

AKJ & MIAJ:
29.07.2020

W.P.No.8916/2020
c/w 8918/2020 and
8931/2020

ORDER ON INTERIM PRAYER

In these writ petitions, validity of the notification dated 13.05.2020 issued by the Karnataka Examination Authority (hereinafter referred to as 'KEA' for short) is questioned and pending disposal of W.P.No.8931/2020, stay of its operation has been sought for.

2. Under the impugned notification, respondent – KEA has issued the Time Table for conducting Common Entrance Test-2020 (for short 'CET-2020') on 30.07.2020, 31.07.2020 and 01.08.2020. This Court, by order dated 28.07.2020, after hearing the learned Advocates appearing for the parties, had observed as under:

“We may briefly summarize the issues which arise. During the last two weeks, everyday, more than 5,000 COVID-19 positive cases are being detected in the State and more than 2,000 cases are being detected in the city of Bengaluru. It is reported that more than 5,000 areas in the city of Bengaluru have been declared as containment zones apart from the containment zones in the other cities.

The Standard Operating Procedure of the State Government dated 17th April 2020 clearly lays down that no one is allowed to leave the containment zones. Moreover, the public transport will not be available. It is also contended that some students from other States will also be appearing for CET. It is true that the petitioners have approached the Court belatedly. However, there is a drastic change in the situation everyday. We, therefore, direct the State Government to immediately reconsider the decision of holding CET considering the aforesaid aspects.

The State Government shall place its decision on record tomorrow (29th July 2020) at 2.30 p.m.

We are sure that State Government will take into consideration various aspects and possibilities of some of the students missing the examination due to serious situation prevailing in the State and in particular, in the city of Bengaluru.”

Pursuant to he same, learned Additional Advocate General has placed on record the submission note dated 29.07.2020.

3. We have heard the arguments of Sri.A.S.Ponnanna, learned Senior Counsel who appeared along with Sri Arnav A Bagalwadi and Sri H.C.Prateek, learned Advocates and Sri Anil Kumar, learned Advocate appearing for petitioners and Sri

Abdulla Mannan Khan –petitioner appearing in person who is also an Advocate and Sri Dhyan Chinnappa, learned Additional Advocate General along with Sri Vikram Huligol, learned AGA appearing on behalf of respondents.

4. It is the grievance of the petitioners in all these petitions that proposed examination of CET-2020 to be held would result in pushing the candidates to the risk of COVID-19 and they being infected and students as well as their parents who are now in the containment zones will not be permitted to come out of their home as it would be contrary to the Standard Operating Procedure ('SOP' for short) issued hitherto. They would contend that rights of the students are infringed as acts of the State are in violation of Articles 14 and 21 of the Constitution of India. It is also contended that in the present pandemic situation prevalent in the country, most of the examinations have been postponed and even in respect of the examination which came to be conducted by State of Kerala, it has resulted in

students being infected. It is further contended that SOP now proposed by the State under the submission note is contrary to the guidelines of the UGC and also the directions issued by the Ministry of Home Affairs. The State which intends to rely upon to contend that examination is to be conducted is based on the Secondary School Leaving Certificate ('SSLC' for short) examination which provided for second opportunity and such opportunity is not available to the students appearing for CET-2020 and they do not stand on the same footing as that of the SSLC students. They further contended that LTM of the students are being obtained by use of inkpad and in the light of SOPs issued doing away with Bio Metric attendance, State cannot be heard to contend that inkpad is to be used for obtaining thumb impression of candidates and this would definitely result in spreading of COVID-19. They would also contend that between the date on which impugned notification dated 13.05.2020 has been issued till date, there has been marked change namely, number of persons who are infected with

COVID-19 in the State of Karnataka has increased from 1146 to 85810 as on 23.07.2020 and as on today, it has crossed 1,00,000. Hence, they pray for quashing of impugned notification and seeks for a direction to the State to postpone the examination till such time the standard SOP is issued which meets the genuine apprehensions of the students.

5. Per contra, learned Additional Advocate General would submit that UGC guidelines mandate that the examinations should be concluded on or before 30.09.2020 and earlier scheduled to be held from 22.04.2020 to 23.04.2020 has been postponed and now the proposed examination is being held by addressing all the issues including the safety of the students. It is also stated that by notification dated 18.05.2020 a provision to change the examination centre was provided and editing of the applications was permitted whereunder 75 new locations were added and candidates were at liberty to give three (3) examination centres of their choice. He would further contend that number of examination centres

have been increased from 431 in 2019 to 497 throughout the State and examination scheduled earlier was not held due to the countrywide lockdown.

6. He would submit that the SSLC examination authority had conducted the board examination from 25.06.2020 to 03.07.2020 where more than 8 lakhs students appear and SOP issued for conducting SSLC examination has been kept in mind, which was also by referring to the SOP prescribed by the University Grants Commission and guidelines provided by Ministry of Home Affairs, Government of India. He would further contend that special arrangements for students for COVID-19 positive and willing to appear for CET examination have been made by the respective Deputy Commissioners and thereby there is no risk to the students who are COVID-19 positive and they kept away from other candidates and at the same time, they have also been extended opportunity to write the examination. He would draw the attention of the

Court to the note furnished to the Court today whereunder separate rooms have been provided to the students, who are infected with COVID-19 to write the examinations.

7. He would further elaborate his submission by contending that pursuant to direction issued by this Court on 28.07.2020 Video Conference was held under the Chairmanship of the Deputy Chief Minister and Minister for Higher Education, ITBT and ST with all the stakeholders and a consensus was evolved in the said discussion that conducting of examination would be feasible and Deputy Commissioners expressed their preparedness. He would further submit that a State Level Coordination Committee for 2020 was constituted consisting of various departments who have held meetings and expressed their preparedness to conduct CET-2020. He would submit that more than 1,84,368 students have downloaded the hall tickets, which would indicate that larger number of students are willing to attend the examination and it is not

feasible nor proper in the larger interest of the students to postpone the examination.

8. Having heard the learned Advocates appearing for the parties and on perusal of records we notice in the State of Karnataka the statistics with regard to number of persons who have tested positive for COVID-19 has been drastically on the rise and as on the date of the impugned notification, it was 1,146 as against 85,870 as on 23.07.2020 and as on date it has crossed mark of 1,00,000 and above. In fact, in Bangalore city alone there are 48,821 persons who have tested positive for COVID-19.

9. At the outset, we would like to make it clear that we are not expressing or opining that examination CET-2020 should be cancelled or postponed indefinitely. Same has to be necessarily held in the interest of the students. The question that arises, is when? and, whether all effective steps have been taken by the respondents to conduct the examination by protecting the interests of not only the candidates but also the parents who would be

accompanying them and whether the SOPs issued by the KEA would allay the apprehension of the students which cannot be brushed aside as being not genuine in the background of pandemic.

10. The State has attempted to rest its oars to sustain the impugned notification by contending that on lines similar to the examination CET - 2020, SSLC examination for 8 lakh students in the State of Karnataka had been held. It is no doubt true that examination of SSLC in the State of Karnataka came to be conducted by the Karnataka Secondary Education Examination Board from 25.06.2020 to 03.07.2020 whereunder more than 8 lakh students appeared for the examination. Said examination was conducted by the Board keeping in mind the Official Memorandum dated 06.07.2020 published by the Ministry of Human Resources Department, Department of Higher Education, Government of India, under the heading "Standard Operating Procedure for Conducting of Examinations" whereunder, several guidelines have been issued for

being operated to conduct the examination by the Universities. It has been notified that all safety and health issues are to be addressed. It reads:

**“STANDARD OPERATING
PROCEDURE FOR CONDUCT OF
EXAMINATIONS.**

(1) Instructions, guidelines and orders issued by the Central and State Governments concerning the opening of educational institutions and safety and health should be abided by the Universities and colleges. However, they may develop more stricter provisions and guidelines, if they find it necessary.

(2) In case there is restriction of movements in certain areas, admit/identity cards issued to the students should be treated as ‘Pass’ for the movement of students. State Governments should issue instructions to local authorities to issue movement passes to Invigilators and all personnel engaged in the conduct of examination.”

11. It is necessary to observe at this juncture itself that congregation should not be allowed to take place in any manner and same should not become a catalytic agent for the spread of COVID-19 virus. Keeping this in mind, it is to be examined as to

whether examination CET-2020 proposed to be conducted by the Karnataka Examination Authority at this juncture, would be feasible or it will have to be deferred in the interest of students.

12. Undisputedly, in Bengaluru city, 12325 have been declared as contaminated zones. Such zone may be of one isolated house, a street, a row of houses, complete road or roads as the case may be. We will not delve upon on the said issue as it may not be relevant for our purpose. However, the fact remains that several areas in Bengaluru city and in State of Karnataka have been declared as contaminated zones. Thus, prevention of congregation of students at the examination centre would be of prime concern and prior to commencement of examination, candidates are likely to appear at the examination centre and if it so happens, by giving go by to social distancing and it would definitely result in spread of COVID-19. It is not only when the students enter inside the examination centers, social distancing should take

place but also outside the examination centre and there being no definite norms under the SOP, State will have to take a call on this issue. We say so, for the simple reason that under the instructions issued to the students, they have been directed to appear at the examination center at least two hours prior to commencement of the examination and they are bound to congregate at examination centre and respondents should ensure such congregation does not takes place. SSLC Board which conducted the examination for about 8 lakh students, as noticed herein above, has referred to the various circulars, Official Memorandum and communications issued from various authorities and it has referred to the UGC communication dated 08.07.2020 for ensuring maintenance of social distance and same will have to be necessarily followed by Karnataka Examination Authority also.

13. The communication dated 08.07.2020 has also been relied upon in the note submitted by learned Additional Advocate General and a copy of

the said SOP for conduct of examination issued by UGC to the Vice Chancellors of Universities, Principals of all Colleges including the Principal Secretaries of Higher Education of all the State Governments. Same would indicate that the examinations are required to be conducted by 30.09.2020. Annexure-II appended to the said SOP would indicate that in the light of prevalent pandemic situation, it is important to safeguard the health and safety by ensuring fair and equal opportunity. At the same time, it is very crucial to ensure academic credibility and career opportunities including future progress of students is also taken care of. In guidelines issued by UGC on 08.07.2020 – Annexure-II, under the heading “2. Provision of examination through Special Chance”, it is held to the following effect:

“In case a student of terminal semester/final year is unable to appear in the examination conducted by the University for whatsoever the reason(s) may be, he/she may be given opportunity to appear in special examinations for such course(s)/paper(s), which may be conducted by the University as and when feasible so that the student is not

put to any inconvenience/disadvantage. The above proposition shall be applicable only for the current academic session 2019-20 as a one-time measure.”

14. It is in this background, examination for SSLC students has been conducted by providing second opportunity to the candidates missed out in first attempt. To a pointed question posed by the Court to the learned Additional Advocate General as to whether an opportunity to the students who have missed out in the examination CET-2020 as provided for SSLC students, would be extended to the students appearing for the examination CET-2020, it has been submitted that he has no instructions in this matter and such undertaking cannot be given in the background of the said examination being a competitive examination.

15. Be that as it may. In the extended SOP which has been pressed into service for conducting the examinations of CET-2020, separate rooms have been provided for COVID-19 positive candidates and it is also stated that candidates should inform

COVID-19 status to the examination authorities well in advance to make necessary special arrangements if they have been declared as such. It is further stated in the SOP that candidates should produce medical certificate from their treating physicians certifying that they are fit to write the examinations. The candidates have also been called upon to furnish 'risk and consent' undoubtedly for taking up the examination. These grey areas have remained as such and SOP does not specify as to what steps the students should take in case of such candidate being in quarantine or isolation as the case may be.

16. Likewise, the last date to inform the authorities to make arrangements has not been prescribed for enabling such of the candidate who are already in isolation or in quarantine centres. SOP does not indicate as to how candidates would be provided transportation to travel from their place of stay to the examination centre. In other words, present SOP is silent on these aspects. In the present scenario, General Physicians practicing in the

State of Karnataka, may or may not be available and this should not become a stumbling block from candidates writing the examination. Hence, to insist upon the students or the candidates to procure the medical certificate about their fitness may not be feasible and it would not only be onerous but also may neigh impossible. In such circumstances, the right to appear for the examination cannot be taken away as it would infringe upon their fundamental rights and such act would be violation of Article 14 of the Constitution of India. In fact, under the SOP dated 18.07.2020 (Annexure-E) produced in W.P.No.8918/2020, no last date for informing the authorities with regard to COVID-19 status of the candidates has been fixed. There may be instances where even on the previous day of examination i.e. today or on the day of the examination i.e. 30.07.2020, a candidate can get the result of he/she having been tested positive for COVID-19. In such circumstances, what would be status of the student remains unexplained in the SOP.

17. In other words, SOP dated 18.07.2020 and submission note dated 29.07.2020 are vague in certain areas or in other words, grey areas which we have observed hereinabove by way of illustration and this may result in genuine candidates being deprived of attending the examination and thereby their right guaranteed under Article 14 and 21 of the Constitution would be infringed. In other words, if there is discrimination between 2 candidates who are equals and without any rational basis, Article 14 of the Constitution would definitely be attracted. In such circumstances, the respondents cannot prevent, prohibit or restrict a candidate from appearing in the examination. In other words, all candidates who appear in the examination centres should be permitted to appear and take up examination subject to all other conditions being fulfilled.

18. It is no doubt true that the Courts exercising the power under Article 226 of the Constitution would not sit in the arm chair of the authorities or experts to ascertain the feasibility of

conducting the examination or otherwise. It is only the decision making process, if flawed which will be scrutinized and examined and not the decision itself. In the facts obtained in the present case it cannot be said from the SOPs prescribed and note submitted by the State would act oppressively to the candidates from attending the examination. This Court cannot also lose sight of the fact that more than 1,84,368 students have already downloaded the hall tickets for attending the examination scheduled to commence from 30.07.2020 which would indicate their preparedness and interest of those students who are not before the Court and whose interest is required to be protected is also taken into consideration to reject the interim relief sought for. However, we make it explicitly clear that on no ground whatsoever, a candidate shall be prevented from attending the examination scheduled to be held from 30.07.2020 and all logistic support shall be extended by the State to ensure such of the candidates who require medical attention, transportation, food (in case of COVID-19 candidates) and other facilities are provided and

respondent-authorities shall also make sure that not only inside the examination hall but also outside the centres namely, in the precincts of the examination centre, the conditions prescribed under SOPs issued by the Ministry of Health and Family Affairs and SOP issued by the State Government from time to time are scrupulously and strictly followed by the candidates and persons accompanying them. The State shall also ensure that all necessary instructions and information is issued to the authorities for ensuring that no candidate and/or parents and guardians accompanying them are prevented from proceeding from their place of residence/stay to examination centre on account of same being contaminated zone or otherwise and if necessary on case to case basis they shall also provide transportation not only to candidates who may be tested positive for COVID-19 but also to other candidates who may be in need of such transportation.

19. The respondent-authorities shall also ensure that on account of non compliance of the

conditions prescribed under SOP dated 18.07.2020 namely not informing the authorities about COVID-19 status in advance or non production of medical certificate from physician certifying that candidate is fit to write the examination and non-furnishing 'risk and consent' as a ground to prohibit them from taking up the examination.

For the aforesaid reasons, interim prayer sought for is rejected.

Sri Venkata Raja, Executive Director, Karnataka Examination Authority who is present in person submits that submission note furnished to the Court today by way of SOP, would be uploaded to the web portal of Karnataka Examination Authority forthwith. His undertaking is placed on record.

Sd/-
(ARAVIND KUMAR)
JUDGE

Sd/-
(M. I. ARUN)
JUDGE

*sp/DR/hkh.