

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

WP(C).No.3518 of 2015 (L)

PETITIONER:

**DR.R.N.K.SANKAR,AGED 50 YEARS,
S/O.S.RENGAN REDDIAR,SREE RANGA SOUDAM,
ALAPPUZHA WEST VILLAGE,ALAPPUZHA DISTRICT.**

**BY ADVS.SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN
SMT.T.J.SEEMA**

RESPONDENTS:

- 1. THE DIRECTOR,DIRECTORATE OF MEDICAL EDUCATION,
THIRUVANANTHAPURAM-695 011.**
- 2. THE COMMISSIONER OF ENTRANCE EXAMINATIONS,
OFFICE OF THE COMMISSIONER OF ENTRANCE EXAMINATIONS,
THIRUVANANTHAPURAM-695 001**

R1&R2 BY GOVERNMENT PLEADER SRI.ROSHAN D.ALEXANDER.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 23.2.2015 THE COURT ON 12-03-2015, DELIVERED THE FOLLOWING:**

pk

WP(C).No.3518 of 2015 (L)

APPENDIX

PETITIONER'S EXHIBITS:

**EXT.P1-TRUE COPY OF THE RELEVANT PAGES OF THE PROSPECTUS FOR THE
POST GRADUATE MEDICAL ENTRANCE EXAMINATION.**

**EXT.P2-TRUE COPY OF THE GOVERNMENT ORDER G.O(MS)NO.10/2014/BCDD
DATED 23-05-2014.**

**EXT.P3-TRUE COPY OF THE RELEVANT PAGES OF THE PROSPECTUS FOR
UNDERGRADUATE MEDICAL COURSE, 2015.**

**EXT.P4-TRUE COPY OF THE CERTIFICATE ISSUED BY THE TAHSILDAR,
AMBALAPPUZHA DATED 09-01-2015**

RESPONDENT'S EXHIBITS:

**EXT.R1(a):TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER
BEFORE THE COMMISSIONER OF ENTRANCE EXAMINATION.**

**EXT.R1(b):TRUE COPY OF THE AFFIDAVIT WITHOUT EXHIBITS FILED ON BEHALF
OF THE STATE GOVERNMENT PURSUANT TO THE DIRECTION OF THIS
HONOURABLE COURT ON 1.7.2014 IN WRIT APPEAL NO.839/2014.**

EXT.R1(c):TRUE COPY OF THE JUDGMENT DATED 12.8.2014 IN W.A.NO.839/2014.

//TRUE COPY//

P.S. TO JUDGE

pk

(CR)

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.3518 of 2015

Dated this the 12th of March, 2015

JUDGMENT

Non-inclusion of the 'Reddiar Community' in the list of 'SEBC' (Socially and Educationally Backward Class) in Annexure-VII of Ext.P1 Prospectus for Post Graduate Medical Courses, 2015, is under challenge in this writ petition. Claim is based on Ext.P2 G.O. dated 23.05.2014 which provides to include 'Reddiar Community' as one among the 'SEBC' category for getting admission in the Professional Colleges and the subsequent Prospectus for Undergraduate Medical Courses, 2015 (Ext.P3), wherein 'Reddiar Community' has been included as one of the beneficiary communities.

2. The petitioner belongs to 'Reddiar Community', which is a socially and educationally backward class for the purpose of reservation under Articles 15(4) and 16(4) of the Constitution of India. In fact, the petitioner got admission for M.B.B.S. course

under the quota reserved for 'Reddiar Community' and on successful completion of the course, got employment as a Doctor in the T.D. Medical College Hospital, Alappuzha in the year 1992 on contract basis. Subsequently, the petitioner came to be employed in the permanent service as a Lecturer from the year 2011 onwards and is continuing as above.

3. In response to the various notifications issued at different points of time, the petitioner had applied for admission to P.G. Medical courses. In fact, he could apply for the same only under the general category, as the 'Reddiar Community' came to be deleted from the list of beneficiary communities including the SEBC category, somewhere in the year 2008. Despite the best efforts put in by the petitioner in the aforesaid selection process for the different years, he could not come through in the general category.

4. Meanwhile, the petitioner came across Ext.P1 prospectus issued by the concerned respondent for the Post Graduate Medical Entrance Examination, 2015, scheduling the examination to be conducted on 08.02.2015. As done earlier, this time also, the petitioner applied under the general category for the

discipline 'General Medicine'. It was after submitting the application that, the petitioner did come to know of Ext.P2 G.O. dated 23.05.2014, whereby the Government had re-inducted 'Reddiar Community' as one of the beneficiary communities under the SEBC Category, for obtaining admission in the Educational Institutions including in Professional Colleges. Since the petitioner was not aware of the said Government Order, he could not apply in the SEBC category and had to apply under the general category. The petitioner also came to know that, pursuant to Ext.P2 G.O., 'Reddiar Community' has been included as one of the eligible beneficiary communities under the SEBC category, for Undergraduate Medical Course, 2015, as evident from Ext.P3 prospectus. This made the petitioner to approach this Court by filing the writ petition, seeking for a declaration that, non-inclusion of 'Reddiar Community' in the list of SEBC in Annexure VII of Ext.P2 proceedings is unconstitutional and for a positive direction, to have the benefit flowing from Ext.P2. It is contended that, in view of Ext.P2 G.O. and inclusion of 'Reddiar Community' in the eligible list of SEBC in respect of the Undergraduate courses notified as per Ext.P3 prospectus, non-inclusion of the

said community in Ext.P1 prospectus for Postgraduate Courses is only an omission and is liable to be interfered.

5. A detailed statement has been filed on behalf of the first respondent, contending that the idea and understanding of the petitioner is thoroughly wrong and misconceived. It is stated that, the norms of selection and distribution of seats for Postgraduate Courses are entirely different from those for the Undergraduate courses, mainly in view of the limited number of seats available and the extreme demand, besides the necessity to maintain the level of merit in the field of selection, in terms of the verdicts passed by the Apex Court governing the field. It is stated that, the percentage-wise earmarking as well as break-up of seats for Postgraduate Medical Courses cannot be compared with that of M.B.B.S. or B.D.S. Courses.

6. The scheme of earmarking of seats for Postgraduate Medical admission has been explained in paragraph 4 of the statement, which reads as follows:

"4. Scheme of earmarking of seats for PG Medical Admission: It is submitted that for Postgraduate Medical admission, unlike admission for MBBS and BDS, the lesser number of seats itself is a criteria to fix the percentage breakups for

recognizing communities eligible for reservation under SEBC. From among the total seats available for allotment, 50% of seats will be earmarked for All India quota selection and admission. After earmarking such 50% towards All India pool the rest of the seats for the year 2015 is 259 seats for PG Degree and 78 seats for diploma. From among 259 seats for degree, Government have to allot 50% of the total seats for general merit. In accordance with Section 5(1), the Kerala Medical Officers' Admission to Postgraduate Courses, under Service Quota Act, 2008 (Act 29 of 2008), seats not exceeding 40% of the seats are to be reserved for service quota candidates. Seats not exceeding 3% of the state quota seats are reserved for Persons with Disabilities (PD). One seat in a particular specialty is reserved for ex-service candidate. Leaving the seats set apart for persons with disabilities and ex-service, 10% of the remaining seats under state quota will be given to schedule Caste (8%) and schedule Tribe (2%) candidates. Leaving the seats set apart for persons with disabilities and ex-service, 9% of the remaining seats under state quota shall be reserved for candidates belonging to socially and educationally backward classes (SEBC). The percentage breakup for seats as per SEBC reservation for PG medical courses is as follows:

1	Ezhava (EZ)	3%
2	Muslim (MU)	2%
3	Other Backward Hindu (BH)	1%
4	Latin Catholic (LC)	1%
5	Other Backward Christian (BX)	1%
6	Kudumbi (KU)	1%
	Total	9%

Therefore, for PG medical courses, 50% of the total seats have to be earmarked for general candidates, 3% of the seats will go to PD candidates,

one seat will go to ex-service candidate, 10% for SC/ST candidates, 9% for SEBC candidates and rest of seats which would be approximately 31% is allotted to service quota candidates."

7. It has been pointed out in the statement that, taking into account of the percentage breakup of seats as mentioned above, Ext.P2 G.O. was discussed by the Prospectus Committee under the Chairmanship of the Principal Secretary for Health and Welfare Department in the meeting held on 29.11.2011. It was after much deliberation that, a decision was taken, not to implement the above reservation pattern for P.G. Medical and Dental Courses. Ext.P1 prospectus for admission to the P.G. Medical courses was prepared not by the second respondent, but by the first respondent and the same has been approved by the Government as per G.O.(Rt) No.3986/2014/H&FWD dated 15.12.2014. It has been asserted that, non-inclusion of the 'Reddiar Community' is not an omission or oversight, but a conscious decision taken by the Prospectus Committee constituted under Act 29 of 2008 and the same stands approved by the Government.

8. The learned counsel for the petitioner points out that, the

attempt of the respondent to restrict the scope of Ext.P2 G.O. keeping it away from the field of Ext.P1 admission, is not at all correct or sustainable, as no such stipulation is contained in Ext.P2. On the other hand, it is applicable to all Professional Colleges as well. Reliance is placed on the definition of the term 'Professional College' or 'Institution' under Section 2(r) of the Kerala Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Explorative Fee and Other Measures to Ensure Equity and excellence in Professional Education) Act, 2006 and contends that, every institution imparting Medicine, Dentistry, Pharmacy, Ayurveda, Homoeopathy, Siddha and Nursing is a professional College/Institution under Section 2(r)(b).

9. The learned Government Pleader submits that, Ext.P2 is only of general importance, referring to the institutions to which the same is applicable. It pertains to admissions in Higher Secondary Schools, Vocational Higher Secondary Schools, Professional Colleges etc. and it does not mention anything with regard to the courses, to which such benefit could be extended.

10. The learned counsel for the petitioner submits on the

other hand, that the status of the petitioner, being a member of SEBC category, cannot be disputed in view of Ext.P4 Community Certificate issued by the concerned Tahsildar, as a member of the 'Reddiar Community'. In the case of SEBC Candidates, the minimum marks required for passing the entrance test is only 40% and hence the petitioner might be given the advantage in this regard.

11. The prayer is vehemently opposed by the learned Government Pleader pointing out that, the petitioner has applied only under the 'Service Quota', as borne by the contents of Annexure R1(a) and as such, he is not eligible for further reservation in the reserved seat under the mandatory reservation available for SEBC candidates. It is added that the contention taken by the petitioner in paragraph 3 of the writ petition that, he had made the application under the 'general quota' is not correct and hence denied. In the case of the 'Service Quota' candidates, the minimum qualifying marks prescribed earlier was 40%, which came to be enhanced subsequently as '50%' by virtue of G.O. (Rt) No.517/2015/H&FWD dated 03.02.2015. The version of the first respondent, as discernible from paragraph 7 of the

statement, is in the following terms:

"7. At this juncture, it is worthwhile to mention a curious fact for the purpose of reference of this Honourable Court. According to the prospectus clause 4-4 the qualifying criteria for various categories is mentioned as follows:

Sl. No.	Category	Qualifying Criteria in (%)
1	General	50
2	SC/ST/SEBC	40
3	PD	45
4	Service Quota	40

*Later, by virtue of GO(Rt) No.517/2015/H&FWD dated 03.02.2015 minimum eligibility for service quota was increased to 50%. Petitioner contended that he had applied only under General category and he is claiming eligibility for reservation as per clause 6.5 of the prospectus (ie. Reservation of seats under SEBC quota). The percentage of marks required by the Petitioner for qualifying his entrance examination is 50% for General category, 40% for SEBC category and 50% for Service quota. If the petitioner is applying under the category service quota alone, he need to obtain 50% of marks for qualifying the examination. If the petitioner claims under service quota alone; there cannot be further claim for mandatory reservation under SEBC category for a person eligible for reservation under Service Quota. If a candidate applies only under Service Quota he is not able to seek for a reservation seat available for SEBC. For service quota, the term SEBC is only relevant for a reduction on minimum eligibility. For the purpose of reference a true copy of application submitted by the petitioner before the Commissioner of Entrance Examination is produced herewith and marked as **Annexure R1(a)**. Petitioner applied only under "service quota" and he is not eligible for further*

reservation for a reserved seat under mandatory reservation available for SEBC candidate. Therefore the contention taken by the petitioner in paragraph 3 of the writ petition that he made an application under "general quota" is not correct and hence denied. Therefore, as a matter of fact Petitioner will not be able to obtain a seat reserved for SEBC, since he did not lay a claim under General Quota."

From the above, it is clear that the claim of the petitioner to obtain a seat reserved for SEBC is not liable to be entertained, as the application is to be considered only under the 'Service Quota' and not otherwise.

12. With regard to the scope of Ext.P2 G.O., it is only a list of other backward communities, who are eligible for education concessions as given to 'Other Eligible Communities' (OEC). Scope of Ext.P2 G.O. and the Annexure attached to it, had come up for consideration before a Division Bench of this Court in W.A. No.839 of 2014, as stated in paragraph 8 of the Counter Affidavit filed by the first respondent. It was pointed out that, Ext.P2 was not an Order, additionally including certain communities under the SEBC category, but an order issued only for the purpose of fixing separate reservation for some other communities coming under 'Other Backward Community' (OBC) to avail the benefit of

educational concessions granted to other eligible communities (OEC). It was also brought on record that, Ext.P2 was not an exhaustive list of communities/categories eligible for the SEBC benefit. A true copy of the affidavit filed before the Division Bench, along with Exhibits in W.A. No.839 of 2014, has been produced as Annexure R1(b). It was after taking note of all the facts and circumstances that, interference was declined and the writ appeal was dismissed by the Division Bench vide Annexure R1(c).

After hearing both the sides, this Court finds that there is absolutely no merit or bonafides in the writ petition. None of the grounds raised in support of the same could be held as tenable.

Interference is declined and the writ petition is dismissed accordingly.

**P.R. RAMACHANDRA MENON,
JUDGE**

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