

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (C) No. 1982 of 2020

Reserved on 08/10/2020

Delivered on 27/10/2020

1. Sunil Patel S/o Shri Kuleshwar Patel, Aged About 20 Years R/o Nagoi, Uraihapara, Nougai, Bilaspur, District Bilaspur Chhattisgarh.
2. Sakshi D/o Radhe, Aged About 19 Years R/o 53/1, Majira, Latori, District Surajpur Chhattisgarh.
3. Garima Swarnkar D/o Rajendra Swarnkar, Aged About 19 Years R/o 7, Ringroad No. 2, Near Sahara Nursing Home, Panna Nagar, Bilaspur, District Bilaspur Chhattisgarh.
4. Hemlata Kori D/o Lalaram Kori, Aged About 19 Years R/o Ward No. 15, Civil Line, Nawagarh, Bemetara District Bemetara Chhattisgarh.
5. Sangita Rajak D/o Lallu Rajak, Aged About 19 Years R/o Ward No. 33, House No. 633, Near Mamta Tent House, Tikrapara, Bilaspur, District Bilaspur Chhattisgarh.
6. Sanju Yadav, S/o Shankar Yadav, Aged About 19 Years R/o Ward No. 1, Tahsil Chauk, Bagicha, Jashpur, District Jashpur Chhattisgarh.
7. Rahul Mourya S/o Suresh Kumar Mourya, Aged About 19 Years R/o Kailash Nagar, Dheka, Darrighat, Bilaspur, District Bilaspur Chhattisgarh.
8. Esha Singh D/o Jagsai Singh, Aged About 19 Years R/o Pandripani, Karla, Pathalgaon, Jashpur, District Jashpur Chhattisgarh.
9. Ashish Soni S/o Anil Kumar Soni, Aged About 19 Years R/o Q.No. 1220/2, Ward No. 62, Railway Colony, Wireless Colony, Bilaspur, District Bilaspur Chhattisgarh.
10. Paridhi Bakre D/o Prayas Bakre, Aged About 19 Years R/o Kasturba Nagar, Beside Geetanjali Apartment, Bilaspur, Ward No. 4, District Bilaspur (Chhattisgarh).
11. Mangesh Kumar S/o Brijmohan Dixena, Aged About 19 Years R/o Shish, Bilaspur, Kota, District Bilaspur Chhattisgarh.
12. Aman Shriwas S/o Parmeshwar Shriwas, Aged About 18 Years R/o Police Line, Masanganj, Bilaspur, District Bilaspur Chhattisgarh.

---Petitioner(s)

Versus

1. State of Chhattisgarh Through Secretary, Technical Education Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur District Raipur Chhattisgarh.
2. State of Chhattisgarh, Through Secretary, Agriculture Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, District Raipur Chhattisgarh.

3. Chhattisgarh Professional Examination Board (VYAPAM) Through Secretary, Vyapam Bhawan, North Block Sector 19, Atal Nagar, Raipur, District Raipur Chhattisgarh.
4. Indira Gandhi Krishi Vishwavidyalaya Through Registrar, Krishak Nagar, Raipur Chhattisgarh.
5. Vice Chancellor, Indira Gandhi Krishi Vishwavidyalaya, Krishak Nagar, Raipur Chhattisgarh.
6. University Grants Commission Through Secretary, Bahadur Shah Zafar Marg, New Delhi.

---Respondents

For Petitioners	:	Shri S.P. Kale, Advocate.
For Respondent-State	:	Shri Raghvendra Verma, Govt. Advocate.
For Respondent No.3	:	Dr. Sourabh Pandey, Advocate.
For Respondents No.4&5:		Shri Sangharsh Pandey, Advocate.
For Respondent No.6	:	Shri R.K. Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy

C.A.V. ORDER

1. The challenge in the present writ petition is to the notifications dated 27.07.2020, 30.07.2020 and 11.08.2020 in addition to the challenge to the Indira Grandhi Krishi Vishwavidyalaya Ke Snatak Pathyakram Me Pravesh Niyam, 2020 (in short, the Rules, 2020) dated 08.08.2020.
2. The challenge to the aforesaid notifications and Rules, 2020 is more on the decision of the respondents to grant admission in the B.Sc. (Agriculture) and B.Tech. (Agriculture) courses conducted by the respondent-University based upon the marks received by a student in 10+2 examination i.e. 12th standard examination.
3. The facts of the case in brief is that all the petitioners in the present writ petition are students who had cleared their 12th examination in the year, 2017, some in the year, 2018 and a few in the year, 2019.

Till the previous year, the admissions for the said course in the Agriculture College under the respondent-University was done on the basis of the Pre Agriculture Test (in short, PAT) conducted by the State through its agency, the respondent No.3. The petitioners could not crack or did not appear in the PAT examination conducted in the past and it is said that the petitioners had taken a drop and were preparing for the PAT examination for the year, 2020 for the academic session 2020-21. This examination has been cancelled by the respondents and the University further decided to grant admission on the basis of the marks scored in the 12th examination by a student. It is this decision by which the petitioners are aggrieved of, which has led to the filing of the present writ petition.

4. The petitioners on an earlier occasion had filed another writ petition for the same cause of action. However, the respondents-University entered appearance and submitted that they have also framed a Rule i.e. Rules, 2020 and the Rules also prescribe for granting admission in the academic session 2020-21 on the basis of marks obtained in Class 12th. At that juncture, the counsel for the petitioners withdrew the writ petition with liberty to challenge the Rules as well which has led to the filing of the present writ petition.
5. The counsel for the petitioners submits that in the process of cancelling the examination of PAT and thereby granting admission by way of marks scored in 12th examination the petitioners may lose chance of coming out in merit as they were concentrating more on

the preparation of PAT and in the process they have not been able to score good marks in the 12th examination. Thus they may not be able to come out in the order of merit for getting admitted in the Agriculture Courses conducted by the respondents-University.

6. The challenge to the said Rules and decision to cancel PAT to be conducted this year is alleging arbitrariness as according to the petitioners all over India there have been various entrance examinations conducted like for example NEET, JEE and CLAT etc. In addition, various recruitment related examinations also are being conducted and under the said circumstances, there is no reason why the respondents should cancel PAT which was earlier proposed to be conducted by the respondent No.3 and which has since been cancelled.
7. Further contention of the petitioner was that the cancellation of the examination and the decision to grant admission on the basis of the marks scored in the 12th examination is one which ought to have been taken by the State Government and cannot under any circumstances be taken/decided by the University. The challenge also is to the Rules, 2020 on the ground that the Rules do not specify as to the body which has passed the same or the authority under whose signature it has been published. It was also the contention of the petitioners that even otherwise the University did not have the power, authority and competence to frame such a Rule. It was also the contention of the petitioners that the Rules, 2020 also

does not have an approval of the Chancellor of the University who is supposed to be the Head of the Institution and every rules and orders issued should have been under his name alone.

8. It was also vehemently argued by the petitioners that for the academic session, 2019-20 infact there was no examination conducted for Class 12th. The students were promoted on the basis of the internal assessments. Thus, the same has to be presumed to be General Promotion being granted to the students and therefore the marks scored from such examination should not be considered as a parameter for granting admission in the Agriculture courses as it would amount to compromising the merits of the students.
9. For all the aforesaid reasons, the counsel for the petitioners prayed for quashment of the notifications issued by the respondent No.3 as also the Rules, 2020 be declared to be illegal and further direct the respondents to conduct PAT examination and proceed to grant admission on the basis of the merits of the candidates.
10. Opposing the petition the stand of the counsel for the University Grant Commission (UGC) was that the role of the UGC is only for prescribing the minimum standards in respect of an academic courses rendered by each of the universities/colleges. It was the categorical contention of the learned counsel for the UGC that so far as the mode of admission, the parameters, modalities and the method of admission being exclusively within the domain and the

power of the respective university to decide and there is hardly any role for the UGC to play in this regard.

11. Further, opposing the petition Mr. Sangharsh Pandey, learned counsel for the University submitted that the petitioners cannot have a claim as such for this year because of the precarious condition that is prevailing throughout the globe more particularly the State of Chhattisgarh. It was the contention of the University that because of the peculiar and dangerous situation prevailing in the State, the decision was taken not to conduct the PAT and to grant admission on the basis of the marks scored in class 12th. It was the contention of the University that under the prevailing circumstances and situation particularly that is prevailing in the State of Chhattisgarh particularly the need for undergoing quarantine for persons coming from outside the State and also from outside the Districts, it was not practically feasible at this juncture to conduct the examination and therefore such a decision was taken. Accordingly, it was argued by the counsel for the University that taking into consideration the larger interest of the students, if a decision particularly for this year if has been taken by the University, the same cannot be said to be in any manner arbitrary, malafide or illegal.
12. It was also the contention of the learned counsel for the University that it is not a case where the petitioners would not be permitted to participate in the selection process. According to the University, the petitioners also have an equal chance of being selected subject to

their scoring better marks in their 12th results and since the petitioners also have a chance of participating in the selection process, the decision of the respondents cannot be said to be in any manner arbitrary or illegal.

13. It was also contended that the said decision also was taken, taking into consideration the fact that the University and the Colleges are as it is running late and that with no possibility of conducting of an entrance examination in the near future under the prevailing circumstances, it was under compulsion that the respondent-University had to take a decision to drop conducting of the P.A.T. It was also the contention that most of the petitioners in the present writ petition have already applied for being considered which itself shows that they have not been put to loss in any manner first by the chance of system introduced for this year alone.
14. According to the University, under the prevailing situation, it would not be advisable to conduct an examination and expose a large number of students as also the teaching and non-teaching staffs and the authorities of the colleges and institutions, where the examinations have to be conducted to the threat of getting infected with the Corona Virus. The counsel for the University highlighted the aspect that there are thousands of candidates who have applied from out of the State for the P.A.T. and if they were to come to Chhattisgarh. It would have caused great inconvenience both to the candidates as also to the State of Chhattisgarh, firstly in

accommodating them, secondly in providing quarantine facility and at the same time the candidates also would have faced considerable inconvenience of requiring to undergo quarantine, which would be required on their coming to appear for the examination in the State of Chhattisgarh and also on going back to their State or District. Another practical difficulty, which the University highlighted was the fact that taking note of the present precarious condition, there is a possibility of the colleges which have been declared as centers in the P.A.T. falling under the containment zone at the last moment thereby the candidates who have been provided with centers at that area would not be able to participate in the examination and at the last moment an alternative arrangement also would not be practically feasible.

15. It was further argued on behalf of the University that it is not just that the P.A.T. alone that has been cancelled by the University, there are large number of entrance examinations which have been cancelled by different Universities including the respondent-University and the Guru Ghasi Das Central University etc. That it is only for P.A.T. or the admission to the Agriculture course which has been subjected to challenge, which in other word means that the said action of the University in respect of the other courses is in fact acceptable to a large majority of persons. For this reasons also the impugned decision of the respondents do not warrant interference.

16. Dr. Saurabh Pandey, learned counsel for the respondent no.3- Vyapam supporting the arguments led by the University, the UGC and other respondents submitted that as far as the respondent no.3 Vyapam is concerned, it is only a body which conducts examinations at the instance of the Universities as also the Government. The Vyapam, as such on its own, does not have the power to cancel a particular examination nor does it have the power to change the modality and methodology for granting admission to various courses conducted by different universities and colleges in the State.
17. Supporting the contention of the other respondents, counsel for the Vyapam submitted that given the prevailing situation and condition, in the backdrop of COVID-19 pandemic situation in the State of Chhattisgarh, it is not practically feasible to conduct the examination when around 51227 candidates have applied for PAT and centers have been given in all the districts of the State of Chhattisgarh. The contention was that it would have been difficult to accommodate 51227 candidates in the course of conducting examination under the prevailing precarious condition. In addition, it was also contended that there were around 1260 candidates from outside the State of Chhattisgarh who had applied for the said examination. These 1260 candidates have also been given different centers for their examination. These candidates coming from outside the State of Chhattisgarh would find it difficult to appear and participate in the examination considering the requirement of being quarantined on their coming from outside the state so also the participating

candidates in the course of attending the examination also would require more space in order to maintain the distance required under the guidelines of the Govt. According to the counsel for the Vyapam, these are only some of the practical difficulties which would be faced by the respondent no.2 in the course of conducting the examination. Another aspect which has been raised by the counsel for the Vayapam is that a plain reading of the relief clause would reveal that the whole of the notification dated 27.07.2020 has been challenged whereas the petitioners are only concerned with the cancellation of PAT and they cannot have a grievance so far as the cancellation of other admission related examinations are concerned and therefore, the whole notification cannot be quashed. As regards the other admissions are concerned, there is no challenge from any corner which also needs to be considered. Counsel for the Vyapam submitted that when a decision is taken considering the emergent situation like the one which is prevailing throughout the world today and an alternative arrangement is resorted to by the university authorities for grant of admission, the same cannot be subjected to judicial review as would be required in respect of a decision which would have been taken under the normal circumstances. Thus, prayed for rejection of the writ petition.

18. Having heard the contentions put forth on either side and on perusal of the records, what is paramount to be seen is that at the first instances, there was no intention of any of the respondents not to hold the PAT. On the contrary, the respondents had taken steps for

conducting PAT and had issued necessary notice also in this regard. However, subsequently, because of the sharp rise in the number of cases COVID -19 being detected in every district in the State of Chhattisgarh in particular and the nation, as a whole where people have been confined to their residences for months together fearing of getting exposed to the virus in the event of their moving out of their residence unnecessarily and without proper precaution and care. It was under this circumstance specially when the State of Chhattisgarh itself was hard hit by the COVID-19 pandemic with more than 1.50 lakhs cases of COVID-19 persons who have been found positive of Corona virus, that the respondents, in their wisdom as a precautionary step, decided to cancel some of the exams to be conducted by the Vyapam. One such examination is that of PAT which is under challenge in this writ petition.

19. COVID-19 pandemic has affected the educational system worldwide leading to a situation where the entire schools, colleges and universities are totally closed for the last about 7 months. The very fact that the educational system and the educational institutions itself have been put to a total closure in itself is a sufficient indication to infer that as of now it is not feasible and practical nor advisable at present to hold examinations for a large number of candidates which in the instant case is more than half a lakh.
20. One should not forget that it is not just students alone who would be exposed to the threat of being infected in the course of conducting

examination not just PAT alone but other examinations also which have been canceled by the Vyapam, a large number of teaching and non-teaching staffs of the respective centers which have been marked for conducting the examination would also be equally exposed so also the family members of each of the candidates and the teaching and non teaching and other support staff would get exposed on their returning home after the examination and which could also prove fatal in some cases.

- 21.** What has also to be realized is that because of the Corona virus pandemic there is hardly any sector which remains unaffected and educational institutions are no exception. Even as on date, there is total uncertainty as to when these educational institutions will reopen. As it is the academic session has got considerably delayed so also the admissions to these institutions have got much delayed. Because of the delay of the academic session, there is all likelihood of it having an adverse impact on the courses to be completed in a particular academic session more particularly to those courses where the education system is semester wise.
- 22.** Under the aforesaid compelling emergent situation if the university authorities finds out a via media for grant of admission where every category of students including the petitioners get an equal chance of participation and which also includes the petitioners herein. What requires consideration is whether such a decision can be held to be arbitrary, malafide or illegal. Whether under the said circumstances

can it be said that the decision so taken by the respondents is violative of Article 14 of the Constitution of India.

23. Today, when the matter was being heard, counsel for the University submitted that 10 out of 12 petitioner/students in this writ petition had applied under the new system and that all the 10 students have been found eligible and have been shortlisted for counseling. This submission of the learned counsel for the University itself is a fact which would establish that the decision was neither arbitrary nor violative of any of the provisions of law.
24. So far as the challenge to the Rule of 2020 is concerned, this Court is of the opinion that the challenge to the said Rule in the present case while challenging the decision of Vyapam and the University not to conduct PAT, it is inconsequential for the reason that, the respondents had already taken a decision even before the Rule was published not to conduct the PAT. Hence, the decision of the respondents which was taken even prior to the publication of the Rule is what is being subjected to judicial review.
25. The Indian Council for Agricultural Research, a body under the Ministry of Agriculture, Government of India had issued advisories to all Agricultural Universities during the COVID-19 pandemic. The said advisories were taking into consideration the factual situation that the Universities were facing and in addition to a large number of advisories, it was also under headings “**Rescheduling of the**

Academic Session, 2020-21” it was categorically advised as under:

“In view of the present scenario and future uncertainties, if the university faces difficulty in making admissions as per the existing policy, it may adopt alternative modes of admission process, if otherwise legally tenable.”

26. This aspect/advisory given by the Indian Council for Agricultural Research has great importance when we look into the decision of the respondent-University of finding a via-media for granting admission only for this academic session because of the impact of COVID-19 pandemic.
27. Similarly on 29-04-20 the University Grants Commission also had issued certain Guidelines on Examinations and Academic Calender for the Universities in view of COVID – 19 Pandemic and subsequent Lockdown in respect of how examinations have to be conducted of the previous Academic session and also in respect of admissions for the next academic session. In the said Guidelines it was also envisaged that “ in case the situation does not appear to be normal in view of COVID-19, in order to maintain “social distancing” safety and health of the students then the Grading of the students can be on the basis of the internal evaluation and on the basis of the performance in the previous semester.
28. Likewise, if we look into the powers which have been conferred upon the Academic Council it clearly reflects that the Academic Council is the Incharge of all the academic affairs of the University and it is the

Academic Council, which regulates the various courses imparted by the University including the conducting of the admissions as also the examinations awarding of Degrees etc. Thus, so far as the Academic is concerned, since it is the Academic Council, which is the body in determining the admission and conducting of the various courses in a University that the Academic Council in the instant case had taken a decision at the first instance not to conduct the Pre-Agriculture Test 2 (PAT) and it is in this process that the Incharge Registrar had sent a letter to the Professional Examination Board suggesting for granting admissions on the basis of the marks obtained in the qualifying examination for admission to the B.Sc. (Agriculture) and B.Sc. (Horticulture).

- 29.** Looking to the aforesaid backdrop under which the said decision was taken irrespective of the Rules that have been framed by the Department, it cannot be said that the same is in any manner arbitrary, malafide or illegal. The very fact that the petitioner has an opportunity of participating in the admission process and 10 out of 12 candidates have already applied for the same, this Court does not find any strong prejudice which would be caused to the petitioner on the not conducting of the P.A.T. examination for the year, 2020-21.
- 30.** One must understand that in the course of facing the COVID-19 pandemic and also in the backdrop of the Universities requiring to grant admissions to the various courses undertaken by the

University, they must have that much of freedom to take decisions befitting the moment and all the Universities must also have that much of play in the joints in order to ensure the smooth and effective functioning of the University, which should be the paramount object in the minds of the University while taking any decision. It is ultimately the larger interest of students in general, which should be given more weightage as compared to a selected few. Thus in the overall factual background under which such a decision was taken, this Court does not find any good reason to interdict the said Rule as also the order under challenge.

- 31.** The writ petition therefore deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge