

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN**

**TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937**

**WP(C).No. 5110 of 2015 (K)**  
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**PETITIONER:**  
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**DR.ASWATHI VINOD, PADMA HOUSE,  
THYKANDIYIL, CHELANNUR. P.O.,  
KOZHIKODE DISTRICT.**

**BY ADV. SRI.GEORGE POONTHOTTAM.**

**RESPONDENTS:**  
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- 1. THE COMMISSIONER OF ENTRANCE EXAMINATIONS,  
FIFTH FLOOR, HOUSING BOARD BUILDINGS,  
SANTHI NAGAR, THIRUVANANTHAPURAM-695 001.**
- 2. THE DIRECTOR OF MEDICAL EDUCATION,  
DIRECTORATE OF MEDICAL EDUCATION,  
THIRUVANANTHAPURAM-695 011.**
- 3. STATE OF KERALA,  
REPRESENTED BY THE SECRETARY,  
HEALTH AND FAMILY WELFARE (S) DEPARTMENT,  
GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM-695 001.**

**BY GOVT. PLEADER SRI.ROSHEN D.ALEXANDER.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 02-06-2015, ALONG WITH WP.(C) NO. 6249 OF 2015 AND  
WP.(C) NO. 7177 OF 2015, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:**

**rs.**

**APPENDIX**

**PETITIONERS' EXHIBITS:**

- EXT.P1        TRUE COPY OF THE RELEVANT PAGES OF THE PROSPECTUS FOR  
ADMISSION TO MEDICAL POST GRADUATE COURSE, 2015.
- EXT.P2        TRUE COPY OF THE G.O.(RT)NO.517/2015/H&FWD  
DATED 03-02-2015.
- EXT.P3        TRUE COPY OF THE GO(RT)NO.529/2015/H&FWD  
DATED 04.02.2015.
- EXT.P4        TRUE COPY OF THE NOTIFICATION NO.CEE/3171/PGM-2015/TAE  
DATED 04-02-2015.
- EX.P5        TRUE COPY OF THE RELEVANT PAGES OF THE PROSPECTUS  
ISSUED BY THE 2ND RESPONDENT FOR ADMISSION TO THE  
SPECIALITY POST GRADUATE COURSE DENTAL SURGERY  
(MDS-MASTER OF DENTAL SURGERY)IN DENTAL COLLEGES  
IN KERALA-2015.

**RESPONDENTS' EXHIBITS:**                      **NIL.**

**//TRUE COPY//**

**P.A. TO JUDGE**

**rs.**

**K. VINOD CHANDRAN, J.**

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**W.P(C). Nos.5110, 6249 & 7177 of 2015**  
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**Dated this the 2<sup>nd</sup> day of June, 2015.**

**JUDGMENT**

The rigour of negative marking in the Entrance Examination conducted by the State, to the various Post Graduate Dental Courses, is the bone of contention in the above writ petitions. Admittedly, after the Entrance Examination to the Post Graduate Dental Courses for the Academic year 2015-2016 was over, the State removed the negative marking with respect to the Entrance Examinations for P.G. Medical Courses. A specific reason is projected for such action.

2. The Hon'ble Supreme Court declared that there can be no separate minimum qualifying marks prescribed for service quota candidates, who are reserved a definite number of seats, for admission in each Academic year. It was also declared that there can be no weightage for seniority and service candidates also

ought to be selected, to the seats reserved for them, on the basis of inter-se merit. When the Supreme Court passed the said judgment on 12.01.2015 in Civil Appeal No.297-298/2015, the Entrance Examination for Ext.P4 Post Graduate Medical Courses was not yet over. Hence, on a premonition that sufficient number of candidates for service quota will not be available, the Government thought it fit to take away the negative marking, in the Entrance Examination for the Post Graduate Medical Courses, which was scheduled on 08.02.2015. A Government Order to that effect, produced at Ext.P2 dated 03.02.2015, was brought in. Hence, for all the P.G. Medical students, there was no negative marking.

3. The Entrance Examination for the Post Graduate Dental Courses was held prior to the Supreme Court judgment and the Government Order; on 11.01.2015. As per the established system, negative marking was the norm in the said examination. The petitioners, all of whom did not qualify in the said Entrance Examination, for reason of having not acquired the minimum required 50%, claims that this causes discrimination in so far as

a different system having been applied for the Post Graduate Medical Courses. The petitioners rely on **Vinod K.M. and others v. State of Kerala and others [2012 (2) KHC 797]**. The petitioners also contend that this Court could exercise the extraordinary powers under Article 226 directing a fresh rank list to be published without the negative marking and without altering the already finalised list; so as to merely enable those persons, who would be then acquiring the bench mark of 50% to either apply for vacant seats or for obtaining seats under the management quota. It is contended that, such a procedure would not cause prejudice at all, to any.

4. The learned Government Pleader would contend that no discrimination can be claimed since the petitioners herein are not in any way similarly situated as the candidates who appeared for Post Graduate Medical Courses. Further, it is also submitted that it was in fact due to the binding declaration in **Vinod K.M.** (supra) that the Government thought it fit to take away the negative marking for the Post Graduate Medical Entrance Examination as such; not confining such benefit to the service

quota candidates alone. It is also submitted that the question of prejudice cannot be decided upon, at this point, since the students who appeared for the Post Graduate Dental Entrance Examinations had appeared and answered the examination fully aware of the negative marking system and there could be prejudice caused by issuing a fresh rank list, which would not be discernible at this point of time.

5. This Court is not convinced that any discrimination can be claimed on the basis of the judgment reported in **Vinod K.M.** (supra), in which the Division Bench was concerned with a separate yard-stick being applied to service candidates as distinguished from the other candidates appearing for the Entrance Examination. Therein the negative marking earlier notified for all the candidates, were withdrawn for the service candidates alone. It was in the said circumstances, that the Division Bench held that there cannot be a separate yard-stick applied in the case of one particular category of candidates when the examination is taken by different categories. In the present case, the claim raised on the basis of the aforesaid judgment is

that the separate system adopted for admission to Post Graduate Dental Courses from that of Post Graduate Medical Courses is arbitrary. The candidates, who appeared for the Post Graduate Dental Courses cannot at all be equated with those of the candidates, who appeared for Post Graduate Medical Courses and one could not have appeared in the examination for admission to the other course. In such circumstances, the challenge raised on discrimination fails.

6. The separate yard-stick being applied for admission to Post Graduate Dental Course and Post Graduate Medical Course, was also on sustainable grounds, due to the intervening facts. The intervening circumstances, which has been explained by the Government in its Counter Affidavit was the need for a uniform requirement of minimum marks to be applied for all candidates applying for the Post Graduate Medical Courses and the Government's apprehension that there might not be sufficient service candidates qualified; in the teeth of relaxation in the minimum marks required being taken away. The relaxation in the prospectus, to in-service candidates was available for the PG

courses in Dentistry and Medicine and so was the negative marking, a prescription. The Entrance Examination for Dental courses was conducted before the declaration of law made by the Hon'ble Supreme Court; and hence the students' attempt was regulated by the negative marking system. The Entrance Examination for Medical courses was subsequent and hence the relaxation was taken away in tune with the declaration of law and mitigation was offered by the negative marking being done away with. The State, according to this Court, was quite justified in such action.

7. The next question to be considered is with respect to the prejudice caused, which is sufficiently answered by the Government in paragraph 7 of its statement, which is extracted hereunder:

*"7. It is also pertinent to point out that candidates who have appeared for the entrance examination for PG DENTAL might have answered the questions based on Clause IX.2. Therefore, most of the candidates who were not sure about the questions to which they know the correct responses might have left the question for fear of negative mark. If negative marks are withdrawn after the examination, it would only help those candidates who made a wild guess and tried to*

*answer randomly and took a chance of trial and error. In such an event the assessment of merit on the basis of the performance in the entrance examination would not be correct."*

8. This Court is inclined to accept the contention that it may not be possible for this Court or the official respondents to decide on the probable prejudice that could be caused by a fresh list being published. Admittedly, the students had appeared for the examination knowing fully well that negative marking would be applied in valuation. The negative marking system is one in which a student is expected neither to make a wild guess nor randomly select an answer, especially the entrance examination being solely of multiple choice questions. The assessment of merit for admission to professional P.G. Courses, in the highly competitive environment, is a challenge to the Government, who subsidises such education, at least in the Government Colleges; which even now is the first choice, despite the prevalence of private professional Colleges. The large number of candidates seeking admission and the high percentage of meritorious ones; as against limited seats makes the process one of elimination rather

than selection. Negative marking is a system introduced to minimise the vagaries of a purely multiple choice evaluation. The performance of the students would be so attuned as to excel with maximum marks, by making precise choices, and leaving out those which could result in negative marking

9. A student who had randomly ticked an answer or who had made a wild guess would stand to gain if after the examination the system is altered. A student, who had intelligently avoided answering a question would be prejudiced in so far as not being given a chance to make a random guess. In any event, the process cannot result in random selection, since it seeks to identify the best equipped to take the higher studies. A re-vamping of the list, even without disturbing the allotments already made would only lead to unnecessary heart-burn and attempted ventilation of that, before this Court, opening the flood-gates of litigation. In addition what the petitioners claim is a mere chance based on fortuitous circumstances. Lady Justice would frown upon such favours showered at whim, which Lady Luck is wont to smile at. This Court would not reduce the

extraordinary discretionary power conferred on this Court to an exercise akin to a throw of dice.

For all the above reasons, the writ petitions are found to be devoid of any merit and the same are dismissed. The learned counsel for the petitioners would then urge that atleast in future there should be uniformity with respect to the system followed in admission to Dental Courses and Medical Courses. That would be a question to be left to the consideration of the Government and will have to be judicially tested when the question arises. No warrant exists as of now to make a pre-emptive declaration.

**K. VINOD CHANDRAN,  
JUDGE**

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