

Santosh

***IN THE HIGH COURT OF BOMBAY AT GOA******LD-VC-OCW-13 & 14-2020***

Cedric A. Vaz and another. .... Applicants.

Versus

State of Goa and others. .... Respondents.

Mr. A. F. Diniz, Senior Advocate with Mr. R. Menezes and Nigel Fernandes, Advocates for the Applicants.

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

Mr. Pravin Faldessai, Asst. Solicitor General of India for the Union of India.

***WITH******LD-VC-OCW-15-2020***

Dr. Adwait Desai and others. .... Applicants.

Versus

State of Goa and others. .... Respondents.

Mr. A. F. Diniz, Senior Advocate with Mr. R. Menezes, and Nigel Fernandes Advocates for the Applicants.

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

Mr. Pravin Faldessai, Asst. Solicitor General of India for the Union of India.

***WITH******LD-VC-OCW-16-2020***

Dr. Adwait Desai and others. .... Applicants.  
 Versus  
 State of Goa and others. .... Respondents.

Mr. A. F. Diniz, Senior Advocate with Mr. R. Menezes, and Nigel Fernandes Advocates for the Applicants.

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

Mr. Pravin Faldessai, Asst. Solicitor General of India for the Union of India.

Mr. D. Lawande, Advocate for the Intervenor in LD-VC-OCW-10-2020.

***Coram : M.S. Sonak, J.***

***Date : 19<sup>th</sup> May, 2020.***

**P.C. :-**

Heard learned Counsel for the parties.

2. On 15<sup>th</sup> May, 2020, an order was made declining stay on holding of the Standard X<sup>th</sup> examination which is scheduled to commence from 21<sup>st</sup> May, 2020. Since then, the situation has changed, and changed not for the better in so far as COVID-19 situation is concerned.

3. Firstly, the lock-down which was to conclude by 18<sup>th</sup> May, 2020, has now been extended by the MHA order dated 17<sup>th</sup> May,

2020, upto 31<sup>st</sup> May, 2020. Secondly, when the decision was taken to hold examination on or about 6<sup>th</sup> May, 2020, Goa did not have a single COVID positive case. On 15<sup>th</sup> May, 2020, no doubt, some positive cases were detected from out of the persons entering into Goa consequent upon limited descaling of the borders. However, as of today, it is pointed out that there are at least about 31 positive cases which are being treated in the State of Goa.

4. The learned Advocate General stresses that only persons coming from out of Goa have been detected COVID-19 positive. Mr. Diniz, and Mr. Menezes, appearing for the Petitioners point out that the actual number as of today is 42. The learned Advocate General, however, states that he is not in a position to confirm this number at this point of time.

5. Suffice to note that there is a change in the circumstances and, therefore, it is not possible to simply reject the applications filed on the ground that they are in the nature of a mere review of the earlier order.

6. In any case, the 15<sup>th</sup> May, 2020 order required the State and the Board to continuously monitor the situation and take suitable decisions, depending upon how the situation develops. Under no circumstances was the State or the Board to compromise on the issues of health, safety and well-being of the students and their parents, as

also the staff involved in exercise of holding of examination.

7. The learned Advocate General states that the position was reviewed and after considering the changed scenario as well, the State and the Board are of the opinion that the examination should proceed as scheduled.

8. The State and the Board are directed to file additional replies by tomorrow on this aspect. The replies may also address certain additional concerns like the issue of sanitisation as provided in the MHA order, issue of transportation arrangement and traffic plans, so as to ensure that there is no clogging of traffic at or around examination centres and breach of social distancing norms, health emergency measures, including access to availability of ambulances at the examination centres in case need therefor arises.

9. The learned Counsel for the Petitioners have pointed out that there is some change in the phraseology of the relevant clauses of the MHA order dated 17<sup>th</sup> May, 2020 when it comes to holding of any activities in Schools and Colleges. They have also pointed out that there is an embargo on holding even academic functions which, according to them, would include examinations involving more than 50 persons.

10. The learned Advocate General has, no doubt, argued that there is absolutely no significant difference between the clauses of the

earlier order and the present order of the MHA. He also submitted that the present order in fact relaxes several of the conditions included in the earlier order. He submits that had the Central Government intended to prohibit holding of examinations, then, the Central Government would have clearly stated so in the orders issued. He submits that the fact that there is no specific bar, clearly implies that no prohibition was ever intended. He reiterates that adequate measures, as indicated in the MHA orders, have in fact been taken and will be taken, so that there is no compromise on the issue of health and safety.

11. Though the Central Government has not been impleaded as party in these two Petitions, leave is granted to now implead the Central Government, as Respondent in both these Petitions. The applications for amendment, as filed, are also allowed.

12. The learned Asst. Solicitor General of India Mr. Pravin Faldessai who appears today in the Court is requested to obtain urgent instructions from the MHA as to whether any of the clauses of the MHA's order dated 17<sup>th</sup> May, 2020, prohibit even holding of the examinations in Schools and Colleges.

13. The MHA is directed to impart these instructions to the learned Asst. Solicitor General of India at the earliest, so that the same can be placed before this Court tomorrow itself. It is

emphasized that some stand, one way or the other, will have to be taken by the MHA and this Court will not appreciate any excuse that there has been some difficulty in obtaining instructions. The situation is of urgent nature and can obviously brook no delay. It is not in the interest of any one that any uncertainty lingers with the issue of holding of examination.

14. Accordingly, these matters are posted for tomorrow at 10.00 a.m. for further consideration. If possible, the State, the Board and the MHA furnish copies of their responses by e-mail to the learned Counsel appearing for the Petitioners in these Petitions.

15. S.O. to 20<sup>th</sup> May, 2020 at 10.00 a.m.

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