

Santosh

***IN THE HIGH COURT OF BOMBAY AT GOA***

***LD-VC-CW – 222 OF 2020***

1. Siddhant Ramakant Shetye,  
son of Ramakant Shetye,  
aged 20 years, r/o. H.No.13,  
Shriram Smruti,  
Borde, Bicholim, Goa.

2. Om Anthony D'Costa,  
son of Desmond D'Costa,  
aged 23 years, r/o. B-G-1,  
Vajra Apartments, Near  
Hanuman Temple, Goulem Bhat,  
Chimbel, Goa 403 006.

3. Nishikat Raut Desai,  
son of Pundalik Raut Dessai,  
aged 23 years, r/o. Block 'C',  
Montipio Qtrs.  
Behind All India Radio Altinho,  
Panaji, Goa 403 001.

4. Miss Simran Sunil Khadilkar,  
daughter of Sunil Khadilkar, aged  
21 years, r/o. M-50, Housing  
Board Colony, Near Alto  
Porvorim, Goa 403 521.

5. Miss Natasha Deshpande,  
daughter of Atmaram Deshpande, aged  
19 years, r/o. Madhuuban 1 Building,  
Opp. St. Inez, Church,  
Near RBI Quarters, Panaji, Goa.  
403 001.

..... Petitioners.

Versus

1. State of Goa,  
through the Chief Secretary,  
having office at Secretariat,  
Porvorim, Goa.

2. Goa University,  
through its Vice Chancellor,  
having office at Taleigao,  
Plateau, Goa.

3. University Grants Commission,  
through its Chairman,  
having office at Bahadur Shah Zafar  
Marg, New Delhi 110 002,

4. Bar Council of India,  
through its Secretary, having office  
at 21, Rouse Avenue,  
Institutional area,  
Near Bal Bhavan, New Delhi – 110 002

5. V.M. Salgaocar College of Law,  
through its Principal, having office  
at Miramar, Goa.

..... Respondents.

Mr. P. S. Rao, Advocate for the Petitioner.

Mr. D.J. Pangam, Advocate General with Mr. Deep Shirodkar,  
Additional Government Advocate for respondent no.1.

Ms. A. Agni, Senior Advocate with Ms. J. Sawaikar, Advocate for the  
Respondent No.2.

Shri M. S. Joshi, Advocate for the respondent no.4.

Mr. A. D. Bhohe, Advocate for Respondent No.5.

***Coram : M.S. Sonak &  
Smt. M.S. Jawalkar, JJ.***

***Date : 12<sup>th</sup> October, 2020.***

**ORAL JUDGMENT** : (Per M.S. SONAK, J.)

Heard Mr. Rao for the Petitioner, Ms. Agni, the learned Senior Advocate for Respondent No.2, Mr. Joshi for Respondent No.4 and Mr. Bhohe for Respondent No.5.

2. We issue Rule and make the Rule returnable forthwith at the request of and with the consent of the learned Counsel for the parties.

3. In our last order, we had recorded that the examination has been postponed to 2/11/2020. We had also directed the Bar Council of India (BCI) to file a reply, making its stand clear in the matter.

4. Today, despite difficulties faced by Mr. Joshi, he appears in this matter and points out that the BCI, in pursuance of our earlier direction, had a meeting on 5/10/2020 through V.C. and its decision has been communicated to the Goa University.

5. The Goa University has filed an affidavit before us and the decision of the BCI is to be found at page 204. The BCI, in its

meeting held on 5/10/2020, has taken the following decision :

***“Extracts of the Minutes of the General Council Meeting held on 5th October, 2020 through Video-Conferencing under Item No. 541/2020.*”**

*The office has placed the Order dated 29.09.2020 passed by the Hon’ble High Court of Bombay at Goa in LD-VC-CW-222/2020 titled as Siddhant Ramakant Shetye Vs. State of Goa and others. Perusal of the order reveals that the BCI has been directed to clarify whether in terms of the rules and regulations it is mandatory to hold this type of examination in the physical format i.e. offline or whether the rules permit such examinations to be held online. The clarification is required to be sent to the Goa University as well as to the college namely V.M. Salgaocar College of Law, Goa.*

*The Bar Council of India had issued a Circular/Press release dated 27.5.2020 and 9.6.2020 which was addressed to all the Centres of Legal Education in the country including Universities and law colleges. By virtue of circular dated 27.5.2020, it had been stated in para 2 that **intermediate students will be promoted on the basis of performance of previous years and marks obtained in the examination of the current year. Universities are directed to conduct the end semester examination within a month of reopening of the colleges.***

*This position was further elaborated and clarified by virtue of the press release dated 9. 6. 2020 whereby in para 4 of the said circular it was stated as follows:*

***All Students, except Final year students, will be promoted on the basis of performance of previous year’s marks and marks obtained in the internal***

*examination of the current year. However, it is clarified that after reopening of the colleges/Universities, the Universities shall conduct the end semester examination with respect to the year from which they have been promoted, within a reasonable period of time, though, such promoted students shall continue to study in the year to which they have been promoted, and in case, they are unable to pass/clear any such paper of such end semester exam of the year from which they have been promoted, they shall have to clear the same, before they are granted the degree. In the case of students who have been promoted to the final year as LL.B students, they shall have to pass all papers in order to obtain their degree/s*

*Thus it is evident and crystal clear from the BCI Circular/Press release that examination for all students except final year students only is to be conducted within one month of physical reopening of colleges when normalcy resumes and when the pandemic situation no longer exists.*

*Furthermore, the rules of Legal Education 2008 do not permit any examination to be held by online mode and the exception for conducting by either online mode is only for Final year LL.B students. In the said resolution/circulars, the Universities have been given an alternative option to adopt any other appropriate method which they feel is adequate to satisfy the requirements of regular examination including allowing Final Year LL.B students to write a project report/research paper for each paper of final year or by resorting to adopt a full proof method to double the internal marks of the semester exams already held for such year, which was a recourse to be adopted only under the extraordinary unprecedented emergent situation which has*

*arisen due to the pandemic of covid 19 which necessitates social and physical distancing and resorting to various other precautions to keep the Corona virus at bay.*

*Thus this step was only taken only in order to prevent loss of an academic session and year for Final Year LL.B due to which their future in obtaining the degrees and thereafter starting their careers by entering the profession of advocacy or otherwise would have been grossly and indefinitely delayed putting further burden on the already overburdened and stressed students due to Covid-19.*

*On the other hand, issuing directions for promoting all students except final year students to the next year/semester ensured saving of their academic session and it was ensured that the classes for the next academic session would begin. However, for them a Clause was added that exams should be held within one month of re-opening of Colleges, which refers to physical reopening of Colleges, and thus it refers to exams to be held only after normalcy resumes and after the pandemic is averted. The Circular/Press release refers to adherence of norms of social distancing and sanitization of examination halls too. A further clause was added for all such similarly placed students, that in case, they were unable to clear any of the papers of the previous years, their promotion would not be affected but that they would have to clear all such papers which they have been unable to give before getting their degree. This decision was taken based on the circumstances and ground realities.*

*Furthermore the Hon'ble Supreme Court of India, vide it's judgment dated 28th August, 2020 has clearly given power to respective State National Disaster Authorities in view of the pandemic to make requests for postponing of physical exams if they deem fit, which will have to be heard by the authority concerned. The BCI's Circular and Press Release*

*clearly spelled out that no physical exams were to be held till physical reopening of colleges, which should only re-open after the crisis of pandemic is averted.”*

6. Ms. Agni, the learned Senior Advocate for Goa University, on instructions, states that the Goa University will go by the aforesaid decision of the BCI in this matter. She points out that no examinations will now be held on 2/11/2020, as earlier proposed, but the examinations will be conducted within one month of the physical reopening of the Colleges and the University when normalcy resumes and when the pandemic situation no longer exists, as directed by the BCI.

7. The Petitioner now tried to urge that there is no provision under the Legal Education Rules, 2008 referred to by the BCI which prohibits examinations being held by online mode. Ms. Agni and Mr. Joshi, point out that there is no provision under the Rules which permits examination to be held by online mode at the intermediate level as well.

8. According to us, it is really not necessary for us to go into this issue in this Petition, at this stage. This is because both, the BCI and Goa University, are quite clear that for the present, the students in the intermediate years will be promoted and their final examinations will be conducted within one month of the physical reopening of the Colleges and university when normalcy resumes

and when the pandemic situation no longer exists. Accordingly, the issue as to whether there is any bar to hold online examinations at the intermediate stage is not gone into this Petition and left open for examination in future should any such occasion arise.

9. We are quite sure that after the normalcy resumes, the students will be granted a reasonable period of one month in order to answer these examinations. Ms. Agni, the learned Senior Advocate for Goa University states that this is what is directed by the BCI and the Goa University has every intent to go by the direction of the BCI in this matter.

10. Mr. Rao points out that in the reply filed by the Goa University it is stated that as per the academic term, the examination for the current semester was scheduled for January, 2021 and the University shall ensure that there is sufficient time between the examinations of the last academic year and those of the current semester. Ms. Agni, the learned Senior Advocate for the Goa University states that the University will go by this statement made in its affidavit.

11. We, accordingly, accept the statements made on behalf of the Goa University that it will go by the direction of the BCI and what is stated in its own affidavit.



12. The aforesaid statements made by the Goa University and accepted by us, substantially redress the grievances raised by the Petitioners in the present Petition. Therefore, we dispose of this Petition by keeping the issue as to whether there is any bar to holding of intermediate examination online, open.

13. The Petition is disposed of in the aforesaid terms. There shall be no order as to costs.

***Smt. M.S. Jawalkar, J.***

***M.S. Sonak, J.***