implementation, Government of India on "key indicators of Household Social Consumption on Education in India" for the year 2017-18 shows that only 10.7 % Percentage of



households has a computer while 18.8 % households has an internet facility In Karnataka and the percentage goes down to 2.0 and 8.3 respectively in rural Karnataka. The Nationwide survey is herewith produced and marked as **Annexure - P.**

16. It is submitted that the Karnataka State Law University, by its Notice dated 31.08.2020, started with its 2020-2021 academic year in online mode from September 1st as per Government of Karnataka order ED/197/UNE/2020 dated 10.07.2020. The Notice issued by KSLU dated 31.08.2020, is herewith marked and produced as **Annexure - Q.**
17. It is submitted that on 01.11.2020, the Bar Council of India issued the impugned Circular/Press Release pursuant to a Writ Petition in W.P. (C) No. 8307/2020 before the Delhi High Court. Wherein the Bar Council of India modified its Resolution/Circular/Press Release dated 27.05.2020. The Press Release dated 01.11.2020 effectively permits all law universities to conduct physical examinations for the intermediate semester students. It is further provided that if any students are unable to appear for the physical exam or are unable to pass such exam, then those students, without being penalized, will be entitled to take or reappear in a re-examination that shall be held within one month of the physical re-opening of the Universities/College after the pandemic is averted. The order copy in W.P. (C) No. 8307/2020 passed by the Delhi High Court is herewith produced and marked as **Annexure - R.**
18. It is submitted that KSLU issued the impugned circular dated 09.11.2020, clarifying that the Intermediate semester students of all KSLU affiliated law universities are mandatorily required to write intermediate semester examinations as per the Bar Council Press Release dated 09.06.2020. The impugned Circular also states that the aforementioned Intermediate Semester Examinations will be held after the re-opening of colleges and Universities, after the Covid-19 Pandemic situation is completely averted.
19. It is submitted that the guidelines issued by the Bar Council of India, to the extent that it is different from the Guidelines issued by the University Grants Commission which is enforced throughout the

state of Karnataka by its order dated 10.07.2020, violates Article 14 of the Constitution. The guidelines issued by the Bar Council of India, to the extent that it grants permission to the law universities to conduct physical examinations for intermediate students and deviates from the University Grants Commission guidelines, differentiates between Law students and Non-law Students as the non-law students are promoted based on the 50-50 aggregate of internal marks of the semester and marks scored in previous semesters.

20. It is submitted that in any case, the guidelines issued by the Bar Council of India in its press release dated 01.11.2020 and the Circular dated 09.11.2020, issued by KSLU, suffer from ambiguity as it is impossible to determine when the pandemic will be averted and normalcy will return. It would be unreasonable to subject the students who are unable to appear in the physical exams, to the uncertainty of when the re-examinations for the same would be held. Furthermore it would also be unsustainable to test the students after a lapse of a prolonged period of time after the pandemic is completely averted, on subject matters that are taught in the months of July and October if 2020.
21. It is submitted that the Petitioners have represented their grievances to both The Bar Council of India and The State Government of Karnataka, represented by its Principal Secretary, Law Ministry. However, neither the Bar Council of India, nor the State Government of Karnataka have acted based on these representations. The Representations made to the Bar Council of India and the Acknowledgment for the same are herewith produced and marked as **Annexure S & T** respectively. The Representation made to the State Government of Karnataka represented by its Principal Secretary, Law Ministry, is herewith produced and marked as **Annexure V**.
22. It is submitted that the Petitioner has not presented any other Writ Petition before this Hon'ble Court or any other Forum on the same cause of action. The Petitioner, having no other efficacious or alternate remedy, has approached this Hon'ble Court by presenting this Writ Petition as a Public Interest Litigation under Article 226 of

the Constitution on the following among other grounds:

GROUND

- I. The impugned Circular dated 09.11.2020 issued by Respondent No.2 and Circular/Press Releasedated 01.11.2020 read along with Circular bearing No. BCI:D:1401/2020, and the press release dated 09.06.2020, both issued by Respondent No.1, in so far as they deviate from the guidelines issued by the Universities Grants Commission and imposes an examination on the intermediate semester Law students of all Law Universities across India, including the Law Universities that are affiliated with KSLU, for the semester from which they have already been promoted, violates Article 14 of the Indian Constitution by differentiating between law students and non-law students as there is no intelligible differentiation between the two groups and also there is no nexus for such differentiation with the object of the Circulars.

- II. The High Court of Karnataka in **S P Venkatesh v. The Chief Secretary, Government of Karnataka &Anr.**, has examined the government of Karnataka order no. ED/197/UNE/2020 dated 10.07.2020 and while upholding its validity held that:

“The State Government has always the power as well as the discretion to guide the Universities individually or issue advisories to the respective Universities coming within the scope and ambit of the Universities Act, 2000. But in such exceptional circumstances, we cannot find fault with the State Government taking a policy decision on behalf of all the Universities so that the health and safety of the students, stakeholders is safeguarded and protected.”

“The other reason as to why the State has taken such a policy decision is to ensure uniformity

amongst all the Universities so that there is no disparity caused amongst the students or the students being put to any other difficulty in their future career progression on account of different methods being adopted by the Universities in the State.”

Therefore, the legislative competence of the government in respect of GOK order no. ED/197/UNE/2020 dated 10.07.2020 cannot be disputed and its authority to direct KSLU to adopt a particular evaluation mechanism can also be traced in section 9 r/w section 10 of The Karnataka State Law Universities Act, 2009.

- III. The UGC derive its authority in respect of the examination guideline from THE UNIVERSITY GRANTS COMMISSION ACT, 1956 and the statute do not classify between Law University and Non-law University. Therefore, an order of the government which is giving effect to UGC guideline, is binding on Law Universities as well. An examination after reopening when the students are already in next semester is beyond the scope of the UGC guideline of April, 2019
- IV. The Impugned circulars also have a disproportionate and adverse impact on the students who were unable to attend classes in online mode for various reasons like accessibility, remote locality, and affordability, the students who were unable to follow the online mode of education for various reasons like affordability, accessibility, remote locality etc., would effectively be compelled to write examination on subjects which they were never taught and that will have a disparate impact on these students and will impose an extra burden, obligation, or disadvantage on such individuals who were already marginalized, and hence being violative of Article 14.
- V. The Circulars dated 09.11.2020, 13.10.2020 and 01.11.2020 suffer from ambiguity as it is impossible to determine when the pandemic will be averted and normalcy will return. It would be unreasonable to subject the students who are unable to appear in the physical exams, to the uncertainty of when the re-examinations for the same would be held. Furthermore it would also be unsustainable to test the

students after a lapse of a prolonged period of time after the pandemic is completely averted, on subject matters that are taught in the months of July and October if 2020.

- VI. The online/internet mode education which was adopted as an alternative soon after the shutdown of the educational institution was essentially limited to the rich and comfortable class of our society, which, for that the Hon'ble Delhi High Court in **Madhu v. Northern Railway [247 (2018) DLT 198]** observed that: "the touchstone to examine the validity of an allegedly discriminatory action is whether or not the effect of the action has a disproportionate impact on a class of citizens." The Doctrine of 'Disparate Impact' within the equality scheme of our Constitution has been intentionally extended to cover all class of citizens and to confer a greater protection under Article 14.
- VII. For that the Law students completely depend upon library for the purpose of study material. Now, because of the sudden shutdown of colleges, the students have lost access to library and have come back home without any study material in their hand. The students had a legitimate expectation from the university that they would be taught the subjects, given access to study material and then they would be evaluated. If an examination is conducted bypassing this process that would breach this legitimate expectation.
- VIII. For that this 50:50 comprehensive formula does not deprive anyone the opportunity to write examination. As per the government order, anyone who is not satisfied with the grade will get an opportunity to write examination after reopening of colleges.
- IX. For that it's not the wisdom or soundness of the policy, but the constitutionality of the policy, which is under question here. The impugned orders/notifications/communications violate right to equality of the students. Therefore this honorable court has every reason to exercise judicial review over this matter.

GROUND FOR INTERIM PRAYER

- I. For that the circular dated 09.11.2020, issued by Respondent No.2

Press Release dated 01.11.2020, issued by Respondent No.1, herewith produced and marked as **Annexure-A & B** respectively, are violative of Article 14 of the Constitution of India and has created uncertainty and confusion among the law students of all Law Universities. Consequently, the students are not being able to concentrate either on previous semester from which they have been promoted or on present semester which has already started from 1.09.2020.

PRAYER

WHEREFORE, the Petitioners most humbly pray that this Hon'ble Court be pleased to call for records and issue:

- I. Appropriate Writ, order or direction in the nature of certiorari quashing the impugned Circular dated 09.11.2020 and impugned Press Release dated 01.11.2020, copies of which are produced herewith as **Annexure - A & B**, as being illegal and void to the extent that they deviate from the guidelines issued by the Universities Grants Commission and impose an examination on Intermediate semester Law Students of all Law Universities across India, including the Law Universities that are affiliated with KSLU, for the even semester of 2019-2020 academic year.
- II. Appropriate Writ, order or direction in the nature of certiorari quashing the impugned Guidelines dated 27.05.2020 and impugned Press Release dated 09.06.2020, copies of which are produced herewith as **Annexure - C & D** respectively, both issued by Respondent No.1, as being illegal and void.
- III. Appropriate writ, order or direction for a writ of mandamus or any other appropriate writ, order or direction directing the Respondent No.2 Karnataka State Law University to give effect to government of Karnataka order dated 10.07.2020 which is in line with the UGC Guidelines on Examinations and Academic Calendar for the Universities in view of Covid-19 Pandemic and Subsequent Lockdown
- IV. Issue other directions and orders to the respondents within the facts and circumstances of this case in the interests of justice and equity.

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INTERIM PRAYER

Pending disposal of this Writ Petition, the Petitioner prays that this Hon'ble Court may be pleased to stay the operation of the circular dated 09.11.2020 and Press Release dated 01.11.2020 herewith produced and marked as **Annexure -A & B** issued by Respondent No.2 and Respondent No.1 respectively, to the extent that they impose an examination on the intermediate semester law students of all Law Universities across India, including the Law Universities that are affiliated with KSLU, for the even semester of 2019-2020 academic year.

Place: Bangalore

Date: 13-11-2020

Advocate for Petitioner

H. C. Prateek

ADDRESS FOR SERVICE:

Arnav Bagalwadi,