

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

WA.No. 887 of 2015 ()

(AGAINST THE JUDGMENT IN WP(C).NO. 7292/2015 DATED 10-04-2015)

THIRD PARTY/APELLANT(S) :

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1. DR.AMRITHA V.S.,
D/O. MR. SASIKUMAR B.S., AMRITHASREE, KOLLAMKONAM,
VILAPILSALA P.O., THIRUVANANTHAPURAM - 695 573.
 2. DR. RINCE MOHAMMED,
S/O.MR.C.H. MEERANNAN, CHAYIPARAMBIL HOUSE,
NADACKAL P.O., ERATTUPETTA - 686 124.
 3. DR. ARSHA RAJENDRAN,
D/O.M.R. M. RAJENDRAN,'MADHAVAM', OPP. SNVGHSS,
KADAKKAVUR, THIRUVANANTHAPURAM - 695 306.
 4. DR. ABHILASH ANTONY,
S/O.MR.V.O. ANTONY, VAZHAPARAMBIL HOUSE,
CHRISTOPHER NAGAR, P.O. OLLUR, THRISSUR - 680 306.
 5. DR.ANCY BABU,
D/O. MR. KANJIRAMULLA BABU, FLAT NO. 65, CHAMPA NAGAR,
GUJAR KI THADI, NEW SANGANER ROAD, JAIPUR,
RAJASTHAN.
 6. DR. MIDHUN O.,
S/O. MOHANDAS.O, INDUVARAM, SREEKRISHNAPURAM,
PALAKKAD - 679 513.
 7. DR. JESMITH ELSA JACOB,
D/O.MR. JACOB THOMAS, THYKKOTHATHIL HOUSE,
PULLAD P.O.,THIRUVALLA, PATHANAMTHITTA - 689 548.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENT(S)/PETITIONER AND RESPONDENTS 1 TO 3:

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1. DR.LIJI K. KRISHNAN,
ASSISTANT DENTAL SURGEON, TALUK HOSPITAL,
KUNNAMKULAM, THRISSUR - 680 523.

W.A.NO.887/2015

2. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
3. THE DIRECTOR OF MEDICAL EDUCATION,
DIRECTORATE OF MEDICAL EDUCATION,
THIRUVANANTHAPURAM - 695 001.
4. THE COMMISSIONER FOR ENTRANCE EXAMINATIONS,
THIRUVANANTHAPURAM - 695 001.

R1 BY ADVS. SRI.ELVIN PETER P.J.

SRI.P.K.MANOJKUMAR

SRI.K.R.GANESH

R2 TO R4 BY SR GOVERNMENT PLEADER SRI.ROSHAN D. ALEXANDER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION
ON 01-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

sts

W.A.NO.887/2015

APPENDIX

PETITIONER'S ANNEXURES:

NIL

RESPONDENT'S ANNEXURES:

**ANNEX R1(A) COPY OF THE DECISION REPORTED BY THE HON'BLE SUPREME
COURT IN 2012(1) SCC 177.**

/TRUE COPY/

P.S.TO JUDGE

sts

**THOTTATHIL B. RADHAKRISHNAN &
SUNIL THOMAS, JJ.**

W.A. No. 887 OF 2015

Dated this the 1st day of June, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

This appeal by leave is against the judgment of the learned Single Judge.

2. We have heard the learned counsel for the appellants, whom we would hereinafter refer to as "General merit Quota Candidates" and the learned counsel for the contesting respondent, who is the writ petitioner, whom we would herinafter refer to as an 'in-service candidate'. We have also heard the learned senior Government Pleader on behalf of the State Government.

3. The competent authority in the state government issued prospectus and invited applications for admission to the post graduate courses in Dental Surgery(Master of Dental Surgery-MDS) with different classifications. The prospectus shows that the minimum marks required in the entrance test for consideration is 50% for general merit quota candidates and 40% for the in-service candidates. Applications were made by all who

intended to contest in the entrance examination. The competent authority conducted the OMR test on 11/1/2015. Thereafter, on 13/2/2015 the Government came out with Ext.P2 Government Order enhancing the minimum marks for in-service candidates to 50% instead of 40%, which was already prescribed as per the prospectus. The writ petitioner, who found that she had gained only 44% when the results were published, challenged Ext.P2 Government Order, mainly on the plea that it was issued after settling the rules for selection including cut off marks, which were prescribed as minimum for each group. She further pleaded that the very foundation of Ext.P2 is wholly baseless in as much as the said Government Order was issued as if it is a curative one in the wake of pronouncement of the Hon'ble Supreme Court in **Sudhir N. and others v. State of Kerala and others** (Civil Appeal Nos. 297-298 of 2015). According to the writ petitioner, the principle in Sudhir's case (supra) had no impact whatsoever on the question arising for decision in arraying the minimum bench mark for in-service candidates because Sudhir's case dealt with an issue as to whether inter se seniority could be considered for the purpose of evaluation of the candidates from among those who have got minimum

prescribed bench marks in the category of in-service candidates.

4. The learned single Judge found that Ext.P2 was unsustainable and accordingly, struck down the same. Resultantly, the petitioner was found entitled to be admitted to the MDS course.

5. The writ appellants, who stand with leave having been obtained, contended that the prescription of 50% marks as the minimum marks is the requisite condition in terms of the regulation issued by the Dental Counsel of India, which are statutory in nature and, therefore, the minimum bench mark of 50% in the entrance examination is knocked down by the Entrance Commissioner or other authority through the prospectus. It is further argued that, having regard to the findings of the Constitution Bench of the Supreme Court of India in **Preethi Srivastava v. The State of Madhya Pradesh** (1999 (7) SCC 120), merit cannot be described or satisfied while making comparative evaluation between different groups. It is further pointed out that even as far as the Scheduled Castes and Scheduled Tribes candidates are concerned, the Bench mark fixed as per the prospectus is 45% and for in-service candidates is 40% and absolutely there was no reason to maintain vide

disparity between the general merit candidates and in-service candidates in as much as the minimum bench mark is concerned.

6. Going by the submissions made by both sides, we see that some controversy has been raised as to the effect of the judgment of the Supreme Court of India in **Christian Medical College, Velloor v. Union of India** (2014 (2) SCC 305) and the effect of a declaration that amending the statute is constitutionally invalid. Certain issues have also been raised as to the correctness of the approach made by the Division Bench in its judgment dated 28/5/2015 in W.A. No.803/2015 and connected cases, in which the Bench headed by the Hon'ble Chief Justice has held that among other things, the decision in **Christian Medical College's case** (supra) touched only the National Eligibility - cum -Entrance Test (hereinafter referred to as 'the NEET,' for short).

7. **The Christian Medical College's case** (supra) related to a case where the matters falling under the Medical Council of India and Dental Council of India Act, came up for consideration by the Hon'ble Supreme Court of India. Through the majority of the judgments, the Apex Court held that neither

the Medical Council of India (hereinafter referred to as 'the MCI' for short) nor the Dental Council of India (hereinafter referred to as 'the DCI' for short) has an authority to have NEET conducted. It has no authority in terms of the relevant statutory provisions to conduct admission test. Having taken such a view, relevant notification and provisions were found against.

8. Considering the contentions of the above mentioned judgment, we are clear in our mind that neither the MCI nor the DCI has an authority to conduct NEET and, therefore, it does not have the authority to prescribe cut off marks when NEET is conducted. Therefore, the resultant situation emanating out of the effect of the said judgment is that neither the MCI nor the DCI has an authority to conduct NEET and the MCI and the DCI did not have the authority to prescribe cut off marks in the examination, which itself was groundless. We do not find anything in that judgment to hold that the MCI and the DCI did not have the power to prescribe qualifying marks for any entrance examination or admission, which is otherwise permissible to be conducted.

9. We would immediately refer to the principles of law, which is well settled through the decision of the Hon'ble

Supreme Court in **Preethi Srivastava 's case (supra)**, that it is for an expert body like Medical Council of India to lay down the extent of reservations and the lowering of qualifying marks, consistent with the broader public interest in having the most competent people for specialized training, and the competing public interest in securing social justice and equality. The above rulings of the Apex Court would show that enumerated powers, including the power to regulate and prescribe the quality of education in the relevant fields, have been given to the MCI and the DCI. Once that power is given, it takes the power to prescribe the qualifications and also standards for entering into courses, which leads to award of degree under any such faculties. So much so, it is well within the domain of the MCI and the DCI to prescribe the standards which have to be maintained, including the effective marks regarding the prescription of limits to be obtained in the Entrance examination which are otherwise duly authorised to be conducted by the Union Government of India or the State Government or any other authority authorized to do so.

10. In the background of the aforesaid decision, we see that the Government of Kerala had prescribed 40% marks for

the in-service candidate while prescribing prospectus for MDS course. The writ petitioner is one who stands to say that she, as an in-service candidate slogging for marks for her service for the people of the State, had cleared entrance test and had obtained marks which were prescribed in terms of the procedure. According to her, she and another one were only two, who had cleared entrance test from the in-service quota. The modification made by the Government through Ext.P2 was challenged by her on the premise that such modification makes upward revision of the minimum bench mark and thereby deprived her an opportunity to enter the course.

11. For one thing, though the writ appellants stand to contend that no other candidate was arrayed among the respondents in the writ petition, it is also an indisputable fact that nobody challenged the prospectus, on the basis of which the selection was initially proceeded with. None of the general quota candidates challenged the prescription of 40% marks as the minimum marks for in-service candidates.

12. The question now is whether, under the writ appeal jurisdiction under Section 5 of the Kerala High Court Act, we should disturb the exercise of power by the learned Single Judge

under Article 226 of the Constitution. In the absence of any challenge to the prospectus as it stood originally to the notice of the learned Single Judge, the only issue that arises for decision is as to whether Ext.P2 was bad, particularly for the reason which it purports. As already noted by us, the Constitutional excuses are wholly out of place because ratio of that precedent was framed in different domain; that is to say, as to whether there could be an inter se seniority consideration between in-service candidates to satisfy the minimum bench mark. The decision of the Apex Court is that even among the in-service candidates, comparative merit on the basis of the marks obtained in the entrance test would be decisive as even among the candidates who come under the in-service quota.

13. While we see that there would be some substance in the contention of the writ appellants on the basis of the provisions of the DCI regulations, we are of the view that, the decision of the learned Single Judge is not liable to be disturbed by us in the writ appeal, particularly for the reason that none of the appellants has challenged the prospectus which was originally issued and which was in force even as on the date of the admission test.

14. For the aforesaid reasons, we see no merit in this appeal. We find no ground to interfere with the judgment of the learned single Judge. The writ appeal fails.

In the result, this writ appeal is dismissed.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

dpk

/True copy/

PS to Judge.

