

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

&

THE HONOURABLE MR. JUSTICE K. V. JAYAKUMAR

FRIDAY, THE 28<sup>TH</sup> DAY OF FEBRUARY 2025 / 9TH PHALGUNA, 1946

WA NO. 403 OF 2025

AGAINST THE JUDGMENT DATED 01.12.2023 IN WP(C) NO.34075 OF  
2023 OF HIGH COURT OF KERALA

APPELLANT(S)/4TH RESPONDENT:

NATIONAL MEDICAL COMMISSION  
POCKET-14, SECTOR-8, DWARAKA PHASE-I, NEW DELHI,  
REPRESENTED BY ITS SECRETARY., PIN - 110077

BY ADV.  
SRI.K.S.PRENJITH KUMAR, CGC

RESPONDENT(S)/PETITIONER & RESPONDENTS 1,2 & 3:

- 1 ANTONY P. ALAPPAT,  
AGED 22 YEARS,  
S/O. PAUL ALAPPAT, ALAPPATU HOUSE, PUTHUKKAD P.O.,  
THIRISSUR DISTRICT., PIN - 680301
- 2 KERALA UNIVERSITY OF HEALTH SCIENCES,  
REPRESENTED BY ITS REGISTRAR, MULANKUNNATHUKAVU,  
THRISSUR. PIN - 680596
- 3 THE CONTROLLER OF EXAMINATIONS,  
KERALA UNIVERSITY OF HEALTH SCIENCES,  
MULANKUNNATHUKAVU, THRISSUR. PIN - 680596
- 4 THE PRINCIPAL,  
GOVERNMENT MEDICAL COLLEGE, MULANKUNNATHUKAVU,  
THRISSUR., PIN - 680596

BY ADVS.  
BINNY THOMAS

WA NO. 403 OF 2025

-2-



2025:KER:22334

SRI.P.SREEKUMAR (SR.) (K/410/1994)  
SRI.B.S.SHIVAJI  
SMT.HELEN P A

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
28.02.2025, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

JUDGMENTAMIT RAWAL, J.

The present intra court appeal is directed against the judgment of the Single Bench whereby, going by the amendment dated 01.08.2023, allowed the writ petition of the respondent - petitioner, declaring him to be passed in the second year examination of MBBS of a Medical College affiliated to Kerala University of Health Sciences, Thrissur.

2. At the time when the examination of second year commenced, i.e., in July, 2023 and ended on 11.08.2023, the condition of qualifying the said examination as per the amendment dated 01.08.2023 was to obtain 50% of mark in aggregate in both papers together as well as 50% marks in the examination conducted by the University separately, in theory and practical. However, a corrigendum on 01.09.2023 was issued, whereby it was made clear that the condition of 50% in both practical and theory would not be necessary



as it could be in aggregate of 60:40 and vice versa. Respondent-petitioner in the subjects of Microbiology and Pharmacology did not obtain 50% each in aggregate on one of the examinations out of the second year, either of the practical or of the theory. Having not cleared the examination gave a cause of action to approach the Court. The contention that the corrigendum would not be applicable to the respondent/petitioner as it came into force only on 01.09.2023, is the sole point to be determined by us.

3. Learned Single Judge noticed the fact that the earlier amendment Ext.P1 was with effect from 01.08.2023 and the corrigendum would relate back to the amendment and not from the date of the issuance of the corrigendum. By noticing the above, the single Judge has given the following findings in paragraphs 3 to 5 of the judgment:

“3. The grievance of the petitioner is that the petitioner has been declared as failed since the petitioner has not scored 50%



aggregate and 40% minimum in the examinations. The petitioner submits that the 4<sup>th</sup> respondent has issued guidelines whereby the minimum required mark has been amended and as per the present requirement which is produced as Ext.P3, in a subject with two papers, the student has to score minimum 40% aggregate and in cases where there is a practical along with theory paper, the candidate has to obtain 50% mark in aggregate and 60:40 minimum or 40:60 minimum in the University conducted examinations separately in theory and practical.

4. Going by the amendment which has come into effect from 01.08.2023, the petitioner submits that he is entitled to be declared as passed. The contention is that the examination started on 30.07.2023 and ended on 11.08.2023 and as such, it is a case where the examinations were completed only after the amendment came into force. The learned Standing Counsel for the University contends that the amended notification will apply only to examinations which are notified after the amendment.

5. The contention raised by the Standing Counsel for the 4<sup>th</sup> respondent cannot be countenanced. The amendment has to be prospectively applied to all cases where the



examinations are held after the amendment and the Pass Board meets to decide on the result. The application cannot be restricted on the basis of the notification of the examination.

In the above circumstances, the petitioner is entitled to succeed. The writ petition is allowed. The respondents 1 and 2 are directed to declare the petitioner as successfully completed the subjects Pharmacology and Microbiology of 2<sup>nd</sup> professional MBBS Degree supplementary examination held in July, 2023 and issue a fresh mark sheet accordingly. Necessary orders shall be issued within three weeks from the date of receipt of a copy this judgment."

4. The intra court appeal is accompanied by an application seeking condonation of delay of 282 days, primarily on the ground that, similarly situated persons studying in various medical colleges affiliated by different Universities have been knocking the doors for treating them as passed in the subjects on account of the judgment rendered by the Single Bench of this Court.

5. Mr.P.Sreekumar, learned Senior Counsel assisted by Smt.Helen P.A., appearing on behalf of the



respondent submitted that the findings of the Single Bench cannot be stated to be perverse or erroneous for the reason that the interpretation of the corrigendum relate back to the date of the notification dated 01.08.2023 in correct perspective. The amendment was during the midst of the examination. It was submitted that prior to the amendment of 01.08.2023, the requirement was 50% aggregate in both the papers.

6. In rebuttal, Mr.K.S.Prenjith Kumar, learned Central Government Counsel relied upon the judgment of the Honourable Supreme Court in **Sree Sankaracharya University of Sanskrit Vs. Dr.Manu (2023 KHC 6578)** to contend that where a subsequent order of such modification has been issued whether it can be made retrospectively or not, it has been held that if the said clarification is substantive to the amendment, it will have retrospective effect otherwise prospective.

7. We have heard learned counsel for the parties and appraised the paper book.



8. The reason for seeking condonation of delay was that, under the wrong advice had challenged the order of the Single Bench before the Honourable Supreme Court which was withdrawn and in this conspectus the delay of 282 days has occurred. Considering the fact that the delay was not intentional, we hereby condone the delay.

9. Concededly, prior to the notification issued by the National Medical Commission on 01.08.2023, the requirement of law for the student to pass a particular year was 50% in aggregate in both practical and theory. However, with effect from 01.08.2023 condition was that if one subject has two papers it has to be 50:50 and in the examination conducted by the University the candidate is required to obtain 50% in practical and 50% in theory. The corrigendum, issued on 01.09.2023, changed the condition from 50:50 to 60:40 and vice versa. Respondent-petitioner by relying upon the corrigendum





dated 01.09.2023 contended that obtaining of minimum required marks or more than the required in the practical, and less marks in theory or vice versa, would be squarely falling within the conditions of corrigendum. For the sake of brevity, the conditions of corrigendum, Ext.P3 reads as under:

“Subject: Competency Based Medical Education Curriculum (CBME) Guidelines- National Medical Commission.

Kindly refer to the communication of even no. dated 01<sup>st</sup> August, 2023 on the above mentioned subject and to inform that provisions at page 58 of CBME is amended as under:

Page 58 of CBME Guidelines	Amended page 58 of CBME Guidelines
In subjects that have two papers, the learner must secure minimum 50% of marks in aggregate (both papers together) to pass in the said subject.	In subjects that have two papers, the learner must secure minimum 40% of marks in aggregate (both papers together) to pass in the said subject.
Criteria for passing in a	Criteria for passing in



<p>subject: A candidate shall obtain 50% marks in University conducted examination separately in Theory and In Practical (practical Includes:practical/clinical and viva voce) in order to be declared as passed in that subject.</p>	<p>a subject: A candidate shall obtain 50% marks in aggregate and 60:40 (minimum) or 40:60 (minimum). In University conducted examination separately in Theory and in Practical (practical includes: practical/clinical and viva voce) in order to be declared as passed in that subject.</p>
---	---

”

10. It is settled law that any corrigendum issued will not be prospective but relate back to the amendment already in force with effect from 01.08.2023, whereas the examination for second year of the medical college commenced on 30.07.2023 and ended on 11.08.2023; in between, the notification had been brought into force meaning thereby, in the midst of the examination and would have applicability to the students undertaking the examination. There is no dispute that the *ratio decidendi*



culled out in the judgment *supra*, but the fact remains it was not a new amendment but a corrigendum and definitely would relate back to the date of the amendment issued on 01.08.2023.

Finding of fact and law, in such circumstances, do not require a different interpretation. We do not find any merit in the writ appeal. Writ appeal standss dismissed.

Sd/-

**AMIT RAWAL**  
**JUDGE**

Sd/-

**K. V. JAYAKUMAR**  
**JUDGE**



APPENDIX OF WA 403/2025

*PETITIONER ANNEXURES*

- |                    |  |
|--------------------|--|
| <i>ANNEXURE A1</i> | <i>TRUE COPY OF GRADUATE MEDICAL<br/>EDUCATION, REGULATIONS, 2023 ISSUED BY<br/>THE APPELLANT HEREIN</i> |
| <i>ANNEXURE A2</i> | <i>A TRUE COPY MCI, GRADUATE MEDICAL<br/>REGULATIONS, 1997</i>   |
| <i>ANNEXURE A3</i> | <i>TRUE COPY OF THE ORDER DATED<br/>07.03.2024 IN SLP(C) NO. 5451 OF 2024</i>                            |