

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

WP(C).No. 19552 of 2013 (T)

PETITIONER(S):

1. **ZEENATH P.**
D/O.ABOOBACKER, PALAPRA HOUSE, ARIMANAL P.O.
KALIKAVU 676 525, MALAPPURAM DISTRICT.
2. **ABOOBACKER,**
PALAPRA HOUSE, ARIMANAL P.O., KALIKAVU 676 525
MALAPPURAM DISTRICT.

BY ADVS.SRI.P.SAMSUDIN
SMT.NIMA JACOB

RESPONDENT(S):

1. **THE DISTRICT COLLECTOR**
MALAPPURAM DISTRICT
COLLECTORATE MALAPPURAM - 678 505.
2. **THE PRINCIPAL,**
KMCT MEDICAL COLLEGE, MANASSERI P.O., 673 602
MUKKOM, KOZHIKODE.
3. **THE COMMISSIONER OF ENTRANCE EXAMINATION,**
THIRUVANANTHAPURAM - 695 001.
4. **SHARAFIYA T.K.**
1ST MBBS, KMCT MEDICAL COLLEGE, MANASSERI P.O. 673 602
MUKKOM, KOZHIKODE.
5. **SANITHAC.M.,**
1ST MBBS, KMCT MEDICAL COLLEGE, MANASSERI P.O. 673 602
MUKKOM, KOZHIKODE.

WP(C).No. 19552 of 2013

***ADDL R6 IMPEADED**

***ADDL. R6**

**AKHILA SALIM, THANDUPARAKKAL HOUSE, MAMPADU P.O.,
THANA, MALAPPURAM DISTRICT, PIN 676 542.
(2ND MBBS STUDENT, KMCT MEDICAL COLLEGE, MANASSERI P.O.
KOZHIKODE - PIN 673 602)**

**(ADDL. R6 IS IMPEADED AS PER ORDER IN I.A. NO.16475/2014 DATED
27.5.2015)**

R5 BY ADV. SRI.K.M.MOHAMED ABDURAHIMAN

R4 BY ADV. SRI.R.PARTHASARATHY

R4 BY ADV. SMT.SEEMA

R1 -R3 BY GOVERNMENT PLEADER SRI. NOUSHAD THOTTATHIL

ADDL R6 BY ADV. SRI.P.VENUGOPAL (1086/92)

R2 BY ADV. SRI.SHYAM PADMAN

R2 BY ADV. SRI.A.RANJITH NARAYANAN

R2 BY ADV. SRI.S.K.SAJU

R2 BY ADV. SRI.JOHN THITHEEMOS

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1:** COPY OF THE GO (RT) NO.3096/2011/H&FWD DT.27/8/2011
- EXHIBIT P2:** COPY OF THE COMPLAINT FORWARDED BY THE 2ND PETITIONER TO THE CHIEF MINISTER OF KERALA.
- EXHIBIT P3:** COPY OF THE INTIMATION DATED 11/10/2012 RECEIVED BY THE 2ND PETITIONER FROM THE OFFICE OF THE CHIEF MINISTER OF KERALA.
- EXHIBIT P4:** COPY OF THE COMMUNICATION DATED 17/11/2012 RECEIVED BY 2ND PETITIONER FROM THE OFFICE OF THE 1ST RESPONDENT.
- EXHIBIT P5:** COPY OF THE ORDER DATED 03/05/2013 ISSUED BY THE 1ST RESPONDENT TO THE TAHSILDAR NILAMBUR.
- EXHIBIT P6:** COPY OF THE ANNUAL FAMILY INCOME CERTIFICATE DATED 06/05/2013 ISSUED BY THE VILLAGE OFFICER KALIKAVU TO THE 2ND PETITIONER.
- EXHIBIT P7:** COPY OF THE CERTIFICATE ISSUED TO THE 1ST PETITIONER BY THE BRANCH MANAGER PUNJAB NATIONAL BANK KALIKAVU DATED 06/05/2013 AND ACCOUNT STATEMENT.
- EXHIBIT P8:** TRUE COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT DATED 1/6/2013.
- EXHIBIT P9:** COPY OF THE LIST OF 20 CANDIDATES ENTITLED FOR FEE CONCESSION UNDER SEBC AND BPL CATEGORY IN THE SECOND RESPONDENT COLLEGE ISSUED BY THE COMMISSIONER OF ENTRANCE EXAMINATION.

RESPONDENT(S)' EXHIBITS

- EXHIBIT R5:** COPY OF LIST OF CANDIDATES WHO ARE ELIGIBLE FOR FEE CONCESSION
- EXHIBIT R4(A):** COPY OF THE MEDICAL MARK SHEET FOR THE COMMON ENTRANCE EXAMINATION CONDUCTED IN THE YEAR 2011.

/TRUE COPY/

SKV

P.A. TO JUDGE

P.V.ASHA, J.

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W.P.(C). No.19552 OF 2013

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Dated this the 27th day of May, 2015

JUDGMENT

The 1st petitioner is a candidate who got admission in the 2nd respondent's college for MBBS on the basis of her rank in the Common Entrance Test held in the year 2011–2012. She belongs to Muslim Community. As per Clause 6 (a) of the agreement entered between the Management of Self Financing Colleges and Government which is produced as Ext.P1, 14% of candidates allotted by the Commissioner for Entrance Examination in each institutions coming under the BPL families need to pay only a sum of Rs.25,000/- as annual tuition fee, same amount was allotted by the Commissioner. Candidates will be selected under these category on the basis of the lower income irrespective of a rank or category. 26% of the candidates allotted under the SEBC category, also need pay a sum of Rs.25,000/- as annual tuition fee. They are selected on the basis of their rank.

2. The petitioner had submitted her income certificate, along with the application submitted by the petitioner before the Entrance Examination,(which is part of the application itself) showing the annual income as sum of Rs.9,000/-, as certified by the Village Officer.

3. Clause 4(6)(c) of Ext.P1 provides that the fee benefits will be granted only after closure of allotment to the private Self Financing Colleges. The income shown in the application is subject to verification at the end of Commissioner for Entrance Examination, for which particulars furnished by the candidates will be sent to the concerned District Collector, who will furnish a report after making enquiries. It is after such verification that the benefit is granted.

4. In the case of the petitioner the income was shown as Rs.38,000/- after verification by the District Collector and she happened to be a candidate ineligible for the benefit of reduced rate of fee and compelled to undergo the course on payment of full amount of fee. As the petitioner belongs to a poor family her father-the 2nd petitioner submitted a petition before the Chief Minister in the Sutharya Keralam Programme

pointing out that the income mentioned on the basis of the reports furnished by the Collector was not correct, explaining the pathetic condition of a tapping labourer who does not have even a residential property of their own. On the basis of this petition an enquiry was conducted by the (Ext.P4 letter dated 17.11.2012) District Collector and after reverification the annual income was found to be Rs.11,000/- as against the sum of Rs.38,000/- earlier reported. The petitioners have produced Ext.P5 letter of the District Collector addressed to the Tahsildar by which the income certificate was revised showing the correct annual income of Rs.11,000/-. Based on Exts.P4 and P5 as well as Ext.P6 certificate issued by the Village Officer the income is shown as Rs.11,000/-.

5. The petitioner approached this court for a direction to the respondents to grant her the benefit of fee concession under 14% quota, treating her as one among them with a further prayer to refund the excess tuition fee she was already remitted. Respondents 4 and 5 were impleaded as candidates belonging to the BPL categories who were having higher income—an income of Rs.36,000/- each and enjoying the

benefit of fee concession. 14% of the candidates eligible for fee concession comes to 7 students.

6. Ext.P9 is the list of candidates in the 2nd respondent college, who were granted benefit of fee concession, as published by the Commissioner of Entrance Examination. Serial No.8 therein is the respondent with rank No.1327 with income of Rs.36,000/- and Serial No.18 is the 5th respondent having a rank no. 1496 with an income of Rs.36,000/-. Additional 6th respondent has also been impleaded as she belongs to SEBC categories. She is Serial No.2 in the list with rank No.1517 having income of Rs.2,64,000/- . There are only 7 candidates who were eligible for fee concession under the BPL category. Remaining 30 come under SEBC category. While BPL category candidates are selected on the basis of lower income, candidates under SEBC category are selected on their rank. In case the petitioner has to be granted the benefit of fee concession one of the candidates among 20 has to be removed from the list of eligible hands and will have to refund the benefits enjoyed by him/her.

7. This court passed an order dated 11.8.2014, directing the District Collector, Malappuram to furnish the details regarding the income of the petitioner as well as the respondents 4 and 5 after conducting re-verification. The order reads as follows:

“The first petitioner was admitted in second respondent's college for MBBS course during the academic year 2011-'12. As per Government Order dated 27.8.2011 fees concession is provided for 14% of the students in self financing colleges based on his annual family income. Ext.P1 is the said Government Order. The petitioners would submit that the first petitioner submitted an annual income certificate of Rs.9,000/- along with an application for common entrance examination. The income was enquired by the 3rd respondent the Commissioner of Entrance Examination through the office of the District Collector, Malappuram. On such verification it is reported that the first petitioner's annual income is Rs.38,000/-. Based on that the first petitioner was not given fees concession. Respondents 4 and 5 were given fees concession as their income was less than the income of the first petitioner. The income of parents of both party respondents is Rs.36,000/-. Whereas in the report made by the District Collector the income

of the first petitioner is shown as Rs.38,000/-.

2. The first petitioner has a case that fraud was played while making the enquiry by the respondents and on that count the first petitioner's income is reported as Rs.38,000/-.

The petitioners rely on Ext.P4 a subsequent report made by the Deputy Collector on behalf of District Collector in which the income of the petitioner is reported as Rs.11,000/-.

Petitioners also rely on Ext.P6 income certificate issued on 6.5.2013 and would submit that the income of the petitioners is Rs.11,000/-.

3. The relevant academic year is 2011-'12. The income of petitioners have to be enquired for the year 2011-'12. The petitioners would submit that the income certificate produced along the application for common entrance examination is only Rs.11,000/-. The question is whether a proper enquiry has been conducted at the relevant point of time as to find out the annual income of the first petitioner's parents. Necessarily the details has to be there showing the income of first petitioner's parents at Rs.38,000/-. If the income of Rs.38,000/- was calculated on a factual basis, the claim in this

writ petition is to be negatived. Therefore, an enquiry is necessary in this matter especially in the light of the fact that in Exts.P4 and P6 the income of the first petitioner's parents is shown as Rs.11,000/-. In the facts and circumstances of the case, there shall be a direction to the first respondent to conduct an enquiry, find out the reasons on which the income of the first petitioner's parents is found as Rs.38,000/-. A report shall be filed after conducting an enquiry in this matter after hearing the petitioners as well as respondents 4 and 5 and place before this Court within six weeks from the date of receipt of a copy of this order."

8. Based on that direction, a report was filed before this court. As per the report it is stated that the Sub Collector who verified the income already assessed, recorded it as Rs.38,000/- in the place of income assessed by the Village Officer as Rs.9,000/-. It was further stated that on the basis of the orders from the Public Grievance Redressal Cell of the Chief Minister, further inquiry was conducted and after the verification, the income was assessed by the Tahsildar as Rs.11,000/- based on which the revised certificate was issued. In this report the income earned by each of the family

members was given. It was reported that the 2nd petitioner, the father of 1st petitioner, was a coolie earning from Rubber tapping. It is further submitted that the petitioner's father is sick and unable to work and he is not doing any tapping work for more than the last 3 years, though he is known as Rubber tapper. The elder son of the 2nd petitioner is married and maintaining separate family and he is the only earning member and having only 10 cents of property having no series of income derived from it. The details of income in respect of respondents 4 and 5 were also informed. That their income was shown in the list before the Commissioner of Entrance Examination, as Rs.36,000/-. As per this report the annual income of the petitioner for the year 2011-2012 was assessed as Rs.11,000/-.

9. The respondents 4 and 5 and the additional respondent have also filed a counter affidavit. In the counter affidavit of 4th respondent he has claimed that since she is having higher rank she cannot be disallowed the benefit. At the same time, 5th respondent in the counter affidavit disputes the reverification as well as the contents of the report furnished

by the District Collector and states that she cannot be disallowed the benefits.

10. The Additional 6th respondent also filed counter affidavit pointing out that their selection was from SEBC and it is a separate selection even as per Ext.P1, on the basis of the rank. According to her she is having a higher rank than the petitioner and the criteria for selecting SEBC candidates is on the basis of rank cannot be excluded from the list of beneficiaries for fee concession.

11. In this case the candidates under BPL category, who are having income higher than the petitioner, among the 7 are rank Nos. 4 and 5, who are having the same income. In case the petitioner is also included, the number of candidates under the BPL category will come to 8 making one among them excess. Since the income of respondents 4 and 5 is the same, one among them will have to be excluded from the BPL category and in that place 1st petitioner shall be included. Ext.P1 does not provide for the method for exclusion. The method of selecting candidates under SEBC category is based on the rank. Therefore in order to find out the ineligible, i.e.,

person who should be disallowed the benefit, it will be just and proper to adopt the order of rank when there is a tie based on marks. Therefore the only possible solution is to select the candidate with higher rank for retention of benefit and to exclude her from the list. Among the respondents 4 and 5, the respondent 4 is Rank No.1327 and respondent 5 is rank No.1496, as evident from the list Ext P9. Therefore the 1st petitioner should be treated as included in the place of 5th respondent among the BPL candidates entitled to the benefit of fee concession.

12. In view of the above, I direct the 2nd respondent to allow the 1st petitioner to continue her studies with the benefit of fee concession, remitting tuition fee at reduced rates. As far as the tuition fee already paid by her is concerned, the 2nd respondent shall see that it is adjusted towards the fee to be remitted or refunded to her.

13. The additional respondents 4 and 5 submitted that the excluded candidates of BPL are liable to be accommodated in the SEBC list on the basis of their rank. In such circumstances, I direct the 3rd respondent to consider the

question whether the 5th respondent can be included in the list of SEBC candidates, after affording an opportunity of hearing to the candidates likely to be affected and to re-cast the list of the candidates eligible for fee concession under the 2nd respondent within a period of 2 months from the date of receipt of a copy of the judgment.

Accordingly, this writ petition is allowed.

Sd/-
P.V.ASHA, JUDGE

SKV