

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.08.2020

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WP.Nos.11081, 11083, 11084, 11086, 11087, 11089, 11092 &
11095/2020 & WMP.Nos.13488, 13490, 13492, 13493 to 13495, 13497,
to 13499, 13503 to 13505, 13507 to 13508, 13514, 13515, 13517,
13520, 13522, 13523 & 13529 to 13531/2020

Minor T.Mohamed Humayun	..Petitioner in WP.No.11081/2020
Minor S.Arsth Ismaeel	..Petitioner in WP.No.11083/2020
Minor S.Mohamed Abrarul Haq	..Petitioner in WP.No.11084/2020
Minor M.B.Mohamed Aslam	..Petitioner in WP.No.11086/2020
Minor J.Musab	..Petitioner in WP.No.11087/2020
Minor S.Fathima	..Petitioner in WP.No.11089/2020
Minor N.Ibadha	..Petitioner in WP.No.11092/2020
Minor K.S.Kwaja Naushath Maraicar	..Petitioner in WP.No.11095/2020

Versus

1. State of Tamilnadu
rep.by the Principal Secretary to Government
School Education Department
Govt. of Tamil Nadu,
Fort St. George, Chennai 600 009.
2. The Directorate of Govt. Examinations
rep.by its Director, DPI Campus,
College Road, Nungambakkam
Chennai 600 006.

3. The Directorate of School Education,
rep.by its Director,
Government of Puducherry, ''A'' Block,
I Floor, Perunthalaivar Kamaraj Cenetenary
Educational Complex, 100 ft Road, Anna Salai
Puducherry 605 005.
4. The Chief Educational Officer-Karaikal,
Directorate of School Education,
Office of the Chief Educational Officer
Karaikal. ..Respondents 1 to 4
in all the WPs
5. M.E.S.Govt. Aided High School
rep.by its Principal, Masthan Palli Street
Karaikal 609 602. ..5th Respondent in
WP.Nos.11081,
11084, 11086/2020
6. Iqra English High School
rep.by its Principal,
Duplex Street, Karaikal 600 602. ..5th respondent in
WP.No.11083 & 11095/2020
- 7.Thanthai Periyar Govt.Hr.Sec.School
rep.by its Principal, Kovilpathu
Karaikal-609602. ..5th respondent in
WP.No.11087/2020
- 8.Annai Theresa Govt.Girls Hr.Sec.School
rep.by its Principal
Karaikal, Karaikal-609602. ..5th Respondent in
WP.No.11089 & 11092/2020

Common Prayer:-Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relating to [i] the order bearing G.O.Ms.No.54 School Education Department, dated 09.06.2020 on the file of the 1st respondent [ii] the order bearing Na.Ka.No.116/E3/2020/21 dated 11.06.2020 on the file of the 4th respondent and all other consequential orders/circulars issued by the respondents 2 to 4 and quash the same insofar as the same is relating to clause 4[iii] viz., the method of assessment proposed for assessing and awarding final marks as scored by the petitioners in the SSLC Public Examination 2020 and consequently, direct the respondents 1 to 4 to adopt a just, fair, correct and proper method of assessment for assessing and awarding of final marks as scored by them in the SSLC Public Examination 2020, award correct marks and issue mark sheet to them.

For Petitioners in
all WPs : Mr.T.P.Manoharan
Senior Counsel assisted by
Mr.T.M.Naveen

For RR 1 & 2 in
WP.Nos.11081,
11083, 11084 &
11086/2020 : Mr.C.Munusamy, Spl.GP[Edn]

For RR 1&2 in
WP.Nos.11087,
11089, 11092 &
11095/2020 : Mrs.V.Annalakshmi, GA

For RR 3 & 4 in
all the WPs : Mr.Syed Mustafa, Spl.GP
[Puducherry]

COMMON ORDER

- (1) These batch of writ petitions challenge the Government Order issued by the 1st respondent in G.O.Ms.No.54, dated 09.06.2020 and the order issued by the 4th respondent dated 11.06.2020 and all other consequential Circulars/Orders issued by respondents 2 to 4, insofar as it relates to Clause 4[iii] which deals with the method of assessment for assessing and awarding final marks in SSLC Public Examination.
- (2) The petitioners are all young students who were studying 10th standard during the academic year 2019-20. Like all students, all the petitioners were devoting their entire time in preparation for the SSLC Public Examination conducted by the 2nd respondent. As a bolt from the blue, came COVID-19 and a nationwide shut down was announced to deal with the pandemic situation. Initially, there was a hope that the situation will improve and therefore, the 2nd respondent postponed the examination to the month of June 2020. The situation only got bad to worse and ultimately, it was realised that the students cannot be exposed to the deadly virus by making them write examination and therefore, the Government of Tamil Nadu decided to cancel the SSLC Public Examination and declare all the students to have passed in the said examination. It is important to note that the Union Territory of Puducherry does not independently conduct any examination for 10th and 12th standards and it is the 2nd respondent who conduct examination even for the Union Territory of Puducherry for the 10th and 12th standards.

(3)After the Government decided to declare all the students as pass, it had to device some method to assign marks to the students. It is at this stage, G.O.Ms.No.54 dated 09.06.2020 came to be issued by the Government of Tamil Nadu.

(4)As per the above Government Order, it was declared that all those subjects for which the examination was not conducted, those exams shall stand cancelled. All the students were declared to have passed the 10th standard Public Examination. Clause 4[iii] deals with the method to be adopted for the purpose of awarding marks to the students. For proper appreciation, the same is extracted hereunder:-

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''4(iii)khzth;fSf;fhd kjpg;bgz; kjpg;gPL
mth;fspd; fhyhz;L kw;Wk; miuahz;L njh;t[fsPy;
me;je;j khzth;fs; bgw;w kjpg;bgz;fspd;
mog;gilapy; 80 rjtpfpj kjpg;bgz;fSk;.
khzth;fspd; tUif gjtpdp; mog;gilapy; 20 rjtpfpj
kjpg;bgz;fSk; tH';fg;gLk;/''
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(5)As per the above clause, 80% will be made on the basis of the marks secured by the students in the Quarterly and Half-yearly examinations and 20% will be made on the basis of their attendance. It is this clause that has been put to challenge in these batch of writ petitions.

(6)Mr.T.P.Manoharan, learned Senior counsel assisted by Mr.T.M.Naveen, learned counsel for the petitioners made it clear the petitioners are not questioning the intention behind the issuance of the Government Order and the declaration of all the students who have passed in the 10th standard Public Examination. The learned Senior counsel submitted that the only grievance expressed by the petitioners in all these writ petitions is with regard to the manner in which the marks are going to be awarded to the students as per Clause 4[iii] of the impugned Government Order. The learned Senior counsel submitted that during the academic year 2019-20, the 2nd respondent had introduced a new syllabus for the first time and the topics that were included, were even new for the teachers who taught the students. The learned Senior counsel further submitted that the blueprint of the new syllabus was issued belatedly, only after the Quarterly examinations were over. That apart, there were also many changes that took place in the pattern of the SSLC Public Examination. The learned Senior counsel, therefore, submitted that only during the month of December 2019, the students and the teachers became acclimatised to the changes that took place in the syllabus as well as the pattern of the SSLC Examination. Only thereafter, the schools started conducting the revision classes and setting question papers covering the entire syllabus in all the subjects during the revision tests that were conducted after the Half-yearly

examination. The students prepared themselves by putting in hard work and equipped themselves to write the SSLC Public Examination and their complete ability reached the crescendo only when they took the final revision test. Therefore, according to the learned Senior counsel, the marks secured by the students in the final revision test will speak about the level of preparation that has been made by the students before the final Public Examination. Therefore, according to the learned Senior counsel the marks secured by the students in the final revision test should have been taken as the final marks and it should not have been confined only upto the Half-yearly examination.

- (7) The learned Senior counsel also questioned the logic behind confining the attendance to only 20% since according to the learned Senior counsel, respondents 1 and 2 have already directed the schools to assess and award marks for 30% on the basis of the attendance for students studying upto 9th standard and the same should have been adopted for the 10th standard students also.
- (8) The learned Senior Counsel submitted that the method adopted in the Government Order for awarding marks will have a very serious impact on the future career of the students since it is these marks which will be taken into account for admission to the 11th standard and for getting the desired groups and even during the future education in Colleges and it will have an impact even at the time of entering into employment.
- (9) The learned Senior counsel concluded his arguments by submitted that the respondents 1 and 2 must be directed to assess and award notional final marks in the SSLC Public Examination for 70% on the basis of the marks secured by the students in the last and final revision test or any examination conducted by the Schools prior to March 2020 and the remaining 30% must be on the basis of the attendance during the academic year 2019-20. On the alternative, the learned Senior counsel submitted that Grade System can be followed and Grades can be awarded to the students on the basis of the marks obtained by them in the last and final revision test or examination conducted prior to March 2020. He would submit that such a Grading System was adopted by the Telangana State and the same can be adopted here also. He also suggested yet another alternative, wherein the students can be issued with a Qualifying Certificate stating that they have cleared the SSLC Public Examination and are eligible for admission for 11th standard, without specifying any marks or providing any Grade.
- (10) The learned Senior counsel submitted that the petitioners have no other alternative remedy except to approach this Court

and challenge the concerned Clause dealing with awarding of marks since the method that has been suggested is arbitrary and it completely goes against the interest of the students who are going to be affected throughout their career.

(11) Per contra, Mr.C.Munusamy, learned Special Government Pleader [Edn] accepting notice on behalf of respondents 1 and 2 submitted that it is too late in the day for the petitioners to have approached this Court by questioning the Government Order since this Government Order has been acted upon and the marks have been awarded to all the students and 11th standard admissions are also in progress. The learned Special Government Pleader submitted that while taking a decision, the Government took into consideration the general interest of all the students and majority of them never had any grievance and therefore, a handful of students cannot be allowed to question the method adopted by the Government for awarding marks to all the students who were declared as pass in the 10th standard Public Examination. The learned Special Government Pleader submitted that if this Court interferes with the Government Order at this stage, it will have a cascading effect and in the given circumstances, reversing the entire process is almost impossible. The learned counsel concluded his arguments by submitting that the decision taken by the Government cannot be considered as illegal and this Court cannot sit on judgment upon the method suggested by the Government to award marks just because there may be a much more effective or alternative method available and that could have been adopted. That is not a ground to challenge the Government Order.

(12) Mr.Syed Mustafa, learned Special Government Pleader [Puducherry] accepting notice on behalf of respondents 3 and 4 adopted the arguments made by the learned Special Government Pleader [Edn] who appeared for respondents 1 and 2. He would further submit that the Union Territory of Puducherry does not independently conduct examinations for 10th and 12th standards and it is the 2nd respondent who conducts the examination for those classes even in Puducherry. The learned Special Government Pleader submitted that there are absolutely no grounds to interfere with the Government Order which has been passed by taking into consideration, the interests of all the students.

(13) This Court has carefully considered the submissions made on either side and the materials available on record.

(14) The COVID-19 has not only brought about challenges for the survival of the humanity but has also posed greater challenges on Governments and the Governments are grappling with the situation on a daily basis to manage the affairs of the States.

No one expected that the world is going to face a situation like this even in the beginning of the year 2020. The virus extended its tentacles into India during March 2020. The Central Government and the State Governments have been facing various challenges on a daily basis and one such challenge which fell on the shoulders of the State Government was to deal with the situation of the students who were writing the Public Examination for the 10th and 12th standards.

(15) As rightly contended by Mr. T. P. Manoharan, learned Senior counsel appearing for the petitioners, the 10th standard Public Examination is an important milestone in the career of a student and the mark secured by the student will have a bearing right from getting a favoured Group in the 11th standard and upto employment since there is a tendency to look into the consistency of performance of a student during his educational career. The students give their heart and soul and prepare for the 10th standard examination. Some students start preparing themselves even in the last phase of 9th standard. Some students gear up during the Half-yearly examination while studying in the 10th standard and there are some students who get serious only when they get near their final Public Examination. It is possible that a student who did not prepare well in the Quarterly and Half-yearly examination, may prepare himself well and get very good marks in the final Public Examination. Therefore, under normal circumstances, the marks obtained in the final examination alone is taken as the criteria.

(16) The Government of Tamil Nadu faced a new problem where it was not able to conduct the 10th standard examination due to the pandemic situation. Initially it was postponed and later, it was realised that the students cannot be exposed to the deadly virus. Therefore, the Government took a policy decision to declare as 'pass' to all the students studying in the 10th standard and made them eligible to join 11th standard. No one can question this decision since under the given circumstances, any Government, in a welfare state, can take only such a decision in the interests of the students. Even the petitioners are not aggrieved with this decision.

(17) The next challenge that was posed to the Government was the manner in which the marks are going to be awarded to the students. There are going to be various alternatives to be chosen and the Government thought it fit to choose a method that has been extracted supra in clause 4[iii] of the Government Order.

(18) The main grounds of attack in the method chosen by the

Government to award marks is that [a]there was a change in the syllabus and both the teaching staff and the students became more acquainted with the new syllabus only after the Half-yearly examination ; [b] there was also a change in the pattern of SSLC Public Examination and only after December 2019, the schools and teachers got the clear information about these changes. Until then, they were not coming to grips with the new syllabus and in the change in pattern of the examination ; and [c] only after the Half-yearly examination, the schools started setting question papers and conducting revision examination by properly incorporating the change in syllabus and the students reached their best form only at the time when they wrote the final revision test.

(19) In view of the above grounds raised by the petitioners, it was argued that the Government ought not to have confined the assessment only for the Quarterly and Half-yearly examinations.

(20) There can be no doubt that the decision was taken by the Government by taking into consideration, the interests of all the students. It may also be possible that there may be some other alternative ways to assess the students as suggested by the learned Senior counsel appearing for the petitioners in the course of his arguments. The only question is whether the decision taken by the Government to determine the method for awarding marks can be interfered only on the ground that there are other alternative and effective ways of awarding marks to the students.

(21) It is now a settled law that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India can interfere into the policy decision of the Government only when it suffers from arbitrariness, irrationality, bias and malice. This has been made very clear by the Hon'ble Supreme Court of India in *Shimnit Utsch India Private Limited and Another V. West Bengal Transport Infrastructure Development Corporation Limited and Others* reported in 2010 [6] SCC 303 ; *A.P.M.Terminals B.V. Vs. Union of India and Others* reported in 2011 [6] MLJ 176 and *Centre for Public Interest Litigation V. Union of India and others* reported in 2016 [3] MLJ 516. The interference into the decision taken by an authority normally is not on that decision per se but it is the manner in which such a decision was taken or in other words, the process adopted for taking the decision. That is the area where the scope is more for a judicial review.

(22) In the present case, the Government has thought it fit to adopt a particular method of awarding marks to the students in the 10th standard Public Examination. While adopting any method, the Government has to take into consideration the

overall interest of the students. It may be possible that some of the students are not happy with the method suggested by the Government or it is also possible that there are some alternative or effective methods available to award marks to the students. That by itself cannot be a ground for this Court to interfere with the decision taken by the Government. These are areas which should be safely left within the domain of governance and the Courts must be very slow to interfere with such decisions. If the Court is satisfied that the decision taken by the Government is not arbitrary, irrational or is not actuated by bias or malice, this Court should not poke its nose to a policy decision taken by the Government. In the considered view of this Court, the method adopted by the Government does not fall within any of these categories. Therefore, this Court is not inclined to interfere with the Government Order.

(23) In the result, the writ petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

To

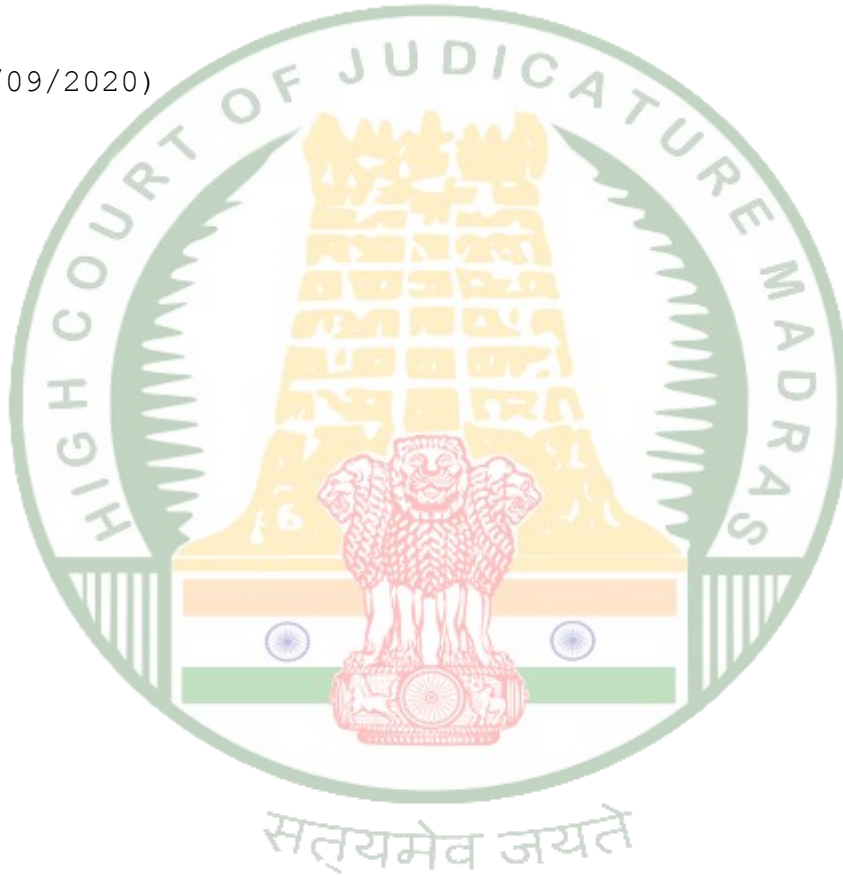
1. The Principal Secretary to Government
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Puducherry 605 005.

4. The Chief Educational Officer-Karaikal,
Directorate of School Education,
Office of the Chief Educational Officer,
Karaikal.

+2cc to the Government Pleader Sr.No.27423 & 27350

WP.Nos.11081, 11083, 11084, 11086,
11087, 11089, 11092 & 11095/2020

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