

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF APRIL, 2022

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO.9040 OF 2022 (EDN-RES)

BETWEEN:

1. MR. ASHRITH UMESH
S/O DR. R.B. UMESH
AGED 20 YEARS
REG NO.19M0711
R/O NALANDA SCHOOL ROAD
NEAR RAILWAY STATION
TIPTUR-572201
2. MR. JOEL DEEPAK RAVIKAR
S/O RAVIKAR JAYARAJ
AGED 24 YEARS
REG NO.19M3794
R/O NO.26, 1ST CROSS
1ST MAIN, MARUTHINAGAR
MADIWALA, BENGALURU-560068
3. FATHIMATH JENNIFER
D/O ABDUL MAJEED.K
AGE 21 YEARS
REG NO.20M4613
R/O XENEL, MELE CHAMPAD
THALASSERY, KANNUR
KEARALA

...PETITIONERS

(BY SRI. ABHISHEK MALIPATIL, ADVOCATE-PH)

AND:

1. RAJIV GANDHI UNIVERSITY OF
HEALTH SCIENCES
4TH T BLOCK, JAYANAGAR
BENGALURU-560041

REP. BY ITS REGISTRAR

2. THE NATIONAL MEDICAL COMMISSION
POCKET-14, SECTOR-8, DWARAKA PHASE-1
NEW DELHI-110077
REP BY THE EXECUTIVE SECRETARY

... RESPONDENTS

(BY SRI. HARISH GANAPATHI, ADVOCATE FOR R1-VC;
SRI. N. KHETTY, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OR ORDER OR DIRECTION IN THE NATURE OF MANDAMUS DIRECTING THE R-1 TO CONDUCT VALUATIONS OF THE FAILED SUBJECTS OF THE MBBS (RS4) EXAMINATIONS OF FEBRUARY 2022 UNDERTAKEN BY ALL THE PETITIONERS, STRICTLY IN TERMS OF ORDINANCE OF 2012 VIDE NOTIFICATION DTD.15.6.2012 WITH AUTH/III & V VALUATION/208/2012-13 ISSUED BY THE RESPONDENT UNIVERSITY VIDE ANNEXURE-E IN TERMS OF THE DIRECTION NO.2 ISSUED BY THIS HON'BLE COURT VIDE ORDER DTD.7.10.2021 PASSED IN W.P.NO.13626/2021 AND CONNECTED W.P. VIDE ANNEXURE-H INCLUDING DEVIATION VALUATIONS ON THERE BEING A DIFFERENCE OF 15% MARKS BETWEEN THE EVALUATORS AS PER THE LAW ALREADY DECLARED BY THIS HON'BLE COURT IN THE EARLIER WRIT PETITION AND ETC.

THIS PETITION COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. Sri.Harish Ganapathi, learned counsel accepts notice for respondent No.1 and Sri.N.Khetty, learned counsel accepts notice for respondent No.2.
2. The petitioners are before this Court seeking for the following reliefs:

- i. *Issue a writ or order or direction in the nature of mandamus directing the r-1 to conduct valuations of the failed subjects of the MBBS (RS4) Examinations of February 2022 undertaken by all the petitioners, strictly in terms of ordinance of 2012 vide notification dtd.15.6.2012 with No.Auth/III & V Valuation/208/2012-13 issued by the respondent university vide Annexure-E in terms of the direction No.2 issued by this hon'ble court vide order dtd.7.10.2021 passed in w.p.no.13626/2021 and connected w.p. vide Annexure-H including deviation valuations on there being a difference of 15% marks between the evaluators as per the law already declared by this hon'ble court in the earlier writ petition.*
- ii. *Issue a writ or order or direction in the nature of mandamus directing direct the r-1 to accomplish the additional valuations and to announce the results well before the commencement of 1st and 2nd MBBS RS4 Theory Supplementary Examinations of May 2022 scheduled to commence from 05.05.2022 as per notification dtd.1.4.2022 with No.RC/DR-I/MBBS-Exam/Jan-Feb22/120/2021 vide Annexure-D issued by the R-1*
- iii. *Issue any other appropriate writ or order or direction as this Hon'ble Court deems fit to grant in the ends of justice."*

3. The contention of the petitioners is that the petitioners were enrolled as MBBS students for the academic year 2020-2021. Having taken up the exams and valuation of the papers having taken place, the petitioners were declared 'failed' mark. The contention of the petitioners now is that there are only two valuations as regards the papers of the petitioner and as such the third valuation is required to be carried out.
4. Learned counsel for the respondents by referring to the decision of this court in W.P.No.9619/2021 and connected matter on 17.12.2021 submits that the petitioner is bound by the ordinance dated 01.02.2021 and as such no such third valuation can be permitted.
5. In reply thereto, learned counsel for petitioners relies on an earlier decision of this court in W.P.No.13626/2021 and connected matters, whereunder ordinance dated 01.02.2021 is

quashed. Therefore he submits that the subsequent Judgment upholding the ordinance will not come in the way of consideration of above petition inasmuch as by the time when the order in writ petition No.9619/2021 and connected matter had been passed, ordinance dated 01.02.2021 was already quashed and not in existence as on 17.12.2021. This court by its order dated 07.10.2021 in W.P.No.13626/2021 and connected matters has passed the following order:

- (1) *The impugned Ordinance dated 01.02.2021, is quashed and set aside. Before promulgating the next Ordinance, the respondent-University shall ensure that the matter is placed before its Committee of Academic Council and act according to the advise of the Academic Council.*
- (2) *Consequently, applying the provisions of the Ordinance of 2012, wherever there is difference of 15% or more between the marks awarded by the two evaluators, the same shall be sent for third valuation. In case where third valuation was already done pursuant to the impugned Ordinance, nevertheless, revaluation shall be conducted even in*

such cases, in terms of the Ordinance of 2012. This shall apply not only to the petitioners, but to all students, similarly situated.

- (3) Consequent to the revaluation, if a student becomes eligible to be promoted to the second year course, such student shall be permitted to attend to the second year classes.*
- (4) Such students shall be provided with make-up classes. However, if such students are found wanting on account of attendance to write the semester examination of the second year, alternative examination shall be conducted for such students after the minimum requirement of attendance is met.*
- (5) Such students who become eligible for the second year course shall be treated on par with the present second year students.*
- (6) The revaluation shall be conducted and results shall be announced as expeditiously as possible and at any rate within a period of three weeks from the date of receipt of a certified copy of this order.*
- (7) In case of all other students who are not successful even after the revaluation, they shall be entitled for one more additional opportunity, beyond the four prescribed attempts.*

Ordered accordingly."

6. Considering that the ordinance dated 01.02.2021 had already been quashed on 07.10.2021 the subsequent order dated 17.12.2021 wherein no reference is made to the earlier order dated 07.10.2021 is required to be held to be *per incuriam* since the same was not brought to the notice of the said court.
7. The ordinance having stood quashed on 07.10.2021 the benefit thereof is required to be extended to the petitioners and similar order that is passed in W.P.13626/2021 would enure to the benefit of the petitioners. As such I pass the following:

ORDER

- (i) Writ petition is allowed.
- (ii) Consequently, applying the provisions of the Ordinance of 2012, wherever there is difference of 15% or more between the

marks awarded by the two evaluators, the same shall be sent for third valuation. In case where third valuation was already done pursuant to the impugned Ordinance, nevertheless, revaluation shall be conducted even in such cases, in terms of the Ordinance of 2012. This shall apply not only to the petitioners, but to all students, similarly situated.

- (iii) Consequent to the revaluation, if a student becomes eligible to be promoted to the second year course, such student shall be permitted to attend to the second year classes.
- (iv) Such students shall be provided with make-up classes. However, if such students are found wanting on account of attendance to write the semester examination of the second year, alternative examination shall be conducted for such students after the minimum requirement of attendance is met.
- (v) Such students who become eligible for the second year course shall be treated on par with the present second year students.

- (vi) The revaluation shall be conducted and results shall be announced as expeditiously as possible and at any rate within a period of three weeks from the date of receipt of a certified copy of this order.
- (vii) In case of all other students who are not successful even after the revaluation, they shall be entitled for one more additional opportunity, beyond the four prescribed attempts.

Ordered accordingly.

**Sd/-
JUDGE**

In