

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

WP(C).No. 7422 of 2015 (C)

PETITIONERS:

1. DR.M.P. ABHILASH KUMAR,
COMMUNITY HEALTH CENTRE,
MEPPADY, WAYANAD DISTRICT.
2. DR.LAKSHMY. M.,
COMMUNITY HEALTH CENTRE,
MEPPADI, WAYANAD DISTRICT.
3. DR.PRINSON GEORGE,
COMMUNITY HEALTH CENTRE,
MEENANGADI, WAYANAD DISTRICT.
4. DR.SHIJI E.JOB,
PUBLIC HEALTH CENTRE,
NOOLPUZHA, WAYANAD DISTRICT.

**BY SRI.KURIAN GEORGE KANNANTHANAM, SENIOR ADVOCATE.
ADVS. SRI.TONY GEORGE KANNANTHANAM,
SRI.THOMAS GEORGE.**

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
HEALTH & FAMILY WELFARE DEPARTMENT,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. THE DIRECTOR OF MEDICAL EDUCATION,
TRIVANDRUM-695 001.
3. THE COMMISSIONER FOR ENTRANCE EXAMINATION,
TRIVANDRUM -695 001.

WP(C).No. 7422 of 2015 (C)

*** ADDL. R4 IMPEADED**

**4. DHANYA. S.,
ASSISTANT SURGEON,
COMMUNITY HEALTH CENTRE,
IRIVERI, P.O. MOWANCHERY, KANNUR.**

*** ADDL. R4 IS IMPEADED AS PER ORDER DATED 27/03/2015
IN I.A. NO.3818/2015.**

**R1 TO R3 BY GOVT. PLEADER SRI.K.C. VINCENT.
ADDL. R4 BY ADV. SRI.KALEESWARAM RAJ.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-03-2015, ALONG WITH WP(C).NO.8273 OF 2015 AND CONNECTED
CASES, THE COURT ON 27-03-2015 DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- P1:- COPY OF THE JUDGMENT DATED 12/01/2015 IN CIVIL APPEAL NOS.297-298 OF 2015 OF THE HON'BLE SUPREME COURT OF INDIA.
- P2:- TRUE COPY OF THE ORDER DATED 03/02/2015 OF HEALTH & FAMILY WELFARE (S) DEPARTMENT.
- P3:- TRUE COPY OF THE NOTIFICATION DATED 24/03/2011 ISSUED BY THE COMMISSIONER FOR ENTRANCE EXAMINATIONS.

RESPONDENT'S EXHIBITS:-

- EXT.R4A COPY OF THE APPLICATION FOR ADMISSION TO MEDICAL P.G. COURSE 2015-20.
- EXT.R4B COPY OF THE ADMIT CARD.

//TRUE COPY//

P.S. TO JUDGE

rs.

P.R. RAMACHANDRA MENON, J.

**W.P.(C)Nos. 7422, 8273,
8287, 8305, 8421, 8427,
8450, 8452, 8590 & 8687 OF
2015**

Dated this the 27th March, 2015

J U D G M E N T

Change in the norms for selection and admission to the Post Graduate Medical Courses, after conducting the written test and declaration of the result, is the subject matter of challenge in all these cases, except, W.P.(C)No.7422 of 2015, where it is against the concerned G.O. dated 03.02.2015 whereby the weightage to be given to 'in-service' candidates is ordered to be reckoned for all '**rural areas**', instead of confining the same to candidates working in '**remote and difficult rural areas**', as contemplated in the Regulations issued by the Medical Council of India and explained by the Apex Court in **Civil Appeal Nos.297 and 298 of 2015** by judgment dated 12.01.2015.

2. The pleadings and proceedings are referred to, as given

in W.P.(C)No.8273 of 2015 for convenience of reference, except to the extent which is separately dealt with, wherever it is felt necessary.

3. All the petitioners herein, after acquiring the degree of MBBS , joined the service of the State and are working in various capacities in different destinations, with different length of service. Considering the difficulties expressed from the part of in-service candidates to get selected for admission to Post Graduate Degree/Diploma courses, competing with fresh hands because of the stress, strain and commitment to duty, the State Government gave rise to an enactment named as **Kerala Medical Officers' Admission to Post Graduate Medical Courses Under Service Quota Act, 2008 (Act 29 of 2008)** (popularly known as Service Quota Act) whereby 40% of available seats were earmarked for, to be filled up by eligible 'in-service' candidates . As per **Section 3** of the said Act, it was stipulated that admissions under the said Act will be made

notwithstanding anything contained in the Indian Medical Council Act or any rule or Regulations issued thereunder and as per **Section 5(4)** of the Act, the **selection was to be made on the basis of seniority**. 'Weightage' was ordered to be provided as dealt with in **Section 6** of the Act, reckoning the service rendered in the '**rural area**' or '**difficult rural area**' as the case may be, defining both the terms separately **under Section 2 (a) and 2(i)** of the Act .

4. Selection and admission of candidates, based on seniority as envisaged under the Act was sought to be challenged by some of the aggrieved parties by approaching this Court. By virtue of the Central legislation- the Indian Medical Council Act, 1956 (**MCI Act**) and Regulations thereunder, a common Entrance Test was prescribed for admissions to all PG Degree/Diploma Courses, prescribing the minimum qualifying marks. By virtue of the **Service Quota Act**, the selection was to be conducted not based on the merit, but based on the service

seniority, which hence was under challenge in the aforesaid cases filed before this Court, mainly contending that, in so far as the field was pre-occupied by the Central Legislation brought about in exercise of the power flowing from Entry 66 of the List I of the 7th Schedule to the Constitution of India, it was not open for the State to have legislated on the same subject, with reference to the power flowing from Entry 25 of List III (Concurrent List) of 7th Schedule.

5. After hearing both the sides, a Division Bench of this Court, as per the judgment reported in **2011 (2) KLT 294 [Mohammed Riaz v. State of Kerala]** held that, in so far as Central Legislation was occupying the field, it was not liable to be intruded or encroached by the State Legislation, prescribing a different mode of selection. Placing reliance on the decision rendered by the Constitution Bench of the Apex Court in **Dr. Preeti Srivastava & anr. vs. State of M.P.& Others.** [(1999) 7 SCC 120], it was made clear by the Bench that the

State was free to legislate invoking the power under Entry 25 of List III of 7th Schedule to the Constitution, in so far as the field was not occupied by any Central Legislation enacted with source of power traceable to Entry 66 of List I of 7th Schedule. In view of existence of Central Legislation (MCI Act and Regulations) dealing with admission to PG Degree/Diploma courses in the field, the Bench observed that, passing the common Entrance Test, acquiring the minimum qualifying marks was essential. Then the Service Quota Act was read down by the Bench, reconciling the position that, once the candidate gets qualified in the common Entrance Test, selection will be pursued based on their **inter se seniority**.

6. The matter was taken up in appeal before the Apex Court. Referring to the scheme of the Statute, both Central and State and the existence of the Regulations formulated by the Medical Council, in exercise of the powers under **Section 20 and 33** of the Indian Medical Council Act, 1956, the Supreme

Court observed that the High Court had rightly held that *in so far as the field was occupied by the Central Legislation, it was not open for the State to have prescribed a different mode of selection, merely based on the **seniority simplicitor***. It was held that ***merit and merit alone shall be the basis for such selection*** and if at all any advantage was to be given to the in-service candidates, *weightage could be given to the appropriate extent, as stipulated in the third proviso to Regulation 9 of the MCI Regulations (the Post Graduate Medical Education Regulations, 2000)*. It was further held that the Division Bench of this Court was not right in reconciling the position to the effect that once the candidates get qualified in the Entrance Test, **inter se seniority** was to be the deciding factor for getting admission. In short, the necessity to pass the common Entrance Test and the merit rating of the candidates, with liberty to have requisite extent of weightage in respect of in-service candidates, stand highlighted in the said judgment. A copy of the

said verdict has been produced as **Ext.P2 in W.P.(C)No.8273 of 2015.**

7. But by the time, the above judgment was rendered on 12.01.2015, the State Government had already approved the prospectus, as per **G.O. dated 15.12.2014**, a copy of which has been produced as Ext.P1, which was based on the law declared by the Division Bench of this Court in **2011 (2) KLT 294 (cited supra)**. As per the provisions of the said prospectus, particularly, **clause 7.1.3.**, Preparation of Seniority list under the Health Service Quota was to be made with weightage for the '**rural area**' and '**difficult rural area**' service, as provided therein. *In respect of 'Rural service' it was mentioned that '**one year**' will be added **for every completed 3 years** of rural service, subject to a **maximum of 5 years** as bonus* and that Doctors working in approved Casualty Units in the Government Hospitals would also be also eligible for claiming Rural Service Quota. In respect of the '*Difficult Rural Service*', it was stipulated that

*one year will be added for **every completed 1 year**, subject to a **maximum of 8 years** as bonus.* The list of Government Allopathic Medical Institutions designated as Rural stations in Kerala is given as mentioned in the Standardised list of Government Allopathic Medical Institutions 2013 prepared by Health Information Cell (DHS) and approved vide G.O.(MS) No.443/2013/H&FWD dated 16.11.2013 and the list of Government Allopathic Medical Institutions in Difficult Rural Areas in Kerala is provided as mentioned in G.O.(MS) No.55/2014/H&FWD dated 15.02.2014.

8. Based on Ext.P1 Prospectus, further steps were pursued and the common Entrance Examination was conducted on 08.02.2015. As mentioned above, it was in the meanwhile, that the Apex Court deprecated the **reconciliatory approach** made by the Division Bench of this Court in the decision reported in **2011(2)KLT 294 [Mohammed Riaz v. State of Kerala]** and declared the law, as per Ext.P2 judgment dated 12.01.2015,

alerting the need to give utmost importance to **merit with requisite/permissible extent of weightage** to be given to the in-service candidates, in terms of the third proviso to Regulation 9 of the **Post Graduate Medical Education Regulations, 2000**. It was taking note of the observations made by the Apex Court as above, that the prospectus was sought to be corrected by issuing Ext.P3 **G.O dated 03.02.2015**, whereby the minimum qualifying marks in respect of Service Quota candidates, (which was fixed as 40% vide Ext.P1 Prospectus) was enhanced to **50%**, with other appropriate amendments also providing 'weightage' to be reckoned in the case of the in-service candidates having '**rural area service**'. On the very next day, i.e. on 04.02.2015, the adverse consequences resulted, because of '**negative marking**', particularly in the case of in-service candidates, was decided to be taken away by issuing another G.O. in this regard, holding that no negative marking will be there in the Entrance Examination.

9. It was after setting the field as above, that the candidates were made to participate in the common Entrance Examination, which was held on 08.02.2015 . After the test, the papers were evaluated and the result was declared vide Ext.P4 on 06.03.2015. When the petitioners (in all these cases) were expecting selection on the basis of above exercise, the Government took a somersault and issued Ext.P7 **G.O. on 11.03.2015 (G.O.(Rt.)No.847/2015/H&FWD)**, whereby the basis of weightage ordered to be given for 'rural area service', as per **Ext.P3, G.O. dated 03.02.2015 ((G.O.(Rt.) No.517/2015/H&FWD)** was completely changed, ***confining the benefit to 'Difficult Rural Area service' alone.*** A fresh rank list was prepared as per Ext.P8, whereby the persons like the petitioners came to be pushed down to much lower pedestal, while the candidates, whose performance in the written test was much below, came to be placed above them. This made the petitioners to approach this Court challenging Ext.P7 G.O. dated

11.03.2015, mainly contending that such change in the norms effected after the examination and publication of result, is not liable to be sustained, as the rules of the game cannot be changed after commencement of the game.

10. As mentioned already, the petitioners in **W.P.(C) No.7422 of 2015** are in-service candidates **having 'difficult rural area service'**, whose grievance is that even as per the Statute (Service Quota Act), separate parameters have been prescribed for giving weightage to 'rural area service' and 'difficult rural area service' and that higher extent of benefit is stipulated to be given to the 'difficult rural area service'. This in turn was incorporated as part of Ext.P1 Prospectus published on 15.12.2014. Eventhough Regulation 9 of **Post Graduate Medical Education Regulations, 2000** stipulates for giving weightage to the 'remote or difficult area service' (extracted by the Apex Court in para 12 of Ext.P2 judgment) in the manner and extent as specified therein and eventhough the Supreme

Court, while passing the judgment on 12.01.2015, intercepting the verdict passed by the Division Bench in **2011(2)KLT 294 [Mohammed Riaz v. State of Kerala]** observed that the benefit could be extended only to such extent, the State Government under the guise of giving effect to the verdict passed by the Apex Court has issued the **G.O dated 03.02.2015**, whereby weightage has been ordered to be given **to all the in-service candidates having 'rural area service'**. Many institutions situated with close proximity to city /towns are also enlisted as coming under 'rural areas', as per the G.O. Dated 16.11.2013, whereas the **'difficult rural areas' notified as per the G.O.dated 15.12.2014 have been simply given a go-bye**. By virtue of such an exercise, undue advantage is given to in-service candidates having 'rural area service' and the more deserving persons having 'difficult rural area service' have been made to suffer and hence the challenge in the said writ petition. But subsequently, since the mistakes have been realised and the

Government has come up with **G.O. dated 11.03.2015** pointing out that, what was actually meant in the G.O. dated 03.02.2015 was only to extend the benefit to all the candidates, who were having service in 'difficult rural areas, the relief stands satisfied. But since the subsequent G.O. dated 11.03.2015 is under challenge in the other writ petitions, the above writ petition also required to be heard in detail along with other matters.

11. During the course of hearing, it is brought to the notice of this Court that Ext.P2 judgment rendered by the Apex Court on 12.01.2015, interfering with the verdict passed by a Division Bench of this Court in **[2011(2)KLT 294] (cited supra)** (to the extent it has been interfered), was with reference to the Central Legislation/Regulation already occupying the field. But it remains a fact that the Central Regulation came to be set aside by the Apex Court in **Christian Medical College, Vellore vs. Union of India (2014) 2 SCC, 305**, which fact was not brought to the notice of the Apex Court while passing Ext.P2 judgment. True,

the Apex Court was considering only the scope of the verdict passed by the Division Bench of this Court in **2011 (2) KLT 294 (cited supra)**, when the Regulation was very much in existence and as such, setting aside the Regulation, as per **Christian Medical College, Vellore case (cited supra)** may not have tilted the balance in any manner, in so far as the issue involved in the said case was concerned.

12. But since the Regulation stands set aside, no Central Legislation (enacted with reference to the power of the Central Government under Entry 66 of List I of 7th Schedule of the Constitution) is in existence as on date and as such, the Service Quota Act enacted by the State with reference to the power under Entry 25 of List III of the 7th Schedule, which has obtained the assent of the President cannot be adversely affected. In other words, Ext.P2 verdict passed by the Apex Court, with reference to the factual position existing on the date when the Regulation No.9 of the **Post Graduate Medical**

Education Regulations, 2000 was in existence, as such, is not applicable to the position as it exists as on this day and the State cannot be found fault with, if appropriate stipulations are made to reckon seniority of in-service candidates to an appropriate extent, while fixing the norms for selection.

13. On coming across Ext.P2 judgment of the Apex Court, passed on 12.01.2015, the matter was considered by the Prospectus Committee as to the necessity to incorporate **merit as one of the deciding factors** to grant admissions to the in-service candidates as well. It was accordingly, that necessary changes were sought to be made in the Prospectus, by issuing Ext.P3 G.O dated 03.02.2015 and the entrance examination was conducted on 08.02.2015. It was after taking part in the said examination and after declaration of the result on 06.03.2015, that the petitioners in W.P(C)No.7422 of 2015 chose to turn up before this Court challenging the G.O. dated 03.02.2015 to the extent it provides weightage to the '**rural service**', instead of

confining the same to the '**difficult rural service**'. But it remains a fact that the persons having '**difficult rural area service**' are sought to be placed on a better pedestal than the persons having '**rural area service**', as separately defined under **Section 2(a) and 2(i) of the Act 29 of 2008** and as dealt with accordingly under **Section 6** of the Act r/w **Rule 8 of the Kerala Medical Officers' Admission to Post Graduate Medical Courses under Service Quota Rules, 2010**.

14. The eligibility of the in-service candidates having 'difficult rural area service', giving higher benefit to them under the 'Act', is not under challenge in any of these writ petitions. Nothing prevents the Government in having considered the eligibility of the in-service candidates having 'difficult rural area service' and the persons having 'rural area service' separately, fixing appropriate extent of weightage in respect of their service, in conformity with the provisions of the Statute; more so when no Central law is in occupation of the field as on date,

(the Central Regulation having been set aside by the Apex Court in ***Christian Medical College, Vellore case***)(cited *supra*).

15. When Ext.P3 Government Order dated 03.02.2015 intended to provide weightage to in-service candidates having 'rural area service' **en bloc**, it took a different turn, when the Government has later come up with G.O. dated 11.03.2015 (after the test and declaration of result) holding that it was actually intended only in respect of remote difficult service. The two stands do not reconcile with each other, more so when both the circumstances are separately defined and dealt with under the Statute, which was very much known to the Government/Department. It is also a fact, as pointed out by the learned Counsel for the petitioners in W.P.(C)Nos.8450 and 8452 of 2015 that, at the time of issuance of the G.O. dated 03.02.2015, the necessity to reckon the merit in the light of Ext.P2 verdict passed by the Apex Court on 12.01.2015, was considered and discussed in detail by the **Prospectus**

Committee and it was accordingly, that a decision was taken. But coming to the subsequent G.O. dated 11.03.2015, whereby Ext.P3 G.O. dated 03.02.2015 was varied, no such exercise is seen to have been done by the Prospectus Committee and the G.O. dated 11.03.2015 does not refer to any such deliberation. In the said circumstance, this Court finds that the change brought about by issuance of Ext.P7 G.O. dated 11.03.2015, after conducting the test on 08.02.2015 and declaration of the result on 06.03.2015, is not correct or sustainable and hence the same is hereby set aside.

16. As rightly pointed out by the learned Counsel appearing for the petitioners in **W.P.(C)No.8687 of 2015**, it may not be proper for this Court to specify what should be the appropriate extent of weightage to be given to the 'rural area' candidates or the 'difficult rural area' candidates. It is already fixed under the 'Act' with reference to seniority alone. The only question to be considered is, to what extent it should be varied or modified,

when the merit in the entrance test is also intended to be reckoned. This comes within the zone of consideration of the Government, who is the proper and competent authority in this regard. Such re-fixation of the norm will in no way adversely affect any in-service candidates, as a different norm stipulating a higher extent of benefit to the 'difficult rural area' candidates, is actually intended and envisaged under Section 6 of the Act 29 of 2008 r/w Rule 8 **of the Kerala Medical Officers' Admission to Post Graduate Medical Courses under Service Quota Rules, 2010.** The third proviso to Regulation 9 of ***Post Graduate Medical Education Regulations, 2000*** also refers to "remote **or** difficult areas" (emphasis is supplied). Eventhough the word used in the Regulation is "or" , (as extracted in **paragraph 12** of Ext.P2 judgment of the Apex Court), when it was dealt with in paragraph '13' of the judgment, it came to be cited as "and" , i.e. "remote **and** difficult areas". If the Regulation contemplates **remote areas or difficult areas**

separately, there was nothing wrong in having extended different extent of **consideration**/weightage. even at a time when the Regulation was in existence. Now, since the Regulation is not there, it is more easy and open for the State Government to consider it separately, giving appropriate extent of weightage. Such prescription at this stage can in no way cast any heart burn to anybody, as this Court has already heard the case of persons representing both the groups.

17. In the above circumstance, the impugned **G.O. dated 11.03.2015** in the concerned writ petitions stands set aside. The respondent/State is directed to reconsider the matter in the light of the above observations and stipulate appropriate extent of weightage, to be given separately in respect of '**rural areas**' **and 'difficult rural areas**' and re-fix the ranklist accordingly, which shall be done forthwith, at any rate, within 'two weeks' from the date of receipt of a copy of the judgment. It is open to proceed with selection and allotment accordingly. This will

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govern the issue and rights of the candidates in W.P.(C)No.7422
of 2015 as well.

All the writ petitions stand disposed of.

**P.R.RAMACHANDRA MENON
JUDGE**

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