



2025:KER:36793

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE P. V. BALAKRISHNAN

TUESDAY, THE 27TH DAY OF MAY 2025 / 6TH JYAISHTA, 1947

WA NO. 773 OF 2025

AGAINST THE ORDER DATED 06.03.2025 IN WP(C) NO.8960 OF

2025 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

THE PRINCIPAL
CENTURY INTERNATIONAL INSTITUTE OF DENTAL SCIENCE AND
RESEARCH CENTRE, POINACHI, THEKKILL POST, KAZARAGOD
DISTRICT, PIN - 671541

BY ADV P.S.BIJU

RESPONDENTS/RESPONDENTS:

- 1 UNION OF INDIA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT, HEALTH AND
FAMILY WELFARE DEPARTMENT, NIRMANBHAVAN, NEW DELHI,
PIN - 110011
- 2 DENTAL COUNCIL OF INDIA
REPRESENTED BY ITS THE SECRETARY, NATIONAL DENTAL
MISSION BUILDING, PLOT NO. 14. SECTOR 9, RK PURAM, NEW
DELHI, PIN - 110022
- 3 KERALA UNIVERSITY OF HEALTH SCIENCES,
REPRESENTED BY ITS REGISTRAR, MEDICAL COLLEGE. P.O.
TRICHUR, PIN - 680596
- 4 DIRECTOR OF MEDICAL EDUCATION
KUMARAPURAM ROAD, CHALAKKUZHI, THIRUVANANTHAPURAM, PIN
- 695011

BY ADVS.C.DINESH
P.SREEKUMAR (SR.) (K/410/1994)



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SHRI.ASOK M.CHERIAN, ADDL. ADVOCATE GENERAL()
SHRI.K.B.RAMANAND. SPL. G.P. TO A.A.G()

SMT. O M SHALINA, DSGI,
SRI. BINNY THOMAS. SC, KERALA UNIVERSITY OF HEALTH
SCIENCES,
SRI. K B RAMANAND, SPL GP TO AAG

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
27.05.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

Anil K. Narendran, J.

The petitioner in W.P.(C)No.8960 of 2025 has filed this writ appeal, invoking provisions under Section 5(i) of the Kerala High Court Act, 1958, challenging the interim order dated 06.03.2025 of the learned Single Judge in that writ petition. The said writ petition was filed by the petitioner, namely, the Principal, Century International Institute of Dental Science and Research Centre, invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, seeking a writ of certiorari to quash Ext.P13 communication dated 24.02.2025 issued by the 3rd respondent Kerala University of Health Sciences, whereby the petitioner is required to furnish the details of students and house surgeons currently doing BDS course at Century International Institute of Dental Science and Research Centre, in the format given in the said communication, on or before 28.02.2025. The said communication is one issued based on the request made by the 4th respondent Director of Medical Education, Kerala, to the 3rd respondent University, to take steps to reallocate BDS students in the Dental College on the ground that the college lacks hospital facility. The petitioner has also sought for a writ of



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mandamus commanding the 1st respondent Union of India and the 2nd respondent Dental Council of India to take an appropriate decision on Ext.P11 representation dated 07.11.2024 and Ext.P12 representation dated 12.12.2024, before proceeding against the Dental College either under Section 16 and 16A of the Dentists Act, 1948, which deals with withdrawal of recognition, or Regulation 11A of the Dental Council of India (Establishment of New Dental Colleges, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity in Dental Colleges) Regulations, 2006; a declaration that the respondents can look into the facilities available in the Government Hospital with which the Dental College has a tie up and not with the private owned hospital [sic: the hospital attached to the Dental College], which is yet to be functional; a writ of mandamus commanding respondents 1 and 2 to reassess the facilities in connection with the Dental College, keeping in mind the tie up of the Dental College with the Government Hospital.

2. The interim relief sought for in that writ petition, reads thus;

"It is therefore prayed that this Hon'ble Court may be



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pleased to stay all further proceedings pursuant to Ext.P13, pending disposal of the writ petition.”

(underline supplied)

3. On 06.03.2025, when the writ petition came up for admission, the learned Single Judge admitted the matter on file and granted an interim order, which reads thus;

“Counsel for the petitioner submits that Dental Hospital within the premises of the Institution had to be demolished consequent to the widening of the National Highway and the construction of the new Dental Hospital building is completed. It is yet to become functional. In the meanwhile, with the approval of the respondents, the Hospital had a tie up with the Government Hospital and the said facility is being utilised even today. Now, holding that the new Dental Hospital lacks facility, proceedings have been initiated.

2. By Ext.P13, the petitioner is requested to provide the details of students and House Surgeons currently undergoing BDS Course in the Institution with intention to reallocate the students of the College.

3. Admit.

4. Deputy Solicitor General of India-in-Charge takes notice for the 1st respondent. Respective Standing Counsel take notice for respondents 2 and 3. Government Pleader takes notice for the 4th respondent.

5. Pending the writ petition, there will be an interim order staying further proceedings pursuant to Ext.P13, for a period of three months.”

(underline supplied)

4. Though the learned Single Judge granted an interim



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order, as sought for in the writ petition, the appellant-writ petitioner has filed this writ appeal by contending that the interim order of the learned Single Judge may not save the situation and if the officials are acting to shift the students, serious prejudice would be caused to the writ petitioner. Further, the directives presently issued vide the interim order of the learned Single Judge may not suffice and can in no way safeguard the interest of the institution.

5. On 16.04.2025, when this writ appeal came up for consideration before a Division Bench of this Court, the said Bench passed the following order;

“Mr.P.S. Biju, counsel for the petitioners submitted that owing to the widening of the National Highway, the hospital run by the appellant-petitioner is now under arrangement with District Hospital, Kanhangad, Ext.P7. The aforementioned college is affiliated with Kerala University of Health Sciences (KUHS). Though order Ext.P13 with regard to the list of students would be transferred to other college has been sought for, but there is a threat perception of withdrawing of the affiliation and taking of further admissions. Issue notice before admission to the respondents. In the meantime, status quo qua affiliation.”

(underline supplied)

6. Heard the learned counsel for the appellant-writ



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petitioner, the learned Deputy Solicitor General of India for the 1st respondent Union of India, the respective Standing Counsel for respondents 2 and 3 and also the learned Senior Government Pleader for the 4th respondent.

7. The issue that requires consideration in this writ appeal is as to whether the interim order dated 06.03.2025 of the learned Single Judge in W.P.(C)No.8960 of 2025, can be challenged by the writ petitioner in a writ appeal filed under Section 5(i) of the Kerala High Court Act, 1958.

8. During the course of arguments, the submission made by the learned counsel for the appellant-writ petitioner is that the interim order granted by the learned Single Judge on 06.03.2025 staying further proceedings pursuant to Ext.P13 for a period of three months would not save the situation, as stated in the memorandum of writ appeal. Therefore, dissatisfied with the said interim order, the appellant has chosen to file this writ appeal, invoking the provisions under Section 5(i) of the Kerala High Court Act.

9. Section 5 of the Kerala High Court Act deals with appeal from judgment or order of Single Judge. As per Section 5(i) of the Act, an appeal shall lie to a Bench of two Judges from



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a judgment or order of a Single Judge in the exercise of original jurisdiction. On the question of maintainability of a writ appeal under Section 5(i) of the Kerala High Court Act, against an interim order passed by a learned Single Judge during the pendency of the writ petition, the Larger Bench in **K. S. Das v. State of Kerala [1992 (2) KLT 358]** held that the word 'order' in Section 5(i) of the Kerala High Court Act includes, apart from other orders, orders passed by the High Court in miscellaneous petitions filed in the writ petitions provided the orders are to be in force pending the writ petition. An appeal would lie against such orders only if the orders substantially affect or touch upon the substantial rights or liabilities of the parties or are matters of moment and cause substantial prejudice to the parties. The nature of the 'order' appealable belongs to the category of 'intermediate orders' referred to by the Apex Court in **Madhu Limaye v. State of Maharashtra [(1977) 4 SCC 551]**. The word 'order' is not confined to 'final order' which disposes of the writ petition. The 'orders' should not however, be ad-interim orders in force pending the miscellaneous petition or orders merely of a procedural nature.

10. In **Thomas P. T. and another v. Bijo Thomas and**



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others [2021 (6) KLT 196], a Division Bench of this Court noticed that the view that was upheld by the Larger Bench in **K.S. Das [1992 (2) KLT 358]** was that even though an appeal could be filed against an interlocutory order passed in a writ petition, in order to be qualified for challenge in an appeal, the order shall be either substantially affecting or touching upon the substantial rights or liabilities of the parties or which are matters of moment and cause substantial prejudice to the parties. According to the Larger Bench, the nature of the order appealable belongs to the category of intermediate orders referred to by the Apex Court in **Madhu Limaye [(1977) 4 SCC 551]**. It was, however, clarified by the Larger Bench that such orders should not, however, be ad interim orders or orders merely of a procedural nature.

11. In the instant case, as already noticed hereinbefore, the interim relief sought for in W.P.(C)No.8960 of 2025 is a stay of all further proceedings pursuant to Ext.P13, pending disposal of the writ petition. The interim order granted by the learned Single Judge on 06.03.2025 is to the effect that pending the writ petition, there will be an interim order staying further proceedings pursuant to Ext.P13, for a period of three months.



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When the interim relief as sought for in the writ petition has already been granted by the learned Single Judge, the writ petitioner, who is not a person aggrieved by that interim order, cannot maintain a writ appeal against that order, by invoking the provisions under Section 5(i) of the Kerala High Court Act. If the writ petitioner requires any further direction, beyond the scope of the interim order sought for in the writ petition, he has to move an interlocutory application in the writ petition for that purpose, instead of challenging the interim order already granted by the learned Single Judge in a writ appeal filed before the Division Bench under Section 5(i) of the Kerala High Court Act.

12. In that view of the matter, the conclusion is irresistible that, this writ appeal filed by the appellant-writ petitioner is beyond the scope of Section 5(i) of the Kerala High Court Act. When the interim relief as sought for in the writ petition has already been granted by the learned Single Judge, the writ petitioner, who is not a person aggrieved by that interim order, cannot maintain a writ appeal against that order.

In the result, this writ appeal fails on the ground of maintainability and the same is accordingly dismissed. Consequently, the interim order dated 16.04.2025 granted in this



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writ appeal will stand vacated; however, without prejudice to the right of the writ petitioner to move an interlocutory application in the writ petition, if he requires any further direction, beyond the scope of the interim order sought for in the writ petition.

Sd/-

ANIL K. NARENDHAN, JUDGE

Sd/-

P. V. BALAKRISHNAN, JUDGE

AV/