

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

WEDNESDAY, THE 8<sup>TH</sup> DAY OF SEPTEMBER 2021 / 17TH BHADRA, 1943

WP(C) NO. 17883 OF 2021

PETITIONER:

SAFNA K.M.  
AGED 24 YEARS  
W/O. MUZAMMIL NAZ, EVERGREEN, KUNNICODE P.O.,  
KUNNICODE, KOLLAM-691 508.

BY ADVS.  
KALEESWARAM RAJ  
VARUN C.VIJAY  
THULASI K. RAJ

RESPONDENT/S:

- 1 UNIVERSITY OF KERALA  
REPRESENTED BY ITS REGISTRAR, UNIVERSITY OF KERALA  
SENATE HOUSE CAMPUS, PALAYAM, THIRUVANANTHAPURAM-695  
034.
- 2 REGISTRAR  
THE UNIVERSITY OF KERALA, UNIVERSITY OF KERALA  
SENATE HOUSE CAMPUS, PALAYAM, THIRUVANANTHAPURAM-695  
034.
- 3 CONTROLLER OF EXAMINATIONS  
THE UNIVERSITY OF KERALA, UNIVERSITY OF KERALA  
SENATE HOUSE CAMPUS, PALAYAM, THIRUVANANTHAPURAM-695  
034.
- 4 PRINCIPAL  
SANATANA DHARMA COLLEGE, KANYAKUMARI - PANVEL ROAD,  
SANATHANAPURAM P.O., ALAPPUZHA-688 003.

- 5 CHIEF SUPERINTENDENT  
SANATANA DHARMA COLLEGE, KANYAKUMARI - PANVEL  
ROAD, SANATHANAPURAM P.O., ALAPPUZHA-688 003.
- 6 MAHATMA GANDHI UNIVERSITY  
REPRESENTED BY ITS REGISTRAR, ADMINISTRATIVE  
BLOCK, PRIYADARSINI HILLS POST, UNIVERSITY CAMPUS  
ROAD, ATHIRAMPUZHA-686 560.
- 7 THE REGISTRAR  
MAHATMA GANDHI UNIVERSITY, ADMINISTRATIVE BLOCK,  
PRIYADARSINI HILLS POST, UNIVERSITY CAMPUS ROAD,  
ATHIRAMPUZHA-686 560.
- 8 PRINCIPAL  
ST.GREGORIOS COLLEGE, ULAMON PO, KOTTARAKARA,  
KOLLAM-691 531.

BY ADV SHRI.THOMAS ABRAHAM, SC, UNIVERSITY OF  
KERALA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 08.09.2021, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

## **JUDGMENT**

Petitioner, student of 2018 batch of M.Com course in St.Gregorios College, Kottarakara, Kollam, had completed all the semesters except the 2<sup>nd</sup> semester, as during that period she was pregnant. She had already sat in the supplementary examination held between 19.06.2020 to 29.06.2020 and Sandhana Dharma College, Alappuzha was the examination centre. The results were published on 07.07.2021 but petitioner was declared as failed in End Semester Assessment. Marks obtained in the subject 'E-business and Cyber Laws' were shown as blank as evident from Ext.P2. After having undertaken enquiry it was found that, certain bundles of the answer sheets submitted by the college to the University have been misplaced. The only apprehension expressed is that, petitioner has to take a further step in improving her educational profile by taking admission in the B.Ed course, as the last date was 6<sup>th</sup> September, 2021, which has now been extended to 16.9.2021. In an identical matter, where the answer sheet submitted by the college were lost, this Court in

the judgment dated 04.10.2007 rendered in W.P.(C) No.9696/2007 by taking into consideration the bye-laws and the guidelines of the University of Kerala, directed to grant average marks considering the previous papers, though as per the regulations of the University in case of non retrievability of the answersheet, the candidate is permitted to sit in the another examination without charging the fees.

2. Learned counsel for the University submits that a concerted effort has been made to retrieve the answer sheets, but despite that it has not been available and in anticipation thereof a meeting of the Syndicate is scheduled in coming week, but is not averse in issuing direction keeping in view the fact that the petitioner has to undertake admission in B.Ed course and the last date for submission of the admission form is expiring on 16<sup>th</sup> September, 2021.

3. I have heard learned counsel for the parties and appraised the paper book.

4. Clause 12(b) of the Revised Guidelines for Revaluation of Answer books of University Examinations of

Kerala University is extracted hereinbelow:-

"12 (b) In case, the answerbook is found to be irretrievable, the candidate will be given another opportunity to write the examination in the missing paper, in accordance with the same scheme and syllabus, without charging the Examination fee."

5. No doubt it reveals that the candidate in such circumstances, is permitted to sit in the examination without charging of the fees, but the said fact has not been appreciated by this Court in the judgment in W.P.(C) No. 9696/2017. For the sake of brevity paragraphs 4, 5 and 6 of the judgment reads thus:-

*"4. From this it is evident that the University could not have been more negligent in the case of the petitioner. Paragraph 7 of the statement reveals that while carelessness has been accepted as one of the possibilities, without any basis it is concluded that the loss of answer scripts may be with the deliberate intention of helping the student. I asked the learned Standing Counsel for the University a specific question as to on what is the basis on which this conclusion has been arrived at and no satisfactory answer could be given. In these circumstances, I can only hold that the conclusion of the Committee which has been accepted by the University is nothing but perverse.*

*5. A reading of the statement further shows that it is on the aforesaid conclusion that the Committee did not accept the recommendation that average marks of the other written papers need not be given to the petitioner. I should also mention that the respondents are not disputing the case of the petitioner that this is a system of giving average marks in a situation like this. Since the basis on which the recommendation was not accepted is perverse, I*

*should hold that the petitioner is entitled to be given average marks of the other papers for the lost paper also. Therefore, I direct the respondents that the petitioner shall be given the average marks of the other written papers, for the paper in Physics also. This, the respondent shall do as expeditiously as possible, at any rate within a period of one month from the date of receipt of a copy of this judgment.*

*6. At one stage of the hearing the learned counsel for the University suggested that a separate examination can be held for the petitioner. This was considered by me and I am of the view that this is an impractical suggestion. From the facts of the case it is evident that the petitioner had completed her course way back in 2002 and she had competed her course in 2004. She having settled down in her life and at this distance of time I do not think, it is fair to ask the petitioner to sit for the examination once again especially when all these have happened only on account of the fault and negligence on the part of the University."*

6. Conceded position on record is that the petitioner owing to medical condition could not undertake the 2<sup>nd</sup> semester at the scheduled time and after recovering from the same, sat in the examination way back in June, 2020, but her result as noticed above against a particular subject has been shown as blank. Loss of the answer sheets have not been denied by the University and in that background of the matter, meeting has been scheduled for. This Court cannot remain as a mute spectator as to whether the scheduled meeting would culminate into some effective decision or not as by that time,

the last date of submission of the application for B.Ed may expire.

Thus, I dispose of the writ petition by issuing directions to the Controller of Examinations of the University of Kerala to ponder the task of awarding the average marks keeping in view her record and result in the other examinations and declare the result by 14<sup>th</sup> of September, 2021.

Sd/-

**AMIT RAWAL**  
**JUDGE**

hnh

APPENDIX OF WP(C) 17883/2021

PETITIONER EXHIBITS

- Exhibit P1                    TRUE COPY OF THE ADMIT CARD OF THE  
PETITIONER.
- Exhibit P2                    TRUE COPY OF THE MARK LIST OF THE  
PETITIONER.
- Exhibit P3                    TRUE COPY OF THE STATEMENT AFFIXED TO  
THE CARDBOARD COVERING OR PRIMARY PACKET  
OF ANSWER BOOK OF THE PETITIONER SIGNED  
BY THE FIFTH RESPONDENT.
- Exhibit P4                    TRUE COPY OF THE E-MAIL SENT BY THE  
PETITIONER TO THE 3RD RESPONDENT.
- Exhibit P5                    TRUE COPY OF THE RESULT OF THE  
PETITIONER IN THE STATE ELIGIBILITY TEST  
CONDUCTED ON 10.1.2021.
- Exhibit P6                    TRUE COPY OF THE SCHEDULE OF THE  
ADMISSION PROGRAM TO B.ED THROUGH CAP  
ISSUED BY THE 6TH RESPONDENT UNIVERSITY.