

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

WP(C).No. 12695 of 2012 (J)

PETITIONER(S):

- 1. SWATHY GIREESAN, AGED 20 YEARS,
D/O.GIREESAN, VADAKKE VARRIAM, MOORKKANAD P.O.
THRISSUR DISTRICT, PIN-680 711.**
- 2. FATHIMA UMMER AGED 20 YEARS
D/O.MOHAMMED UMMER, AYINIKKALAYIL HOUSE, PILLEKKAD
ANJOOR, THRISSUR DISTRICT-680 523.**

**BY ADVS.SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS
SRI.N.SUNIL**

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
HIGHER EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695 001.**
- 2. THE COMMISSIONER FOR ENTRANCE EXAMINATIONS
HOUSING BOARD BUILDING, SANTHI NAGAR
THIRUVANANTHAPURAM-695 001.**
- 3. THEJUS ENGINEERING COLLEGE
VELLARAKKAD P.O., ERUMAPETTY, P.O.TRICHUR DISTRICT
PIN-680 584, REPRESENTED BY ITS PRINCIPAL.**

R1,2 BY ADV. SR GOVERNMENT PLEADER SRI.THOMAS JOHN AMBOOKEN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE EXTRACT OF RANK LIST OF THE PETITIONER.

EXT.P2: TRUE COPY OF THE ALLOTMENT MEMO DATED 16.8.11 ISSUED BY THE 2ND RESPONDENT TO 1ST PETITIONER.

EXT.P3: TRUE COPY OF THE ALLOTMENT MEMO DATED 29.8.2011 ISSUED BY THE 2ND RESPONDENT TO 2ND PETITIONER.

EXT.P4: TRUE COPY OF THE NOTIFICATION DATED 14.11.11 ISSUED BY THE 2ND RESPONDENT.

EXT.P5: TRUE COPY OF THE RECEIPT DATED 1.9.11 ISSUED BY THE 3RD RESPONDENT TO 1ST PETITIONER.

EXT.P6: TRUE COPY OF THE CERTIFICATE DATED 11.1.12 ISSUED BY THE 3RD RESPONDENT.

EXT.P7: TRUE COPY OF RECEIPT DATED 9.5.12 ISSUED BY THE 3RD RESPONDENT TO 1ST PETITIONER.

EXT.P8: TRUE COPY OF RECEIPT DATED 15.5.12 ISSUED BY THE 3RD RESPONDENT TO 2ND PETITIONER.

EXT.P9: TRUE COPY OF THE LETTER DATED 22.5.12 ISSUED BY THE 3RD RESPONDENT TO 1ST PETITIONER.

EXT.P10: TRUE COPY OF THE LETTER DT.22.5.12 ISSUED BY THE 3RD RESPONDENT TO 2ND PETITIONER.

EXT.P11: TRUE COPY OF THE LETTER DT 16.5.12 ISSUED BY THE 2ND RESPONDENT.

EXT.P12: TRUE COPY OF THE ORDER DT 3.8.11 ISSUED BY THE 1ST RESPONDENT.

EXT.P13: TRUE COPY OF THE ORDER DT 10.2.12 ISSUED BY THE 1ST RESPONDENT.

1ST RESPONDENT'S EXHIBITS

EXT.R1(a): A TRUE COPY OF THE AGREEMENT DT 21.7.11

EXT.R1(b): A TRUE COPY OF THE LETTER NO.CEE.B3-2233/11(77) DATED 19.3.12 ALONG WITH LIST.

EXT.R1(c): A TRUE COPY OF THE REPRESENTATION DATED 12.3.12 BY THE MANAGEMENT ASSOCIATION TO GOVERNMENT.

EXT.R1(d): A TRUE COPY OF THE LETTER NO.10257/G3/2012/H.EDN DATED 23.3.12.

EXT.R1(e): A TRUE COPY OF THE REVISED LIST ALONG WITH LETTER DATED 16.5.12.

//True Copy//

PA to Judge

Rp

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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WP(C) No. 12695 of 2012
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Dated this the 30th day of March, 2015

J U D G M E N T

Antony Dominic, J.

The issue raised in this writ petition is as to whether the petitioners were entitled to get concession of special fee of ₹25,000/- payable from students undergoing Engineering Courses.

2. Brief facts of the case are that Ext.R1(a) dated 21/7/11 is a copy of the agreement that was entered into between the Government and the managements of Private Self Financing Engineering Colleges in the State. In the agreement, parties thereto have agreed that 50% of the seats will be filled up by students allotted by the Commissioner for Entrance Examination and the remaining 50% will be filled up under the management quota and NRI quota. Subsequently, the Government issued Ext.P12 order dated 3/8/11 specifying the fee structure and allotment of students. Clause 6 of Ext.P12, being relevant, reads thus;

“6. The fee structure applicable to the seats under the categories mentioned below in the 75 Private Self-financing Engineering Colleges who have entered into this Agreement for the year 2011-2012 admissions shall be as given below and this annual fee shall continue for

all the four years of study for the student admitted in 2011-2012.

<i>Annual Fee</i>	<i>Seats filled up by the CEE 50%</i>		<i>Seats filled up by the Management 50%</i>	
	<i>25% Lower Income Group</i>	<i>25%</i>	<i>35%</i>	<i>NRI-15%</i>
<i>Tuition Fee</i>	<i>Rs.35,000/-</i>	<i>Rs.35,000/-</i>	<i>Upto Rs.99,000/-</i>	<i>Upto Rs.1,50,000/-</i>
<i>Special Fee</i>	<i>NIL</i>	<i>Rs.25,000/-</i>	<i>Rs.25,000/-</i>	<i>Rs.25,000/-</i>
<i>Interest Free Refundable Deposit for 4 years.</i>	<i>NIL</i>	<i>NIL</i>	<i>Rs.1,50,000/-</i>	<i>Rs.1,50,000/-</i>

Note: Name of Private Self-financing Engineering colleges are specified in the Annexure I Prospectus.

25% Lower Income Group candidates will be eligible to study for a tuition fee of Rs.35,000/-. The remaining 25% candidates will be eligible to study for a tuition fee of Rs.35,000/- and Special fee of Rs.25,000/-. The fee benefits will be granted only after the closure of allotments to the Private Self-financing Engineering Colleges. Hence candidates (except SC/ST/OEC/ candidates eligible for fee concession) allotted to these institutions will have to remit the fee of Rs.60,000/- provisionally at the time of allotment. The Commissioner for Entrance Examinations will refund the balance amount to the candidates who will become eligible for fee benefits after the completion of allotment process, based on the Income Certificates produced by them."

3. On the basis of Ext.P12, the Government have also issued Ext.P4, notification dated 14/11/11, which also refers to the fee that is payable by the students allotted and the concessions that they are entitled to. On the basis of the above, the petitioners herein, whose annual family income is less than ₹2,50,000/-, were allotted by the Commissioner for Entrance Examination to the 3rd respondent College and accordingly, they joined for B.Tech in that College during the academic year 2011-12. It is the admitted case that they had already remitted the tuition fee of ₹35,000/- and special fee of ₹25,000/- for the first year.

4. It is the case of the petitioners that in terms of the provisions contained in Clause 6 of Ext.P12, they were entitled to get refund of the special fee paid. Ext.P6 is the certificate obtained by the 1st petitioner from the College, which also shows that they are liable to pay only ₹35,000/- each per academic year towards tuition fee. Exts.P7 and P8 show that petitioners paid the fee at the above rate for the second year of the course. While they were thus continuing, the College issued Exts.P9 and P10 notices making reference to Ext.P13 Government Order and

informing that the Government have revised the list of candidates eligible for fee concession and that therefore the petitioners are liable to pay ₹25,000/- additionally towards tuition fee. It was thereupon that the petitioners have filed this writ petition mainly challenging Exts.P9 and P10 and asserting their entitlement for waiver of special fee.

5. The case of the petitioners is that since they belong to lower income group viz., families with annual income less than ₹2,50,000/- a year, they are eligible for the benefit of Ext.P12, which relieve them from payment of special fee. It is contended that Government have revised the list of such eligible candidates by including the SC/ST students allotted to the college also in the list and as a result, the petitioners were rendered excess in the 50% quota earmarked for lower income group. Therefore, the question that arises in this writ petition is whether the action of the Government in including the SC/ST candidates also in the lower income group is correct or not.

6. In our view, this question will have to be answered in the light of the provisions contained in Clause 6 of Ext.P12 itself. Reading of Clause 6 shows that out of the 50% of the seats filled

up by the Commissioner for Entrance Examination, 25% seats are earmarked for candidates belonging to lower income group. Such candidates are liable to pay only tuition fee unlike the remaining 25% students who have the liability to pay ₹25,000/- towards special fee. In so far as the question whether the lower income groups would include candidates belonging to SC/ST, OEC etc., are concerned, reading of the above provision itself shows that the fee benefits will be granted only after the closure of allotments to the colleges concerned and that candidates, except SC/ST/OEC candidates eligible for fee concession, allotted to such institutions will have to remit the fee of ₹60,000/- provisionally at the time of their allotment and that the Government would refund ₹25,000/- to them. This, therefore, means that the Government have treated candidates belonging to SC/ST and OEC also as eligible for fee concession and have only relieved such candidates from remittance of fee on a provisional basis. If that be so, it is evident that candidates belonging to SC/ST and OEC categories are also liable to be included in the quota earmarked for lower income group. This, therefore, means that the communication of the Government, modifying the list of eligible candidates by

including the SC/ST and OEC candidates also in the list, is not in variance with the provisions of Ext.P12, the Government Order mentioned above. If that be so, we cannot find fault with Exts.P9 and P10 notices issued by the management of the 3rd respondent College calling upon the petitioners to remit additional ₹25,000/- towards special fee that is payable by them.

Writ petition fails and is dismissed.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

//True Copy//

PA to Judge