

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

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

WP(C).No. 8876 of 2013 (H)

PETITIONERS:

1. EADHU KRISHNA K., AGED 18 YEARS
S/O.DR.KRISHNAKUMAR, 1ST YEAR BHMS STUDENT
DR.PADIAR MEMORIAL HOMOEPATHIC MDICIAL COLLEGE
CHOTTANIKKARA, ERNAKULAM.
2. MAHJEBIN ASHRAF ALI
D/O.ASHRAF ALI, 1ST YEAR BHMS STUDENT
DR.PADIAR MEMORIAL HOMOEPATHIC MEDCIAL COLLEGE
CHOTTANIKKARA, ERNAKULAM.

**BY ADVS.SRI.V.A.MUHAMMED
SRI.K.E.HAMZA**

RESPONDENTS:

1. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
HEALTH AND FAMILY WELFARE DEPARTMENT, SECRETRIAT
THIRUVANANTHAPURAM-695 001.
2. THE COMMISSIONER
KERALA GOVERNMENT ENTRANCE EXAMINATION
HOUSING BOARD BUILDING, SANTHI NAGAR
THIRUVANANTHAPURAM-695 001.
3. THE KERALA UNIVERSITY OF HEALTH SCIENCES
REPRESENTED BY ITS REGISTRAR, MEDICAL COLLEGE P.O.
THRISSUR DISTRICT-680 596.
4. THE PRINCIPAL AND CONTROLLING OFFICER
GOVERNMENT HOMEOPATHIC MEDICAL COLLEGE, IRANIMUTTOM
THIRUVANANTHAPURAM - 695 007.
5. THE PRINICIPAL
DR.PADIAR MEMORIAL HOMEOPATHIC MEDICAL COLLEGE
CHOTTANIKKARA, ERNAKULAM - 682 312.

**R5 BY ADV. SMT.R.RANJINI
R1-R2 BY GOVERNMENT PLEADER SRI.RAFEEK. V.K.
R3 BY ADV. SRI.P.SREEKUMAR,SC,KERALA UINIVERSITY HEALTH SCIENCES**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1.TRUE COPY OF THE LETTER OF THE GOVERNMENT DATED 16/10/2012.

EXHIBIT P2.TRUE COPY OF THE LETTER OF THE 4TH RESPONDENT DATED 18/10/2012.

EXHIBIT P3.TRUE COPY OF THE VERIFICATION REPROT OF ANEESA E.A.

EXHIBIT P4.TRUE COPY OF THE VERIFICATION REPOT OF AYISHA NASMIN E.C.

EXHIBIT P5.TRUE COPY OF THE VERIFICATION REPORT OF IRFAN THATTARUTHODI.

EXHIBIT P6.TRUE COPY OF THE LETTER OF THE PRINCIPAL OF THE COLLEGE DATED 30/10/2012.

EXHIBIT P7.TRUE COPY OF THE CONSOLIDATED REPORT DATED 13/12/2012.

EXHIBIT P8.TRUE COPY OF THE LETTER OF THE 3RD RESPONDENT DATED 7/2/2013.

EXHIBIT P9.TRUE COPY OF THE SHOW CAUSE NOTICE DATED 22/2/2013.

EXHIBIT P10.TRUE COPY OF THE LETTER OF THE PRINCIPAL TO THE 3RD RESPONDENT DATED 12/2/2013.

EXHIBIT P11.TRUE COPY OF THE LETTER OF THE PRINCIPAL TO THE 3RD RESPONDENT DATED 27/2/2013.

EXHIBIT P12.TRUE COPY OF THE LETTER OF THE PRINCIPAL OF THE COLLEGE DATED 22/10/2012.

EXHIBIT P13.TRUE COPY OF THE LETTER OF THE PRINCIPAL OF THE COLLEGE DATED 22/10/2012.

EXHIBIT P14.TRUE COPY OF THE G.O.(RT) NO.792/83/HD DATED 28/3/1983 OF THE GOVERNMENT.

EXHIBIT P15.TRUE COPY OF THE LETTER OF THE UNIVIERSTY DATED 20/3/2013.

EXHIBIT P16.TRUE COPY OF THE LETTER OF THE PRINCIPAL DATED 3/10/2012.

EXHIBIT P17.TRUE COPY OF THE LETTER OF THE PRINCIPAL DATED 13/12/2012.

EXHIBIT P18.TRUE COPY OF THE LETTER OF THE DEMAND DRAFT DATED 31/11/2012.

RESPONDENT(S)' EXHIBITS

EXHIBIT R1(a) : A TRUE COPY OF THE G.O. NO.184/2003/H&FWD DATED 03.09.2003.

EXHIBIT R5(1) : THE PHOTOCOPY OF THE GOVERNMENT ORDER DATED 25.4.2000.

EXHIBIT R5(2) : THE PHOTOCOPY OF THE ORDER DATED 26.11.1996 IN O.P. NO.15831/96

EXHIBIT R5(3) : THE PHOTOCOPY OF THE JUDGMENT DATED 9.2.1999 IN O.P. NO.15831/96.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.8876 of 2013

Dated this the 12th day of March, 2015

JUDGMENT

The petitioners are aggrieved by Ext.P15 notice dated 20.03.2013 issued by the 3rd respondent directing the 5th respondent to remove the petitioners from the roll of BHMS students in the 5th respondent college.

2. When this writ petition was filed, the petitioners were 1st year BHMS students in the 5th respondent college. They were granted admission from the rank list prepared by 2nd respondent for the year 2012. Petitioners allege that while the admission for the academic year 2012 was about to close, the 1st respondent informed the 4th respondent about the modalities of spot admission which had to be completed before 31.10.2012. Accordingly the 4th respondent scheduled spot admission to the 5th respondent college on 29.10.2012. According to the petitioner, by the last week of October, 2012 out of 50 seats for BHMS course, 5 seats were vacant in the 5th respondent college. On 29.10.2012, as scheduled certain candidates came forward

opting spot admission and accordingly 3 were admitted. However the remaining two seats remain vacant. Petitioners alleged that respondents 2 and 4 could not make available any candidate. Hence those 2 seats were filled by the petitioners. The petitioners alleged that the candidature of the petitioners was agreed to by the 3rd respondent. However, of late, they started to issue queries which were duly replied. The petitioners point out that 2nd and 4th respondents were informed of the seats in which they were granted admission on 22.10.2012. However, there was no response. Petitioners, however, alleged that the 5th respondent college is a minority institution duly recognized by the Government. However, 3rd respondent asked the 5th respondent to remove the petitioners from the rolls before 31.03.2013 by this notice impugned. It is with this background the petitioners are come up before this Court.

3. In the counter affidavit filed by the first respondent, they contended as follows:

As per Clause 16 of Direct Payment System agreement signed between the Management of Dr.Padiar Memorial Homeopathic Medical College, Chottanikkara, Ernakulam and Government, they can admit only 15% of total strength

for 2012-13. They were allotted 7 sets and they can admit only 7 students in the management quota. The Principal has no authority to change the lapsed Government seats as Management seats and to fill the Government seats with Management candidates. Exhibit P6 is not validly issued. Exhibit P7 is only a list forwarded by the Principal in a form provided by 3rd respondent.

Dr.Padiar Memorial Homeopathic Medical College, Chottanikkara, Ernakulam is an institution managed by a minority community. Exhibit -P14 dated 28.03.1983 was later modified by G.O. No.184/2003/H&FWD dated 03.09.2003 (Exhibit-R1(a)) which was issued after the introduction of Direct Payment System in the institution. The Government Order clearly states that Dr.Padiar Memorial Homeopathic Medical College management shall not make any claims as a minority community. So Government Order mentioned Exhibit-P14 has become invalid.

The Principal, Dr.Padiar Memorial Homeopathic Medical College, Chottanikkara, Ernakulam has conducted improper admission to lapsed Government seat in Dr.Padiar Memorial Homeopathic Medical College, Chottanikkara, Ernakulam for BHMS course during the academic year 2012-13. He was bound to inform the Principal and Controlling Officer i.e., in the 4th respondent of any vacancies existing in the institutions upto 29.10.2012.

The Kerala University for Health and Science, on verification of records found out the improper admission conducted by the Principal, Dr.Padiar Memorial

Homeopathic Medical College, Chottanikkara, Ernakulam. Hence Exhibit-P15 was issued.

Exhibit-P15 is a letter issued by the Registrar, Kerala University for Health and Science to the Principal, Dr.Padiar Memorial Homeopathic Medical College. There is no need to inform the petitioners the issuance of the letter as alleged by the petitioner. This is an official correspondence among the offices. Hence the question of violation of natural justice does not arise.

Government cannot justify the improper admission conducted by Management for the 1st BHMS 2012-13. It is the prime duty of the Government to render justice to the eligible candidates.

4. The 3rd respondent filed a statement. Though they have admitted that the petitioners were admitted on BHMS course by the 5th respondent, according to them, the admission was in violation of the then existing norms for taking admission. He contented as follows:

The contention of the petitioners that they were given admissions under the management quota cannot be accepted as the said seats were filled up under the merit quota and the two students left the institution on getting themselves allotted with their higher options. In such an event the said seats are to be filled up by the students from the list prepared by the 2nd respondent and on the basis of the allotment effected by the 4th respondent. In the present case the management adopted the stand that

the authorities did not make any allotment to the said seats and hence they filled up the same by the petitioners under the management quota. Neither the management nor the 5th respondent has got any authority to treat the seats filled up under the merit quota as management quota seats at a later point of time.

The 3rd respondent sought an explanation from the 5th respondent regarding the said aspect and the explanation given by the 5th respondent was found not satisfactory and hence Exhibit P15 was issued to discharge the students. The college which is run under the direct payment system does not enjoy the benefit of management quota as in the case of self financing colleges. The only benefit available to the college is the limited number of seats allotted to be filled up by the members of the community in terms of exhibit P14 order. The management and the principal has taken the decision to create the category of management seats in the college without any authority and the same cannot be approved of. In the said circumstances the admissions of the petitioners made under the management quota cannot be accepted and the decision of the university in this regard is well founded and justifiable.”

5. In the detailed counter affidavit filed by the 5th respondent they have justified their stand in filling up the vacancies. According to them, the petitioners were admitted not

to leave two seats unfilled. According to them, the admission was made bona fide and the petitioners were included in the rank list prepared by the 2nd respondent.

6. Arguments have been heard.

7. The 5th respondent college is run by a minority community. The seat allotment in this college is in the ratio of 85:15 i.e., 85 from the merit quota and 15 from the management quota. Since the total number of seats are 50, management is allowed to fill up 8 seats during an year and 7 seats during the next years. This method is being followed in the case of admission to 15% management quota. This is as per Ext.R5(1) G.O. dated 24.04.2000. Normally after the Entrance Examination, the admission for each year would be closed by September. It is an admitted fact that spot admission is a method adopted for filling seats falling vacant before the last date of closure of admission. It is also an admitted fact that this method is adopted every year and the Government had given permission to the college to conduct spot admission to fill up vacancies after allotment from the Commissioner for Entrance Examinations. The 5th respondent pointed out that for the

academic year 2012, out of 15 seats for BHMS course, 7 seats were allotted under the management quota. When the allotment was coming to an end, the 1st respondent issued communication to the 4th respondent to conduct spot admission and fill up vacancies for admission for BHMS course. The spot admission had to be completed before 31.10.2012. According to the 5th respondent, at the initial stage of admission, 41 students were allotted for BHMS course in the 5th respondent college out of whom 3 discontinued and these 3 were the seats filled up by spot admission conducted on 29.10.2012. This is evident from Exts.P3 to P5. The other two vacancies arose on account of the leaving of 2 students after availing T.C. in October, 2012. The 5th respondent alleges that these two vacancies were informed by the college to the second respondent and the 4th respondent could not make available students for filling up two vacancies reported by the then Principal. As per the condition imposed by the prospects, no allotment could be made after 31.12.2012. Therefore to prevent lapse of two seats the management filled those seats by admitting the petitioners who belong to OBC and they already been included in the rank list of the entrance

examination.

8. The main argument advanced by the learned Standing Counsel for the University is that before filling up of those two vacancies the 5th respondent college should have notified the vacancies. However, this was practicably impossible as admission had to be closed on the next day i.e. 31.10.2012, I see no reason to reject the submission made by the learned counsel for the 5th respondent that those two seats were filled up only to prevent lapse of seats and there was no other option. It cannot be said that any third party rights are affected as it was a spot admission. On a specific query put to the respondents during the course of argument as to whether they have received any complaint from any quarters that any other student who was more eligible than the petitioners were denied admission though they were present. The learned Standing Counsel for the respondent University answered in the negative.

9. It is true that before filling up the two seats by spot admission, the 5th respondent has not notified the same. It was not practicable as there was only one day left as third party interests are not affected. This Court is of the definite view that

the admission of the petitioners could be regularized as the petitioners were included in the select list of candidature prepared by the Commissioner of Entrance Examinations (R2).

10. Though it was argued by the learned Standing Counsel for the respondent - University that if the petitioners are permitted to continue, the same course of action would be taken by the 5th respondent in future also. This Court is of the view that the same can be curtailed by clear standing direction to the 5th respondent. It was also submitted by the learned Standing Counsel for the respondent - University that a penalty should be imposed on the 5th respondent for the irregular act. In this context, the learned counsel for the 5th respondent submitted that the 5th respondent is ready to sacrifice one seat each from the management quota during two future academic years. If such a restriction is imposed, the same would be a proper penalty on the 5th respondent. On a consideration of the entire materials placed on record, this writ petition is disposed of as under:

a) Ext.P15 is quashed.

b) The respondent - University is directed to allow the

petitioners to continue the BHMS studies under the 5th respondent college.

- c) The two seats to which the petitioners were admitted would be compensated by giving admission to candidates figured in the merit list for BHMS course in the 5th respondent college during the academic years 2015-2016 and 2016 -2017 by adjusting against the management quota during the new academic year.
- d) It is hereby directed that the 5th respondent shall not repeat such irregularities in future and if it is repeated the same would not be overlooked without consequence following.

Sd/-
A.V. RAMAKRISHNA PILLAI,
JUDGE

//true copy// P.A. To Judge

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