

IN THE HIGH COURT OF BOMBAY AT GOA

(LD-VC-CW-8-2020)

Cedric A. Vaz & Anr. ... Petitioners
 Vs
 State of Goa & Ors. ... Respondents

Mr. A. F. Diniz, Senior Advocate with Mr. R. Menezes and Ms. G. Almeida, Advocates for the Petitioners.

Mr. D. Pangam, Advocate General with Ms. M. Correia, Addl. Government Advocate for the Respondents.

WITH
(LD-VC-CW-17-2020)

Dr. Adwait Desai & Ors. ... Petitioners
 Vs
 State of Goa & Ors. ... Respondents

Mr. A. F. Diniz, Senior Advocate with Mr. R. Menezes and Ms. G. Almeida, Advocates for the Petitioners.

Mr. D. Pangam, Advocate General with Mr. P. Faldessai, Addl. Government Advocate for the Respondents.

WITH
(LD-VC-OCW-10-2020)

Dattaprasad V P. Lawande & Anr. ... Applicants
 In
 Cedric A. Vaz & Anr. ... Petitioners
 Vs
 State of Goa & Ors. Respondents

Mr. Dattaprasad Lawande- Applicant present in person.

WITH
(LD-VC-CW-10-2020)

Mr. Kenneth Ian Stewart Silveira	...	Petitioner
Vs		
State of Goa & Ors.	...	Respondents

Mr. Eldrin Afonso, Advocate for the Petitioner.

WITH
(LD-VC-CW-11-2020)

Mr. Walter Martin Piedade Fernandes	Petitioner
Vs		
State of Goa	Respondent

Petitioner present in person.

Coram : M. S. Sonak, J.

Date : 15th May, 2020

P.C.:

The challenge in all these petitions is to the decision of the State Government and the Goa Board of Secondary and Higher Secondary Education to hold the standard Xth (SSCE) examination from 21st May, 2020 onwards. There is an intervention filed by Advocate Dattaprasad Lawande opposing the reliefs sought for in all these petitions.

2. Mr. Diniz, learned Senior Advocate appearing for the Petitioners- Dr. Adwait Desai and others and Mr. R. Menezes appearing for the Petitioners-Cedric Vaz and others and other two Petitioners who appear in person referred to order dated 1st May, 2020 issued by the Union Home Secretary under the provisions of Disaster Management Act, 2005 to submit that in terms of directions issued therein, it is impermissible for the State Government or the Board to hold SSC examination during the period of lock-down.

3. The learned counsel pointed out that though presently the Goa is in Green zone, very recently some cases have been tested positive and therefore, the Goa is very likely to be classified in Orange zone. They point out that even in Green zone the activities of running schools, colleges, educational/training/coaching institutions is prohibited. They submit that clause 4(vi) of order dated 1st May, 2020 is required to be construed in pragmatic manner so as to prohibit the holding of examination, which might put lives and well-being of the students in grave danger. They point out that about 260 students from Maharashtra have also been permitted to answer the examination in Goa and any movement of such students is a prohibited activity in terms of clause 4(v) of the order dated 1st May, 2020.

4. The learned counsel and the Petitioners appearing in person point out that the State Government has not taken into consideration

the plight of the students and possibility of students being affected by COVID-2019 and therefore, the decision to hold examination must be deferred until the lock-down is completely lifted. They point out that no sufficient details have been set out in the affidavits filed on behalf of the State Government and the Goa Board as to the measures which they propose to take for holding the examination. In any case, they point out that the measures are totally inadequate. For all these reasons, they submit that the decision to hold the examination with effect from 21st May, 2020 deserves to be quashed or in any case stayed.

5. The learned Advocate General submits that clause 4(v) or (vi) are not at all attracted to the conduct of examinations. He submits that this is not a case of regularly holding schools or colleges. He submits that there were several representations received from the students and parents for holding the examination. He submits that the SSC examination is a mile stone in the educational career of the students and it is really not possible to dispense with such examination.

6. The learned Advocate General referred to the reply filed on behalf of the Respondent No.4- Goa Board and Respondent No.3- Director of Education to submit that more than adequate measures have been taken for conduct of the examination. He submits that conscious decision was taken by both the State Government as well as the Goa Board to conduct the examination after having considered

various view points and various inputs. He submits that this Court may therefore not interfere with the decision so taken on the basis of the apprehension expressed by some of the Petitioners.

7. Mr. Lawande supports the submission made by the learned Advocate General and urges that the decision for holding the examination may not be interfered.

8. There can be no serious issue with the proposition that the State Government and its instrumentalities are duty bound to comply with the guidelines issued by the National Disaster Management Authority (NDMA) as are contained in the order dated 1st May, 2020. Clause 4 of this order provides that certain activities will continue to remain prohibited across the country, irrespective of the zone, for a period of two weeks with effect from 4th May, 2020.

9. The prohibited activities referred to in sub clause (v) and (vi) of clause 4 of the order dated 1st May, 2020 read as follows :-

“(v). Inter-State movement of individuals except for medical reasons or for activities as permitted by MHA.

(vi) All schools, colleges, educational/training/coaching institutions etc. However, online/distance learning shall be permitted.”

10. Further, clause 9(i) of the order dated 1st May, 2020 provides that all activities are permitted in Green zones, except those

activities that are prohibited under clause 4.

11. Thereafter, clause 10 of the order dated 1st May, 2020 provides as follows :-

“All other activities will be permitted activities, which are not specifically prohibited/permitted with restrictions in the various Zones, under these guidelines. However, States/UTs, based on their assessment of the situation, and with the primary objective of keeping the spread of COVID-19 in check, may allow only select activities from out of the permitted activities, with such restrictions as felt necessary.”

12. At least, *prima facie*, it is not possible to accept the contentions raised by the Petitioners that one time holding of examination is an activity which is squarely covered under clause 4(vi) of the order dated 1st May, 2020. The holding of such examination is not the same thing as conduct of regular activities in schools, colleges etc.

13. Besides, clause 4 of the order dated 1st May, 2020 provides that certain activities will continue to remain prohibited for a period of two weeks with effect from 4th May, 2020. This period ends on 18th May, 2020. The examinations are scheduled on 21st May, 2020. Therefore, strictly speaking the holding of examination beyond 18th May, 2020, cannot be said to be in contravention of clause 4 of the order dated 1st May, 2020.

14. The contention about inadequacy of measures also cannot be accepted, if one has to refer to replies filed on behalf of the Respondent Nos.3 and 4 in the petition filed by Cedric Vaz and others.

15. In the reply filed, it is made clear that about 19680 students are to appear for the SSC examination and there will be 1612 examination halls through which these students will answer the examination. The reply states that adequate social distancing norms will be observed and hardly about 12 students will appear for examination in any one examination hall depending upon the size and location of the examination hall.

16. The measures which are proposed to be taken have been set out in paragraphs 10 to 22 of the reply filed by the Chairman of the Goa Board. The contents of the said paragraphs are transcribed for reference of convenience.

“10. That in order to mitigate the difficulties that may be faced by the students during the prevalent circumstances several measures have been adopted. For instance, in the past, irrespective of the school in which the said students were studying, the students were allotted their centre of examination on the basis of nearest main centre available. Therefore, most students were placed in an exam centre which was an unfamiliar school setup. However, in light of the current situation for every school having 100 and above candidates appearing for the SSC Examination their exam centre will be the very same school of which the said candidates are students of. With respect to schools

having less than 100 candidates appearing for the SSC examination, schools within the vicinity of the said school will be clubbed together for the purpose of allotting examination centres to the students.

11. That there shall be minimum 5 volunteers at each sub centre. These volunteers shall be in addition to the Deputy Conductor, Invigilators/Supervisors and ancillary staff such as peons who will otherwise be available at the examination centres.

12. That as the students will largely be appearing at the exam Centre which is their own educational institute, thereby reducing the commute to and fro from the exam centre for several students, the students will have the option of arriving at the examination hall vide their own transport or vide the buses which will be made available. Buses will be made available by the respective Schools and if required the 'Bal Rath' school buses shall be pressed into service to shuttle Students to and fro from the examination centres. Additionally, in the event that a need is felt for additional buses depending on the strength of the students, buses shall be made available to the said schools from Kadamba Transport Corporation Ltd. That there shall be an attendant in the school bus who will ensure that the students follow the norms of social distancing whilst being seated in the school bus.

13. That the students shall be brought to the exam centres in a staggered manner vide the school buses. The same is applicable also to the students who opt to arrive at the exam centre vide their own transport. That a pick up and drop point will be marked at a distance of 200 meters from the Examination centre for the students who arrive vide their own transport. That the students who arrive vide their own transportation means will thereafter be required

to walk to the examination centre where they shall be guided into the examination centres by the Volunteers in an orderly fashion keeping in mind the norms of social distancing.

14. That the volunteers at the entrance of the examination centre shall provide the students with hand sanitizer and also ensure that the students are wearing adequate face masks. In the event any student arrives without a face mask the said student will be provided with a face mask by the Volunteers present.

15. That the exit from the examination centre will also be in a staggered manner in order to ensure compliance with the norms of social distancing at all points of time and in order to prevent the gathering of students in large numbers.

16. That the public at large has been put to notice that in the event any of the students, teachers, volunteers or persons involved in the examination process exhibit any signs or symptoms of COVID -19 it is their fundamental duty towards their fellow citizens to consult a physician and only upon being satisfied with respect to their health condition participate in the examination process. Annexed hereto and marked as Exhibit A is a copy of the newspaper article as published in the 'Navhind Times' daily.

17. That students who are unable to attend the examination as they display symptoms of COVID-19 or as their test results for COVID-19 are awaited, shall be permitted to answer the supplementary examination which will be conducted one month after the declaration of the results of the primary SSC Examination.

18. That a separate centre will be made available for

students who are in home quarantine, facility quarantine or hospital isolation. Further students who on the day of the examination exhibit symptoms such as sneezing or coughing will also be accommodated in a separate block in their respective examination centres. Furthermore, students coming to answer the SSC Examination from across the border shall be placed in a different sub-centre and a total of 23 such sub-centres have been identified.

19. That two days prior to the date on which the examination is scheduled the exam centres, including the furniture and the toilets as well as the buses involved for the pick-up and drop of the students will be sanitised.

20. That from amongst the volunteers three persons will be responsible to coordinate with the Primary Health Centre in the event any medical emergency arises. In any event the Respondent No. 4 seeks to include YRC/NSS candidates in the numbers of the Volunteers as they possess knowledge of first aid.

21. That the duty has been placed upon the individual sub centres to ensure that they have the requisite number of volunteers. In the event that the requisite number of volunteers cannot be procured by the school they are required to coordinate with the concerned team leader who shall make the necessary arrangements.

22. That the Respondent No. 4 has already conducted 2 orientation programmes for the Conductors of the SSC Examination. That the last programme was carried out on 10/05/2020. That the Respondent No. 4 in the said Programmes have also covered the issues pertaining to social distancing and other health and safety measures which are to be kept in mind by the Conductors and all other persons involved in the examination process. The

conductors shall thereafter brief the rest of their teams and volunteers.”

17. There is no reason to proceed on the basis that the Chairman of the Goa Board has not made true and correct disclosures to the Court. There is also no reason to proceed on the basis that the Goa Board as well as the State Government will not take the measures which are set out in the reply. In any case, the directions are issued to Goa Board and the State Government to ensure that all these measures are scrupulously complied with while conducting the examination.

18. The Director of Education has also filed reply in which, there are statements that all measures would be taken while conducting the examination for ensuring social distancing, usage of masks, sanitizers etc. for the safe conduct of the examinations. It is pointed out that the guidelines have been issued by the Board. Even the Director of Education is directed to oversee the conduct of the examination and to ensure that all safety measures are actually taken so that lives and well-being of the students is not put in any jeopardy.

19. As regards the movement of the students from Maharashtra is concerned, it is pointed out in the replies filed that around 200 students from the border areas, which were otherwise studying in the schools in the State of Goa will be permitted. However, it is made clear that such students will not intermingle with the other

students in the State of Goa and all safety measures will be taken so that interest of neither these students nor the other students from the State of Goa is in any manner put in jeopardy.

20. From the material placed on record by the Respondents, it cannot be said that the decision makers have ignored the relevant considerations or have been swayed by irrelevant considerations. Ultimately, in such matters it is not always possible for the Court to interfere unless some breach of statutory provision is pointed out or a case is made out that the decision is *ex-facie* unreasonable and result of ignoring relevant considerations or taking into account the irrelevant considerations. From out of choices legitimately available to the executive, if conscious decision has been arrived at by the executive, being alive to various view points, pros and cons and then, it is not for the Court to substitute its own opinion for that of decision of the executive in such matters.

21. There is no doubt as urged by and on behalf of the Petitioners, same element of risk always persists. However, the Petitioners, have failed to make out a case that the State Government and the Board was not at all conscious of such risk or that such decision has been made without assessment of the risk. At this stage, it is not possible to say that the State Government or the Board will not continuously assess the situation and taken suitable decision, if any need

for the same actually arises in the course of the conduct of the examination.

22. Based upon the apprehension expressed by the Petitioners, not quite supported by any concrete material as such on record, it will not be possible to interfere with the conduct of the examinations. However, the State Government and the Goa Board will have to take all measures necessary to ensure the safety of the students as well as the personnel involved in holding of such examinations. Assurances in the replies filed by the State Government and the Goa Board are accepted as undertakings given to this Court and the directions are issued to both the State Government as well as the Goa Board to ensure that all such measures are implemented and lives and well-being of the students and the personnel to conduct the examination is not put into any serious jeopardy. Besides, the State Government as well as the Goa Board will have to continuously monitor and assess the situation at examination centres and if necessary make the suitable orders so that there is no compromise on the issue of safety and well-being of the students and personnel conducting the examination. Although, the SSC examination is a mile stone as urged by the learned Advocate General, obviously, the safety and well-being of the students, will be priority which will undoubtedly the rank over and above such mile stone.

23. For all the aforesaid reasons, the interim relief is declined in

these matters.

24. These matters be placed for consideration in the regular course.

M. S. Sonak, J.

at*