

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.9147 of 2020 (O&M)
Decided on: 06.07.2020**

Dental Surgeons Association of India and another

....Petitioners

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Randeep S. Surjewala, Advocate
and Mr. H.S. Lalli, Advocate
for the petitioner (through video conferencing)

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.
(through video conferencing)

Mr. Nitin Kaushal, Advocate
for respondent No.2 (through video conferencing)

Mr. Manpreet Singh, Advocate
for respondent No.3 (through video conferencing)

ARVIND SINGH SANGWAN, J.

CM No.5988-CWP of 2020

Heard.

Allowed as prayed for.

Documents (Annexures P-19 to P-27) are taken on record
subject to all just exceptions.

CWP No.9147 of 2020 (O&M)

Prayer in this civil writ petition is for issuance of a writ in
the nature of certiorari for quashing the impugned examination
notifications dated 01.06.2020 and dated 02.06.2020 (Annexures P-5
and P-5A, respectively), vide which the respondent No.2 – Baba Farid

University of Health Sciences (hereinafter to be referred to as 'the University') has notified that the examination for Master of Dental Surgery (M.D.S.) and Bachelor of Dental Surgery (B.D.S.) schedule to commence from 07.07.2020 with a further prayer to issue a writ in the nature of prohibition restraining the University from holding the examinations until proper guidelines, arrangement and infrastructure is made available for unlocking the Universities and Colleges, to be notified under the Disaster Management Act, 2005 (in short 'the Act') by the Central/State Authorities and also to quash the undertaking/affidavit (Annexure P-17) vide which the respondents/authorities have asked for undertaking from the students regarding COVID-19 infection.

During the course of arguments, the counsel for respondent No.2 – University has produced the affidavit of Dr. G.C. Ahir, Registrar, Baba Farid University of Health Sciences, Faridkot, alongwith Annexures 'A to G', which is taken on record.

Counsel for the petitioner has argued that petitioner No.1 is an Association of the Dental Surgeons of India and petitioner No.2 is a Welfare Association of Dental Students of India and the aims and objects of both the Associations are to take care of the interest of the Dental Surgeons and to improve imparting of dental education. It is further submitted that on 30.05.2020, Ministry of Home Affairs, Government of India, issued a Notification/Guidelines for phased reopening of the areas outside Containment Zones and Clause (II) of the guidelines provide that schools, colleges, educational/coaching institutions, etc. will be opened after consultation with the State and

U.T. Governments, and also in consultation with the parents and other stakeholders at institution level and on the basis of the feedback, the decision to reopen of the institution will be taken in the month of July, 2020.

Counsel for the petitioner has further argued that thereafter, the University Grants Commission (UGC) also issued identical guidelines on 26.05.2020, and directed the Universities to establish student grievances cell in order to resolve their grievances regarding academic examinations, admissions, fees and salary of the faculty. It is further submitted that the respondent – University, has not taken any action in compliance of the aforesaid guidelines and have not taken safety norms and has issued the impugned date-sheet for holding the exams commencing from 07.07.2020 without consulting or seeking advice from the stakeholders. Counsel for the petitioner has, thus, prayed that the impugned date-sheets dated 01.06.2020 and 02.06.2020 for M.D.S. and B.D.S. examinations, respectively are liable to be quashed.

Counsel for the petitioner has also submitted that even as per the clarification issued by the State of Punjab, the decision will be taken after 30.06.2020 in view of the fresh guidelines issued by the Government of India. It is further argued that by ignoring the guidelines, the University has issued a Notification dated 14.06.2020 calling upon the students to be present in the hostel before 20.06.2020, so as to make a process of 14 days self quarantine in the hostel itself and in case, the students fail to report by 20.06.2020, they were to make their own arrangement for quarantine.

Counsel for the petitioner has also submitted that there are steep hike in the cases of COVID-19 patients everyday and there are many Containment Zones in the State of Punjab and the petitioner – Association has already given representations to the State, in this respect.

Counsel for the petitioner has referred to Section 38 of the Act to submit that it is for the Central Government to take all necessary measures for the purpose of any disaster management and to co-ordinate action with the State Government. It is further submitted that as per Section 39 of the Act, it is the responsibility of the every department of the State to take necessary measures for prevention of any disaster like COVID-19 pandemic.

Counsel for the petitioner has further referred to Section 72 of the Act to submit that this Act has an over-riding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Counsel for the petitioner has, thus, submitted that it is the bounden duty of the State to adhere to the provisions of the Disaster Management Act and the instructions issued by the National Disaster Management Authority from time to time.

Counsel for the petitioner has further argued that under Article 256 of the Constitution of India, it is provided that it is the obligation of the State to ensure compliance with the law made by the Parliament and the existing laws which apply to the State.

Counsel for the petitioner has next argued that as per the guidelines dated 30.05.2020, issued by the Ministry of Home Affairs, Government of India, it is provided in Phase II that the decision to

reopen the institution will be taken in the month of July, 2020 and the impugned examination notifications were issued on 01.06.2020 and 02.06.2020, which is in violation of the guidelines.

Counsel for the petitioner has further argued that the notice dated 16.06.2020 issued by the University directing the students to remain present in the hostel before 20.06.2020, so that they may undergo 14 days quarantine as per the present government guidelines, is contrary to the guidelines for quarantine facilities of COVID-19.

Counsel for the petitioner has submitted that the “quarantine” means as per Clause 1.0 of the Guidelines for Quarantine facilities COVID-19, reads as follows:-

“Quarantine is the separation and restriction of movement or activities of persons who are not ill but who are believed to have been exposed to infection, for the purpose of preventing transmission of diseases. Persons are usually quarantined in their homes, but they may also be quarantined in community-based facilities.

Quarantine can be applied to-

- i. An individual or to a group of persons who are exposed at a large public gathering or to persons believed exposed on a conveyance during international travel.*
- ii. A wider population or geographic-level basis.”*

Counsel for the petitioner has further referred to a check list attached to the guidelines wherein as many as 90 check points are provided and without providing the same, the respondent – University has issued the circular dated 16.06.2020 in a casual manner.

Counsel for the petitioner has next argued that this letter is in violation of Section 6(2A) of the Act wherein it is provided that it is

the duty and responsibility of the National Authority to lay down the policies, plans and guidelines and the University has wrongly issued the circular dated 16.06.2020.

Counsel for the petitioner has further referred to Chapter 10 of the Act, relating to the offences and penalties and submit that the action of the respondent – University is liable for penal action. The counsel has also referred to the letter dated 10.04.2020 wherein certain advisories were issued by the Dental Council of India regarding final year examination of M.D.S. Course/Post-graduate Diploma Course. Counsel for the petitioner has also, referred to the letter dated 02.06.2020 issued by the Dental Council of India (for short ‘D.C.I.’) wherein it was advised that the P.G. Exam Course should be completed by July, 2020, however later on, this condition of completing the examination by July, 2020 was omitted by another letter issued by the D.C.I. on 30.06.2020, however, as per Clause 2-B of this letter, it was stated that the colleges are free to allow the students to commence their exams for the next higher classes. Counsel for the petitioner has then referred to another letter dated 10.06.2020 issued by the D.C.I. to the Secretary, Ministry of Health and Family Welfare informing that the Executive Committee in its meeting held on 10.06.2020, resolved that the word ‘July, 2020’ stands omitted and there is no limit for the examinations for final year B.D.S./M.D.S., which may be conducted at a suitable time. He has then referred to the letter dated 29.06.2020 issued by the Ministry of Health and Family Welfare, intimating D.C.I. that the conduct of the examination is the prerogative of the University and rather than changing the earlier advisories, the D.C.I. may, if it is

absolutely necessary, may grant some specific relaxation, if the University ask for, on case to case basis.

Counsel for the petitioner has, thus, argued that despite the DCI's resolution to postpone the examination, the respondent/University is proceeding with the examination, which is going to be conducted on 07.07.2020.

In reply, counsel for the State as well as counsel for respondent No.2 – University has argued that majority of the students have reported back in the hostels and on 04.07.2020 on completing 14 days quarantine period, they were asked to submit the declaration of the advisories/instructions issued regarding the conducting of B.D.S./M.D.S. examinations for the sessions May-June, 2020. it is further argued that some additional guidelines were issued by the Controller of Examination, in this regard and advisories are also issued to the Examination Centre/Institutions and for conducting the practical U.G. Dental Test, details of which are part of the letter dated 04.07.2020.

Counsel for the respondent/University has further submitted that on 05.07.2020, the Directorate of Research and Medical Education, Punjab, has issued an Office Order, which reads as under:-

“Whereas the Government of Punjab has sanctioned more than 4000 posts of doctors and paramedical staff including Technicians, Staff Nurses, Pharmacists, Ophthalmic Officers, Medical/Psychiatric Social Workers, Operation Theater Assistants, Diet Supervisors etc. because of COVID-19 epidemic.

Whereas the responsibility of recruiting medical and paramedical staff has been given to Baba Farid University

of Health Sciences, Faridkot and the University is holding the examinations for recruitment to these posts.

Whereas the Baba Farid University of Health Sciences, Faridkot has already notified the schedule of examinations of various course related to graduation and post-graduation of various courses related to health sciences.

Whereas the Vice-Chancellor, Baba Farid University of Health Sciences, Faridkot has sought to conduct these exams at the earliest.

So, in the overall interest of the State, and for containing and fighting COVID-19 in Punjab, the Vice-Chancellor, Baba Farid University of Health Sciences, Faridkot shall conduct the examinations as already notified, following the guidelines and necessary precautions issued by the Central Government and State Government from time to time, in this regard.

These orders shall be without prejudice to and shall be subject to the outcome of the writ petition(s), if any, pending before any court of law.

This is being issued with the permission of the Competent Authority.”

Counsel for respondent No.2/University has next argued that not only the B.D.S./M.D.S. examination, the exams of M.D./M.S. in the University have already taken place without there being any complaint and only few students wants delay in conducting of the examinations.

Counsel for respondent No.2/University have further argued that for M.D.S. Exam, there are total 184 students, out of which 115 students have to appear, only in one exam/paper and 69 students have to appear in the final exam/paper. It is further submitted that

similarly, in B.D.S. Exam, there are 3194 students and there are 14 examination centre having morning and evening shifts and each shift will not have more than 100 students. It is also submitted that the University itself, is a medical college, which is being consulted by the State of Punjab for treating the COVID-19 patients and to overcome the COVID-19 pandemic and similarly, the affiliated Colleges are well equipped with all the precautionary measures to be taken while conducting the examinations. Lastly, it is submitted that the D.C.I. advisories were duly considered while issuing the examination schedule.

Counsel appearing for respondent No.3 – D.C.I., has not disputed the fact it has advisory powers and the decision is to be taken by the University at its own level. Counsel for respondent No.3/D.C.I., has referred to the letter dated 10.06.2020 issued by the D.C.I., to submit that the earlier advisories given to the University to conduct the examination by July, 2020 stands modified and no time limit was prescribed.

In reply, counsel for the petitioner has relied upon the judgment ***“Alakh Alok Srivastava vs Union of India”***, 2020 SCC Online (SC) 345, wherein the Hon’ble Supreme Court in view of the COVID-19 situation has issued directions to the Government of India to ensure that the trained counsellors and community group leaders belonging to all faith should visit the relief camps and shelter home and deal with any consideration which the migrant labours are facing. Counsel for the petitioner has also relied upon the order dated 17.06.2020 passed in SLP (Civil) No.12064 of 2020, ***“Rajshree vs The***

State of Karnataka and other”, wherein the Hon’ble Supreme Court has upheld the order passed by the High Court of Karnataka, regarding SSLC Examination for the academic session 2019-20, noticing that the High Court has issued several direction relating to the steps taken by the Government for conducting the examination schedule from 25.06.2020, onwards.

Counsel for the petitioner has further relied upon the order dated 28.06.2020 passed by the Hon’ble Supreme Court in **SLP (Civil) No.13461 of 2020, “Maghi Devi vs Union of India and others”**, in which the judgment of the High Court of Rajasthan was upheld by the Hon’ble Supreme Court, noticing the fact that the petitioner has not referred to any instance to highlight deficiency of facilities or floating of any protocol specified by the Central Government or the State Government in the examination centre while conducting such examination during COVID-19 pandemic.

Counsel for the petitioner has also relied upon the judgment dated 26.06.2020 passed by the Hon’ble Supreme Court in **“Amit Bathla and others vs Central Board of Secondary Education and another”, Writ Petition (Civil) No.566 of 2020**, wherein it has been held that in view of the proposed notification to be issued by CBSE and ICSE for conducting the remaining examination for classes 10th and 12th, which were scheduled from 01.07.2020 to 15.07.2020, were cancelled by the two Boards. The Hon’ble Supreme Court has clarified that this order relates to conducting of examination for classes 10th and 12th only.

In further reply, counsel for respondent No.2 – University

has submitted that the examinations for the 10th and 12th classes of the Central/State Boards cannot be equated with the exam of B.D.S./M.D.S. as there are lacs of students appearing in 10th and 12th classes whereas in the M.D.S. Exam, there are total 184 students, out of which 115 students have to appear, only in one exam/paper and 69 students have to appear in the final exam/paper and similarly, in B.D.S. Exam, there are 3194 students and there are 14 examination centre having morning and evening shifts and each shift will not have more than 100 students, for which necessary preventive measures are already taken by the University.

Counsel for respondent No.2 – University has also argued that so far the students, who have already reported in the hostel till 20.06.2020 and have undergone the quarantine period of 14 days, were found to be negative for COVID-19 pandemic and therefore, there is no reason to postpone the examination.

After hearing the counsel for the parties, I find no ground to interfere in the present writ petition for the following reasons:-

(i) The main thrust of the arguments of counsel for the petitioner is for violation of the provisions of the Disaster Management Act, 2005 providing that it is for the Central Government to take all measures and is overall responsibility for the disaster management plan. As per the Act, the State Government has to take necessary measures as per the National Authority and in view of the various circulars issued from time to time, considering the COVID-19 situation, therefore, the only legal argument for the petitioner is that as per the order dated 30.05.2020 in Phase II, reopening of the educational institutions at all level will be taken in the month of July, 2020 whereas the University has issued the impugned

examination notifications on 01.06.2020 and 02.06.2020, however, a perusal of the subsequent circulars and the communication between U.G.C., D.C.I. and the respondent/University make it clear that the University has followed the proper procedure.

(ii) Further, as per the impugned examination notifications and circular dated 04.07.2020, a direction is issued to all the Principals to make necessary arrangement for conducting theory exam at their examination centre as per the guidelines strictly issued by the Government of Punjab.

(iii) Moreover, counsel for the University has stated at bar that there are only 189 students appearing in M.D.S. Exam out of which 69 students have to appear in one exam only and similarly, in B.D.S. Exam, there are 14 exam centres, divided in two shifts and only 100 students have to appear in each shift and therefore, the conduct of the B.D.S./M.D.S. exam cannot be equated with the Board exam of class 10th and 12th wherein lacs of students had to appear throughout the State.

Moreover, the respondent No.2/University has already conducted M.D./M.S. examination in June, 2020 and even the respondent/University is conducting examination for recruitment of 4000 posts of Doctors and Paramedical Staff, etc. which is not opposed by anyone.

(iv) The D.C.I. has the primary role of issuing the advisories and the initial advisory issued by the D.C.I. was to complete the examination in the month of July, 2020 according to which, the impugned examination circular was issued by the University, however later on, in the middle of this process, the D.C.I. has passed another resolution omitting the word “July, 2020” and even as per the letter dated 29.06.2020 issued by the Ministry of Health and Family Welfare, it is informed to D.C.I. that the conduct of the examination is University’s prerogative and rather than changing its earlier advisories, the D.C.I. may grant relaxation to the University on case to case basis.

(v) It is worth noticing that after issuing the

examination circular, the respondent/University has issued a circular on 14.06.2020 directing the students to join the hostel by 20.06.2020 so that they may undergo 14 days self-quarantine in the hostel itself. As per the circular of the University dated 04.07.2020, the students have been asked to submit a declaration regarding following the advisories/instructions issued by the University for the forthcoming B.D.S./M.D.S. examination starting from 07.07.2020. This circular contains necessary guidelines to be followed by the students, the examination centres/institutions where the exams are to be held as well as the advisories for practical U.G. Dental Examination. It is stated at bar by counsel for the University that the majority of the students have reported back; they have undergone 14 days self-quarantine in the hostel and upon their test all of them are found to be negative of COVID-19 disease and therefore, there is no reason to postpone the examinations schedule to start on 07.07.2020.

(vi) Moreover, vide circular dated 05.07.2020, the Directorate of Research and Medication Education, State of Punjab has again clarified that Baba Farid University of Health Sciences, Faridkot, shall conduct the examination as already notified, following the guidelines and necessary precautions issued by the Central Government and State Government from time to time. This circular is issued on 05.07.2020 i.e. yesterday only.

In view of the judgment of *Maghi Devi's case (supra)*, the Hon'ble Supreme Court has held that since the High Court has issued necessary directions to follow the protocol specified by the Central Government/State Government, the examination conducted by the Board of Secondary Education, Rajasthan Ajmer, will proceed as per schedule, in the instant case also, it is stated at bar on behalf of the University that none of the students reported in the college, are found to

be COVID-19 negative, after completing their 14 days self-quarantine in the hostel and also in view of the fact that the respondent/University itself is a medical college and is capable of maintaining the protocol, no ground to quash the impugned examination notifications dated 01.06.2020 and 02.06.2020, is made out.

In view of what has been discussed hereinbefore and also in view of the affidavit of the Registrar of Baba Farid University of Health Sciences, Faridkot, this civil writ petition is *dismissed*.

06.07.2020
yakub

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No