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**(2014) 10 KL CK 0359**

**In the High Court Of Kerala**

**Case No :** Writ Petition (Civil) No. 37062 of 2008 (K)

Ajith Kumar

APPELLANT

Vs

University of Kerala

RESPONDENT

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**Date of Decision :** 28-10-2014

**Acts Referred:**

**Citation :** (2014) 10 KL CK 0359

**Hon'ble Judges :** A.V. Ramakrishna Pillai, J

**Bench :** Single Bench

**Advocate :** S. Karthika, M.S. Unnikrishnan, M.R. Anison and K.P. Geetha Mani, Advocate for the Appellant; M.R. Rajendran Nair, Sr. Adv., M.R. Hariraj, P.A. Kumaran, Suraj. S., Vineetha B., Advs., M. Rajagopalan Nair, George Poonthottam and Bechu Kurian Thomas, SCs, Advocate for the Respondent

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## **Judgement**

A.V. Ramakrishna Pillai, J.—The petitioner, who had appeared for M.D. (Pulmonary) Medicine Examination held on May/June 2008 by the 1st respondent University has come up before this Court for declaring the result of M.D. (Pulmonary) Medicine Examination held in June 2008 and January 2009 as invalid on the ground practical and viva examinations were held against Ext. P22 Regulations and also for a direction directing respondents 1 to 4 to conduct M.D. (Pulmonary) practical examination for the petitioner at the earliest with an examination board other than the examination board which conducted that examination on 26.06.2008 and also to direct respondents 2 and 3 to pass orders cancelling the petitioner's attempt in the examination for M.D. (Pulmonary) Medicine held on May/June 2008 and also to consider his next examination as the first examination as recommended by the 4th respondent in Ext. P3.

2. The petitioner is a lecturer of Pulmonary Medicine, who was working at Medical College, Thrissur. He appeared for M.D. (Pulmonary) Medicine Examination held on May/June 2008. The petitioner alleges that while he was a student, the 5th respondent, who is the present Head of Department was a professor of

Pulmonary Medicine and due to reason beyond the comprehension and for no perceptible reasons, she had been behaving in a hostile manner against the petitioner for the past several years. The petitioner alleges that during the practical of M.D. (Pulmonary) Examinations conducted on 26.6.2008, the panel of examination was headed by the 5th respondent. The petitioner alleges that the atmosphere inside the interview room was hostile and the 5th respondent told the petitioner clearly in front of the other panel members of the board, that she would not let him to get qualified for the M.D. not merely this time but even in the future as long as she continues to be the Head of the Department. In such circumstances, the petitioner preferred a complaint before the controller of examinations placing all these facts before him and requesting to enquire in the matter. The petitioner also approached the Directorate of Medical Education seeking intervention in the matter. The Directorate of Medical Education after conducting a detailed enquiry in the matter, had requested the controller of examinations of the 1st respondent University to consider the request for cancelling his attempt in examination for M.D. (Pulmonary) Medicine and also to consider his next examination as the first examination. The petitioner further alleges that even though, he was heard by the examination committee headed by Dr. Mohammed Kunju and the committee without referring to the order passed by the Director of Medical Education informed him that they have no plan but to reject his request and informed him that his result would be published on the same day itself as failed. They also directed the petitioner to apply for the next examination to be held on 15.12.2008. The petitioner further alleges that thereafter he approached the 2nd respondent highlighting all these aspects and requesting him to look into the matter and to issue necessary orders to cancel the early attempt in the examination for M.D. (Pulmonary) Medicine of the petitioner and to consider the next examination as the first examination as per the recommendation of the Director of Medical Education. However, the respondent has not considered the representation filed by the petitioner and on the contrary, issued Ext. P5 letter declaring the petitioner's result as failed. It is with this background, the petitioner approached this Court.

3. Earlier, the M.D. examination were being conducted by the 1st respondent University, but as per the Kerala University of Health Sciences Act, 2010 the Government constituted an independent body namely Kerala University of Health Sciences for the purpose of ensuring proper and scientific instruction, teaching, training and research exclusively in modern medicine, Homeopathy and Indian system of medicine including Ayurveda, Sidha, Yoga, Naturopathy, Unani and allied sciences in the State of Kerala and to have uniformity in the various academic programs in medical and applied subjects in the State and to provide for matters connected therewith. Accordingly, the additional 6th respondent was impleaded, which conducts M.D. examinations from the year 2010 onwards.

4. Respondents 1 and 3 filed a counter affidavit contending as follows.

The petitioner joined the M.D. (Pulmonary) Medicine Course on 06.6.2006 at

Medical College, Thiruvananthapuram. The practical examination for M.D. (Pulmonary) Medicine Course was on 26.06.2008. Dr. Anitha Kumary, the Head of the Department appointed as the Chairman and three others were also appointed as Examiners by the University as per norms. As per Medical Council of India Regulations the Head of the Department will be one of the internal Examiners for the Examination.

The petitioner had submitted Exhibit-P1 complaint to the 3rd respondent on 27.6.2008 against Dr. Anitha Kumari, the Head of the Department, wherein it was stated that he was harassed by Dr. Anitha Kumari during the practical and Viva Examination and was intentionally victimized. He alleged that the Head of the Department had delayed the submission of thesis and raised baseless complaints about him due to personal grudge.

On the basis of the complaint filed by the petitioner the matter was placed before the Syndicate as per Orders of the Vice-Chancellor. The Syndicate referred the matter to the Standing Committee of the Syndicate for examinations. Copy of the Minutes of the Syndicate held on 14.08.2008 is produced herewith and marked as Exhibit-R1(a). Meanwhile Exhibit-P3 was received along with the request of the petitioner for the cancellation of his Examination from the office of the Directorate of Medical Education which was not signed by the Director of Medical Education or Joint Director of Medical Education. Therefore the genuineness of the letter is to be verified and ascertained.

As per the recommendations of the Standing Committee of the Syndicate on Examinations convened on 13.11.2008 the petitioner and Dr. Anitha Kumari were heard by the Sub Committee of the Standing Committee on Examination on 28.11.2008. Before the Committee, the petitioner reiterated his allegations against the Head of the Department and Dr. Anitha Kumari denied all the allegations put forth against her by the petitioner. She clarified that he was in fact considered equal to all the other PG students of the Department and that there was no discrimination against him on her part and the allegation regarding her grudge against the petitioner were totally fictitious. She also submitted that the decision regarding the practical and viva were taken unanimously by the Board of Examiners.

It is submitted that on the basis of the hearing held on 28.11.2008 the withheld result of the petitioner at the M.D. Exam held in May 2008 was released on 11.12.2008 as per Orders of the Controller of Examinations so as to enable him to appear for the PG Examination which commenced on the 15th of December 2008.

5. The 5th respondent has filed a counter affidavit as well as an additional counter affidavit, wherein she has contended as follows.

Earlier the petitioner was a student for Diploma in TB and Chest Diseases (DTCD) in the Department of Pulmonary Medicine, Govt. Medical College, Trivandrum during the period from 2001 to 2003. He appeared for the examination held in

November-December 2003. During 16.10.1996 to 14.5.2002 the 5th respondent was working as Assistant Professor and from 15.5.2002 to 8.4.2008 was working as Associate Professor and there after from 9.4.2008 as Professor and Head of Department. During the above period she was engaged in academic and clinical activities for the diploma and post graduate students. All the allegations levelled against her, are vague, non specific, false, incorrect, and fictitious. They are with an ulterior motive to build up a case to show that the examination conducted on 26.6.2008 was with bias. When the petitioner apprehended failure due to his poor performance in the examination he started making such unsustainable allegations to build up a case of bias. The petitioner has not made out any specific instance where the 5th respondent had exhibited any hostile attitude against him. The petitioner has also not specified who is the lecturer or professor who informed him that she was harboring any hostility towards him. The allegations are vague and liable to be rejected was the Head of the Department. During this period the 5th respondent not made any complaint against the petitioner to any one. He has not mentioned as to whom the 5th respondent made complaints against him. But on one occasion, being the senior lady member of the faculty the 5th respondent conveyed an oral complaint of Dr. Dhanya, a post-graduate student, regarding the misbehavior of the petitioner towards her, to Dr. C. Sudheendra Ghosh, the then HOD. To the best of the knowledge of the 5th respondent, no action was taken against the petitioner. No enquiry was conducted by the HOD on this or on any other occasion against the petitioner. The statement of the petitioner that the 5th respondent's complaints were found by the HOD to be without any basis after due enquiry is totally false and mischievous. There was a general feeling among the staff and students that Dr. C. Sudheendra Ghosh was giving undue protection and favour to the petitioner. It may be due to the close relationship of the petitioner with Dr. C. Sudheendra Ghosh, the staff and students, especially women, who were scared about the irritant and unsteady behavior of the petitioner, avoided any complaints against him.

The petitioner was a student during the period from 2001-2003 and thereafter he was a student and also a staff from 25.1.2006 to 23.7.2008. It is reliably known that during the period from 2003 to 2005 he had worked outside Medical College Service. This is evident from the certificates issued by Professor M. Joshi, Dr. S. Sasikumar and Dr. Kesavan Nair of the Kerala Institute of Medical Sciences, Trivandrum. True copies of the certificate dated 23.7.2004 issued by Dr. Kesavan Nair, certificate dated 5.10.2004 by Dr. S. Sasikumar, and certificate dated 8.10.2004 issued by Dr. M. Joshi, to the petitioner are produced and marked as Exhibit R5A, R5B and R5C respectively.

These certificates were produced by the petitioner himself before the Director of Medical Education, Trivandrum. From this it is clear that the petitioner had worked in this department in the Medical College Trivandrum only for 4 years and six months and not 7 years as claimed by him. In such circumstances, the allegation that the 5th respondent had been behaving in hostile manner to the

petitioner for seven years can never be correct. This is a reckless allegation raised without any iota of truth only to malign my reputation.

The petitioner has not made complaint against the 5th respondent before the examination.

The 5th respondent had been teaching the MBBS, DTCD, M.D. and paramedical students ever since she joined the Medical Education department. She had been a teacher to the core to them all, including the petitioner. Not a single student, has ever made any complaint against the 5th respondent on any aspect of her behavior. She participates in almost all academic activities of the department as far as possible. She was never late to the seminars or presentations as alleged. All the academic and clinical activities are being conducted strictly and effectively without any lapse since she took charge as HOD. She had treated the petitioner like any other student. No discrimination was shown towards any of her students including the petitioner. There was no instance of postponing or rescheduling any academic activities of the petitioner or any one else deliberately. Adjourning of academic activities will happen only due to unforeseen or unavoidable reasons. The petitioner underwent M.D. course during 6.6.2006 to 5.6.2008. The 5th respondent was in charge of HOD from 30.1.2008 only. During the major portion of the M.D. course of the petitioner, the 5th respondent was not the HOD and she had no role in schedule of his academic activities. Allegations to the contrary made by the petitioner in this regard are baseless, incorrect and with an ulterior motive to tarnish her reputation as an impartial teacher.

The allegation that the 5th respondent had been creating obstacles and difficulties during seminars, patient case presentation etc. of the petitioner was denied. She had always attended the seminars and presentations of students as far as possible and actively participated in all of them. It is not clear as to what the obstacle or difficulty caused by the 5th respondent is. In seminars and presentations, those who attend the same are required to quiz the presenter on the academic aspects of the presentation, and give him chance to clarify. Some presenters take it as an opportunity, and some take it as a burden. The 5th respondent had quizzed all the student presenters so that they get their best opportunity and expand their academic horizons.

The petitioner made complaint only after 4 1/2 years of his working with the 5th respondent and that too after having appeared for the M.D. examination. This complaint is the result of a desperate feeling of the petitioner that he would fail in the examination, fully convinced himself of his poor performance.

The petitioner had worked directly under the 5th respondent only for a very short period. The 5th respondent never instigated any of the patients against the petitioner telling them that he was incompetent and that he has been treating them incorrectly. The above allegation is false and mischievous. The 5th respondent is a senior faculty member and is under obligation to point out, correct or rectify the defects, if any in the management of patients by my

subordinates and students. The 5th respondent had discharged this duty with commitment with respect to all her students and subordinates. But while making such corrections or rectifying any instructions noted by students or subordinates, the same would never be presented to the patients as a complaint against them.

Regarding the allegation of disallowing compensatory leave, it is stated that the petitioner has been sanctioned all eligible compensatory leaves. Ineligible compensatory leave alone were rejected. During May, 2008 and June, 2008 the petitioner has claimed compensatory leave for 12 days of which compensatory leave for 4 days only were rejected for the reason that the compensatory leave claimed were in lieu of working on Sundays, even though weekly off had already been availed by him on other days for having worked on Sundays, which is against the existing rules. No discrimination was shown to the petitioner in this regard. The casual leave was sanctioned instead of compensatory leave on all these days. Thus no leave was denied to the petitioner, but only the nature of leave was converted. Hence the allegation that the petitioner was denied study leave is not true.

Going by the University norms on the subject, the Head of the Department is the ex-officio chairman of the practical examination board for MD. The 5th respondent was the chairman of the board for examination on 26.6.2008 in that capacity. Apart from her the following members were also there in the board:

1. Dr. Surendra Menon, Professor, Medical College, Pondicherry.
2. Dr. Dinesa Prabhu, Professor and Head, Department of Pulmonary Medicine, Medical College, Trichur.
3. Dr. Fathahudien, Associate Professor, Department of Pulmonary Medicine, Medical College, Trivandrum.

Among these, the professors mentioned against serial No. 1 and 2 above are seniors to the 5th respondent in the service. The clinical, practical/oral examinations were conducted in the most befitting manner strictly following the rules and regulations of the University and fairly. The decisions regarding the assessment/evaluation of the candidates were unanimous. No panel members misbehaved or harassed any of the 4 candidates including the petitioner. The 5th respondent had not made any derogatory remarks against the petitioner to anybody at the time of examination or at any time. She did not make any effort to vitiate the atmosphere against him as alleged. The allegations made against her in this regard are totally false.

The complaint made by the petitioner is an after thought, and one made after being convinced of his hopeless performance during the practical examination. This is the first complaint made by the petitioner against her.

The allegation contained in Ext. P1, that the 5th respondent have purposefully delayed presentation of the thesis of the petitioner, is denied. Dr. C. Sudheendra Ghosh, then Professor and Head of the Department and Dr. Ronald Win, Assistant

Professor were the petitioner's guide and co-guide respectively for the preparation of his thesis. The petitioner is seen to have got the approval of his thesis on 23/1/2008 by Dr. C. Sudheendra Ghosh as the HOD. A true copy of the certificate dated 23.1.2008 of Dr. C. Sudheendra Ghosh is produced and marked as Exhibit R5(D).

The 5th respondent took charge as HOD only on 30/1/2008 from which it is clear that she was not in any way connected with the submission of the thesis of the petitioner. Hence it is crystal clear that the 5th respondent have not caused any delay in the submission of the thesis of the petitioner. The petitioner's allegation to the contrary is false and mischievous.

The 5th respondent happened to see the thesis of the petitioner for the first time only when she received a copy of the same from the University in connection with the examination. The petitioner has no claim that he had submitted a copy of his thesis to the 5th respondent at any time before or after that. The thesis of all the candidates except the petitioner were approved by her as HOD and entrusted the same with the Medical College office during February 2008 for onward transmission to the University. The thesis of the petitioner which was approved by the then Head of the Department Dr. C. Sudheendra Ghosh on 23.1.2008 was received in the office of the Principal, Medical college Trivandrum only on 18.2.2008 and the same was forwarded to the University on 20.2.2008. A true copy of the letter No. G1/4309/09/MCT dated 13.3.2009 issued by the Public Information Officer, Medical College, Trivandrum, is produced and marked as Exhibit R5(E).

Theses of all the students other than the petitioner contained copy of the Human Ethical Committee clearance which was mandatory. Without such certificate, it ought not have been approved by the Head of the Department. But the petitioner's thesis was approved by Dr. C. Sudheendra Ghosh without a copy of Ethical committee clearance attached to it. The human ethical committee of Medical College Trivandrum reviewed and discussed the petitioner's application to conduct the clinical study titled "Evaluation of bronchial hyper reactivity in allergic rhinitis" on 7/3/2008 and communicated to him their approval vide letter no C08/EC02/08/MCT dated 7/3/2008 a true copy of which is marked as Exhibit R5(F).

It is hard to believe that Dr. C. Sudheendra Ghosh, a very senior faculty and chairman of so many examination boards was not aware of this mandatory provision of Ethical committee clearance in submitting the thesis. The necessity of a hurry in approving the thesis with this gross defect on 23/1/2008 i.e. before the 5th respondent taking over charge as HOD on 30/1/2008, when all other exam going students submitted their theses only in February 2008, is unexplained. Either way, it can be seen that the 5th respondent had not in any manner delayed the submission of the thesis by the petitioner.

When the above mentioned lapse regarding the Ethical committee clearance

came to the notice of the 5th respondent when she received his thesis from the University, she had pointed out this lapse to the petitioner for rectification before the examination. The allegation contrary to this contained in Ext. P1 that the 5th respondent had mentally harassed him by saying that his thesis has been rejected is totally false. The aforesaid lapse in the submission of thesis was pointed out by Dr. C. Raveendran, Professor and Head, Department of Pulmonary Medicine, Government Medical College, Kozhikode also, one of the examiners who valued it and approved it subject to ethical committee clearance. It may please be noted that if the 5th respondent had also done the same, without informing the petitioner, he would have lost the chance to appear for the examination. The 5th respondent was in fact helping him, by informing him the defect, and letting him cure it in time, which alone will be enough to disprove his allegations against the 5th respondent that she was hostile and was harboring ill will towards him.

Based on the complaints of the petitioner, the 5th respondent was asked to attend a hearing by the Controller, University of Kerala, the University. She was directed to appear at 3.30 pm on 28-11-2008 at the Syndicate room of the University of Kerala for a hearing regarding the complaint on M.D. Pulmonary Medicine Examination, 2008. Accordingly she appeared for the hearing and made her remarks before the Syndicate members on the allegations made against her in the Ext. P1 petition dated 27-6-2008 of the petitioner. She had submitted before the hearing authorities the facts mentioned in the foregoing paragraphs. Copy of the hearing note is marked as Exhibit R5(G).

It appears that later the syndicate authorized the Vice Chancellor to take a decision in the matter. Thus Exhibit P13 was issued. Noting that the decision of the board was unanimous, and that there were no proof for allegations leveled against the 5th respondent by the petitioner, the Vice Chancellor turned down the request of the petitioner. There is nothing to show that the said finding of fact was perverse or one warranting interference by this Court. The said order was issued after a full opportunity to the petitioner as is evident from the face of it.

Exhibit P2 does not contain any date. In fact it is the copy of a representation given by the petitioner on 30.10.2008. A Xerox copy of the representation dated 30.10.2008 obtained under the Right to Information Act is produced and marked as Exhibit R5(H).

To the best understanding of the 5th respondent, the petitioner never made any representation dated 10.11.2008 to the 4th respondent. He made a representation dated 10.11.2008 before the 3rd respondent. A Xerox copy of the representation dated 10.11.2008 obtained by the 5th respondent under the Right to Information Act is produced and marked as Exhibit R5(I).

It appears that without even marking a copy to the 4th respondent Exhibit R5(I) was send to the office of the 4th respondent by the petitioner. A file bearing



number B2/27134/2008/DME was opened and based on Exhibit R5(I), Exhibit P3 was issued on the very same day.

Even when Exhibit R5(I) contained very serious allegations against the 5th respondent, and it was not addressed to the 4th respondent, with no opportunity to her Exhibit P3 was issued, in an ugly haste. Such an order, issued a day after the submission of the representation, with no notice to any of the parties, cannot be treated as one made after a "detailed enquiry" as alleged. A true copy of the noting on file No. respondent under the Right to Information Act is produced and marked as Exhibit R5(J).

The entire file, file notings and other details in respect of Exhibit R5(J) was obtained by the 5th respondent under Right to Information Act. It shows that Exhibit R5(J), and consequential order in Exhibit P3, are all issued with no enquiry whatsoever.

The petitioner's request dated 10/11/2008 addressed to the Controller of examinations was received in the office of the DME and action taken thereon on 11/11/2008. The note was put up with a draft suggesting that the representation be forwarded to the University with remarks. The DME approved the draft on 11/11/2008. The DME acted on a letter addressed to the Controller and even without a copy being marked to the Director of Medical Education. It is evident from this that no enquiry was conducted in the matter and the remarks of the Head of the Department on whom the petitioner made serious allegations and hostile attitude were not called for before sending a report.

The action of DME in having sent her recommendation contained in Ext. P3 is ultra vires as the conduct of university examinations is purely a subject matter of the University and the DME has no role in the matter.

Dr. Sudheendra Ghosh, the erstwhile HOD of the Department, is presently the Joint Director of Medical Education. He has been making undue favors for the petitioner on many occasions. It is apprehended that Exhibit P3 was got issued using the clout of Dr. Sudheendra Ghosh who was inclined to help the petitioner out of the way.

One of the observations in the letter mentioned above is that the failure percentage of 75% in the examination was not expected considering the previous results in the history of the department. The pass percentage depends on the performance of the candidates at the time of examination and is not connected with the performance of other students in the previous years. It was not for the first time that students have failed in the M.D. examination. In some previous years also there were failure in the MD/DTCD exams. Dr. Saramma K.G., Dr. Thomas K.J., Dr. Thomas George, Dr. Gina Dalus, Dr. Vinod Kumar K. were some of the students who failed in M.D. exam in their first attempt. Among the above students the first two failed in the same exam. All students who get admission for MD/DTCD courses have good academic records. That does not mean that all of them will pass the examination at their first chance itself.

In the M.D. in Pulmonary Medicine Exam conducted in 12/2008 in the Department of Pulmonary Medicine, Govt. Medical College, Kozhikode two out of three candidates failed. And also in Pathology, Paediatrics, Anaesthesia and General Medicine Departments in Govt. Medical College, Trivandrum more than one candidate failed in June, 2008. Hence there is no logic in the observation in Ext. P3 that the failure percentage of 75% was not expected considering the previous results in the history of the Department.

The petitioner has, by producing a truncated document as Exhibit P2 and averring that the same was dated 10.11.2008, and by suppressing the real representation Exhibit R5(I) based on which Exhibit P3 was issued, and by stating that Exhibit P3 is a result of a detailed enquiry, deliberately tried to mislead this Court. He has done this because the fact that 4th respondent has acted on a representation, when even a copy of the same was not marked to him had to be suppressed at any cost. He has thus committed contempt of this Court, it was further contended.

On Exhibit R5(H) action was taken in File No. H5/26138/08/DME. The remarks of the 5th respondent on the same were called for vide letter No. H5/26138/08/DME dated 12.11.2008, issued by the 4th respondent a true copy of which is produced and marked as Exhibit R5(K).

In such circumstances, it is to be explained how the 4th respondent issued Exhibit P3 order recommending the prayer in Exhibit P2 "after an elaborate enquiry" when the notice of enquiry on Exhibit R5(J) was only issued a day later. This further strengthens the 5th respondent's doubt that Exhibit P3 was managed by the petitioner using his clout with Dr. Sudheendra Ghosh who is the Joint Director of Medical Education, and that he produced a defaced and manipulated document before this Honourable Court.

The 5th respondent had submitted her remarks on Exhibit R5(J) on 9.12.2008. A true copy of the representation dated 9.12.2008 submitted before the 4th respondent is produced and marked as Exhibit R5(L).

In Exhibit R5(L) for the reasons stated therein the 5th respondent have made the following requests:

- i. Evidence may be taken from Dr. C. Sudheendra Ghosh regarding the action taken on the oral complaint of Dr. Dhanya on the misbehavior of the petitioner, conveyed by the 5th respondent and also the enquiry conducted by him on the complaints alleged to have been made by me.
- ii. The petitioner may be directed to reveal the names of lecturers and professors who had informed him that the 5th respondent had been harboring some kind of ill will towards him and evidence may be taken from them.
- iii. Evidence may be taken regarding the date of submission of thesis of the petitioner in the Medical College office for onward transmission to the University to ascertain the urgency in getting the thesis approved on 23/1/08 without a

copy of the ethical committee clearance in the thesis and to establish that there was no lapse on the part of the 5th respondent in the matter. Statement of Dr. C. Sudheendra Ghosh may also be obtained in this regard.

iv. An enquiry may be conducted on the circumstances under which the petitioner was relieved from the department by the Principal without the knowledge of the HOD in contravention to the existing procedure in this regard.

v. Suitable action may be taken against the petitioner for making false and fabricated allegations against the 5th respondent, which is in gross violation of the Government servants' conduct rules.

The 5th respondent had made the above request to vindicate her position as a independent teacher. The heartburn caused to her due to the most unsustainable allegations made against her, ought to have been abated. However, nothing has been heard from the Director of Medical Education on the further action taken on my requests mentioned above, it is contended.

The 5th respondent strongly feels that the allegations leveled against her was the result of a conspiracy.

Dr. Sudheendra Ghosh, the present JDME, has been interfering in the day to day clinical activities of the department. Against this, the faculty of the department, including the 5th respondent made a complaint to the Principal. A true copy of the representation dated 13.10.2008 is produced and marked as Exhibit R5(M).

However the said representation has not been accepted by the higher ups. Prior to and after the said representation, there has been such misuse of the departmental facilities by Dr. Sudheendra Ghosh, which had been opposed by the 5th respondent in my capacity as the Head of the Department. He has therefore developed an ill will towards the 5th respondent. He is using the petitioner to tarnish her image, and settle scores with her. The entire episode is thus an attempt to ensure that the 5th respondent is kept away from the powers of the Head of the Department, and the move to push her out of the ex-officio position of chairman of the examination board is part of this larger design.

The same committee had summoned this respondent also, and the 5th respondent and she had appeared and explained the actual facts before the committee. There is no information in this regard to the 5th respondent thereafter. The petitioner was declared failed based on the unanimous decision of the board, where external examiners who were senior to the 5th respondent were also members.

The 5th respondent has no direct knowledge about Exhibit P4. The allegations raised therein against the 5th respondent are denied for the reasons already stated.

From the documents subsequently produced it appears that the 2nd respondent also considered the complaint by the petitioner and after a detailed enquiry,

found the same to be unsustainable.

While the allegations earlier were only in respect of the 5th respondent, the allegations in P6, P7, P8, P9 and P10, are against all the other faculty of the present department also. This only shows that the petitioner is bent on making reckless and unsustainable allegations against the examiners. The students taking examinations cannot dictate terms to the University regarding who should be or should not be the examiners. The choice of examiners is left to the University subject to the norms and rules governing the courses. The Head of the Department is to be the chairman of the examining board ex-officio. The attempt now made is only to tarnish the image of the 5th respondent and remove her from the said position.

The allegation that the petitioner was not informed about the examination on 27.1.2009 is not correct. The university of Kerala appointed the 5th respondent as Chairman, Board of Examiners for the conduct of M.D. in Pulmonary Medicine Exam, December, 2008, vide their letter dated 19/1/2009. The letter was received by her on 22/1/2009. Considering the convenience of the external examiners, the M.D. Examination was scheduled to be held at 8 AM on the 27th January 2009 and the DTCD examination was scheduled to be held at 8 AM on 28th January 2009. A notice to this effect was published in the notice board in Department office at Pulayanarkotta on 23/1/2009. In fact beyond this, there is no legal duty on the chairman to individually inform the candidates regarding the examination date. However, considering the fact that the petitioner has a grievance against the 5th respondent, and to avoid any further complaint, the 5th respondent further made efforts to communicate the date of exam to him.

Information regarding the conduct of M.D. examination was communicated to Petitioner to his official address Viz. Lecturer, Pulmonary Medicine Dept. Govt. Medical college, Thrissur by telegram at 1.30 PM on 23.1.09. The telegram was received in the CTO, Trissur at 13.58 hrs. on the same day and sent by post at 15.30hrs. This information is obtained under the Right to Information Act.

Further the 5th respondent have contacted Dr. Dinesa Prabhu. Professor and HOD of Pulmonary Medicine Govt. Medical college, Thrissur on 23.1.09 itself over phone and informed that the above mentioned telegram regarding examination was sent to C.S. Ajithkumar in his official address and also requested to convey the message regarding conduct of examination to petitioner.

Another telegram informing the date of examination was sent at 7.02 PM on 23.1.09 to his home address "Chandrachan veedu", Kadakkavoor. PO. Attingal, which was obtained from the University. He has represented the University that communication be issued in his home address.

In addition the 5th respondent had sent at 10.24 PM on 23.1.09 the message "M.D. pulmonary Medicine Practical exam scheduled at 8 AM 27.1.09 at Pulmonary Medicine Dept. Chest Disease hospital, Pulayanarkotta Tvm.-Dr. Anitha Kumari. K., Chairperson M.D. Exam." The 5th respondent had also tried to

contact the petitioner over phone in his mobile No. 9946838343, but he did not pick the phone.

It is submitted that the 5th respondent had done all within her reach to inform the petitioner about the Exam through all the available communication facilities which was unprecedented in such cases. There was no intention on her part to deprive the petitioner of his chance. All candidates except the petitioner came to know about the conduct of examination on the date of publication of the notice in the matter on 23/1/2009 even without resorting to the communication facilities adopted in the case of the petitioner. Of these candidates all except one Sri. Jolly were working in districts other than Trivandrum (Vipin Varkey-Kozhikode, Praveena-Kazarkode and Aneesh a DTCD.

The petitioner was aware of the fact that the 5th respondent was being posted as examiner, which is evident from his petition dated 23/1/2009 submitted to the Controller of examination and that submitted to Mr. Mohammed Kunju, a syndicate member as Examination committee chairman on 23/1/2009. 55. From the above facts it is reasonable to believe that he has purposefully evaded receipt of communication issued by the 5th respondent in this regard with the intention to allege malafide on my part even at the risk of losing a chance. He deliberately avoided appearing for the examination, it was contended.

By convention the practicals for M.D. examination are conducted prior to that of the DTCD examination for the reason to avoid comparative evaluation of the M.D. and DTCD candidates which may adversely affect the M.D. candidates. In the instant case the examinations were conducted on 27/01/2009 and 28/01/2009 considering mainly the convenience of the external examiners and also for avoiding further delay of these examinations, the theory examinations of which were conducted in December 2008.

The order at Exhibit P13 is issued after a detailed consideration of all the allegations, and the finding of fact arrived at by the authority is not liable to be interfered by this Court. There is no arbitrariness or discrimination made out against the said order.

Exhibit P14 is not a single document. It appears to be copy of different pages of some book, which are not continuous. The regulation to the effect that those who are examiners for Thesis shall not be examiners for Theory and Clinical, was introduced by an amendment in October, 2008. That could not form the touch stone for what was done in June, 2008. At that time, the presence of Head of the Department was mandatory in every board where there are internal examiners. Even now, it is mandated that Head of the Department shall be one of the internal examiners for every board.

The fact that the petitioner is trying to bring political influence in the matter is clear from Exhibit P15 where the Minister is addressed. The Minister, the Director of Medical Education etc. have no role in the conduct of the examination.

The petitioner has not made out any case on merits for cancellation of his first attempt in M.D. examinations, it is contended."

6. Arguments have been heard.

7. The main challenge in the writ petition is that the very appointment of the 5th respondent as the Chairperson of the Board of Examiners constituted for the purpose of Theory and Practical examinations of the petitioner is in clear violation of Clause 14(4)(a) of Ext. P22, which is the Medical Council of India Regulation, 2000. When the matter came up for hearing on 01.02.2014 before learned Single Judge of this Court, the learned counsel for the 5th respondent upon instruction from his client. submitted before the learned Single Judge that the 5th respondent never valued the thesis of the petitioner. Based on the aforesaid factual statement made by the learned counsel for the 5th respondent, the learned Single Judge posed the following questions in a detailed order passed on 11.02.2014.

"(1) How many Boards of Examiners were constituted for the M.D. (Pulmonary) Medicine examination conducted in 2008 in which the petitioner Dr. Ajith Kumar was a candidate?

(2) Who are the examiners constituted for valuing and actually valued the thesis for the examination of M.D. (Pulmonary) Medicine in 2008?

(3) Who are the persons constituted the Board of Examiners for the M.D. (Pulmonary) Medicine theory and practical examinations conducted in 2008?

(4) Whether the fifth respondent Dr. Anitha Kumari was included in the Board of Examiners for valuing the thesis as well as for valuing the theory and practical examinations of M.D. (Pulmonary) Medicine examinations conducted in 2008?

(5) Whether the persons constituted various Boards of Examiners for the M.D. (Pulmonary) Medicine examinations held in 2008 were qualified to be included so as per the Regulations issued by the Medical Council of India in Ext. P22?"

8. The learned Single Judge also directed the 1st respondent University to file an affidavit specifically answering the above queries on or before 26.4.2014 and the matter was posted to 28.02.2014. In compliance with the above order dated 11.02.2014, the 1st respondent University filed an affidavit dated 24.02.2014 admitting the following facts.

"5. It is further submitted that while Dr. Fathahudeen, Dr. Anithakumari constituted the internal examiners for the purpose of thesis evaluation, Dr. Sudheendra Ghosh and Dr. C. Raveendran and Dr. Jayaraj were the external examiners for thesis evaluation. Dr. Anithakumari, Drudheendra Ghosh and Dr. C. Raveendran were the examiners who actually valued the thesis.

6. The Board of Examiners who constituted the Board of Examiners of M.D. (Pulmonary) Theory and Practical Examination 2008 included Dr. Anithakumari as the Chairperson, Dr. Surendra Mohan, Dr. Dinesa Prabhu and Dr. Fathahudeen A.

Further, Dr. Anithakumari was included in the Board of Examiners for evaluating thesis as well as theory and practical examination of the M.D. examination."

9. On filing the above affidavit by the 1st respondent University disclosing the correct fact, the 5th respondent has chosen to file an affidavit dated 08.03.2014 expressing regret and rendering unconditional apology for making false submission before this Court on 11.02.2014. The learned counsel for the petitioner therefore, would argue that from the above facts it is crystal clear that all throughout the 5th respondent had been taking this Court for a ride and actually committed perjury and deliberately played fraud on this Court. It was pointed out that the regret and unconditional apology rendered by the 5th respondent in the additional affidavit is totally without any bona fides at all.

10. The argument advanced by the 5th respondent was that, the rule that the thesis should be examined by the examiners, who are not the examiners for theory and clinical examination was introduced by an amendment of the Post Graduate Medical Education Regulation 2000 with effect from 02.10.2008 and since the examiners in question in this case was conducted prior to October 2008, i.e. in June 2008, the aforesaid condition was not in force. This, according to the petitioner, is an incorrect statement. In support of her argument, the learned counsel invited my attention to Clause 14(4)(a) of Ext. P22 Medical Council of India Regulation, 2000 and the amendment to paragraph 3 of Clause 14(4)(a) introduced by Ext. R5(n) produced by the 5th respondent along with the additional affidavit dated 18.03.2014. I see valid force in the submission made by the learned counsel for the petitioner.

11. Clause 14(4)(a) of Ext. P22 reads as follows:

(4) Doctor of Medicine (M.D.)/Master of Surgery (M.S.) M.D./M.S. examinations, if any subject shall consist of Thesis, Theory Papers, and clinical/practical and Oral examinations.

(a) Thesis

Every candidate shall carry out work on an assigned research project under the guidance of a recognised Post Graduate Teacher, the result of which shall be written up and submitted in the form of a Thesis.

Work for writing the Thesis is aimed at contributing to the development of a spirit of enquiry, besides exposing the candidate to the techniques of research, critical analysis, acquaintance with the latest advances in medical science and the manner of identifying and consulting available literature. Thesis shall be submitted at least six months before the theoretical and clinical/practical examination.

The thesis shall be examined by a minimum of three examiners; one internal and two external examiners, who shall not be the examiners for Theory and Clinical; and on the acceptance of the thesis by two examiners, the candidate shall appear for the final examination."

12. Paragraph 3 of Clause 14(4)(a) was amended as per Ext. R5(n), which reads as follows:

(iii) Clause 14(4)(a) the sentence in second para "Thesis shall be submitted at least six months before the theoretical and clinical/practical examination" shall be substituted by "Thesis shall be submitted at least six months before the Theory and Clinical/Practical examination" Further, para 3 of Clause 14(4)(a) shall be substituted by "The thesis shall be examined by a minimum of three examiners; one internal and two external examiners, who shall not be the examiners for Theory and Clinical examination. A candidate shall be allowed to appear for the Theory and Practical/Clinical examination only after the acceptance of the Thesis by the examiners."

13. It was argued by the learned counsel for the petitioner that Ext. P3 recommendations of the 4th respondent clearly establishes that the practical examination of M.D. (Pulmonary) Medicine conducted on 26.06.2008 was vitiated due to the interruption and hostile attitude of the 5th respondent, who was the Head of Department. It was pointed out that even though the 4th respondent had recommended that the examination conducted to M.D. (Pulmonary) Medicine was vitiated and requested the 3rd respondent to cancel the attempt of the petitioner in the examination of M.D. (Pulmonary) Medicine and to consider the next examination as the first examination, the 3rd respondent did not pass any order to that effect. Even though the petitioner preferred Ext. P1 complaint before the 3rd respondent and he was heard by the examination committee on 28.11.2008, no orders have been passed by the 3rd respondent. In the affidavit accompanying IA No. 1263 of 2009 filed by the petitioner, he had affirmed that on a mass petition filed by all students who had to appear for December practical examination, the syndicate of the University, which met in November-December 2008 have already resolved not to post the 5th respondent and also the members of the previous panel for the practical examination for M.D. (Pulmonary) Medicine to be held in January 2009 and the specific decision was taken by the syndicate to constitute another examination board with persons other than the members of the previous examination board on account of the complaint raised against the previous examination board members. Names of new panel of the examiners were also suggested and determined in that syndicate meeting. It was pointed out that in the light of the above decision taken by the syndicate of the University held in November-December 2008, the decision taken by the 2nd respondent not to change the previous board of examination or M.D. (Pulmonary) Medicine practical examination to be held in January 2009 is void in the eye of law.

14. The 5th respondent in her counter affidavit has devoted so many paragraphs making accusations against another professor of the same department, the petitioner as well as the 4th respondent. From the apparent tenor of those accusations it can be seen that the relationship between the 5th respondent and the petitioner was not so cordial as it was made to appear. However, during the



course of argument, the learned counsel appearing for the 5th respondent submitted that the 5th respondent no longer wants to be in the board of examiners of the petitioner. Therefore, I am not going into the questions relating to the allegations regarding the hostile animous of the 5th respondent towards the petitioner.

15. In Ext. P2 representation submitted by the petitioner before the 2nd respondent, the petitioner has specifically brought to the notice of the 2nd respondent the decision taken by the syndicate held on November-December 2008 to change the previous board of examination for the examination to be held in January 2009. Once there is a complaint, it is always just and proper for the University to change the board of examiners. The petitioner has pointed out the following instances where the University has changed the examiners:

1) In the M.D. (Medicine) practical examination held in May, June 2008, the members of the board of examination was changed on receipt of the complaint from the students. In that examination Dr. Jayakumar HOD of Medical College was replaced by Dr. Gopakumar of Trivandrum Medical College. A new member from other medical colleges, Alleppey was brought for conducting that examination.

2) In the practical examination held in December, 2008 in M.D. (Paediatrics Medicine), also the examiners were changed based on the complaint received from the students. Dr. Lalitha Kailas, HOD Trivandrum Medical College was replaced by Dr. Elizebath of Trivandrum Medical College another doctor from Alleppey Medical College was brought for conducting that examination.

3) In M.D. Microbiology examination also, based on the complaint given by the students, a re-examination was conducted with another set of examiners, 10 days after the original examination. In the examination the HOD Dr. Sivan Pillai was replaced by another doctor."

16. The very appointment of the 5th respondent as Chairperson of the examination board is against the guidelines issued by the University itself, which says that the teacher who has valued the thesis of a particular student should not be appointed as examiner of that student. Since the 5th respondent is the teacher who valued the petitioner's thesis, applying Clause 14(4)(a) of Ext. P22 guidelines, the 5th respondent could never be an examiner of the petitioner's examination. On that ground alone, Ext. P16 is liable to be quashed counsel for the petitioner would argue that the petitioner is having a good academic record. In support of the argument the learned counsel for the petitioner pointed out that the following recommendation letters were given by the institutions where he had worked:

1) Certificate dated 9.5.2000 issued by the Vice-Principal of the Trivandrum Medical College.

2) Certificate issued by the Vice-Principal of the Medical College, Trichur dated

10.5.2000.

3) Certificate issued by the Faculty of Medicine University of Kerala dated 28.6.2004.

4) Certificate issued by the Kerala Institute of Medical Sciences dated 23.7.2004.

5) Certificate issued by the Kerala Institute of Medical Sciences dated 8.10.2004.

6) Certificate issued by the Kerala Institute of Medical Sciences dated 05.10.2004.

7) Certificate issued by the Sree Chitra Thirunal Institute for Medical Sciences for Technology dated 17.2.2007.

8) The performance certificate issued by the Medical Officer in charge of IC unit department of Anesthesiology and critical care medical college, Trivandrum, showing the training attended by the petitioner in various Medical Care Centre and Management in that department.

17. The petitioner points out that, had the University acted fairly and reasonably the petitioner would have got promotion to the post of Assistant Professor, which arose in the College in July 2008. Exts.P13 and P16 memos issued by the University are not at all sustainable in the eye of law, since those two memos were issued against Ext. P14 guidelines issued by the University, as also the decision taken by the syndicate of the very same University held in November-December 2008, so submitted the learned counsel for the petitioner.

18. Clause 14 of Ext. P22 Post Graduate Medical Examination Regulation 2000, issued by the Medical Council of India prescribes the method of appointment of external examiners. In June 2008 examination only one external examiner was appointed. Dr. Surendra Menon included in the board of examination was from Medical College, Pondicherry. One of the examiners Dr. Dinesh Prabhu was invited from outside University. But he was not from outside the State. Dr. Dinesh Prabhu was working in Medical College, Thrissur. Therefore, he cannot be considered as an external examiner as stipulated in the regulations. It is also crucial to note that as per the regulations the Post Graduate examiners should have recognized post graduate qualification in the subject concerned. Dr. Dinesh Prabhu has no post graduate qualification in Pulmonary Medicine and he was not taking classes for post graduates in the subject concerned, it was argued. Therefore, there need not be any hesitation to hold that the appointment of Dr. Dinesh Prabhu as one of the examiner is against the Clause 14 of Ext. P22.

19. No mark list was prepared by the examination board for the examination conducted in June 2008. The result is declared based on the entries in the Minutes book forwarded to the University by the Chairperson. Ext. P23 letter reveals that the tabulation Section in the University is depending on the entries in the Minutes Book to publish the result of the candidates. As per Clause 10 of the Regulation, grading or mark list system has to be followed to evaluate and to certify the level of knowledge, skill and competence of the candidates and 50%

marks in theory and practical separately shall be mandatory for passing the examination. However, as against the above regulation in June 2008 examination the results were published based on the entries in the Minutes Book prepared and forwarded by the Chairperson of the examination board.

20. Since the examination of the petitioner was conducted against Clause 14 of Ext. P22, Exts.P13 and P16 memos are only to be quashed. On a consideration of the materials placed on record, this Court is of the definite view that the petitioner is entitled to succeed.

In the result, the writ petition is allowed.

It is hereby declared that the result of the M.D. (Pulmonary) Medicine examination taken by the petitioner in June 2008 and January 2009 are invalid as they were held against Ext. P22 Regulations. The 6th respondent is directed to conduct M.D. (Pulmonary) Medicine theory, practical/viva examination for the petitioner, within a period of three months, with an examination board other than examination board which conducted that examination on 26.06.2008 as well as in January, 2009, strictly in accordance with Ext. P22 Regulations, as the additional 6th respondent is conducting the examinations in the field of medicine, at present. The examination shall be conducted at TD Medical College, Alappuzha. The date and time of the examination shall be fixed under due intimation to the petitioner in advance. The petitioner's attempt in examination for M.D. (Pulmonary) Medicine in May-June 2008 and in December, 2008 is hereby cancelled and it is hereby declared that his next examination to be conducted as above shall be reckoned as the petitioner's first examination as recommended by the 4th respondent in Ext. P3.

No orders as to costs.