

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 2240 of 2020****Reserved on 16.10.2020****Delivered on 05.11.2020**

Prachi Tulsyan D/o Niranjana Tulsyan, aged about-22, R/o village Belgahna, District Bilaspur (CG)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through its Secretary, Department of Agriculture, Mantralay, Mahanadi Bhawan, PS Rakhi, New Raipur, District Raipur, Chhattisgarh
2. Vice Chancellor, Indira Gandhi Krishi Vishwavidyalaya, Krishk Nagar, Raipur, Chhattisgarh
3. Director of Instruction and Controller of exam of Indira Gandhi Krishi Vishwavidyalaya, Raipur, Chhattisgarh
4. Indira Gandhi Krishi Vishwavidyalay through Registrar, Krishka Nagar, Raipur, Chhattisgarh
5. University Grants Commission through Secretary, Bahadur Shah Zafar Marg, New Delhi

---- Respondents

For Petitioner	:	Shri P. K. Tulsyan, Advocate
For Respondent no.1	:	Shri S. Dubey, Dy. Govt. Advocate
For Respondents 2 to 4	:	Shri Sangharsh Pandey, Advocate
For Respondent no.5	:	Shri R. K. Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy**C A V O R D E R**

1. Aggrieved by the notification dated 30.07.2020 passed by the respondents 2 to 4, the present writ petition has been filed by the petitioner.
2. Through the present writ petition, apart from seeking quashment of the aforesaid notification, the petitioner has also sought for a direction to the authorities to conduct CET-PG examination. The petitioner is challenging the cancellation of CET on the ground of the rules required for holding CET examination for getting admission to post graduation courses particularly to M.Sc. course.
3. The facts which led to the filing of the present writ petition is that vide Annexure P-1 dated 30.07.2020 the respondent authorities i.e. the respondents 2 to 4 have decided to cancel the CET examination conducted annually for this academic session, 2020-21 which was required for admission to PG and Ph.D. courses under the respondents 2 to 4.
4. The petitioner is a candidate who had passed her B.Sc. agriculture course in the academic session 2018-19. As per the petitioner, she has taken a drop for preparing CET examination for the academic session 2020-21. However, to her utter surprise, the respondents vide impugned order have taken a decision to cancel the CET examination for this academic session 2020-21 and have decided to provide admission for PG & Ph.D courses on the basis of the marks/percentage scored by a candidate in the eligibility qualification, which in the instant case would be the percentage/marks scored in B.Sc. Agriculture course. According to the petitioner, the students who have not passed

out this year and interested in getting admission in PG & Ph.D. courses, their interest would be adversely affected on account of the liberal marks that have been given to the students in B.Sc. Agriculture course for the academic session 2020-21 where the examinations have not been conducted and the marks have been awarded based on the internal assessment and the satisfaction of the internal teachers concerned.

5. Some of the major grounds raised by the petitioner for assailing the action on the part of the respondents, is firstly the decision of the respondents not to conduct an examination for the final year B.Sc. Agriculture students and to declare the results on the basis of the marks awarded on the internal assessment is bad in law. Second ground raised by the petitioner is the necessity for conducting CET exam as per the rules governing the field and the practice which was being followed from very long time now. Thirdly, it was contended that the action on the part of the respondents in not conducting exams for the final year B.Sc. Agriculture students is also violative of the judgment of the Supreme Court recently passed in the case of *Pranit K Vs. University Grants Commission*, 2020 SCC Online SC 688 where according to the petitioner it has been emphatically held by the Supreme Court that in order to maintain the sanctity of the standard of education and the expectation from a student, exams for the final year/terminal batch cannot be waved off and marks cannot be awarded on the basis of internal assessment. It is also the contention of the petitioner that the University Grants Commission vide their guidelines

dated 06.07.2020 had directed the universities in ensuring that at least for the final year/terminal semester batches, examination must be conducted for the purpose of declaring results which again has not been followed by the respondents and the action therefore on that ground also has to be declared as illegal and contrary to the guidelines of the UGC. According to the petitioner, the respondents did not have the power, authority and competence in taking a decision for cancelling CET examination because no such power is vested with the respondent University more particularly the Academic Council to take such a decision. The petitioner heavily relied upon the judgment of the Supreme Court in the case of *Pranit K (supra)* to substantiate her contention.

6. Two major aspects which were drawn by the learned counsel for the petitioner was that because of the non-conducting of examination for the students of B.Sc agriculture final year and awarding marks based upon the internal assessment, the marking system becomes liberal and in the process, the students of this year would be scoring much more than what they would have scored if the examination had been conducted. That on account of the high scoring marks, the candidates of the previous year will be finding it difficult to compete with the students of this year. According to the petitioner, since the number of seats are limited, at times one mark here and there becomes crucial. The second aspect raised by the petitioner was that the cancellation of examination firstly without any authority and secondly when all other major examinations could be conducted in the country like NEET, JEE

IIT, CAT etc., there is no reason why CET exam should not have been conducted by the respondents. According to the petitioner, the very fact that subsequent to the impugned order being passed, deciding not to conduct the CET exam for this academic session, the respondents realized that they were not having the power to do so and therefore, thereafter they have framed the rules which has been brought on record by amendment Annexure P-17 notified on 29.08.2020 known as “ the Rules for Admission in PG & Ph.D Programmes of IGKV for 2020-21”. This by itself would establish that the decision not to conduct CET examination was bad in law and thus, prayed for quashment of the impugned order Annexure P-1 and also for directing the respondents to conduct CET examination for this academic session.

7. Counsel for the University opposing the petition submits that because of the Covid -19 Pandemic the University so also the State Government, so also many other universities in the State of Chhattisgarh have taken a decision not to have entrance Examination for admission for this academic session and admission be granted on the basis of percentage/marks scored in the eligibility course. According to the counsel for the University the decision was taken a consciously taking into consideration the prevailing situation in the backdrop of the effect of COVID-19 Pandemic.
8. It was further contention of the University that petitioner herein is not the Degree/ Graduation pass out of this year by which she may get adversely affected rather it is a case where she was degree/graduation pass out of the previous year. It was also contended by the University

that it is not the case where classes were not conducted and examinations were not held rather according to the University it is a case where B.Sc. Agriculture Course is substantially based on practicals and assessments and marks are also given on the basis of the practical examinations conducted and which has also been done in the present year. Thus, it cannot be said that students of this year degree course would be in an advantageous position. It was contended that only change that was brought in was to the extent of the students not being examined by external examiner but were subjected to examination by the Internal Examiners appointed by the University. Another submission made by the learned counsel for the University was that now that the admission process has already begun and is at the final stage at this juncture striking down the process of admission and ordering for a fresh admission process after conducting a Common Entrance Examination may not be practical for two reasons. Firstly, because of the impact of COVID-19 Pandemic it is not in any manner safe to conduct examination under the prevailing circumstances. At the same time, it is also not practical for the reason that the University would first have to conduct a CET then go in for a fresh admission process, all this may consume considerable time and in all likelihood a couple of months may further take for the same and in the process there will be further delay in the academic session which would thereby be not in the interest of either the students or for the University and also for the educational system as a whole.

- 9.** It was also the contention of the University that University Grants Commission has already vide their guidelines dated 29.04.2020 had permitted the universities to relax the system of admission considering the total facts and circumstances of the case and as per the university this decision of not to conduct CET also is based upon the said guidelines issued by the UGC. Moreover, it was also the contention of the University that Indian Council for Agricultural Research which again a body of the Central Government has issued certain guidelines for the Corona Pandemic season and as per the guidelines of the ICAR while issuing guidelines for rescheduling of the academic session it was suggested by the ICAR 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”

- 10.** This fact was also borne in mind by the University authorities while taking a decision to cancel the CET-P.G. Examination. Thus, according to the counsel for the University the action cannot be said to be in any manner malafides or contrary to law in any manner. It was also contended by the University that all these decisions have been taken only for this academic session and for the obvious reason that of the effect of the COVID-19 Pandemic and which is a decision taken in the larger interest of all and therefore it does not warrant any interference.

- 11.** As regards counsel for the UGC Shri R. K. Gupta, it was contended that so far as UGC is concerned its primary responsibility is to ensure the minimum standard that has to be maintained in the process of imparting education for a particular course. It was also the contention of the counsel for the UGC that from time to time the UGC has been issuing guidelines taking into consideration the factual situation as it prevails in the country. In this regard initially the guidelines was issued on 29.04.2020 and another guidelines subsequently was issued on 06.07.2020. According to the counsel for the UGC in the guidelines of 06.07.2020 It has been emphatically held by the UGC instructing all concerned authorities to ensure conducting of terminal semester(s)/ Final Year(s) Examination by the Universities. This according to the counsel for the UGC means that for the terminal Semester based final year students examinations must be conducted.
- 12.** As regards State counsel, it was contended that State being a formal party for the reason that the decision under challenge is that of the university which by itself is juristic person having a decision making power and not being under the control of the State Government. However, State counsel submitted that persual of the Indira Gandhi Krishi Vishwavidyalaya Adhiniyam would show that Section 39 confers power upon the university to frame rules.
- 13.** Having heard the contentions put forth on either side and on perusal of records, the two issues which crop up for consideration are firstly whether the university authorities were justified in not conducting the examination for the final year students studying in B.Sc. Agriculture

and Horticulture Courses and secondly whether the decision of the University to cancel CET. P.G. Examination is justified and proper.

14. Undisputedly, the admission to PG & Ph.D. courses in agriculture, horticulture and agriculture engineering was being done in the past on the basis of CET-PG entrance examination conducted by the University. This year also the respondents had initially proposed to conduct the aforesaid examination and advertisement also in this regard was published. It is said that the petitioner had also applied. However, subsequently the University considering the precarious condition prevailing took a decision not to conduct the aforesaid examination and to grant admission on the basis of the marks/percentage scored in graduation courses.

15. At this juncture what has to be realized is the fact that when the decision was taken by the University authorities, the situation because of the impact of COVID-19 pandemic in the State of Chhattisgarh was very severe and it has till date not reached at the stage of normalcy. There are a large number of practical difficulties which the authorities would face in the course of conducting the aforesaid CET-PG entrance examination. The authorities concerned took an overall assessment of the practical feasibility in conducting the examination and took a conscious policy decision not to conduct CET examination this year.

16. At this juncture it would be relevant to mention that it is not just the CET-PG entrance examination that has been cancelled by the respondent University, rather there are large number of examinations including the entrance examination for graduation courses in

agriculture and horticulture which till now were being given on the basis of PAT (Pre Agriculture Test) that too has been cancelled by the same respondent University. In addition, the other universities also operating in the State of Chhattisgarh including the Central University i.e. Guru Ghasidas University have cancelled many entrance examinations taking into consideration the peculiar precarious condition prevalent because of COVID-19 Pandemic.

17. The fact which needs consideration is that the Indian Council for Agriculture Research, a body of the Central Govt., had already issued guidelines in the form of advisory whereby liberty was granted to the respective Universities that in the event of facing difficulties in making admission as per the existing policy, by adopting an alternative process of admission. In addition to the guidelines issued by the ICAR, the University Grants Commission also had issued guidelines in April, 2020 Annexure P-4 wherein the UGC had laid down certain guidelines and advisories granting liberty to start out its own plan of action taking into consideration the situation pertaining to COVID-19 pandemic. After laying down certain guidelines in respect of conducting the examinations, the UGC had further issued an advisory envisaging that “in case the situation does not appear to be normal in view of COVID-19, grading of the students could be on the basis of the internal evaluation adopted by the Universities along with the performance in the previous semester.

18. Now, if we read the impugned order Annexure P-1 dated 30.07.2020 whereby the University authorities have cancelled the CET-

PG entrance examination so also Annexure P-7 dated 26.06.2020, it would reveal that the decision was taken in the backdrop of a large number of areas, districts and another places in the State of Chhattisgarh being declared as red zone on account of COVID-19 pandemic. Recently another writ petition challenging the cancellation of the Pre Agricultural Test (PAT) by the Professional Examination Board for admission to the degree course in the respondent University for graduation in agriculture and horticulture was filed i.e. WPC No. 1982/2020 in the case of **Sunil Patel and others vs. State of Chhattisgarh and others** decided on 27.10.2020. In the said case, this Court had the occasion of dealing with a similar situation and after considering the totality of the facts and circumstances of the case, this Court had rejected the writ petition wherein cancellation of the examination was also under the identical set of facts. This Court while deciding WPC No. 1982 of 2020 in paragraph-30 has held as under:

“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.”

19. As regards the challenge to the rules framed by the respondent University as has been held by this Court in WPC No.1982/2020, the rules as such may not be of much relevance in the factual backdrop of this case for the reason that the decision to cancel CET-PG entrance examination by the respondents was much before the rules were framed by the University. In fact, even the representations of the petitioner and similarly placed other persons also got rejected on 05.08.2020 that too was much before the rules were framed.

20. Thus, this Court has to test the veracity of the order dated 30.07.2020 Annexure P-1 on the situation and the ground reality as it stood then. The rules of 2020 has not been questioned on the ground of competency of the authority concerned or the University not being empowered for publication of such rules. The rules in fact are not the rules which are statutory but are more in the nature of guidelines or instructions so far as the admission for the present academic session is concerned. The rules have been challenged on the ground of the same being arbitrary, malafide and unreasonable. No strong case as such has either been established or proved or brought on record to establish malafides or arbitrariness or unreasonableness on the part of the respondents. The respondents have in very categorical term stated that the said rules are only for this academic session and the intention

of cancelling CET-PG entrance examination again was purely taking into consideration the impact of COVID-19 supported with the advisory issued from ICAR and also the guidelines issued from the UGC in April 2020.

21. Now, so far as the issue of declaration of results of 2019-20 second semester of 4th year of B.Sc. Agriculture is concerned, if we take into consideration the guidelines of the UGC issued in April, 2020 wherein it was envisaged that in the event of the situation not getting normalized in view of COVID-19, the University would be permitted to grant grading of the students on the basis of the internal evaluation and also on the basis of the performance in the previous semester. Moreover, there is a categorical stand taken by the University that all the procedures required for conducting practical examinations and awarding of marks have been undertaken in the same manner as were being done in the past except for the fact that all the examinations were undertaken by the internal teachers and no external teachers were called upon for practical examinations and viva voce test for the students.

22. If the University authorities have in fact conducted examination in accordance with the pattern of examination as was in the past, there is hardly any reason for testing the veracity of the said procedure. Only because of the examination particularly practical and viva voce not being conducted by external teachers but being conducted by internal teachers by itself would not vitiate the procedure as the same was keeping in mind the prevailing precarious condition on account of

COVID-19 pandemic. For this reason also the petitioner would not be entitled for the relief that she has prayed for in the present writ petition.

23. Another fact, which impresses upon the Court not to interfere with the proceedings at this juncture is that the petitioner has been banking more on the guidelines of the UGC that was published on 06.07.2020, but the fact, which needs consideration is that based upon the report of the ICAR referred to in the preceding paragraph and also based upon the guidelines of the UGC that was first published in April, 2020, the respondents seem to have taken a decision considering to the ground realities that were prevailing. The decision of the university was dated 08.07.2020 by which time in all probability, the order of the UGC dated 06.07.2020 might not have reached the respondent-University. In any case, once when the university takes a stand that the students have been subjected to the examination in accordance with the prevailing practice and procedure except for being subjected to viva voce test and other assessment from an external teacher, all other procedures having being adopted, the ground of challenging the declaration of the result on 08.07.2020 does not have much force.

24. Even otherwise, as on date substantial period has already been lapsed, it would not be practical, feasible or advisable asking the University to redo the entire process altogether again, which by itself may consume lots of time for this academic session and in the process the eligible students may be losing one academic calendar. Therefore, on this ground also the petitioner would not be entitled for any relief.

25. For all the aforesaid reasons, the present writ petition being devoid of merits deserves to be and is accordingly rejected.

Sd/-
P. Sam Koshy
Judge

Khatai

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

MCC No. 522 of 2020

Prachi Tulsyan **Versus** State of Chhattisgarh & Ors.

09.11.2020	The present MCC has been listed for clarification and modification of the order dated 05.11.2020 passed in WP(C) No. 2240 / 2020. The aforesaid writ petition was reserved for judgment on 16.10.2020 and the judgment was delivered on 05.11.2020. Inadvertently, in the order, the date of judgment has been reflected as “16.10.2020” on which date the aforesaid matter was in fact closed for orders. The order, therefore, stands modified to the extent that it shall be read as “judgment pronounced on 05.11.2020” instead on “16.10.2020”. With the aforesaid modification, the present MCC stands allowed and disposed off. Let a copy of this order be made part of the record of WP (C) No. 2240 of 2020. Sd/- (P. Sam Koshy) JUDGE
Rahul	