

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

PUBLIC INTEREST LITIGATION ST. NO.6466/2021

PETITIONERS :

1. HERD Foundation, a company registered under the Companies Act, 1965 as a not for profit organisation, through its Managing Director, Amol s/o Ranjeet Deshmukh having its office at 3rd Floor, Near Coffee House Square, Dharampeth, Nagpur – 440010, Maharashtra, Mail id-amol.deshmukh@herdfound.org.
2. Nitesh Dhanraj Tantarapale, student of Niharika college of physiotherapy aged 31 yrs. Occ- Student, R/o Plot no.169, Ayyapa nagar, New Gorewada Ring road, Near Shyam lawn Nagpur-13. Phone no-8999799440 Mail id-drniteshtantarpale@gmail.com.

...Versus...

RESPONDENTS :

1. Union of India
Ministry of Health & Family Welfare through its secretary having office at Room No.348; 'A' Wing, Nirman Bhavan, New Delhi – 110011.
&
Ministry of Education through its Minister of State Education, having its office at Shastri Bhawan, New Delhi.
2. The State of Maharashtra
Through Government of Maharashtra
Ministry of Health & Family Welfare

having its office at 3rd Floor, Arogya Bhavan,
St. George's Hospital Compound,
Premises P.D. 'Mello Road, Mumbai-400001
&
Ministry of Higher & Technical Education,
Maharashtra having its office at 4th Floor,
Mantralaya Annex, Madam Cama Road,
Nirman Point, Mumbai -400032.

3. National Medical Commission,
Through its Chairman having its registered
office at Pocket-14, Sector-8, Dwarka Phase-1,
New Delhi – 110077.
4. Maharashtra University of Health Sciences (MUHS),
Through its Acting Vice-Chancellor having its
registered office at Mhasrul, Vani Dindori Road,
Nashik - 422004

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. Rahul M. Bhangde, Advocate for petitioners
Mr. Ulhas M. Aurangabadkar, ASGI for respondent no.1
Mrs. Ketki S. Joshi, G.P. for respondent no.2
Mrs. Radhika Bajaj, Advocate for respondent no.3
Mr. Abhijit Deshpande, Advocate for respondent no.4

CORAM : AVINASH G. GHAROTE, J.

Order reserved on : 04/06/2021
Order pronounced on : 05/06/2021

1. Heard learned Counsel for the respective parties.
The respondents have appeared suo motu through their
respective Counsels, as they were served an advance copy of

the petition by the Counsel for the petitioners and Mr. Abhijit Deshpande, the learned Counsel for the respondent no.4/ MUHS, has also placed on record his detailed reply opposing the petition itself, as well as the plea seeking interim relief.

2. Mr. Rahul Bhangde, learned Counsel for the petitioners, on the issue of *locus standi* of the petitioner no.1, to file the present petition, submits that it is an NGO working for socio-economic needs of the underprivileged people since 2006 and is a non-profit organisation registered under the Companies Act. A writeup of the social activities of the petitioner no.1, has been given at Annexure-A and the learned Counsel submits that the petitioner no.1 is involved in various social activities in the field of providing medical benefit to the poor. The petitioner no.2 is a student undergoing the course of physiotherapy and is currently in the third year. Learned Counsel Mr. Rahul Bhangde, submits that both the petitioners have a *locus standi* to file a present petition, which he submits be treated as one in public interest, as the public cause is being espoused.

3. Mr. Rahul Bhangde, learned Counsel for the petitioners submits that the ensuing examinations for the Under Graduate (UG) Courses i.e. I, II and III years and university UG/PG/Certificate Courses (Winter-2020 Medical Examination) to commence from 10/06/2021, conducted by

the respondent no.4 – MUHS, offline, are required to be postponed till such period that each of the students entitled to hold the examination is fully vaccinated or in the alternative they be held online. He therefore submits that the decision dated 19/05/2021, directing the examinations to be held offline i.e. by a physical mode, be quashed and set aside. He submits, that considering the present situation of the Covid-19 pandemic, any assembly of persons for the above said examinations would create a situation where there would be an explosion of the virus again and since the same can be avoided by postponing the examination, it ought to be done as it is the fundamental duty of the Union and the State to protect the life of each and every citizen. He submits that every life has an equal inherent value, which is recognized by Article 21 of the Constitution and the Court is duty bound to save that life, by placing reliance on ***Aarushi Dhasmana Vs. Union of India and others (2013) 9 SCC 475***. He submits that even the teachers and support staff who would be deployed for conducting the examination would be at risk. He submits that when earlier in 2020, the Post Graduate Examinations were conducted in the first phase, the aspirants were vaccinated, being frontline workers in the medical field and were therefore protected. The earlier examinations were conducted before the second wave of Covid-19 pandemic erupted. He submits that any congregation/assembly of a number of persons will aid in the hastening of the third

wave. He submits that the petitioners are not frontline workers, and are therefore, incapable of being vaccinated as per the present policy of the Union of India and thus the examinations be postponed to a period after the petitioners get themselves vaccinated, whatsoever time it may take. He submits that neither the respondents, nor the Court can call upon the petitioner no.2 nor students similarly situated to him to put their life at stake merely for the sake of undertaking an examination, which can always be postponed and taken later on. Mr. Rahul Bhangde, learned Counsel for the petitioners further submits that the CBSE/HSSC and SSC examinations have already been postponed. He further invites the Court's attention to the statement of the Hon'ble Prime Minister to the effect that the health of the students is more important than conducting examinations. He further submits that as of date there are 20% deaths in the State on account of mucormycosis, which enhances the risk to the students, if they are to undertake the examinations. The students will have to go back to the hostels, stay 4 in a room, which would again increase the risk of the infection. He therefore submits that this is a fit case where by way of an interim order, the examinations to commence from 10/06/2021 and end on 30/6/2021, either be postponed or be held online.

4. Mr. Abhijit Deshpande, learned Counsel for the respondent no.4-MUHS who has filed a detailed reply opposing the petition, submits that the petition is clearly misconceived and is not tenable at the behest of the petitioner no.1, as it has no locus whatsoever to challenge any decision regarding holding of examinations. He further submits, that the petitioner no.2, is a singular person, a student of third year of physiotherapy and cannot be said to represent the cause of the entire students, who are slated to take the examination from 10/06/2021 onwards till 30/06/2021. He submits that the petition is hopelessly belated as everyone was aware, as far back as 06/10/2020 that the examinations were going to be held offline, for which he invites my attention to the Circular No.69/2020 dated 06/10/2020 issued by the Controller of Examinations, MUHS. He further submits that the first phase of the Winter-2020 Health Sciences Courses Examination (Theory and Practical) was conducted from 04/01/2021 and thereafter by offline mode, in which 8000 students of various Post Graduate Health Sciences Courses appeared, results of which have already been declared between 08/02/2021 to 15/03/2021 course-wise. He further points out that the second phase of Winter 2020 examination in which about 9000 final year students of various Under Graduate Health Sciences Courses participated, was conducted between 08/03/2021 to 01/04/2021, offline, which results were also

declared between 22/04/2021 to 15/03/2021 course-wise. He submits, that now the third and last phase of Winter-2020 examination is scheduled from 10/06/2021 in which about 40,000 students of Ist, IInd and IIIrd year of various Under Graduate Health Sciences Courses and Certificate Courses are expected to participate. He submits that initially these examinations were scheduled from 23/03/2021, however, on account of second wave of Covid-19, they were initially rescheduled on 19/04/2021 to 15/05/2021, thereafter again rescheduled from 02/06/2021 in view of the State-wide lockdown and now have been rescheduled from 10/06/2021. He therefore submits that the petitioners, if at all the cause could be said to be genuine to them could have approached the Court earlier and not at the last moment, days before the examination is scheduled to begin. He submits that the entire preparation for the examinations have already been completed, even the question papers have been dispatched to the various centers. The respondent no.4, has been fully aware of the extent and nature of the pandemic and considering its intensity in the earlier period, has taken due care to postpone it from time to time. He submits that considering the present position regarding vaccination in the country, no special group can be carved out, such as the students taking the examinations and the examinations cannot be indefinitely postponed. He further submits that it is not as if the students are being forced to take the

examinations, rather on the contrary a choice has been given to them either to take the examinations now or at a later stage and if any student felt apprehensive about his health he had the choice not to take the examinations now and to opt for taking them later, for which purpose he invites my attention to the Advisory dated 19/04/2021, issued by the Under Graduate Medical Education Board, National Medical Commission, which specifically deals with the option given to the students (pg. 191). He further invites my attention to the SOP, issued for conduct of examinations and submits that all necessary safety measures and precautions as the situation mandates have been directed to be taken and shall be strictly adhered to. He further submits that a scheme under the name and style of “Covid-19 Suraksha Kawach Yojana-2021” has been formulated by the MUHS, in view of Covid-19 pandemic and various safety measures including financial assistance, to any person who may get affected, have been provided therein. He further submits that the sitting arrangements of the examinees have been strictly made, by considering the social distancing norms directed to be followed in this regard, for which he invites my attention to the communication dated 28/05/2021 issued by the Controller of Examinations, MUHS. He submits that in case there were any restrictions on movements in certain areas, the admission/identity cards issued to the students were directed to be treated as passes for movement of students,

which according to him has been approved by the State Government. He further submits that the respondent no.2 had already permitted the holding of such examinations under the communication dated 24/06/2020 in pursuance to which various examinations were conducted and so also the present one is being conducted. He further relies upon the orders passed by this Court in WP-ASDB-LD-VC No.186/2020, ***Akash Udaysing Rajput and others Vs. The Maharashtra University of Health Science, Nashik and others*** dated 14/08/2020 and in Public Interest Litigation (Stamp) No.92477/2020, ***Namrata Ashok Karade and others Vs. State of Maharashtra and others*** dated 05/09/2020, in both of which the Court had declined to stay the examinations in the background of the Covid-19 pandemic. Learned Counsel further submits, that considering the nature of courses for which the examinations are being conducted, namely in the medical field, and the country, being in need of medical professionals, it is more the reason necessary, that the examinations be conducted. He therefore submits that there is no reason whatsoever, to postpone the ensuing examinations, as except for the petitioner no.2, none has come forward to raise such a grievance and therefore the petitioners cannot be said to be espousing the cause of all the examinees.

5. Mrs. Ketki Joshi, learned Government Pleader, submits that the State is not in a position, to indicate as to when a particular category of persons, such as the students whose cause the petitioners claim to espouse, could be vaccinated. Adopting the arguments of learned Counsel for the respondent no.4, Mr. Abhijit Deshpande, she submits, that if there is any apprehension in the mind of any student, the option is available to such students, not to take the ensuing examination, and instead to opt for the examinations to be held later on. She submits that the examinations have to go on and the present case, is not akin, either to the CBSE/HSSC Examination or the SSC Examination, where lacs of students, undertake it. She submits that the SOP takes adequate care of the apprehensions expressed by learned Counsel Mr. Rahul Bhangde and the examinations should go on, more so, as the courses for which the same are being conducted, relate to the medical field.

6. Mr. Ulhas Aurangabadkar, learned ASGI adopts the arguments of Mr. Abhijit Deshpande, learned Counsel for the respondent no.4 and of Mrs. Ketki Joshi, learned Government Pleader. Mrs. Radhika Bajaj, learned Counsel for the respondent no.3 submits that it has no role to play in the matter.

7. I have given my anxious consideration to the rival contentions. No doubt it is true that the safety of every citizen is the duty of the Union and the State, it is equally true that all that is necessary and humanly possible, to protect and save lives is being done, by putting to maximum utilization, the resources which are presently available. In a country, with a huge population as we have, it is well nigh impossible to ensure, that each and every citizen, would be vaccinated within a given period of time, as such a pogrom, would definitely take considerable period of time. Though frontline workers, have been given the priority in vaccination, which is but natural considering their exposure, the vaccination process, is slowly and surely expanding, to cover as large a populace as possible, for which various measures including permitting private players to procure the vaccine from abroad and to provide the same to the citizens, have been permitted.

8. It is true that the dictum in ***Aarushi Dhasmana*** (supra) lays down that every life is valuable and needs to be protected. However in view of what has been stated above, it cannot be said that the respondent nos.1 and 2 are not making any attempt at saving the lives of citizens. It would be material to note that given the present state of affairs, even vaccination has been found to be not affording, full protection from Covid-19, as the efficacy of various vaccines

is not 100 % but varies from vaccine to vaccine and none claims to be 100% effective. There have been reported cases where even vaccinated persons have been found to be Covid-19 positive. Thus vaccination alone cannot be said to be a panacea for Covid-19, though largely it may have an effect. It is equally the responsibility of every citizen to strictly adhere to the social distancing norms and the Standard Operating Procedure (SOP) prescribed in this regard. There is also no guarantee that by sitting home a person may not contract Covid-19.

9. As rightly pointed out by Mr. Abhijit Deshpande, learned Counsel for the respondent no.4, there are about 40,661, examinees, who are slated to take the examinations in 173 centres throughout the State and except for the petitioner no.2, none has joined the petitioner no.2 in the present petition, requesting for a postponement of the examinations for the reasons canvassed. Though Mr. Rahul Bhangde, learned Counsel for the petitioners submits, that the petitioner no.1 has the consent of approximately 300 to 400 students, nothing has been placed on record to indicate this. That apart, even if this is presumed to be true, this would constitute a minuscule percentage of the total number of students, slated to take the examination on 10/06/2021. As observed in the order dated 14/08/2020 in ***Akash Udaysing Rajput and others*** (supra) there could be

examinees, other than the petitioners, who might be willing and prepared to write the examinations even physically and stay of the examinations behind the back of such examinees would be detrimental to their interests. In the instant case also, there is nothing on record to indicate that the majority of the examinees are not willing to take the examination for the grounds as stated in the petition and therefore, any postponement of the examination at the behest and instance of the petitioners, is clearly not possible.

10. This is also specifically so, when the Advisory dated 19/04/2021 issued by the Under Graduate Medical Education Board, National Medical Commission makes the appearance at such examination optional. It would be necessary to quote the relevant clause in the said Advisory, which is as under :

“5. All students who are unable to appear for the examinations for whatever reasons, may take up the examinations with the supplementary batches. This will not be counted as an additional attempt for them.”

The Advisory is thus clear and specific and does not make it compulsory for any student to appear in the said examinations, if such student is apprehensive of his/her

safety. Not only this, it also indicates that if the student is unable to appear in the ensuing examination, for whatsoever reason, absence of such an attempt, will not be counted as an attempt at all and such student will be entitled to take up the examinations with the supplementary batches. Thus, any apprehension which a student may have about his/her safety, has been duly addressed by the above Advisory, by giving such student a choice in the matter.

11. It would further be material to note the observations of the Hon'ble Apex Court in ***Sayantani Biswas and others Vs. National Testing Agency (NTA) and others***, as quoted in ***Namrata Ashok Karade*** (supra), while considering a plea seeking postponement of NEET UG-2020 and JEE (Main) April, 2020, where it was observed that though there is a pandemic situation, but ultimately life has to go on and the career of the students cannot be put on peril for a long and full academic year cannot be wasted. Though Mr. Rahul Bhangde, learned Counsel for the petitioners submits, that this was a situation before the second wave of the Covid-19 pandemic struck the nation, which was multiple times severe than the first one, however, the situation as it now prevails, clearly appears to be normalizing, considering the figures of infected persons available as of date. The plea of the threat of mucormycosis, as raised by Mr. Rahul Bhangde, learned Counsel for the petitioners, does not

appeal to me, for the reason that mucormycosis, is a fallout of the reduced immunity of a person due to administration of steroids during the treatment of Covid-19 and is not a disease akin to Covid-19.

12. That apart, it would be material to note that it is not a case as if the entire lot of examinees are being examined at one place, thereby creating a crowd of more than 40,000 persons. As pointed out by Mr. Abhijit Deshpande, learned Counsel for the respondent no.4, about 40,661, examinees, are slated to take the examinations in 173 centers throughout the State, which would mean that there is no single congregation but the examinees are spread out, there being not more than approximately 250 examinees at one center, with all the SOP being in place. It is quite a different case in CBSE/HSSC and SSC examinations, which lacs of students undertake, and it in this context that the statement of the Hon'ble Prime Minister has to be construed. The examinees, it is material to note, are undertaking the examinations in various medical courses, and upon successfully completing the courses would be working in the field of medicine, handling patients with various infections, some of which may be communicable and it does not auger well for such medical professionals, to harbour such insecurities.

13. Even otherwise, as already indicated above, a choice has been given to the examinees and it is open for each of the examinees, given the situation in which he or she considers himself/herself, to exercise the choice either by giving the ensuing examination or undertaking the examination at a later date as indicated in the Advisory dated 19/04/2021 and no prejudice would be caused to such examinees as failure to appear at the ensuing examination shall not be counted as an additional attempt.

14. All the preparations for conducting the examinations w.e.f. 10/6/2021, are in place, which is a date 5 days hence. The petitioners and all the students were aware since 6/10/2020, that the examinations would be held offline. The examinations in the earlier two phases were conducted offline, in January-February 2021 and March-April 2021, of which also the examinees were aware and it would not now be justifiable to stay the conduct of the examinations, even on the plea that it should be conducted online as such conduct may not be advisable in view of the respondent no.4, which is the authority in this regard, and also in view of the preparations involved for such a course.

15. Thus for the reasons stated above, I am not inclined to grant any interim relief to the petitioners. The prayer for interim relief is therefore rejected. The matter be

placed before the First Division Bench on 14/06/2021. Needless to mention, that the issue regarding the maintainability of the petition, on account of absence of locus of the petitioner no.1 and so also its maintainability on behalf of the petitioner no.2 are kept open.

(AVINASH G. GHAROTE, J.)

At this stage, Mr. Rahul Bhangde, learned Counsel for the petitioners, makes a request that at least conduct of an RT-PCR test by every student who undertakes the examination, should be made compulsory, and such student should have a report of the RT-PCR test conducted upon him, within a period of 72 hours and should produce the same for the verification of the authorities at the examination hall and in case any RT-PCR report is positive, the student should not be permitted to enter into the examination hall. He submits that this would be necessary, to prevent any spread of Covid-19 virus in case any examinee is found to be infected.

Mr. Abhijit Deshpande, learned Counsel for the respondent no.4, submits that the MUHS is not opposed to any safety measure, however, he will have to take

instructions in this regard from the authorities and would revert back by 1:15 p.m.

(AVINASH G. GHAROTE, J.)

At 1:20 p.m.

Mr. Abhijit Deshpande, learned Counsel for the respondent no.4, upon having taken instructions from his client, submits that neither the National Medical Commission nor the University Grants Commission has issued any direction to conduct RT-PCR test before the examinee enters the examination hall; he further submits that it is difficult to communicate to near about 40,000 students, any such requirement, if it is made compulsory now. He submits that there are only two modes of communication, one is by e-mail to the Principals of the respective Colleges, who in turn, would have to ensure communication to the students and the second is by public notice on the website. He submits, that since the examinations are commencing on 10/06/2021, a period of three days commencing from 07/06/2021 is too less a time to ensure that all the students are made aware of the additional conditions, if at all imposed. He therefore submits that imposing such a condition, which has not been felt necessary by either the National Medical Commission or

the University Grants Commission is not justified or warranted. He further submits that in case any such condition is being put, then reasonable time of seven days be granted.

None appears for the respondent no.2/State of Maharashtra.

Generally speaking, it would be for the examinees, as responsible citizens, to have themselves tested for the Covid-19 virus, by conducting an RT-PCR test upon themselves before they leave their residence, either for the hostel or for the examination hall. It goes without saying, that any examinee, who tests positive, then has to quarantine himself/herself and there is no question of such examinee reporting to the examination centre.

The contention of Mr. Rahul Bhangde, learned Counsel for the petitioners that the conduct of the RT-PCR test upon the examinees cannot be left to themselves, but has to be made compulsory, would amount to imposing an additional condition upon the examinees, which was not there in the SOP, and in such a case, it may so happen that an examinee may be deprived of appearing in the examinations, for want of RT-PCR test report, and therefore cannot be made compulsory.

However, as a safety measure, it would be advisable for each examinee, to have conducted the RT-PCR test upon himself and only in case where such examinee finds that the test is negative, that he may attend the examination. The respondent no.4 - MUHS therefore is directed to issue an Advisory to the Principals of the various Colleges and also to publish it on its website, indicating that it would be desirable that each examinee, should have himself tested for Covid-19 and produce the negative report to the hall examiner along with his hall ticket on 10/06/2021. In case an examinee, is not having such a RT-PCR certificate, he can have report of a Rapid Antigen test and be permitted to appear in the examination on its basis, but may also be asked to get an RT-PCR test conducted upon himself/herself and produce a report in that regard on the next date of the examination and preferably by 15/06/2021. Needless to say that in case the RT-PCR report is found positive, such an examinee would not be in a position to undertake the examination, in order to avoid spread of the infection. This is all however, subject to the directions and instructions, as may be contained in the SOP, issued by the respondent no.2, as prevailing on 07/06/2021 or thereafter.

(AVINASH G. GHAROTE, J.)

Wadkar