

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

WP(C).No. 2006 of 2015 (A)

PETITIONER(S):

**DR.HASNA K.K., D/O.MUSHIN K.K., M.D.S.STUDENT,
DEPARTMENT OF ORAL PATHOLOGY, AGED 28 YEARS
GOVERNMENT DENTAL COLLEGE, KOZHIKOE
'PULIYAM POYIL APARTMENTS, KALPETTA P.O.
WAYANAD - 673 121.**

BY ADV. SRI.S.MUHAMMED HANEEFF

RESPONDENT(S):

- 1. THE PRINCIPAL, GOVERNMENT DENTAL COLLEGE,
MEDICAL CAMPUS, KOZHIKODE - 637 008.**
- 2. DENTAL COUNCIL OF INDIA, REPRESENTED BY ITS SECRETARY,
ALWAN-E-GALIB MARG, KOTLA ROAD, NEW DELHI - 110 002.**
- 3. THE COMMISSIONER FOR ENTRANCE EXAMINATIONS,
HOUSING BOARD BUILDINGS, SANTHI NAGAR,
THIRUVANANTHAPURAM - 695 001.**
- 4. THE DIRECTOR OF MEDICAL EDUCATION, THIRUVANANTHAPURAM-695011.**
- 5. STATE OF KERALA REPRESENTED BY ITS SECRETARY
TO THE GOVERNMENT
DEPARTMENT OF HEALTH, SECRETARIAT
THIRUVANANTHAPURAM - 695 001.**
- 6. KERALA UNIVERSITY OF HEALTH SCIENCES,
REPRESENTED BY ITS REGISTRAR, MULANKUNNATHUKAVU,
THRISSUR - 680 002
ADDITIONAL 6TH RESPONDETN IMPEADED AS PER ORDER IN
I.A.NO.1112/2015 DATED 29.01.2015.**

**R1 & R2 BY ADV. SRI.TITUS MANI VETOM, SC, DENTAL COUNCIL OF INDIA
(ADDL6) BY ADV. SRI.P.SREEKUMAR,SC,KERALA UTY.HEALTH &
R BY GOVERNMENT PLEADER SRI.ROSHAN D ALEXANDER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
15-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 : A TRUE COPY OF THE ADMIT CARD FOR CBT ONLINE EXAMINATION FOR AIPG DENTAL ENTRANCE EXAMINATION 2014.
- EXHIBIT P2 : A TRUE COPY OF THE RANK LETTER IN AIPGMDS-2014.
- EXHIBIT P3 : A TRUE COPY OF THE ALLOTMENT/ADMISSION TO POST GRADUATE COURSES IN DENTAL SURGERY (MDS), KERALA-2014 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT P4 : A TRUE COPY OF THE AUTHORIZATION LETTER OF THE PETITIONER DATED 2.4.2014.
- EXHIBIT P5 : A TRUE COPY OF THE INTERIM ORDER DATED 7.7.2014 IN WPC NO.16561/2014 OF THE DIVISION BENCH OF THIS HON'BLE COURT.
- EXHIBIT P6 : A TRUE COPY OF THE INTERIM ORDER DATED 10.7.2014 IN WPC NO.16561/2014 OF THE DIVISION BENCH OF THIS HON'BLE COURT.
- EXHIBIT P7 : A TRUE COPY OF THE MEMO ISSUED BY THE 4TH RESPONDENT DATED 10.7.2014.
- EXHIBIT P8 : A TRUE COPY OF THE RESIGNATION LETTER SUBMITTED BY THE PETITIONER BEFORE THE DISTRICT PROGRAMME MANAGER, AROGYA KERALAM, WAYNAD.
- EXHIBIT P9 : A TRUE COPY OF THE RECEIPT ISSUED BY THE 1ST RESPONDENT DATED 11.7.2014.
- EXHIBIT P10 : A TRUE COPY OF THE ORDER NO.DE/MDS(95) STUDENTS/2013/12381 DATED 31.12.2014 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS

- EXT.R2/a : CIRCULAR DE-MDS(STUDENTS)-2014/2124 DATED 28.5.2014 ISSUED BY DENTAL COUNCIL OF INDIA
- EXT.R2/b : CIRCULAR DE-MDS(STUDENTS)-2014/5700 DATED 27.8.2014 ISSUED BY DENTAL COUNCIL OF INDIA
- EXT.R2/c : LETTER DE-MDS(95)(STUDENTS)-2014/7960 DATED 7.10.2014 ISSUED BY DENTAL COUNCIL OF INDIA
- EXT.R2/D : LETTER DE-MDS(95)(STUDENTS)-2014/9233 DATED 5.11.2014 ISSUED BY DENTAL COUNCIL OF INDIA
- EXT.R2/e : LETTER B1/4956/13/DCC DATED 11.11.2014 ISSUED BY GOVT.DENTAL COLLEGE, KOZHIKODE.

/TRUE COPY/

VS

PA TO JUDGE

K.VINOD CHANDRAN, J

W.P.(C).No.2006 of 2015

Dated this the 15th day of July, 2015

JUDGMENT

The petitioner has been allotted a seat in the Master of Dental Surgery course in the first respondent college in accordance with her rank in the All India Post Graduate Dental Entrance Examinations 2014 in the category of Other Backward Classes(Non- Creamy layer). The petitioner's rank or her entitlement is not in controversy.

2. The petitioner is aggrieved with Ext.P10 order dated 31.12.2014 of the Dental Council of India. Ext.P10 directed that the petitioner, who was admitted to the Academic Session 2014-15 on 11.07.2014, after the cut off date for admission to MDS Course; i.e. 10.07.2014, shall be discharged. Ext.P10 also threatened withdrawal of recognition of the subject Dental college under Sec.16A of the Dentists Act, 1948.

3. The consideration is only as to whether the admission made of the petitioner, beyond the date was irregular, insofar as being violative of the schedule prescribed by the Hon'ble Supreme Court of India, for admissions to professional courses. The delay in admission occurred due to certain interim orders passed in a writ petition.

4. The petitioner was eligible to be allotted a seat in the Government Dental college, Kozhikode in an allotment made on 30.06.2014. However, four other aspirants to the very same course approached this Court with a writ petition claiming their right to exercise an option in the said allotment. Those petitioners, as indicated in Ext.P5 interim order, where all students who had been allotted and accepted seats in self financing colleges. Their claim was on the ground that they are entitled to exercise an option in the allotment scheduled on 30.06.2014, to the Government college. This Court by interim order dated 07.07.2014 in W.P.(C).No.16561/14 (Ext.P5), permitted the same, but however, provisionally.

It was also specifically directed that the writ petition would be posted on 09.07.2014, one day prior to the last date; as per the schedule for admission.

5. However, unfortunately, the case was not posted on 09.07.2014 and it came up before the Division Bench on 10.07.2014. Ext.P6 order was passed, wherein, it was noticed that but for the provisional order granted earlier, three other persons, one of whom was the petitioner herein, would have obtained a valid allotment. It was directed that the Government Dental College, Kozhikode would allot the seat to the most meritorious from among the three persons. That was also said to be a provisional order, to enable such allotment, especially since the last date fixed was over. The Division Bench of this Court directed that the allotment letter would be issued to the candidate on 11.07.2014 as is clear from Ext.P6 order.

6. It is submitted by the learned counsel for the petitioner that the learned Government Pleader immediately intimated the college and the petitioner too

was present at the college on 10.07.2014 itself. The petitioner was admitted on the said date. But however, the petitioner did not have the certificates ready and hence the petitioner was granted one day's time to produce the certificates. The petitioner produced the same on 11.07.2014 and in fact the allotment and admission is in accordance with Ext.P6 order of this Court. Though, Ext.P6 was a provisional order, the writ petition subsequently stood dismissed by judgment dated 03.12.2014. Hence the admission as per Ext.P6 provisional order has to be regularised.

7. The learned Standing Counsel for the Dental Council of India however points out that there was discrepancy in the lists forwarded by the University and the college. On clarifications being sought, the Dental Council of India was told that one student was admitted only on 11.07.2014. The communication of the Government Dental College, Kozhikode is also produced as Ext.R2(e). Ext.R2(e) did not contain any of the details as to the orders of this Court or the facts leading to the

admission. Hence, the Dental Council of India came out with Ext.P10, directing discharge of that student, admitted beyond the time schedule. The Dental Council of India also asserts that no student could be admitted after the cut off date.

8. In this context, the decision of the Hon'ble Supreme Court in **Asha v. Pt. B.D.Sharma University of Health Sciences and Others** [2012 (7) SCC 389] assumes reliance. The Hon'ble Supreme Court has categorically held that no meritorious student should be denied a seat for reason of a default of the authorities and in cases where no fault can be attributed to the student itself. In the present case, the petitioner's allotment could not be made only by reason of the order of provisional allotment, directed by this Court in Ext.P5 order. This Court on the matter coming up on the next posting date modified the interim order and directed the persons in the rank list itself to be allotted, but however provisionally. This Court had specifically in Ext.P6 order directed that such allotment shall be made on 11.07.2014.

9. In such circumstances, the petitioner's allotment and admission was delayed only by reason of the orders of this Court. W.P.(C).No.16561/2014 itself was dismissed subsequently by judgment dated 03.12.2014. No fault can be attributed to the student and the petitioner's allotment is in accordance with the rules. The delay of one day was only on account of the orders passed by this Court and even in Ext.P6, the Division Bench has taken care of the delay by directing the allotment to be made on 11.07.2014. In such circumstance, Ext.P10 would stand set aside. The petitioners admission shall be regularised and the petitioner be permitted to complete the course in accordance with law.

The writ petition is allowed. No costs.

Sd/-
K.VINOD CHANDRAN
JUDGE

VS