PRANEETH K. AND ORS. A

v.

UNIVERSITY GRANTS COMMISSION (UGC) AND ORS.

(Writ Petition (Civil) No. 724 of 2020)

AUGUST 28, 2020 B

**[ASHOK BHUSHAN, R. SUBHASH REDDY AND M. R. SHAH, JJ.]**

*Education/Educational Institutions:*

*Guidelines dated 06.07.2020, issued by University Grants Commission (UGC) – Directing the Universities/ Colleges to complete terminal semester/ final year examinations by 30.9.2020 – Ministry of Human Resource Development by OM dated 06.07.2020 formulated SOP for conducting the examinations as per the UGC Guidelines which was settled by Ministry of Health and Family Welfare – Ministry of Home Affairs permitting to conduct the examination – State of Maharashtra as well as Maharashtra State Disaster Management Authority, in view of situation due to pandemic COVID-19 took decision not to hold examination for the final year courses and to promote the students on the basis of previous performance and internal assessment of the students – Writ Petition challenging the UGC Guidelines and the Orders of Ministries being* ultra vires *Arts. 14 and 21 of the Constitution – Orders of State of Maharashtra and State Disaster Management Authority also challenged – Held: The UGC Guidelines are statutory having been issued in exercise of power u/s. 12 of the UGC Act – They are not beyond the domain of UGC as they relate to co-ordination and determination of standards of education in institutions of higher education – The Guidelines are in compliance with s. 12 of UGC Act – They are neither unreasonable nor arbitrary and hence not violative of Art. 14 – SOP for conducting the examinations shows that UGC and the ministries are fully concerned with the health of all the stakeholders and hence the Guidelines are not violative of Art. 21 – The UGC Guidelines being referable to UGC Act, 1956 which was enacted in reference to Entry 66 of List I of VII Schedule, shall have precedence as compared to any decision taken by the State – Therefore, the decision of the State and Disaster Management* C D E F G H

A *Committee to promote Final year/ terminal semester examination being not within domain of Disaster Management Act and being contrary to guidelines issued under Central enactment, cannot be upheld – However the OM and letter of Central Government permitting for holding the examination shall not fetter the power of the State Disaster management Authority to take appropriate measures to contain the pandemic – Hence, UGC Guidelines in so far as it directs holding of examination by 30.09.2020 shall be overridden by any contrary decision taken under Disaster Management Act, 2005 – The State is at liberty to seek extention of deadline of 30.09.2020 – Constitution of India – Arts. 14 and 21 VII Schedule List I Entry 66; List II Entry 25 – University Grants Commission Act, 1956 – s. 12 – Disaster Management Act, 2005.*

*University Grants Commission Act, 1956:*

*s. 12 – Interpretation of – Expression 'other bodies' used in opening part of the Section, would not include State Disaster Management Authority or health experts – It is not mandatory duty of University Grants Commission to consult with the Universities or other bodies concerned, in all cases – The expression "in consultation with Universities or other bodies concerned" has to be read to mean where consultation is necessary.*

**Disposing of the matters, the Court**

**HELD: 1.1. Education including university education, is a concurrent subject where both State legislature as well as Parliament have legislative competence. Entry 11 of List II of Seventh Schedule of the Constitution, as existed prior to Constitution (Forty-second Amendment) Act, 1976 as well as Entry 25 of List III is subject to the provisions of Entry 66 of List I, which is the Constitutional Scheme delineated by Seventh Schedule of the Constitution of India. [Para 49][953-C-D]**

*Gujarat University and Anr. v. Shri Krishna Ranganath Mudholkar and Ors.* **AIR 1963 SC 703 : [1963] Suppl. SCR 112;** *Dr. Preeti Srivastava and Anr. v. State of M.P. and Ors.* **(1999) 7 SCC 120;** *Dr. Sadhna Devi and Ors. v. State of U.P. and Ors.* **(1997) 3 SCC 90 : [1997] 2 SCR 186 – followed.**

*Professor Yashpal and Anr. v. State of Chhattisgarh and Ors.* **(2005) 5 SCC 420 : [2005] 2 SCR 23;** *Maa Vaishno Devi Mahila Mahavidyalaya v. State of Uttar Pradesh and Ors.* **(2013) 2 SCC 617 : [2012] 13 SCR 810– relied on.**

**1.2 Section 12 of University Grants Commission Act, 1956 enumerates the functions of University Grants Commission and provides that it shall be the general duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities. The use of expression "examination" in Section 12 itself makes it clear that steps taken by the UGC under Section 12 may relate to the "examination as well". The standards of education in an institution depends on various factors, one of which includes "the standard of examinations held including the manner in which the papers are set and examined". Therefore, the Guidelines dated 06.07.2020 are not beyond the domain of the UGC and they relate to co-ordination and determination of standards in institutions of higher education. [Paras 57 and 62][960-H; 961-A-B; 962-H]**

*Modern Dental College and Research Centre and Others v. State of Madhya Pradesh and Others* **(2016) 7 SCC 353 : [2016] 3 SCR 579 – held inapplicable.**

**1.3 UGC being an expert body is entrusted with duty to take such steps as it may think fit for the determination and maintenance of standards of teaching, examination and research in the University. In academic matters unless there is a clear statutory violation, this Court shall keep their hands off since the issues fall within the domain of the experts. [Paras 54 and 55][959-C, F]**

*University Grants Commission and Anr. v. Neha Anil Bobde (Gadekar)* **(2013) 10 SCC 519 – relied on.**

**2.1 The Guidelines dated 29.04.2020 contains academic calendar suggested for the academic session 2019-2020 and dates for conduct of examinations were also suggested as 01.07.2020**

**to 31.07.2020. It is true that Guidelines mentioned that Guidelines are advisory in nature and each University may chart out its plan of action taking into consideration the issues pertaining to pandemic COVID-19. A reading of the Guidelines indicate that ample latitude was given to the Universities to conduct terminal/intermediate/ semester year examinations in offline and online mode. The Guidelines, however, cannot be read to mean that Guidelines dated 29.04.2020 left it to the wisdom of the Universities to either conduct terminal semester/final year examinations or not to conduct, which is clear from clauses 4 and 5 of the Guidelines, under the heading "Examinations". The Guidelines dated 29.04.2020 was issued for a purpose and object with latitude to the Universities to chart their own plan/course but it cannot be said that Universities were not to follow the Guidelines on the pretext that it uses the expression "advisory". [Para 65][965-E-H; 966-A-C]**

**2.2 The Revised Guidelines dated 06.07.2020 were issued looking to the situation that COVID-19 cases are still rising and likely to increase further. The Guidelines dated 06.07.2020 in fact grant further time requiring the completion of examination by 30.09.2020. Looking into the substance of the Guidelines dated 29.04.2020 and Revised Guidelines dated 06.07.2020, it is clear that Guidelines dated 06.07.2020 are in continuation to the earlier Guidelines and not contrary to the earlier Guidelines. The Guidelines were issued with the object that a uniform academic calendar be followed by all the Universities and final terminal semester/final year examinations be held. With regard to intermediate semester/year examination, the earlier UGC Guidelines dated 29.04.2020 have been continued even in the Revised Guidelines dated 06.07.2020. Therefore, the Guidelines dated 06.07.2020 cannot be said to be contrary to the earlier Guidelines dated 29.04.2020. [Para 65][966-C-F]**

**2.3 Guidelines have been issued by the UGC in exercise of power under Section 12 of UGC Act. Section 12 provides that it shall be the general duty of the Commission to take all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards**

**of teaching, examination and research in Universities. The words "all such steps" are of wide import. The steps referred to in Section 12 may include issuance of guidelines, directions, circulars etc. The Guidelines dated 06.07.2020 has to be treated to have been issued in exercise of statutory powers vested in the Commission under Section 12. Guidelines issued in exercise of statutory powers, thus, cannot be said to be non-statutory. [Para 66][966-G-H; 967-A]**

**2.4 The University Grants Commission, in exercise of power under Section 26 sub-section (1) of the UGC Act have made the Regulations namely, "the UGC (Minimum Standards of Instruction for the Grant of the Master's Degree through Formal Education) Regulations, 2003". Regulation 6 thereof deals with "examination and evaluation". The statutory Regulation, 2003 thus, categorically requires Universities to adopt the Guidelines issued by the UGC, hence, it is the statutory duty of the Universities to adopt the guidelines issued by the UGC. It is the statutory obligation of the Universities to adopt the Guidelines and the Guidelines cannot be ignored by terming it as non-statutory or advisory. [Paras 66 and 67][967-B-D]**

*Professor Yashpal and Anr. v. State of Chhattisgarh and Ors.* **(2005) 5 SCC 420 – relied on.**

**3.1 The revised guidelines dated 06.07.2020 have been challenged claiming that it violates Article 14 of the Constitution, as they discriminate between the students of Final year and First/ Second year. The Final year/terminal semesters examinations are important because the learning process is a dynamic interaction where the only way to figure out what students know is to seek evidence of their knowledge and to evaluate it. Performance in examination especially Final year/terminal semester examination are reflection of competence of the students. Terminal semester/ Final year examination also provides an opportunity to the students to improve upon their overall score/marks which are very crucial for academic excellence and opportunities of employment. Final year/terminal semester examination of under-Graduate or post-Graduate is an opportunity for student to show his optimum calibre which pave his future career both in academics**

**and employment. The differentiation made by revised guidelines to hold Final year/ Terminal semester examination has a rational basis and there is an intelligible differentia between the student of Final year/Terminal semester and other students. There is no unreasonableness or arbitrariness in the revised guidelines of University Grants Commission dated 06.07.2020 which require all Universities/ Collages to conduct at least the final year/terminal semester examination.[Paras 68, 70 and 71][967-F; 968-A-D]**

**3.2 It is also not correct that the guidelines failed the test of Article 14 because they apply throughout India and being one fixed date i.e. 30.09.2020 irrespective of the conditions prevailing in the individual States/Universities. Even the earlier guidelines dated 29.04.2020 provided for an academic calendar which mentioned 01.07.2020 to 15.07.2020 for conduct of Terminal semester/Final year examination and 16.07.2020 to 31.07.2020 for Intermediate semester/year examination. When the academic calendar is set, fixed dates are always given for uniformity. The UGC had rightly fixed a date for completion of the Terminal semester/Final year examination throughout the country to maintain uniformity in the academic calendar. The students who look forward for admission in higher classes or take employment require final degree for their career prospect and to maintain uniformity in dates by which final examinations are over is with the object of students welfare and for their career. [Paras 72 and 73][968-F-H; 969-A-B]**

**3.3. The features in the revised guidelines clearly indicate that expert body took measures in the interest of the students and their academic career. The revised guidelines has granted further time for completion of examination till end of September, 2020, which was a step to facilitate Universities and Colleges to complete their examination which was a reasonable step in wake of the Pandemic. The guidelines made the conduct of examination flexible by providing three modes of examination:(a) Offline (Pen and Paper)(b) Online (c) Blended (Online + Offline). The revised guidelines also made a provision of examination through special chance in case a student of Terminal semester/Final year is unable to appear in the examination due to any reason. The provision**

**for giving special chance to appear in examination is also in the interest of the students to protect those students who due to any reason are unable to appear in the examination. The above measures taken in the revised guidelines are reasonable and the criticism of the guidelines that they are unreasonable and manifestly arbitrary are without any substance. Thus the revised guidelines are not violative of Article 14 of the Constitution of India. [Para 75][969-C-H]**

**4.1 There can be no doubt that it is the duty of the State to take care of the health of its citizens. The various measures taken by the specified authorities under the Disaster Management Act, 2005, are only with the object to contain the Pandemic and protect the health of citizens of the country. The revised guidelines were issued taking into consideration the fact that the number of covid cases are still rising and likely to increase further which fact has been categorically mentioned in the beginning of the revised guidelines itself. Further, clause 6 of the revised guidelines specifically provides that every University/Institution has to ensure that it is prepared in all respect to carry out the academic activity following necessary protocols, guidelines, directions, advisories issued by the Central/ State Government from time to time in view of Covid-19. The University Grants Commission is conscious of increasing number of covid cases throughout the country and the revised guidelines have extended the period for completion of examination from 31.07.2020 to 30.09.2020 which was only due to the reason that due to Pandemic, Universities/ Colleges may not have been able to hold the examination. [Paras 77, 78 and 79][970-C-F, H; 971-A]**

**4.2 After issuance of revised guidelines dated 06.07.2020 OM dated 06.07.2020, Ministry of Human Resource Development (MHRD), has issued detailed guidelines for conduct of examination which guidelines were duly vetted by Ministry of Health and Family Welfare(MoHFW). The guidelines for conduct of examination were circulated by University Grants Commission vide its letter dated 08.07.2020. Standard Operating Procedure for conduct of examination makes it abundantly clear that UGC, MHRD, and Ministry of Health and Family Welfare are fully concerned with the health of all stakeholders i.e. the students as**

**well as exam functionaries. Therefore, it cannot be said that the revised guidelines are violative of Article 21 of the Constitution. [Paras 80, 81 and 82][971-C; 974-B-C]**

**5.1 Section 12 is part of Chapter III of UGC Act, 1956, which deals with "Powers and functions of the Commission". The use of the word 'Universities or other bodies concerned' in the opening part of the Section has been with a purpose of referring the Universities or other bodies concerned for whom the function has to be performed by. The enumerations given from clause (a) to (j) indicate that apart from Universities, the function also include advice to the Central Government or any State Government on allocation of any grant to the Universities or advise Central Government or any State Government or any Universities on any question which may be referred to the Commission by the Central Government or the State Government. Thus, the expression 'other bodies' used in the opening part of the Section is in reference to other bodies apart from Universities enumerated in Section 12. 'Other bodies' as used in Section 12 would not include State Disaster Management Authority or health experts. Section 12 never contemplated any such "bodies". Furthermore, the State Disaster Management Authority came into existence only after enactment of Disaster Management Act, 2005, no such concept was there when the UGC Act, 1956 was enacted. The use of the word 'concerned' after 'Universities or other bodies' has specific purpose and meaning. The consultation with the Universities or other bodies concerned was in reference to a particular function which was enumerated in clause (a) to (j) and it has specific reference and "Universities" or "other bodies" were referred to in the above context. Section 12 cannot be interpreted in a manner that for taking any measure with regard to coordination of university education and for determination and maintenance of standards of teaching examination in the Universities, the UGC should consult each and every University of each and every State and only then, such measures can be taken. Reading the provision in above manner shall make the functioning of UGC unworkable. There are more than nine hundred Universities in the country and to require UGC to consult more than nine hundred Universities for taking any measure will make the functioning impossible and impractical. [Paras 84, 86 and 87][974-H; 977-C-H; 978-A-B]**

**5.2 Section 12 cannot be interpreted in a manner that for taking any steps by the UGC, there is a mandatory requirement of consultation of all the States/Universities failing which no measures can be taken by the University Grants Commission. Clause (j) of Section 12 is couched in a very vide manner which empower the Commission to perform such other functions as may be prescribed or as may be deemed necessary by the Commission for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of the above function. Any function which may be deemed necessary by the Commission can be performed. For performance of its function by the Commission, the Commission of its own is fully competent to take decisions, issue any directions, guidelines, etc. The Commission may take assistance of any Committee of experts in discharge of its functions for which there is no prohibition in the statutory scheme. [Para 88][978-B-E]**

**5.3 The statutory scheme as delineated by Section 12 makes it clear that for the purposes of performing its functions under the Act as enumerated in clause (a) to (j), it is not mandatory duty of the Commission to consult with the Universities or other bodies concerned in all cases e.g. while allocating and disbursing out of the fund of the Commission, grants to the Universities as enumerated in sub-clause (b) and (c). It is not necessary to consult the university to whom the grant is to be allocated and disbursed. The expression "in consultation with the Universities or other bodies concerned" has to be read to mean where consultation with Universities or other bodies concerned is necessary without which the Commission is unable to perform its functions. [Para 90][979-D-F]**

**5.4 The impugned revised Guidelines have been issued after a report of an expert committee consisting of academicians and experts. The UGC is empowered to perform such other functions as may be deemed necessary by the Commission. If the Commission felt it necessary to issue Guidelines after obtaining a report from the expert committee, no exception can be taken to the procedure adopted by the Commission. The Guidelines dated 29.04.2020 as well as revised guidelines dated 06.07.2020 are general in nature and not confined to any particular**

**university or any particular state. Hence, it cannot be said that UGC is obliged to consult all Universities or States before issuance of the guidelines. Therefore, guidelines dated 06.07.2020 cannot be said to be violative of Section 12 of UGC Act, 1956. [Paras 92-94][980-B-E]**

**6.1 The Disaster Management Act, 2005 empowers the State Disaster Management Authority as well as the State Government to take decision for prevention and mitigation of a disaster and the action taken by the authorities under the Disaster Management Act have been given overriding effect to achieve the purpose and object of the Act. In case of a disaster the priority of all authorities under the Disaster Management Act is to immediately combat the disaster and contain it to save human life. Saving of life of human being is given paramount importance and the Act, 2005 gives primacy, priority to the actions and measures taken under the Act over inconsistency in any other law for the time being in force. [Para 99][984-F-H]**

*State (NCT of Delhi) v. Sanjay* **(2014) 9 SCC 772 : [2014] 9 SCR 1063 – referred to.**

**6.2 A perusal of the OM dated 06.07.2020 indicates that the Ministry of Home Affairs has agreed to the request of the Ministry of Human Resource Development and granted exemption for the opening of educational institutions for the purpose of holding examinations/ evaluation work for Final Term Examinations of the Universities/Institutions. The said OM as well as letter of the Ministry of Home Affairs cannot be read to mean that it fettered the jurisdiction of the State Authority to take a decision considering the situation in a State with regard to conduct of examinations. The cumulative effect of OM dated 06.07.2020 and letter dated 06.07.2020 shall be that Government of India granted exemption for holding the examinations which shall be treated as exception to the guidelines dated 29.06.2020 issued by the Ministry of Home Affairs where Schools, Colleges, educational and coaching institutions were to remain closed till 31.07.2020. The said OM and letter dated 06.07.2020 permitting holding the examinations shall not fetter the power of the State**

**Disaster Management Authority to take appropriate measures to contain the Disaster in the State. [Para 103][987-H; 988-A-C]**

**6.3 With regard to conduct of examinations, the State authorities are competent to assess the situation in a particular State regarding possibility of holding of examinations. No State shall permit health of its subject to be compromised that is why overriding power has been given to the State Disaster Management Authority and the State Government with regard to any inconsistency with any other law for the time being in force. There are no orders or directions in the guidelines of the National Disaster Management Authority or National Executive Committee fettering the powers of the State Disaster Management Authority and a State Government to take a decision as to whether examinations by physical mode be permitted in particular State looking to the situation in the State. Coming to the guidelines dated 06.07.2020 of the UGC insofar as it directs completion of final examinations by 30.09.2020 which direction is overridden by the decision of the State Disaster Management Authority and State Government where it resolved not to hold the examinations. Thus, the direction of the University Grants Commission in its revised guidelines dated 06.07.2020 insofar it directs the Universities and colleges to complete the final year/ terminal examinations by 30.09.2020 shall be overridden by any contrary decision taken by a State Disaster Management Authority or the State Government exercising power under the Disaster Management Act, 2005. [Para 104][988-G-H; 989-A-C]**

**7.1 University Grants Commission Act has been enacted in reference to Entry 66 of List I. The States although have legislative competence to legislate on education including Universities but the State Legislation is subject to Entry 66 List I. The revised guidelines issued by UGC are statutory and referable to University Grants Commission Act, 1956 and shall have precedence as compared to any inconsistent decision taken by the State. The purpose and object of the Disaster Management Act, 2005 is management of disasters and for matters connected therewith. The Disaster Management is a continuous and integrated process of planning,organising, coordinating and implementing measures. [Para 107][991-D-F]**

**7.2 The exercise of powers by the State Disaster Management Authority or by the State Government which shall have overriding effect under Section 72 are those exercise of jurisdiction which are within the four corners of the Disaster Management Act, 2005. When the State Disaster Management Authority and State Government take a decision that for mitigation or prevention of disaster it is not possible to hold physical examination in the State, the said decision was within the four corners of Disaster Management Act, 2005. However, the decision of the Disaster Management Authority or the State Government that students should be promoted without appearing in the final year/terminal semester examination, is not within the domain of the Disaster Management Act, 2005. The decision to promote students and grant Degree by a State if contrary to any Central enactment or guidelines issued thereunder the Central enactment and the guidelines thereunder shall have precedence by virtue of the same being referable to Entry 66 List I. Thus, the State Disaster Management Authority and the State Government has no jurisdiction to take a decision that the students of final year/terminal examination should be promoted on the basis of earlier years assessment and internal assessment whereas the UGC guidelines dated 06.07.2020 directed specifically to conduct final year/terminal semester examination. The UGC guidelines dated 06.07.2020 in the above respect shall override the decision of the State Government and the State Disaster Management Authority regarding promoting the students, does not fall within the jurisdiction of the Disaster Management Act, 2005 and shall have no protection of Section 72 of the Disaster Management Act, 2005. The decision of the State or the State Disaster Management Authority being contrary to revised guidelines of the University Grants Commission cannot be upheld and has to give way to the guidelines of UGC which is the Authority to issue guidelines for determination and maintenance of standards of education and teaching of the Universities. [Para 109][992-D-H; 993-A-B]**

**8. The prayer to quash the revised guidelines dated 06.07.2020 issued by the University Grants Commission and OM dated 06.07.2020 issued by the Ministry of Human Resource**

**Development and letter dated 06.07.2020 issued by the Ministry of Home Affairs is refused. [Para 111(1)][995-C-D]**

**9. The decision taken by the State Disaster Management Authority/State not to hold final year/terminal semester examination by 30.09.2020 in exercise of power under Disaster Management Act, 2005 shall prevail over deadline fixed by the University Grants Commission i.e. 30.09.2020 in respect to the concerned State. [Para 111(2)][995-D-E]**

**10. The decision of the State/State Disaster Management Authority to promote the students in the final year/terminal semester on the basis of previous performance and internal assessment being beyond the jurisdiction of Disaster Management Act, 2005 has to give way to the guidelines of UGC dated 06.07.2020 directing to hold examination of final year/ terminal semester. The State and University cannot promote the students in the final year/terminal semester without holding final year/terminal examination. [Para 111(3)][995-F]**

**11. If any State/Union Territory in exercise of jurisdiction under Disaster Management Act, 2005 has taken a decision that it is not possible to conduct the final year/terminal semester examination by 30.09.2020, liberty is granted to such State/Union Territory to make an application to the University Grants Commission for extending deadline of 30.09.2020 for that State/ Union Territory which shall be considered by UGC and rescheduled date be communicated to such State/Union Territory at the earliest. [Para 111(4)][995-G-H; 996-A]**

**Case Law Reference**

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|---|---|---|
| **[1963] Suppl. SCR 112** | **followed** | **Para 49** |
| **(1999) 7 SCC 120** | **followed** | **Para 50** |
| **[1997] 2 SCR 186** | **followed** | **Para 50** |
| **[2005] 2 SCR 23** | **relied on** | **Para 52** |
| **[2012] 13 SCR 810** | **relied on** | **Para 53** |
| **(2013) 10 SCC 519** | **relied on** | **Para 54** |

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|---|---|---|---|
| **[2016] 3 SCR 579** | **held inapplicable** | **Para 58** |
| **[2014] 9 SCR 1063** | **referred to** | **Para 99** |

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 724 of 2020.

Under Article 32 of the Constitution of India

With

Writ Petition (Civil) No. 739,746, 745, 741, 794, 814, 862, 861 of 2020 and SLP(C) No. 10042 of 2020.

Tushar Mehta, SG, Ashok Parija, Adv. Gen., Dr. Abhishek Manu Singhvi, Dhruv Mehta, Ms. Meenakshi Arora, Shyam Divan, Jaideep Gupta, P.S. Narasimha, Vinay Navare, K.V. Vishwanathan, Arvind Datar, Kishore Dutta, Mihir Desai, Sanjay Hegde, Sr. Advs., Raj Kamal, Sanjay Kr. Dubey, Aavishkar Singhvi, Malak Bhatt, Aseem Atwal, Kartavya Batra, Sanpreet Singh Ajmani, Alakh Alok Srivastava, Ms. Anubha Shrivastava Sahai, Ms. Neela Gokhale, Ms. Anannya Ghosh, Ms. Samiksha Godiyal, Nikhil Ranjan, Ms. Pratyushi Mehta, Pranaya Goyal, Raghunath Chakaraborty, Kunal Chatterji, Ms. Maitrayee Banerjee, Pravar Veer Misra, Kishor Lambat (for M/s. Lambat And Associates), Shivankar Sharma, Talha Abdul Rahman, Kushagra Pandey, Mohd. Shaz Khan, Udit Atul Konkanthankar, Pulkit Tare, Dr. Uday Prakash Warunjikar, Abhay Anil Anturkar, C. George Thomas, Surendra Kumar Gangele, Ms. Ritu Gangele, Ms. Swagoti Batchas, SPM Tripathi, V.K. Shukla, Satish Kumar, Apoorv Kurup, G.S. Makker, Ms. Nidhi Mittal, Siddharth Nigotia, Ms. Upama Bhattacharjee, Dr. R. R. Deshpande (for M/s. Dr. R.R. Deshpande And Associates), Chirag M. Shroff, Ms. Sanjana Nangia, Ms. Abhilasha Bharti, Rahul Chitnis, Sachin Patil, Geo Joseph, Shibashish Misra, Vikas Mehta, Vikram Mehta, Sanjay Basu, Apoorv Khator, Ms. Mansaa Shukla, Namit Saxena, Gaurav Agrawal, Amir Singh Pasrich, Ms. Meera Mathur, Akash Sinha Shubham Saket, Harpreet Singh Hora, Chirag, G. Priyadharshni (for Rahul Shyam Bhandari), Yashodeep Deshmukh, Akshay Kapadia, Priank Adhyaru, Dr. Balram Jain, R.P. Goyal, Ms. Rukhsana Choudhury, Jamshed Mistry, Ms. Mohini Priya, Siddharth Dharmadhikari, Sahil Lal, Abhikalp Pratap Singh, Bharat T. Manubarwala, Pranjal Kishore, Sarvagnya Trivedi Manubarwala, Varun Varma, Ms. Nistha Gupta, Advs. for the appearing parties.

Petitioner-in-person

The Judgment of the Court was delivered by

**ASHOK BHUSHAN, J.**

1. This batch of cases consisting of writ petitions (except one Special Leave Petition, i.e., SLP (C) D. No.15056 of 2020) filed under Article 32 of the Constitution of India can be divided into two broad groups. First group of writ petitions consists of petitions filed by students, youth organisations and the teachers associations challenging the guidelines issued by University Grants Commission (hereinafter referred to as "UGC") dated 06.07.2020, O.M. dated 06.07.2020 issued by Ministry of Human Resource Development and letter dated 06.07.2020 issued by Ministry of Home Affairs whereby all the Universities and Colleges across the country had been directed to conduct terminal semester/ final year examinations by 30.09.2020. A further relief has been sought directing the respondents to declare the results of the students of the final year/terminal semester examinations of all universities/ institutions of the country on the basis of their past performance/internal assessment and to award marksheets and degrees. The second group of writ petitions are the writ petitions filed by the students challenging the decision of the State Disaster Management Authority as well as of the States (State of Maharashtra and State of West Bengal) for not holding final term examination. Further prayers have been made that State of Maharashtra as well as State of West Bengal be directed to comply with the UGC revised guidelines dated 06.07.2020 and O.M. dated 06.07.2020 of Ministry of Human Resource Development. The special leave petition has been filed against a common order dated 14.07.2020 passed by the High Court of Delhi in Writ Petition No. 3199 of 2020 and other connected matters by which the High Court noted the schedule of examination in the Open Book Examination (OBE) mode by University of Delhi.

2. In **Writ Petition (C) No. 724 of 2020, Praneeth K and Others Vs. University Grants Commission and Others,** a common counter affidavit, additional affidavit and affidavit in reply to the UGC has been filed. The State of Maharashtra has also filed affidavits in Writ Petition (C) No. 724 of 2020. All the parties in Writ Petition (C) No. 724 of 2020 are represented. Other writ petitions and special leave petition are tagged with Writ Petition (C) No. 724 of 2020. The decision in Writ

Petition (C) No. 724 of 2020 shall be sufficient to answer the issues raised in this batch of cases. The pleadings in Writ Petition (C) No. 724 of 2020 need to be noted in some detail with brief reference of prayers in other writ petitions and special leave petition.

**Writ Petition (C) No. 724 of 2020 - Praneeth K and Ors. Vs. University Grants Commission and Ors.**

3. This writ petition has been filed by 31 students pursuing undergraduate or postgraduate terminal semester/final year courses in different Universities located in different States across the country. The petitioners are studying in different Universities located in States of Kerala, Maharashtra, Assam, Gujarat, Himachal Pradesh, Uttarakhand, NCT Delhi, Orissa, Madhya Pradesh, West Bengal, Haryana, Uttar Pradesh, Bihar and Meghalaya. Petitioners' case is that due to pandemic COVID-19, Government of India announced the nationwide lockdown w.e.f. 24.03.2020 in order to contain the spread of COVID-19. The Ministry of Health & Family Welfare, Government of India issued various directions, guidelines and SOPs. Various educational institutes and Universities extended their dates of examination for various courses postponing the same indefinitely.

4. UGC constituted an Expert Committee to deliberate and make recommendations regarding issues of examination and academic calendar. The Expert Committee submitted its report on basis of which UGC issued guidelines on 29.04.2020, in which guidelines it was proposed to take the final year university examination by 31.07.2020. Number of COVID cases being still rising, the above Expert Committee was requested by UGC to revisit the guidelines. The Expert Committee submitted its report, which was approved by UGC on 06.07.2020 and UGC revised the guidelines and issued academic calendar for final year examinations. In view of COVID-19 pandemic, the revised guidelines provided that Universities are required to complete the examinations by end of September, 2020 in offline (pen and paper)/online/blended (offline + online) following the prescribed protocol/guidelines relating to COVID-19. On 06.07.2020, the Ministry of Human Resource Development formulated SOP for conduct of the examination duly vetted by Ministry of Health and Family Welfare. On 06.07.2020, the Ministry of Home Affairs by a letter permitted the Ministry of Human Resource Development to conduct the examination by Universities and institutions.

5. The petitioners' case is that the decision of the UGC, Ministry of Human Resource Development and Ministry of Home Affairs to conduct the final term/final examinations of Universities and institutions throughout the country amid COVID-19 pandemic is extremely arbitrary, whimsical and detrimental to the health and safety of the students as well as violative of fundamental rights of lakhs of students enshrined under Articles 14 and 21 of the Constitution of India including those of the writ petitioners.

6. In pursuance of the guidelines dated 06.07.2020, various institutions and colleges have issued notifications notifying the final year examination. Many universities and educational institutions of India and abroad have issued their admission notification for the year 2020-2021 wherein the last date of online registration was 31.07.2020 and unless a candidate possess the degree before that he cannot apply for admission. Representation dated 09.07.2020 has been submitted to the Minister of Human Resource Development to find an alternate way to save the careers of the students. The petitioners have further claimed that various other examination Boards like CBSE, ICSE, ISC have cancelled their Xth/XIIth Board examination due to COVID-19 pandemic and has declared the result on the basis of past performance/internal assessment. On one hand, the UGC has exempted the students of intermediate years/ semester from appearing in the examinations due to COVID-19 outbreak and on the other hand has forced the final year students to appear in the examinations, which is discriminatory and arbitrary. The petitioners in the writ petition have made following specific prayers:-

a) Issue urgent Writ In the nature of mandamus or any Other appropriate Writ, Order or Direction to quash and set aside the Letter bearing D.O. No.F.1-1/2020 (Secy) dated 06.07.2020 issued by the Respondent No.1 UGC (Annexure P-3) AND the Office Memorandum bearing F.No. 16-16/2020-U1A dated 06.07.2020, issued by the respondent No. 3 MHRD (Annexure P-4) AND Notification bearing NW/RK/PK/AD/ DD dated 06.07.2020, issued by the Press Information Bureau, Government of India (Annexure P-5) whereby all the Universities and Colleges across India have been directed to conduct final Term/final year examinations by 30.09.2020; and/ or

A b) Accordingly, issue urgent Writ In the nature of mandamus or any other appropriate Writ, Order or Direction to the Respondent Nos. 1, 2 and 3 to not conduct the final Term/ final Year examinations of all Universities/ institutions across India; and/or

B c) Issue urgent Writ in the nature of mandamus or any other appropriate Writ, Order or Direction to the Respondent Nos.1, 2 and 3 to declare results of the Petitioners and other similarly situated students of the final Term/ final Year examinations of all Universities/ Institutions across India, on the basis of their past performance/ internal assessment and to award marksheets and degrees to all successful students on or before 31.07.2020; and/or

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d) Issue urgent Writ in the nature of mandamus or any other appropriate Writ, Order or Direction to the Respondent Nos.1, 2 and 3 to also adopt CBSE mechanism end provide subsequently another chance to Improve marks to those willing students, who may be unsatisfied with their score based upon their past performance or Internal assessment; and/or

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e) Pass any other order or direction as this Hon'ble Court may deem it and proper In the facts and circumstances of the case and in the interest of justice."

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7. By our order dated 27.07.2020, we had directed the petitioners to serve a copy to learned Solicitor General as well as learned counsel for the UGC. Three days' time was given to file the counter affidavit and rejoinder was directed to be filed on next date. In pursuance of order dated 27.07.2020, a common counter affidavit dated 30.07.2020 has been filed by UGC. UGC has also filed additional affidavits. An affidavit dated 05.08.2020 was also filed by the State of Maharashtra in Writ Petition (C) No. 724 of 2020, reply of which was filed by the UGC vide its affidavit dated 17.08.2020. Pleadings were complete in Writ Petition (C) No. 724 of 2020, consideration of which writ petition shall answer all issues raised in this batch of cases.

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**Writ Petition (Civil) No. 739 of 2020 –**

**Yuva Sena Vs. University Grants Commission and Ors.**

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8. This writ petition has been filed as a public interest litigation by the petitioner, which is youth wing of Shiv Sena, registered and recognized political party in India. After issuance of revised guidelines dated 06.07.2020 by UGC, the petitioner claims to have addressed a letter dated 07.07.2020 to Minister of Human Resource Development praying to reconsider the decision of compulsorily conducting final year examinations. Petitioner's case is that UGC had issued earlier guidelines dated 29.04.2020, which were advisory in nature and each University was to chart out its own plan of action taking into consideration the issues pertaining to COVID-19 pandemic. Petitioner's case is that revised guidelines have been passed in ignorance of rising cases of COVID-19 and have crated great fear in the minds of students around the country especially in the States of Maharashtra, West Bengal, Tamil Nadu and Delhi. The impugned guidelines have not taken into account the consequent risk of life to which the students writing examinations would be exposed to.

9. Petitioner's case further is that various States are suffering gravely from pandemic of COVID-19 and respective State Governments have imposed/implemented various levels of lockdown under the Disaster Management Act, 2005. Petitioner pleads that as a result of the lockdown, Universities, schools, educational institutions were forced to shut down and to postpone the terminal semester/final year examinations. Petitioner pleaded that pursuant to the UGC guidelines dated 29.04.2020, the Ministry of Higher and Technical Education, State of Maharashtra had set up a State level Committee in view of the grave situation of pandemic COVID-19, which Committee submitted a report on 06.05.2020 and recommended that the final year exams may be conducted between 01.07.2020 to 31.07.2020, the said recommendations were objected by petitioner and representation was made to cancel the examinations. Petitioner also claims to have made a representation to the Government of Maharashtra requesting for not to hold any examinations. On 19.06.2020, the State of Maharashtra vide a Government Resolution dated 19.06.2020 took a resolution for cancellation of the terminal semester/final year examinations considering the safety of health and life of the students and for the allotment of grades and aggregate marks to students based on their previous semester and internal marks.

10. Petitioner's case is that cases of COVID-19 are increasing day by day in the State of Maharashtra and many college buildings in the

A State of Maharashtra have been requisitioned by the State Government / its bodies like Municipal Corporation to be converted into quarantine centres and for other public purpose in view of present pandemic COVID-19, hence it is impractical to hold examinations. In the writ petition, petitioner has also given certain details with regard to different States pertaining to number of COVID-19 cases like States of Tamil Nadu, NCT of Delhi, Gujarat, Karnataka, Uttar Pradesh, Telangana, Andhra Pradesh, West Bengal and others, the decisions taken by different States of not conducting final examinations. Petitioner also referred to and relied on judgment of this Court in **Writ Petition (C) No. 566 of 2020 – Amit Bathla & Ors. Vs. Central Board of Secondary Education & Anr**, where this Court noticed the notifications issued by CBSE cancelling the examinations for classes Xth/XIIth, which was scheduled from 01.07.2020 to 15.07.2020. petitioner in the writ petition has also prayed for a writ of Certiorari setting aside the impugned revised guidelines dated 06.07.2020 issued by UGC and O.M. dated 06.07.2020 issued by Ministry of Human Resource Development. It has also prayed to clarify and declare that as per UGC guidelines dated 29.04.2020, each university may chart out its own plan of action with respect to terminal semester/final year examinations taking into consideration the issues pertaining to the COVID-19 pandemic.

**Writ Petition (Civil) No. 746 of 2020 –**

**Yash Dubey and Anr. Vs. Union of India and Ors.**

11. This writ petition has been filed by petitioner No.1, a final year law student and petitioner No.2, an association of lawyers registered under Society Registration Act, 1860 namely, Youth Bar Association of India. The petitioners plead that cause of action for filing of the writ petition has arisen on 06.07.2020 when Ministry of Home Affairs issued notification dated 06.07.2020 and the UGC issued revised guidelines dated 06.07.2020. The petitioners' case is that in view of increasing number of COVID-19 cases, many States like Madhya Pradesh, Rajasthan, Punjab and Maharashtra have announced cancellation of examination of final year students and for promotion of the final year students. The petitioners further pleaded that on 11.07.2020, Tamil Nadu Government wrote a letter to HRD Minister informing that they are not in a position to conduct college examinations for the final year students. Another letter dated 11.07.2020 by Punjab Higher Education Minister written to HRD Minister is referred where all decisions dated 06.07.2020

was asked to be reviewed, decision of Government of Delhi dated 11.07.2020 to cancel all ongoing examination have also been referred to. Petitioners have prayed for setting aside the notification dated 06.07.2020 issued by Ministry of Home Affairs and revised UGC guidelines dated 06.07.2020. The writ petitioners have also prayed for certain other payers to provide for alternative mode of assessment of the final year students in wake of COVID-19 outbreak; to call upon Universities to submit a set of parameters for evaluation of the students on the basis of students past performance and accordingly award provisional degrees to the students and to promote the students on the basis of the performance in the previous semesters by taking an aggregate score for all the semesters.

**Writ Petition (Civil) No. 741 of 2020 –**

**West Bengal College and University Professors' Association(WPCUPA) and Anr.Vs. Union of India & Ors.**

12. This writ petition has been filed by the West Bengal College & University Professors' Association (WBCUPA) through its President. The petitioners pleaded that on 27.06.2020 in the State of West Bengal, all Vice Chancellors and Registrars of the Universities held a meeting with the Minister and arrived at a consensus for alternate method of marking of final semester examination in the State and decided to declare the result by 31.07.2020. A memorandum dated 27.06.2020 was issued by the Government of West Bengal, Department of Higher Education to the above effect. Petitioners case is that revised UGC guidelines is in abject contravention of students' welfare since by the time these examinations through special chance will be conducted most of the Universities have closed their admission application for postgraduate courses. With the continuous spike in COVID-19 cases in the entire country including the State of West Bengal, situation will not at all be conducive to conduct offline examination by 30.09.2020. The petitioner also refers to letter dated 11.07.2020 written by Chief Minister of West Bengal to Hon'ble Prime Minister requesting to get the matter re-examined and restore the earlier advisory of UGC dated 29.04.2020. Petitioners have also referred to various representations made by various Universities from State of West Bengal to UGC to reconsider its decision to hold examinations. Petitioners in writ petition has prayed for Mandamus commanding the respondent No.1 to forthwith rescind and/or cancel and/or withdraw the letter dated 06.07.2020.

A **Writ Petition (Civil) No. 745 of 2020 –**

**Krushna Govind Waghmare and Ors. Vs. University Grant Commission and Ors.**

13. This writ petition has been filed by five petitioners, who are final year law students of various educational institutions affiliated to
B Universities of Maharashtra. Petitioners' case is that UGC before issuing the revised guidelines have not considered the deadly COVID-19 pandemic. Petitioners have also referred to cancellation of Xth and XIIth examinations by CBSE and ICSE. Petitioners have prayed for quashing the guidelines dated 06.07.2020 and has further prayed that this Court
C may be pleased to grant the benefit of decision dated 19.06.2020 (State of Maharashtra) to the students of professional courses and necessary directions to the respondent State may also be issued.

**Writ Petition (Civil) No. 794 of 2020 –**

**Sarthak Mehta and Ors. Vs. University Grants Commission**
D **(UGC) and Ors.**

14. This writ petition has been filed by three petitioners. Petitioner Nos. 1 and 2 are advocates and petitioner No. 3 is a final year law student studying in Pune. Petitioners' case is that earlier UGC guidelines dated 29.04.2020 left the decision to take or not to take the examinations
E of the students with the Universities keeping in view the spread of COVID-19 whereas impugned guidelines dated 06.07.2020 have made it compulsory for the Universities to conduct final year examinations by the end of September, 2020 irrespective of the spread of COVID-19 in different regions/States. Petitioners' case is that impugned guidelines is
F ultra vires to the Articles 14 and 21 of the Constitution. Petitioners have also prayed for quashing the guidelines dated 06.07.2020 and for quashing the O.M. dated 06.07.2020 of Ministry of Human Resource Development and letter dated 06.07.2020 and it has been further prayed that result of students be declared on the basis of previous semester/year performance/ internal evaluation.

G **Writ Petition (Civil) No. 814 of 2020 –**

**Ritesh Anil Mahajan and Ors. Vs. The Maharashtra State Disaster Management Authority and Ors.**

15. This petition has been filed by four petitioners out of which
H three are students and fourth petitioner is member of Senate of University

at Jalgaon elected from the graduate's constituency. The State Disaster Management Authority of the State of Maharashtra has been impleaded as respondent No.1, State of Maharashtra as respondent No.2 and UGC as respondent No.3. The petitioners plead that the Ministry of Higher and Technical Education of the State of Maharashtra set up a State-level Committee headed by the Vice-Chancellor, Mumbai University in view of grave situation created by COVID-19 pandemic. The Committee submitted its report on 06.05.2020 recommending that the final year exams be conducted between 01.07.2020 to 31.07.2020. The statement of Chief Minister dated 31.05.2020 has been referred to where he declared that no examinations will be conducted for final year students and all students will be given marks by averaging the marks obtained in the previous semester examinations. The State Disaster Management Authority in its meeting dated 18.06.2020 took various decisions resolving that taking into consideration the state of COVID-19 in the State of Maharashtra, examination of final year professional courses cannot be arranged. With regard to non-professional courses, decision was also taken for declaring their result as per decision taken in the meeting. The State of Maharashtra issued a resolution dated 19.06.2020 regarding non-professional and professional courses, the methodology for declaring the result. The petitioners are challenging the decision taken by State Disaster Management Authority dated 18.06.2020 as well as the resolution of the State of Maharashtra dated 19.06.2020 and have prayed for setting aside the aforesaid two decisions.

**Writ Petition (Civil) No. 861 of 2020 –**

**Souvik Pal Vs. The State of West Bengal**

16. This petition has been filed by a final year B.Sc. student studying in a College of State University of West Bengal. The petitioner is challenging the decision dated 27.06.2020 issued by State Government of West Bengal regarding the undergraduate and postgraduate examinations, 2020. The State of West Bengal vide its decision dated 27.06.2020 issued an advisory to the effect that for the evaluation of students in terminal semester /final year of the General Degree courses at undergraduate/postgraduate level, 80% weightage shall be given to the best aggregate percentage obtained by the candidate in any of the previous semesters'/years' results and 20% to internal assessment during the current semester/year as adopted by the university. The petitioner in the writ petition has prayed for quashing the order dated 27.06.2020 and

A also prayed for a direction to the State of West Bengal and State Universities to comply with the UGC's revised guidelines dated 06.07.2020, O.M. of Ministry of HRD dated 06.07.2020 and UGC's letter dated 08.07.2020.

**Writ Petition (Civil) No. 862 of 2020 –**

B **Kalicharam Gajbhiye and Anr. Vs. The Maharashtra State Disaster Management Authority and Ors.**

17. This writ petition has been filed by two students, who are studying in a University in the State of Maharashtra. Petitioners have challenged the decision dated 18.06.2020 of the Maharashtra State C Disaster Management Authority as well as the decision of the Government of Maharashtra dated 19.06.2020 and subsequent decision dated 13.07.2020 of the Maharashtra State Disaster Management Authority and further prayer was made that State of Maharashtra and State Universities therein be requested to comply with the UGC's revised D guidelines dated 06.07.2020, O.M. of HRD Ministry dated 06.07.2020 and UGC's letter dated 08.07.2020.

**SLP(C)No.10042(Diary No. 15056) of 2020 –**

**Kajal Mishra and Ors. Vs. Union of India and Ors.**

E 18. This special leave petition has been filed by six petitioners challenging the judgment and common order dated 14.07.2020 of the Division Bench of High Court of Delhi in Writ Petition (C) No. 3199 of 2020 – Prateek Sharma and Anr. Vs. Union of India and Anr. with other connected writ petitions. The petitioners were not party in the writ petition before the High Court. The High Court in its order dated 14.07.2020 F noticed that entire scheme of examination has to be worked out afresh by the Delhi University and dates for conducting examinations of various undergraduate courses to be finalized. The Delhi High Court directed the University to issue a notification at the earliest placing on the record the revised schedule of the examination. The writ petition before the G Delhi High Court is still pending and in pursuance of order dated 14.07.2020 the examinations in Open Book Examination (OBE) mode had already commenced. Petitioners' case is that in batch of writ petitions filed in the Delhi High Court, the conduct of examination by online mode was also challenged. The petitioners plead that other Universities are evaluating their final year students through internal assessment and the

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students of Delhi University shall be deprived of the equal opportunity in respect of admission and post graduate employment opportunities etc.

19. In the writ petitions although no formal notice was issued but, in all writ petitions the respondents have appeared through counsel(except W.P.No.739 of 2020). In Writ Petition No.739 of 2020 all the States and Union Territories were impleaded as respondents in addition to University Grants Commission as respondent No.1, Ministry of Human Resource Development, respondent No.2, Ministry of Home Affairs, respondent No.3. The State of Maharashtra and NCT of Delhi appeared through their counsel and filed affidavits. The State of Orissa has also appeared through its Advocate General. We have not issued notice to all the States who were impleaded in Writ Petition No.739 of 2020. The State of Maharashtra, State of West Bengal, NCT of Delhi and State of Orissa have sufficiently presented the stand of the States and Union Territories. The above States/UTs have communicated the Ministry of Home Affairs, Government of India that they are unable to hold the examination due to spread of COVID-19. Before us the cause of States, power of States and States' Disaster Management Authority have been sufficiently represented. We are, thus, of the view that for deciding this batch of cases it is not necessary to issue notice to all the States and Union Territories and the issues raised can be decided after hearing the respondents, Ministry of Human Resource Development, Ministry of Home Affairs, Government of India, State of Maharashtra, State of West Bengal, NCT of Delhi and State of Orissa. We, thus, proceed to consider the submissions raised to decide the matter on merits.

20. As indicated above in Writ Petition No.724 of 2020 pleadings are complete and in Writ Petition No.739 of 2020 convenience compilation in two volumes has been filed by the learned counsel for the petitioners. It shall be sufficient to refer the pleadings in Writ Petition No.724 of 2020 and convenience compilations for deciding all the issues raised before us.

21. For the writ petitioners, we have heard Dr. Abhishek Manu Singhvi, Senior Advocate, Shri Shyam Divan, Senior Advocate, Shri Jaideep Gupta, Senior Advocate, Shri Vinay Navare, Senior Advocate, Shri Kishore Lambat, Shri Alakh Alok Srivastava and other learned counsel.

22. We have heard Shri Tushar Mehta, learned solicitor General for University Grants Commission. We have heard Shri Arvind Datar,

learned senior counsel for the State of Maharashtra, Shri K.V. Vishwanathan, learned senior counsel for the Government of NCT of Delhi, Shri Ashok Parija, Advocate-General, for the State of Odisha, Shri Kishore Dutta, learned Advocate General for the State of West Bengal. Ms. Meenakshi Arora, learned senior counsel has appeared for the petitioner in SLP(C)Diary No.15056 of 2020.

23. Dr. Abhishek Manu Singhvi appearing for the petitioner in Writ Petitioner in W.P.(C)No.746 of 2020 submits that revised UGC Guidelines dated 06.07.2020 are in complete disagreement and have been issued in complete disregard with the earlier guidelines dated 29.04.2020. The guidelines dated 29.04.2020 were advisory in nature and provided flexibility to the Universities to implement the guidelines in the best interest of students. The guidelines provided that in case the pandemic situation does not normalise the grading can be on the basis of internal evaluation and past performance of the student. Various State Governments including State of Maharashtra, State of West Bengal, NCT of Delhi and other States have expressed their inability to organise the examination in the wake of increase in COVID cases in the respective States. The deadline of 30.09.2020 is unrealistic and unattainable. The most of the Colleges/Universities/ Institutions have been converted into COVID Health Care Centres. Therefore, conducting of exams through offline mode will entail a huge risk of transmission of virus, it will be absolutely unjust to neglect the problems of adopting uniform online mode of exams and also the infrastructural disparities. The office memorandum issued by the Ministry of Human Resource Development dated 06.07.2020 is itself flawed and in complete disregard to the Ministry of Home Affairs guidelines dated 29.07.2020, which provide that in areas outside the Containment Zones, all activities will be permitted, except the Schools, Colleges, Educational and Coaching Institutions will remain closed till 31.08.2020. Section 72 of the Disaster Management Act, 2005 provides that decisions taken and orders issued thereunder will have overriding effect. If a decision is taken by the appropriate authority under Act, 2005 regarding non-holding of examination, the same will operate and hold the field despite the provisions of the UGC Act. Section 12 of the UGC Act mandates that guidelines need to be framed in consultation with the Universities. All Universities were not consulted before issuing the impugned guidelines.

24. Dr. Singhvi has also referred to and relied on the decision taken on 13.07.2020 by the State Disaster Management Authority of the State of Maharashtra where decision was taken not to conduct the examination in the current circumstances. Dr. Singhvi submits that right to life and health is the right guaranteed under Article 21 of the Constitution. Conducting of the examination involves huge amount of travel, huge use of public transport which are not possible in the present state of affairs in the various States including the State of Maharashtra. The present pandemic is a special situation which is state neutral. The University Grants Commission Act and the guidelines framed thereunder shall not have overriding effect on the action under the Act, 2005. The Disaster Management Act being a latter and special Act shall operate. He further submits that the guidelines dated 06.07.2020 are manifestly arbitrary and liable to be set aside on this ground alone.

25. Shri Shyam Divan, learned senior counsel, appearing for the petitioner in Writ Petition No.739 of 2020 submits that to elevate human life, fundamental norms have been engrafted in the regime of Disaster Management Act. There are decentralized units which may apply structured standard. He submits that students, teachers and their respective families are all homogeneous groups, they cannot be treated differently for the purpose of conducting final year/terminal semester exams by the UGC. Shri Divan, learned counsel for the petitioner referring to the Ministry of Home Affairs order dated 15.04.2020 contends that prohibited activities included "all educational, training, coaching institutions etc. shall remain closed". He submits that the said prohibition is still continued and is operating till 31.08.2020 which does not permit holding of any exam. Referring to the earlier guidelines dated 29.04.2020, Shri Divan submits that the guidelines were advisory in nature and there was flexibility at local level in the guidelines whereas the revised guidelines dated 06.07.2020 makes it compulsory to complete examination before 30.09.2020. Revised guidelines disregard the health factor. There is no statement in the revised guidelines that COVID-19 situation has improved.

26. Reverting to the Disaster Management Act, Shri Divan submits that disaster is still continuing, the State authorities under Disaster Management Act are equally empowered to take measures. Shri Divan further submits that letter issued by Ministry of Home Affairs permitting holding of examination cannot supersede the statutory provisions. There are issues of lack of appropriate infrastructure for conducting online

examination, the impugned guidelines violate the right of students and their families. The guidelines are impractical and unclear. The order issued under the Disaster Management Act shall override the revised guidelines dated 06.07.2020. The revised guidelines are manifestly arbitrary, inappropriate and violative of Articles 14 and 21 of the Constitution of India. The writ petitioner is an organisation which works towards the betterment of educational facilities for the students of India. The petitioner has written to Ministry of Human Resource Development on 07.07.2020 praying to reconsider the revised guidelines issued by the Ministry.

27. Shri Arvind Datar, learned senior counsel appearing for the State of Maharashtra, submits that UGC has no legislative competence with regard to conduct of examination. It is submitted that revised guidelines have been issued under University Grants Commission Act, 1956 which is referable to Entry 66 of List I of the Seventh Schedule of the Constitution, which is confined to "co-ordination and determination of standards". Shri Datar placed reliance on the Constitution Bench judgment of this Court in **Modern Dental College and Research Centre and others vs. State of Madhya Pradesh and others, (2016) 7 SCC 353**. Shri Datar submits that UGC can lay down only the qualification. Shri Datar submits that not holding final examination and awarding Degree on the basis of earlier semester's performance is not diluting the standards of education in any manner. The students have completed five semesters (in the State of Maharashtra) by March, 2020 and for final semester internal assessment is also over, hence, the students could have been promoted on the basis of earlier assessments and there is nothing arbitrary in giving Degree to the students on the basis of earlier results. The directions of UGC to hold examination by 30.09.2020 is completely beyond the power of UGC. Revised guidelines do not take into consideration the different situations of different States. In the State of Maharashtra situation is grave in view of phenomenal increase in the COVID-19 cases. The University Grants Commission cannot fix the date for holding examination. In the city of Pune itself which is the hub of the education more than half of the students have left for their home and hostels have been vacated. There are about 7.35 lacs non-professional and 2.84 lacs are professional students, public transport being not in operation it is difficult for the students to reach at the examination centres. Revised guidelines issued by the UGC are violative of Article 14 because they apply throughout the India and give one fix date, i.e., 30.09.2020 irrespective of the conditions prevailing in the State.

28. Shri Datar further submits that guidelines are violative of Section 12 of the University Grants Commission Act, 1956. Section 12 requires consultation with various Universities and other bodies. Other bodies shall include State Disaster Management Authority. There has been no consultation as per Section 12. The State of Maharashtra was not consulted before issuing the revised guidelines, the guidelines are, thus, not in accordance with Section 12. Shri Datar submits that provisions of Disaster Management Act will have overriding effect. He placed reliance on Section 72 of the Act, 2005. Section 72 shall override not only the provisions of Maharashtra University Act but also University Grants Commission Act, 1956 and also the decision taken and orders issued under Act, 1956. In the circumstances decision taken by the State Disaster Management Authority in the State of Maharashtra in not holding examination shall operate and hold the field despite the provisions of UGC Act and the revised guidelines. Shri Datar has also referred to Section 18 and 24 of Act, 2005 and submits that earlier Guidelines dated 29.04.2020 were advisery in nature. Shri Datar has also referred to UGC (Minimum Standards of Instruction for the Grant of the First Degree through Formal Education) Regulations, 2003. The proposal of Maharashtra Government to grant Degree on the basis of first five semesters and internal assessment is in accordance with Regulations, 2003. Shri Datar has referred to and relied on the Government Resolution dated 19.06.2020 as well as the decision dated 18.06.2020 of State Disaster Management Authority.

29. Shri Ashok Parija, learned Advocate General for the State of Odisha adopts the submission of Shri Arvind Datar. He submits that it is not possible to hold the final examination by 30.09.2020. Shri Parija submits that there are several reasons which make it impossible to take physical examination in the present scenario. The public transport is not functioning, Schools and Colleges are closed from 25.03.2020 and students have gone back to their native places. Several Colleges are presently being used by the District Administrations as Quarantine Centres, COVID Care Home, COVID Care Centre, COVID Care Hospital, etc. COVID-19 infection is spreading rapidly in the State of Odisha. It is not feasible to conduct online examination also since most of the students belong to the lower and medium income group and do not have desktop or laptop or decent smart phone at home. The Minister, Ministry of Higher Education, Government of Odisha has issued instructions for adopting alternative procedure for undergraduate or post-

graduate final year or final semester students which is in consonance with UGC guidelines dated 29.04.2020. To await indefinitely for conducting of examination shall delay the academic calendar.

30. Shri Jaideep Gupta, learned senior counsel appearing for the petitioner in Writ Petition No.741 of 2020 submits that on 27.06.2020 an advisory was issued by the State of Bengal to the effect that students in terminal semester/final year of the General Degree courses at under-Graduate/post-Graduate level, 80% weightage should be considered on the basis of the best aggregate percentage obtained by the candidates in any of the previous semesters'/years' results and 20% on internal assessment during the current semester/year. The result of final year/ semester would be declared by 31.07.2020.

31. Shri Gupta submits that UGC guidelines dated 06.07.2020 is not a statutory document but it is an executive instruction. He submits that it is unreasonable to direct the State to hold the examination by 30.09.2020. He submits that in the State of West Bengal most of the Universities are not the Campus University but a large number of Colleges are affiliated and local trains and metros are not working. Several districts are also affected by Super Cyclone Amphan. He submitted that no physical examination is possible in the State of West Bengal. There is lack of digital infrastructure. The guidelines are violative of Section 12 of Act, 1956 since relevant fact is not taken into consideration. Section 12 of the UGC Act requires consultation which means effective consultation.

32. Shri Kishore Dutta, learned Advocate General, has appeared for the State of West Bengal. Shri Dutta submits that UGC has not taken into consideration the pandemic. He submits that public health has to be taken into consideration. He has also referred to Article 39(e),41, 45, 46 and 47 of the Constitution of India. He submits that every State has peculiar problems and UGC could not have taken a decision without consulting the States.

33. Shri K.V. Vishwanathan, learned senior counsel for NCT of Delhi submits that on 11.07.2020, Deputy Chief Minister wrote that because of pandemic, examination cannot be held. He submits that online infrastructure was also not sufficient. Shri Vishwanathan submits that Entry 66 of List I of 7th Schedule has no role to play. The students have no access to the books, online has its own shortcomings. The guidelines dated 29.04.2020 were only advisory and now guidelines dated 06.07.2020

have been made compulsory. He submits that guidelines dated 06.07.2020 has no statutory force. Shri Vishwanathan submits that there is no rational distinction between pre-final or final examination and it is easier to evolve mechanism for final examination. Shri Vishwanathan submits that this Court may consider for appointing an independent commission for exploring the solution.

34. Shri Alakh Alok Srivastava, counsel appearing for the petitioner submits that guidelines dated 06.07.2020 have been issued in violation of Section 12. He submits that words "other bodies" occurring in Section 12 means health experts also. He submits that there was no pan-India consultation before issuing guidelines. He further submits that the guidelines issued under Section 12 are only advisory. Referring to Section 14 of UGC Act, he submits that UGC has right only to stop the grant. He submits that Section 22 right of conferring or granting degrees shall be exercised only by a University, who is authorised to confer the Degrees.

35. Referring to Regulation 6.3 of Regulation 6 of 2003 Regulations, Shri Srivastava submits that nature of final examination, whether written or oral or both, in respect of each course, ought to have been made known to the students at the beginning of the academic session. He submits that there is violation of Article 14 of the Constitution. Shri Srivastava has submitted that criteria as suggested by the State of Madhya Pradesh which is at page 463 of the compilation Volume II should be accepted and necessary direction be issued accordingly.

36. Shri Kishor Lambat, counsel appearing in Writ Petition No.745 of 2020 submitted that when not even 50% syllabus is complete how the examination can be held. The Bar Council of India has resolved to postpone the All India Bar Examination keeping in view the present pandemic. UGC has not taken opinions and advice of relevant bodies. Online examination is not feasible in the present situation.

37. Ms. Meenakshi Arora, learned senior counsel appearing in SLP, filed against the order of the Delhi High Court contends that present system of online examination does not provide a level playing field, left over students will be given chance, it will delay the whole process. She submitted that Delhi High Court in issuing impugned order dated 14.07.2020 has not considered the challenges to the online examination. She further does not dispute that in pursuance of the impugned direction of the Delhi High Court online examinations have commenced by the Delhi University.

38. Shri P.S. Narasimha has appeared for the writ petitioners, the students, who prayed for the enforcement of UGC guidelines dated 06.07.2020. He submits that majority of students want examination to be held. He submits that under-Graduate Degree is minimum qualification for various employment and the final examination when takes place then students are granted the Degree which is most relevant for grading the students. Final evaluation for the students who want to go abroad is necessary. The students must have chance to improve in final year examination. Shri Narasimha submits that University has time to cope with the health situation. He submits that in the pandemic life has to go on, thus, methods have to be found. The methodology of evaluation is a part of standard of education which is in the domain of the UGC. He submits that conduct of final examination is necessary.

39. Shri Vinay Navare, learned senior counsel who appears for the writ petitioners who have challenged the decision of the State Disaster Management Authority of the State of Maharashtra and have prayed for enforcement of the guidelines dated 06.07.2020 submits that holding of examination is legal, ethical and academic. He submits that the students saying for conferring the Degree without holding examination should not be heard under Article 32. The State Government cannot say that examination be not held. He submits that earlier in the State of Maharashtra Vice Chancellors have taken a decision to hold final year examination which was made a political issue by Yuva Sena. He submits that there is no power in the State in deciding that Degree be given without examination. He submits that the State has no power to issue any direction not to conduct any examination. Shri Navare, however, has fairly submitted that the date 30.09.2020 has to be moderated in the peculiar situation of a State.

40. Shri Tushar Mehta, learned Solicitor General appearing for University Grants Commission submits that judicial review of the guidelines of the UGC dated 06.07.2020 is permissible only on limited grounds. He submits that there are no sufficient grounds to grant judicial review to the decision of the UGC. He has referred to UGC guidelines dated 29.04.2020 and submitted that the schedule of conducting of examination was already mentioned in the guidelines. He submitted that the State level committee founded by the Minister, Higher Technical Education for Government of Maharashtra has submitted report dated 06.05.2020 where it was recommended that final examination be held.

He submits that the State has also accepted the above recommendations. Referring to 06.07.2020 decision of Ministry of Home Affairs, Shri Mehta submits that if authority has power to do something, the form is not material. He submits that under UGC guidelines dated 06.07.2020 only final year examinations have to be held which is a reasonable recommendation and there being option of offline, online and hybrid mode, the reasonable flexibility was provided, sufficient time was also given in the guidelines dated 06.07.2020 for conducting the examination and under the guidelines an opportunity was given to any student who fails to appear, to sit in special examination even after 30.09.2020 which was reasonable and protected the interest of the students. He submits that the order dated 06.07.2020 issued by Ministry of Human Resource Development, guidelines for conducting examination were issued after application of mind and due consideration of ground situation. The standard operating procedures for conducting examination were vetted by the Ministry of Family Health and Welfare. The date 30.09.2020 was fixed for completion of examination in the larger interest of the students to take care of the future prospects of the students. Referring to the order dated 29.07.2020 issued by the Ministry of Home Affairs, Government of India and the guidelines providing that any area outside the containment zone, School, Colleges and Coaching Institutions shall remain closed till 31.08.2020, he submit that it could not come in the way of conducting examination since the Ministry of Home Affairs have already granted exemption for conducting the examination despite the closure of Schools, Colleges and Coaching Institutions. Shri Mehta submits that there are large number of Universities in the entire country who have conducted their examinations and several Universities are proceeding with the holding of the examination. It is only the few States who have not conducted the examination. Shri Mehta submits that University Grants Act is referable to Entry 66 List I of 7th Schedule and no contrary decision of the State can stand in its way. Referring to Regulations, 2003, Shri Mehta submits that as per Regulations which are statutory, the Universities are obliged to adopt the guidelines issued by the UGC. Referring to the decisions of Ministry of Home Affairs, Shri Mehta submits that in the case of National disaster, Centre has taken care of and in the given set of facts the State can give suggestion to change the schedule i.e. change the deadline to hold the examination i.e. 30.09.2020. He submits that deadline was issued in the interest of the students.

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41. For the Union of India Shri S.V. Raju, learned Additional Solicitor General has appeared. Shri Raju submits that under the guidelines issued along with the order of the Government of India, Ministry of Home Affairs which prohibited opening of Schools, Colleges and Institutions till 31.08.2020, there is no prohibition in any manner in conduct of the examination. He submits that closure of the Schools, Colleges and Institutions has nothing to do with the conduct of the examinations and normally final examinations are conducted only after teaching is over i.e. after Colleges are closed. He further submitted that it is not necessary that the examination must be held where teaching is imparted or where attendance took place. It can also take place in hall unconnected with the Schools, Colleges and Institutions where the teaching was imparted. He submits that the Ministry of Home Affairs has duly examined the request of Ministry of Human Resource Development and respondent on 06.07.2020, taking into consideration the academic interest of large number of students it was decided to permit the conduct of final examinations.

42. Learned counsel for the parties have referred to and relied on several judgments of this Court which shall be referred to while considering the submissions of the parties.

43. We have considered the submissions of the learned counsel for the parties and perused the material on record.

44. From the submissions of the parties following issues arise for consideration:

(1) Whether the revised guidelines dated 06.07.2020 requiring the Universities to complete terminal semester/final year examination by 30.09.2020 is beyond the domain of the UGC and does not relate to "co-ordination and determination of standards in institution of higher education"?

(2) Whether the revised guidelines dated 06.07.2020 issued by the UGC are non-statutory, advisory only and contrary to earlier guidelines dated 29.04.2020?

(3) Whether the UGC guidelines dated 06.07.2020 are violative of Article 14 of the Constitution of India?

(4) Whether the UGC guidelines dated 06.07.2020 are violative of Article 21 of the Constitution of India and the guidelines have been issued disregarding the pandemic COVID-19?

(5) Whether the guidelines of the UGC dated 06.07.2020 are liable to be set aside on the ground of non-compliance of Section 12 of UGC Act, 1956?

(6) Whether the State and State's Disaster Management Authority in exercise of jurisdiction under Disaster Management Act, 2005 can take a decision not to hold examination by 30.09.2020 disregarding the direction in the UGC guidelines dated 06.07.2020?

(7) Whether the State or State Disaster Management Authority, in exercise of jurisdiction under Act, 2005, can take a decision to award degrees to final year/final semester students by promoting them on the basis of criteria of assessment formulated by the State/Universities on the result of previous semesters/exams and internal assessment of final year/terminal semester in disregard to the guidelines dated 06.07.2020 which require holding of examination of final year/terminal semester by 30.09.2020?

**Issue No.1**

45. We, in the present batch of cases are concerned with examinations by the Universities and the degrees to be conferred to graduates and postgraduates. A University is an institution of higher education. Education plays a very significant role in development of personality of an individual as well as in the progress and development of a country. After independence of our country, looking to the pivotal role of higher education, the Government of India constituted a Commission known as "University Education Commission" with Dr. S. Radhakrishnan as Chairman. The Commission submitted a report, which mentioned "Universities as the organs of Civilisation". The report emphasised on the need for higher standards in Universities dealing with standards of teaching and examinations. The Commission recorded its views in the following words:-

"**The need for High Standards**.

Introduction—It is the primary duty of a university to maintain the highest standards of its teaching and examinations.

A A university is a place of higher education where the personality and capacities of the students are developed to the utmost by teachers who should themselves be at work at the frontiers of knowledge in their respective fields. The success of a university is to be judged as much by the type of graduate it turns out as by the amount and quality of research contributed by its teachers and research students. It must be clearly recognized that there is no conflict involved between the twofold function of a university to educate its members and to advance the frontiers of knowledge - the two functions are, in fact, complementary. Unless high standards of teaching and examinations are maintained, research will suffer, since research can continue uninterruptedly only if there is a regular supply of graduates well prepared by general education for specialized research work. On the other hand, if research is neglected by teachers, their teaching will lack vitality and will rapidly become stale. A degree must always be what a university makes it by the kind of teaching it imparts and the type of intellectual and social life it provides for its members. If our universities are to be the makers of future leaders of thought and action in the country, as they should be, our degrees must connote a high standard of scholarly achievement in our graduates."

46. The Parliament enacted the University Grants Commission Act, 1956 (hereinafter referred to as "UGC Act, 1956") to make provision for the coordination and determination of standards in Universities and for that purpose to establish a University Grants Commission. The UGC Act, 1956 is referable to Entry 66 of List I of Seventh Schedule of the Constitution which provides as under:-

> "66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

47. The education including Universities both in Government of India Act, 1935 and the Constitution of India was a State subject. Entry 11 in the State List prior to Constitution (Forty-second Amendment) Act, 1976 provided:-

> "……Education including Universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III".

48. By Constitution (Forty-second Amendment) Act, 1976 w.e.f. 03.01.1977, Entry 11 from List II was omitted and was transferred and combined with subject of Entry 25 of List III. Entry 25 List III as after amendment by Constitution (Forty-second Amendment) Act, 1976 is to the following effect:-

> "25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

49. Education including university education, thus, is now a concurrent subject where both State legislature as well as Parliament have legislative competence. Entry 11 of List II as existed prior to Constitution (Forty-second Amendment) Act, 1976 as well as Entry 25 of List III is subject to the provisions of Entry 66 of List I, which is the Constitutional Scheme delineated by Seventh Schedule of the Constitution of India. The inter-play with regard to legislation by State referable to earlier Entry 11 of List II as well as Entry 25 of List III with that of Entry 66 of List I came for consideration before this Court in several cases. The Constitution Bench of this Court in **Gujarat University and Anr. Vs. Shri Krishna Ranganath Mudholkar and Ors., AIR 1963 SC 703** laid down that although there may be overlapping between a State Legislation referable to Entry 11 of List II and Parliament legislation referable to Entry 66 List I but to the extent of overlapping the power conferred by Item 66 of List I must prevail over power of the State. In paragraph 23 of the judgment, the Constitution Bench Laid down:-

> "……Use of the expression "subject to" in item 11 of List II of the Seventh Schedule clearly indicates that legislation in respect of excluded matters cannot be undertaken by the State Legislatures. In Hingir-Rampur Coal Co. Ltd. Vs. State of Orissa [1961] 2 SCR 537: (AIR 1961 SC 459), this Court in considering the import of the expression "subject to" used in an entry in List II, in relation to an entry in List I observed that to the extent of the restriction imposed by the use of the expression "subject to" in an entry in List II, the power is taken away from the State Legislature. Power of the State to legislate in respect of education including Universities must to the extent to which it is entrusted to the Union Parliament, whether such power is exercised or not, be deemed to be restricted……"

A 50. A Constitution Bench of this Court in **Dr. Preeti Srivastava and Anr. Vs. State of M.P. and Ors., (1999) 7 SCC 120** had occasion to consider the inter-play between Entry 66 of List I and that of Entry 25 of List III. The Constitution Bench had occasion to consider a Government order dated 11.10.1994 issued by the State of Uttar Pradesh where for admission in Post Graduate Medical Entrance Examination B percentage of 45% marks was fixed for the general category candidates, cut-off for reserved category candidates, i.e., Scheduled Castes, Scheduled Tribes etc., was fixed at 35% and thereafter, by another G.O. dated 31.8.1995 the State of Uttar Pradesh completely did away with a cut-off percentage of marks in respect of the reserved category C candidates, which was challenged before this Court. This Court held that while laying down minimum qualifying marks for admission to the Post Graduate Courses, it was not open to the State Government to say that there will be no minimum qualifying marks for the reserved category candidates in **Dr. Sadhna Devi and Ors. Vs. State of U.P. and Ors., (1997) 3 SCC 90.** The State of U.P. issued an ordinance on 15.01.1997 D revising the minimum qualifying marks for the reserved category candidates from 35% to 20%, which ordinance was challenged before this Court by means of writ petition under Article 32. Similarly, State of Madhya Pradesh also by Government Order directed the minimum qualifying marks for the reserved category candidates be fixed 20% for E Scheduled Casts and 15% for Scheduled Tribes, which was also under challenge. This court in the above context had occasion to consider the Regulations framed under the Medical Council Act, 1956, a Parliamentary legislation, which Regulation provided standard of qualification for admission in a medical course. There being conflict between the criteria F fixed by the State of U.P. and State of M.P. and those fixed by Regulations under Indian Medical Council Act, the controversy was finally determined by the Constitution Bench, in paragraph 35, following was laid down:-

> "35. The legislative competence of the Parliament and the legislatures of the States to make laws under Article 246 is G regulated by the VIIth Schedule to the Constitution. In the VIIth Schedule as originally in force. Entry 11 of List-II gave to the States an exclusive power to legislate on
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> "education including universities subject to the provisions of retries 63, 64, 65 and 66 of List-I and Entry 25 of List-III".

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Entry 11 of List-II was deleted and Entry 25 of List-III was amended with effect from 3-1-1976 as a result of the Constitution 42nd Amendment Act of 1976. The present Entry 25 in the Concurrent List is as follows:

"25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 list-I: vocational and technical training of labour."

Entry 25 is subject, inter alia, to Entry 66 of List-I. Entry 66 of List-I is as follows :

"66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List-I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also co-ordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union Legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in intuitions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List-I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977 education including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254."

51. Constitution Bench had also occasion to elaborate on different aspects of "standards of education". This Court held that the standards of examination is also one of the relevant factor in standards of education. In paragraph 36, following has been laid down:-

"**36.** It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List-III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List-I. For example, a State may, for admission to the post-graduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List-I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can, and do have an adverse affect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors. Some of these are :

(1) The calibre of the teaching staff;

(2) A proper syllabus designed to achieve a high level of education in the given span of time;

(3) The student-teacher ratio;

(4) The ratio between the students and the hospital beds available to each student;

(5) The calibre of the students admitted to the institution;

(6) Equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges;

(7) Adequate accommodation for the college and the attached hospital; and

(8) The standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged."

52. A Three Judge Bench of this Court had occasion to consider all legislative entries pertaining to education including University education in **ProfessorYashpal and Anr. Vs. State of Chhattisgarh and Ors.,(2005) 5 SCC 420**. This court laid down following in paragraphs 33, 34 and 35:-

"**33.** The consistent and settled view of this Court, therefore, is that in spite of incorporation of Universities as a legislative head being in the State List, the whole gamut of the University which will include teaching, quality of education being imparted, curriculum, standard of examination and evaluation and also research activity being carried on will not come within the purview of the State legislature on account of a specific Entry on co-ordination and determination of standards in institutions for higher education or research and scientific and technical education being in the Union List for which the Parliament alone is competent. It is the responsibility of the Parliament to ensure that proper standards are maintained in institutions for higher education or research throughout the country and also uniformity in standards is maintained.

**34.** In order to achieve the aforesaid purpose, the Parliament has enacted the University Grants Commission Act. First para of the Statement of Objects and Reasons of the University Grants Commission Act, 1956 (for short "UGC Act") is illustrative and consequently it is being reproduced below :

> "The Constitution of India vests Parliament with exclusive authority in regard to 'co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions'. It is obvious that neither co-ordination nor determination of standards is possible unless the Central Government has some voice in the determination of standards of teaching and examination in Universities, both old and new. It is also necessary to ensure that the available resources are utilized to the best possible effect. The problem has become more acute recently on account of the tendency to multiply Universities. The need for a properly constituted Commission for determining and allocating to Universities funds made available by the Central Government has also become more urgent on this account."

**35.** In the second para it is said that the Commission will also have the power to recommend to any University the measures necessary for the reform and improvement of University education and to advise the University concerned upon the action to be taken for the purpose of implementing such recommendation. The

A Commission will act as an expert body to advise the Central Government on problems connected with the co- ordination of facilities and maintenance of standards in Universities."

53. In **Maa Vaishno Devi Mahila Mahavidyalaya Vs. State of Uttar Pradesh and Ors., (2013) 2 SCC 617**, this Court had occasion B to consider the provisions of National Council for Teacher Education Act, 1993 and the role of the State and Universities in the above regard. In paragraph 59, this court held that NCTE is constituted under the Central Act with the responsibility of maintaining standard of education hence the State and Universities cannot lay down any guideline or policy C which would be in conflict with the Central statute or the standards laid down by the Central body. In paragraph 59, following has been laid down:-

"**59.** The above enunciated principles clearly show that the Council is the authority constituted under the Central Act with the responsibility of maintaining education of standards and judging D upon the infra-structure and facilities available for imparting such professional education. Its opinion is of utmost importance and shall take precedence over the views of the State as well as that of the University. The concerned Department of the State and the affiliating University have a role to play but it is limited in its E application. They cannot lay down any guideline or policy which would be in conflict with the Central statute or the standards laid down by the Central body. State can frame its policy for admission to such professional courses but such policy again has to be in conformity with the directives issued by the Central body. In the present cases, there is not much conflict on this issue, but it needs F to be clarified that while the State grants its approval, and University its affiliation, for increased intake of seats or commencement of a new course/college, its directions should not offend and be repugnant to what has been laid down in the conditions for approval granted by the Central authority or Council. G What is most important is that all these authorities have to work ad idem as they all have a common object to achieve i.e. of imparting of education properly and ensuring maintenance of proper standards of education, examination and infrastructure for betterment of educational system. Only if all these authorities work in a coordinated manner and with cooperation, will they be able to H achieve the very object for which all these entities exist."

54. In another judgment of this Court in **University Grants Commission and Anr. Vs. Neha Anil Bobde (Gadekar), (2013) 10 SCC 519**, the qualifying criteria fixed by the UGC came for consideration. Bombay High Court had ruled out that UGC lacked the competence to fix the aggregate marks as the final qualifying criteria after the candidates obtained the minimum marks prescribed before the declaration of result of N.E.T. examination. The judgment of the Bombay High Court was in appeal before this Court where this Court categorically laid down that UGC being an expert body is entrusted with duty to take such steps as it may think fit for the determination and maintenance of standards of teaching, examination and research in the University. In paragraph 22, following was laid down :-

> "**22.** We have elaborately referred to various statutory provisions which would clearly indicate that the UGC as an expert body has been entrusted by UGC Act the general duty to take such steps as it may think fit for the determination and maintenance of standards of teaching, examination and research in Universities. It is also duty bound to perform such functions as may be prescribed or as may be deemed necessary by the Commission for advancing the cause of higher education in India. The UGC has also got the power to define the qualification that should ordinarily be required for any person to be appointed to the teaching staff of the University and to regulate the maintenance of standards and coordination of work and faculties in the Universities."

55. This Court further held that in academic matters unless there is a clear statutory violation, this Court shall keep their hands off since the issues fall within the domain of the experts. In paragraph 31, following was laid down:-

> "31. We are of the view that, in academic matters, unless there is a clear violation of statutory provisions, the Regulations or the Notification issued, the Courts shall keep their hands off since those issues fall within the domain of the experts. This Court in University of Mysore v. C.D. Govinda Rao, AIR 1965 SC 491, Tariq Islam v. Aligarh Muslim University (2001) 8 SCC 546 and Rajbir Singh Dalal v. Chaudhary Devi Lal University (2008) 9 SCC 284, has taken the view that the Court shall not generally sit in appeal over the opinion expressed by expert academic bodies and normally it is wise and safe for the Courts to leave the decision

A of academic experts who are more familiar with the problem they face, than the Courts generally are. UGC as an expert body has been entrusted with the duty to take steps as it may think fit for the determination and maintenance of standards of teaching, examination and research in the University. For attaining the said standards, it is open to the UGC to lay down any "qualifying criteria", which has a rational nexus to the object to be achieved, that is for maintenance of standards of teaching, examination and research. Candidates declared eligible for lectureship may be considered for appointment as Assistant Professors in Universities and colleges and the standard of such a teaching faculty has a direct nexus with the maintenance of standards of education to be imparted to the students of the universities and colleges. UGC has only implemented the opinion of the Experts by laying down the qualifying criteria, which cannot be considered as arbitrary, illegal or discriminatory or violative of Article 14 of the Constitution of India."

56. Now, we come to the Revised Guidelines dated 06.07.2020, which is under challenge before us. The Guidelines dated 06.07.2020 were issued in continuation to earlier Guidelines dated 29.04.2020. The Guidelines dated 06.07.2020 provided that Universities are required to complete the examination by the end of September, 2020 in offline (pen and paper)/online / blended (offline and online mode) all terminal semester/final year examinations 2020. The Guidelines dated 06.07.2020 intended that it is only after holding of terminal semester/final year examination, Universities may proceed to grant degrees. The challenge to Guidelines is on the ground that Guidelines are beyond the domain of UGC and does not relate to "co-ordination and determination of standards in institution of higher education". Undoubtedly, the UGC Act has been enacted in reference to Entry 66 List I where the preamble of the Act provides:-

> "An Act to make provision for the co-ordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission."

57. Section 12 which enumerates the functions of the Commission provides that it shall be the general duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University

education and for the determination and maintenance of standards of teaching, examination and research in Universities. The use of expression "examination" in Section 12 itself makes it clear that steps taken by the UGC under Section 12 may relate to the "examination as well". In **Professor Yashpal (supra)** in paragraph 32, this Court has held that the standards of education in an institution depends on various factors, one of which includes "the standard of examinations held including the manner in which the papers are set and examined".

58. The sheet anchor of the argument as stressed by Shri Arvind P. Datar is the Constitution Bench judgment of this Court in **Modern Dental College and Research Centre and Ors. Vs. State of Madhya Pradesh and Ors., (2016) 7 SCC 353.** Learned senior counsel has relied on observation of this Court in paragraph 101. Relevant observation made in paragraph 101 is as follows:-

> "101. To our mind, Entry 66 in List I is a specific Entry having a very specific and limited scope. It deals with co-ordination and determination of standards in institution of higher education or research as well as scientific and technical institutions. The words "co-ordination and determination of standards" would mean laying down the said standards. Thus, when it comes to prescribing the standards for such institutions of higher learning, exclusive domain is given to the Union. However, that would not include conducting of examination, etc. and admission of students to such institutions or prescribing the fee in these institutions of higher education, etc……."

59. To comprehend the import of the above observation made by this Court, we need to look into the issue, which has arisen for consideration in above case. The enactment, which came for consideration before this Court in the above case was "Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007". The aforesaid Act, 2007 as well as the Madhya Pradesh Private Medical and Dental Postgraduate Course Entrance Examination Rules, 2009 came to be challenged before the High Court and the High court upheld the provisions of the Act and Rules, which came to be questioned before this Court in **Modern Dental College & Research Centre (supra).** The Constitution Bench itself in paragraph 83 of the judgment has noted that the State enactments does not run foul of any of the existing central law. Paragraph 83 of the judgment needs to be quoted, which is to the following effect:-

A **"83.** The enactment in question does not run foul of any of the existing Central laws. As far as the introduction of a CET at a national level is concerned, the same was not enforced during the period of operation of the State statute. In any event, there being no Regulations regarding fixation or determination of fees of these institutions to ensure that the same does not allow commercialisation or profiteering, the State Legislature was well competent to enact provisions regarding the same."

60. The issue, which was raised before the Constitution Bench was whether the subject matter of admissions was covered exclusively by Entry 66 of List I, thereby the States had no legislative competence to deal with the subject of admissions or determination of fee to be charged by professional educational institutions. The said issue has been noticed in paragraph 98 in following words:-

"98. The next issue to be considered is whether the subject-matter of admissions was covered exclusively by List I Entry 66, thereby the States having no legislative competence whatsoever to deal with the subject of admissions or determination of fee to be charged by professional educational institutions."

61. In paragraph 101, the Constitution Bench repelled the above submission and in the above context the observations were made "however, that would not include conducting of examination, etc. and admission of students to such institutions or prescribing the fee in these institutions of higher education, etc."

62. The Constitution Bench in paragraph 101 has used the expression "not include **conducting** of examination etc." In the present case, there is no claim on behalf of the UGC that it is the UGC which shall **conduct** the examination of the graduate and postgraduate students. The examinations are to be conducted by the respective Universities only. The above observations made by Constitution Bench in paragraph 101 as relied by learned senior counsel for petitioner, cannot be treated to be laying down any preposition that University Grants Commission has no competence to lay down any standards with regard to examination. We, thus, are of the considered opinion that the Guidelines dated 06.07.2020 are not beyond the domain of the UGC and they relate to co-ordination and determination of standards in institutions of higher education.

**Issue No.2**

63. The issue consists of two parts, i.e., (i) whether the Revised Guidelines dated 06.07.2020 are non-statutory and advisory only and (ii) the Guidelines dated 06.07.2020 are contrary to earlier Guidelines dated 29.04.2020. We may take up the second part first. The Guidelines dated 29.04.2020 were issued with heading "UGC Guidelines on Examinations and Academic Calendar in view of COVID-19 pandemic and subsequent lockdown". With regard to examination of 2019-2020, several Universities have conducted examinations full or partial, some of the Universities were yet to commence their examination. At the outbreak of pandemic COVID-19, the Government of India, Ministry of Home Affairs issued various orders and had taken measures to prevent its spread across the country including lockdown where several activities were prohibited due to the situation as developed from the last week of March, 2020. Neither any teaching could be done in the colleges/ Universities nor any examination could be held for the months together. Since the examinations could not be held in the month of March to June, 2020, by which period usually the examinations of all Universities are completed and results are declared, UGC came with Guidelines on Examinations and Academic Calendar for the Universities. The Guidelines begins with following introduction:-

> "Introduction
>
> The whole world, including India, is passing through unprecedented difficult times due to the outbreak of COVID-19 pandemic. As all universities and colleges are closed due to national lockdown, the teaching – learning process and research activities have been badly disrupted. The schedule of Terminal Semester examinations has also got disturbed. In such scenario, it is joint responsibility of all the stakeholders to manage multiple key issues relating to academic activities in the institutions. While it is crucial to follow measures taken by the Government to contain the spread of COVID-19, it is also important to continue the educational process making effective use of technology and other available options. Future may have many uncertainties but difficult times demand quick appropriate decisions. We must be optimistic that we can reinvent work again and engage the students in effective and constructive ways. The University Grants Commission (UGC) has been engaged with this issue and contemplating measures to

face the challenge of safeguarding the interests of the academic fraternity in general and students in particular. Confronted with vital issues of examinations and academic calendar, UGC constituted an Expert Committee to deliberate on these issues and make recommendations to address them."

64. The University Grants Commission has constituted an Expert Committee and it was on the basis of report submitted by Expert Committee Guidelines dated 29.04.2020 was issued. It is relevant to extract following portion of the guidelines:-

"1. Maintaining the sanctity of academic expectations and integrity of examination process, the universities may adopt alternative and simplified modes and methods of examinations to complete the process in shorter period of time in compliance with CBCS requirements as prescribed by UGC from time to time. These may include MCQ/ OMR based examinations, Open Book Examination, Open Choices, assignment/ presentation-based assessments etc.

2. The universities may adopt efficient and innovative modes of examinations by reducing the time from 3 hours to 2 hours assigned to each examination, if need arises but without compromising the quality, so that the process may be completed in multiple shifts and, at the same time, sanctity to evaluate the performance of a student is also maintained.

3. The universities may conduct Terminal / Intermediate Semester / Year examinations in offline / online mode, as per their Ordinances/ Rules and Regulations, Scheme of Examinations, observing the guidelines of "social distancing" and keeping in view the support system available with them and ensuring fair opportunity to all students.

4. Terminal semester / year examinations for PG/ UG courses/ programmes may be conducted by universities as suggested in the academic calendar keeping in mind the protocols of "social distancing".

5. For intermediate semester/year students, the universities may conduct examinations, after making a comprehensive assessment of their level of preparedness, residential status of the students, status of COVID-19 pandemic spread in different region / state and other factors.

In case the situation does not appear to be normal in view of COVID-19, in order to maintain "social distancing", safety and health of the students, grading of the students could be composite of 50% marks on the basis of the pattern of internal evaluation adopted by the universities and the remaining 50% marks can be awarded on the basis of performance in previous semester only (if available). The internal evaluation can be continuous evaluation, prelims, mid-semester, internal assignments or whatever name is given for student progression.

In the situations where previous semester or previous year marks are not available, particularly in the first year of annual pattern of examinations, 100% evaluation may be done on the basis of internal evaluation.

If the student wishes to improve the grades, he/she may appear in special exams for such subjects during next semester.

This provision for intermediate semester examinations is only for the current academic session (2019-20) in view of COVID-19 pandemic, while maintaining safety and health of all the stakeholders and sanctity and quality of examinations."

65. The Guidelines also contains academic calendar suggested for the academic session 2019-2020 and dates for conduct of examinations were also suggested as 01.07.2020 to 31.07.2020. It is true that Guidelines mentioned that Guidelines are advisory in nature and each University may chart out its plan of action taking into consideration the issues pertaining to pandemic COVID-19. A reading of the Guidelines indicate that ample latitude was given to the Universities to conduct terminal/ intermediate/ semester year examinations in offline and online mode. The Guidelines, however, cannot be read to mean that Guidelines dated 29.04.2020 left it to the wisdom of the Universities to either conduct terminal semester/final year examinations or not to conduct, which is clear from clauses 4 and 5 under the heading "Examinations". Clause 4 specifically provides that terminal semester /final year examinations for PG/ UG courses/ programmes may be conducted by universities as suggested in the academic calendar keeping in mind the protocols of "social distancing". The academic calendar, which is part of the Guidelines suggested the date for start of the examinations as 01.07.2020. When we read clause 5, the difference between clause 4 and 5 is clear. With

A regard to intermediate semester /year students there is express mention that "In case the situation does not appear to be normal in view of COVID-19, grading of the students could be composite of 50% marks on the basis of the pattern of internal evaluation adopted by the universities and the remaining 50% marks can be awarded on the basis of performance in previous semester." But this option is not mentioned in clause 4 of the Guidelines, which referred to terminal semester/final year examinations. The Guidelines dated 29.04.2020 was issued for a purpose and object with latitude to the Universities to chart their own plan/course but the argument cannot be accepted that Universities were not to follow the Guidelines on the pretext that it uses the expression "advisory". The Revised Guidelines dated 06.07.2020 were issued looking to the situation that COVID-19 cases are still rising and likely to increase further and as per academic calendar in the Guidelines dated 29.04.2020, the examinations were to complete by 31.07.2020. The UGC requested the Expert Committee to revisit the Guidelines. The Guidelines dated 06.07.2020 in fact grant further time requiring the completion of examination by 30.09.2020. When we look into the substance of the Guidelines dated 29.04.2020 and Revised Guidelines dated 06.07.2020, it is clear that Guidelines dated 06.07.2020 are in continuation to the earlier Guidelines and not contrary to the earlier Guidelines. We have to look into the substance of the Guidelines and find out the intent and object of the Guidelines. The Guidelines were issued with the object that a uniform academic calendar be followed by all the Universities and final terminal semester/final year examinations be held. With regard to intermediate semester/year examination, the earlier UGC Guidelines dated 29.04.2020 have been continued even in the Revised Guidelines dated 06.07.2020. We, thus, do not accept the submission of petitioners that Guidelines dated 06.07.2020 are contrary to the earlier Guidelines.

66. Now, coming to the first part of the issue that the Guidelines are non-statutory and advisory only, it is the case of both the parties that Guidelines have been issued by the UGC in exercise of power under Section 12. Section 12 of the Act provides that it shall be the general duty of the Commission to take all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities. The words "all such steps" are of wide import. The steps referred to in Section 12 may include issuance of guidelines, directions, circulars etc. The Guidelines dated 06.07.2020 has

to be treated to have been issued in exercise of statutory powers vested in the Commission under Section 12. Guidelines issued in exercise of statutory powers, thus, cannot be said to be non-statutory. There is one more reason to hold the Guidelines have statutory force. The University Grants Commission, in exercise of power under Section 26 sub-section (1) of the Act, 1956 have made the Regulations namely, "the **UGC(Minimum Standards of Instruction for the Grant of the Master's Degree through Formal Education)Regulations, 2003"**, on which both learned counsel for the petitioners as well as learned counsel for the UGC have placed reliance. Regulation 6, which deals with "examination and evaluation" contains following regulation as Regulation 6.1:-

> "6.1 The university shall adopt the guidelines issued by the UGC and other statutory bodies concerned from time to time in respect of conduct of examinations.''

67. The statutory Regulation, 2003 thus, categorically requires Universities to adopt the Guidelines issued by the UGC, hence, it is the statutory duty of the Universities to adopt the guidelines issued by the UGC. It is the statutory obligation of the Universities to adopt the Guidelines and the Guidelines cannot be ignored by terming it as non-statutory or advisory.

**Issue No.3**

68. The revised guidelines dated 06.07.2020 have been challenged claiming that it violates Article 14 of the Constitution. It is submitted that the UGC guidelines discriminate between the students of Final year and First/Second year. The UGC guidelines have been termed as unreasonable and arbitrary. It is further submitted that impugned guidelines failed the test of Article 14 because they apply throughout India and one fixed date i.e. 30th September, 2020, irrespective of the conditions prevailing in the States/Universities, issuing one deadline results in unequals being treated equally.

69. The submission is that the impugned guidelines discriminate between the students of First year and Final year and carves out one class of students from homogeneous class; The impugned guidelines are in continuation to earlier guidelines dated 29.04.2020 and the guidelines dated 29.04.2020 dealt with terminal semester/ final year examination in clause four and for intermediate semester/year students in clause five.

A 70. The earlier guidelines provided that the examination may be conducted, however, an option was given with regard to intermediate/ year students for their promotion on the basis of internal assessment and performance in the previous semesters. Holding of examination for the Final year students was made necessary by the impugned guidelines. The Final year/terminal semesters examinations are important because the learning process is a dynamic interaction where the only way to figure out what students know is to seek evidence of their knowledge and to evaluate it. Performance in examination especially Final year/ terminal semester examination are reflection of competence of the students. Terminal semester/Final year examination also provides an C opportunity to the students to improve upon their overall score/marks which are very crucial for academic excellence and opportunities of employment. Final year/terminal semester examination of under-Graduate or post-Graduate is an opportunity for student to show his optimum calibre which pave his future career both in academics and employment. We do not find any unreasonableness or arbitrariness in the revised guidelines of University Grants Commission dated 06.07.2020 which require all Universities/ Collages to conduct at least the final year/ terminal semester examination.

71. The differentiation made by revised guidelines to hold Final year/ Terminal semester examination has a rational basis and there is an intelligible differentia between the student of Final year/Terminal semester and other students. We thus reject the challenge on the ground that there is any hostile discrimination between the students of Final year/Terminal semester and other students.

F 72. The further submission that the guidelines failed the test of Article 14 because they apply throughout India and being one fixed date i.e. 30.09.2020 irrespective of the conditions prevailing in the individual States/Universities also cannot be accepted. Even the earlier guidelines dated 29.04.2020 provided for an academic calendar which mentioned 01.07.2020 to 15.07.2020 for conduct of Terminal semester/Final year G examination and 16.07.2020 to 31.07.2020 for Intermediate semester/ year examination. When the academic calendar is set, fixed dates are always given for uniformity. The UGC had rightly fixed a date for completion of the Terminal semester/Final year examination throughout the country to maintain uniformity in the academic calendar.

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73. The students who look forward for admission in higher classes or take employment require final degree for their career prospect and to maintain uniformity in dates by which final examinations are over is with the object of students welfare and for their career and it cannot be said that since uniform date has been fixed by which Terminal semester/ Final year examination are to be completed, Article 14 has been violated.

74. Both, the earlier guidelines as well as revised guidelines have taken due notice of the prevailing situation of Covid-19 and it cannot be said that the expert body is unaware of Pandemic spread throughout the Country. The criticism of guidelines that they are unreasonable does not inspire any confidence. Following features in the revised guidelines clearly indicate that expert body took measures in the interest of the students and their academic career: -

(i) The academic calendar provided for in the earlier guidelines contemplated conduct of examination from 01.07.2020 to 31.07.2020. The revised guidelines noticed - "The number of covid cases are still rising and likely to increase further…". The revised guidelines has granted further time for completion of examination till end of September, 2020, which was a step to facilitate Universities and Colleges to complete their examination which was a reasonable step in wake of the Pandemic.

(ii) The guidelines made the conduct of examination flexible by providing three modes of examination:

(a) Offline (Pen and Paper)

(b) Online

(c) Blended (Online + Offline)

(iii) The revised guidelines also made a provision of examination through special chance in case a student of Terminal semester/Final year is unable to appear in the examination due to any reason.

75. The provision for giving special chance to appear in examination is also in the interest of the students to protect those students who due to any reason are unable to appear in the examination. The above measures taken in the revised guidelines are reasonable and the criticism of the guidelines that they are unreasonable and manifestly arbitrary are without any substance. We thus do not find revised guidelines to be violative of Article 14 of the Constitution of India.

**ISSUE NO.4**

76. The claim of the learned counsel for the petitioner is that compelling attendance of the students by holding physical examination in the present situation of the Pandemic is a violation of the 'Right to Life' under Article 21. It is contended that lakhs of students, teaching and non-teaching staff will be forced to risk their health and lives of their family members in event they are asked to participate in the Final year/ Terminal examination. The revised guidelines have been issued totally disregarding the graveness of the present Pandemic of which the entire country is in its grip.

77. There can be no doubt that it is the duty of the State to take care of the health of its citizens. The various measures taken by the specified authorities under the Disaster Management Act, 2005, are only with the object to contain the Pandemic and protect the health of citizens of the country. The criticism of the revised guidelines is that it ignores the fact that covid cases are still rising in the different part of the country and the guidelines had completely disregarded the health of the students and expose the students, teachers and non-teaching staff to the risk of contacting virus during the course of examination.

78. It is relevant to note that the revised guidelines were issued taking into consideration the fact that the number of covid cases are still rising and likely to increase further which fact has been categorically mentioned in the beginning of the revised guidelines itself. Further, clause 6 of the revised guidelines specifically provides that every University/ Institution has to ensure that it is prepared in all respect to carry out the academic activity following necessary protocols, guidelines, directions, advisories issued by the Central/ State Government from time to time in view of Covid-19. Clause 6 of the guidelines is as follows:-

> "6. Notwithstanding the above guidelines regarding conduct of examination and commencement of next academic session, every university/institution has to ensure that it is prepared in all respects to carry out the academic activities following necessary protocols/ guidelines/ directions/ advisories issued by the Central/ State Governments and MHRD/UGC from time to time, in view of COVID-19."

79. The University Grants Commission is conscious of increasing number of covid cases throughout the country and as observed above,

the revised guidelines have extended the period for completion of examination from 31.07.2020 to 30.09.2020 which was only due to the reason that due to Pandemic, Universities/ Colleges may not have been able to hold the examination. Further specific provisions in the guidelines that all institutions have to follow necessary protocols, guidelines, directions, advisories issued as measures to contain Covid-19 makes it clear that there is no intent to protect the students, teachers, non-teaching staff from the deadly virus.

80. It is also relevant to note that after issuance of revised guidelines dated 06.07.2020 OM dated 06.07.2020, Ministry of Human Resource Development (MHRD), has issued detailed guidelines for conduct of examination which guidelines were duly vetted by Ministry of Health and Family Welfare(MoHFW). The guidelines for conduct of examination were circulated by University Grants Commission vide its letter dated 08.07.2020, "Standard Operating Procedure for conduct of examination is relevant" which is quoted as below: -

**"Standard Operating Procedure for conduct of Examination**

1. The instructions, guidelines and orders issued by the Central and State Governments concerning the opening of educational institutions and safety and health should be abided by the universities and colleges. However, they may develop more stricter provisions and guidelines, if they find it necessary,

2. In case there is a restriction on movements in certain areas, admit/identity cards issued to the students should be treated as a pass for the movement of the students. State Governments should issue instructions to all local authorities to issue movement passes to invigilators and all personnel engaged in the conduct of examination.

3. Entire examination centre floors and walls, doors, gates, should be sprayed with disinfectant.

4. Fresh mask and gloves to be used by exam functionaries after staff verification is done.

5. Sanitizer bottles should be arranged at the entry gate, examination rooms, staff/observer room, etc, and should be replenished regularly.

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6. All liquid handwash bottles should be replenished in restrooms and entry gate whenever required.

7. Candidate Seating Area should be thoroughly sanitised (desk and chair) after every session.

8. All the washrooms should be cleaned and disinfected.

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9. All door handles, staircase railing, lift buttons, etc, should be disinfected.

10. Wheelchairs, if present at the examination centres, should be disinfected.

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11. All the trash bins should be cleaned.

12. Staff verification and self declaration as suggested below must be done as soon as they report at the centre.

a. Exam functionary must submit self declaration about health status.

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b. Thermo gun temperature check must be done at staff entrance point.

c. If any Examination functionary fails to meet the self-declaration criteria, or thermo gun check, he/she will be asked to leave the examination centre immediately.

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d. Exam functionary needs to wear the mask and gloves at all the time.

13. Cleanliness and hygienic conditions as per safety and health advisories of the concerned government departments are to be maintained at all places.

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14. Proper signages, symbols, posters, etc. should be displayed at appropriate place to maintain social distancing.

15. Downloading of 'Arogya Setu' App may be advised for every staff and student of the University and College.

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16. Adequate arrangements of thermal scanners, sanitisers, facemasks and hand gloves at all entry and exit points including the reception area. Wherever possible, students should be given fresh face masks by the invigilators in the examination room itself.

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17. Avoid crowding at entry and exit points.

18. Opening all the gates, of entry and exit, in case HEIs have more than one gate.

19. Senior staff should monitor the entry and exit. There should be proper markings with at least 2 metre distance where students stand while waiting for opening of the college gate. Exit of students should permitted one by one only.

20. Thermal screening of students, wearing of face mask, sanitizing of hands etc. be ensured.

21. The Invigilators, while on duty, should be continuously wearing mask, and proper hand gloves.

22. The students should be asked to sanitize their hands before and after signing the Attendance sheet.

23. Students having symptoms of fever, cough and cold should be either made to sit in a separate room or given a chance to appear on another day.

24. Hand washing stations with facilities of liquid soap should be made available so that every student can wash her/his hand frequently.

25. Keeping in view the physical distancing, institutions should have adequate rooms capacity to meet the proper seating arrangement for examination. Minimum distance between two students should be 2 metres. Sample seating plan is annexed.

26. Adequate arrangements for safe drinking water be made on the campus.

27. Adequate supply of water in toilets and for hand washing be ensured.

28. Dustbins must be cleaned and covered properly.

29. Proper sanitization of buses, other transport and official and vehicles of the institution.

30. At the end of the day-

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a. Used gloves and masks should be disposed only in a pedal push covered bin at the Examination Centre and outside the examination room/hall.

b. Safely dispose off all used masks and gloves discarded at the examination centres or outside the examination centre in trash bin bags at suitable place and as per standard guidelines issued by health authority."

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81. The Standard operating procedure for conduct of examination as extracted above make it abundantly clear that UGC, MHRD, and Ministry of Health and Family Welfare are fully concerned with the health of all stakeholders i.e. the students as well as exam functionaries.

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82. In view of the above, we are not persuaded to accept the submissions of the petitioner that the revised guidelines are violative of Article 21 of the Constitution.

**ISSUE NO.5**

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83. The revised guidelines dated 06.07.2020 have been challenged on the ground that it has been issued in the breach of Section 12(1) of the UGC Act, 1956. The submission is that Section 12(1) mandates that the Commission in consultation with the Universities and other bodies concerned shall take all such steps as it may think fit. It is submitted that before issuance of the revised guidelines dated 06.07.2020, the UGC was required to consult all the Universities and other bodies concerned. The submission is that the expression 'other bodies concerned' used in Section shall include State Disaster Management Authority which has been constituted in each state and before issuance of guidelines dated 06.07.2020, it was obligatory for the UGC to consult the State Disaster Management Authority. Further submission is that the expression 'other bodies' may also include health experts and UGC was required to consult health experts before issuing the revised guidelines. The UGC having failed to consult the Universities or other bodies, the guidelines dated 06.07.2020 are in breach of Section 12 and are liable to set aside on this ground alone.

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84. For appreciating the above challenge raised by the petitioner, we need to look into the statutory scheme as delineated by Section 12 of UGC Act, 1956. Section 12 is part of Chapter III of UGC Act, 1956, which deals with "Powers and functions of the Commission". Section 12 bears the heading "Functions of the Commission". Section 12 as relevant is as follows:-

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"**POWERS AND FUNCTIONS OF THE COMMISSION**

**Functions of the Commission**

. It shall be the general duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities, and for the purpose of performing its functions under this Act, the Commission may

(a) inquire into the financial needs of Universities;

(b) allocate and disburse, out of the Fund of the Commission, grants to Universities established or incorporated by or under a Central Act for the maintenance and development of such Universities or for any other general or specified purpose;

(c) allocate and disburse, out of the Fund of the Commission, such grants to other Universities as it may deem 1 [necessary or appropriate for the development of such Universities or for the maintenance, or development, or both, of any specified activities of such Universities] or for any other general or specified purpose:

Provided that in making any grant to any such University, the Commission shall give due consideration to the development of the University concerned, its financial needs, the standard attained by it and the national purposes which it may serve,

[(cc) allocate and disburse out of the Fund of the Commission, such grants to institution deemed to be universities in pursuance of a declaration made by the Central Government under section 3, as it may deem necessary, for one or more of the following purposes, namely: -

(i) for maintenance in special cases,

(ii) for development.

(iii) for any other general or specified purpose;]

[(ccc) establish, in accordance with the regulations made under this Act, institutions for providing common facilities, services and programmes for a group of universities or for the universities in general and maintain such institutions or provide for their maintenance by allocating and, disbursing out of the Fund of the Commission such grants as the Commission may deem necessary.]

A (d) recommend to any University the measures necessary for the improvement of University education and advise the University upon the action to be taken for the purpose of implementing such recommendation;

(e) advise the Central Government or any State Government on
B the allocation of any grants to Universities for any general or specified purpose out of the Consolidated Fund of India or the Consolidated Fund of the State, as the case may be;

(f) advise any authority, if such advice is asked for, on the establishment of a new University or on proposals connected with
C the expansion of the activities of any University;

(g) advise the Central Government or any State Government or University on any question which may be referred to the Commission by the Central Government or the State Government or the University, as the case may be;

D (h) collect information on all such matters relating to University education in India and other countries as it thinks fit and make the same available to any University;

(i) require a University to furnish it with such information as may be needed relating to the financial position of the University or the
E studies in the various branches of learning undertaken in that University, together with all the rules and regulations relating to the standards of teaching and examination in that University respecting each of such branches of learning;

(j) perform such other functions as may be prescribed or as may
F be deemed necessary by the Commission for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of the above functions."

85. Section 12 begins with the words "it shall be the general duty of the commission to take",..."in consultation with Universities or other
G bodies concerned." What is the ambit and scope of expression 'Universities or other bodies concerned' has fallen for consideration in the present case. The use of expression 'Universities or other bodies concerned' is for purpose and object which is clear from subsequent enumerations of functions of the commission in the Section itself. For example, we may take functions of the commission as mentioned in sub-

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clause (d) which provides that the Commission may recommend to the universities any measures necessary for the improvement of the university education and advise the universities upon the action to be taken for the purpose of implementation of such recommendation. When we look into this sub-clause (d), it is clear that the function enumerated in sub-clause is only with regard to a particular university and for discharge of function by the commission with regard to sub-clause (d), it has to consult only the university concerned.

86. The use of the word 'Universities or other bodies concerned' in the opening part of the Section has been with a purpose of referring the universities or other bodies concerned for whom the function has to be performed by. The enumerations given from clause (a) to (j) indicate that apart from universities the function also include advice to the Central Government or any State Government on allocation of any grant to the Universities or advise Central Government or any State Government or any Universities on any question which may be referred to the commission by the Central Government or the State Government. Thus, the expression 'other bodies' used in the opening part of the Section is in reference to other bodies apart from universities enumerated in Section 12. The expression 'Universities or other bodies concerned' used in the opening part of the Section cannot be stretched to the meaning which is now sought to be given by the learned counsel for the petitioner.

87. The submission that 'other bodies' as used in Section 12 should include State Disaster Management Authority or health experts is misconceived. Section 12 never contemplated any such "bodies". Furthermore, the State Disaster Management Authority came into existence only after enactment of Disaster Management Act, 2005, no such concept was there when the UGC Act, 1956 was enacted. The expression 'other bodies' cannot be expanded as contended by the learned counsel for the petitioner. The use of the word 'concerned' after 'Universities or other bodies' has specific purpose and meaning. The consultation with the Universities or other bodies concerned was in reference to a particular function which was enumerated in clause (a) to (j) and it has specific reference and "Universities" or other bodies" were referred to in the above context. Section 12 cannot be interpreted in a manner that for taking any measure with regard to coordination of university education and for determination and maintenance of standards of teaching examination in the Universities, the UGC should consult each

A and every University of each and every State and only then, such measures can be taken. Reading the provision in above manner shall make the functioning of UGC unworkable. There are more than nine hundred Universities in the country and to require UGC to consult more than nine hundred universities for taking any measure will make the functioning impossible and impractical.

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88. Section 12 cannot be interpreted in a manner that for taking any steps by the UGC, there is a mandatory requirement of consultation of all the States/Universities failing which no measures can be taken by the University Grants Commission. Clause (j) of Section 12 is couched in a very vide manner which empower the commission to perform such other functions as may be prescribed or **as may be deemed necessary by the Commission for** advancing the cause of higher education in India or as may be incidental or conducive to the discharge of the above function. Any function which may be deemed necessary by the Commission can be performed. For performance of its function by the Commission, the Commission of its own is fully competent to take decisions, issue any directions, guidelines, etc. The Commission may also take assistance of any Committee of experts in discharge of its functions for which there is no prohibition in the statutory scheme. In the common counter affidavit filed by the UGC with regard to the guidelines dated 29.04.2020, the Commission has in paragraph 8 of the common counter affidavit has stated that the guidelines which contained policy decision taken by UGC were made following the report by the Committee under the Chairmanship of Prof. R.C.Kuhad. Following statements have been made in the paragraph 8: -

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> "8.... It is pertinent to note that these Guidelines, which contain policy decisions taken by the UGC, were made following a report by a committee under the Chairmanship of Prof. R.C.Kuhad, Vice-Chancellor, Central University of Haryana. The said committee consisted of various experts in the field that included Vice-Chancellors of various universities, the director of the Inter University Accelerator Centre, New Delhi, and senior officers of the UGC. Therefore, the Guidelines were published "in consultation with the Universities or other bodies concerned", as mandated by section 12 of the UGC Act..."

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89. The revised guidelines dated 06.07.2020 was issued after the report was received from the Committee headed by Prof. R.C. Kuhad

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as has been specifically pleaded in paragraph 10 of the common counter affidavit in which following statement has been made:-

> "10. That, however, in June 2020, considering the evolving situation of the Covid-19 pandemic, the UGC requested the expert committee headed by Prof. R.C. Kuhad to revisit the 'UGC Guidelines on Examinations and Academic Calendar for the Universities in View of COVID-19 Pandemic and Subsequent Lockdown'. Accordingly, the expert committee (which also included Vice-Chancellors of technical Universities and a representative of industry) did so, and submitted a report recommending that terminal semester/final year examinations would be conducted by universities/ institutions by the end of September, 2020 in offline(Pen & Paper)/ online/ blended (online + offline) mode. This report of the expert committee was deliberated and approved by the UGC in its emergent meeting held on 06.07.2020..."

90. The statutory scheme as delineated by Section 12 makes it clear that for the purposes of performing its functions under the Act as enumerated in clause (a) to (j), it is not mandatory duty of the Commission to consult with the Universities or other bodies concerned in all cases e.g. while allocating and disbursing out of the fund of the Commission, grants to the Universities as enumerated in sub-clause (b) and (c). It is not necessary to consult the university to whom the grant is to be allocated and disbursed. The expression "in consultation with the Universities or other bodies concerned" has to be read to mean where consultation with Universities or other bodies concerned is necessary without which the Commission is unable to perform its functions.

91. We may further elaborate the point by referring to certain other functions as enumerated in Section 12. Section 12 sub-clause (h) provides: -

> "(h) collect information on all such matters relating to University education in India and other countries as it thinks fit and make the same available to any University;"

92. Whether for collecting information relating to University education in India, UGC has to consult all 900 or more Universities and whether without consultation with the Universities, it cannot perform its functions under Section 12(h), the answer would be obviously that it is

not necessary for UGC to consult all the universities while collecting information relating to University Education in India. The expression "Universities or other bodies concerned" has not be read in a rigid manner rather it is flexible as per requirement of the Commission. The residuary clause i.e. Section 12(j) cloth the Commission to perform such other functions **as may be deemed necessary by the Commission.** The guidelines dated 29.04.2020 and 06.07.2020 have been issued after consultation of an expert Committee headed by Prof. Kuhad. The guidelines have been issued after a report of an expert committee consisting of academicians and experts. It cannot be said that the Commission had no jurisdiction to issue guidelines without consulting all the Universities in the Country and all the States or Union Territories.

93. The UGC is empowered to perform such other functions as may be deemed necessary by the Commission. If the Commission felt it necessary to issue guidelines after obtaining a report from the expert committee, no exception can be taken to the procedure adopted by the Commission. The guidelines dated 29.04.2020 as well as revised guidelines dated 06.07.2020 are general in nature and not confined to any particular university or any particular state. Hence, it cannot be said that UGC is obliged to consult all Universities or States before issuance of the guidelines.

94. We thus, are satisfied that guidelines dated 06.07.2020 cannot be said to be violative of Section 12 of UGC Act, 1956.

**Issue No.6**

95. The submission which has been pressed before us by the learned counsel for the petitioners challenging the revised guidelines dated 06.07.2020 is that the said guidelines insofar as it directs for holding of the final year/terminal semester examination by 30.09.2020 does not prohibit a State or State Disaster Management Authority in taking appropriate decision in exercise of power under Disaster Management Act, 2005 not to hold examination looking to the situation in a particular State. In this context, reference has been made to the decision taken by the State Disaster Management Authority of Maharashtra dated 18.06.2020 and the Government Resolution dated 19.06.2020 by the State of Maharashtra as well as the proceedings dated 13.07.2020 of the State Disaster Management Authority of the State of Maharashtra. The submission is that exercise of power under Disaster Management Act,

2005 shall override the UGC's guidelines directing holding of the examination by 30.09.2020 by each University/Colleges. For considering the above submission we need to look into the statutory scheme of the Disaster Management Act, 2005 and various orders issued thereunder. The Disaster Management Act, 2005 has been enacted to provide for the effective management of disasters and for matters connected therewith or incidental thereto. Section 3 provides for establishment of National Disaster Management Authority with Prime Minister of India as Chairperson. Section 6 provides for powers and functions of National Authority. Section 8 provides for constitution of National Executive Committee. National Plan is to be drawn as per Section 11. Section 14 provides for establishment of State Disaster Management Authority. Section 14 of the Act is as follows:

"**Section 14. Establishment of State Disaster Management Authority**.—(1) Every State Government shall, as soon as may be after the issue of the notification under sub-section (1) of section 3, by notification in the Official Gazette, establish a State Disaster Management Authority for the State with such name as may be specified in the notification of the State Government.

(2) A State Authority shall consist of the Chairperson and such number of other members, not exceeding nine, as may be prescribed by the State Government and, unless the rules otherwise provide, the State Authority shall consist of the following members, namely:—

(a) the Chief Minister of the State, who shall be Chairperson, ex officio;

(b) other members, not exceeding eight, to be nominated by the Chairperson of the State Authority;

(c) the Chairperson of the State Executive Committee, ex officio.

(3) The Chairperson of the State Authority may designate one of the members nominated under clause (b) of sub-section (2) to be the Vice-Chairperson of the State Authority.

(4) The Chairperson of the State Executive Committee shall be the Chief Executive Officer of the State Authority, ex officio:

Provided that in the case of a Union territory having Legislative Assembly, except the Union territory of Delhi, the Chief

A Minister shall be the Chairperson of the Authority established under this section and in case of other Union territories, the Lieutenant Governor or the Administrator shall be the Chairperson of that Authority: Provided further that the Lieutenant Governor of the Union territory of Delhi shall be the Chairperson and the Chief Minister thereof shall be the Vice-Chairperson of the State Authority.

(5) The term of office and conditions of service of members of the State Authority shall be such as may be prescribed."

96. Section 18 deals with powers and functions of State Authority. Section 20 provides for constitution of State Executive Committee and Section 22 enumerates functions of the State Executive Committee. Section 38 empowers the State Government to take measures.

97. After notifying COVID-19 as pandemic the National Disaster Management Authority issued order dated 24.03.2020 directing the Ministries/Departments of Government of India, State/Union Territory Governments and State/Union Territory Authorities to take effective measures so as to prevent the spread of COVID-19 in the country. Guidelines and the measures to be taken by the Ministries, State/Union Territory were issued by the Ministry of Home Affairs. For the purposes of this case we may notice the order dated 30.05.2020 issued by the Government of India, Ministry of Home Affairs in exercise of powers conferred under Section 6(2)i) of the Act, 2005. The guidelines for phased reopening (Unlock I) was issued on 30.05.2020. Paragraphs 1 and 5 of the guidelines which are relevant are as follows:

"**1. Phased re-opening of areas outside the Containment Zones**

In areas outside Containment Zones, all activities will be permitted, except the following which will be allowed, with the stipulation of following Standard Operating Procedures (SOPs) to be prescribed by the Ministry of Health and Family Welfare (MoHFW), in a phased manner.

**Phase I**

**.....**

**Phase II**

Schools, colleges, educational/training/ coaching institutions etc., will be opened after consultations with States and UTs. State Governments/UT administrations may hold consultations at the institution level with parents and other stakeholders. Based on the feedback, a decision on the re-opening of these institutions will be taken in the month of July, 2020.

MoHFW will prepare SOP in this regard, in consultation with the Central Ministries/ Departments concerned and other stakeholders, for ensuring social distancing and to contain the spread of COVID-19.

**Phase III**

**.....**

**5. States/Uts, based on their assessment of the situation, may prohibit certain activities outside the Containment zones, or impose such restrictions as deemed necessary."**

98. The guidelines dated 30.05.2020 were to remain in force till 30.06.2020 during which period some of the States have taken a decision not to hold the examination as directed by the UGC. For the purposes of this case it shall be sufficient to notice the decision taken by the Government of Maharashtra as well as the State Disaster Management Authority of State of Maharashtra. State Disaster Management Authority of Maharashtra in its meeting dated 18.06.2020 took a decision not to conduct the final year/terminal semester examination. The Government Resolution dated 19.06.2020 was issued by the Government of Maharashtra where the Government decided that taking into consideration the situation of COVID-19 in the State of Maharashtra final year examination of professional courses cannot be arranged. With regard to non-professional (traditional) courses Government resolved to declare result by way of adopting suitable formula after obtaining in writing from students that they intend to get the Degree without appearing in examination. On 18.06.2020 when the State Disaster Authority took the decision and the Government of Maharashtra issued Government Resolution the guidelines issued by the Ministry of Home Affairs dated 30.05.2020 did not expressly permit conduct of examination in Schools/ Colleges. In paragraph 5 of the guidelines dated 30.05.2020 issued by the Ministry of Home Affairs, States/Uts, based on their assessment of

A the situation, were empowered to prohibit certain activities outside the Containment Zones, or impose such restrictions as deemed necessary. When the State Disaster Management Authority and the State Government (Maharashtra) took a decision not to conduct examination, the said decision was well within the guidelines issued by the Ministry of Home Affairs. Further Disaster Management Authority of the State is B empowered under Section 38 to take measures for the purpose of prevention of disaster and mitigation. The decision taken by the State Disaster Management Authority on 18.06.2020 as well as the State Government's Resolution dated 19.06.2020 insofar they decided not to hold final year/terminal semester examination by 30.09.2020 was well C within the jurisdiction of the said Authority. We have noticed that guidelines of UGC dated 06.07.2020 directed all Universities/Colleges to complete their examinations by 30.09.2020. The question is as to whether the State Disaster Management Authority could have taken a decision contrary to the directive of the University Grants Commission to complete the examination by 30.09.3030. Reliance has been placed on Section 72 D of the Disaster Management Act, 2005 which provision gives overriding effect to the provisions of Act, 2005. Section 72 of the Act, 2005 is quoted below:

> "**Section 72. Act to have overriding effect**.—The provisions of this Act, shall have effect, notwithstanding anything inconsistent E therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

99. The Disaster Management Act, 2005 empowers the State Disaster Management Authority as well as the State Government to F take decision for prevention and mitigation of a disaster and the action taken by the authorities under the Disaster Management Act have been given overriding effect to achieve the purpose and object of the Act. In case of a disaster the priority of all authorities under the Disaster Management Act is to immediately combat the disaster and contain it to G save human life. Saving of life of human being is given paramount importance and the Act, 2005 gives primacy, priority to the actions and measures taken under the Act over inconsistency in any other law for the time being in force. Section 72 begins with *non obstante* clause. This Court in **State (NCT of Delhi) vs. Sanjay, 2014(9) SCC 772** in paragraph 63 laid down following:

H

"63. It is well known that a non-obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions."

100. The Kerala High Court had occasion to consider Section 72 of the Disaster Management Act in reference to another Central Act that is Land Acquisition Act. The Division Bench of the Kerala High Court (of which one of us Justice Ashok Bhushan was also a member) laid down following in paragraph 69:

69. The Disaster Management Act, 2005 is enacted with a definite object. Various powers have been given to the different authorities, including the DDMA to achieve the objects of the Act. Various statutory plans are to be prepared for Disaster Management. In event it is to be accepted that with regard to taking any action with regard to a premises which is in occupation/ possession/ownership of a private person, the authorities have first to draw proceedings under the Land Acquisition Act and then issue any order under the 2005 Act is to defeat the entire purpose and object of the 2005 Act. The legislature being well aware of the legal consequences have already engrafted Section 72 of the Act which gives overriding effect to the provisions of the 2005 Act, notwithstanding anything consistent therewith contained in any other law. Section 72 of the Act is as follows:

"72. Act to have overriding effect.-The provisions of this Act, shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.""

101. At this juncture, we may also notice the OM dated 06.07.2020 issued by the Ministry of Human Resource Development as well as the decision dated 06.07.2020 of Ministry of Home Affairs. Learned Solicitor General appearing for the University Grants Commission has submitted that in case of National Disaster the decision taken by the National Disaster Authority as well as the decision of the National Executive Committee hold the field and no contrary decision can be taken by a

State Disaster Management Authority or State Government. It is submitted that on 06.07.2020 the Ministry of Home Affairs in a letter to Union Higher Education Secretary, permitted conduct of examination by Universities and Institutions. The decision of the Ministry of Home Affairs is placed on record which is to the following effect:

"Press Information Bureau

Government of India

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Ministry of Home Affairs permits conduct of examinations by Universities and Institutions

New Delhi, July, 6 2020

Ministry of Home Affairs, in a letter to Union Higher Education Secretary, today permitted conduct of examinations by Universities and Institutions. The final Term Examinations are to be compulsorily conducted as per the UGC Guidelines on Examinations and Academic Calendar for the Universities; and as per the Standard Operating Procedure (SOP) approved by the Union Ministry of Health & Family Welfare.

*****"

102. The Ministry of Human Resource Development issued an OM dated 06.07.2020 which is to the following effect:

"Government of India

Ministry of Human Resource Development

Department of Higher Eduction

Shastri Bhawan, New Delhi,

Date the 6th July, 2020

OFFICE MEMORANDUM

Subject: Instructions for conduct of examination regarding.

A large number of examinations of the Universities, IIT-JEE(Mains & Advance), NEET etc are scheduled to be held in the coming months. In order to ensure safety of the examinees, as also their academic interest, the following action may be taken.

1. Final Term Examinations should be compulsorily conducted as per UGC Guidelines on Examinations and Academic Calendar for the Universities dated 29.04.2020 which have been again resolved today i.e. 06th July, 2020.

2. All examination may be conducted on 30th September, 2020.

3. Taking into consideration the academic interest of large number of students, MHA has agreed to the request of MHRD and granted exemption for the opening of educational institutions for the purpose of holding examinations/evaluation work for Final Term Examinations of the Universities/Institutions.

4. MHRD has formulated detailed SOP for conduct of examinations with precautions to be taken in view of COVID-19 situation. This has been vetted by the Ministry of Health and Family Welfare. A copy of the same is enclosed to ensure safety to all.

5. Previous instructions regarding "Work From Home" sent vide letter dated 30.06.2020 will not apply to the officers, faculty and non-Teaching Staff who are involved in Examination/Evaluation/ Admission work.

Sd/-

(Vidya Sagar Rai)

Under Secretary to the Govt. of India."

103. A perusal of the OM dated 06.07.2020 indicates that the Ministry of Home Affairs has agreed to the request of the Ministry of Human Resource Development and granted exemption for the opening

of educational institutions for the purpose of holding examinations/ evaluation work for Final Term Examinations of the Universities/ Institutions. The said OM as well as letter of the Ministry of Home Affairs cannot be read to mean that it fettered the jurisdiction of the State Authority to take a decision considering the situation in a State with regard to conduct of examinations. The cumulative effect of OM dated 06.07.2020 and letter dated 06.07.2020 shall be that Government of India granted exemption for holding the examinations which shall be treated as exception to the guidelines dated 29.06.2020 issued by the Ministry of Home Affairs where Schools, Colleges, educational and coaching institutions were to remain closed till 31.07.2020. The said OM and letter dated 06.07.2020 permitting holding the examinations shall not fetter the power of the State Disaster Management Authority to take appropriate measures to contain the Disaster in the State. It is relevant to notice that State Disaster Management Authority of the State of Maharashtra held meeting on 13.07.2020 and took the following decision:

> "……
>
> After detailed deliberations in the meeting, the following decision was taken:-
>
> 1. As per the revised guidelines issued by the University Grants Commission on July 6, 2020, it is not possible to conduct examinations in the State in case of COVID-19. Therefore, the decision taken by the Government on June 19, 2020 regarding the final session/final year examinations of non-professional (traditional) as well as professional courses was upheld.
>
> 2. The University Grants Commission should be re-requested as it is not possible to conduct the examination as per the guidelines."

104. With regard to conduct of examinations, the State authorities are competent to assess the situation in a particular State regarding possibility of holding of examinations. No State shall permit health of its subject to be compromised that is why overriding power has been given to the State Disaster Management Authority and the State Government with regard to any inconsistency with any other law for the time being in force. We have noticed above that there are no orders or directions in the guidelines of the National Disaster Management Authority or National

Executive Committee fettering the powers of the State Disaster Management Authority and a State Government to take a decision as to whether examinations by physical mode be permitted in particular State looking to the situation in the State. Coming to the guidelines dated 06.07.2020 of the UGC insofar as it directs completion of final examinations by 30.09.2020 which direction is overridden by the decision of the State Disaster Management Authority and State Government where it resolved not to hold the examinations. We, thus, conclude that direction of the University Grants Commission in its revised guidelines dated 06.07.2020 insofar it directs the Universities and colleges to complete the final year/terminal examinations by 30.09.2020 shall be overridden by any contrary decision taken by a State Disaster Management Authority or the State Government exercising power under the Disaster Management Act, 2005. Learned counsel appearing for the UGC has, in his submission, submitted that UCC shall be ready to consider any request received from any State to allow the Universities to re-schedule the date of final examinations and in the event any request is made to the UGC the deadline for completion of the examination can be extended by the UGC and the date of final examinations can be rescheduled.

**Issue No.7**

105. As noted above, the State Disaster Management Authority (State of Maharashtra) in its meeting dated 18.06.2020 as well as the State of Maharashtra in its Resolution dated 19.06.2020 have resolved to promote the students without taking the final examinations. It is useful to refer to the Government Resolution dated 19.06.2020, which is to the following effect:

"**Government Resolution:**

1. In all non-agricultural universities, deemed universities, self-financed universities and their affiliated colleges for the academic year 2019-20 for organising examinations of final session/final year of graduation/ post-graduation classes the Universities are required to take action as per following point (1) and (2) in A:

**(A) Non-Professional (Traditional) Courses:**

1. If the students of final session/year have gone through in all earlier sessions intend to get degree certificates without

A appearing their examination, by way of obtaining in writing from them by way of adopting suitable formula the Universities should declare result.

2. If the students of final session/year have gone through in all earlier sessions intend to appear the examination, by way of B obtaining in writing from them opportunity of appearing the examination is to be given to them. After taking into consideration the emergence of Covid-19 epidemic at local level and local situation and after discussing with the concerned District Collector & President of Disaster Eradication Authority the Universities should take suitable decision and accordingly C they may declare the time table.

3. In case of the students of final year if there is any backlog, in respect of examinations of their backlog a meeting is to be arranged at Government level with Chancellor and concerned Officers of the University and after discussing the matter in D this meeting suitable decision would be taken.

**(B) Professional Courses (Engineering, Pharmacy, Hotel Management, Management Science, Architecture, Planning, Computer Science, Law, Physical Education, Teaching Science etc):**

E

Taking into consideration the situation of Covid-19 in the State the examinations of final session/final year of Professional Courses cannot be arranged. For those students like non-professional courses the decision has been taken in the meeting of State Disaster Management Authority that action would be taken as per following F point (1), (2) and (3) in above point A. The concerned apex institution of concerned professional courses can make a request for getting approval to the same. In this regard separate communication would be done.

2. This Government Resolution is being released as per the G decision taken in the meeting held on 18th June, 2020 of State Disaster Management Authority formed under Disaster Management Act 2005."

106. The guidelines dated 06.07.2020 categorically directed all Universities/Colleges to hold the examination of terminal semester/final H year, option for not holding the examination was given in the revised

guidelines as well as the earlier guidelines only with regard to intermediate/ year examination. Before us submissions have been addressed by the learned counsel appearing for the petitioners contending that students can be promoted on the basis of previous year assessment and internal assessment which in no manner shall be lowering down the standard of education and the decision taken by the State Government and the State Disaster Management Authority to grant such promotion is perfectly in accordance with law. Referring to Regulations, 2003 it has been submitted that students can be promoted on the basis of cumulative grade point average. It is submitted that students have completed five semesters and no special importance can be attached to the last semester, hence the Maharashtra Government's decision to promote on the basis of previous assessment and internal assessment was in accordance with law.

107. We have already held, while considering Issue No.1, that University Grants Commission Act has been enacted in reference to Entry 66 of List I. The States although have legislative competence to legislate on education including Universities but the State Legislation is subject to Entry 66 List I. The revised guidelines issued by UGC are statutory and referable to University Grants Commission Act, 1956 and shall have precedence as compared to any inconsistent decision taken by the State. We also need to consider as to whether in exercise of power under the Disaster Management Act, 2005, the State or State Disaster Management Authority could have taken any decision with regard to promote the students without undergoing final year/terminal semester examination. The purpose and object of the Disaster Management Act, 2005 is management of disasters and for matters connected therewith. The Disaster Management is a continuous and integrated process of planning,organising, coordinating and implementing measures. The Disaster Management has been defined in Section 2(e) to the following effect:

> **"Section 2(e)-** "disaster management" means a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for—
>
> (i) prevention of danger or threat of any disaster;
>
> (ii) mitigation or reduction of risk of any disaster or its severity or consequences;

A (iii) capacity-building;

(iv) preparedness to deal with any disaster;

(v) prompt response to any threatening disaster situation or disaster;

B (vi) assessing the severity or magnitude of effects of any disaster;

(vii) evacuation, rescue and relief;

(viii) rehabilitation and reconstruction;"

108. The word mitigation has also been defined in Section 2(i) as C follows:

"**Section 2(i)- "**mitigation" means measures aimed at reducing the risk, impact or effects of a disaster or threatening disaster situation;"

109. The exercise of powers by the State Disaster Management D Authority or by the State Government which shall have overriding effect under Section 72 are those exercise of jurisdiction which are within the four corners of the Disaster Management Act, 2005. When the State Disaster Management Authority and State Government take a decision that for mitigation or prevention of disaster it is not possible to hold physical E examination in the State, the said decision was within the four corners of Disaster Management Act, 2005. However, the decision of the Disaster Management Authority or the State Government that students should be promoted without appearing in the final year/terminal semester examination, is not within the domain of the Disaster Management Act, 2005. The decision to promote students and grant Degree by a State if F contrary to any Central enactment or guidelines issued thereunder the Central enactment and the guidelines thereunder shall have precedence by virtue of the same being referable to Entry 66 List I. We, thus, conclude that the State Disaster Management Authority and the State Government has no jurisdiction to take a decision that the students of final year/terminal examination should be promoted on the basis of earlier G years assessment and internal assessment whereas the UGC guidelines dated 06.07.2020 directed specifically to conduct final year/terminal semester examination. The UGC guidelines dated 06.07.2020 in the above respect shall override the decision of the State Government and the State Disaster Management Authority regarding promoting the students, H does not fall within the jurisdiction of the Disaster Management Act,

2005 and shall have no protection of Section 72 of the Disaster Management Act, 2005. We, thus, conclude that the State or the State Disaster Management Authority have no jurisdiction under Disaster Management Act, 2005 to take a decision for promoting the students on the basis of previous performance or internal assessment which decision being contrary to revised guidelines of the University Grants Commission cannot be upheld and has to give way to the guidelines of UGC which is the Authority to issue guidelines for determination and maintenance of standards of education and teaching of the Universities.

110. From the aforesaid discussion, we arrive at the following conclusions:

**Conclusions:**

(1) The Revised Guidelines dated 06.07.2020 issued by the UGC are not beyond the domain of the UGC and they relate to coordination and determination of standards in institutions of higher education.

(2) The Guidelines dated 06.07.2020 are in continuation to the earlier Guidelines dated 29.04.2020 and are not contrary to the earlier Guidelines. We have to look into the substance of the Guidelines to find out the intention and object of the Guidelines. The Guidelines were issued with the object that a uniform academic calendar be followed by all the Universities and final / terminal examinations be held.

(3) The Guidelines dated 06.07.2020 has to be treated to have been issued in exercise of the statutory powers vested in the Commission under Section 12. As per the Statutory Regulations, 2003, it is the statutory duty of the Universities to adopt the Guidelines issued by the UGC. The Guidelines dated 06.07.2020 cannot be ignored by terming it as non-statutory or advisory.

(4) The differentiation made in the Revised Guidelines to hold final or terminal semester examination and to give option for earlier years/intermediate semester for not holding the examination has a rational basis. The differentiation has nexus with the object to be achieved. We, thus, reject the challenge to the revised Guidelines on the ground that there is any discrimination between the students of final year/terminal semester and those of intermediate and first year.

A (5) The revised Guidelines also cannot be termed to violate Article 14 of the Constitution on the ground that one date, i.e., 30.09.2020 has been fixed irrespective of the conditions prevailing in individual States. The date for completion of examination was fixed throughout the country to maintain uniformity in the academic calendar.

B

(6) The Revised Guidelines dated 06.07.2020 as well as Standard Operating Procedures for conduct of examinations circulated vide letter dated 08.07.2020 of UGC as well as O.M. dated 06.07.2020 issued by MHRD clearly shows deep concern with the health of all stakeholders, i.e., students as well as the exam functionaries. Challenge to the Guidelines on the ground of it being violative of Article 21 is repelled.

C

(7) The expression "other bodies" used in opening part of the Section 12 of the UGC Act, 1956 is in reference to other bodies apart from Universities as enumerated under Section 12. The submission that other bodies as occurring in Section 12 should include State Disaster Management Authority or health experts is misconceived. Section 12 never contemplated any such expression. The revised guidelines dated 06.07.2020 are not in breach of Section 12 of 1956 Act.

D

E (8) The Disaster Management Act, 2005 empowers the State Disaster Management Authority as well as the State Government to take measures for prevention and mitigation of a disaster and the action taken by the authorities under the Disaster Management Act have been given overriding effect to achieve the purpose and object of the Act, 2005. Saving of human life has been given paramount importance under the Act, 2005. Primacy have been given to the actions and measures taken under the Act, 2005 over anything inconsistent in any other law for the time being in force.

F

(9) The direction of the University Grants Commission in Revised Guidelines dated 06.07.2020 insofar as it directs the Universities and Colleges to complete the final year/terminal year examination by 30.09.2020 shall be overridden by any contrary decision taken by the State Disaster Management Authority or the State Government exercising power under the Disaster Management Act, 2005.

G

H

(10) The State Governments or State Disaster Management Authority in exercise of power under Disaster Management Act, 2005 has no jurisdiction to take a decision that the students of final year/terminal students should be promoted on the basis of earlier year assessment and internal assessment, which decision being contrary to UGC Guidelines dated 06.07.2020 has to give way to the UGC Guidelines. The UGC Guidelines dated 06.07.2020 specifically directed to conduct the final year/ terminal semester examination which shall override such contrary decision of the State Government or SDMA.

111. In view of our foregoing discussion and conclusion, this batch of cases is disposed of in the following manner:

(1) The prayer to quash the revised guidelines dated 06.07.2020 issued by the University Grants Commission and OM dated 06.07.2020 issued by the Ministry of Human Resource Development and letter dated 06.07.2020 issued by the Ministry of Home Affairs is refused.

(2) The decision taken by the State Disaster Management Authority/State not to hold final year/terminal semester examination by 30.09.2020 in exercise of power under Disaster Management Act, 2005 shall prevail over deadline fixed by the University Grants Commission i.e. 30.09.2020 in respect to the concerned State.

(3) The decision of the State/State Disaster Management Authority to promote the students in the final year/terminal semester on the basis of previous performance and internal assessment being beyond the jurisdiction of Disaster Management Act, 2005 has to give way to the guidelines of UGC dated 06.07.2020 directing to hold examination of final year/terminal semester. The State and University cannot promote the students in the final year/terminal semester without holding final year/terminal examination.

(4) If any State/Union Territory in exercise of jurisdiction under Disaster Management Act, 2005 has taken a decision that it is not possible to conduct the final year/terminal semester examination by 30.09.2020, we grant liberty to such State/Union Territory to make an application to the University Grants Commission for extending deadline of 30.09.2020 for that State/Union Territory

A which shall be considered by UGC and rescheduled date be communicated to such State/Union Territory at the earliest.

112. All writ petitions are disposed of accordingly. The Special Leave Petition No.10042 of 2020 is dismissed.

Kalpana K. Tripathy Matters disposed of.