

Arathi Sreevalsalan, vs Union of India,

Arathi Sreevalsalan, vs Union of India,

SooperKanoon Citation : sooperkanoon.com/1613230

Court : Kerala

Decided On : Mar-17-2021

Judge : Honourable the Chief Justice Mr.S.Manikumar,Honourable Mr. Justice Shaji P.Chaly

Appeal No. : WA/419/2021

Appellant : Arathi Sreevalsalan,

Respondent : Union of India,

Judgement :

W.A. No. 419/2021 :1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR & THE HONOURABLE MR. JUSTICE SHAJI P.CHALY WEDNESDAY, THE 17TH DAY OF MARCH 2021 / 26TH PHALGUNA, 1942 WA.No.419 OF 2021 AGAINST THE JUDGMENT DATED 17.03.2021 IN WP(C) 1961/2021(U) OF HIGH COURT OF KERALA APPELLANT/WRIT PETITIONERS:

1 ARATHI SREEVALSALAN, AGED 23 YEARS D/O.SREEVALSAN M.A., SREENIDHI, GREEN PARK AVENUE, AYYANTHOLE, THRISSUR DISTRICT-680 001. 2 MISHA RAVI, D/O.RAVI.M, MANNAMKUNNATH HOUSE, THOTTAKARA P.O., OTTAPPALAM, PALAKKAD-679 102. 3 MYTHREYI NAIR A.G., D/O.AJITH KUMAR K.G., GOVINDA NIVAS, MUTHOOR P.O., THIRUVALLA-689 111. 4 MUHAMMED NIZAM JAFAR K., S/O.JAFFER K.M., BAITHUL MARYAM, VADAKARA P.O., CALICUT-673 101. 5 DHANYA PANKAJAKSHAM, D/O.PANKAJAKSHAN THADATHIL, FLAT 66, PLATINUM PRIDE APARTMENT, ELAMAKKARA, ERNAKULAM-682 026. 6 FATHIMA NAZEER, D/O.SUMAYYA NAZEER, KHIZADAYIL HOUSE, IRIMBALASSERY, NELLAYA P.O., PALAKKAD-679 335.

W.A. No. 419/2021 :2 7 ASHWATHI BALAN, D/O.BALAN K., KRISHNALAYAM KOLAYOD, P.O.CHITTARIPARAMBA, KANNUR-670 650. 8 FATHIMA SHAHANA SHERIN, AGED 22 YEARS D/O.MUHAMMED RAFEEQ K.P., KALIPARAMBIL HOUSE, PATTAMBI ROAD, PERINTHALMANNA P.O., MALAPPURAM-679 322. BY ADVS. SRI.C.P.MOHAMMED NIAS SRI.S.AJITH (PALAKKAD) SMT.V.NAMITHA RESPONDENTS/RESPONDENTS:

1 UNION OF INDIA, REPRESENTED BY SECRETARY, MINISTRY OF LAW AND JUSTICE, NEW DELHI-110 001. 2 STATE OF KERALA, REPRESENTED BY SECRETARY, MINISTRY OF HEALTH, GOVT.SECRETARIATE, THIRUVANANTHAPURAM-695 001. 3 KERALA UNIVERSITY OF HEALTH SCIENCES, REPRESENTED BY ITS REGISTRAR, MEDICAL COLLEGE P.O., THRISSUR-680 596. 4 MEDICAL COUNCIL OF INDIA, POCKET 14, SECTOR-8, DWARKA PHASE I, NEW DELHI-110 077. 5 COMMISSIONER FOR ENTRANCE EXAMINATIONS, HOUSING BOARD BUILDING, SANTHI NAGAR, THIRUVANANTHAPURAM-695 001. 6 KERALA MEDICAL COLLEGE, MANGODE, CHERPULASSERY, PALAKKAD-679 503. 7 MALABAR MEDICAL COLLEGE HOSPITAL AND RESEARCH CENTER,

ULLIYERI, KOZHIKODE-673 323. 8 SREE NARAYANA INSTITUTE OF MEDICAL SCIENCES, CHALAKKA, NORTH KUTHIYATHODU P.O., ATHANI, NORTH PARAVOOR ROAD, ERNAKULAM DISTRICT-683 594. 9 SUT ACADEMY OF MEDICAL SCIENCES, VENCODE P.O., VATTAPPARA, THIRUVANANTHAPURAM-695 028.

W.A. No. 419/2021 :3 10 DR.SOMERVELL MEMORIAL CSI MEDICAL COLLEGE HOSPITAL, KARAKONAM, NEYYATTINKARA P.O., THIRUVANANTHAPURAM-695 504. R1 BY SRI.P.VIJAYAKUMAR ASG, R2 BY SRI. TEK CHAND, SR. GOVERNMENT PLEADER R3 BY SRI.P.SREEKUMAR, SC, KUHS, R4 BY SRI.TITUS MANI, SC MCI THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 17.03.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: W.A. No. 419/2021 :4 Dated this the 17th day of March, 2021.

JUDGMENT

SHAJI P. CHALY, J.

This appeal is filed by the petitioners in W.P.(C) No. 1961 of

2021 challenging the judgment dated 18.02.2021, whereby the learned single Judge dismissed the writ petition holding that the appellants, who were the students of the Kerala Medical College, Palakkad, had been allotted to respondents 7 to 10 colleges on the basis of the directions issued by this Court in Ext. P1 judgment.

2. In Ext. P1 judgment, it was specifically directed that the

respective students would be eligible to appear for the second professional MBBS examinations on the basis of the list which was annexed along with the judgment. Therefore, relying upon the directions in Ext. P1 judgment that the examinations which were originally scheduled to be conducted in February, 2021 were not commenced so far and therefore, the prayer made in the writ petition for permitting

the appellants/writ petitioners to attend the examination which is now to be conducted in February, 2021, which is admittedly the postponed examinations which originally ought to have been conducted in August-September, 2020 in February, 2021, cannot be allowed. It is, thus, challenging the legality and correctness of the said

W.A. No. 419/2021 :5 judgment, this appeal is preferred by the writ petitioners.

3. The paramount contention advanced in the appeal is that the

learned single Judge was not right in disregarding Exts.P3 to P5 certificates issued by respondents 7 to 9 colleges, which would categorically show that the appellants satisfy all the criteria imposed by the University in Ext.P2 pertaining to the attendance and internal assessment to appear for the second professional MBBS examinations. It is also contended that the learned single Judge was not correct in relying upon the statement made by the Kerala University of Health

Sciences-third respondent that the examination scheduled in February, 2021 is made for their senior batch, which was to be held in August-September, 2020 and not for the appellants. It is also contended that the examination conducted by the University in February, 2021 is the examination for the second professional MBBS course for the students reallocated to the 5 th Semester course, subject to them specifying the requisite cafeteria as to the attendance, minimum internal marks and clinical postings etc.

4. It is the case of the appellants that the appellants have

complied with all the requirements that are to be satisfied, so far as the 5th semester is concerned and therefore, they are eligible and entitled to participate in the examination. W.A. No. 419/2021 :6

5. In fact, the University had filed a statement before the writ

court specifying that the examination conducted in February, 2021 was scheduled actually during August-September, 2020. However, due to the pandemic covid-19 and the restrictions imposed, the examinations could not be conducted for the said

batch and it was accordingly that on re-opening the institutions, the University scheduled the examinations. It is also pointed out that the second professional MBBS which the appellants are attending has a duration of 3 semesters ie., semesters 3 to 5 and the second professional training, includes theory and practical subjects.

6. That apart, it was pointed out that in terms of the MBBS

Regulations framed by the Medical Council of India, a second professional student need not have to pass the second professional examination for continuing his studies in the third professional Part I and as a result, once the students successfully completes the second professional training with the required attendance, he could appear in the examination and move on to the third professional Part I, independent of the result of the examination. Therefore, it was highly necessary to ensure that the students of the second professional MBBS course get proper training in the theory and practical subjects as they will not get any opportunity to redo the training, even if they failed in the examinations. Other contentions were also raised by the University

W.A. No. 419/2021 :7 justifying their stand that the appellants cannot be permitted to participate in the examinations conducted during February, 2021 for the purpose of a different batch other than that of the appellants.

7. Anyhow, the learned single Judge was satisfied that the

appellant did not acquire the qualification to participate in the second professional examination having not undertaken the practical and clinicals enabling them to sit for the examinations. Fact remains, the appellant could not secure any interim order in the writ petition, consequent to which the examination scheduled during February, 2021 is over.

8. When the writ appeal was taken up for hearing, today, the

learned counsel for the appellants submitted that they may be permitted to participate in the ensuing examinations conducted by the University. However, the learned Standing Counsel for the University stoutly opposed the proposal mooted

by the learned counsel, for the reason that the appellants have not acquired sufficient attendance and having not attended the practical and clinical classes, they cannot be permitted to participate in the examination conducted for other students who have participated in the practical and clinical classes.

9. Taking into account the above said aspects and the developments that have taken place during the course of time while W.A. No. 419/2021 :8 the writ petition and the writ appeal were pending, we are not inclined to grant any reliefs as is sought for by the appellants.

10. We are also of the view that the appellants have not made out any case so as to disprove the stand adopted by the University that the appellants are not qualified to sit for the second professional MBBS examination.

11. Therefore, we have no hesitation to hold that there is no

jurisdictional error or other legal infirmities in the judgment of the learned single Judge justifying interference in an intra court appeal filed under Section 5 of the Kerala High Court Act, 1958. Needless to say, the writ appeal fails and accordingly, it is dismissed. S. MANIKUMAR, CHIEF JUSTICE. SHAJI P. CHALY, JUDGE. Rv

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com