



2025:KER:66346

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

TUESDAY, THE 9TH DAY OF SEPTEMBER 2025 / 18TH BHADRA, 1947

WP(C) NO. 20249 OF 2025

PETITIONER:

THE PRINCIPAL
DR. SOMERVELL MEMORIAL CSI MEDICAL COLLEGE,
ALLIED HEALTH SCIENCES, KARAKONAM,
THIRUVANANTHAPURAM, PIN - 695504

BY ADVS.
SRI.ARUN.B.VARGHESE
SMT.RAKHI RAJ
SRI.ALAN LALU JOHN
SRI.S.SREEKUMAR (SR.)

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS PRINCIPAL SECRETARY,
HEALTH AND FAMILY WELFARE DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 695001
- 2 KERALA UNIVERSITY OF HEALTH SCIENCES
REPRESENTED BY ITS REGISTRAR
MEDICAL COLLEGE P.O, THRISSUR, PIN - 680596
- 3 THE REGISTRAR
KERALA UNIVERSITY OF HEALTH SCIENCES
MEDICAL COLLEGE P.O, THRISSUR, PIN - 680596



2025:KER:66346

W.P.(C) No.20249/2025

: 2 :

BY ADVS.

SRI.BINNY THOMAS, STANDING COUNSEL

SRI.P.SREEKUMAR (SR.), STANDING COUNSEL

SMT.ANIMA M., GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 23.08.2025 AND THE COURT ON 09.09.2025
DELIVERED THE FOLLOWING:



W.P.(C) No.20249/2025

: 3 :

CR

N. NAGARESH, J.

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W.P.(C) No.20249 of 2025
.....

Dated this the 9th day of September, 2025

J U D G M E N T

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The Principal of Dr. Somervell Memorial CSI Medical College, Allied Health Sciences, Karakkonam, Thiruvananthapuram seeks to quash Exts.P1, P5, P7 and P8 and to direct the 2nd respondent to grant affiliation to start Bachelor of Occupational Therapy (BOT), Bachelor of Audiology and Speech Language Pathology (BASLP), Bachelor of Dialysis Technology (BDT) and B.Sc Medical Microbiology forthwith.

2. The petitioner states that they are conducting various paramedical courses like Bachelor of Physiotherapy



W.P.(C) No.20249/2025

: 4 :

(BPT), Bachelor of Science in Medical Laboratory Technology (B.Sc MLT), Bachelor of Science in Optometry (B.Sc Optometry) and Master of Hospital Administration. The 2nd respondent-Kerala University of Health Sciences has issued Ext.P1 notification dated 31.08.2024 inviting applications for starting new courses and for enhancement of seats.

3. The petitioner submitted application for starting BOT for 20 seats, BASLP with 20 seats, BDT with 10 seats, B.Sc MMB with 30 seats and an application for enhancement of MHA seats from 5 to 20. The Government has issued NOC for BOT (20 seats), BASLP (20 seats), BDT (10 seats) to the petitioner. The Government also issued NOC for B.Sc MMB (30 seats) and for enhancement of MHA seats (from 5 to 20).

4. However, the 2nd respondent rejected the application for starting BDT, BASLP, BOT and B.Sc MMB Courses as per Ext.P5 stating that the pass percentage of all regular examinations of existing Batches is only 44.15% which



W.P.(C) No.20249/2025

: 5 :

is below the minimum prescribed requirement.

5. The petitioner states that as per Clause 2(5) (ii)(v) of Ext.P7 notification, in case of additional courses and/or for enhancement of seats, the Colleges shall satisfy the condition that the first Batch of the courses in the institution under the same stream shall be passed out and the details of the average of pass percentage of previous regular examinations of all existing Batches of the same course at the same time of submitting the application and a declaration that the percentage is not below the minimum prescribed by the Governing Council in the notification issued by the University for the purpose of the addition/enhancement concerned. The petitioner submits that since Ext.P7 notification has not been published in official gazette, it will have no force of law.

6. The petitioner submits that the words “same stream” in the statute must be taken to mean as same course. The petitioner submits that Ext.P8 notification is illegal as it has not followed the mandatory requirements under Sections



W.P.(C) No.20249/2025

: 6 :

41(3)(iv), 41(3)(v), 41(3)(vi) and 46 of the Kerala University of Health Sciences Act.

7. Respondents 2 and 3 opposed the writ petition. For processing applications for starting additional courses, the average of pass percentage of all regular examinations of the existing Batches of all courses under the same stream shall not be below the minimum prescribed by the Governing Council in the notification issued by the University from time to time, contended respondents 2 and 3. Ext.P1 notification prescribes the average pass percentage of previous regular examinations of existing Batches of the courses in that stream as 50% for starting additional courses.

8. Respondents 2 and 3 submitted that Ext.P7 Amendment Statute was published in the official gazette on 15.12.2021 and hence the argument of the petitioner in that regard, is unsustainable. Sub-clause A to Clause 2(5)(ii)(v) prescribes the condition to be complied by institutions applying for additional courses wherein it is prescribed that the average



W.P.(C) No.20249/2025

: 7 :

of pass percentage of all regular examinations of the existing Batches of all courses under the same stream is not below the minimum prescribed by the governing council in the notification issued by the University from time to time for the purpose of additional course concerned.

9. The minimum pass percentage provision in the affiliation statute is intended to ensure the overall quality of the institution while considering their application for additional course / enhancement of seats. In the case of the petitioner, since the courses applied for by the petitioner are new courses, the only option before the University is to consider the pass percentage of other courses belonging to the same stream conducted in the institution.

10. The counsel for the University relied on the judgment of the Apex Court in ***State of Bihar and others v. Bihar Distillery Limited*** [(1997) 1 SCC 121] and contended that while examining the challenge to the constitutionality of an enactment, the court has to start with the presumption of



W.P.(C) No.20249/2025

: 8 :

constitutionality and any defects of drafting should be ironed out as part of the attempt to sustain the validity / constitutionality of the enactment.

11. The counsel for the petitioner, on the other hand, relied on a Division Bench judgment of this Court in ***N.C. Narayanan Nair v. State of Kerala [1988 (1) KLT 894]*** and submitted that when a statutory rule is found to be unreasonable, uncertain in its language and unworkable in its operation, the conclusion is that the statute is manifestly arbitrary.

12. I have heard the learned counsel for the petitioner, the learned Government Pleader appearing for the 1st respondent and the learned Standing Counsel representing respondents 2 and 3.

13. The petitioner-College is conducting paramedical courses like BPT, B.Sc MLT, B.Sc Optometry and Master of Hospital Administration. When the 2nd respondent-University issued Ext.P1 notification on



W.P.(C) No.20249/2025

: 9 :

31.08.2024, the petitioner submitted application for starting the Courses BOT (for 20 seats), BASLP (for 20 seats), BDT (for 10 seats) and BSc MMB (for 30 seats). An application was submitted for enhancement of MHA seats from 5 to 20.

14. The Government has granted NOC. However, the 2nd respondent-University rejected the application for starting BDT, BASLP, BOT and BSc MMB Courses as per Ext.P5 on the ground that the pass percentage of all regular examinations of existing Batches is only 44.15% which is below the minimum 50% requirement.

15. The University has made Ext.P7 amendment to the First Statutes in the matter of affiliation of Colleges. As per Clause 2(5)(ii)(v) of Ext.P7, in the case of additional courses and/or for enhancement of seats, the Colleges shall satisfy the condition that first Batch of the Courses in the institution under the same stream shall be passed out and the details of the average of percentage of previous regular examinations of all existing Batches of the same Course at the



W.P.(C) No.20249/2025

: 10 :

time of submitting the application and a declaration that the percentage is not below the minimum prescribed by the governing council.

16. It is based on Clause 2(5)(ii)(v) of Ext.P7 that the petitioner's applications stand rejected. According to respondents 2 and 3, for processing applications for starting additional courses, the average of pass percentage of all regular examinations of the existing Batches of all courses under the same stream shall not be below the minimum prescribed by the governing council in the notification issued by the University from time to time. Ext.P1 notification has prescribed the average required pass percentage as 50% for starting additional courses.

17. The dispute revolves around implication of Clause 2(5)(ii)(v), which reads as follows:

In the case of additional courses and/or for enhancement of seats, the colleges shall satisfy the condition that 1s batch of the courses in the institution under the same stream shall be passed out and the details of the average of pass percentage of previous regular examinations of all existing batches of the same course at the time of submitting the



W.P.(C) No.20249/2025

: 11 :

application and a declaration that the percentage is not below the minimum prescribed by the Governing Council in the Notification issued by the University for the purpose of the addition /enhancement concerned.

18. The issue arises from the requirement *“first Batch of the courses in the institution under the same stream shall be passed out”* and the details of the average of pass percentage of *“previous regular examinations of all existing Batches of the same course”* should be given. The counsel for the petitioner would submit that the words *“first Batch of the courses in the institution under the same stream”* would only mean the first Batch of the same course, in which students are studying in different years/semesters. The word “stream” cannot be interpreted to mean other totally different courses run by the institution. The words *“pass percentage of previous regular examinations of all existing batches of the same course”* means all existing batches of the particular course only.



W.P.(C) No.20249/2025

: 12 :

19. The dispute arises as the University has laid down common procedural requirements in one Clause (Clause 2(5)) for affiliation of not only various professional medical courses but for paramedical and allied courses also. These common procedural requirements encompass not only affiliation of new Colleges and new courses, but also enhancement of seats for various courses. When such clubbing of procedural requirements is made, confusion and contradictions are likely to arise.

20. For instance, Clause 2(5)(ii)(v) requires the Colleges which apply for affiliation of a new course to furnish details of the average pass percentage of previous regular examinations of all existing batches of the same course. It is impossible to furnish details of pass percentage of previous examination of same course as the course is yet to be introduced. In such situation, this Court is bound to give a purposive interpretation to the provision taking note of the object of the Act/Statute.



W.P.(C) No.20249/2025

: 13 :

21. While submitting application for affiliation of new College or new course or for enhancement of seats, Clause 2(5)(ii)(v) mandated colleges to furnish the following information:

(i) that the college satisfies the condition that first batch of the courses in the institution under the same stream shall be passed out

and

(ii) details of average of pass percentage of previous regular examinations of all existing batches of the same course alongwith a declaration that the percentage is not below the minimum prescribed.

22. As the afore Clause 2(5)(ii)(v) failed to meet the intended need, the Vice Chancellor invoking emergency provisions under the Kerala University of Health Sciences Act, 2010 modified Clause 2(5)(ii)(v) as per Ext.R2(a) U.O. 444/2021/academic/KUHS dated 26.03.2021, by adding Clauses 'A' and 'B', as follows:

A. For additional course the average of pass percentage of all regular examinations of the existing batches of all courses under the same



W.P.(C) No.20249/2025

: 14 :

stream is not below the minimum prescribed by the Governing council in the Notification Issued by the University from time to time for the purpose of the additional course concerned. If the norm above is contrary to the norm of apex council If any, then the norm of apex council shall prevail.

B. For enhancement of seats the first batch of the same course to which enhancement is requested by the college shall be passed out and the average of pass percentage of all regular examinations of the existing batches of that particular course is not below the minimum prescribed by the Governing council in the Notification issued by the University from time to time for the purpose of the enhancement concerned. If the norm above is contrary to the norm of apex council if any, then the norm of apex council shall prevail.

23. Ext.R2(a) made it clear that the average of pass percentage required should be of all regular examinations of the existing batches of all courses under the same stream. Ext.R2(a) decision of the Vice Chancellor was ratified by the Academic Council and Governing Council, which is evident from Ext.R2(b).

24. Thereafter, the Governing Council decided to add sub-clauses 'C' and 'D' to Clause 2(5)(ii)(v), as per Ext.P8. Clauses C and D read as follows:



W.P.(C) No.20249/2025

: 15 :

C. For the purpose of considering applications for enhancement of seats/additional courses, the average of pass percentage as noted in Sub Clause "A" and "B" above shall be minimum 50% (Fifty Percentage). The relevant date for considering the pass percentage shall be the last date fixed for receipt of such applications as per notification issued by the University from time to time. In case of applications which have validity of three years, if the applications are to be considered in the subsequent years, the last date fixed for receipt of the applications as per notification issued by University in the current year shall be the relevant date for considering the pass percentage. If no notifications are invited by the University in a particular year, the date on which the date on which the institution concerned is to achieve the average pass percentage required shall be decided by the Governing Council.

D. If seat enhancement is already permitted in an existing course and the application is for further enhancement Of seats, the batch in which enhancement was last sanctioned shall be treated as 1st batch for the purpose of considering further enhancement of seats.

25. From Clause 2(5)(ii)(v) and Ext.R2(a) and Ext.P8, it has to be held that the University, with intent to maintain high degree of educational standards, intended to insist for minimum percentage of pass in all courses conducted by the Colleges/Institutions for grant of enhancement of seats in an existing course. The wisdom of



W.P.(C) No.20249/2025

: 16 :

the University to prescribe minimum standards in education cannot be called in question in a writ petition under Article 226 of the Constitution of India.

26. The counsel for the petitioner would rely on the judgment of this Court in ***Sree Anjaneya College of Nursing and another v. State of Kerala and others [2022 (1) KLT 26]***. That was case of a College where B.Sc (Nursing) alone was taught and the respondents therein had no case that education was imparted in any other stream. The said judgment is therefore of no assistance to the petitioner.

In the facts of the case, I find no merit in the writ petition. The writ petition is therefore dismissed.

Sd/-

N. NAGARESH, JUDGE

aks/03.09.2025



W.P.(C) No.20249/2025

: 17 :

APPENDIX OF WP(C) 20249/2025

PETITIONER'S EXHIBITS

Exhibit P1	A TRUE COPY OF NOTIFICATION NO.32754/2022/AC1/GEN.A2/KUHS DATED 31.08.2024 ISSUED BY THE 2ND RESPONDENT
Exhibit P2	A TRUE COPY OF ORDER BEARING NO. GO(MS) NO.127/2024 /H&FWD DATED 27.06.2024 ISSUED BY THE 1ST RESPONDENT
Exhibit P3	A TRUE COPY OF GO(MS) NO.269/2024/H&FWD DATED 07.10.2024 ISSUED BY 1ST RESPONDENT
Exhibit P4	A TRUE COPY OF GO(MS) NO. 77/2025/H&FWD DATED 03.03.2025 ISSUED BY 1ST RESPONDENT
Exhibit P5	A TRUE COPY OF LETTER NO.33893/2024/ACII/AHS/A3/KUHS DATED 21.02.2025 ISSUED BY 2ND RESPONDENT
Exhibit P6	A TRUE COPY OF THE RELEVANT PORTION OF THE KERALA UNIVERSITY OF HEALTH SCIENCES FIRST STATUTES 2013
Exhibit P7	A TRUE COPY OF NOTIFICATION NO.2035/AC-H/2015/KUHS DATED 24.02.2020 ISSUED BY THE 2ND RESPONDENT
Exhibit P8	A TRUE COPY OF UNIVERSITY ORDER BEARING NO: 69/2022/ACADEMIC/KUHS DATED 07.02.2022 ISSUED BY THE 2ND RESPONDENT
Exhibit P9	A TRUE COPY OF THE RELEVANT PORTION OF THE SYLLABUS OF BACHELOR OF SCIENCE IN OPTOMETRY
Exhibit P10	A TRUE COPY OF THE RELEVANT PORTION OF THE SYLLABUS OF BACHELOR OF SCIENCE IN MEDICAL LABORATORY TECHNOLOGY
Exhibit P11	A TRUE COPY OF THE RELEVANT PORTION OF BACHELOR OF SCIENCE DIALYSIS TECHNOLOGY
Exhibit P12	A TRUE COPY OF THE RELEVANT PORTION OF



W.P.(C) No.20249/2025

: 18 :

SYLLABUS OF BACHELOR OF OCCUPATIONAL THERAPY

Exhibit P13	A TRUE COPY OF A CHART SHOWING THE EXAMINATION RESULTS OF MBBS AND PG MEDICAL COURSE
Exhibit P14	A TRUE COPY OF THE CHART SHOWING THE MARKS OF BS C NURSING COURSE AND MSC NURSING COURSE
EXHIBIT P15	A COPY OF THE KERALA GAZETTE NOTIFICATION DATED 24.02.2020

RESPONDENT'S ANNEXURES

Annexure R-2 (a)	TRUE COPY OF THE ORDER U.O 444/2021/ACADEMIC/KUHS DATED 26-3-2021
Annexure R-2 (b)	TRUE COPY OF THE ORDER U. O. NO : 770/2021/ACADEMIC/KUHS DATED 20-09-2021 RATIFYING THE DECISION OF THE VICE CHANCELLOR
Annexure R-2 (c)	TRUE COPY OF THE RELEVANT PAGES EVIDENCING PUBLICATION OF THE EXT. P-7 IN OFFICIAL GAZETTE DATED 24.02.2020