

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

WP(C).No. 8096 of 2015 (J)

PETITIONER(S) :

**DR.SREEKUMAR.G.S,
'AMBADY', TC 14/1714, FOREST OFFICE LANE,
VAZHUTHACAUD, THIRUVANANTHAPURAM- 695 014.**

**BY SRI.N.N.SUGUNAPALAN (SENIOR ADVOCATE)
ADV. SRI.S.SUJIN**

RESPONDENT(S) :

- 1. COMMISSIONER OF ENTRANCE EXAMINATIONS
FOR ADMISSION TO POST GRADUATE MEDICAL COURSES, 2015,
HOUSING BOARD BUILDINGS, SANTHI NAGAR,
THIRUVANANTHAPURAM- 695 001.**
- 2. DIRECTOR OF MEDICAL EDUCATION,
DIRECTORATE OF MEDICAL EDUCATION,
THIRUVANANTHAPURAM- 695 011.**
- 3. SECRETARY TO GOVERNMENT,
HEALTH & FAMILY WELFARE DEPARTMENT,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM- 695 001.**
- 4. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM- 695 001.**

BY SPL. GOVERNMENT PLEADER SRI.ROSHAN ALEXANDER

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF THE PROSPECTUS ISSUED BY THE GOVERNMENT
FOR THE YEAR 2015.**

EXHIBIT P2: TRUE COPY OF THE GOVERNMENT ORDER DATED 01.01.2015.

**EXHIBIT P3: TRUE COPY OF THE GOVERNMENT ORDER NO.4/2015
DATED 05.01.2015.**

**EXHIBIT P4: TRUE COPY OF AMENDMENT OF PROSPECTUS BY
G.O(RT)NO.517/215/H&FWD DATED 03.02.2015.**

**EXHIBIT P5: TRUE COPY OF RELEVANT PAGES THE LIST OF THE RESULT OF
CANDIDATES.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE

K. VINOD CHANDRAN, J.

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Dated this the 8th day of June, 2015

J U D G M E N T

The petitioner is aggrieved with the modification made to the prospectus, allegedly in the midst of the selection process, which the petitioner asserts is against the established law as laid down by the Hon'ble Supreme Court. The rules of the game cannot be changed mid-way, after the selection process has commenced is the consistent view of this Court, as also the Hon'ble Supreme Court.

2. The brief facts to be noticed are that, the petitioner is an in-service candidate, who applied for the entrance examination to the P.G Medical courses, as per Ext.P1 prospectus. In-service candidates were permitted a relaxation of 10% in the minimum required marks as per the prospectus. The petitioner is aggrieved with the change made, removing such relaxation by

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Ext.P4 Government Order. The relaxation was removed just prior to the entrance examination and hence the selection process having already commenced and the petitioner having a legitimate expectation of being granted a relaxation as an in-service candidate, challenges Ext.P4 Government Order.

3. I have heard Sri. N.N. Sugunapalan, learned Senior Counsel for the petitioner, instructed by Smt. K. Amminikutty, and Sri. Roshan Alexander, learned Senior Government Pleader for the State.

4. The learned Senior Counsel for the petitioner would specifically point out that different standards were applied in the entrance examination for the P.G Dental course and the P.G Medical course. The in-service candidates, who appeared for the P.G Dental course entrance examination were granted a relaxation of 10%; despite the verdict of the Hon'ble Supreme Court relied on in Ext.P4. The petitioner and similarly placed

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medical P.G aspirants were denied such benefit. The learned Senior Counsel also would rely on a decision of a learned Single Judge of this Court, in which this Court struck down the States decision to avoid relaxation of 10% to the in-service candidates; upheld also by the Division Bench.

5. The learned Senior Government Pleader on the other hand would contend that, there is considerable distinction in the facts and context in which this Court directed relaxation to in-service candidates for the P.G Dental courses. The P.G Dental course entrance examination concluded before the judgment of the Hon'ble Supreme Court, while the entrance examination to P.G Medical courses was scheduled later and the Government had withdrawn the relaxation prior to the exams and had removed the negative marking only to mitigate any possible prejudice to such in-service candidates.

6. The relevant dates are to be noticed to understand

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the controversy and the claim of uniformity with respect to the two entrance examinations raised by the petitioner herein. Both the prospectus for the P.G Dental course and P.G Medical course were brought out with the relaxation of 10% in the minimum requirement to in-service candidates. An ancillary benefit was available to the in-service candidates with respect to weightage insofar as rural area service and difficult rural area service, also specified in the prospectus itself. The prospectus was brought out with the above relaxation since a Division Bench of this Court had affirmed such relaxation granted to in-service candidates in an earlier year. The said decision was also pending consideration in a Civil Appeal before the Hon'ble Supreme Court.

7. After the last date of application and after the P.G Dental course entrance examination, the Hon'ble Supreme Court delivered a judgment on 12.01.2015 in **Sudhir and others v.**

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State of Kerala and others [Civil Appeal Nos. 297-298 of 2015], reversing the judgment of the Division Bench of this Court interfering with such relaxation granted and weightage conferred on in-service candidates; maintaining that the selection should be on inter-se merit. The P.G Dental course entrance examination was held on 11.01.2015, just prior to the said judgment. The State then sought to remove the relaxation in tune with the judgment of the Hon'ble Supreme Court by re-casting the rank list without the relaxation of 10% being granted to in-service candidates. This was the subject of challenge before this Court in W.P.(C) No.7292 of 2015, in which a learned single Judge upheld the challenge by a judgment dated 10.04.2015. The learned single Judge found that, the entrance examinations for the P.G Dental course itself having been concluded, it may not be proper for the State to change the rules of the game and remove the relaxation of 10% granted to

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in-service candidates.

8. However, it is to be noticed that, the judgment took note of the situation where the examination had been already concluded and specifically found that if the amendment was prior to the examination, then there could have been some justification in upholding the contention of the State. It is this observation which distinguishes the P.G Medical course entrance examination from P.G Dental course entrance examination and the context in which factually relaxation was granted to in-service candidates, in one exam, while it stood declined in the other. In the case of the P.G Medical courses, the entrance examination itself was conducted after the amendment was notified. The amendment was necessitated only by reason of the declaration of law made by the Hon'ble Supreme Court and not by reason of any change in policy.

9. The judgment of the Hon'ble Supreme Court

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having been delivered on 12.01.2015, the State alertly issued a notification dated 03.02.2015, which is produced at Ext.P4, wherein, on the basis of the declaration of law, the relaxation granted to in-service candidates insofar as the minimum requirement of marks was taken away. Going by the very same decision of the Hon'ble Supreme Court, the weightage granted to two different services being rural area service and difficult rural area service was confined to difficult rural area service alone. However, apprehending that sufficient in-service candidates would not be available for allotment and to facilitate more among them to achieve the minimum bench mark of 50%; it was also decided that, the negative marking system would be removed in toto. The State was hence alive to the perceivable injury that could be caused to the in-service candidates, by taking away the relaxation and in anticipation brought in a mitigating measure to enable more in-service candidates to

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obtain the threshold eligibility.

10. The reliance placed on the judgment of the Division Bench affirming the decision of the learned single Judge also, according to this Court is distinguishable. The Division Bench affirmed the decision of the learned single Judge on the specific ground that, the appellants who challenged the judgment of the learned single Judge did so by obtaining leave to appeal. They had never challenged the prospectus as such. The prospectus having provided a relaxation and the entrance examinations having concluded prior to the judgment of the Hon'ble Supreme Court, the appellants therein, who had never challenged such relaxation available to the in-service candidates as declared in the prospectus, was found to be disentitled to raise such contention after the entire process of selection was over.

11. The said finding of the Division Bench would

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equally apply to the petitioner herein. The P.G Medical course entrance examination was held on 08.02.2015 and the petitioner had raised a challenge with the instant writ petition after the results were declared and the petitioner failed to obtain the minimum required 50% in the entrance examination. The prospectus for the P.G Medical course under which the petitioner applied specifically contained a relaxation of 10% for in-service candidates. The same was removed by Ext.P4 Government Order dated 03.02.2015. The petitioner does not have a case that the petitioner was not aware of such removal prior to the examination. The petitioner also was aware of the measure of mitigation taken by the State, to minimise prejudice to the in-service candidates. On 08.02.2015, the petitioner attended the examination without demur, enjoyed the benefit of mitigation too. Definitely, the petitioner could take up a contention that there was little time between Ext.P4 and the

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examination. But that however would not absolve the petitioner from explaining as to why the petitioner did not approach the Court within a reasonable time, challenging Ext.P4 notification. Only after the results were published and the petitioner was found to have not obtained the required minimum of 50%, the petitioner thought it fit to challenge the relaxation to in-service candidates being removed by Ext.P4.

12. In this context, the learned Special Government Pleader would also point out that, another amendment made was with respect to a notification dated 11.03.2015, which was brought out by the Government on the question of weightage granted to in-service candidates with respect to rural area service and difficult rural area service. Such notification as was noticed above also was necessitated by reason of the declaration made by the Hon'ble Supreme Court in the Civil Appeal referred to herein above. The Government had by the said notification,

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which was in continuation of Ext.P4, confined such weightage to difficult rural area service alone and had taken away that conferred to rural area service, as available in the prospectus.

13. A challenge raised with respect to the removal of weightage was negated. The Division Bench in W.A No. 803 of 2015 and connected cases raised the issue at (vi) and found so in paragraph 66.

VI. Whether the GO dated 11th March, 2015 amounted to change in the rules of game after examination was over, which is not permissible in law ?

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66. Now we come to issue No.VI. Petitioners' submission is that Government Order dated 11.03.2015 amounted to change in the Rules of Game after entrance examination was over on 08.02.2015. Relevant provisions of prospectus have already been noted above. As noted above, the prospectus contained clause for admission to postgraduate course on the basis of seniority determined as per prospectus in service candidates subject to they have obtained 50% marks in the entrance examination. The said was the legal position as laid down by the Apex Court in Mohammed Riaz's case (supra) dated 30.03.2011. Against the judgment of the Division Bench appeal was filed before the Supreme Court and the Supreme Court pronounced the judgment on

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12.01.2015. The Supreme Court did not agree with the judgment of the High Court that seniority of in-service candidates be reckoned for purpose of admission in medical service. Apex Court held that Section 5(4) being in conflict with Regulation 9 cannot survive and seniority of candidates is irrelevant. Apex Court held that weightage of marks can be given as per the third proviso of Regulation 9. The Supreme Court having on 12.01.2015 declared the law, the law declared by the Supreme Court is binding on the State and the State has to mend its affairs accordingly. The implementation of the judgments cannot be said to be change of rule of the game. The admissions by the State were to be concluded by the State following the law laid down by the Supreme Court in **Sudhir N's case (supra)**. It is true that immediately after the judgement dated 03.02.2015 certain modifications were made in the prospectus purported to be implementing the judgement. But as discussed above Government Order dated 03.02.2015 did neither implement the judgment of the Apex Court nor was in accordance with Regulation 9. The State itself thus came forward and corrected its mistake by issuing Government Order dated 11.03.2015. Learned counsel for the petitioners have relied on the judgments in **P.V.Indiresan (2) v. Union of India & Others** (2011) 8 SCC 441, **Paramender Kumar & Others v. State of Haryana & Others** ([2012] 1 SCC 177) and **Manjusree v. State of A.P** ([2008] 3 SCC 512). There cannot be any dispute to the general proposition that rules of game cannot be changed after the game is over. But the present case is different where the State was bound to implement the judgment of the Supreme Court and Regulation 9, hence the issuance of Government Order 11.03.2015 cannot be said to be hit by the above general proposition. It is further relevant to note that result of

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the entrance examination' was declared on 06.03.2015 publishing the marks obtained by the candidates in the examination. No change is being effected on the marks obtained by the candidates in the entrance examination. The result itself contemplated that the list of in-service candidates after adding weightage shall be separately issued. Rank list after adding weightage was issued on 12.03.2015 in accordance with Government Order dated 11.03.2015 which was brought on record of the Writ Petitions. The rank list after adding weightage was first issued on 12.03.2015 in accordance with the Government Order. Thus it cannot be said that there was any change in the rank list. We thus are of the view that on the above submission, the petitioners can obtain no benefit and there is no infirmity in the Government Order dated 11.03.2015 due to the above reason.

14. It is pertinent that the Government did not make the modification on a mere whim or even as a considered policy deviation. The prospectus was brought out as per the Division Bench decision of this Court, which had affirmed the relaxation granted to in-service candidates. When the relaxation granted was found to be bad by the Hon'ble Supreme Court, definitely the State was bound under Article 141 of the Constitution of India to follow the said dictum. The State alertly and with all

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expediency, came out with Ext.P4 notification removing the relaxation of the required minimum marks both in the P.G Dental courses and P.G Medical courses. With respect to the P.G Dental courses, this Court had found that, the same could not have been removed; specifically since the examination was prior to the declaration made by the Hon'ble Supreme Court. The said decision on the contextual circumstance stands distinct from the situation arising herein.

15. The Government also had in alleviation of the rigour of no relaxation being available; taken away the negative marking system. One cannot be divorced from the other and the prejudice is one assumed and not sustainable as a legal ground, since prejudice was one arising from the law declared. The petitioner who had the benefit of such change in rules seek to challenge the assumed prejudice caused. The removal of relaxation of minimum marks, attempted by the State was only

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to comply with the judgment of the Hon'ble Supreme Court. It is also to be noticed that otherwise there would have been a flood of litigation challenging the relaxation granted, on the basis of the declaration of the Hon'ble Supreme Court.

For all the above reasons, this Court is not inclined to interfere with Ext.P4. The writ petition is found to be devoid of merit and would stand dismissed. No costs.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

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P.A To Judge.