

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 30TH DAY OF OCTOBER 2020 / 8TH KARTHIKA, 1942

WP(C).No.20214 OF 2020(B)

PETITIONERS:

- 1 P. SEBASTIAN ABRAHAM
AGED 20 YEARS
S/O ABRAHAM P, GEORGE, PAINUMKAL HOUSE, PUTHIYAKAVU,
TRIPUNITHURA P.O. PIN-682 301.
 - 2 EPHRAIM E MAMPILLY,
AGED 20 YEARS
S/O EPHRAIM GEORGE MAMPILLY, MAMPILLY HOUSE (SOUTH
BOCK), BROADWAY, ERNAKULAM, KOCHI-682 031.
- BY ADVS.
SRI. ABRAHAM P. GEORGE
SMT. M. SANTHY
SRI. JOHNY THOMAS
SRI. C. A. ANAS
SRI. M. B. RATHEESH
SMT. BEJLA MARY BEJOY

RESPONDENTS:

- 1 MAHATMA GANDHI UNIVERSITY
REP. BY ITS REGISTRAR, MAHATMA GANDHI UNIVERSITY
CAMPUS, ATHIRAMPUZHA, KOTTAYAM DISTRICT, PIN-686 560.
- 2 CONTROLLER OF EXAMINATION,
MAHATMA GANDHI UNIVERSITY CAMPUS, ATHIRAMPUZHA,
KOTTAYAM DISTRICT, PIN-686 560.
- 3 BAR COUNCIL OF INDIA,
21, ROUSE AVENUE INSTITUTIONAL AREA, NEAR BAL BHAVAN,
NEW DELHI-110 002, REPRESENTED BY THE HON'BLE
SECRETARY

R1-2 BY SRI. ASOK M. CHERIAN, SC, M.G. UNIVERSITY
R3 BY ADV. SRI. RAJIT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
30.10.2020, ALONG WITH WP(C).21926/2020(M), WP(C).22856/2020(F),
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 30TH DAY OF OCTOBER 2020 / 8TH KARTHIKA, 1942

WP (C) .No.21926 OF 2020 (M)

PETITIONERS :

- 1 ABIN RASHID
AGED 20 YEARS
S/O.SAMSUDIN, 4TH SEMESTER LLB, GOVERNMENT LAW
COLLEGE ERNAKULAM, RESIDING AT 10F, RAMPRAKASH
VIHAR APARTMENTS, VADUTHALA, ERNAKULAM DISTRICT,
KERALA, PIN-682023.
 - 2 AKASH ANTONY A.A.,
S/O.ANTONY JOLLY A.G., 4TH SEMESTER LLB, GOVERNMENT
LAW COLLEGE ERNAKULAM, RESIDING AT AZHIKKAKATH
HOUSE, WINNERS ROAD, CHITTOOR, ERNAKULAM DISTRICT,
KERALA, PIN-682027.
- BY ADVS.
SRI.P.SAMSUDIN
SRI.M.ANUROOP

RESPONDENTS :

- 1 THE SECRETARY TO HIGHER EDUCATION DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 2 THE MAHATMA GANDHI UNIVERSITY,
REPRESENTED BY ITS REGISTRAR, MAHATMA GANDHI
UNIVERSITY, PRIYADARSINI HILLS P.O., KOTTAYAM
DISTRICT, PIN-686560.
- 3 THE CONTROLLER OF EXAMINATIONS,
MAHATMA GANDHI UNIVERSITY, PRIYADARSINI HILLS P.O.,
KOTTAYAM DISTRICT, PIN-686560.
- 4 THE VICE CHANCELLOR,
MAHATMA GANDHI UNIVERSITY, PRIYADARSINI HILLS P.O.,
KOTTAYAM DISTRICT, PIN-686560.
- 5 THE ACADEMIC COUNCIL,
MAHATMA GANDHI UNIVERSITY, PRIYADARSINI HILLS P.O.,

WP(C).No.20214/2020 & Conn.Cases

3

KOTTAYAM DISTRICT, PIN-686560.

R2 BY SRI.ASOK M. CHERIAN, SC, M.G. UNIVERSITY

SRI. V.MANU - SR.GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.10.2020, ALONG WITH WP(C).20214/2020(B), WP(C).22856/2020(F), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 30TH DAY OF OCTOBER 2020 / 8TH KARTHIKA, 1942

WP(C) .No.22856 OF 2020(F)

PETITIONERS:

- 1 DEVADATH G.
 AGED 20 YEARS
 S/O. GLADLY N.B., STUDENT OF 6TH SEMESTER,
 5TH YEAR B.COM LL.B., GOVERNMENT LAW COLLEGE,
 ERNAKULAM-682011.
- 2 SIMSAR UL HAQ K.Y.,
 AGED 20 YEARS
 AS/O. YOOSAF K., STUDENT OF 6TH SEMESTER, 5 YEAR
 B.A. LL.B., BHARATA MATA SCHOOL OF LEGAL STUDIES,
 ALUVA, CHOONDI, ERNAKULAM-683112.
- 3 GOKUL KRISHNAN V.R.
 S/O. V.N. RADHAKRISHNAN, 6TH SEMESTER, 5 YEAR BBA
 LL.B., SREE NARAYAN LAW COLLEGE, POOTHOTTA-682037.
- 4 MOHAMMED SHAD K.A.
 S/O. K.K.ABDUL SALAM, STUDENT OF 6TH SEMESTER,
 5TH YEAR B.COM, LL.B , BHARAT MATA SCHOOL OF LEGAL
 STUDIES, ALUVA, CHOONDI, ERNAKULAM-683112.

BY ADVS.
SMT.A.K.PREETHA
SRI.C.ANIL KUMAR

RESPONDENTS:

- 1 STATE OF KERALA,
 REPRESENTED BY SECRETARY TO GOVERNMENT, DEPARTMENT
 OF HIGHER EDUCATION, SECRETARIAT,
 THIRUVANANTHAPURAM-695001.
- 2 BAR COUNCIL OF INDIA,
 21, ROUSE AVE INSTITUTIONAL AREA RD., NEAR BAL
 BHAWAN, ROUSE AVENUE, MATA SUNDARI RAILWAY COLONY,
 MANDI HOUSE, NEW DELHI-110002, REPRESENTED BY ITS

SECRETARY.

- 3 MAHATMA GANDHI UNIVERSITY,
PRIYADARSHINI HILLS POST, ATHIRAMPUZHA, KOTTAYAM-
686560, REPRESENTED BY REGISTRAR.
- 4 CONTROLLER OF EXAMINATION,
MAHATMA GANDHI UNIVERSITY, PRIYADARSHINI HILLS
POST, ATHIRAMPUZHA, KOTTAYAM-686560.

R2 BY ADV. SRI.RAJIT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
30.10.2020, ALONG WITH WP(C).20214/2020(B), WP(C).21926/2020(M),
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

These writ petitions have been heard together on account of the analogous factual circumstances pleaded and the similarity in the prayers sought for.

2. In all these cases the petitioners are stated to be students of Law pursuing studies in various Colleges under the Mahatma Gandhi University (M.G. University). They pray that the Semester Examinations, which is scheduled by the University to commence from 04/11/2020, be directed to be done in the online mode, taking note of the guidelines issued by the University Grants Commission (UGC) and the Bar Council of India (BCI).

3. The petitioners say that they are seriously aggrieved by the action of the University in conducting the examinations in the physical mode, without heeding to the egregious spread of the COVID-19; and therefore, pray that they be directed to

consider holding of the examinations in the online mode, at the earliest.

4. When this matter was considered by me on 27/10/2020, after hearing the learned counsel for the parties, I had passed the following order:-

“Shri.Rajit, learned Standing Counsel for the Bar Council of India, submits that except in the case of the Final Semester, an online examination is not recognized under the Rules of Legal Education, 2008. He submitted that he will place on record a statement enclosing all the relevant guidelines issued by the Bar Council in this regard.

Shri.Asok M.Chariyan, learned Standing Counsel for the M.G. University, submitted that the results of the First Semester examinations of the students in W.P(C)No.20214 of 2020, will be published not later than 16/11/2020; and that a schedule has already been published for the purpose of conduct of examinations of the IInd, IIIrd and IVth Semesters. He submitted that online examinations have not been preferred, because the infrastructure and logistical requirements cannot be met and also on account of the stand of the Bar Council as afore stated. He also adds that in order to assuage the apprehensions of the petitioners, they can be allowed a choice of their centre, which should be intimated to the University within a time frame.

The learned counsel for the petitioners seek time to consult with their clients.

List these cases, therefore, on 30/10/2020; within which time the Bar Council shall place their statement on record. I, further direct the M.G. University to inform this Court by the next posting date as to the modus they suggest for the students to choose their examination centre.”

5. Today, Shri.Rajit, learned Standing

Counsel for the Bar Council of India, submits that a statement has been filed explaining the stand of his client, wherein, the following have been stated.:-

“1. The writ petition is filed by the petitioners seeking for a direction to the 1st and 2nd respondents to conduct the 2nd, 3rd and 4th semester examinations of 2018 LLB, five year course, on the basis of the marks obtained by them in the internal examinations and also by way of online examination.

2. When the matter was taken up before this Hon'ble Court today on 27.10.2020, it was submitted on behalf of the Bar Council of India that different interpretation was given to the circulars issued by the Bar Council of India in respect of the conduct of the examinations, taking into consideration the situation caused due to the Covid-19 pandemic. This Hon'ble Court in the above circumstances directed the Bar Council of India to place on record the circulars issued, for this Hon'ble Court to appropriately consider the matter. Accordingly this statement is filed.

3. It is respectfully submitted that the Bar Council of India on 27.10.2020 issued guidelines to all the Law Universities in the Country as well as the centers of legal education wherein it was decided to permit the final year students of three years and five year course to appear in online examination and further the university was directed to adopt an alternative strategy for conducting examination for those students who are unable to avail the online examinations for any reason. It was further directed to promote the intermediate semester students on the basis of performance of previous year and marks obtained in internal examination of the current year. The universities were further directed to conduct the end semester examination within a month of reopening of the college. A true

copy of the above guideline dated 27.5.2020 in BCI:D:1401/2020 is produced herewith and is marked as Annexure R3(a).

4. The Bar Council of India has on 09.6.2020 issue a press release clarifying the stand of the Bar Council of India. In this press release it was decided by the Bar Council of India to permit the universities to adopt any other appropriate method to satisfy the requirements of regular examination in respect of the final year examinations of LLB students. Under this system the university was permitted to allow students to write a project report/research paper for each paper final year or to adopt a method to double the internal marks of the semester examinations already held for such year. It was further held that in case of final year LLB students, who have not cleared all papers of previous years and are required to sit in the supplementary examination, but, who have been promoted to final year, such final year LLB students may be allowed to write a project report or appear in online examination with regard to the pending/supplementary papers, so that they could also pass within time.

5. All students, except final year students, will be promoted on the basis of performance of previous year's marks and marks obtained in the internal examination of the current year. However, it is clarified that after reopening of the colleges/universities, the Universities shall conduct the end semester examination with respect to the year from which they have been promoted, within a reasonable period of time, though, such promoted students shall continue to study in the year to which they have been promoted, and in case, they are unable to pass/clear any such paper of such end semester exam of the year from which they have been promoted, they shall have to clear the same, before they are granted the degree. In the case of students who have been promoted to the final year as LLB students, they shall have to pass all papers in order to obtain their degree/s. A true copy of the above press release dated 9.6.2020

issued by the Bar Council of India is produced herewith and is marked as Annexure R3(b).

6. The stand of the Bar Council of India was further clarified in the general council meeting held on 5th October, 2020 and the Bar Council of India clarified that except final year students examinations of all students shall be conducted within one month of physical reopening of colleges when normalcy resume and when the pandemic situation no longer exists. It was clarified by the Bar Council that exception for conducting examination in the online mode was only for final year LLB students, to prevent any loss of academic sessions thereby putting the students to difficulty. For all other students, examination had to be conducted within one month of reopening of college and that the students will have to clear all the papers before getting their degree. A true copy of the extracts of the minutes of the general council meeting held on 5.10.2020 is produced herewith and is marked as Annexure R3(c).

7. It is also brought to the Bar Council of India's notice that some Universities in the country are, on a wrong understanding of Ext.R3(a) to R3(c), propoising to hold the semester examinations in the online mode. It is clarified that the resolution adopted by the Bar Council of India is clear that the option for online mode is only for the final year students and all other semester students, would have to clear their papers by taking part in the examination, which has to be conducted by the universities in the physical mode within one month of reopening of college and that the students will have to clear all the papers before getting their degree.”

6. That said, as far as the UGC guidelines are concerned, there is no doubt that the same enables the University to conduct examinations either in the offline

mode or in the online mode or in a hybrid fashion. However, when the Bar Council of India has taken the afore stand, I am of the firm view that I cannot find fault with the University in having preferred the physical mode particularly because, as has been recorded by me in the order dated 27/10/2020, they do not appear to have the infrastructural and logistical requirements to conduct the examinations online, which is to commence on 04/11/2020.

7. Indubitably, all that remains, therefore, are considerations as to the equities to be protected as far as the petitioners are concerned and I had, therefore, asked the learned Standing Counsel for the University through the afore order to inform this Court if the students can be allowed Centres of their choice, so that they do not have to travel very far.

8. The learned Standing Counsel for the University, Shri.Asok M.Chериан, today informed this Court that the University has taken an apposite decision and that a notification will be issued allowing the students to choose any of the seven Law Colleges affiliated to the M.G. University, as their preferred Centre; and that once they do so, they will be allowed to write examinations in such Centres, subject to the COVID-19 requirements.

9. At this time, Smt.A.K.Preetha, learned counsel appearing for the petitioners in W.P(C)No.22856 of 2020 and Shri.Abraham P.George, learned counsel appearing for the petitioners in w.P(C)No.20214 of 2020 submitted that the scourge of COVID-19 is serious and that many of the students will not be in a position to write the examinations commencing on 04/11/2020. They, therefore, pray that the University be

directed to consider conduct of fresh examinations for such students in future, which may be directed not to be considered as a Supplementary chance but as the main one.

10. Shri.Asok M.Chériyan submits that this request of the petitioners will certainly be considered by the University and that a fresh chance will be offered to every student who is unable to write the scheduled examinations on account of COVID-19 restrictions or such other reasons; and that the same will be deemed as the main examination and not as a supplementary chance.

Taking note of the afore submissions, I dispose of these writ petitions, permitting the University to conduct the examinations - which are scheduled on 04/11/2020 - strictly in terms of the COVID-19 stipulations as are mandatorily prescribed in the health

advisories of Governments of Kerala and India; and the standard operative procedures brought forth by the State Disaster Management Authority and the Health Authorities, thus ensuring that the lives of every student is well protected from the COVID-19 infection, adhering to the social distancing requirements as also other imperative conditions.

The University will also consider allowing students, who are COVID-19 positive and who are desirous of writing the upcoming examinations, separate areas as per the guidelines issued by the Health and Family Welfare of the Government of Kerala dated 22/09/2020 and make arrangements for the same as per the rigour of the said order.

Finally, Shri.Abraham P.George, learned counsel for the petitioners in W.P(C)No.20214 of 2020, submitted that even though the

Second Semester Examinations have been scheduled for the 2018 batch, the schedule of 3rd and 4th semester are yet to be published by the University.

Shri.Asok M.Chериан, learned Standing counsel for the University, in reply, submitted that the schedule for 3rd and 4th Semesters will be published as soon as the 2nd semester examinations are complete, so as not to load the students unnecessarily with simultaneous and multiple examinations.

This is recorded.

The above writ petitions are thus ordered.

sd/-

DEVAN RAMACHANDRAN

JUDGE

MC/30.10.2020

APPENDIX OF WP (C) 20214/2020

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE PHOTOCOPY OF THE IDENTITY CARD ISSUED BY THE FIRST PETITIONER
EXHIBIT P2	TRUE PHOTOCOPY OF THE IDENTITY CARD ISSUED BY THE SECOND PETITIONER
EXHIBIT P3	TRUE PHOTOCOPY OF THE HALL TICKET ISSUED TO THE FIRST PETITIONER FOR THE FIRST SEMESTER EXAMINATION
EXHIBIT P4	TRUE PHOTOCOPY OF THE HALL TICKET ISSUED TO THE SECOND PETITIONER FOR THE FIRST SEMESTER EXAMINATION
EXHIBIT P5	TRUE PHOTOCOPY OF RELEVANT PAGES OF ACADEMIC CALENDAR 2019 PUBLISHED BY THE MG UNIVERSITY
EXHIBIT P6	TRUE PHOTOCOPY OF RELEVANT PAGES OF ACADEMIC CALENDAR 2020 PUBLISHED BY THE MG UNIVERSITY
EXHIBIT P7	TRUE PHOTOCOPY OF GUIDELINE DATED 27.5.2020 ISSUED BY BAR COUNCIL OF INDIA
EXHIBIT P8	TRUE COPY OF NEWS ITEM PUBLISHED IN HINDU DAILY DATED 23/10/2020.

RESPONDENT'S/S EXHIBITS:

EXHIBIT-R2 (A)	TRUE COPY OF THE NOTIFICATION DATED 09/07/2019 SCHEDULING VARIOUS EXAMINATIONS OF LL.B COURSES
EXHIBIT-R2 (B)	TRUE COPY OF THE NOTIFICATION DATED 21/08/2019 OF THE MAHATMA GANDHI UNIVERSITY RE-SCHEDULING THE LL.B EXAMINATIONS ORIGINALLY SCHEDULED TO 07/08/2019
EXHIBIT-R2 (C)	TRUE COPY OF THE PROCEEDINGS OF THE MEETING OF THE STANDING COMMITTEE OF THE SYNDICATE OF EXAMINATIONS HELD ON 24/01/2020, AS APPROVED BY THE VICE CHANCELLOR ON 13/02/2020 EXERCISING HIS

EMERGENCY POWER UNDER SECTION 10 (17) OF
THE MAHATMA GANDHI UNIVERSITY ACT, 1985

- EXHIBIT-R2 (D) TRUE COPY OF THE NOTIFICATION DATED
16/10/2020 OF THE UNIVERSITY SCHEDULING
EXAMINATIONS INCLUDING 2ND SEMESTER
EXAMINATION OF THE 5 YEAR LL.B COURSES
OF 2018 BATCH
- ANNEXURE R3 (A) COPY OF THE GUIDELINE DATED 27.5.2020 IN
BCI:D:1401/2020
- ANNEXURE R3 (B) TRUE COPY OF THE PRESS RELEASE DATED
09.6.2020 ISSUED BY THE BAR COUNCIL OF
INDIA
- ANNEXURE R3 (C) TRUE COPY OF THE EXTRACTS OF THE MINUTES
OF THE GENERAL COUNCIL MEETING HELD ON
5.10.2020.

APPENDIX OF WP (C) 21926/2020

PETITIONER'S/S EXHIBITS:

- | | |
|------------|--|
| EXHIBIT P1 | TRUE COPY OF THE REPRESENTATION
SUBMITTED BY THE STUDENTS OF GOVT. LAW
COLLEGE ERNAKULAM TO THE CONTROLLER OF
EXAMINATIONS. |
| EXHIBIT P2 | TRUE COPY OF THE REPRESENTATION
SUBMITTED BY THE STUDENTS OF GOVT. LAW
COLLEGE ERNAKULAM TO THE VICE
CHANCELLOR. |
| EXHIBIT P3 | TRUE COPY OF THE REPRESENTATION
SUBMITTED BY THE STUDENTS OF BHARATH
MATHA SCHOOL OF LEGAL STUDIES TO THE
CONTROLLER OF EXAMINATIONS. |

APPENDIX OF WP (C) 22856/2020

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE PRESS RELEASE DATED 09/06/2020 ISSUED BY THE BAR COUNCIL OF INDIA.
EXHIBIT P2	TRUE COPY OF THE ORDER PASSED BY THIS HONOURABLE COURT IN WPC 13547/2020 DATED 07/07/2020.
EXHIBIT P3	TRUE COPY OF THE NOTIFICATION PUBLISHED BY THE 3RD RESPONDENT UNIVERSITY DATED 08/10/2020.
EXHIBIT P4	TRUE COPY OF THE DASHBOARD/OFFICIAL OF THE GOVERNMENT OF KERALA COVID 19 STATISTICS DATED 22/10/2020.
EXHIBIT P5	TRUE COPY OF THE MHA ORDER NO.40-3/2020-DM-I (A) DATED 30TH SEPTEMBER, 2020 ISSUED BY THE GOVERNMENT OF INDIA, MINISTRY OF HOME AFFAIRS.
EXHIBIT P6	TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE CLASS REPRESENTATIVE OF GOVERNMENT OF LAW COLLEGE, ERNAKULAM TO THE 3RD RESPONDENT DATED 23/10/2020.
EXHIBIT P7	TRUE COPY OF THE EXAMINATION SCHEDULE (ONLINE MODE) OF SCHOOL OF LEGAL STUDIES, COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY .

RESPONDENT'S/S EXHIBITS:

ANNEXURE R3 (A)	COPY OF THE GUIDELINE DATED 27.5.2020 IN BCI:D:1401/2020
ANNEXURE R3 (B)	TRUE COPY OF THE PRESS RELEASE DATED 09.6.2020 ISSUED BY THE BAR COUNCIL OF INDIA
ANNEXURE R3 (C)	TRUE COPY OF THE EXTRACTS OF THE MINUTES OF THE GENERAL COUNCIL MEETING HELD ON 5.10.2020.