

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 07TH DAY OF JANUARY 2021 / 17TH POUSHA, 1942

WP (C) .No.27637 OF 2020 (D)

PETITIONER/S:

SUSRUTH K, ,
AGED 24 YEARS
S/O.SANTHOSH.V.K. ,
KEZHKOOT HOUSE,
KUMARAPPANAL P.O. ,
VARAVUR,
THRISSUR DISTRICT-680 585.

BY ADVS.
SHRI.SAMEER M NAIR
SRI.MANU RAMACHANDRAN
SRI.M.KIRANLAL
SRI.R.RAJESH (VARKALA)
SRI.T.S.SARATH

RESPONDENT/S:

- 1 THE UNION OF INDIA,
THROUGH ITS SECRETARY (HIGHER EDUCATION) ,
MINISTRY OF HUMAN RESOURCE DEVELOPMENT,
NORTH BLOCK, NEW DELHI-110 001.
- 2 THE STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 3 THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

- 4 DIRECTOR, INDIAN INSTITUTE OF MANAGEMENT, CALCUTTA,
DIAMOND HARBOUR ROAD JOKA,
KOLKATA (CALCUTTA)-700 104,
WEST BENGAL INDIA.
- 5 DIRECTOR, INDIAN INSTITUTE OF MANAGEMENT,
AHMEDABAD, VASTRAPUR,
AHMEDABAD-380 015,
GUJARAT, INDIA.
- 6 DIRECTOR, INDIAN INSTITUTE OF MANAGEMENT,
BANGALORE, BANNERGHATTA ROAD,
BANGALORE, KARNATAKA-560 076, INDIA.
- 7 DIRECTOR, INDIAN INSTITUTE OF MANAGEMENT,
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IIM ROAD, LUCKNOW-226 013.
- 8 DIRECTOR, INDIAN INSTITUTE OF MANAGEMENT,
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RAU-PITHAMPUR ROAD, INDORE,
MADHYA PRADESH-435 556, INDIA.
- 9 DIRECTOR, INDIAN INSTITUTE OF MANAGEMENT,
KOZHIKODE, IIMK CAMPUS P.O.,
KOZHIKODE, KERALA,
INDIA, PIN-673 570.
- 10 DIRECTOR,
INDIAN INSTITUTE OF MANAGEMENT,
SHILLONG, MAYURBHANJ COMPLEX,
EAST KHASI HILLS DISTRICT,
NANGTHYMMAI, SHILLONG,
MEGHALAYA-793 014, INDIA.
- 11 DIRECTOR,
INDIAN INSTITUTE OF MANAGEMENT,
ROHTAK, NH-10 SOUTHERN BYPASS,
SUNARIA, ROHTAK, 124010,
HARYANA, INDIA.
- 12 DIRECTOR,
INDIAN INSTITUTE OF MANAGEMENT,
RANCHI, SUCHANA BHAWAN,
5TH FLOOR, AUDREY HOUSE CAMPUS,
MEUR'S ROAD, RANCHI-834 008.

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- 13 DIRECTOR,
INDIAN INSTITUTE OF MANAGEMENT,
RAIPUR, ATAL NAGAR,
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RAIPUR (CG)-493 661.
- 14 DIRECTOR,
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THIRUCHIRAPALLY,
PUDUKKOTTAI MAIN ROAD,
CHINNA SOORIYUR VILLAGE,
TIRUCHIRAPPALLI-620 024,
TAMIL NADU.
- 15 DIRECTOR,
INDIAN INSTITUTE OF MANAGEMENT,
KASHIPUR, KUNDRESHWARI,
KASHIPUR, DISTRICT-UDHAM SINGH NAGAR,
UTTARKHAND-244 713, INDIA.
- 16 DIRECTOR,
INDIAN INSTITUTE OF MANAGEMENT,
UDAIPUR, MOHANLAL SUKHADIA UNIVERSITY,
UDAIPUR-313 001, RAJASTHAN, INDIA.
- 17 DIRECTOR,
INDIAN INSTITUTE OF MANAGEMENT,
AMRITSAR, AMRITSAR II,
AMRITSAR-143 105, PUNJAB, INDIA.
- 18 DIRECTOR,
INDIAN INSTITUTE OF MANAGEMENT,
SIRMAUR, PAONTA SAHIB,
SIRMAUR, 173025,
HIMACHAL PRADESH, INDIA.
- 19 DIRECTOR,
INDIAN INSTITUTE OF MANAGEMENT,
SAMBALPUR, SILICON INSTITUTE OF TECHNOLOGY,
NUAKHURIGAN-768 200, ODISHA, INDIA.
- 20 DIRECTOR,
INDIAN INSTITUTE OF MANAGEMENT,
VISHAKAPATANAM,
ANDHRA BANK SCHOOL OF BUSINESS BUILDING,
ANDHRA UNIVERSITY CAMPUS,
VISAKHAPATNAM-530 003.

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- 21 DIRECTOR,
INDIAN INSTITUTE OF MANAGEMENT,
NAGPUR, VNIT CAMPUS, SOUTH,
AMBAZARI ROAD, NAGPUR,
MAHARASHTRA-440 010, INDIA.
- 22 DIRECTOR,
INDIAN INSTITUTE OF MANAGEMENT,
BODHAGAYA, SAMATVAM,
THE MINDFULNESS CENTRE URUVELA,
PRABANDH VIHAR, BODH GAYA-824 234, INDIA.
- 23 DIRECTOR,
INDIAN INSTITUTE OF MANAGEMENT,
JAMMU, OLD UNIVERSITY CAMPUS,
CANAL ROAD, JAMMU-180 016.
- 24 C.E.O.,
REPRESENTING TATA CONSULTANCY SERVICES LIMITED,
REGISTERED AT: 9TH FLOOR,
NIRMAL BUILDING, NARIMAN POINT,
MUMBAI-400 021,
SITUATED IN STATE AT: VISMAYA BUILDING,
INFOPARK, KUSUMAGIRI P.O.,
KAKKANAD, KOCHI-682 030, KERALA.

R1, R8 BY SRI.SUVIN R.MENON, CGC
R24 BY ADV. SRI.P.BENNY THOMAS
R24 BY ADV. SRI.D.PREM KAMATH
R24 BY ADV. SRI.TOM THOMAS (KAKKUZHIYIL)
R24 BY ADV. SHRI.ABEL TOM BENNY
R24 BY ADV. SHRI.JYOTHISH KRISHNA
R24 BY ADV. SMT.MEENAKSHY S DEV
R24 BY ADV. SHRI.AHAMMAD SACHIN K.
R24 BY ADV. SHRI.KURIAN OOMMEN THERAKATH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
07-01-2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)No.27637 of 2020

JUDGMENT

This matter relates to the Common Admission Test 2020 (the test), the qualifying examination for admission to the various courses conducted by the Indian Institutes of Management in the country namely respondents 4 to 23. The test was conducted by the eighth respondent institute on their behalf and also on behalf of other institutes.

2. The petitioner is one among the candidates applied for the test which was scheduled to take place in three sessions on 29.11.2020. Ext.P2 is the Admit Card issued to the petitioner for the said purpose by the competent authority. It is stated by the petitioner that his mother was tested positive for COVID-19 infection on 22.11.2020 and as the petitioner, who was residing with his mother, was advised by the officials of the Health Service Department of the State to be in quarantine, he sent Ext.P4 request by email to the authority conducting the test to let him know the particulars of the protocol to be followed by him for partaking in the test. In Ext.P5 reply to Ext.P4 email, the petitioner was informed that if he is not identified as a potential carrier of COVID-19 virus, he can appear for the test after giving a self declaration as provided for in the Admit Card. It is stated by the petitioner that later on 27.11.2020, he was also tested positive for COVID-19 infection. The

petitioner, then preferred Ext.P7 request by email to the authority conducting the test to let him know the protocols to be followed by him for partaking in the test. It is alleged by the petitioner that there was no response to Ext.P7 request and the petitioner could not therefore appear for the test. The case set out by the petitioner in the writ petition in essence is that it was obligatory for the competent authority to make necessary arrangements to enable the petitioner and other similarly placed candidates to appear for the test and in as much as arrangements have not been made for the same, the competent authority is bound to conduct another session of the test for them to be qualified to secure admission to the various courses conducted by respondents 4 to 23. The petitioner, therefore, seeks appropriate directions to the respondents concerned to conduct an additional session of the test with proper protocol and facilitation for those candidates who could not appear for the test held on 29.11.2020 on account of COVID-19 infection.

3. Heard the learned counsel for the petitioner, the learned Central Government counsel as also the learned counsel for respondent No.24.

4. Placing reliance on the decision of the Apex Court in **Rakesh Kumar Agarwalla and Others v. National Law School of India University, Bengaluru and Others**, AIR 2020 SC 4461 and the interim order passed in the said matter on 28.09.2020 directing the competent authority to provide appropriate facilities for a candidate who was in isolation for suspected COVID-19 infection to appear for the

Common Law Admission Test 2020, the learned counsel for the petitioner submitted that the inaction on the part of the competent authority in making necessary arrangements to enable COVID-19 infected candidates to appear for the test was arbitrary and unfair. It was also submitted by the learned counsel for the petitioner that in so far as the competent authority has failed to make necessary arrangements to enable COVID-19 infected candidates to appear for the test, they are obliged to conduct an additional session of the test for such candidates.

5. Per contra, the learned Central Government Counsel appearing for the eighth respondent submitted that having regard to the peculiar situation created by the pandemic, possibility of another session of the test has in fact been considered by the committee conducting the test and it was found that the test being the qualifying examination for admission to the various courses conducted by the prestigious Indian Institutes of Management, considerable time is required to prepare the question papers for another session of the test and even if question papers are prepared for another session of the test, since particulars for such a session would be minimal, it would not be possible to do normalization of the scores of such candidates and that the idea of conducting another session of the test was consequently dropped. It was also submitted by the learned Central Government Counsel that the identical relief prayed for by similarly placed candidates in the context of JEE(Advanced) Examination, 2020 was declined by the Delhi High Court as per the judgment in W.P.(C)No.7444 of 2020. On a query from the court, the learned Central Government Counsel conceded that the

consistent stand of the Central Government being that persons suffering from COVID-19 infection have to remain in isolation, alternative arrangements have not been made to enable such candidates to appear for the test.

6. I have considered the submissions made by the learned counsel for the parties on either side.

7. Insofar as the petitioner could not appear for the test held on 29.11.2020, the questions arising for consideration are (1) whether it was obligatory for the competent authority to make necessary arrangements to enable the petitioner and other similarly placed candidates to appear for the test and (2) if so, whether the petitioner is entitled to a direction to the respondents concerned to conduct an additional session of the test.

8. As noted, the contention taken by the eighth respondent is that it is impossible to conduct another session of the test. If the said contention is upheld, it is unnecessary to consider the questions referred to in the preceding paragraph. As such, I shall proceed to consider the sustainability or otherwise of the contention taken by the eighth respondent.

9. In the course of the arguments, the learned Central Government Counsel has handed over to the Court the written instructions received by him from the eighth respondent. The written instructions handed over to the court reveals that the test committee deliberated on the possibility of conducting re-examination for COVID-19 positive candidates who could not appear for the test and found that such

a course is not viable due to the following reasons :

“1. Preparing a new question paper of the CAT exam level requires a considerable amount of time and effort. This year the number of question papers had to be increased midway to three due to the decision of increasing the number of shifts to three owing to COVID (instead of two papers in regular years). It took nearly six months for the question paper preparation process to complete.

2. It would not be possible to do normalization of scores for a new question paper with a small number of candidates. CAT normalizes the scores of the candidates according to the shift they appear in while determining their percentiles. For the normalization process to work properly the number of candidates in a shift needs to be significantly large (for example, more than 59,000 candidates appeared in each of the three shifts this year).”

There is absolutely no reason for doubting the correctness of the aforesaid stand of the eighth respondent. It is all the more so since it is trite that it would be wise and safe generally for the courts to leave the decisions on academic matters to experts who are familiar with the problems they face than the courts. In other words, even if it is found that it was obligatory for the competent authority to make necessary arrangements to enable the petitioner and other similarly placed candidates to appear for the test, the relief claimed by the petitioner cannot be granted.

10. The only other option available to redress the grievance of the petitioner would be to direct the competent authority to conduct the test afresh for all the candidates. Should that course be adopted for the purpose of rendering justice to the petitioner is the remaining

question. It is revealed from the written instruction furnished to the counsel by the eighth respondent, which was handed over to the court, that about 1.9 lakhs candidates have appeared for the three sessions of the test held on 29.11.2020. Merely for the reason that the petitioner could not participate in the test on account of reasons not attributable to him, according to me, this court would not be justified in ordering the test to be conducted afresh, as for conducting the test afresh, a new set of question papers are to be prepared, and as noted, the same will take considerable time in addition to the efforts to be put in by large number of persons and even if such a course is adopted, the courses cannot be conducted by the institutes as scheduled by them now, which would adversely affect the career prospects of large number of candidates who have appeared for the test. I am fortified in this view by the observations made by the Apex Court in **Ran Vijay Singh and others v. State of Uttar Pradesh and others**, (2018) 2 SCC 357, in the context of the mistakes in the answer key prepared for a similar test, which read thus :

“31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse - exclude the suspect or offending question.”

11. Coming to the argument advanced by the learned counsel for the petitioner, it is seen that the candidate in whose favour interim order has been passed by the Apex Court in **Rakesh Kumar Agarwalla** was not a Covid-19 infected person. The candidate was only a person suspected of Covid-19 infection. Further, the interim order was one passed prior to the test. Even while I am conscious of the fact that the petitioner could not have approached this court for relief before the test for want of time, I am of the view that the said interim order of the Apex Court may not be of any benefit to the petitioner.

The writ petition, in the circumstances, is without merits and the same is, accordingly, dismissed.

rkj

Sd/-
P.B.SURESH KUMAR, JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	THE TRUE COPY OF APPLICATION FOR CAT MADE BY THE PETITIONER TO RESPECTIVE ONLINE PLATFORM.
EXHIBIT P2	THE TRUE COPY OF ADMIT CARD ISSUED ON 28.10.2020 BY AUTHORITY CONCERNED.
EXHIBIT P3	THE TRUE COPY OF PETITIONER'S MOTHER'S TEST RESULT CONFIRMING COVID 19 VIRUS PRESENCE AS ON 22.11.2020.
EXHIBIT P4	THE TRUE COPY OF EMAIL SENT TO RECOGNIZED EMAIL ADDRESS BY THE PETITIONER AS ON 22.11.2020.
EXHIBIT P5	THE TRUE COPY OF RESPONSE EMAIL TO EXT.P4 EMAIL AS ON 26.11.2020.
EXHIBIT P6	THE TRUE COPY OF TEST RESULT CONFIRMING PETITIONER BEING COVID 19 VIRUS INFECTION AS ON 27.11.2020.
EXHIBIT P7	THE TRUE COPY OF 2ND REPRESENTATION THROUGH EMAIL TO RECOGNIZED EMAIL ADDRESS AS ON 27.11.2020.
EXHIBIT P8	THE TRUE COPY OF MEDIA RELEASE MADE BY THE AUTHORITY CONDUCTING CAT EXAMINATION AS ON 15.09.2020.
EXHIBIT P9	THE TRUE COPY OF MEDIA RELEASE MADE BY THE AUTHORITY CONDUCTING CAT AFTER ISSUANCE OF ADMIT CARD.
EXHIBIT P10	THE TRUE COPY OF DISCLAIMER MADE BY THE AUTHORITY CONCERNED FOR CONDUCTING CAT EXAMINATION.

RESPONDENT'S/S EXHIBITS:

ANNEXURE R8 (a)	TRUE COPY OF THE EXTRACT OF MINUTES OF THE MEETING DATED DECEMBER 16, 2020.
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