

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

W.P. No. _____/2020 (PIL)

BETWEEN:

1.Sri. Pradeep Kumar S.P.

..Petitioners

AND:

1. State of Karnataka.
Rep. by its Secretary,
Department of Primary & Secondary
Education,
M.S.Building,
Dr. BR Ambedkar Veedhi
Bengaluru-560 001.

2.Karnataka Examination Authority,
Rep. by its Executive Director,

Having office at 18th Cross,
Sampige Road,
Malleswaram, Bengaluru-560 012

3. . State of Karnataka.
Rep. by its Secretary,
Department of Health & Family
Welfare,
M.S.Building,
Dr. BR Ambedkar Veedhi
Bengaluru-560 001.

..Respondents

**MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226 &
227 OF THE CONSTITUTION OF INDIA**

The Petitioners above named most respectfully submit as follows:

1. Petitioners are the citizens of India and are residents of Karnataka and are practicing Advocates. Petitioner No. 1 has enrolled himself in the year 2007 with enrolment No. KAR 1782/07 and petitioner no. 2 has enrolled in the year 2004 with enrolment No. KAR 2367/2004 and both the Petitioners are members of Advocates Association Bengaluru.

2. It is submitted that the petitioners, on 26.7.2020 have received more than 300 e-mails from the e-mail account of various students who have completed their Pre University Course examination. The said e-mails were sent by the students requesting the petitioners to help them out in seeing to it that the CET Examinations scheduled to be held on 30.7.2020, 31.7.2020 and 1.8.2020 be postponed for various reasons stated by them therein.

3. It is submitted that on 13.5.2020, the 2nd Respondent, Karnataka Examination Authority, hereinafter referred to as "KEA" for short, had issued a Press Note specifying the time table for conduct of the Common Entrance Test (CET) 2020 examination on 30.7.2020, 31.7.2020 and on 1.8.2020. A copy of the press note

issued by the 2nd Respondent is produced herewith and marked as **Annexure-A**.

4. It is submitted that as could be seen from the said time table issued at Annexure-A, the examinations are scheduled to be conducted on 30.7.2020 to 1.8.2020. On 30.7.2020, there are two examinations scheduled to be conducted between 10.30 AM to 11.15 AM in the subject of Biology, between 2.30PM to 3.50 PM in the subject of Mathematics. On 31.7.2020, between 10.30 AM to 11.15 AM, in the subject of physics and between 2.30PM and 3.50 PM, in the subject of Chemistry, are scheduled to be conducted. On 1.8.2020, between 11.30 AM to 12.30 PM, Kannada language subject shall be conducted only at Bangalore for students who are residing at Horanadu and Gadinadu kannadigas. The students, in general, are aggrieved by the schedule that has been prepared by the 2nd Respondent on 13.5.2020. The said schedule of examination vide Annexure-A is prepared by the 2nd Respondent prior to the guidelines issued by the Ministry of Home Affairs on 31.5.2020 and 30.6.2020. True copy of the guidelines dated 31.5.2020 is produced herewith and marked as **Annexure-B**, and a true copy of the guidelines dated 30.6.2020 is produced herewith and marked as **Annexure-C**. After issuance of the said guidelines by the Ministry of Home Affairs, the 2nd Respondent-Authority has not re-looked the examination schedule and is bent upon conducting the CET examinations as per the schedule prepared by them before issuance of the guidelines issued by the Ministry of Home Affairs.

5. It is submitted that the 1st Respondent has cancelled the examinations for degree courses and the students intending to take up CET examinations, were expecting that the same would be done in so far as the CET is concerned. On 18.7.2020, the 3rd Respondent has issued a standard operating procedure (SOP) in respect of conducting examination for the covid 19 tested positive

students. A true copy of the said SOP dated 18.7.2020 issued by the 3rd Respondent is produced herewith and marked as **Annexure-D**. Vide the said SOP produced at Annexure-B, covid 19 positive tested students have also been permitted to take up the examination which is to be conducted by following proper guidelines. In the SOP, there is no separate procedure incorporated in so far as covid 19 positive tested students and there is no separate examination prescribed for them and are to take up the examination scheduled on 30.7.2020, 31.7.2020 and 1.8.2020 as applicable to other students also. Instead, the guidelines stated that such candidates shall, well in advance, intimate the examination authorities with respect to their covid 19 positive status so that the examination authorities can make separate arrangements. This action of the Respondents is in clear violation of the guidelines issued by the Ministry of Home Affairs. Further, there is no explanation as to whom the students have to report their corona status. Also, there is no explanation as to the students who are tested positive on the day of examination.

6. It is submitted that the SOP dated 18.7.2020 produced at Annexure-B, is inconsistent with the guidelines issued by the Ministry of Home Affairs. By permitting the covid 19 positive tested students to attend the examination with other students, is creating a fear in the mind of the other students. The said SOP does not explain as to what measures would be taken for the candidates suffering from covid 19 positive status to separate other students. In the guidelines issued by the MHA, it is clear that there is still lockdown in containment zones. There are around 15,000 containment zone in Bangalore alone. There are institutions in the containment zone where the centre for CET is setup. These are contrary to the guidelines issued by the MHA.

7. Petitioners have received many e-mails from students who have tested positive and are unable to attend the examination. These

students have complained that no second opportunity is provided to them to write the CET examination. In view of the same, such students will have to lose their one year of precious career which is very important to them.

8. It is submitted that likewise, many e-mails have been received by the petitioners in which it is mentioned that the students are residing in one particular district have to travel to other districts for writing the CET examination and some are required to travel for more than 60 or 90 Kms. each way on 30.7.2020 and 31.7.2020 and further there are 2 examinations that are being scheduled to be conducted and between those 2 examinations, there is a time gap of 1 hour and 40 minutes. There is no mention as to where and how the students who have tested positive have to maintain social distance from each other during this time gap. Maintaining physical distance is a mandate by the Ministry of Home Affairs and the said SOP does not state how the covid +ve students should maintain physical distance during the said time gap. The students are required to write the examination from 10.30AM to 3.50 PM each day and there is no alternate facility being made to such students as to their transport facility as they have to travel about 90 Kms. each way on both the days, from his/her place to the venue of the examination. There is no mention of the transport facility that is made by the Respondents. It becomes very difficult for such students to travel in public transport. All these aspects have not been considered while issuing the SOP on 18.7.2020 and only with an intention to implement the order dated 13.5.2020, for name-sake the SOP has been prepared by the 2nd Respondent.

9. It is submitted that due to ongoing covid 19 pandemic situation, there is lock-down in many districts and in many States and there is no facility being made by the Respondents for those students to take up the examination which is scheduled to be held from 30.7.2020 to 1.8.2020. Students who are domiciled in Karnataka

and have completed their studies from 1st to 10th standard in Karnataka and are residing in other States with their parents, such students cannot come out of their houses and take up the examination. This aspect has not been considered while preparing the SOP and issue of notification dated 13.5.2020.

10. It is submitted that there is lockdown in various States and districts of other States and in view of the same, the students residing in those areas are not able to reach Karnataka and take up examination in their respective centres, as there would be no transport facility to them from their States/districts. Respondents have not made any facility for such students to write the said examination.

11. It is submitted that a few students, in their e-mails have also expressed that their residential areas have been identified as containment zones and their areas are sealed down by the Government. They have clearly stated that they are not permitted to come out of their houses in such containment zones and no facility has been made by the authorities to come out of their houses and write the examination. Such seal down has been made for the reason that some person in their locality or their street has tested positive and such students are deprived of the opportunity to write the examination, for no fault of theirs. Respondents have not considered the aspect that there are more than 500 containment zones in Bangalore City alone. This inaction on the part of the authorities in not providing an opportunity for those to take up the examination is clearly violative of their fundamental right because right to education is a right guaranteed to them by the Constitution of India. Passing of the CET examination is very much essential for students aspiring to get admitted to Engineering, Ayush and Medical courses in the State of Karnataka. Thousands of students will be deprived of their examination if proper SOP and guidelines are not formulated by the Respondents

and proper opportunity for all the students who are eager to take up the examination.

12. It is submitted that the petitioners have received e-mails from a few students requesting them to help them in getting the CET 2020 examination either postponed or cancelled, due to the worst situation prevailing in the State and their inability to reach the test centres to write the examination.

13. It is submitted that more than 300 students have sent the emails out of which copy of few of the e-mails that have been received by the first petitioner are produced herewith and marked as **Annexure-E, E1, E2, E3, E4, E5, E6** and copy of few of the e-mails received by the second petitioner are produced herewith and marked as **Annexure-F, F1, F2, F3, F4, F5, F6, F7, F8, F9, F10, F11, F12, F13, F14, F15, F16**.

14. It is submitted that the notification dated 13.5.2020 and the SOP dated 18.7.2020 clearly indicate that the respondents intend to conduct the examination of CET 2020 absolutely in a vague and arbitrary manner and they have not considered the interest, safety of the students in preparing the SOP and the notification. The said examinations are conducted off-line and there is no online facility for the students to write the examination. Petitioners understand that many students have made several representations and addressed letters to the respondents requesting postponement of the examination and conducting the same in a proper manner to facilitate all the students whose number is in lakhs, as this examination would decide the fate and future of students who are aspiring to seek admission to Engineering, Ayush and Medical courses.

15. It is submitted that other competitive examinations i.e. the examination of JEE conducted for students of 10+2 std. which was scheduled to be conducted by the National Testing Agency

from 18th to 23rd July has been postponed to be held on 1.9.2020. The National Testing Agency is an autonomous organization under the Ministry of Higher Education and Human Resources and Development, Government of India. A true copy of the notification issued by the National Testing Agency dated 3.7.2020 is produced herewith and marked as **Annexure-G**. Another examination, COMED-K which is conducted by private medical colleges in Karnataka which was scheduled to be held on 1.8.2020, has been postponed by a notification dated 17.7.2020 a copy of which is produced herewith and marked as **Annexure-H**.

16. Petitioners submit that the respondents may cancel the CET examination and take the marks scored by the students in PUC and prepare the rank of students and thereby the CET could be avoided.

17. In one of the articles published by Times of India, it is stated that nearly 1,94,356 students are appearing for the examination of CET 2020 in 497 centres. Thus, on an average, nearly 400 students will be appearing in each centre. There are no facilities made by the Government as to how these 400 students stay during the 2 examinations. Almost all the students being minors, they will be accompanied by their parents. Thus there would be about 800 people in each centre and no provision is made either in the SOP or the guidelines published by the respondents to ensure maintenance of physical distance by them.

18. That being aggrieved by the orders passed by the Respondents vide Annexure-A bearing No. Commr/Aakuka/Aasha/2020 dated 18.7.2020 pertaining to the issue of SOP and also the inaction by the Respondents in not formulating proper SOP for ensuring the safety of the students appearing for the CET examination 2020, petitioners have preferred this writ petition. The present writ petition is filed considering the larger interest of the students

having been involved, and many students are not able to approach the court for the reason that they are residing in containment zones or are from faraway places. Petitioners, being moved by the sufferings and difficulties faced by the students who are aspiring to take the examination, petitioners have filed this writ petition which is in public interest. Petitioners have no private or personal interest involved in the matter and hence this present petition is maintainable.

19. The petitioners are having no other alternative and efficacious remedy but to approach this Hon'ble Court invoking its writ jurisdiction. The petitioners have not filed any other writ petition or the like before this Hon'ble Court earlier seeking the same relief.

20. The Petitioners seek to urge the following among other grounds in support of their case.

GROUND

21. The respondents have issued the notification much before the issue of guidelines by the Ministry of Home Affairs. Due to the covid 19 pandemic prevailing in the State, many students are not able to travel from their houses to the respective centres to write the examination. The SOP bearing No. Commr/Aakuka/Aasha/2020 dated 18.7.2020 issued by the Respondents does not protect the right of the students who are required to travel from outside the State of Karnataka. Hence, the action is arbitrary and issued without application of mind and taking the interest of the students into consideration and hence the same is required to be set aside.

22. Many students are residing in various places in the State which are identified as containment zones and the areas are sealed down. They are not able to come out of their houses and travel to the examination centre. This aspect has not been considered by the Respondents and hence the same is required to be set aside.

23. Students who have tested covid 19 positive, are not extended with separate facility and the guidelines of the Government to maintain physical distance cannot be ensured since all the students are required to write the same examination and no separate arrangement is made to students who test positive. Students have a fear in their mind about the spreading of virus in the absence of maintenance of physical distance.

24. Students who are residing in other States but are domiciled in Karnataka, where there is lockdown, are unable to reach Karnataka because of absence of the transport facility and also they are not permitted to come out of their houses. This aspect has been considered by the respondents and hence their action is arbitrary, highhanded and taken in haste and the same is required to be set aside.

25. The act of the respondents in not providing adequate facilities to the students to write the examination by taking safety measures, is clearly violative of Articles 14 and 21 of the Constitution of India.

26. Viewed from any angle, the conduct of the CET 2020 examination is not appropriately scheduled and the same is required to be postponed/cancelled.

GROUND IN SUPPORT OF THE INTERIM PRAYER:

27. For the reasons stated above and that the examination is scheduled to be held on 30.7.2020, 31.7.2020 and 1.8.2020 and no proper facilities are provided to the students to appear for the examination by ensuring safety of the students and also that many students are residing in containment zones and their areas are sealed down for detection of a covid 19 patient, they are not able to come of their houses and write the examination, due to no fault of

theirs. Many students are required to travel 80 to 90 kms each way on each day to attend the examination and no separate transport facility is arranged for the students who have tested positive to Covid19. Students fear to travel by public transport due to the spreading pandemic and huge risk to other students. Students who are residing in other States are not able to reach Karnataka due to the lockdown situation prevailing in their States and no transport facility is available to them. Passing the CET examination is very much essential for students seeking admission to Engineering, Ayush and Medical courses and by the arbitrary decision of the respondents, thousands of students are deprived of their opportunity to write the examination and this would make them lose one precious year of their career. Hence, during the pendency of this writ petition, it is most respectfully prayed that an interim order be passed as prayed for. If an interim order as prayed for is not passed, interest of thousands of students would suffer and no such hardship or injury would be caused to the respondents if the impugned examination is postponed or cancelled. Balance of convenience lies in granting an interim order in favour of the petitioners

PRAYER

Wherefore, it is most respectfully prayed that this Hon'ble Court maybe pleased to call for records pertaining to the case of the petitioner and grant him the following reliefs:

(i) Issue a writ of certiorari or any other appropriate writ or order or direction, quashing the impugned press note dated 13.5.2020 bearing No. EDE/KEA/ADMN/CR-13/2019-20 produced at Annexure-A, proposing to hold the CET examination 2020 from 30.7.2020 to 1.8.2020 as improper, arbitrary and not in the interest of the students at large.

(ii) Issue a writ of certiorari or any other appropriate writ or order or direction, quashing the impugned SOP dated 18.7.2020 bearing

No. Commr/Aakuka/Aasha/ 2020 produced at Annexure-D as improper and arbitrary;

(iii) Issue a writ of mandamus or any other appropriate writ or order or direction, directing the respondents to cancel the examination of CET 2020 and consider the marks obtained by the students at the PUC level for preparing the ranking list in order to grant admission to the professional courses

or

In the alternative, to conduct the examination at a later date after preparing proper SOP considering the safety of the students who are residing in containment zones and in other States where the lockdown restrictions are still there and are unable to reach Karnataka to write the examination due to covid 19 situation.

(iv) Grant the petitioners the cost of this proceedings; and

(v) Pass such other order or orders as this Hon'ble Court may deem fit and expedient to pass in the circumstances of the case.

INTERIM PRAYER

Pass an interim order staying the operation, implementation and execution of the press note dated 13.5.2020 bearing No. EDE/KEA/ADMN/CR-13/2019-20 produced at Annexure-A and the SOP dated 18.7.2020 bearing No. Commr/Aakuka/Aasha/ 2020 produced at Annexure-B, during the pendency of this writ petition, to meet the ends of justice.

Bengaluru,

Date: 27.7.2020

Advocate for Petitioners

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