

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

WA.No. 2265 of 2015 () IN WP(C).28859/2015

**AGAINST THE ORDER/JUDGMENT IN WP(C) 28859/2015 of HIGH COURT OF KERALA
DATED 09-10-2015**

APPELLANT(S)/6TH RESPONDENT:

**DR.MANJU JOSEPH, AGED 39 YEARS,
W/O MA GEORGE, SENIOR MEDICAL OFFICER (NC)
GOVERNMENT AYURVEDA DISPENSARY,
MATHUR, AGRAHARAM PO, PALAKKAD 678 571.**

**BY ADVS.SRI.K.RAMAKUMAR (SR.)
SRI.S.M.PRASANTH
SRI.G.RENJITH
SMT.ASHA BABU**

RESPONDENT(S)/PETITIONER AND RESPONDENTS 1 TO 5:

- 1. DR SREEJA RANI. T.
SENIOR MEDICAL OFFICER (NC),
GOVERNMENT AYURVEDA DISPENSARY, ANAKKARA, PO ANAKKARA
PALAKKAD, RESIDING AT SREE NILAYAM, KANDANAKAM
PO KALADY, EDAPPAL VIA, MALAPPURAM-679 582**
- 2. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
DEPARTMENT OF HEALTH AND FAMILY
WELFARE DEPARTMENT SECRETARIAT
THIRUVANANTHAPURAM-695 001**
- 3. THE COMMISSIONER OF ENTRANCE EXAMINATION
HOUSING BOARD BUILDING, SANTHI NAGAR
THIRUVANANTHAPURAM-695 001**
- 4. THE DIRECTOR
INDIAN SYSTEMS OF MEDICINE, AROGYA BHAVAN, THAMPANOOR
THIRUVANANTHAPURAM-695 001**
- 5. THE DIRECTOR
AYURVEDA MEDICAL EDUCATION DEPARTMENT
THIRUVANANTHAPURAM-695 001**

6. MINISTRY OF AYUSH UNDER THE UNION OF INDIA
REPRESENTED BY THE SECRETARY, DEPARTMENT OF AYUSH
ROOM NO. 206, IRCS BUILDING ANNEX, I RED CROSS ROAD
C P, NEW DELHI-110 001

R1 BY ADV. SRI.KALEESWARAM RAJ
R6 BY ADV. SMT.SREEKALA K.L., CGC
BY SR GOVERNMENT PLEADER SRI.P.IDAVIS

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 19-10-2015, THE
COURT ON 27/10/15 DELIVERED THE FOLLOWING

WA NO.2265/15

APPENDIX

APPELLANTS EXHIBITS

ANNEXURE A: TRUE COPY OF THE COMMUNICAITON DT 1.9.2015
FROM THE DIRECTOR, INDIAN SYSTEMS OF MEDICINE TO THE
DIRECTOR, AYURVEDA MEDICAL EDUCATION DEPARTMENT ALONG
WITH ENGLISH TRANSLATION.

//True Copy//

PS to Judge

Rp:

ASHOK BHUSHAN, C.J.

“C.R.”

&

A.M. SHAFFIQUE, J.

=====

W.A. No. 2265 of 2015

=====

Dated this, the 27th day of October, 2015

J U D G M E N T

Shaffique, J.

This appeal is filed by the 6th respondent in WP(C) No.28859/15 challenging judgment dated 9/10/2015 by which the learned Single Judge allowed the writ petition filed by the 1st respondent herein setting aside Ext.P5.

2. By Ext.P5, the Government had issued an order on 31/7/2015 permitting the appellant to participate in the selection for the Post Graduate Course in Ayurveda under the service quota for the academic year 2015-16. The 1st respondent herein by filing the writ petition challenged Ext.P5 *inter alia* contending that after issuing the prospectus, which is produced as Ext.P2, no power is available enabling the Government to issue an order in the form of Ext.P5 especially when clause (vii) of the note which forms part of Clause 3 clearly indicates that the service quota candidate should join the course to which they are selected in a

-:2:-

particular academic year and if they do not join the course or discontinue the course, they will not be considered for selection to the Post Graduate Course under service quota in future. It is contended that the appellant herein was selected under the service quota for Post Graduate Course during 2013-14. She was allotted a seat in terms of Ext.P3. However, she did not join the course and she discontinued. In the year 2014-15 also, she applied and her name was included in the select list. However, in view of the disqualification in terms of Clause (vii) of the note which forms part of Clause 3, another candidate objected to the inclusion of the appellant in the list of 2014-15 and accordingly, her candidature was rejected during interview. It is in the said circumstances that Ext.P5 came to be issued on 31/7/2015 which according to the 1st respondent was clearly arbitrary and illegal and totally contrary to the settled law.

3. Counter affidavit was filed by the 6th respondent *inter alia* stating that though she was selected and allotted a seat for post graduate studies during 2013-14, she could not join the course as her mother-in-law became seriously ill. Hence, another person was appointed in the said vacancy. She denied that she

was selected during 2014-15. She supports Ext.P5 by contending that it is a Government Order permitting the appellant to join the PG Course after considering in detail her claim as a special case.

4. Learned Single Judge after considering the factual circumstances involved in the case allowed the writ petition setting aside Ext.P5 on the ground that once the prospectus contains a clause which prevents a candidate who had obtained admission earlier from participating in the next selection process, it was not possible for the Government to accede to the request of the appellant. It is observed that when a provision is made for forfeiture of the seat, Ext.P5 could not have been issued by the Government. However, it was made clear that to take care of such situations, it is possible for the Government to amend the prospectus in future.

5. Impugning the aforesaid judgment, learned senior counsel Sri.K.Ramakumar appearing on behalf of the appellant submits that Government Order like Ext.P5 can be issued on the basis of specific conferment of power as per Clause 22 of the prospectus. Learned Single Judge having failed to consider the scope and impact of Clause 22, had committed error of law in

setting aside Ext.P5. Once it is found that the Government has the power to amend the prospectus conditions and as Ext.P5 clearly amounts to exercise of such a power, it cannot be contended that the exercise of power is arbitrary or illegal.

6. Learned counsel also placed reliance on the judgment of this Court in **Sreeja v. State of Kerala** (2013 (1) KLT 345) wherein learned Single Judge of this Court had observed that prospectus for admission can be amended if there is a provision relating to the same. He also placed reliance on judgment of a Division Bench of this Court in **Nazar v. State** (1996 (2) KLT 518), wherein this Court after referring to Section 21 of the General Clauses Act, observed that Government has the power to amend, vary or rescind any notification issued by the Government. Reference is also made to the judgment of the Supreme Court in **Rajiv Kapoor v. State of Haryana** (Laws (SC) 2000-3-176), wherein the Supreme Court had occasion to observe that the High Court committed an error in sustaining the claim of the petitioners that selection and admission for the course in question have to be only in terms of the stipulations contained in Chapter V of the prospectus issued by the University.

It was observed that such an error came to be attempted in assuming that the Government had no authority to issue any directions laying down any criteria other than the one contained in the prospectus. The argument is that it is well within the power of the Government to amend the prospectus and that too when Ext.P5 has been issued immediately after issue of Ext.P2 prospectus and giving notice to all concerned regarding the permission granted to the appellant to participate in the selection process, it is valid and enforceable and does not suffer from any illegality.

7. On the other hand, learned counsel for 1st respondent/writ petitioner while supporting the stand taken by the learned Single Judge submitted that even if Clause 22 gives power to the Government to amend the prospectus, Ext.P5 is not an amendment to the prospectus whereas, it is an order issued as a special case only for a particular individual and cannot bind all the candidates who have participated in the selection process or who would have participated if such benefit was given to all the candidates who could not join duty after being selected for the previous years. He also relied upon the judgments of this Court in

Sreeja (supra), **Vinod K.M. (Dr.) and Others v. State of Kerala** (2012 (2) KLT 683), **E.P.Royappa v. State of T.N. and anor.** [(1974) 4 SCC 3] and **District Collector. v. Sundari Devi** [(1990) 3 SCC 655].

8. The argument is two fold. One is that Ext.P5 does not amount to an amendment to the prospectus, as other than the appellant no other candidates were given the benefit. Secondly, the prospectus condition in terms of clause (vii) of the note which forms part of Clause 3 has not been deleted by Ext.P5. If it was an amendment, several candidates would have been benefitted. Therefore, Ext.P5 being issued only to render assistance to a particular individual and that too on a particular set of facts is clearly an arbitrary exercise of power. **Vinod K.M.** (supra) has been relied upon to contend that an amendment brought out in the prospectus which is discriminatory is liable to be quashed. **Royappa's case** (supra) had been relied upon to emphasise the principle of an arbitrary action which would amount to violation of Articles 14 and 16 of the Constitution of India.

9. We do not think that a detailed analysis of the case laws cited by either side is required to be considered for the

purpose of disposing this writ appeal.

10. Clause 22 of the prospectus which is relied upon by the learned senior counsel for the appellant reads as under;

“The prospectus published in advance to enable the candidates to make their application in the proper manner, on the basis of their eligibility will be subject to modification/additions as may be considered necessary by Government that will be issued as Executive Orders/Notifications.”

11. The only question to be decided is whether Ext.P5 Government Order reflects an amendment or modification of the prospectus as contemplated under Clause 22.

12. Perusal of Ext.P5 does not indicate that it has been issued with the purpose to amend the prospectus. The prospectus contained a specific clause viz., clause (vii) of the note which forms part of Clause 3. The aforesaid clause clearly restricts a person who had obtained admission during a particular academic year and have not joined or have discontinued the course from participating in any other selection process in the next academic years. When there is a specific bar to enable such candidates from appearing for the selection process in the future years, unless this Clause is amended by an order issued by the

Government, it cannot be stated that there is an amendment to the Clause. Reference to Ext.P5 only indicates a special order being passed by the Government for the appellant alone and that too by stating that it shall not be a precedent. Such an order apparently cannot be described as an amendment to the prospectus or a modification to the terms of the prospectus. Ext.P5 can only be termed as a concession extended to the appellant as an individual. In fact there might be several persons who would have their own reason for not joining in a particular academic year or discontinuing the course. But then, this is not a general order to enable such persons to attend the selection process in the year 2015-16. For this reason alone, we are of the view that Ext.P5 does not amount to an amendment to the prospectus whereas it is only a concession extended to the appellant, which is not warranted as per the terms and conditions of the prospectus.

13. Since we have already found that Ext.P5 is not issued in terms with the prospectus conditions, then the next question would be whether it has any independent existence. Going by the law laid down by the Supreme Court as well as this Court, in the

absence of any provision in the prospectus which enables the Government to issue executive orders in cases of necessity or circumstances as narrated in Ext.P5, favouring an individual alone, can only be treated as an arbitrary action which is liable to be quashed, being in violation of Art.14 of the Constitution of India.

14. Apparently, by issuing Ext.P5, the 1st respondent herein would lose her chance for getting admission as she is the next person to get the admission if the admission in favour of the appellant is set aside.

In the result, we do not find any error in the judgment of the learned Single Judge warranting interference at the appellate stage and accordingly the writ appeal is dismissed.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp

//True Copy//

PS to Judge