

Daily Orders for Case WA 379/2024

Sl. No	Judge(s) Name	Date of Order	Daily Order
1	K.SOMASHEKAR AND RAJESH RAI K	07/03/2024	<p>For the reasons assigned in the affidavit accompanying the applications, I.A.Nos.1/2024, 2/2024 and 3/2024 are hereby allowed. However, a week's time is granted to comply the office objections. ORDERS ON I.A.4/2024 IN W.A.No.379/2024 & 380/2024 The appellant / State of Karnataka has questioned the legality and correctness of the order dated 06.03.2024 passed by the learned Single Judge in W.P.No.26489/2023 C/w. W.P.No.24745/2024, wherein the learned Single Judge has allowed both the writ petitions filed by the petitioner therein and has quashed the Notification No.EP 209 SLB 2023 dated 06.10.2023 (Annexure-E) and Notification No.EP 209 SLB 2023 dated 09.10.2023 (Annexure-G) issued by the Government. 2. We have heard Shri Vikram Huilgol, learned Additional Advocate General for the appellants / State and so also the learned counsel Shri K.V.Dhananjay for the respondent in both the appeals. Learned AAG, by emphasizing the notifications dated 06.10.2023 (Annexure-E) and 09.10.2023 (Annexure-F) would contend that in pursuance of these two notifications, the Government has passed the order dated 16.11.2023 permitting to conduct the examination for 5th, 8th and 9th Standards so also, to 11th Standard subject to conditions. The said order passed by the Government under Section 22 of the Karnataka Education Act, 1983 gives a right to the Government that the Government 'may make' Rules for all the matters connected with respect to the implementation of the examination system and to conduct examination so also the pattern of examination system to which different classes of educational institutions should conform. Further, the notification dated 09.10.2023 (Annexure-F) issued by the Government under Section 15(a)(iv) of the Karnataka Education Act. Such being the scenario, the learned Single Judge erroneously concluded that the main say of the Government is that the power to issue impugned notification was under Section 7, while Section 22 and 145 of the Education Act provides additional option of achieving same result. 3. Admittedly, the respondents have not raised any challenge in respect of the order passed pursuant to the notification issued by the Government as per Annexures-E and F. There was no cause of action for the respondents since the writ petitions filed by them were premature. Further, when Rule 22(2) specifically reads that the Government 'may make' such Rules, learned Single Judge wrongly came to the opinion that the Government would have to be guided by prior framed Rules. Further, the learned AAG would contend that the impugned order has been passed merely four days prior to the date on which the proposed assessment were scheduled to commence for classes of 5th, 8th and 9th Standards. Further, the proposed assessment has already been conducted for Class 11th Standard. 4. According to the learned AAG, no stay was operative during the pendency of the writ petitions. Petitioners have undertaken all the preparatory activities towards conduct of the proposed assessment and grave prejudice would be caused to the applicants if they are disabled at this juncture from proceeding with proposed assessment. 5. The learned AAG also would contend that the Schools across the State have adopted the curricula, modelled lesson plans, and structured the teaching methodology having regard to the requirements of the proposed assessment. Therefore, requiring the schools to conduct internal examination at this juncture, and permitting individual schools to follow such examination patterns as they each deem fit, would be prejudicial to the interest of the students, as also of the schools, as they would be required to hurriedly conduct examinations. 6. Additionally, he would contend that if the order is not stayed during the pendency of the writ appeals, individual schools would be required to conduct internal examinations at this juncture. As schools are not, at the moment, prepared to conduct the same, delay would be occasioned in conducting the same. Such delay could even affect the academic calendar for the following academic year. He also contends that there are as many as 42,250 Government Schools and 2660 aided schools, thus, totaling to 46,000 schools in the State which have made all such preparation for the assessment and there are as many as 28 lakh students who are prepared to write</p>

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			<p>examination, which is scheduled on 11.03.2024. At this juncture, if the order passed by the learned Single Judge is not stayed, then there would be irreparable loss and injury caused to the students, the parents so also, the school authorities around the State, which cannot be compensated in any manner. Accordingly, he prays to allow I.A.4/2024 in both these appeals and grant interim order as prayed for. 7. In order to buttress his arguments, he relied on a judgment passed by a learned Single Judge of this Court in the case of High Court of Karnataka, Bangalore v. H.S.Basavanna reported in 1997(5) KLJ 436. 8. Per contra, the learned counsel for the respondent by supporting the impugned order passed by the learned Single Judge would contend that the learned Single Judge rightly passed the order in both the writ petitions after considering the entire material placed before the learned Single Judge. He would further contend that the provisions similar to Section 7 of the Education Act has been interpreted by the Apex Court in OSPCB's case as providing option to Government to issue Notifications to regulate subject matter, without recourse to framing Rules, would nevertheless, fall foul of specific provisions in Section 145(4) of Education Act. The Said provision provides procedure for issuance of 'Notifications', i.e. by 'previous publication'. Hence, the Government has failed to follow the rigor contemplated in Section 23 of the Karnataka General Clauses Act. He would also emphasize that when the Government intends to bring changes to examination system affecting such large number of students it would be desirable as well as mandatory to follow democratic procedure stipulated. As such the learned Single Judge by considering the entire aspect of the matter passed the well reasoned order, which does not call for any interference by this Court granting any interim order. Accordingly, he prays to dismiss the application for stay in these appeals. 9. It is pertinent to mention at this juncture, that despite providing sufficient opportunity to the learned counsel for the respondent to advance his arguments on the interim application filed by the State, after arguing for considerable length of time, the learned counsel emphasizes this Court to grant another four hours time and thereby he would complete his arguments on the merits of the matter. 10. Having heard the learned AAG so also, the learned Advocate for the respondent and on perusal of entire materials made available before us including the impugned order passed by the learned Single Judge, it is relevant to refer the notifications issued by the Karnataka Government dated 06.10.2023 (Annexure-E) and 09.10.2023 (Annexure-F). Annexure-E states that Karnataka School Examination and Evaluation Board is the Competent Authority to conduct examination under Section 22 of the Karnataka Education Act. The notification dated 09.10.2023 (Annexure-F) states that the Government of Karnataka has granted permission to conduct examinations to the Karnataka School Examination and Evaluation Board from the year 2023-2024 for 5th, 8th and 9th Standards on formative assessment and for 11th standard by way of annual examination under Section 15(a)(iv) of the Karnataka Education Act. 11. In pursuance of these two notifications, posteriorly the Government of Karnataka passed the Government proceedings and passed the order dated 16.11.2023 to conduct the examination for 5th, 8th, 9th and 11th standards with terms and conditions. As could be seen from the records the respondent has not challenged the said Government proceedings and the order dated 16.11.2023. Inspite of the Notifications as per Annexures-E and F, the learned Single Judge has failed to address Section 22 and Section 15 of the Karnataka Education Act. Instead he relied on the provisions of Section 7 and Section 145(4) of the Karnataka Education Act. We have carefully gone through the judgment of the learned Single Judge stated supra, relied by the learned AAG. In the said judgment, the learned Single Judge in similar circumstance held as under: "Normally this Court would have taken cognizance of the fact that the use of the word 'may' in Section 22 would give the Government the option to act even de hors any rules. There is an aspect of significance which this Court needs to take into account. The question of holding a public examination in this case, as the Court is informed, is a decision which concerns and affects something like 10 lakh students. The magnitude of the matter is something which the Court has to take serious note of. The second aspect of the matter is that it is not an inconsequential</p>

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			<p>decision but it is an extremely major decision. It is almost a total overhaul of the pre-existing system. As far as the academic sphere is concerned, the law is very clear namely that the curriculum or the various aspects relating to the education fields cannot be altered at short notice to the prejudice of the parties concerned. This is an inflexible principle and it is the only one that will have to be applied in the present instance. Admittedly as far as the students and teachers and their parents are concerned, at no point of time prior to 29.1.1996 was it made known to them that the public examination would be held at the end of the 7th standard.” 12. As rightly contended by the learned AAG for the petitioner, in the case on hand the assessments are scheduled to commence for classes 5th, 8th and 9th standards as on 11.03.2024 and the time-table for the assessment was published on 13.12.2023 itself. The proposed assessment has already been conducted for 11th standard and the competent authorities have undertaken all the preparatory activities towards the conduct of the proposed assessment. Nevertheless, there was no such interim order existing in the writ proceedings. In such circumstances, if the order is not stayed, the same would prolong the present situation of uncertainty, which is extremely detrimental to the student community virtually on the eve of their examination. 13. For the reasons discussed supra, without expressing any opinion on the merits of the matter, we are of the considered view that the impugned order passed by the learned Single Judge is required to be stayed. Accordingly, we pass the following: ORDER I.A.4/2024 in both these appeals are allowed. Consequently, the operation of the impugned order dated 06.03.2024 passed by the learned Single Judge in W.P.No.26489/2023 C/w. W.P.No.24745/2024 is stayed, until further orders, pending disposal of these writ appeals.</p>