

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

WP(C).No. 2679 of 2015 (H)

PETITIONER(S):

PRINCIPAL, KANNUR DENTAL COLLEGE
KANNUR DENTAL COLLEGE , ANJARAKANDY
KANNUR DISTRICT.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENT(S):

1. ADMISSION SUPERVISORY COMMITTEE & FEE REGULATORY
COMMITTEE FOR PROFESSIONAL COLLEGES OF KERALA
TC/1553, PRASANTHI BUILDINGS, M.P.APPAN ROAD
VAZHUTHACAUD, THIRUVANANTHAPURAM-695 015
REPRESENTED BY THE MANAGER.

2. KERALA UNIVERISTY OF HEALTH SECIENCES
MULAMKUNNATHUKAVU, MEDICAL COLLEGE P.O
TRICHUR DISTRICT, REPRESENTED BY ITS REGISTRAR.

3. THE DENTAL COUNCIL OF INDIA
REPRESENTED BY THE SECRETARY, AIWAN-E-GALIB MARG
KOTLA ROAD, NEW DELHI-110 002.

R2 BY ADV. SRI.P.SREEKUMAR,SC,KERALA UTY.HEALTH &
R3 BY ADV. SRI.TITUS MANI VETTOM, SC,
DENTAL COUNCIL OF INDIA
R1 BY ADV. SMT.MARY BENJAMIN, SC,
ADMISSION SUPERVISORY COMMITTEE FOR P

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
16-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1. TRUE COPY OF THE ORDER DATED 19/8/2014 PASSED BY THE SUPREME COURT IN SPECIAL LEAVE TO APPEAL (C) NO.19473/2014.

EXT.P2. TRUE COPY OF THE ORDER DATED 17/9/2014 PASSED BY THE SUPREME COURT IN SPECIAL LEAVE TO APPEAL (C) NO.19473/2014.

EXT.P3. TRUE COPY OF THE AGREEMENT DATED 19/9/2014.

EXT.P4. TRUE COPY OF THE STUDENTS ADMITTED IN THE COLLEGE FOR THE YEAR 2014-15 FOR THE BDS COURSE AS WELL AS FOR THE MDS COURSE.

EXT.P5. TRUE COPY OF THE CONSOLIDATED REPORT STUDENT REGISTRATION PREPARED BY THE 2ND RESPONDENT

EXT.P6. TRUE COPY OF THE COMMUNICATION DATED 10/3/2014 ISSUED BY THE 1ST RESPONDENT

EXT.P7. TRUE COPY OF THE COMMUNICATION NO.ASC 1001/14/BDS/KDC DATED 20/11/2014 ISSUED BY THE 1ST RESPONDENT

EXT.P8. TRUE COPY OF THE COMMUNICATION NO.ASC 100/14/BDS/KDC DATED 21/11/2014 ISSUED BY THE 1ST RESPONDENT

EXT.P9. TRUE COPY OF THE APPROVAL ORDER NO.ASC 1001/14/BDS/KDC DATED 16/1/2014 ISSUED BY THE 1ST RESPONDENT

EXT.P10. TRUE COPY OF THE COMMUNICATION NO.BDS/ASC/2014-15 DATED 19/1/2015 GIVEN BY THE PETITIONER.

EXT.P11. TRUE COPY OF THE COMMUNICATION NO.REG.8579/2014/1 DATED 17/1/2015 GIVEN BY THE 2ND RESPONDENT

RESPONDENT(S) ' EXHIBITS

ANNEXURE R1A: AFFIDAVIT TO ACCEPT ADDITIONAL DOCUMENTS FILED BY THE PETITIONER IN SLP(C) NO:19473/2014

ANNEXURE R1B: TRUE COPY OF THE APPLICATION FOR IMPEADMENT

ANNEXURE R1C: -DO- OF THE LETTER DT.8.11.2914 OF THE PETITIONER

JJ

/TRUE COPY/

P.S.TO JUDGE

K. SURENDRA MOHAN & MARY JOSEPH, JJ.

W.P(C) NO.2679 OF 2015

Dated this the 16th July, 2015.

JUDGMENT

Surendra Mohan, J.

The petitioner, Principal of the Kannur Dental College has filed this writ petition challenging Ext.P9 order passed by the first respondent declining to approve the admission of 13 students to the Bachelor of Dental Surgery (BDS) course conducted by the college and approved by the Dental Council of India. The first respondent has by Ext.P9 order directed the second respondent University not to register the names of the said students. Accordingly Ext.P11 order has been passed by the second respondent refusing registration to the said students. According to the petitioner, the impugned orders are illegal, unsustainable and liable to be set aside. Therefore, he has filed this writ petition seeking the following

reliefs:-

i) Issue a writ of certiorari calling for the records leading to Ext.P6, P9 and P11 and to quash the same.

ii) Issue a writ declaring that the decision arrived at by the first respondent as per Ext.P9 in regard to 13 students is ignoring law Ext.P1 and P2 and the object sought to be achieved by the Apex Court to conduct an examination by the committee and the further direction to enter into an agreement with the Government.

iii) Issue a writ declaring that the committee constituted under Section 4 of the Act has no authority to scrutinize the admissions made in an institution when the list is drawn up from among the qualified candidates prepared and published by the State Entrance Commissioner and therefore any exercise interfering with the admissions of an institution is an interference with their rights and therefore the actions are bad.

iv) Issue a writ declaring that the decision as per Ext.P9 has been passed in violation of the principles of natural justice and therefore bad in law.

v) Issue a writ declaring that Ext.P9 order passed by the committee is ignoring the legal requirements for a valid admission in terms of the Regulations framed by the Dental Council of India.

vi) Pass such other order or direction as this Court may deem fit and proper in the interest of justice."

2. The third respondent Dental Council of India has

permitted an intake of 100 students. Accordingly, a prospectus was issued by the College inviting applications from students who had passed and qualified in the Common Entrance Test conducted by the Commissioner for Entrance Examinations , Kerala (KEAM 2014). The qualification and eligibility criteria were stipulated as insisted on by the Dental Council of India. However, the petitioner could not obtain sufficient number of students. Therefore, the Association of the Colleges had approached the Hon'ble Supreme Court by filing an application in a pending case, Special Leave Petition No:19473/2014 filed against the judgment in WPC 16775/2014 seeking a direction permitting the Association to conduct a separate examination. The writ petition from which the Special Leave Petition arose had been filed seeking a direction from this Court to the effect that the time schedule stipulated by the Supreme Court in its judgment was not applicable to the self financing colleges. The Supreme Court considered the request of the Association of Colleges to

conduct an examination and passed Ext.P1 order on 19.8.2014. The Supreme Court noticed that the Commissioner for Entrance Examinations had already conducted an Entrance Examination and had prepared a list of eligible candidates. Therefore, as per Ext.P1 order the State Government was directed to furnish an initial list of 5000 candidates in the order of merit from the said list, from which, the colleges were to admit students. It has been clarified in the said order that if sufficient number of students do not accept admissions in the colleges from the first list of 5000 candidates, a further list of 5000 candidates was to be furnished. Though the above order was complied with, sufficient number of students did not accept admission in the various colleges. Therefore the Supreme Court was approached again. Thereupon by Ext.P2 order the Supreme Court after noticing the peculiar situation, directed the first respondent, to conduct a fresh Entrance Examination on 26.9.2014 after issuing necessary advertisements inviting

applications from interested students. The advertisements issued were to be made on 28.9.2014. As per Ext.P2 order the results of the Entrance Examination was to be declared on 27.9.2014. Ext.P2 further directed that the process of admission be completed by 30.9.2014.

3. The case of the petitioner is that, in compliance with the directions contained in Ext.P2, an agreement was entered into between the State Government and the petitioner on 19.9.2014, a copy of which is Ext.P3. On the basis of the agreement and the Entrance Examination conducted by the first respondent allotments were made by the Government and students were admitted. However, only 77 students have joined the college for the year 2014–15 though the permitted intake was 100. Thereafter, the list of the students so admitted have been furnished to the Dental Council, as evidenced by Ext.P4. A similar list has been furnished to the second respondent University, which is Ext.P5. Neither the second respondent nor the third respondent has objected to

any of the admissions so granted.

4. While so, according to the petitioner the first respondent Committee issued Ext.P6 communication directing that a list of the students admitted by the petitioner be forwarded to the Committee for their approval. Thereafter, by Ext.P7 the petitioner was informed that the admissions made to the college were not in order. Ext.P7 also directed them to appear before the Committee for a hearing on 22.11.2014. Later on, the petitioner was heard on 26.11.2014. Though the petitioner as well as the Vice Principal had appeared before the first respondent Committee and had apprised it of the procedure adopted for admission with the support of relevant documents, as per the impugned order Ext.P9, the Committee has held that 13 candidates mentioned therein are not entitled to be admitted to the Dental course, in terms of the order passed by the Supreme Court. The second respondent University has thereafter, issued Ext.P11 order in terms of Ext.P9 disapproving the admission of the 13 students.

According to the petitioner, Exts.P9 and P11 are absolutely without jurisdiction, illegal and liable to be set aside. Therefore, the petitioner seeks the issue of appropriate orders, quashing Exts.P9 and P11.

5. A statement has been filed on behalf of the first respondent refuting the various allegations made in the writ petition. According to the statement, the 13 candidates whose admissions have been disapproved by the first respondent Committee, are persons who were admitted after the cut off date stipulated by the Supreme Court. The petitioner had entered into Ext.P3 agreement with the State Government on 19.9.2014 pursuant to the direction in Ext.P2 order. They had agreed in Ext.P3 that they shall be entitled to fill up the seats remaining unfilled in the Management Quota only on the basis of the entrance test to be conducted by the Admission Supervisory Committee as directed in Ext.P2. In violation of the terms of the said agreement, they have admitted 13 candidates who had been ranked in the Entrance

Examination conducted by the Commissioner for Entrance Examinations, Kerala (KEAM 2014). They have been admitted, without reference to their inter se merit or their ranking in the rank list. Though the students are alleged to have been admitted on 1.9.2014, it is contended that the said assertion is not true. The said students were admitted only much later. Absolutely no documents or records were produced before the first respondent in support of the contention that they were admitted on 1.9.2014. It was for the said reason that, their admissions were rejected. It is therefore contended that, the petitioner is not entitled to any of the reliefs claimed.

6. Adv.George Poonthottam who appears for the petitioner contends that, though the College was entitled to an intake of 100 students, they could get only 28 students who had passed the State Entrance Examination. Similar situation was faced by various other colleges in the State. It was in the above circumstances that the Hon'ble Supreme Court was approached. As per Ext.P1 order, though an initial list of 5000

students was directed to be furnished, followed by a further list of 5000 students, sufficient number of students could not be obtained. It was to remedy the peculiar situation that was created that the Hon'ble Supreme Court had permitted the first respondent to conduct a fresh Entrance Examination, as per Ext.P2. After the said entrance test, 20 more students joined the course. According to the learned counsel initially 28 students had been admitted to the Management Quota on the basis of the ranking in the KEAM 2014. Thereafter, 20 more students were admitted on the basis of the entrance test conducted by the first respondent. Thus, a total number of 48 students were admitted under the Management Quota and 29 students under the general quota, making up a total number of 77 students. All the students were admitted before the cut off date, 30.9.2014. Clauses 4 and 5 of Ext.P3 agreement are relied upon to contend that, the seats remaining unfilled after allotment by the Commissioner for Entrance Examinations up to 5 p.m on 29.9.2014 would revert

back to the college and that the college was at liberty to fill up the said seats as Management seats with candidates either from the rank list of KEAM 2014 or from the rank list prepared on the basis of the Entrance Examination conducted by the Admission Supervisory Committee.

7. The 13 candidates whose admissions have been disapproved are all candidates admitted from the rank list of KEAM 2014. They are not persons ineligible to be so admitted. All of them have been admitted on 1.9.2014 except the 13th person who has been admitted on 30.9.2014, as evidenced by Ext.P5. Therefore, according to the learned counsel, the first respondent seriously erred in finding fault with the petitioner for having admitted the said students. It is also contended that the first respondent has no authority or power to interfere with the process of admission undertaken by the petitioner and therefore, Ext.P9 is liable to be set aside for want of jurisdiction. According to the learned counsel the petitioner is the Principal of a minority educational institution

which has the right to admit students of its choice. Reliance is placed on the decision in T.M.A.Pai Foundation v. State of Karnataka [(2002)8SCC 481] in support of the above contention. Therefore, the learned counsel seeks the issue of appropriate directions setting aside Exts.P9 and P11.

8. The contentions of the counsel for the petitioner are seriously opposed by Mrs. Mary Benjamin who appears for the first respondent. According to the learned counsel, the contentions of the counsel for the petitioner are unsustainable and liable to be rejected. The contentions put forward challenging the power and authority of the first respondent Committee have already been considered and rejected by this Court in the judgment reported in Kerala Private Medical College Management Association v. Admission Supervisory Committee for Professional Colleges [2013(3)KLT 316] and the judgment dated 10.4.2015 in WPC17328/2014 and connected cases. Though it is true that a Special Leave Petition has been filed against the judgment dated 10.4.2015,

the said decision is binding on this Court, it is contended.

9. It is the further contention of the learned counsel for the first respondent that Ext.P6 circular had been issued as early as on 10.3.2014 directing all colleges to submit a list of the candidates admitted to the various courses for the prior approval of the first respondent Committee. However, no list was submitted by the petitioner college in compliance with the said circular. It was thereafter that, Ext.P2 order was passed by the Hon'ble Supreme Court. It was a condition of the said order that, the Entrance Examination to be conducted by the first respondent was for admission to the 35% seats available under the Management Quota after excluding the 15% NRI quota. It was a further condition that the colleges should enter into an agreement with the Government. As per the terms of the order passed by the Supreme Court as well as the terms of the agreement entered into with the State Government, all seats available under the Management Quota could be filled up only with candidates ranked by the first

respondent Committee on the basis of the Entrance Examination conducted pursuant to Ext.P2 order. The above being the legal position, the present contention that the first respondent had no power or authority to disapprove the admission granted to 13 candidates by the petitioner cannot be accepted, according to the counsel. The present case pleaded by the petitioner that they had admitted the 13 students to the Management Quota from the rank list of KEAM 2014 is contrary to their case before the Supreme Court as well as the case pleaded in the present writ petition. Therefore, the counsel seeks dismissal of the writ petition.

10. Heard. It is not in dispute that, the college of the petitioner is a minority educational institution. It is also not in dispute that, the petitioner had not obtained sufficient number of students for admission to the dental course offered by them, from the rank list published by the Commissioner for Entrance Examinations Kerala, viz., KEAM 2014. What is stated by the petitioner in paragraph 3 of this writ petition reads as

follows:–

“The Dental Council permitted the intake of students as 100. Accordingly prospectus was issued by the College for admitting 100 students. The prospectus published by the petitioner college was inviting application from students who have passed and qualified in the common entrance test conducted by the Commissioner for Entrance Examinations, Kerala (KEAM, 2014). The qualification and eligibility criteria were as provided by the Dental Council of India. In terms of the prospectus the application received were limited in number. The college could admit only 28 candidates from the merit quota as well as under the NRI quota together.”

(Emphasis Supplied)

Therefore, according to the petitioner the college could admit only 28 candidates from the merit quota as well as the NRI quota together. It therefore follows that, even according to the petitioner no student had been admitted under the Management Quota from the list prepared by the

Commissioner for Entrance Examinations, Kerala. It was for the said reason that, the petitioner and their association had approached the Hon'ble Supreme Court for further directions. Accordingly as per Ext.P1 order, the Supreme Court directed that an initial list of the first 5000 candidates ranked by the Commissioner for Entrance Examinations, in the order of their merit shall be forwarded to the association so that the member colleges including the petitioner could grant admission to the candidates from the said list. It is clarified in Ext.P1 that, if sufficient number of candidates do not accept admissions from the first list of 5000 candidates furnished, a further list of 5000 candidates was to be furnished within five days of the first list getting exhausted. Accordingly, though lists were furnished, the colleges including the petitioner could not get sufficient number of candidates. It was in the above circumstances that Ext.P2 order was passed.

11. As per Ext.P2, the first respondent Committee was permitted to conduct an Entrance Examination after issuing

necessary advertisements inviting applications from desirous candidates. The examination was to be conducted on 20.9.2014 and the results were to be declared on 27.9.2014. The admissions were to be completed before 30.9.2014. After having made the above arrangement, Ext.P2 has given the following clarifications:-

“It is further clarified that the afore-stated arrangement is being made for 35% of the seats, which are meant for the management quota.

The petitioners, who are members of the petitioner-Association but have not signed consensual agreement with the State of Kerala, shall do the needful to enter into necessary agreement within three days from today and only after signing the said agreement, this order shall apply to them.

In view of the peculiar facts and circumstances, the counsel appearing for the Dental Council of India did not object to the afore-stated arrangement being made as several seats were being wasted.”

It is clear from the above that, the arrangement that was made by Ext.P2 order was for the 35% seats which were meant for the Management Quota. It is a further condition in Ext.P2 that members of the association who had not signed the consensual agreement with the State of Kerala shall do the needful to enter into necessary agreements within three days from the date of the order and that, the order shall apply to them only after signing the said agreement. It was accordingly that such an agreement was signed by the petitioner thereafter.

12. Ext.P3 is a copy of the agreement signed by the petitioner with the State Government. Clause 8(b) of Ext.P3 agreement reads as follows:-

“8(b) The Kanur Dental College, Anjarakandy shall be entitled to fill up the remaining 35% seats according to the merit list prepared on the basis of the Entrance Test to be conducted by the Admission Supervisory Committee as directed by the Hon'ble Supreme Court of India in its order

dated 17.9.2014 in SLP (C)No:19473/2014. 5% (5 seats out of 100) will be allotted to children of staff, management and trustees of the College based on inter se merit.”

As per the above clause the petitioner has agreed that the college shall be entitled to fill up the remaining 35% seats (Management Quota) according to the merit list prepared on the basis of the entrance test to be conducted by the Admission Supervisory Committee as directed by the Supreme Court in its order dated 17.9.2014 in SLP 19473/2014 (Ext.P2). Therefore, as per Ext.P3 agreement also the petitioner had agreed to have the 35% seats available under the Management Quota filled up with candidates on the basis of the Entrance Examination conducted by the first respondent Committee.

13. Having approached the Supreme Court stating that they have not been able to obtain sufficient students for admission to the Dental course under the Management Quota,

having suffered the direction that the entire seats available under the 35% Management Quota shall be filled up only with candidates ranked on the basis of the Entrance Examination to be conducted by the first respondent Committee and having agreed to the said course as per clause 8(b) of Ext.P3 agreement with the State Government, it is not open to the petitioner to turn around and contend that they have admitted 13 students from the rank list prepared by KEAM 2014. The contention put forward now is that, 12 students were admitted on 1.9.2014 while the 13th student was admitted on 30.9.2014. However, the said contention cannot be countenanced in view of the specific case pleaded in the writ petition that the college could admit only 28 candidates from the merit quota as well as the NRI quota together from KEAM 2014.

14. The counsel for the petitioner has taken up another contention that, as per clauses 4 and 5 of Ext.P3 agreement the college was entitled to fill up the lapsed seats either from

the rank list of KEAM 2014 or from the rank list prepared on the basis of the entrance test conducted by the first respondent, according to their choice. Therefore, according to the learned counsel the 13 candidates are persons admitted to such lapsed seats. The above contention cannot be countenanced in view of the stand taken by the college in their communication to the first respondent evidenced herein by Ext.R1(c). What the petitioner has stated in Ext.R1(c) is as under:–

“It may kindly be noted that we have signed a consensual agreement with the Government for sharing 50% seats. However, only 29 candidates, against 50, allotted by the Commissioner for Entrance Examination, have joined. We were not able to fill up the lapsed seats (21 Nos.) due to paucity of time and non-availability of qualified students.

Out of 35 seats under Management Quota, we have admitted 13 candidates who were qualified in the KEAM 2014 Entrance Examination

and 20 candidates qualified in the common entrance test conducted by the Admission Supervisory Committee, on inter se merit. We could not fill up 2 seats under management quota. We have given admission to all qualified candidates applied for.”

(Emphasis Supplied)

What has been admitted is that the 21 lapsed seats could not be filled up due to paucity of time and non-availability of qualified students. As far as the 13 candidates are concerned, it is candidly admitted that they were admitted to the 35 seats under the Management Quota since they were qualified in the KEAM 2014 entrance examination. They were admitted in addition to the 20 candidates qualified in the common entrance test conducted by the first respondent committee. In view of the above admission in Ext.R1(c) that the 13 candidates were admitted in the Management Quota, the contention that the college was entitled to fill up the said seats either from the rank list prepared by the first

respondent or from the rank list of KEAM 2014 cannot be accepted. It is further worth noticing that neither before the Hon'ble Supreme Court at the time of issue of Ext.P2 order nor before this Court in the present writ petition the petitioner has a case that any seat under the 35% Management Quota had been filled up before the issue of Ext.P2 order. In the absence of any such case, the contention now put forward is only to be rejected. After the issue of Ext.P2 order, the petitioner could admit a student under the Management Quota only in terms of the said order, on the basis of the Entrance Examination conducted by the first respondent. The 13 students in the present case having been admitted in violation of the directions contained in Ext.P2 order as well as the terms of Ext.P3 agreement, the admissions have been rightly rejected by Ext.P9 order.

15. Though the learned counsel for the petitioner has raised questions regarding the power or authority of the first respondent to interfere with the process of admission, it is

not necessary for us to consider the said issue in this case for the reason that, Ext.P9 order has been passed by the first respondent pursuant to and in accordance with Ext.P2 order passed by the Supreme Court. It was certainly open to the first respondent to reject the admission of candidates made in violation of Ext.P2 order and in violation of the terms of Ext.P3.

For the foregoing reasons, we find no grounds to interfere with Exts.P9 and P11 or to grant any of the reliefs sought for in this writ petition. The writ petition is accordingly dismissed.

Sd/–
K. SURENDRA MOHAN
Judge

Sd/–
MARY JOSEPH
Judge

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/True copy/

