

C.S DIAS,J.

W.P (C) Nos 12817 and 12676 of 2020

Dated this the 29th day of June, 2020.

COMMON ORDER

These writ petitions are filed, inter-alia, seeking a direction to the Kerala University to postpone the examinations scheduled on 1.7.2020.

2. W.P(C) 12817/2020 is filed by twenty three students, who are pursuing their fourth semester Post Graduate Courses under the University. It is their grievance that the University, regardless of the University Grants Commission (UGC) (Minimum Standards of instructions for the Grant of the Master's Degree through Formal Education) Regulations, 2003, has notified the examinations. The petitioners contend that as per the Regulations, there has to be a minimum of ninety actual teaching days in every semester. But, the petitioners had only twenty-nine teaching days in the fourth semester till 9.3.2020. The classes were suspended on 9.3.2020 due to

the COVID-19 pandemic, and from 24.3.2020 the entire Nation went on a lockdown, which was extended till 31.5.2020. Although a few colleges conducted online classes in the second week of June, the classes were only for one hour per day. As practical classes cannot be held online, the University has not fulfilled the said stipulation also. But, to the utter shock of the petitioners, the University has issued Ext P4 notification, scheduling the examinations from 1.7.2020 to 8.7.2020. Despite the petitioners submitting Exts P5 and P6 representations to the University, they have kept mum. The petitioners' study materials are left in their Colleges and Hostels, which have now been converted to quarantine centers. The petitioners cannot continue the research under their Guide, in view of the travel restrictions. The petitioners would be put to severe hardships by the arbitrary scheduling of the fourth semester examinations. The UGC has by Ext P9 recommended for the cancellation of examinations for the

final year students across the Country. Undeterred, the University is going ahead with the examinations. Hence, the University may be directed to postpone the examinations.

3. WP(C) 12676/2020 has been filed by a sixth semester law student of the Kerala Law Academy, Law College. She is aggrieved by the University notifying the fifth semester B.A.,LL.B/B.Com., LL.B (Integrated – Five Year Courses) Degree examinations on 1.7.2020. She contends that the Government of Kerala has issued notification dated 11.3.2020 suspending all classes for schools and institutions, including professional colleges sine die. The State Government has issued instructions to avoid social gatherings, public functions and travel. The College has students from all across the State, including from the neighbouring State. Due to the lockdown, most of the students are stranded in different parts of the Country

and abroad, including containment zones and hotspots. The sudden call for the examinations would result in a mass gathering of nearly 400 students in a single room. The news reports state that there are various asymptomatic patients in the State, who would be silent carriers of the disease. Hence, there is a chance of the spread of the disease. Similarly, the students who have gone to the homes in the other States and abroad, would have to go into fourteen days compulsory quarantine, when they return to the State. Therefore, the call for the examination infracts the fundamental rights of the petitioner guaranteed under Articles 14 and 21 of the Constitution of India. Hence, the petitioner seeks for postponing and rescheduling of the examinations.

4. Sri.Thomas Abraham, the learned Standing Counsel appearing for the University has filed detailed statements in both the writ petitions contending as follows:

(i) The University had conducted S6 CBCSS/CR examinations (for undergraduate courses) successfully from 21st May – 15th June, 2020. The students were given option to select their examination centres as per their convenience, either in the main centres or in the sub centres arranged, not only within the jurisdiction of the University but also in the centres allotted in all the 10 districts outside the territorial jurisdiction and in Lakshadweep. The University had deputed two staff members each, by posting them as observers to all the sub centres including Lakshadweep. Allocation of sub centres and additional centres outside the jurisdiction of the University was done with the active involvement of the members of the University Syndicate and the Senate, Principals of the respective colleges, the Director of Collegiate Education and in some cases with the support of local Self Government institutions and elected

representatives. The students' attendance was near total, as in any other examinations conducted in normal circumstances. Not a single adverse report has been received.

(ii) The University has strictly followed the UGC guidelines. A Division Bench of this Court by Annexure 1 judgment in W.A No.1711/2018, has rejected the request for postponement of examinations on identical grounds, upholding the contention of the University regarding the need to adhere to the academic calendar, and the impact of the academic calendar regarding the legal obligations of the college authorities to make all possible arrangements to compensate any possible loss of classes, through alternate arrangements.

(iii) The University has scheduled all the pending examinations from 19th June to 10th of July. The students were given the option to choose any centre within the

jurisdiction of the University or in the selected seven district centres outside the University. All students were intimated about this facility through official website, Newspapers, TV channels, social media including the Whatsapp groups of all Principals. The students have positively responded to the arrangements made, particularly in view of the fact that they got accommodated to their nearby places to write the examinations. Only a few students, who form a microscopic minority, want to postpone the examinations indefinitely, with an intention to thwart the examination schedule.

(iv) With respect to the fourth semester Post Graduate students, the first notification for conduct of examinations was issued way back on 3.3.2020. It was specifically mentioned in the notification that the examinations would commence on 7.5.2020, but the University could not proceed with the examinations due to the lockdown.

Accordingly, the examinations are rescheduled to 1.7.2020.

(v) During the lockdown period, as per the instructions from the Minister for Higher Secondary Education to the Vice Chancellors in the State, the University had as per Annexure 2 informed the Principals of all affiliated colleges through video-conferencing, to conduct online classes to complete the remaining portions on time. Later, a report was sought for from the colleges regarding the same. There was no complaint from any college regarding non-completion of the portions. Hence it is assumed that the allegation of loss of classes owing due to lockdown is not genuine.

(vi) The University had received requests from students to postpone the date of submission of project report. Finding the demand genuine, the University has decided to extend the last date for submission of project report by fifteen days, after the last theory paper

examination.

(vii) The University has prepared a set of COVID-19 protocol guidelines for the conduct of the examinations, as per the Health protocol issued by the State Health Department and the Government of Kerala. The University has provided a special grant of Rs 5,000/- for colleges with candidates below 500 and Rs 10,000/- for colleges with more than 500 candidates to make all the necessary arrangements to follow the protocol procedures. The Syndicate and the Senate members have visited all the examination centres to check the COVID-19 protocol arrangements.

(viii) Regarding the conduct of examinations, the cardinal document is the academic calender. As per Annexure 3, the examinations for the fourth semester PG courses had been published and sent to all colleges. It is specifically mentioned that any deficiency in the classes

shall be made good either by conducting classes on holidays/Saturdays.

(ix) There are altogether 85 colleges affiliated to the University, which offer post Graduate Courses. There are around 3500 regular candidates and 400 supplementary candidates who have registered for the examinations sought to be postponed. Only a negligible number of students are behind the present move to get the examinations postponed, but a majority of students are desirous of getting the course completed at the earliest. From the official reports regarding the spreading of COVID-19 disease, there is strong warning that in the days ahead, particularly after August 2020, the situation may further aggravate, which cannot be discarded. Hence, any postponement can ultimately result in a situation with unimaginable ramifications.

(x) The postponement of the examinations indefinitely

will necessitate the entire process to be restarted after the conduct of the examinations, the process of valuation includes steps like false numbering of answer scripts, constituting valuation camps, conducting valuation camps, tabulation etc. Any disruption in any of the said process would certainly affect the smooth functioning of the entire schedule of work which will definitely lead to course lag to students.

(xi) The University has also taken a decision to conduct additional examinations for those candidates who owing to the present difficulties cannot appear for the ongoing examinations, provided request is made by them for valid reasons. In order to ensure justice for all the students of the University, it has been decided to treat such examinations as special examinations and not to collect any additional examination fee for the same. The greatest advantage of the students who avail the said facility is that

the said special examination will not be considered as a supplementary examination and on the alternative will have the legal status of an ordinary examination. Hence, the University prayed that the writ petition may be dismissed.

(emphasis supplied)

5. In respect of WP(C) No.12676/2020 also a statement on similar lines as extracted above has been filed.

6. The petitioners in WP(C) 12817/2020 have filed I.A No.1/2020 producing Exts P10 to P14 documents. They have, inter alia, contended that the CBSE and ICSE have cancelled the 10th and 12th standard examinations. The list of other major Universities who have postponed or cancelled the examinations have also been furnished. They have produced documents to substantiate that the University of Calicut, the Mahatma Gandhi University and Kannur University have postponed the examinations.

7. Heard Sri.George Poonthottam and Sri.E.Adithyan, the learned senior counsel and learned counsel appearing for the petitioners and Sri.Thomas Abraham, the learned Standing Counsel appearing for the University and Smt.Nisha Bose, the learned Senior Government Pleader appearing for the State of Kerala.

8. The learned senior counsel appearing for the petitioners sought for an expeditious consideration of the interim relief because the examinations are scheduled on 1.7.2020 onwards. He contended that in view of the crisis that we are in, the examinations may be directed to be postponed, failing which it would be a threat to the health and life of the students. The learned Senior Counsel also argued that the University could not be oblivious to Ext P1 Regulations of the UGC, which governs the field in respect of the mandatory number of working days that the classes have to be taken.

9. The learned Senior Counsel relied on the decision of this Court in **Mohanan M.E and others vs University of Calicut and others [2017 (1) KHC 658]**, to fortify his contention that the college has to attain the prescribed class hours and working days before scheduling the examinations. He also relied on the decision in **Satheesh Kumar.N and others vs Mahatma Gandhi University and others [2015 (4) KHC 932]** to canvass the proposition that the unmindful scheduling of the examinations would cause difficulty to students, which practice has been deprecated by this Court.

10. Sri.E.Adhithyan, the learned counsel for the petitioner in WP(C) 12676/2020 argued that the most of the students of the Kerala Law Academy Law College are residing in different parts of the State. Some of them are abroad and other States. They are unable to come to the State in view of the travel restrictions. The areas within

which the Kerala Law Academy Law College as well as the sub-centres have been declared as containment zones. It is impossible for the students to attend the examinations in view of the restrictions imposed by the District authorities. He argued that in view of the present stand taken by the University, that special examinations would be conducted for those students who are unable to write examinations on the scheduled date, they may be permitted to write the special examinations without any conditions attached. He pressed for an interim order staying the examination.

11. Sri.Thomas Abraham, the learned Standing Counsel appearing for the University, reiterated the contentions averred in the statement. According to him, there are approximately 3900 students appearing for the PG examinations and 1800 students appearing for the fifth semester law examination. Other than for these petitioners, the majority of the students have no grievance regarding

the present scheduling of the examinations. If the examinations are stayed or postponed, it would severely prejudice and adversely affect the better interest of the students, who have not even been impleaded in their representative capacity. All the necessary arrangements have been made by the University, including starting of sub-centres, including Lakshadweep. It is usual for a minority group to always agitate against conduct of examinations. The situation may turn graver by August. Hence, if the examinations are postponed, there is a possibility that it would get postponed indefinitely. He also invited the attention of this Court to Annexure 1 decision of the Division Bench, upholding the contention of the University for the need to adhere to the academic calendar. He also argued that the petitioners need not have any heartburn, in view of the decision taken by the University to conduct special examinations for those students who are unable to

write the present examinations. The special examinations would not be treated as supplementary examinations. Therefore, the rights of the petitioners are not affected. It is their choice to appear and write the examinations if they so desire. He contended that if any ad-interim order is passed staying the examination, it would adversely affect the interests of hundreds of students. He also contended that it is trite law that Courts should keep away its hands in academic matters.

12. The Hon'ble Supreme Court has in a plethora of decisions held that the Courts should be extremely reluctant to interfere in academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working educational institutions.

13. In **UPPSC through its Chairman and another vs Rahul Singh and another [2018 (7) SCC 254]** the

Hon'ble Supreme Court in paragraph 32 has held thus:

“32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the Court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities”.

14. In **Maharashtra State Board of Secondary and Higher Secondary Education vs. Paritosh Bhupeshkumar Sheth [(1984) 4 SCC 27]** , the Honourable Supreme Court observed as follows :

“29. ...As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those

formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law, which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case”.

15. Yesterday, a three Judge Bench of the Honourable Supreme Court dismissed a plea by Maghi Devi, a case of similar nature, challenging the decision of the High Court of Rajasthan upholding the conduct of board examination. The Supreme Court relied on its earlier decision in **Rajashree vs. Karnataka.**

16. The above-cited precedents, undoubtedly enunciates the law that the Courts should not substitute the

wisdom of specialists in the field of academics.

17. It is a fact that the unprecedented pandemic, perhaps the worst catastrophe that has crippled life across the globe, was something that no one visualized or comprehended. The schools and educational institutions were closed down. The whole Country was under the lockdown for three months. We are still in the midst of the pandemic with spiraling number of COVID-19 positive patients. The Central and the State Governments have issued protocols to avert an impending community transmission. The Hon'ble Supreme Court in **Raja Shree vs Karnataka** and in **Maghi Devi**, after considering the difficulties poised by the students due to the pandemic, has declined to stay the examinations.

18. As the scope of judicial review in the scheduling of the examination is very limited as laid down in the above decisions, and the fact that the students who are willing to

appear and write the examination have not been impleaded at least in their representative capacity and since the examinations are to commence from 1.7.2020 and further for the elaborate arrangements and reasons pleaded by the University in the statements filed before this Court, I decline to pass an ad-interim order to stay the examinations scheduled on 01.07.2020. Nevertheless, considering the fact that the petitioners' representations are pending consideration before the University, I deem it appropriate to direct the Vice-Chancellor of the University to take a decision on the pending representations by 30.06.2020. I make it clear that, if the examinations are conducted as per the present schedule, and even if the petitioners appear and write the examinations, it would be without prejudice to their rights and contentions raised in these writ petitions. The respondents may file their counter, if any, within a period of one month. Post these writ petitions for

WP(C) Nos 12817 and 12676 of 2020

hearing.

Handover/upload this order on the website.

Sd/-

sks/27.6.2020

**C.S.DIAS
JUDGE**