

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

WP(C).No. 3479 of 2009 (L)

PETITIONER(S):

1. **RENJUL P.R.**
S/O. K. REGHUNANDAN,
FIRST YEAR M.B.B.S. STUDENT, CO-OPERATIVE
MEDICAL COLLEGE, KALAMASSERY, KOCHI.
2. **ARCHANA R.NAIR, D/O.RAJGOPAL K.P.,**
FIRST YEAR M.B.B.S. STUDENT, CO-OPERATIVE
MEDICAL COLLEGE, KALAMASSERY, KOCHI.
3. **ANAND KRISHNA M.,**
FIRST YEAR M.B.B.S. STUDENT, CO-OPERATIVE
MEDICAL COLLEGE, KALAMASSERY, KOCHI.
4. **ANOOP P.N.,**
FIRST YEAR M.B.B.S. STUDENT, CO-OPERATIVE
MEDICAL COLLEGE, KALAMASSERY, KOCHI.
5. **ANEES U.,**
FIRST YEAR M.B.B.S. STUDENT, CO-OPERATIVE
MEDICAL COLLEGE, KALAMASSERY, KOCHI.
6. **THASLEENA K.T.,**
FIRST YEAR M.B.B.S. STUDENT, CO-OPERATIVE
MEDICAL COLLEGE, KALAMASSERY, KOCHI.
7. **KARTHIKA RAMANATHAN,**
FIRST YEAR M.B.B.S. STUDENT, CO-OPERATIVE
MEDICAL COLLEGE, KALAMASSERY, KOCHI.
8. **BABU.A.,**
FIRST YEAR M.B.B.S. STUDENT, CO-OPERATIVE
MEDICAL COLLEGE, KALAMASSERY, KOCHI.
9. **SHRIYAS.,**
FIRST YEAR M.B.B.S. STUDENT, CO-OPERATIVE
MEDICAL COLLEGE, KALAMASSERY, KOCHI.

10. ARYA P.M.,
FIRST YEAR M.B.B.S. STUDENT, CO-OPERATIVE
MEDICAL COLLEGE, KALAMASSERY, KOCHI.
11. SAUMYA S.,
FIRST YEAR M.B.B.S. STUDENT, CO-OPERATIVE
MEDICAL COLLEGE, KALAMASSERY, KOCHI.
12. SANGEETHA V.S.,
FIRST YEAR M.B.B.S. STUDENT, CO-OPERATIVE
MEDICAL COLLEGE, KALAMASSERY, KOCHI.
13. DIVYA R.NAIR,
FIRST YEAR M.B.B.S. STUDENT, CO-OPERATIVE
MEDICAL COLLEGE, KALAMASSERY, KOCHI.
14. HUSSA MOOSA,
FIRST YEAR M.B.B.S. STUDENT, CO-OPERATIVE
MEDICAL COLLEGE, KALAMASSERY, KOCHI.
15. ASWATHY VENUGOPAL,
FIRST YEAR M.B.B.S. STUDENT, CO-OPERATIVE
MEDICAL COLLEGE, KALAMASSERY, KOCHI.
16. GAYATRI G.J.,
FIRST YEAR M.B.B.S. STUDENT, CO-OPERATIVE
MEDICAL COLLEGE, KALAMASSERY, KOCHI.
17. GEETHU.S.,
FIRST YEAR M.B.B.S. STUDENT, CO-OPERATIVE
MEDICAL COLLEGE, KALAMASSERY, KOCHI.
18. DARSAN S.KUMAR,
FIRST YEAR M.B.B.S. STUDENT, CO-OPERATIVE
MEDICAL COLLEGE, KALAMASSERY, KOCHI.
19. JERRY THOMAN,
FIRST YEAR M.B.B.S. STUDENT, CO-OPERATIVE
MEDICAL COLLEGE, KALAMASSERY, KOCHI.
20. ARCHANA LAL,
FIRST YEAR M.B.B.S. STUDENT, CO-OPERATIVE
MEDICAL COLLEGE, KALAMASSERY, KOCHI.

BY ADV. SRI.S.KRISHNAMOORTHY

RESPONDENTS:

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1. STATE OF KERALA
CHIEF SECRETARY, HIGHER EDUCATION DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
 2. THE COMMISSIONER OF ENTRANCE EXAMINATION,
HOUSING BOARD BUILDINGS, SHANTI NAGAR
THIRUVANANTHAPURAM - 695 001.
 3. THE FREE REGULATORY COMMITTEE FOR
PROFESSIONAL COLLEGES, RAM MOHAN PALACE, ERNAKULAM
REPRESENTED BY ITS MEMBER SECRETARY.
 4. THE CO-OPERATIVE MEDICAL COLLEGE,
REP. BY ITS PRINCIPAL, H.M.T.COLONY P.O., KALAMASSERY
KOCHI - 683 503.

R4 BY ADV. SRI.V.KRISHNA MENON, SC, CO.OP.ACADEMY OF PRO. EDU.
R1 & R2 BY SR. GOVERNMENT PLEADER SRI. SOJAN JAMES.
R3 BY MARY BENJAMINE, SC, FEE REGUL. COMMITTEE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07-04-2015, ALONG WITH WPC. 27282/2010, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

APPENDIX

PETITIONERS' EXHIBITS

- EXT- P1- TRUE COPY OF THE QUESTION ANSWERS DATED 25-11-2008 BEFORE THE 12TH KERALA LEGISLATIVE ASSEMBLY.
- EXT- P2- TRUE COPY OF THE NOTIFICATION ISSUED BY THE 2ND RESPONDENT DATED 14-08-2008.
- EXT- P3- TRUE COPY OF THE ALLOTMENT MEMO DATED 31-08-2008 ISSUED TO THE 17TH PETITIONER.
- EXT- P4- TRUE COPY OF THE RELEVANT PORTION OF THE PROSPECTUS ISSUED BY THE KERALA CHRISTIAN PROFESSIONAL COLLEGE MANAGEMENT FEDERATION.
- EXT- P5- TRUE COPY OF THE ORDER No.G.O. (RT) No.2858/08/H&FWD DATED 25-08-2008.
- EXT- P6- TRUE COPY OF THE PUBLICATION DATED 24-08-2008.

RESPONDENTS' EXHIBITS

- EXT- R4 (a) - TRUE COPY OF THE ORDER No.G.O. (MS) No.488/2013/H&FWD DATED 17-12-2013.

True copy

P.A. To Judge

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C.K. ABDUL REHIM, J.

W.P.(c) No. 3479 OF 2009-L
&
W.P.(c) No. 27282 OF 2010-I

DATED THIS THE 7th DAY OF APRIL, 2015.

J U D G M E N T

The petitioners in both these writ petitions are students admitted to M.B.B.S course at the Co-operative Medical College, Kalamassery, Kochi, during the year 2008-2009, under the management quota (management seats). Dispute is regarding the rate of fee for the course, which can be collected from the petitioners. The petitioners have since now completed the course and the Co-operative Medical College has already taken over by the Government. Contention of the petitioners is that, when the Commissioner of Entrance Examinations had published Notification with respect to the Centralised Allotment Process (CAP) to professional degree course for the year 2008, the fees indicated therein for the management seats at the Co-operative Medical College, Kochi was Rs.2,40,000/- per year. But subsequently when the

“Allotment Memo” was issued by the Commissioner, fee with respect to students admitted under the management seats was indicated as Rs.4,35,000/- per year. Evidently, the revision of fee was effected on the basis that, Government of Kerala had entered into an agreement with the managements of self-financing institutions, fixing the rate of fee applicable with respect to Government merit seats and management seats. However, in Ext.P3 it was indicated that if the fee structure introduced is not approved by the High Court or any other competent authority, the candidates will be liable to pay the fee as fixed by the 'Fee Regulatory Committee'. But thereafter the Government have issued Ext.P5 order clarifying terms of the agreement as recognised by the 'Fee Regulatory Committee'. The annual fee applicable to students admitted for M.B.B.S in the year 2008-09 in the Co-operative Medical College, Kochi in the 35% management seats was be fixed as 4,35,000/-. The petitioners are challenging the above said decision, contending that the alleged agreement entered between the

Government and the Co-operative Medical College is in violation of judgment of the hon'ble Supreme Court and is against statutory provisions contained in Act 19 of 2006. Inter alia, the petitioners seek direction to adhere to the fee structure of Rs.2,40,000/- for the course in question, with respect to students admitted during the year 2008-2009. The writ petitions were filed in the year 2009 and 2010. The petitioners have also sought for a direction to refund the excess fee collected during the previous years.

2. Learned counsel for the petitioners argued that, going by decisions rendered by the hon'ble Supreme Court, the authority which can fix the fee structure is the 'Fee Regulatory Committee' for professional colleges. It is true that the hon'ble Supreme Court in various decision have reiterated that the power is vested with the 'Fee Regulatory Committee' to regulate the fee structure. In the case at hand, the Government have fixed the fee applicable with respect to management seats in the Co-operative Medical College, for the year 2008-2009 as Rs.4,35,000/-, as

evidenced from Ext.P5. In Ext.P5 it is stated that the 'Fee Regulatory Committee' have considered the terms of the agreement arrived between the Government and the managements of the self financing institutions. But learned counsel for the petitioners specifically contended that the fee structure which is applicable to the Co-operative Medical college was not fixed by the 'Fee Regulatory Committee' as mentioned in Ext.P5. More over it is contended that the Co-operative Medical College, Kochi and the Co-operative Medical College, Pariyaram which were not under the Government during the relevant period are not included in the agreement, as they are not private self-financing colleges, as directed by the hon'ble Supreme Court. However, it is not discernable as to whether there was any specific orders issued by the 'Fee Regulatory Committee' fixing the fee applicable with respect to management seats in the Co-operative Medical College, Kochi, for the relevant year.

3. From Ext.P2 notification issued by the Commissioner for Entrance Examinations it is revealed that, this court by virtue of order dated 23-07-2008 had issued directions to put on hold the fee structure fixed based on the above said agreement, and to collect the fee fixed by the Fee Regulatory Committee for M.B.B.S in self-financing medical colleges, till the hon'ble Supreme Court pronounces its decision on the issue. It is mentioned in Ext.P2 that the fee of Rs.2,40,000/- was fixed on a temporary basis. Therefore it is evident that the question with respect to fee structure applicable for students admitted in management seats at the Co-operative Medical College, Kochi, would definitely depend upon the decision rendered by the hon'ble Supreme Court, based on the decision of the 'Fee Regulatory Committee'. There exists a dispute between the parties with respect to the question as to whether the 'Fee Regulatory Committee' had taken any decision during the relevant time. Standing counsel appearing for the Fee Regulatory Committee had submitted that, records

pertaining to any such decision is not readily traceable. The Government Pleader is not in a position to produce any such decision rendered by the 'Fee Regulatory Committee', even though it is mentioned in Ext.P5 Government order that the Fee Regulatory Committee had approved the agreement.

4. It is noticed that, by virtue of an interim order issued in these writ petitions, the petitioners were permitted to continue payment of the fee at the rate of Rs.2,40,000/-. Learned counsel for the petitioners pointed out that, management of Co-operative Medical College, Kochi, which is now vested with the Government is not issuing 'Non-due certificates' to the petitioners enabling them to get the Degree Certificates from the University, because of pendency of the dispute with respect to the fee structure. It is further pointed out that an identical issue which prevailed in the Co-operative Medical College, Pariyaram was settled between the college administration and parents of students admitted during 2008 under the

management quota, agreeing to re-fix the fee at the rate of Rs.2,85,000/-

4. Considering the factual situations prevailing as mentioned above, this court is of the considered opinion that the matter can be relegated for appropriate decision by the 'Fee Regulatory Committee'. Learned Counsel for the petitioners had pointed out urgency of the matter, considering the fact that the students need to seek admission for post graduate courses. This court is of the opinion that it is only appropriate for the 'Fee Regulatory Committee for Professional Colleges' to consider the entire issue and to take an appropriate decision, after affording opportunity of personal hearing to the petitioners as well as representative of the management (administration) of the Co-operative Medical College, Kochi. Needless to observe that the Committee will also consider as to whether there was any decision taken on the disputed aspects during the relevant time. The Committee will deal with the matter on a priority basis and will take all earnest efforts to settle the

issue at the earliest, at any rate within a period of one month from the date of receipt of a copy of this judgment.

5. Needless to observe that the parties will be at liberty to submit proper representation before the Committee highlighting their grievances.

Sd/-
C.K. ABDUL REHIM
JUDGE

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True copy

P.A. to Judge